

RULES ON IMPLEMENTATION OF THE PUBLIC PROCUREMENTS ACT

In force from 15.04.2016

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Chapter one. GENERAL PROVISIONS

Art. 1. The Rules shall provide for the conditions and procedure for implementation of the Act on Public Procurement (APP) on:

1. the application of some exceptions from the applicable field of the APP;
2. planning and preparation of awarding public procurement;
3. conducting procedures for awarding public procurement and of a competition for a project;
4. the contents of the participation documents in procedures for awarding public procurement, the procedure and ways for their submission and receiving;
5. submission and publication of information about the public procurement;
6. (new – SG, 17/19, in force from 01.11.2019) the conditions and the order for awarding of public procurements through the electronic platform under Art. 39a, Para. 1 of the Public Procurement Act (PPA);
7. (Former Para. 6, amend., SG, 17/19, in force from 01.03.2019) the circumstances, which are published in the Register of the public procurements in the [Portal for Public Procurements](#);
8. (former item 7 - SG 17/19, in force from 01.03.2019) the requirements for publication of documents in the buyer's profile;
9. (former item 8 – SG, 17/19, in force from 01.03.2019) the minimal contents of the internal rules of public contracting authorities for management of the cycle of public procurements;
10. (former item 9 – SG, 17/19, in force from 01.03.2019) carrying out preliminary control by the Public Procurement Agency (PPA) and exchange of information in relation to the control;
11. (former item 10 – SG, 17/19, in force from 01.03.2019) conducting other powers of the executive director of the PPA under Art. 229, Para. 1 of the APP.

Art. 2. (Repealed, SG, 17/19, in force from 01.11.2019)

Chapter two. OBJECT AND ESTIMATED VALUE OF THE PUBLIC PROCUREMENT

Art. 3. Where in a document, related to awarding public procurement a difference is found between:

1. the description of the public procurement subject and the indicated in the call of proposals code under the Common Procurement Vocabulary (CPV) for correct, the data of the description of the procurement subject shall be accepted;
2. the place of implementation of the public procurement, indicated in words and the filled in the call of proposals code under the Classification of the territorial units for statistical purposes in Bulgaria (NUTS) for correct shall be accepted the indicated in words place of implementation.

Art. 4. Where a contracting authority has used a certain currency while indicated the estimated value of the public procurement in its opening, he shall be obliged to use the same currency everywhere, where a value is indicated for the relevant procurement.

Art. 5. (Amend., SG,17/19, in force from 01.03.2019) (1) The options under Art. 21, Para. 1 of the PPA shall be clauses in the contract, that cover the expectations of the contracting authority to award additional activities or quantities within the term of its execution, without obliging the contracting authority to assign them. When settling the prerequisites and conditions for the realization of the options, Art. 116, Para. 1, item 1 of the Public Procurement Act shall be observed.

(2) Where options are envisaged, they shall be included in the estimated value of the contract, which the contracting authority must indicate in the notice or in the announcement and, where applicable, in the decision to initiate the procedure - respectively in the invitation to certain persons. In the respective document, the contracting authority shall describe the options and, if possible, indicate their volume and value.

Art. 6. (Amend., SG, 17/19, in force from 01.03.2019) (1) The renewals under Art. 21, Para. 1 of the PPA shall include repetitive activities in circumstances, specified in the contract, without the necessity of its amendment.

(2) Where renewals have been foreseen, they shall be included in the estimated value of the contract, which the contracting authority must indicate in the notice or in the announcement and, where applicable, in the decision to initiate the procedure - respectively in the invitation to certain persons. In the relevant document, the contracting authority shall describe the renewals and, where possible, indicate the volume, value and the forecast timetable for their awarding.

Art. 7. (1) Where the contracting authority awards separate positions according to their individual value under the conceptions of Art. 21, Para. 6 of the APP, he shall indicate the estimated value of the separate position, and as additional information – also the remaining value of the procurement in:

1. the call, which announces the opening of the procedure;
2. the call under Art. 187, Para. 1 of the APP, or
3. the decision for opening of the procedure – in applicable cases.

(2) In the cases under Para. 1 in awarding the major part of the procurement as additional information, the contracting authority shall obligatorily indicate the subject, volume and value of each position, awarded independently according to its individual value.

(3) (Amend. – SG, 17/19, in fore from 01.03.2019) In the cases under Para. 1 and 2 the contracting authority shall provide information about the awarding of the other parts of the procurement, by indicating in the call of proposals for public procurement or in the call under Art. 187, Para. 1 of the APP, and in the applicable cases – in the decision, the unique number in the Register for public procurements.

Chapter three.

EXCEPTIONS FROM THE APPLICABLE FIELD OF THE APP

Art. 8. (1) Where the turnover is used as indicator for defining the percentage under Art. 14, Para. 1, p. 5 and 6 of the APP, the turnover shall be juxtaposed for the last 3 finalized financial years, realized by the controlled legal person while fulfilling activities for the contracting authority or his separate structures or for other legal persons, controlled buy the contracting authority with the total turnover, realized by the legal person for the same period.

(2) The correlation under Para. 1 shall be used while defining the percentage under Art. 14, Para. 1, p. 7 of the APP, by taking in consideration the turnover, formed from fulfillment of activities for the contracting authorities, who control a legal person or for other legal persons, controlled by these contracting authorities.

(3) Where the controlled legal person has been established or has fulfilled activity for a period, shorter than 3 finalized financial years, the correlation under Para. 1 and 2 shall be defined on the basis of the turnovers, realized by the controlled legal person for the finalized financial years and the

envisaged in his business programme for the remaining part of the 3 year period. Where the controlled legal person is newly established or has not realized activity during the last 3 finalized financial years, its business programme shall be taken in consideration.

(4) (Suppl. – SG, 17/19, in force from 01.03.2019) The value of a contract, which is signed under the conditions of Art. 14, Para. 1, p. 5 – 7 and Art. 149, Para. 1, item 13 of the PPA, shall be defined according to the methods in Annex N 1.

(5) (Suppl. – SG, 17/19, in force from 01.03.2019) For contracts, signed under Art. 14, Para. 1, p. 5 - 7 and Art. 149, Para. 1, item 13 of the PPA, the contracting authority shall annually assess the correlation under Para. 1 and 2 within 1 month term form the date of preparation of the annual financial statement of the controlled legal person, but not later than 31 March of the year, following the accounted financial year.

Art. 9. (1) (Amend. – SG, 17/19, in force from 01.03.2019) For defining the percentage under Art. 15, Para. 1, p. 5 of the APP, the correlation shall be calculated between the turnover, which is formed from activities, identical or close to the subject of the procurement, provided by the related undertaking of the contracting authorities, or of other undertakings, with which it is connected during the last 3 finalized financial years with the turnover of the related undertaking of all identical or close activities for the same period.

(2) Where the related undertaking has been established or has carried out activity for a period, shorter than 3 finalized financial year, the correlation under Para. 1 shall be defined on the basis of the turnovers, realized by the related undertaking for the finalized financial years and the envisaged in its business programme for the remaining part of the 3 year period. Where the undertaking is newly established or has not realized activity, its business programme shall be taken in consideration.

(3) (Amend. – SG, 17/19, in force from 01.03.2019) For contracts, signed on the basis of Art. 15, Para. 1, p. 5 of the APP, the contracting authority shall assess the correlation under Para. 1 annually, in one-month term form the date of preparation of the annual financial statement of the controlled legal person, but not later than 31 March of the year, following the accounted financial year.

Chapter three "a".

CENTRALIZED ELECTRONIC PLATFORM (NEW – SG, 17/19, IN FORCE FROM 01.11.2019)

Section I.

General provisions (New – SG, 17/19, in force from 01.11.2019)

Art. 9a. (New, SG,17/19, in force from 01.11.2019) (1) The centralized electronic platform, hereinafter referred to as the "platform", shall be kept and maintained in a way, that guarantees the protection of the information, including through its periodic and operational archiving.

(2) The platform shall maintain a record of every procurement operation, carried out by users, related to awarding public procurements, including data on the creation and exchange of documents, as well as on the individual actors, involved in the operations. Records shall be a proof of completeness and thoroughness of information, the authorship and the time of each action.

Art. 9b. (New, SG, 17/19) For the purposes of public procurement, the platform shall provide for the electronic exchange of information with systems and registers with primary information as determined by an order of the Minister of Finance.

Art. 9c. (New, SG, 17/19, in force from 01.11.2019) (1) The platform shall take into account the UTC (Coordinated Universal Time) standard, based on Recommendation 460-4 "Standard Frequency and Time Signal Emissions - Standard Frequency and Broadcast of Time Signal" from the

International Telecommunications Union (ITU), 1986.

(2) The astronomical time for the occurrence of facts with legal or technical significance shall be accounted for accurately by year, date, hour, minute, and second, written in accordance with Standard BDS ISO 8601: 2006 in the time zone of the contracting authority and certified by a qualified electronic time stamp.

Art. 9d. (New, SG, 17/19, in force from 01.11.2019) (1) All actions and omissions of actions in the platform of persons, authorized by the contracting authorities and the economic entities, which create rights or obligations, or directly affect the rights or legitimate interests of other persons, shall be deemed to have been committed by the contracting authority, or the economic entity, respectively.

(2) Contracting authorities and economic entities shall be responsible for the credibility, timeliness and completeness of the information they place on the platform, as well as for meeting the deadlines, according to their competence.

Art. 9e. (New, SG, 17/19, in force from 01.11.2019) Contracting authorities shall collect, process and provide personal data in and through the platform, only in connection with the award of public procurements and in accordance with the requirements of the EU and national legislation.

(2) The collected data may not be used for purposes, other than those, referred to in Para. 1, except where permitted by the law.

Art. 9f. (New, SG, 17/19, in force from 01.11.2019) (1) In the event of an unplanned interruption of the functioning of the platform, occurring at the last hour of the last day of expiry of the preclusive term for carrying out a certain action, the term shall expire at the end of the twenty-fourth hour of the first following working day.

(2) The extension under Para. 1 shall also apply when the unplanned interruption is for more than two hours on the last day of the preclusive period.

(3) In the cases under Para. 1 and 2, no later than the next day the PP Agency shall publish a message about the interruption of the Public Procurement Portal and, if this is not possible, on the website of the Ministry of Finance.

Section II.

Registration in the platform (New – SG, 17/19, in force from 01.11.2019)

Art. 9g. (New, SG, 17/19, in force from 01.11.2019) (1) All actions, related to the awarding public procurement in the platform shall be carried out by contracting authorities and economic entities, which have been registered in it.

(2) The registration shall be performed by an authorized person with a qualified electronic signature or an electronic identity certificate. The registration shall create an organization profile in the platform, and the person shall acquire the status of an administrator.

(3) The administrator under Para. 1 may join to the organization's profile other persons, to whom it shall confer rights to perform certain activities, including as an administrator, according to the internal organization or acts of the contracting authority or economic entity. The joint persons shall register with a username and password to create user profiles within the profile of the respective contracting authority or economic entity.

(4) With the registration the persons under Para. 1 and 3 shall agree with the rules under Art. 229, Para. 1, item 12 of the Public Procurement Act.

(5) Termination of administrator's rights shall be done by another administrator, designated by the contracting authority or the economic entity. Where this is not possible, the termination shall be carried out by the PP Agency, upon receipt of a written request from the contracting authority and the economic entity. The termination shall have an effect in the future.

Art. 9h. (New, SG, 17/19, in force from 01.11.2019) (1) In case of transformation of a contracting authority or an economic entity, the right assigners and the successors shall settle their rights

in respect of the profile of the transformed contracting authority or economic entity, including the access to it, to the administrators of the entities involved in the transformation, where if needed, inform the PP Agency of the official granting or termination of access of certain persons.

(2) The notification under Para. 1 shall be sent by e-mail, signed with an electronic signature, accompanied by evidence, when the information on succession is not publicly available.

Art. 9i. (New, SG, 17/19, in force from 01.11.2019) (1) For each contracting authority in the platform, an account shall be opened with a name, a BULSTAT code, a unique identification code (UIC) of the legal person, that the contracting authority represents, the postal and e-mail address for the correspondence, the settlement, the postal code, the buyer profile address (URL). All subsequent entries shall be made in the account.

(2) For each of the persons under Art. 175, Para. 2 of the PPA in the platform shall be created a unique number, under which name, BULSTAT code, respectively unified identification code (UIC) shall be entered, as well as the notices for subcontractor for procurements in the areas of “Defense” and “Security” shall be.

(3) In the cases under Art. 8, Para. 1 of the PPA, the documents, relating to the award of the procurement shall be published in the contracting authority’s account, specified in the joint awarding agreement.

Section III.

Exchange of documents and communications (New – SG, 17/19, in force from 01.11.2019)

Art. 9k. (New, SG, 17/19, in force from 01.11.2019) (1) The exchange of documents and communications between contracting authorities, applicants, participants and contractors shall take place through the platform, except in the cases of Art. 39a, Para. 5 - 7 of the Public Procurement Act.

(2) Documents and communications shall be deemed to be served upon receipt of the recipient's profile, which is certified by the platform by electronic time stamp.

(3) Users of the platform shall be required to monitor their accounts within the platform for the availability of communications and documents.

Section IV.

Preparation and submission of applications for participation, offers and projects (New, SG, 17/19, in force from 01.11.2019)

Art. 9l. (New, SG, 17/19, in force from 01.11.2019) (1) The platform shall be stored in an encrypted form until their opening:

1. participation applications;
2. the offers, including the price proposals, contained in them;
3. the competition projects, including the documents under Art. 39, Para. 2.

(2) The documents under Para. 1 shall be encrypted with a unique key, generated in the user's Internet browser.

(3) The generated key shall be stored only by the applicants and the participants, who shall decrypt the documents with it under Para. 1 in the platform, in the period from:

1. the expiry of the deadline for receipt of applications or offers, or projects up to the announced date and time for their opening;
2. sending the announcement to open the bids to the announced date and time for opening them.

(4) Applicants and participants, who have not decrypted the documents under Para. 1 within the term under Para. 3, shall be removed from participation pursuant to Art. 107, item 5 of the Public Procurement Act.

Chapter four.

PUBLICITY AND TRANSPARENCY

Section I.

Portal for Public Procurements. Register of Public Procurements

Art. 10. (1) The Public Procurement Agency shall provide access to information, related to public procurement through the [Portal for public procurements](#), called hereinafter: the Portal.

(2) The Portal shall be public and the access to its information shall be free.

(3) Through the Portal, access shall be provided to:

1. (amend., - SG, 17/19, in force from 01.11.2019) the platform, including to the Register of public procurement;

2. the methodical instructions under Art. 229, Para. 1, p. 2, letter "a" of the APP;

3. the document forms, which the contracting authorities use in awarding the public procurements;

4. the lists of the contracting authorities;

5. the lists of the external experts under Art. 229, Para. 1, p. 17 of the APP;

6. the list of the persons under Art. 57, Para. 4 of the APP;

7. results from the conducted monitoring of the public procurement;

8. the monthly journal on the public procurement market;

9. any other information, related to public procurements.

Art. 11. (1) (Amend., SG, 17/19, in force from 01.11.2019) The Public Procurement Register, hereinafter referred to as the "Register", is an electronic database, part of the platform, with information about the public procurements, awarded in the country.

(2) The Register shall be public and the access to the information in it shall be free.

(3) (Repealed, - SG, 17/19, in force from 01.11.2019)

(4) (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 12. (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 13. (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 14. (1) Every public procurement shall be entered in the register under a unique number, which shall contain 3 parts, as follows:

1. first part – a lot of the contracting authority;

2. (amend., - SG, 17/19, in force from 01.11.2019) second part – the year of opening the public procurement;

3. (amend., SG, 17/19, in force from 01.03.2019) third part - a 4-digit number, which is the official number of the entry of the public procurement of the respective contracting authority for the year and shall be obtained automatically from the electronic database.

(2) (Amend., SG, 17/19, in force from 01.11.2019) For each procurement in the Register, updated information on the deadline for the submission of applications or tenders shall be provided. This information shall not be disclosed for the procedures under Art. 18, Para. 1, items 8-10 and 13 of the Public Procurement Act, or when the procurement procedure is suspended.

(3) (Amend. and suppl., SG, 17/19, in force from 01.03.2019) Where public procurement contracts have been concluded after an internal competitive choice, based on a framework agreement of a central public procurement authority, the notices for the award, modification and termination of the contract shall be entered in the account of the central public procurement authority.

Art. 15. (1) (Amend., SG, 17/19, in force from 01.11.2019) Contracting authorities shall send for publication in the Register the information under Art. 36, Para. 1 and Art. 156, Para. 1 of the PPA on samples, through the platform.

(2) The information under Art. 14, Para. 3 shall be sent by the contracting authority, which is a party to the relevant contract.

(3) (Amend., SG, 17/19, in force from 01.11.2019) In the cases under Art. 203, Para. 3 of the Public Procurement Act, on the day of receipt of the notice of initiation or at the latest on the next working day, the contracting authority shall announce the suspension of the procurement through the platform.

(4) (New, SG, 17/19, in force from 01.11.2019) Contracting authorities shall enter the information under Art. 230, Para. 1, item 7 of the PPA in the platform, according to an approved model.

Art. 16. (1) Apart from the cases under Art. 100 and 179 of APP, correction in the following documents shall be admitted:

1. announcement for awarding a procurement;
2. announcement for results from the project competition;
3. announcement for change of a contract for public procurement;
4. announcement for finalization of the public procurement contracts.

(2) For expression of changed in the information, which is contained in the documents under Para. 1, the contracting authorities shall submit for entry in the register an announcement for a change or additional information.

Art. 17. (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 18. (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 19. (Repealed, - SG, 17/19, in force from 01.11.2019)

Section II.

Submitting Information to the EU Official Journal

Art. 20. (1) (Amend., SG, 17/19, in force from 01.11.2019) Contracting authorities shall send the notices under Art. 35, Para. 1 and Art. 156, Para. 1 of the PPA to the Publications Office of the European Union through the "Electronic Sender" service, observing the rules under Art. 229, Para. 1, item 12 of the Public Procurement Act.

(2) (Repealed, - SG, 17/19, in force from 01.11.2019)

Art. 21. (1) The announcement under Art. 156, Para. 1, p. 3 of the APP for the areas of Defence and Security shall be drawn up under a form, confirmed by the PPA executive director.

(2) (Amend., SG, 17/19, in force from 01.11.2019) The information under Art. 155, Para. 1, item 2 of the Public Procedure Act for the termination of the procedure shall be sent to the Publications Office of the European Union through the announcement under Para. 1.

Art. 22. The announcements for change or additional information with which documents under Art. 16, Para. 1, p. 1 – 3 are changed, published in the [EU Official Journal](#) shall be submitted under Art. 20, Para. 1.

Section III.

Buyer's Profile

Art. 23. (Amend., SG, 17/19, in force from 01.03.2019) The contracting authorities shall provide unrestricted, complete, free and direct access to all the documents, published on the created and maintained by them the buyer's profiles.

Art. 24. (1) (Amend., SG, 17/19, in force from 01.03.2019) The documents under Art. 36a, Para. 1, item 1, 2, 5-11 of the Public Procurement Act shall be published in the buyer's profile within the

following deadlines:

1. (Amend., SG, 17/19, in force from 01.11.2019) all decisions, notices and announcements to be published - on the day of their publication in the Register;
 2. (amend., SG, 17/19, in force from 01.03.2019) the decisions under Art. 22, Para. 1, item 3 - 11 of the Public Procurement Act - on the day of their sending to the persons, who have declared interest, to the applicants or the participants, and when they are not subject to sending - on the day of their issuance;
 3. (amend., SG, 17/19, in force from 01.03.2019) the invitations under Art. 34, Para. 1 and Art. 191, Para. 1 of the Public Procurement Act and Art. 64, Para. 3 - on the day they are sent to the designated persons;
 4. invitations under Art. 34, Para. 2 of the PPA - on the day of their sending to the persons, who have expressed interest in participation;
 5. (amend. – SG, 17/19, in force from 01.03.2019) the minutes and the final reports of the commissions for carrying out the procedures - on the day of sending the respective decision under Art. 22, Para. 1, items 4-8, 10 and 11 of the Public Procurement Act, depending on the type and the stage of the procedure;
 6. public procurement contracts and framework agreements, including the annexes thereto, on the day of publication of the contract notice in the register;
 7. (new – SG, 17/19, in force from 01.03.2019) the subcontracts - within 30 days from their receipt by the contractor;
 8. (former item 7 – amend., SG, 17/19, in force from 01.03.2019) the supplementary agreements for amendments of the public procurement contracts and the framework agreements - on the day of publication of the announcement, amending the public procurement contract or the framework agreement in the register;
 9. (former item 8, amend. – SG, 17/19, in force from 01.03.2019) the opinions and motives of the PP Agency under Art. 232, Para. 8 and 10, Art. 233, Para. 4 and Art. 235, Para. 3 of the Public Procurement Act - within 5 working days from their receipt by the contracting authority;
 10. (former item 9 – SG, 17/19, in force from 01.03.2019) the information under Art. 44, Para. 3, item 1 of the Public Procurement Act - within 5 days after the execution of the respective action;
 11. (former item 10, amend., SG, 17/19, in force from 01.11.2019) the information under Art. 193 of the Public Procurement Act - on the day of its publication in the register.
- (2) (Repealed - SG, 17/19, in force from 01.11.2019).
- (3) (Amend., SG, 17/19, in force from 01.03.2019) The documents under Para. 1, which relate to a particular public contract, framework agreement or qualification system, shall be separated into an electronic file in the buyer's profile.
- (4) (Amend., SG, 17/19, in force from 01.03.2019) The buyer's profile shall be maintained in a way, from which the date of publication of the documents therein may be certified.

Chapter five.

PREPARATION AND CONDUCTING PUBLIC PROCUREMENT PROCEDURES

Section I.

Forecast and Planning

Art. 25. The forecast of public procurement shall include establishing the number and type of the public procurements according to the expected needs and financial resource, which the contracting authority intends to provide.

Art. 26. (1) With the planning the contracting authority shall draw up a schedule for awarding the procurements, having in consideration:

1. the defined order for awarding each public procurement, including the type of the selected procedure, where applicable;
2. the preparation time, including of the documentation;
3. the time for conducting the awarding, including for receiving applications for participation or of offers, work of the commission and signing the contract.

(2) (Suppl. – SG, 17/19, in force from 01.03.2019) While planning, the contracting authority must consider all the legally established terms, referable to the subject of the procurement, including the ones for the appealing procedures. Conducting control by the PP Agency, where applicable, as well as the initial moment and the term of implementation of the contract.

Art. 27. (Amend. – SG, 17/19, in force from 01.03.2019) With preparing the schedule under Art. 26, Para. 1, as well as on the date of the decision for opening a procedure or publication of an announcement, the contracting authority shall summarize all the identical or similar needs, which are known to him in view to correct definition of the order for their awarding.

Art. 28. (1) While defining terms, which are in days and are counted after a certain action or event, the day of occurrence of the action or event shall not be counted.

(2) Where the term expires before a certain day, this day will be taken in consideration in defining the date, by which the relevant action is to be conducted.

(3) Where the last day of the term under Para. 1 is a holiday, the term shall expire on the first working day.

(4) (Amend., SG, 17/19, in force from 01.11.2019) The last day of the term shall expire at the moment of termination of the working time of the contracting authority. When exchanging information via the platform, the last day of the deadline shall expire at the end of the twenty-fourth hour.

(5) When the contracting authority extends the time limits in the procedure on the grounds of Art. 100, Para. 11 of the Public Procurement Act, the total duration of each of the deadlines, expired up to the moment of suspension of the procedure, together with the newly determined extended terms, may not be shorter, than the original term, set by the contracting authority.

(6) (New, SG, 17/19, in force from 01.03.2019) The difference between the time limit for the receipt of applications or participation in the offers and the date and time for their opening may not be less than 12 hours.

Section II.

Preparation of the Procedure

Art. 29. (1) Where in the preparation of the documentation for the public procurement, external persons have participated, the contracting authority shall mention them in the information under Art. 44, Para. 3, p. 1 of the APP, while observing the requirements of the Act on Personal Data Protection, where for the legal persons shall be entered full name and BULSTAT code or UIC , and for the natural persons – full name and place of work, and if needed – also other information.

(2) The persons, who participate in the preparation of documentation for public procurement shall be obliged by the opening of the procedure to keep in secret all the data and circumstance, which have become known to them in relation to their work.

Art. 30. (1) In the announcement, which opens the procedure, the contracting authority may envisage possibility for provision offers for one or more of the nomenclatures in the separate positions, included in the public procurement subject – in awarding public procurements for supply of medical products under the Act on Medical Products in Humane Medicine or of medical items under the Act on

Medical Items.

(2) In the cases under Para. 1 in the participation documentation the minimal requirements to the offers shall be indicated, which are part of the nomenclatures in the separate positions and in the methods shall also be defined the way for assessment of the offers, which have been submitted for part of the nomenclatures of the separate positions.

Art. 31. (1) (Repealed, - SG, 17/19, in force from 01.03.2019)

(2) The way of calculation of the compliance between assets and liabilities and minimal admissible values of this correlation, above which it is accepted that the applicant or participant meets the requirements under Art. 61, Para. 1, p. 3 of the APP, have been defined by the methods in Annex N 2.

Art. 32. Where the contracting authority requires samples, description and/pictures of the goods – subject to the supply, in the public procurement documentation the he shall indicate for what they will be used, which indicators will be studied, in order to establish compliance with the technical specifications, as well as if as a result of the study of the samples their thoroughness will be violated or the commercial appearance.

Art. 33. (1) (Amend. – SG, 17/19, in force from 01.03.2019) Contracting authorities may require the submission of plans, schedules and other documents, in order to assess the organization of performance in accordance with the methodology for assessment. It is not allowed to assess the completeness and the way the information is presented in the documents. In such cases, clear and specific conditions shall be set out in the documentation for participation, which must be in accordance with the plans and timetables and the information they must contain.

(2) Where a competition is conducted for a project in the area of the investment design, the design value of the construction shall obligatorily be included as an assessment indicator of the competition projects.

(3) (New – amend., SG, 17/19, in force from 01.03.2019) In the case of inclusion of an assessment indicator, related to a term, the contracting authority shall set minimum and / or maximum limits, taking into account the complexity of the procurement, the time, required for its implementation and, where applicable, warranty support.

Art. 34. During the preliminary selection in the procedures under Art. 18, Para. 1, p. 2- 7 of the APP, the contracting authority shall not have the right to require and the applicant shall not have the right to produce an offer.

Art. 35. In the draft contract the contracting authorities may set a requirement the resources which will be engaged with the implementation of the procurement to be available in the proposed type and volume in the implementation of the relevant activities under the contract.

Art. 35a. (New – SG, 17/19, in force from 01.03.2019) (1) The term of validity of the offers shall be the time, during which the participants are bound by the terms and conditions of the offers, submitted by them.

(2) The contracting authority shall set the term under Para. 1 in calendar days. The term shall start to run from the date, set for the deadline for receipt of offers.

(3) The contracting authority shall invite the participants to extend the validity of the offers, when it has not expired. When the term has expired, the contracting authority shall invite the participants to confirm the validity of their offers for a new term, set by him. A participant who fails to extend or confirm the validity of his offer shall be removed from participation.

Section III. Requirements to Applicants and Participants

Art. 36. (1) A branch of a foreign person may be an independent applicant or participant in a procedure for awarding a public procurement, if he may independently submit participation applications

or offers, and sign contracts under the legislation of the state where he is established.

(2) In the cases under Para. 1, of for proving compliance with the requirements for economic and financial status, technical and professional abilities, the branch shall rely on the resources of the trader, the branch shall produce evidences, that in fulfillment of the procurement will have these resources at disposal.

Art. 37. (1) The contracting authority may set conditions, which refer to partnership and differ from the conditions for the individual participants or applicants, only where they have been objectively defined in view to the circumstance, that applicants or participant is partnership , which is not a legal person, and is not in an unequal situation to the individual applicants or participants.

(2) The conditions under Para. 1 shall nor refer to:

1. the way of distribution of the work among the members of the partnership;
2. nationality, territorial separateness or belonging of a part or all the members of the partnership ;

3. the way of proving financial and/or economic abilities, as well as technical and professional capabilities by some members of the partnership with the exception of requirements, which complies from a normative or administrative act, depending on the distribution of the participation of the person while implementing the activities, provided by the contract for establishment of the partnership .

(3) The conditions under Para. 1 may refer to:

1. selecting a partner, which shall represent the partnership for the purposes of the public procurement;

2. agreement for joint responsibility, where such is not provided by the applicable legislation.

(4) (Amend. – SG, 17/19, in force from 01.03.2019) The contracting authority may require from an applicant or participant – partnership, which is not a legal person, to produce a copy of a document, for establishment of the partnership, as well as the following information in relation to the relevant public procurement:

1. rights and duties of the participants in the partnership;
2. distribution of responsibility among the partnership members;
3. the activities, which will perform every partnership member.

Art. 38. In selection of a criteria for awarding under Art. 70, Para. 2, p. 2 or 3 of the APP, the contracting authority shall indicate the periods in relation to which proposals for the costs are produced, where applicable.

Section IV. Contents of the Participation Applications and Offers

Art. 39. (1) (Amend., SG, 17/19, in force from 01.03.2019) By submitting offers it shall be considered, that the participants agree with all the conditions of the contracting authority, incl. with the term of validity of the offers and the draft contract.

(2) The application for participation shall include at least the following documents:

1. (amend., SG, 17/19, in force from 01.03.2019) a Single European Public Procurement Document (SEPPD) in accordance with the requirements of Art. 67 of the PPA and the conditions of the contracting authority;

2. documents, evidencing the reliable undertaken measures, where applicable;

3. (amend. – SG, 17/19, in force from 01.03.2019) the document under Art. 37, Para. 4, where applicable.

(3) The offer shall include:

1. technical offer, containing:

a) (repealed – SG, 17/19, in force from 01.03.2019, corr. - SG 20/19);

b) proposal for implementation of the procurement in compliance with the technical

specifications and requirements of the contracting authority;

c) (repealed – SG, 17/19, in force from 01.03.2019, corr. - SG 20/19);

d) (repealed – SG, 17/19, in force from 01.03.2019, corr. - SG 20/19);

e) declaration, that while drawing up the offer, the obligations, related to taxes and securities, environment protection, employment protection and conditions at labour have been observed, where applicable;

f) (Suppl. - SG, 17/19, in force from 01.03.2019, corr. - SG 20/19) samples, models, description and /or pictures of the goods, which will be supplied, where applicable;

g) any other information and/or documents, required by the contracting authority, where this is needed by the procurement subject;

2. (Amend., SG, 17/19, in force from 01.03.2019, corr. - SG 20/19) a price offer, which includes a price of acquisition and all other proposals on monetary indicators.

(4) Where the subject of the public procurement imposes its implementation at stages, the offer shall indicate the concrete stages and terms for implementation of each stage.

(5) (Repealed, - SG, 17/19, in force from 01.03.2019, corr. - SG 20/19)

Art. 40. (Amend., SG, 17/19, in force from 01.11.2019) (1) The persons under Art. 54, Para. 2 of the PPA shall be as follows:

1. in a general company – the persons under Art. 81, Para. 1 and Art. 89, Para. 1 of the Commerce Act;

2. in a limited partnership – unlimited responsible partners under Art. 105 of the Commercial Act;

3. in a limited liability company – the persons under Art. 141, Para. 2 of the Commercial Act, and in a sole trade company with unlimited liability – the persons under Art. 147, Para. 1 of the Commercial Act;

4. in a shareholding company – the persons under Art. 241, Para. 1, Art. 242, Para. 1 and Art. 244, Para. 1 of the Commercial Act;

5. in a limited partnership with shares – the persons under Art. 256, of the Commercial Act;

6. in a sole trader – natural person – trader;

7. in a branch of a foreign person – the person who manages and represents the branch or has analogical rights under the legislation of the state, where the branch has been registered;

8. the cases under p. 1 -7 – also the procurators, where applicable;

9. in the other cases, including for the foreign persons – the persons, who represent, manage and control the applicant or participant under the legislation of the state, where they are established.

8. in the cooperatives - the persons under Art. 20, Para. 1 and Art. 27, Para. 1 of the Cooperatives Act;

9. in the case of associations - the members of the management board under Art. 30, Para. 1 of the Non-Profit Legal Persons Act or the manager, in the cases under Art. 30, Para. 3 of the Non-Profit Legal Persons Act;

10. in the foundations - the persons under Art. 35, Para. 1 of the Non-Profit Legal Persons Act;

11. in the cases under items 1 - 7 and the procurators, if any;

12. for foreigners - the persons, who represent, manage and control the applicant or the participant under the laws of the state, in which they are established.

(2) In the cases under Para. 1, p. 11 and 12, where the person has more than one procurator, the declaration shall be submitted only by the procurator, in whose representation power the territory of the Republic of Bulgaria has been included, or the territory of the state, in which the procedure with the contracting authority under Art. 5, Para. 2, p. 15 of the PPA is conducted.

(3) The applicants or participants are required, at the request of the contracting authority, to provide the necessary information on the legal form of organization, under which they carry out their activities, as well as a list of all obliged persons within the meaning of Art. 54, Para. 2 and 3 of the PPA,

regardless of the name of the bodies, in which they participate or the positions they occupy.

Art. 41. (Amend. – SG, 17/19, in force from 01.03.2019) (1) Where the persons under Art. 54, Para. 1, p. 2 of the APP are more than one, and for them there is no difference regarding the circumstances under Art. 54, Para. 1, items 1, 2 and 7 and Art. 55, Para. 1, item 5 of the Public Procurement Act, UEDPP may only be signed by one of these persons if the signatory has information on the reliability of the declared circumstances with respect to the other obliged persons.

(2) Where there is a need for protection of personal data in case of difference in the circumstances, related to the personal condition of the persons under Art. 54, Para. 2 and 3 of the Public Procurement Act, the information, regarding the requirements under Art. 54, Para. 1, items 1, 2 and 7 and Art. 55, Para. 1, item 5 of the Public Procurement Act shall be completed in a separate UEDPP, signed by the respective person.

(3) The UEDPP under Para. 1 may also contain the circumstances under Art. 54, Para. 1, items 3 - 6 and Art. 55, Para. 1, items 1- 4 of the Public Procurement Act, as well as those, related to the selection criteria, if the signatory person may independently represent the respective economic entity.

(4) If it is necessary to declare the circumstances under Art. 54, Para. 1, items 3 - 6 and Art. 55, Para. 1, items 1-4 of the PPA, as well as those, related to the selection criteria, relevant to a partnership, which is not a legal person, the person representing the partnership shall submit UEDPP for these circumstances.

(5) Where public procurement documents are submitted by a person, who represents the applicant or the participant under authorization, in the UEDPP shall be pointed information on the scope of his / her representative authority.

Art. 42. (1) The contracting authorities may admit the possibility the information for compliance with the selection criteria to be provided through filling in UEDPP only of Part IV "Selection Criteria", Section "General Instruction for All the Selection Criteria".

(2) The possibility under Para. 1 shall be indicated in the call, which announces the opening of the procedure, and the procedures under Art. 18, Para. 1, p. 8 - 10 and 13 of the APP – in the participation invitation in negotiations.

Art. 43. In the UEDPP data shall be provided about the public registers, in which information is contained about the declared circumstances or about the competent body, who under the legislation of the relevant state shall be obliged to provide information about these circumstances officially by the contracting authority.

Art. 44. (1) (Repealed, - SG, 17/19, in force from 01.03.2019)

(2) (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 45. (1) Where for an applicant or participant some of the conditions under Art. 54, Para. 1 of the APP is present, or the indicated by the contracting authority conditions under Art. 55, Para. 1 of the APP and before the submission of the participation application or the offer he has undertaken measures for evidencing reliability under Art. 56 of the APP, these measures shall be described in the UEDPP.

(2) As evidences for the reliability of the applicant or participant, the following documents shall be provided:

1. in relation to the circumstance under Art. 56, Para. 1, p. 1 and 2 of the APP – a document for made payment or an agreement or other document from which is evident that the obligations have been guaranteed or that the parties have agreed upon their delay or deferred, with the payment plan and/or with indicated dates for final payment of the obligations due or is in a process of payment of a compensation due;

2. in relation to the circumstance under Art. 56, Para. 1, p. 3 of the APP – a document by the relevant competent authority for confirmation of the described circumstances.

Art. 46. (1) The applicants and participants shall be obliged to notify in writing the contracting authority within 3 day term from occurrence of a circumstance under Art. 54, Para. 1, Art. 101, Para. 11 of the APP, or a condition under Art. 55, Para. 1 of the APP, indicated by the contracting authority.

(2) (Amend. – SG, 17/19, in force from 01.03.2019) In the cases under Para. 1, the newly occurred circumstances shall be taken into account by the commission when the documents under Art. 106, Para. 1 of the Public Procurement Act have been prepared.

Section V.

Submission of a Participation Applications and Offers (Title, amend. – SG, 17/19, in force from 01.03.2019)

Art. 47. (Amend. – SG, 17/19, in force from 01.11.2019) Documents, related to participation in public procurement shall be submitted through the platform in accordance with the rules for its use under Art. 229, Para. 1, item 12 of the Public Procurement Act and subject to the requirements, laid down by the contracting authority.

(2) In the cases under Art. 39a, Para. 5 - 7 of the PPA, where the application or the offer, or parts thereof shall not be submitted through the platform, they shall be presented in sealed opaque packaging, in which the following shall be indicated:

1. the name of the applicant or participant, including the participants in the partnership, where applicable;

2. correspondence address, telephone N and if possible – fax N and e-mail address;

3. the name of the procurement, and where applicable – the different positions, for which the documents are submitted.

(3) Where the contract is divided into different positions, the applicant or the participant shall submit the documents under Art. 39, Para. 2 and 3 for each position separately. Under the same criteria for selection of two or more distinct positions, the documents under Art. 39, Para. 2 shall be presented in total.

(4) In case of an open procedure and public competition, the documents under Art. 39, Para. 2 and 3 shall be presented.

(5) In the procedures under Art. 18, Para. 1, p. 2-7 of the PPA at the pre-selection stage, the documents under Art. 39, Para. 2 shall be submitted.

(6) When submitting offers in a restricted procedure, competitive dialogue and innovation partnership, the documents under Art. 39, Para. 3 shall be presented. In the cases under Art. 39a, Para. 5 - 7 of the Public Procurement Act, the documents shall be accompanied by an inventory and the price proposal shall be presented in a separate opaque envelope, marked "Proposed price parameters".

(7) When submitting initial offers in the procedures under Art. 18, Para. 1, p. 3 - 5 of the Public Procurement Act the documents under Art. 39, para. 3 shall be submitted, where in the cases under Art. 39a, Para. 5-7 of the PPA shall be accompanied by an inventory.

(8) In the cases under Art. 39a, Para. 5 - 7 of the Public Procurement Act, where the contracting authority awards the contract on the basis of the initial offers, submitted pursuant to Art. 76, Para. 16 of the PPA, the price proposal shall be presented in a separate envelope. In those cases, when an offer is submitted for more than one separate positions, the documents under Art. 39, Para. 3 shall be presented separately packaged, if requested by the contracting authority.

(9) When samples or models are presented under Art. 39a, Para. 8 of the Public Procurement Act, they are indicated in a way, that shows:

1. the name of the applicant or the participant, including the participants in the partnership, where applicable;

2. the number of the offer, sent via the platform, where applicable;

3. correspondence address, tel. N and if possible – fax N and e-mail address;

4. the name of the procurement and, where applicable, the separate positions, for which it is presented.

(10) In the cases under Para. 9, when samples or models are sent before the offer, it shall indicate the incoming number upon registration in the contracting authority's registration office and, when sent by post or other courier service, the dispatch number.

Art. 48. (1) (Amend., SG, 17/19, in force from 01.11.2019) The received offers or applications for participation shall be entered in a register, which shall contain:

1. sender of the offer, or the participation application;
2. N, date and time of receiving
3. (amend., SG, 17/19, in force from 01.11.2019) the reasons for the return of the application for participation or the offer in the cases under Art. 39a, Para. 5-7 of the Public Procurement Act;
4. (new - SG 17/19, in force from 01.11.2019) the data under p. 1 - 3 for the samples or models received, where applicable.

(2) (Amend., SG, 17/19, in force from 01.11.2019) In the cases under Art. 39a, Para. 5 - 7 of the Public Procurement Act upon receipt of the application for participation or of the offer on the packaging the data under Para. 1, p. 2 shall be noted, for which a document shall be issued to the carrier. No participation applications and offers, submitted after the deadline for receipt, or are in unsealed package, or in a package with impaired integrity shall be accepted.

(3) (Repealed, SG, 17/19, in force from 01.11.2019).

(4) (Repealed, SG, 17/19, in force from 01.11.2019).

(5) (Repealed, SG, 17/19, in force from 01.11.2019).

(6) (Amend., SG, 17/19, in force from 01.11.2019). In the cases under Art. 39a, Para. 5 - 7 of the Public Procurement Act the received participation applications or offers shall be submitted to the chair of the commission under Art. 51, for which a protocol with the data under Par. 1 shall be drawn up. The protocol shall be signed by the carrier and the chair of the committee.

Section VI.

Submission of Participation Applications, Offers and Projects in Electronic Way (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 49. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 50. (Repealed, - SG, 17/19, in force from 01.03.2019)

Section VII.

Commission for selection of the Applicants and Participants, Consideration and Assessment of the Offers and Conducting Negotiations and Dialogue

Art. 51. (1) After expiry of the term for receiving participation applications or offers, the contracting authority shall appoint the commission under Art. 103, Para. 1 of the APP with an order, which shall determine:

1. the staff names and the persons, selected for chairperson;
2. the terms for performing the work;
3. (suppl. – SG, 17/19, in force from 01.03.2019) place of storage of the documents, related to the public procurement by the finalization of the commission work, where applicable.

(2) The commission members under Para. 1 may also be external persons.

(3) In the cases under Para. 2 the contracting authority shall sign a written contracts with each of the persons, attracted as chairperson or commission members.

(4) The commission chairperson under Para. 1, p. 1 shall:

1. call the commission meetings and shall set a schedule for its operation;
2. inform the contracting authority about all the circumstances, which stop the fulfillment of the

set tasks within the set terms;

3. (amend. – SG, 17/19, in force from 01.03.2019) be responsible for the correct storage of the documents, which are not in the platform by the finalization of the commission operation;

4. make proposals for replacement of commission members in case of established impossibility for some of them to fulfill their obligations.

(5) The commission members shall:

1. participate in the commission meetings;

2. personally consider the documents, participate in the decision taking and assess the offers;

3. sign all the protocols and reports of the commission operation.

(6) The commission decisions shall be taken by an ordinary majority.

(7) Where a commission members does not agree with the decision and proposals of the commission, he shall sign the documents with reservation. The reservation shall be grounded in writing, where the motives shall be inseparable part of the report under Art. 103, Para. 3 of the APP.

(8) (Amend. – SG, 17/19, in force from 01.03.2019) The commission members shall produce to the contracting authority a declaration under Art. 103, Para. 2 of the PPA after presenting the list of applicants or participants.

(9) Every commission member under Para. 1 shall be obliged to withdraw where he finds that:

1. because of objective reasons he cannot fulfill his tasks;

2. (amend. – SG, 17/19, in force from 01.03.2019) during the procedure, there appeared a conflict of interests.

(10) The contracting authority shall be obliged to remove a commission member, about whom it is found that there is a conflict of interests with an applicant or participant.

(11) In the cases under Para. 9 and 10 the contracting authority shall select by an order a new member.

(12) In the cases under Para. 10, the actions of the removed member, related to consideration of the participation applications and/or offers and assessment of the offers of the participants, after occurrence of the found circumstances shall not be taken in consideration and shall be carried out by the new member.

(13) (suppl. – SG, 17/19, in force from 01.03.2019) The commission members shall be obliged to keep the circumstances in secret, which have become known in relation to their work in the commission, including protecting documents from unauthorized access.

Art. 52. (1) The commission and each of its members shall be independent while expressing opinions and taking decisions, where in their actions they shall only be led by the law.

(2) Every commission member shall be obliged immediately to report to the contracting authority the cases, in which he has been pressed to take unregulated decision in favour of an applicant or participant.

Section VIII.

Commission Actions while Considering Participation Applications and Offers (Title, amend. – SG, 17/19, in force from 01.03.2019)

Art. 53. In case of change of the data, time or place for opening the participation applications or the offers, the applicants or participants shall be notified through the buyers profile at least 48 hours before the new time.

Art. 54. (1) (Amend., SG, 17/19, in force from 01.03.2019) The received participation applications or offers shall be opened at a public meeting by the commission under Art. 103, Para. 1 of the Public Procurement Act, at which the applicants or participants in the procedure may be present, or their authorized representatives, as well as representatives of the mass media.

(2) Amended, SG No. 17/1919, in force from 01.11.2019) Where the participation applications

or the offers are received through the platform, the contracting authority shall ensure to the persons under Para. 1 possibility to track the actions of the Commission for opening the documents.

(3) (Amend., SG, 17/19, in force from 01.03.2019) The chairperson of the Commission shall open the applications for participation or the offers in the order of their receipt and shall announce their content.

(4) (Amend., SG, 17/19, in force from 01.11.2019) In the cases under Art. 39a, Para. 5-7 of the Public Procurement Act, at least three of the members of the commission shall sign the proposal for the execution of the procurement and the envelope with the inscription "Proposed price parameters".

(5) (Amend., SG, 17/19, in force from 01.11.2019) In the cases under Art. 39a, Para. 5 - 7 of the Public Procurement Act, the Commission shall propose to one of the attending representatives of the other participants to sign the proposal for the execution of the procurement and the envelope entitled "Proposed price parameters".

(6) The public part of the commission meeting shall finish after the actions under Para. 3 – 5.

(7) The commission shall consider the documents under Art. 39, Para. 2 for compliance with the requirements to the personal condition and selection criteria set by the contracting authority and shall draw up a protocol.

(8) If there are shortcomings, incompleteness or incompliance of the information, including irregularity or factual mistake or incompliance with the requirements of the persons condition or selection criteria, the commission shall indicate them in the protocol under Art. 7 and shall send the protocol to all applicants or participants on the day of its publication in the buyer's profile.

(9) Within the term of up to 5 working days from receiving the protocol under Para. 7, the applicants and participants, in relation to which incompliance or lack of information has been found, may produce to the commission new UEDPP and/or other documents, which contain changed and/or additional information. Additionally produced information may also cover facts and circumstances, which have occurred after the deadline for receiving offers or participation applications.

(10) The possibility under Para. 9 shall also apply to subcontractors and the third persons, indicated by the applicant or participant. The applicant or participant may replace a subcontractor or third person, where it is found that the subcontractor or the third person fail to meet the conditions of the contracting authority, where this leads to change of the technical offer.

(11) Where the changes refer to circumstances, different from the indicated ones under Art. 54, Para. 1, p. 1, 2 and 7 and Art. 55, Para. 1, p. 5 of the APP, the new UEDPP may be signed by one of the persons, who may independently represent the applicant or participant

(12) After expiry of the term under Para. 9, the commission shall proceed to consideration of the additionally produced documents about the compliance of the applicants/participants with the requirements of the personal condition and selection criteria.

(13) While doing the preliminary selection and at each stage of the procedure, the commission may – if needed – request explanations about data, declared by the applicants and participants and/or check the declared data, including by requirement of information from other bodies and persons.

Art. 55. (1) In the procedure under Art. 18, Para. 1, p. 2 – 7 of the APP, the commission shall produce a protocol with the results from the preliminary selection of the contracting authority. Within the term of 5 working days from the date of accepting the protocol, the contracting authority shall announce with a decision the applicants, which will be invited to produce offers – or to participate in the negotiations or in the dialogue. In the decision shall also be included the applicants, who fail to meet the announced by the contracting authority requirements and the grounds for that.

(2) The invitation for production of offers or for participation in negotiations or dialogue in the procedures under Art. 18, Para. 1, p. 2- 7 of the APP shall be submitted to the selected applicants within 3 day term from:

1. (amend. – SG, 17/19, in force from 01.03.2019) expiry of the term for appeal – where the decision has not been appealed, or it has been appealed, but no request has been made for imposing a

temporary measure;

2. the enforcement of the determination, which has rejected the request for temporary measure;

3. the enforcement of the decision, where a temporary measure has been imposed.

(3) (Suppl. – SG, 17/19, in force from 01.03.2019) To the procedures under Art. 18, Para. 1, p. 2-7 of the APP the contracting authority shall not be able to invite to submit offers or participate in negotiations or dialogue persons, who have not submitted a participation application or applicants, who fail to meet the personal condition requirements and the selection criteria.

Art. 56. (1) The commission shall not consider the technical offers of the participants for which it is found that they do not meet the requirements for personal condition and the selection criteria.

(2) (Amend. – SG, 17/19, in force from 01.03.2019) The commission shall consider the offers of the admitted participants and shall check the compliance of the offers with the preliminary announced conditions.

(3) (New, SG, 17/19, in force from 01.03.2019) When the methodology for complex assessment includes indicators under Art. 70, Para. 7, item 3, letter “b” of the PPA, the assessments awarded by the commission shall be motivated.

(4) (Former Para. 3 – SG, 17/19, in force from 01.03.2019) Where the contracting authority has admitted production of variants in the offer, the commission shall not reject a variant only under the grounds that the selection of this variant would lead to signing a service contract instead of a supply contract or vice versa.

Art. 57. (1) The price offer of a participant, whose offer fails to meet the requirements of the contracting authority shall not be opened.

(2) Where a part of the assessment indicators covers parameters of the technical offer, the commission shall open the price proposal after it has assessed the offers under the other indicators.

(3) (Amend. – SG, 17/19, in force from 01.03.2019) Not later than 2 working days before the date of opening the price offers the commission shall announce at least through an announcement in the buyer’s profile the date, time and place of opening. At the opening, the persons of Art. 54, Para. 1 may be present. The commission shall announce the results of the assessment of the offers under the other indicators shall open the price offers and shall announce them.

Art. 58. (1) The commission shall rate the participants on the rate of compliance of the offers with the preliminary announced conditions by the contracting authority.

(2) Where the complex assessments of 2 or more offers are equal, priority shall have the offer, which contains better offers, estimated in the following order:

1. lower offered price;

2. better offer for the amount of the costs, compared in descending order according to their weight;

3. better offer under indicators, apart from the ones, indicated in p. 1 and 2, compared in descending order according to their weight.

(3) The commission shall conduct public lot for determining a contractor among the rated at the first place offers, if the participants cannot be rated in compliance with Para. 2 or if the awarding criterion is the lowest price and this price is offered in 2 or more offers.

Art. 59. In the cases under Art. 46, Para. 5 of the APP, the commission shall apply the objective and non-discrimination criteria or rules for determining the concrete separate positions, which will be awarded to one contractor after the rating under Art. 58.

Art. 60. (1) (Amend. – SG, 17/19, in force from 01.03.2019) The commission shall draw up a report on the results from its work, which shall contain:

1. composition of the commission;
2. the applicants and the participants in the procedure;
3. rating of the participants and proposal for signing contract with the participant, rated at the first place where applicable;
4. in case of termination of the procedure, indication of the legal ground and relevant motives;
5. where applicable, a proposal to remove candidates or participants together with the relevant motives;
6. description of the presented samples, photographs, or models – where applicable.

(2) (Repealed, - SG, 17/19, in force from 01.03.2019).

(3) (Amend., SG, 17/19, in force from 01.03.2019) The commission report shall be signed by all members and shall be provided to the contracting authority, together with all the documentation, including all documents, drawn up in the course of the commission work, such as protocols, evaluation tables, motives for peculiar opinions, presented samples, models and / or photographs, etc.

(4) (Repealed, - SG, 17/19, in force from 01.03.2019).

Art. 60a. (New, SG, 17/19, in force from 01.03.2019) The protocol of the commission under Art. 181, Para. 4 of the Public Procurement Act shall indicate the number and date of the protocols during the selection of the participants, the examination, the evaluation and the ranking of the offers and shall describe the proposals of the commission for the decision by the contracting authority.

Art. 61. In the cases under Art. 104, Para. 2 and Art. 181, Para. 2 of the APP, the commission actions shall be carried out in the following sequence:

1. (amend. and suppl. – SG, 17/19, in force from 01.03.2019) the commission shall open the offers in the order of their receiving and shall announce their contents, including the offers of the participants under the relevant indicators for assessment of the offers;

2. (Suppl., SG, 17/19, in force from 01.11.2019) in the cases under Art. 39a, Para. 5 - 7 of the PPA, the technical and price proposals of each of the participants shall be signed by at least three members of the commission and shall be offered by one of the attending representatives of the other participants to sign them, with which the public part of the meeting shall end;

3. the commission shall consider the produced offers and assess according to the selected awarding criterion the ones, which comply with the preliminary announced conditions;

4. the commission shall consider the documents, related to the persons condition and selection criterion of the participants in descending order to the received assessments;

5. where a lack is found, incompleteness or incompliance of the information, including irregularity or factual mistake, or incompliance with the requirements to the personal condition or selection criteria, the commission shall notify in writing the participant;

6. within the term of up to 5 days from receiving the notification, the participant may produce new UEDPP and/or other documents, which contain changed and/or additional information;

7. the commission shall consider the documents under p. 4 and 6 to establishing compliance with the requirements for the personal conditions and the selection criteria of 2 participants, who are rated at the first and second place; the remaining participants, whose offers are assessed, shall not be rated.

Section IX.

Actions of the Commission in Consideration Participation Applications or Offers, Submitted in Electronic Way (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 62. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 63. (Repealed, - SG, 17/19, in force from 01.03.2019)

Section X.

The Conducting Procedures, which contain Negotiations Stage (Title, amend. – SG, 17/19, in force from 01.03.2019)

Art. 64. (1) In the decision for opening a procedure under Art. 18, Para. 1, p. 8 - 10 and p. 13 of the APP, the contracting authorities shall also indicate the persons, who will be invited for participation in the negotiations, unless in the cases under Art. 79, Para. 1, p. 7 and 8, Art. 138, Para. 1, p. 2, Art. 164, Para. 1, p. 9 and 10 of the APP, as well as in the cases under Art. 182, Para. 1, p. 3 of the APP.

(2) The decision under Para. 1, the contracting authority shall approve a participation invitation in the procedure, which shall contain:

1. subject of the procurement, including quantity and/or volume and description of certain positions, where applicable;
2. requirements of the contracting authority for fulfillment of the procurement;
3. the awarding criterion for the procurement, and where applicable – also the indicators for a complex assessment with their relevant weight, and where this is impossible to be objective, arranged according to importance in descending order, as well as the methods for a complex assessment of the offers;
4. place and date for conducting the negotiations;
5. other requirements upon estimation of the contracting authority.

(3) The participation information in the procedure shall be submitted to the persons, indicated in the decision under Para. 1.

Art. 65. (1) (Amend., SG, 17/19, in force from 01.03.2019) The contracting authority may not apply Art. 64, Para. 2 and 3 where he signs contracts under:

1. Art. 79, Para. 1, items 3 and 4, Art. 164, Para. 1, items 3 and 4 and Art. 182, Para. 1, item 1 of the Public Procurement Act and there is only one participant invited;
2. Art. 79, Para. 1, items 7 and 8 and Art. 164, Para. 1, items 9 and 10.

(2) (Amend., SG, 17/19, in force from 01.03.2019) In the cases under Para. 1 the contracting authority shall specify the necessary information for conducting the procedure in the decision for its opening and after its entering into force he shall conclude a public procurement contract. Upon signing the contract, the selected contractor shall submit, in addition to the documents under Art. 112, Para. 1, item 2 of the Public Procurement Act, also a declaration of lack of circumstances under Art. 54, Para. 1, item 7 of the Public Procurement Act.

(3) Where a procedure is held under Art. 79, Para. 1, p. 8 and Art. 164, Para. 1, . 10 of the APP in sale of the property of trade companies, declared in liquidation or insolvency, the contract shall be signed under Part Three of the Commerce Act or under the applicable legislation – in foreign persons.

Art. 66. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 67. (1) In the procedures which contain a stage of negotiations and several participants are invited, the sequence of conducting the negotiations shall be defined by the commission by drawing a lot, where representatives of the invited participants may be present

(2) The commission shall hold negotiations with each of the participants separately, while sticking to the initially defined conditions and requirements for fulfillment of the procurement. The results from the negotiations shall be expressed in a protocol, which shall be signed by the commission and the participant.

(3) The commission shall not announce the achieved agreements with a participant before the other participants, unless he has given explicit consent.

(4) The commission shall conduct the negotiations with each of the participants in the same way, including providing them the same information and the same questions.

(5) (Repealed, - SG, 17/19, in force from 01.03.2019)

(6) After conducting the negotiations, the commission shall draw up a report, which shall contain the information under Art. 60, Para. 1.

Chapter six.
CONTRACT FOR PUBLIC PROCUREMENT. CONTRACT FOR SUBCONTRACTING.
FRAMEWORK AGREEMENT

Section I.
Contract for Public Procurement. Subcontracting Contract

Art. 68. (1) After the enforcement of the selection decision of a contractor, the parties shall agree upon the date and way of signing the contract.

(2) Where the selected participants for contractor refuses to sign a contract, the contracting authority shall terminate the procedure or shall select as contractor the second rated participant. For refusal shall be accepted failure to appear on the agreed data, unless the failure to appear is because of reasonable grounds, about which the contracting authority has been notified in time.

Art. 69. The public procurement contract shall contain at least the following information:

1. data about the parties, date and place of signing the contract;
2. subject;
3. price, way and terms of payment;
4. term or continuity of the procurement fulfillment, and in a stage fulfillment – interim terms;
5. rights and duties of the parties, including an obligation for the contractor to sign a contract for subcontracting, where he has declared in his offer using subcontractor;
6. where applicable – the envisaged options and renewals, including volume and value, as well as the conditions and procedure for their realization;
7. size and conditions for keeping and releasing the guarantees, related to fulfillment of the contract, including release in stages;
8. procedure for accepting the work;
9. conditions and procedure for termination.

Art. 70. Where the selected contractor is a non-personified partnership of natural and/or legal persons and the contracting authority has not envisaged in the announcement requirement for creation of legal person, the contract for public procurement shall be signed after the contractor produces before the contracting authority a certified copy of a certificate for tax registration and registration under BULSTAT or equivalent documents under the legislation of the state, in which the partnership is established.

Art. 71. The transfer of the agreed result shall be documented by a protocol, which shall be signed by representatives of the contracting authority and the contractor on a public procurement contract.

Art. 72. (Amend., SG, 17/19, in force from 01.03.2019) For the purpose of providing the information under Art. 29, Para. 2 of the Public Procurement Act, the public procurement contract shall be deemed to be fulfilled with the last action, connected with the provision of the agreed result or the last payment due - whichever is the latest. In cases, where there is a warranty period, it shall not be taken into account.

Art. 73. The contracting authority shall have the right to terminate without notification:

1. a public procurement contract or framework agreement in occurrence of the circumstances under Art. 118, Para. 1, p. 2 or 3 of the APP;
2. a contract, signed on the basis of a framework agreement, made void by a judicial procedure in the cases of Art. 119, Para. 2 of the APP.

Art. 74. (Amend., SG, 17/19, in force from 01.03.2019) For contracts and framework

agreements, annulled on the grounds under Art. 119, Para. 1 of the Public Procurement Act, the contracting authorities shall send to the Register a notice of conclusion of a public procurement contract.

Art. 75. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 76. (1) The contracting authority shall return all the samples, whose entirety and commercial appearance have not been violated within the term of up to 10 days from signing the contract or from termination of the procedure. The contracting authority may keep the samples of the participant, with whom the public procurement contract has been signed, by the finalization of the contract.

(2) Not returned samples shall be subject to payment to the persons, who have produced them according to their value, determined in one of the following ways:

1. for objects with offered single value – according to the indicated value in the offer of the relevant participant;

2. for objects, whose value cannot be defined under p. 1, but there is an official catalogue or price list, maintained by the relevant participant, according to the single value, indicated in the relevant catalogue or price list;

3. for objects, whose single value cannot be defined under p. 1 or 2, on the basis of a proved value, taking in consideration the needed costs for labour and materials or the supply price.

Section II. Framework Agreement

Art. 77. (1) (Repealed, - SG, 17/19, in force from 01.03.2019)

(2) Where the contracting authority has indicated, that they will sign a framework agreement with more than one contractors and some of the selected contractors refuses to sign a framework agreement, the contracting authority may invite the following rated participant, where applicable.

Art. 78. (Amend., SG, 17/19, in force from 01.03.2019) Where the contracting authority carries out an internal competitive selection, on the basis of a framework agreement, the time limit for receipt of offers under Art. 82 Para. 4, item 2 of the Public Procurement Act may be agreed between the contracting authority and the selected contractors. Where no agreement is reached, the time limit shall be negotiated by the contracting authority and the selected contractors, and may not be shorter than 7 days, and in the cases under Art. 93 of the Public Procurement Act - not shorter than 5 days.

Chapter seven. RESERVED PROCUREMENT

Section I. Defining the List under Art. 12, Para. 1, p. 1 of the APP

Art. 79. (1) The goods and services in the list under Art. 12, Para. 1, p. 1 of the APP shall be indicated through a code and the relevant name under the Common Procurement Vocabulary.

(2) The Minister of Labour and Social Policy shall introduce to the Council of Ministers a proposal for adoption or change of the list under Para. 1, which shall indicate as follows:

1. conducting national policies, strategies or programmes, including concrete objectives, activities and mechanisms, for whose fulfillment it is needed the procurements to be reserved;

2. the capacity possibilities of the persons under Art. 12, Para. 1, p. 1 of the APP;

3. the reflection over the competition form reserving the procurements for the relevant goods or services.

Section II. Awarding Reserved Procurements

Art. 80. (1) (Amend., SG, 17/19, in force from 01.03.2019) Where the public procurement contains objectively divisible parts, some of which are included in the list under Art. 12, Para. 1, item 1 of the Public Procurement Act, the contracting authority shall be obliged to separate these parts in one or several procurements, which preserve the participation of specialized enterprises or cooperatives of people with disabilities. In this case, each procurement shall be awarded in the order, applicable to the total value of all procurements, except for the cases under Art. 21, Para. 6 of the Public Procurement Act.

(2) The contracting authority shall not reserve the public procurement where it contains objectively inseparable parts and the major subject is not included in the list under Art. 12, Para. 1, p. 1 of the APP.

(3) In defining the resource under Art. 12, Para. 6 of the APP in the volume of the own resource the needed costs shall be included for raw materials, energy, fuels, water supply, licenses and etc., notwithstanding of the fact that their suppliers are not specialized undertakings or cooperatives of disabled people.

(4) Where specialized undertakings or cooperatives of disabled people provide to the contracting authority without substantial additional processing goods, supplied by other persons, fulfillment of activities with own production or resource shall not be present.

Art. 81. (1) In a procedure for awarding reserved procurement may also participate other interested persons.

(2) Where in a procedure for awarding reserved procurement, participation applications, or offers by persons, for whom the procurement has been reserved have been submitted, also by other persons, firstly shall be considered the participation applications and/or offers of the persons, for whom the procurement has been reserved. The participation applications and/or offers of the remaining persons shall be considered only if there are not admitted offers of persons, for whom the procurement has been reserved.

Chapter eight. COMPETITION FOR A PROJECT

Section I. General Provisions

Art. 82. (Amend. – SG, 17/19, in force from 01.03.2019) (1) The minimum time limit for the receipt of projects shall be 30 days from the date of sending for publication of the notice of project contest, respectively from sending invitations to approved applicants in a restricted competition.

(2) Where, following a project contest, the contracting authority intends to award a procurement under Art. 79, Para. 1, item 9 of the Public Procurement Act, this shall be stated in the announcement for the project contest.

Art. 83. (Amend., SG, 17/19, in force from 01.03.2019) (1) The minimum time limit for receipt of applications for participation in a restricted competition shall be 30 days from the date of sending for publication of the call of competition for a project.

(2) In case of a restricted competition, the contracting authority may restrict in the call the number of participants, who will be invited to produce projects, but their number shall not be smaller than 5.

Art. 84. (1) (Suppl. – SG, 17/19, in force from 01.03.2019) Every person, who participates in a project competition shall have the right to produce only one project, drawn up in the Bulgarian language.

(2) In a project competition one natural or legal person may participate only in one partnership.

(3) A person, who participates in a partnership or has given consent to be subcontractor of

another applicant or participant, shall not be able to submit independent application for participation or a project.

Art. 85. (1) The contracting authority shall organize the storage of the received projects in a way, which guarantees their entirety and the anonymity of the author.

(2) (Repealed – SG, 17/19, in force from 01.03.2019)

Section II.

Jury

Art. 86. (1) At least 14 days before the deadline for receiving the competition projects, the contracting authority shall announce the names of the persons, nominated for members of the jury and for reserve members, if they have not been mentioned in the call.

(2) every interested person in participation in the project competition may submit a written grounded objection to the contracting authority against a nominated jury member and against a reserve member, with whom he is in relations, which would arouse conflict of interests, within 3 day term from the announcement of the nominated persons.

(3) Where the objections have been submitted within the term under Para. 2 and are reasonable, within 3 day term the contracting authority shall replace the relevant person, nominated for a jury member or for a reserve member. The final name composition of the jury and of the reserve members shall be announced latest by the deadline for receiving the competition projects.

(4) The contracting authority shall announce the actions under Para. 1 and 3 through the buyer's profile.

Art. 87. The contracting authority shall appoint a jury with an order, which shall contain:

1. the names and the person, determined for chairperson;

2. the terms for performing the work;

3. (suppl. – SG, 17/19, in force from 01.03.2019) place of storage of the documents, related to the project competition by finalization of the jury work, where applicable.

Art. 88. (1) The jury shall consist of odd number of members. Where from the competition participants is required a certain professional qualification or capacity, at least on third of the jury members must have the same or equivalent qualification or capacity. The jury members may also be external persons.

(2) The jury shall not be given instructions in relation to assessment of the projects. Its decisions about the assessments shall be independent and final.

(3) The jury members shall be obliged to keep in secret the circumstances, which they have known in relation to their work, for which they shall produce written declarations, as well as for lack of the circumstances under Art. 80, Para. 7, sentence two of the APP.

(4) The jury sessions shall be recorded, and after finalization of their work, a report shall be drawn up, which shall be submitted to the contracting authority with the whole documentation of the competition.

(5) Where needed, the jury shall propose to the contracting authority to assign expertise, drawn up by external persons – experts.

Section III.

Conducting Open Project Competition

Art. 89. (1) (Amend., SG, 17/19, in force from 01.11.2019) The competition project and the documents under Art. 39, Para. 2 shall be submitted through the platform.

(2) (Amend., SG, 17/19, in force from 01.11.2019) In the cases under Art. 39a, Para. 7 of the PPA, the competition project or parts thereof shall be presented in sealed opaque packaging, on which the following shall be indicated:

1. the participant's name, including the participants in the partnership, where applicable;
2. correspondence address, tel. N and if possible – fax N and e-mail address;
3. the name of the competition.

(3) (Amend., SG, 17/19, in force from 01.11.2019) Upon receipt of the documents under Para. 2, on the packaging the data under Art. 48, Para. 1, item 2 shall be placed, for which a document shall be issued to the carrier. Contest projects, which have been presented after the expiry of the deadline for receipt, or are in unsealed package or in a package with impaired integrity shall not be accepted.

Art. 90. (1) (Amend., SG, 17/19, in force from 01.11.2019) Before the examination of the competition projects by the jury, their anonymity shall be ensured. In the cases under Art. 89, Para. 2 the preliminary actions to ensure the anonymity of the projects shall be carried out by officials, designated by the contracting authority.

(2) The persons under Para. 1 shall be obliged to keep in secret the circumstances, become known to them in relation to the actions under Para. 1, for which they shall produce written declarations.

(3) The officials, shall open the packages under Art. 89, Para. 2 and shall check for observation of the requirements under Art. 89, Para. 3, as well as for the condition of the competition projects. Where for some of the projects is found that they are in a form, which would allow violation of their anonymity, the officials shall send them to the contracting authority with a report, which shall describe the found incompliance and shall propose that the project should not be admitted to participation in the procedure.

(4) To each competition project a separate number shall be given, which shall be placed on all the materials in the package under Art. 89, Para. 2 and on the envelope under Art. 89, Para. 3 if it does not contain data about the participant.

(5) The officials shall draw up a list of the numbers and of their corresponding participants' names. The list shall be placed in a non-transparent envelope and shall be sealed.

(6) The materials under Para. 4 and 5 shall be given to the jury.

Art. 91. (1) The jury shall consider and assess the produced projects at closed sessions on the basis of the criteria, indicated in the call and in the competition documentation and shall rate the projects, which meet the preliminary announced conditions.

(2) During consideration and assessment of the projects, the jury – if needed – shall note issues, which need explanation in relation to different aspects of the projects.

(3) (Amend., SG, 17/19, in force from 01.03.2019) The results of the evaluation and the classification shall be announced at a public meeting, at which the participants in the procedure or their authorized representatives shall be entitled to be present, as well as representatives of the mass media. The names of the participants, whose projects are ranked shall be reported at the meeting. No later than two working days before the date of the meeting, the contracting authority shall state at least by a notice in the buyer's profile the date, time and venue of its conduct.

(4) (Amend., SG, 17/19, in force from 01.11.2019) Participants shall be obliged to decrypt the documents under Art. 39, Para. 2 in the period between sending of the message under Para. 3 to the announced date and time for their opening, using the unique key they store.

(5) (Amend., SG, 17/19, in force from 01.03.2019) The jury shall consider, by the order of Art. 54, Para. 7 - 9 and 11 - 13 the documents under Art. 39, Para. 2 of the participants, whose projects have been ranked. If necessary, the issues under Para. 2 may also be clarified.

(6) After finalization of their work, the jury shall draw up a report, which shall contain:

1. the jury composition, including the changes, occurred during its operation;
2. the N and date of the order for appointment of the jury, as well as the orders, which change the terms of their work and the composition;
3. the participants in the competition;
4. short description of the work process, including the actions, related to opening, consideration and assessment of the projects;

5. assessment of the projects and grounds for the jury decisions;
6. the rated projects and the participants, proposed for awarding;
7. the projects, proposed to be dropped from participation, as they do not meet the preliminary announced conditions, where applicable;
8. the participants, proposed for removal, where applicable;
9. grounds for the proposals under p. 7 and 8;
10. reservations of the jury members, if any.

(7) (Amend., SG, 17/19, in force from 01.03.2019) The report shall be signed by all members of the jury and shall be provided to the contracting authority, together with all the documentation, including all documents, drawn up in the course of its work, such as protocols, evaluation tables, motives for special opinions, presented models and / or pictures, etc.

Section IV. Conducting Restricted Project Competition

Art. 92. (1) (Amend., SG, 17/19, in force from 01.11.2019) The application for participation in a restricted project contest shall contain the documents under Art. 39, Para. 2 and shall be produced through the platform.

(2) (Repealed - SG, 17/19, in force from 01.11.2019).

(3) The jury shall carry out preliminary selection under Art. 54, Para. 7 - 9 and Para. 11 - 13 and shall produce a protocol with the results from the selection to the contracting authority.

(4) Within the term of 5 working days from the date of accepting the protocol, the contracting authority shall announce with a decision the applicants, who will be invited to produce competition projects. The decision shall also include the applicants, which do not meet the announced by the contracting authority requirements and the grounds for that.

(5) The contracting authority shall submit invitations of the approved applicants to produce projects under Art. 55, Para. 2.

(6) (Amend. - SG, 17/19, in force from 01.11.2019) The project shall be produced under Art. 89.

Art. 93. (1) (Amend., SG, 17/19, in force from 01.11.2019) Before the examination of the competition projects by the jury, their anonymity shall be ensured. In the cases under Art. 89, Para. 2 the preliminary actions to ensure the anonymity of the projects shall be carried out by officials designated by the contracting authority.

(2) The persons under Para. 1 shall be obliged to keep secret about the circumstances, become known to them in relation to the actions under Para. 1, for which they shall sign written declarations.

(3) The officials shall open the packages under Art. 89, Para. 2 and shall check the conditions of the competition projects. If for some projects it is found that they are in a form, which would allow violation of their anonymity, the officials shall produce them to the contracting authority, with an attached report, which shall describe the found incompliance and shall propose that these project should not be admitted to participation in the procedure.

(4) To each competition project a separate number shall be given, which shall be placed on all the materials in the package under Art. 89, Para. 2.

(5) The officials, shall draw up a list of the numbers and of the corresponding participants' names . The list shall be placed in a non-transparent envelope shall be sealed.

(6) The materials under Para. 4 and the envelope under Para. 5 shall be given to the jury.

Art. 94. (Amend. – SG, 17/19, in force from 01.03.2019) The jury shall consider and assess the projects and shall finish their work under Art. 91, Para. 3 and 5- 7.

Section V.

Finalization of the Project Competition Procedure

Art. 95. (Amend., SG, 17/19, in force from 01.03.2019) Within 10 days from the validation of the report, the contracting authority shall issue a decision for rating the participants in the competition, which shall also indicate the assessed awards and payments, where applicable.

Chapter nine.

RULES FOR AWARDING PUBLIC PROCUREMENT THROUGH COLLECTING OFFERS WITH A CALL OR AN INVITATION TO CERTAIN PERSONS (TITLE, AMEND. – SG, 17/19, IN FORCE FROM 01.03.2019)

Art. 96. (Repealed, - SG, 17/19, in force from 01.11.2019).

Art. 96a. (New – SG, 17/19, in force from 01.03.2019) (1) (In force from 01.11.2019) The offers shall be submitted through the platform and, where that is not possible, the procedure under Art. 47, Para. 2 and Art. 48, Para. 2 and 6 shall be applied.

(2) The offers shall contain the documents under Art. 39, Para. 3 and the declarations under Art. 192, Para. 3 of the Public Procurement Act.

(3) By submitting an offer, the participants shall agree with all the conditions of the contracting authority, incl. with the term of validity of the offers and the draft contract.

Art. 97. (1) (Amend., SG, 17/19, in force from 01.03.2019) The contracting authority shall appoint an odd number of persons in a commission to examine and evaluate the received offers or to conduct negotiations.

(2) (Amend., SG, 17/19, in force from 01.03.2019) For the members of the commission under Para. 1, the requirements under Art. 51, Para. 8 - 10 and 13 shall apply. Where a member of the commission cannot fulfill his obligations for objective reasons, or a conflict of interests has arisen for him, the contracting authority shall appoint with an order a new member. In cases, where there is a conflict of interests, the actions of the expelled member shall not be taken into account and shall be re-performed by the new member.

(3) The commission shall open the offers under their receiving and shall announce the price offers. During this activity, representatives of the participants may be present.

(4) (Amend., SG, 17/19 (*)) In the cases under Art. 39a, Para. 6 and 7 of the PPA, the technical proposal of each of the participants. shall be signed by at least three members of the commission and shall be proposed by one of the attending representatives of the other participants to sign it, with which the public part of the meeting shall end.

(5) (Amend., SG, 17/19, in force from 01.03.2019) Where it establishes a lack, incompleteness or inconsistency of the information, including an irregularity or factual error or non-compliance with the requirements for the personal status or the selection criteria, the commission shall notify the participant in writing, requesting to remove the incompleteness or inconsistencies within 3 working days.

(6) (Amend., SG, 17/19 (*)) Prior to the approval of the protocol under Art. 192, Para. 4 of the PPA, the contracting authority shall return it to the commission, when it finds a violation in its work, which can be removed. The protocol shall be sent to the participants via communication on their platform profiles.

Chapter ten.

FILE OF THE PUBLIC PROCUREMENT

Art. 98. (1) The file for each public procurement apart from the documents and information under Art. 121, Para. 2 of the APP shall also include:

1. (new – SG, 17/20, in force from 01.03.2019) a report on the results of the actions under Art. 21, Para. 2 of the Public Procurement Act;

2. (former point 1 – SG, 17/20, in force from 01.03.2019) the order for the appointment of the commission for pre-selection of the applicants and the participants, examination and evaluation of the offers or for the negotiation and dialogue, including all orders, amending or supplementing its composition;

3. (Former p. 2, amend. and suppl. – SG, 17/19, in force from 01.03.2019) a reference or except from the register for the received participation applications and/or offers, where applicable;

4. (Former p. 3, – SG, 17/19, in force from 01.03.2019) the protocol under Art. 48, Para. 6;

5. (Former p. 4, – SG, 17/19, in force from 01.03.2019) exchange of information between the contracting authority and other persons or bodies in relation to the preparation and conducting the procedure and fulfillment of the contract;

6. (Former p. 5, – SG, 17/19, in force from 01.03.2019) information about the appeal of the procurement, including the appeal, opinions on it, decision and determinations of the bodies, responsible for the appeal;

7. (Former p. 6, – SG, 17/19, in force from 01.03.2019) the documents, produced by the participant, selected for contractor before signing the contract;

8. (Former p. 7, – SG, 17/19, in force from 01.03.2019) a document, which certifies the return of the samples, where applicable;

9. (Former p. 8, – SG, 17/19, in force from 01.03.2019) the unique numbers, under which the documents have been entered in the PPA for control, where applicable;

10. (Former p. 9, – SG, 17/19, in force from 01.03.2019) information about the movement of the documents in the file.

(2) The information in the file of the public procurement shall be organized in a way, which shall give opportunity for chronologic traceability of all the action of the responsible officials in relation to the preparation, conducting, finalization and accounting the fulfillment of the public procurement.

(3) (Amend. - SG, 17/19, in force from 01.03.2019) The contracting authority shall determine one or more officials, who shall be responsible for the contents of the file and shall document the movement of the documents, contained in it.

(4) The contracting authority shall provide conditions and shall be responsible for the storage of the file of the public procurement in the terms under Art. 122 of the PPA.

Chapter eleven.

AWARDING PUBLIC PROCUREMENTS BY SECTOR CONTRACTING AUTHORITIES

Art. 99. (1). (Amend. and suppl., SG, 17/19, in force from 01.03.2019) The average annual turnover under Art. 124, Para. 2, item 2 and the average value of the aggregate production under Art. 125, para. 2, item 2 and Art. 126, Para. 3, item 2 of the PPA shall be determined on the basis of the annual financial statements of the persons.

(2) (suppl., SG, 17/19, in force from 01.03.2019) The annual turnover shall include the net revenues from sales, related to the activity under Art. 124, Para. 2 of the PPA.

(3) The average annual turnover shall be defined by summing the data for the 3 last financial years and the received result is divided by 3.

(4) The conditions under Art. 124, Para. 2 of the APP should be fulfilled also for the period of the current year, taking in consideration the accounted monthly turnovers.

(5) The average turnover under Para. 4 shall be defined by summing the turnovers for the months, starting from the beginning of the financial years and then divided by the number of months to the moment.

Art. 100. (1) With the decision for creating a qualification system, the contracting authority shall approve the announcement under Art. 141, Para. 1 of the APP.

(2) The contracting authority shall use the decision under Art. 22, Para. 1, p. 1 of the APP

where with the creation of a qualification system, also a procedure for awarding a public procurement is opened. In this case with his decision, he approves the documentation and the technical specifications.

(3) (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 101. (Amend. - SG, 17/19, in force from 01.03.2019). For inclusion in a qualification system the interested persons shall submit the documents under Art. 39, Para. 2.

Art. 102. Where it awards procurements within the frames of a qualified system, depending on the type of the procedure under Art. 142, Para. 1 of the APP, the contracting authority with a decision shall approve an invitation for provision of offers or for participation in negotiations. The decision and the invitation shall be sent to the persons, entered in the system within 7 day term from issuance of the decision.

Chapter twelve.

AWARDING PUBLIC PROCUREMENTS IN THE DEFENCE AND SECURITY AREAS

Art. 103. (1) Before opening the procedure for awarding public procurement in the Defence and Security areas, the contracting authority shall be obliged to take in consideration the grounded written opinion of the relevant competent body under the Act on Classified Information Protection on presence of qualified information.

(2) With awarding public procurements, which contain or require classified information, the members of the commission for performing selection of the applicants and participants, consideration and assessment of the offers and conducting negotiations and dialogue may be only persons, who have permit for access to classified information under the requirements of the Act on Classified Information Protection.

Art. 104. Where the contracting authority has defined additional term under Art. 158, Para. 4 of the APP, he shall wait for the result from the investigation for access to classified information, where if needed he shall be obliged to extend the additional term to the finalization of the investigation.

Art. 105. (Amend. – SG, 17/19, in force from 01.03.2019) The persons under Art. 175, Para. 2 of the PPA, shall send for publication the announcements for selection of subcontractor for procurements in the Defence and Security areas.

Art. 106. (1) The participation application in a procedure under Art. 18, Para. 1, p. 2, 5, 6 and 10 of the APP shall contain:

1. a list of the documents;
2. data about the UIC under Art. 23 of the Act on the Commercial Register, BULSTAT and/or any other identification information in compliance with the legislation of the state, in which the applicant or participant has been established, as well as address, including e-mail address for correspondence while conducting the procedure;
3. declarations for the circumstances under Art. 157, Para. 1 and Para. 2, p. 5 of the APP;
4. declarations for the circumstances under Art. 157, Para. 2, p. 1-4 of the APP, where applicable;
5. evidences under Art. 158, Para. 7 of the APP;
6. declaration for lack of relation with another applicant in the procedure;
7. (amend. – SG, 17/19, in force from 01.03.2019) in participants – partnerships, a copy of the documents under Art. 37, Para. 4 for establishment of the partnership, as well as a document, which shows the person, representing the participants in the partnership.

(2) The offer in the procedure under Art. 18, Para. 1, p. 2, 5, 6 and 10 of the APP shall contain:

1. the documents and information under Art. 39, Para. 3, and

2. where applicable:
- a) (amend. – SG, 17/19, in force from 01.03.2019) the type and share of the works, which will be awarded to subcontractors, or
 - b) the proposed subcontractors and documents, which prove the observation of the selection requirements for each of them according to the type and share of their participation.
3. (new – SG, 17/20, in force from 01.03.2019) document of authorization, where the person, submitting the offer is not the legal representative of the participant.
- (3) Where a participant in the procedure is a partnership, which is not a legal person:
- 1. (amend. - SG, 17/20, in force from 01.03.2019) the documents under Para. 1, p. 2 shall be produced for each natural or legal person, including the partnership;
 - 2. (amend. - SG, 17/20, in force from 01.03.2019) the documents under Para. 1, p. 5 shall be produced only for the participants, through which the partnership proves the compliance with the selection criteria.
- (4) (Suppl. - SG, 17/20, in force from 01.03.2019) The declarations under Para. 1, p. 3 shall be produced by each of the persons under Art, 40, Para. 1, as well as by the person, who upon authorization represents the applicant or participant, if any.
- (5) (Amend. - SG, 17/20, in force from 01.03.2019) Where the applicant is a legal person, the declarations under Para. 1, p. 4 may be produced by a person, who may independently represent the relevant economic subject.
- (6) The declarations under Para. 4 and 5 shall include information about the public registers, which contain the indicated circumstances or the competent body, which according to the legislation of the state, in which the applicant is established, shall be obliged to produce information about these circumstances officially to the contracting authority.
- (7) (New, SG, 17/19, in force from 01.03.2019) By submitting an offer, the participants agree with all the conditions of the contracting authority, incl. with the term of validity of the offers and the draft contract.
- (8) (Former Para. 7 - SG, 17/19, in force from 01.03.2019) Upon request on behalf of the contracting authority the applicants shall be obliged to produce exhaustively every needed information, about the legal-organizational form, in which they perform their activity, as well as a list of all obliged persons in the meaning of Art. 157, Para. 4 of the PPA, notwithstanding of the names of the bodies, in which they participate, or the positions, which they occupy.
- Art. 107. (1) The applicants and participants shall be obliged to notify in writing the contracting authority within 3 day term from occurrence of a circumstance under Art. 157, Para. 1, Art. 101, Para. 11 of the APP or indicated by the contracting authority ground under Art. 157, Para. 2 of the APP.
- (2) (Amend. – SG, 17/19, in force from 01.03.2019) In the cases under Para. 1, the newly received circumstances shall be taken in consideration by the commission, while preparing the documents under Art. 106, Para. 1 of the PPA.

Chapter thirteen.

FUNCTION OF THE PUBLIC PROCUREMENT AGENCY

Section I.

Conditions and Procedure for Maintaining a List of the Economic Subjects, for which the Circumstances of Art. 54, Para. 1, p. 5, letter "a" and Art. 55, Para. 1, p. 4 of the PPA are Present (Title, amend. – SG, 17/19, in force from 01.03.2019)

- Art. 108. (1) The Public Procurement Agency (PPA) shall provide through the portal for public procurements also an unlimited access to the list under Art. 57, Para. 4 of the APP.
- (2) (Amend. – SG, 17/19, in force form 01.03.2019) For including in the list under Art. 57,

Para. 4 of the PPA, the contracting authorities shall submit to OO Agency information according to a standard form, confirmed by the PP Agency executive director, in which at least the following shall be indicated:

1. in established circumstances under Art. 54, Para. 1, p. 5, letter "a" of the PPA:

a) description of the circumstance, the N of the decision by which it is established and the date of its validation;

b) data about the public procurement, in relation to which the circumstance has occurred, including the date and number of the publication in the register and in the EU Official Journal;

2. in case of found circumstances under Art. 55, Para. 1, p. 4 of the APP:

a) data about the public procurement contract, including the parties, the subject and the total value, the paid sums and compensation, date of signing, and where applicable – the date and legal ground for cancellation of the contract, or its termination;

b) a short description of the failure to fulfill the contract under letter "a", its percentage expression to the value, or the volume of the contract;

c) the date of the enforcement of the judicial decision of the document under Art. 57, Para. 3, p. 2, letter "c" of the PPA.

(3) (New, SG, 17/19, in force from 01.03.2019) In the cases under Art. 230, Para. 3 of the PPA, the contracting authorities shall attach a copy of the enacted act or the document, proving the respective circumstance.

(4) (Former Para. 3 – SG, 17/19, in force from 01.03.2019) The contracting authorities shall submit the information under Para. 2 for the indicated circumstances via e-mail with electronic signature.

(5) (New, SG, 17/19, in force from 01.03.2019) Not included in the list under Art. 57, Para. 4 of the PPA shall be a person, for whom the information has not been filed under the conditions of Para. 2-4.

Section II.

Approval of Standard Requirements and Document under Art. 229, Para. 1, of the PPA (Title, amend. – SG, 17/19, in force from 01.03.2019)

Art. 109. (Amend., SG, 17/19, in force from 01.03.2019) (1) The persons under Art. 231, Para. 1 of the PPA shall send to the executive director of PP Agency drafts of standardized requirements and documents, together with motives for the need of their approval. The motives shall include information on the type and content of the documents, the objects and subjects of the procurements, proposed for approval, as well as the contracting authorities, who will apply them.

(2) The Public Procurement Agency shall send for coordination the draft documents under Para. 1 to the bodies and organizations under Art. 231, Para. 2 of the Public Procurement Act and shall publish them on the Public Procurement Portal, setting a deadline for expressing opinions, which may not be less than 30 days.

(3) The received opinions under Para. 2 shall be expressed by the introducer.

(4) The drafts shall be proposed for approval by the Minister of Finance and the Minister, responsible for the respective portfolio, after obtaining the consent of the introducer and the persons under Art. 231, Para. 2 of the PPA on the final proposals.

(5) Where necessary, the standardized requirements and documents under Art. 231, Para. 3 of the Public Procurement Act shall be updated or revoked in the order of their approval.

Section III.

Conditions and Procedure for Drawing up and Maintaining the List under Art. 229, Para. 1, p. 17 of the APP

Art. 110. (1) The list under Art. 229, Para. 1, p. 17 of the APP shall include persons, who have professional competence, related to the objects and subjects of the public procurements and:

1. have been proposed by professional associations and organization in the relevant sector, or by bodies under Art. 19, Para. 2- 4 of the Act on Administration, with indication of their professional competence;

2. have independently submitted an application for entry, in which the documents have been described, through which the declared professional competence is proved

(2) For each of the persons in the list under Para. 1, the scope of the professional competence shall be indicated, and the availability of access permit to classified information under the requirements of the Act on Classified Information Protection.

(3) The list under Para. 1 shall contain at least the following information:

1. names of the expert according to the identity document;

2. unified civil number UCN/personal N of a foreigner (PNF) or another identity number;

3. postal and email addresses for correspondence, telephone, fax N, etc.;

4. acquired educational degree and subject;

5. area of professional competence, determined in compliance with the categories of the Common Procurement Vocabulary (CPV);

6. data about the professional qualification, additional qualification – if any and practical experience with the declared professional competence;

7. indication of the documents, through which the declared professional competence is proved;

8. data for available permit for access to classified information;

9. region/s of action of the expert in the country;

10. data about the person/body, proposed entry of the expert.

(4) The data under p. 2 shall be used only for official purposes and shall not expressed in the public part of the list.

(5) The PPA executive director shall have the right to require and include in the list under Para. 1 also additional data and information about the experts.

Art. 111. (1) In the list under Art. 229, Para. 1, p. 17 of the APP , a person may be included, who shall meet the following requirements:

1. to have reached the age of 18 and has not been put under guardianship;

2. not to have been convicted for premeditated crime of general nature and not deprived of the right to exercise profession or an activity, which refers to the entry;

3. to have evidence that he has professional competence in the declared area in compliance with the categories of the Common Procurement Vocabulary (CPV).

(2) The bodies and persons under Art. 110, Para. 1, p. 1 shall certify with the application for entry in the list under Para. 1 that the proposed by them persons have been checked according to the circumstances under Para. 1.

(3) The persons under Art. 110, Para. 1, p. 2 shall declare the circumstances under Para. 1 in the application for entry in the list under Para. 1.

Art. 112. (1) Including an expert in the list under Art. 229, Para. 1, p. 17 of the APP shall be carried out by the bodies and persons under Art. 100, Para. 1 on the basis of a standard form approved by the PPA executive director.

(2) The application under Para. 1 shall be filled in by an electronic form through the portal.

(3) The application under Para. 1 shall be submitted to the PPA in one of the following ways:

1. for the persons under Art. 110, Para. 1, p. 1 – through direct introduction of the data in the online form, using electronic signature; the data of the signature shall obligatorily contain UIC of the person/body;

2. for the persons under Art. 110, Para. 1, p. 2 – through direct introduction of the data in the online form using an electronic signature or through filling in online form without using electronic

signature, where in this case the application shall be submitted on paper media with an individual signature; an application, filled in online without using electronic signature, which within 1 month term has not been received in the PPA on paper, shall be deleted officially.

(4) The bodies and persons under Art. 110, Para. 1 shall bear responsibility for the correctness of the declared data.

(5) The contracting authorities shall have the right to require from the persons, included in the list under Art. 229, Para. 1, p. 17 of the APP evidence about the correctness of the indicated data.

Art. 113. (1) The entry in the list under Art. 229, Para. 1, p. 17 of the APP shall be valid for the term of 12 months, starting from the date of submission of the application. After expiry of the term, the entered data shall be deleted officially.

(2) The deleted data shall be stored for the period of 3 years after which they shall be archived.

(3) The bodies and persons under Art. 110, Para. 1 may confirm the declared data by requiring a standard form, approved by the PPA executive director, before expiry of the term under Para. 1, where the validity of the application shall be extended for a new period.

(4) The bodies and persons under Art. 110, Para. 1 may be withdraw at any time their applications for inclusion in the list under Para. 1 by a request according to a form, approved by the PPA executive director.

Section IV.

Conditions and Procedure for Performing Monitoring under Art. 229, Para. 1, p. 14 of the APP

Art. 114. (Repealed, - SG, 17/19, in force from 01.03.2019)

(2) (Amend., SG, 17/19, in force from 01.03.2019) In connection with the monitoring under Art. 229, Para. 1, item 14 of the PPA, the executive director of PP Agency may:

1. issue general methodical instructions;
2. inform the Minister of Finance in case of found need of legislative amendments;
3. refer the competent bodies for performing control on the observation of the public procurement legislation;
4. undertake other actions within the frames of the powers under Art. 229, Para. 1 of the PPA.

(3) (Revoked - SG 91/17, in force from 01.01.2018)

(4) (Revoked - SG 91/17, in force from 01.01.2018)

Art. 114a. (New - SG 91/17, in force from 01.01.2018, repealed, - SG, 17/19, in force from 01.03.2019)

Chapter fourteen.

EXTERNAL PRELIMINARY CONTROL, PERFORMED BY THE PUBLIC PROCUREMENT AGENCY

Section I.

General Rules

Art. 115. (Amend. – SG, 17/19, in force from 01.03.2019) Each stage of the control under Art. 229, Para. 1, 2, letters “d” to “f” of the PPA, performed by the PP Agency shall be performed once.

Art. 116. The issued opinions about the control results under Art. 115 shall not be subject to change unless in the cases of technical mistake, made by the PPA.

Art. 117. (1) The contracting authority shall submit the documents under Art. 236 of the APP to the PPA via e-mail with a letter according to a standard form, signed by electronic signature.

(2) The documents under Para. 1 shall be produced in the Bulgarian language. Where a document in a foreign language has been produced, it shall be accompanied by a translation in the Bulgarian language.

Art. 118. The technical requirements for submission of documents in relation to the control under Art. 115, rules shall be defined, confirmed by the PPA executive director.

Art. 119. Documents, sent to the PPA in relation to the control under Art. 115, for which not requirements have been observed under Art. 117 and 118, shall not be considered.

Art. 120. (Amend. – SG, 17/19, in force from 01.03.2019) The standard forms of documents in relation to realization of the control under Art. 229, Para. 1, p. 2, letters “d” – “f” of the PPA shall be confirmed by an order of the PP Agency executive director and shall be published on the portal.

Section II.

Conditions and Procedure for Performing Control by Random Selection

Art. 121. (1) The contracting authority shall be obliged before opening a procedure, which is subject to control under Art. 232, Para. 1 of the APP to introduce data in the system for random selection (RSS), accessible through the portal. The data shall be signed by an electronic signature.

(2) Every working day through the system under Para. 1 shall be selected at least one procedure for control, which shall be announced on the portal.

(3) The selection of the procedure shall be carried out under methods, which accounts for risk factors with a certain weight. The methods shall be confirmed by the PPA executive director.

(4) Where after expiry of 3 working days from introduction of the data under Para. 1, the procedure has not been selected for control, the contracting authority may announce its opening.

(5) (Amend. – SG, 17/19, in force from 01.03.2019) The contracting authority may announce opening of a procedure, notwithstanding that it has been selected for control in the cases under Art. 232, Para. 9 of the PPA.

Art. 122. (1) Within 3 day term from the selection of the procedure for control, the contracting authority shall submit the projects at the same time of:

1. the decision for opening of the procedure;
2. the announcement for opening the procedure;
3. the technical specifications with the exception of the cases, where they are approved with the decision for approval of the invitation for confirmation of interest;
4. the assessment methods, where applicable.

(2) The documents under Para. 1 shall be submitted under Art. 117, Para. 1.

(3) Receiving the documents shall be confirmed by electronic announcement to the sender.

(4) (Revoked - SG 91/17, in force from 01.01.2018)

Art. 122a. (New - SG 91/17, in force from 01.01.2018, repealed, - SG, 17/19, in force from 01.03.2019)

Art. 122b. (New - SG 91/17, in force from 01.01.2018, repealed, - SG, 17/19, in force from 01.03.2019).

Art. 122c. (New - SG 91/17, in force from 01.01.2018, amend. - SG, 17/19, in force from 01.03.2019) (1) Within 14 days from the receipt of the documents under Art. 122, para. 1, the Public Procurement Agency shall prepare a preliminary opinion which to contain the inconsistencies established therein with the requirements of the Public Procurement Act, and recommendations for their

removal. In the cases under Art. 232, Para. 9 of the Public Procurement Act, the opinion shall be final.

(2) (Amend. - SG, 17/19, in force from 01.03.2019) The opinion of the external expert under Art. 232a, Para. 4 of the PPA shall be enclosed with the opinion of the Public Procurement Agency on the preliminary control under Art. 232 of the Public Procurement Act as an independent and integral part thereof.

(3) (New - SG, 17/19, in force from 01.03.2019) The contracting authority shall note the number of the preliminary opinion under Para. 1 in the decision for opening the procedure.

Art. 123. (1) (Repealed, - SG, 17/19, in force from 01.03.2019).

(2) The second stage of the preliminary control shall cover the documents, published in the register for announcement of the opening of the procedure, as well as the technical specification and methods of the documentation, published in the buyer's profile.

(3) Within 10-day term from the publication of the documents in the register, which announce the opening of the procedure, the PPA shall draw up a final opinion about legality.

(4) (New, SG, 17/1919, in force from 01.03.2019) Where the procedure is terminated before the issuance of the opinion under Para. 3, the control shall be suspended and this shall be noted in the opinion.

Art. 124. (1) Where the opening of the procedure, selected for preliminary control has been announced by preliminary announcement under Art. 23m Para. 3, 4 or 6 of the APP, the contracting authority shall submit to PPA under Art. 117, Para. 1 the draft invitation for confirming interest. To it shall be attached the draft of the technical specification, where they have not been approved with the decision for opening a procedure, and where applicable – the assessment methods of offers. In the accompanying letter, the number of the procedure in the register shall be indicated.

(2) Receiving the documents shall be confirmed by e mail to the sender.

(3) Within 14 day term from receiving the draft documents under Para. 1, the PPA shall draw up a preliminary opinion.

Art. 125. (1) On the day of sending the invitation for confirmation of interest to the persons, expressed interest, the contracting authority shall submit it vial e-mail to the PPA. In the accompanying letter the contracting authority shall indicate the N of the preliminary opining and shall attach grounds, where applicable.

(2) The control shall cover the invitation under Para. 1, as well as the technical specifications and methods of the documentation, published in the buyer's profile.

(3) Within 10 day term from receiving the invitation under Apra. 1, the PPA shall draw up a final opinion for legality.

Art. 126. The opinions of the preliminary control shall be submitted to the contracting authority via e-mail, signed by electronic signature, with the final opinions – also to the bodies under Art. 238, Para. 1 of the APP.

Art. 127. Preliminary control shall not be performed of procedures, for which in the term under Art. 122, Para. 1 the contracting authority fails to send the draft documents.

Art. 128. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 129. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 130. (Repealed, - SG, 17/19, in force from 01.03.2019)

Section III.

Conditions and Procedure for Performing Control over Negotiation Procedures

Art. 131. (1) The control under Art. 233 of the APP shall be performed over the decision for opening the procedure, published in the register.

(2) The control under Para. 1 shall cover the grounds, expressed in the decision for opening the procedure and the evidences, produced by the contracting authority for the described in the grounds circumstances. Grounds which are not contained in the decision, as well as evidences, for which no grounds have been indicated shall not be considered.

Art. 132. (Amend., - SG, 17/19, in force from 01.03.2019) On the day of sending for publication in the register the decision to initiate the procedure under Art. 233, Para. 1 of the PPA, the contracting authority shall send under Art. 117 the evidence of the circumstances, described in the statement of reasons. The letter under Art. 117, Para. 1 shall indicate the contracting authority's account and the number for opening the decision.

Art. 133. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 134. (amend. - SG, 17/19, in force from 01.03.2019). In the cases under Art. 132 the submission of evidences shall not be not needed, if they are accessible by electronic, public, free register and in the opening decision of the procedure, the exact internet address, at which they are to be found is indicated.

Art. 135. (1) (Amend. - SG, 17/19, in force from 01.03.2019). For the results of the control, the PP Agency shall issue an opinion on the legality within 30-day term from expiry of the term for submission of the evidences under Art. 132.

(2) Where the procedure is terminated before issuance of the opinion under Para. 1, the control shall be terminated and this shall be mentioned in the opinion.

(3) (Amend. - SG, 17/19, in force from 01.03.2019). The opinions under Para. 1 shall be sent simultaneously to the contracting authority and to the bodies under Art. 238, Para. 1 of the Public Procurement Act.

Section IV.

Conditions and Procedure for Performing Control over Some exceptions from the Applicable Field of the PPA (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 136. (Repealed, - SG, 17/19, in force from 01.03.2019)

Art. 137. (Repealed, - SG, 17/19, in force from 01.03.2019)

Section V.

Conditions and Procedure for performing Control over Amendment of Public Procurement Contracts under Art. 116, Para. 1, p. 2 of the APP

Art. 138. (1) (New – SG, 17/19, in force from 01.03.2019) The control under Art. 235 of the Public Procurement Act shall be carried out before the conclusion of an additional agreement for amendment of a public procurement contract on the grounds of Art. 116, Para. 1, item 2 of the Public Procurement Act, where the contract has an amount, equal to or higher than the value thresholds under Art. 229, Para. 2 of the Public Procurement Act and the value of the amendment corresponds to the requirements of Art. 229, Para. 3 of the Public Procurement Act.

(2) (Former Para. 1, amend., SG, 17/19, in force from 01.03.2019) For carrying out the control under Para. 1, the contracting authority shall be obliged to send to the PP Agency:

1. draft of announcement for amendment of a public procurement contract;
2. grounds for application of the selected ground;
3. evidences for fulfillment of the requirements of the APP.

(3) (Former Para. 2, amend. - SG, 17/19, in force from 01.03.2019) The documents under Para. 2 shall be sent at the same time under Art. 117, Para. 1. Upon exception, where because of the nature or their volume the documents cannot be sent via e-mail, they shall be produced on electronic media.

Art. 139. (amend. - SG, 17/19, in force from 01.03.2019) (1) The Public Procurement Agency shall issue an opinion on the lawful application of the grounds within 30 days of receipt of the documents under Art. 138, Para. 2, which shall be sent to the contracting authority and to the bodies under Art. 238, Para. 1 of the Public Procurement Act.

(2) The Public Procurement Agency shall notify the bodies under Art. 238, Para. 1 of the Public Procurement Act, when it finds that a notice of amendment has been published, which is subject to control under Art. 229, Para. 1, item 2, letter "f" of the Public Procurement Act, but this has not been implemented, due to non-compliance with Art. 235, Para. 2 of the Public Procurement Act.

Chapter fifteen.

INTERNAL RULES OF PUBLIC CONTRACTING AUTHORITIES FOR MANAGEMENT OF THE PUBLIC PROCUREMENT CYCLE (TITLE, AMEND. – SG, 17/19, IN FORCE FROM 01.03.2019)

Art. 140. (1) The internal rules under Art. 244, Para. 1 of the APP shall provide at least for the procedure for:

1. forecasting the needs of awarding, including for establishing the dates on which public procurement contracts in force must be present;
2. planning conducting the procedures, by accounting the time for preparation, conducting of the procedures and signing the contracts;
3. assigning the officials, responsible for the preparation of the procedures and the procedure for performing control over their work;
4. receiving and storage of participation applications, offers and project and the procedure for assigning the staff and way of operation of the commission for performing selection of the applicants and participants ,for consideration and assessment of the offers and or conducting negotiations and dialogue, as well as of the jury;
5. signing the contracts;
6. tracing the fulfillment of the signed contracts and for accepting the results form them;
7. the actions in appealing the procedures;
8. conducting of introductory and maintaining training of the persons, engaged with management of the public procurement cycle;
9. documentation of each stage of the public procurement cycle;
10. archiving the documents, related to management of the public procurement cycle;
11. maintenance of the buyer's profile.

(2) The contracting authorities shall have the right to award certain activities of the management of the public procurement cycle to external contractors.

Chapter sixteen.

ADMINISTRATIVE – PENAL PROVISIONS

Art. 141. (1) For violation of the provision of these Rules, the guilty persons and the persons who have admitted committing a violation shall be punished under Art. 32 of the Act on Administrative Violations and Punishments.

(2) Every commission member shall bear responsibility for committing violations of these Rules.

Art. 142. (1) The acts for finding violation under the Rules shall be drawn up by officials of the Agency for State Financial Inspection (ASFI) within the term of 6 months from the day in which the violator has been found by bodies of ASFI during a financial inspection or checkup, but not later than 3 years from the violation.

(2) The penal decrees shall be issued by the Minister of Finance or by officials authorized by

him.

(3) Finding violations, issuance, appeal and fulfillment of penal decrees shall be performed under the Act on Administrative Violations and Punishments.

Transitional and concluding provisions

§ 1. Persons, who have been entered in the list under Art. 19, Para. 2 , p. 8 of the repealed Public Procurement Act and whose registration is valid on the date of the enforcement of these Rules, shall be entered officially in the list under Art. 229, Para. 1, p. 17 of the APP.

§ 1a. (New – SG, 17/19, in force from 01.11.2019) (1) Submission, entry or refusal to enter, maintain and update the information on the procedures, published in the Public Procurement Register, which was in force before introduction of the platform under Art. 39a, Para. 1 of the Public Procurement Act shall be executed according to the previous procedure.

(2) The information under Para. 1 shall be kept and maintained in a way, that guarantees its protection and shall be archived after 10 years have elapsed from the opening of the procedures, but no earlier than one year after the completion of the contracts.

(3) The information under Para. 1 for a created qualification system shall be archived after expiring 10 year from:

1. the date of its termination, or
2. expiry of the term of its force.

(4) The information under Para. 1, related to a framework agreement or a dynamic purchasing system shall be archived after 10 years from:

1. the deadline of the force of the framework agreement or the dynamic purchasing system, or
2. their termination.

(5) For the procedures, published in the Public Procurement Register under Para. 1, the contracting authority shall send a model for information in the course of an appeal on the day of receipt of the notice of initiation or - at the latest - on the next working day.

§ 1b. (New, SG, 17/19, in force from 01.11.2019) The Public Procurement Portal shall be publicly available for a period of 3 years from the date of publication of the information about the procurements, awarded through the collection of offers with announcement before the platform was introduced. After the expiration of this period, the information for the respective procurement shall be archived.

§ 2. The Rules shall be adopted under § 26, Para. 1 of the Transitional and Final Provision of the Public Procurement Act.

Concluding provisions

TO DECREE № 251 OF NOVEMBER 8, 2017, ON THE ADOPTION OF ORDINANCE ON THE TERMS AND RULES OF DETERMINING EXTERNAL EXPERTS FOR THE INSPECTION OF TECHNICAL SPECIFICATIONS FOR PUBLIC PROCUREMENT

§ 2. Paragraph 1 shall enter into force on January 1, 2018.

Transitional and concluding provisions

TO DECREE N 30 OF 20 FEBRUARY 2019, ON ADOPTING AN ORDINANCE ON EXTERNAL EXPERTS IN PRELIMINARY CONTROL OF PUBLIC PROCUREMENTS

(PUBL. – SG, 17/19, IN FORCE FROM 01.03.2019)

§ 4. (corr. - SG 20/19) The Decree shall enter into force on 1 March 2019 with the exception of § 2, item 1, letter "a", item 2, item 8, item 9, item 10, item 11, 12, item 13, letter "b", item 14, item 15, item 16, item 17, item 19, letter "a", subpoint bb and b and b, item 22, letter "a", item 27, letter "d", item 29 with respect to Art. 44, Para. 2, item 32, item 33, item 37 in relation to Art. 54, Para. 2, 4 and 5, item

43, letter "b", item 60, item 61, item 62, letter "b", item 63, item 64, item 68, item 69 regarding Art. 96a, Para. 1, item 70, letter "b" regarding the reference to Art. 39a, Para. 6 and 7 of the Public Procurement Act in Art. 97, Para. 4 and with respect to the second sentence of Art. 97, Para. 6, item 94, letter "b") and item 99 (§ 1a and 1b), which shall enter into force on 1 November 2019.

Annex N1 to Art. 8, Para. 4

(Amend. – SG, 17/19, in force from 01.03.2019)

METHODS

For Defining the Price of a Contract, Signed under Art. 14, Para. 1, p. 5 – 7 and Art. 149, Para. 1, p. 13 of the PPA

1. The price of the contract shall be defined on the basis of the needed costs for fulfillment of the awarded activities, increased by the envisaged profit and by all other costs under p. 5.

2. The cost price (the needed costs) of the supply, service or construction – subject of such a contract must be calculated by the undertaking –contractor according to the applicable standards (accounting, technological and/or specific for the relevant activity) and include only the costs, needed for the fulfillment.

2.1. Notwithstanding of the applied methods (“on procurement”, “on technological processes” or other, according to the specifics of the activity), the calculation of the cost price shall be coordinated with the requirements of the applicable national and international accounting standards (CC N 2 and MCC 2). Incases, where the applicable accounting base are the International accounting standards (IAS), their consideration wholly and without changes shall refer to the elements of the Methods, to which they are applicable.

2.2. The cost price as a basis of defining the price of the contracts under Art. 14, Para. 1, 5 - 7 and Art. 149, Para. 1, p. 13 of the PPA shall be submitted to the following rules and restrictions:

2.2.1. The cost price of the produced production, apart from those under p. 2.2.2 shall include: all the cost on purchasing and processing, as well as other costs, made in relation to their delivery to their current location and state.

2.2.2 The cost price of the produced production shall include the value of the input materials, costs for processing etc.:

2.2.2.1. the value of the input material shall include:

2.2.2.1.1. costs for purchasing, including purchase price; customs fees and other taxes and excises (other than those, which as a result the undertaking may recover from the tax authorities);

2.2.2.1.2. delivery costs, such as costs associated with transport, handling, assembly and trial operation; the cost of delivery included in the cost of the contracts under Art. 14, Para. 1, items 5 - 7 and Art. 149, Para. 1, item 13 of the PPA, should not exceed 7 per cent of the value of the inputs;

2.2.2.1.3. other costs necessary to bring the materials into ready-to-use form and which can be directly related to the acquisition of the finished goods and materials (eg. commission for the intermediary of the delivery, the cost of the quality analysis, determined.

Trade discounts, rebates and similar components are deducted when purchasing costs are determined.

When inventories are produced from biological assets, their cost is determined on the basis of the fair value, less the costs to sell at the time of disposal.

2.2.2.2. The processing costs shall include:

2.2.2.2.1. direct costs of production and costs - directly linked to the units produced (eg. direct labor - remuneration and social security contributions of staff, employed in manufacturing);

2.2.2.2.2. indirect costs of production - systematically charged fixed and variable overheads, which in turn may be permanent and variable:

2.2.2.2.2.1. fixed costs - indirect production costs that remain relatively stable and which are not directly influenced by the volume of production and are allocated on the basis of the normal capacity of production capacities; normal capacity is the expected average production over several periods or seasons under normal conditions, taking into account capacity losses due to planned maintenance; eg. depreciation costs, external service costs - rent and maintenance of buildings and equipment for production purposes, asset insurance, interest on credits for production equipment, interest may be part of the cost only if international accounting standards, etc.);

2.2.2.2.2.2. variable costs - dependent on production costs that change directly or almost directly depending on the volume of production and are allocated on the basis of actual use of production capacity;

(e.g., depending of the specific nature of the activity, such costs may include costs of electricity, indirect auxiliary materials, external services, remuneration and insurance contributions of auxiliary staff, etc.);

2.2.2.3. other costs, related the production of the production;

(ex. costs of non-production nature as costs for external services – projecting individual project of the client, etc.)

2.2.3. the cost price of the services shall include:

2.2.3.1. remuneration and securities, due by the employer.

2.2.3.2. the relevant part of the total production (indirect) costs;

2.2.3.3. other costs, directly related to the service (ex. the value of directly input materials – if any; costs for external services, etc.).

2.2.4. The cost price of materials under p. 2.2.1., the produced production under p. 2.2.2. and services under p. 2.2.3 shall not include

2.2.4.1. administrative costs;

2.2.4.2. financial costs (with the exception of the related to production and services) as eg. Rate differences from change of currency rates);

2.2.4.3. sales costs;

2.2.4.4. exceptional costs;

2.2.4.5. interests, fines, defaults, etc. of sanction nature;

2.2.4.6. overpriced quantities of scrapped materials, labor input or other production costs;

2.2.4.7. tangible, labor and other production costs that are outside the normal range (such as overtime, upgrading costs, etc.);

2.2.4.8. the cost of the external services included in items 2.2.2.3 and 2.2.3.3 above the maximum allowable amount; the maximum allowable cost of these costs should be 20 per cent of the total cost.

3. The envisaged percentage of the profit by the contracting authority shall not exceed 10% of the costs, defined in compliance with p. 2. Where an activity – subject to a contract under Art. 14, Para. 1, p. 5 - 7 of the APP is funded by means of European funds and programmes, the percentage profit shall be calculated only if this is admissible fir the relevant for of funding and the rules of the concrete operation allow this.

3.1. The percentage profit under p. 3 may be calculated over the whole sum of the costs of the contract, as well as over some elements of the calculation. Where this percentage is calculated over some elements (materials, labor, etc.), the maximum admissible percent profit over the value of each element is 10%.

3. The anticipated rate of profit by the contracting authority may not exceed 10 per cent of the cost (cost) determined in accordance with paragraph 2. Where an activity subject to a contract under Art. 14, Para. 1, items 5 - 7 and Art. 149, para. 1, item 13 of the Public Procurement Act is financed with funds from European funds and programs, the percentage of profit is calculated only if this is

permissible for the respective form of financing and the rules of the particular operation allow it.

4. Before concluding a contract under Art. 14, para. 1, items 5 - 7 and Art. 149, para. 1, item 13 of the PPA, the contractor shall provide the contracting authority with the relevant calculation documents (accounts / schemes) containing the necessary data for actual cost, according to the specificity of the particular contract and a copy of its accounting policy.

4.1. Over this value must be defined (according to the restrictions of p. 3) the admissible amount profit as an element of the end price. This must be done after the contracting authority is convinced that:

4.1.1. the cost price (the needed costs) is defined in compliance with the requirements of p. 2 and it includes only costs, needed for fulfillment of the awarded activity, considered with its volume and time; the contracting authority may require from the contractor to produce additional calculations for the way, in which the cost price of each element is defined;

4.1.2. the levels of the costs in relation to the elements of calculation shall be objectively defined; as objective shall be accepted such levels of costs, which are calculated in compliance with the acting rules and standards (under p. 2) and/or usually are accounted in fulfillment of the same or similar activity by independent economic subjects and/or by the contractor on contracts with third independent persons.

5. In the end price after the calculations under p. 4 shall be included VAT, excise duties, customs duties, taxes, etc. are due. under a statutory instrument.

Including interest on overdue payments, fines, penalties, etc. shall be unacceptable.

Annex N 2 to Art. 31, Para. 2

METHODS

To Art. 61, Para. 1, p. 3 of the APP for Establishing Minimal Admissible Correlations between the Defined Assets and Liabilities

With establishing the economic and financial condition of the applicants and participants in procedures for awarding public procurements, financial-accounting indicators shall be used through which are given the minimal admissible correlations* between the defended assets and liabilities. These indicators are calculated on the basis of the annual financial statement (AFS) of the applicants or participants undertaking on 31 December of the relevant year, represented in thousands BGN. The obtained values shall be rounded to the second sign after the decimal point. Depending on the subject, complexity and value of the procurement and schemes of payment to the contractor, the contracting authority shall define one or two of the following indicators:

1. Liquidity coefficient:

The liquidity indicators shall be quantity characteristics of the cost price of the undertaking to pay the current obligations with the available current assets. Indicators are for the possibility of the applicant/participant to take occurred financial difficulties. They are indicators, showing the liquidity in statics (at a certain moment).

1.1. Coefficient of total liquidity(Ctl)

General indicator, which without accounting the different level of liquidity of the components of the current assets, shows the possibilities of the undertaking of the applicant /participant to cover the current obligations with them. It is calculated on the basis of data (in thousand BGN) by the accounting balance on 31 December of the relevant year in the following formula:

Current assets (CA)

$$Ctl = \frac{\text{Current assets (CA)}}{\text{Current liabilities (CL)}},$$

Current obligations (CO)

where:

Ct is the coefficient of the total liquidity at the value 1,5;

CA – the sum of the current assets (short term and long term); all the assets, acquired in view to be used or realized in the term of one or above one year according to the operative cycle of the undertaking ¹.

CO – the sum of the current obligations (current liabilities); all the obligations, which are to be paid within 1 year.

1.1.1. Sum of the current assets(CA)

It is defined as a sum of the summarized data (in thousand BGN) indicated in the relevant entries of the asset of the accounting balance on 31 December of the relevant year, numerated as follows:

1.1.1.1. Material inventories- total (including the ones, which according to the operative cycle will be used above one year) including:

- 1.1.1.1.1. raw materials and materials;
- 1.1.1.1.2. unfinished production;
- 1.1.1.1.3. production and goods;
- 1.1.1.1.4. provided advances.

1.1.1.2. Receivables -total, including:

- 1.1.1.2.1. receivables from clients and suppliers to one year;
- 1.1.1.2.2. receivables from undertakings of a group to one year;
- 1.1.1.2.3. receivables, related to associated and mixed undertakings to one year;
- 1.1.1.2.4. other receivables (notwithstanding of the source) to one year;

1.1.1.3. Short term investments- total, included:

- 1.1.1.3.1. assets and shares in a group undertakings;
- 1.1.1.3.2. bought own assets (nominal value);
- 1.1.1.3.3. other investments (assets, bonds, investment properties, etc.);

1.1.1.4. Money means- total, included:

- 1.1.1.4.1. money (without the blocked ones) in cashes and bank accounts (in the country and abroad);
- 1.1.1.4.2. money equivalents (short term, high interest deposits, easily convertible money, checks, policies, state securities, etc.).

1.1.2. Sum of the current(short term) obligations(CO):

It is defined as a sum of the summarized data (in thousand BGN) indicated in the relevant entries of the liability of the accounting balance on 31 December of the relevant year, as follows:

1.1.2.1. obligations to financial undertakings with term of payment to one year (notwithstanding whether the term of the obligation is above one year);

1.1.2.2. bond loans with term of payment to one year (including convertible);

1.1.2.3. received advances with term of up to 1 year;

1.1.2.4. obligations to suppliers with term of payment to 1 year;

1.1.2.5. obligations on policies with term of payment to one year;

1.1.2.6. obligations to undertakings of a group with term of payment to one year;

1.1.2.7. obligations, related to associated and mixed undertakings with term of payment to 1 year;

1.1.2.8. other obligations with term of payment to one year – total included:

1.1.2.8.1. obligations to the staff with term of payment to 1 year;

1.1.2.8.2. securities and tax obligations with term of payment to 1 year;

1.1.2.8.3. obligations for interests, fines, defaults and other economic sanctions with term of payment to 1 year.

1.2. Coefficient of quick liquidity(Cql)

This indicator expresses the direct ability of the undertaking of the applicant/participant to service his current obligations with more quick liquidity short term assets. It is calculated on the basis of data (in thousand BGN) of the accounting balance on 31 December of the relevant year under the following formula:

$$\text{Cql} = \frac{\text{Receivables} + \text{Short term investments} + \text{money}}{\text{Current obligations (CO)}}$$

where:

Cql is the coefficient of quick liquidity at the value of: 1.

1.2.1. Receivables with term of receiving to 1 year - total, included:

- 1.2.1.1. receivables from clients and supplies to one year;
- 1.2.1.2. receivables from undertakings of a group to one year;
- 1.2.1.3. receivables, related to associated and mixed undertakings to one year;
- 1.2.1.4. other receivables (notwithstanding of the source) to one year.

1.2.2. Short term investments- total, included:

- 1.2.2.1. assets and shares in a group undertakings;
- 1.2.2.2. bought own assets (nominal value);
- 1.2.2.3. other investments (assets, bonds, investment properties, etc.).

1.2.3. Money means- total, included:

1.2.3.1. money (without the blocked ones) in cashes and bank accounts (in the country and abroad);

1.2.3.2. money equivalents (short term, high interest deposits, easily convertible money, checks, policies, state securities, etc.).

1.2.4. Current obligations (CO) – the sum of the indicated in p. 1.1.2.

* Minimal admissible correlation- the value of the liquidity coefficients, indicated in p. 1.1 and 1. 2 above which is considered that for the applicant or participant there is compliance with the requirements of Art. 61, Para. 1, p. 3 of the APP.

¹ Operative cycle of the undertaking – the time of acquiring the assets (raw materials, etc.) which enter in a processing to the realization of the created product in money or in money equivalent.

Remark. These methods have been drawn up in compliance with the Accountancy Act and the applicable accounting standards.