

# Public Procurement Law

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## Part One BASIC PROVISIONS

### Chapter One GENERAL PROVISIONS

#### Section I Purpose and Principles

**Article 1.** This Law shall establish the principles, terms and procedures for the award of public procurement contracts for the purpose of ensuring efficiency in the spending of budget and non-budget resources, as well as of the resources associated with meeting needs of general interest specified in the Law.

**Article 2. (1)** Public procurement contracts shall be awarded according to the procedures established in this Law, in accordance with the following principles:

1. publicity and transparency;
2. free and fair competition;
- 3 equal treatment and non-discrimination.

(2) Where a contracting authority grants special or exclusive rights to carry out a public service activity to a person other than such a contracting authority, the act by which these rights are granted shall require from the person concerned to comply with the principle of non-discrimination on the basis of nationality in the award of supply contracts to third parties as part of its activity associated with these rights.

#### Section II Objects and Parties of Public Procurement Contracts

**Article 3.** Objects of public procurement contracts shall be:

1. supply of goods through purchase, lease, rental, with or without the option to buy, or hire-purchase, as well as all other preliminary activities concerning the usage of the goods such as installation, testing of machinery and equipment and others;
2. provision of services;
3. works, including:
  - (a) execution or engineering (design and execution) of works;
  - (b) execution or both the design and execution by whatever means of one or several building and installation works under Annex 1 hereto, related to the construction, redevelopment, remodelling, maintenance, restoration or rehabilitation of buildings or construction facilities;
  - (c) engineering and execution by whatever means of one or more activities involved in the realization of a building work corresponding to the requirements specified by the contracting authority, such as pre-design investigation, design, organization of construction, supply and installation of machinery, plant and process equipment, preparation and commissioning of the project.

(2) Repealed.

**Article 4.** The following shall not be objects of public procurement contracts:

1. the acquisition or rental of land, existing buildings or other immovable property, as well as the creation of limited real rights, with the exception of financial services related to these deals;
2. the acquisition, development, production and co-production of programme material by radio and television broadcasters and the provision of broadcasting time;
3. (Amend. SG No. 53/22.06.2004, entered into force since 01.01.2004, Amend. SG No 34/19.04.2005, entered into force since 01.06.2005, Amend. SG No. 18/28.02.2006) the financial services in connection with the issue and transfer of securities or other financial instruments, the services provided by the Bulgarian National Bank; the services provided in connection with the management of the government debt, the buying out and qualifying of production, the approval of storehouses for preservation and the conduct of tenders for sale with interference in the markets for agricultural production according to the Law for Supporting the Agricultural Producers.
4. research and development services where the service provided is wholly remunerated by the contracting authority but the benefits do not remain exclusively to the contracting authority for its use in the conduct of its own affairs;
5. the choice of arbitration court and conciliation services.
6. employment contracts.

**Article 5. (1)** The public services contracts, depending on the rules for their awarding, shall be divided into:

1. public service contracts listed in Annex 2, which are awarded through:
  - a) open or restricted procedure by contracting authorities under Art. 7, Items 1 – 4;
  - b) open procedure, restricted procedure or negotiated procedure with prior publication of a notice by contracting authorities under Art. 7, Items 5 and 6;
2. public service contracts listed in Annex 3, which are awarded through open procedure, restricted procedure or negotiated procedure with prior publication of notice.

(2) A public procurement contract, which includes simultaneously any services under Annex 2 and Annex 3, shall be awarded according to the procedure provided for services of higher values.

**Article 6.** Public procurement parties shall be the contracting authorities, the candidates, the tenderers, and the suppliers, contractors and service providers.

**Article 7.** Contracting authorities shall be:

1. the state authorities, the President of the Republic of Bulgaria, the Bulgarian National Bank, as well as other state institutions established by a statutory instrument.
2. the diplomatic and consulate representations of the Republic of Bulgaria abroad as well as the permanent representations of the Republic of Bulgaria with the international organizations;
3. the bodies governed by public law;
4. the groups of parties referred to in Item 1 or 3;
5. the public undertakings or any groups thereof, where carrying out one or several of the activities covered under Articles 7a through 7e incl. herein.
6. the traders or any other entities that are not public undertakings, where carrying out one or several of the activities covered under Articles 7a through 7e incl. herein on the basis of special or exclusive rights.

**Article 7a. (1)** Activities relating to natural gas, heat or electricity shall be:

1. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transfer or distribution of natural gas, heat or electricity, the production of heat or electricity for the purpose of supply to these networks, or
2. the supply of natural gas, heat or electricity to such networks.

**(2)** The supply of natural gas or heat to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1), where:

1. the production of natural gas or heat by the entity concerned is the consequence of carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b through 7e incl. herein, and
2. supply to the said networks is aimed only at the economic exploitation of such production of natural gas or heat, provided that the quantity supplied does not exceed 20 per cent of the producer's turnover having regard to the average for the preceding three years, including the current year.

**(3)** The supply of electricity to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning of Paragraph (1) where:

1. the production of electricity is intended for carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b through 7e incl. herein; and
2. supply to the public network depends only on the entity's own consumption and the said supply has not exceeded 30 per cent of the entity's annual production for the preceding three years, including the current year.

**Article 7b. (1)** Activities relating to drinking water shall be:

1. the provision or exploitation of fixed networks intended to provide a service to the public in connection with the production, transfer or distribution of drinking water; or
2. the supply of drinking water to such networks.

**(2)** The persons which pursue any activity covered under Paragraph (1) shall furthermore apply the provisions of the Law to any activities related to:

1. irrigation, land drainage or other hydraulic engineering projects provided that the volume of water to be used for the supply of drinking water represents more than 20 per cent of the total volume of water made available by such projects, or
2. are connected with the disposal or treatment of sewage.

**(3)** The supply of drinking water to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning of Paragraph (1) where:

1. the production of drinking water is necessary for carrying out an activity other than the activities referred to in Paragraph (1) or under Articles 7a, 7 - 7e incl. herein and;
2. supply to the public network depends only on the entity's own consumption and the said supply has not exceeded 30 per cent of the average annual production for the preceding three years, including the current year.

**Article 7c. (1)** Activities relating to transport services shall be the operation of networks providing a service to the public in the field of transport by railway, tramway, trolley bus or bus, as well as by automated systems or cable.

**(2)** The provision of bus transport services to the public shall not be considered a relevant service within the meaning given by Paragraph (1) where other entities can freely provide such services under the same conditions as the contracting authority.

**Article 7d. (1)** Activities related to the provision of universal postal services are the activities provided for in Art. 34 of the Postal Services Act.

**(2)** The persons who pursue activities under Para (1) shall apply the provisions of this Law for all their activities.

**Article 7e.** Activities relating to the exploitation of a specific geographical area shall be

1. prospecting, exploration or extraction of oil, natural gas, coal or other solid fuels;
2. the exploitation of airports and maritime or inland ports or other terminal facilities used in transport by air, sea or inland waterways

**Article 8. (1) (new)** The contracting authorities are obligated to conduct public procurement award procedures when the grounds provided in the law are present.

(2) The contracting authorities or officials authorized by them shall organize and conduct public procurement award procedures and shall conclude public procurement contracts. Authorization may not be used for the purpose of splitting the contract.

(3) (new) When the contracting authority is a collective body, the powers under Para 2 are exercised by the person representing it.

(4) Following a proposal made by the Minister of Economy and Energy, the Council of Ministers may establish a central purchasing body for the needs of the executive authorities, and the municipality mayors – for the needs of the municipalities.

(5) The central purchasing body is a contracting authority which can conduct procedures and conclude public contracts or framework agreements.

(6) Two or more contracting authorities may decide to conduct a joint procedure for the award of public procurement contracts.

**Article 9.** Any Bulgarian or foreign natural or legal person, as well as any group of such persons may be a candidate or tenderer in a public procurement procedure.

**Article 10.** The public procurement supplier, contractor or service provider shall be a candidate or tenderer in a public procurement award procedure wherewith the contracting authority has concluded a public procurement contract.

**Article 11.** The acts of the contracting authorities related to public procurement procedures shall be individual administrative acts.

**Article 12. (1)** This Law shall not apply to:

1. contracts granting works concessions within the meaning of the Concessions Law;
2. contracts which the contracting entities under Items 5 or 6 of Article 7 herein conclude in connection with any activity which differs from activities covered under Article 7a-7c and 7e or in relation with any of these activities which are carried out in a third country in conditions not involving the use of a network or geographical area within a Member-state of the European union;
3. supply contracts concluded by any contracting entity covered under Items 5 or 6 of Article 7 herein for purposes of resale or hire of the subject of the contract to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to carry out the said activity under the same conditions as the contracting authority;
4. contracts for the supply of energy, or fuels for the production of energy, concluded by contracting entities covered under Item 5 or Item 6 of Article 7 herein, conducting an activity under Art. 7a;
5. (new) contracts for the supply of water, concluded by contracting entities covered under Item 5 or Item 6 of Article 7 herein, conducting an activity under Art. 7b;
6. service, supplies or works contracts concluded by a contracting entity covered under Item 5 or Item 6 of Article 7 herein with an affiliated undertaking, provided that at least 80 per cent of the average turnover of the said undertaking with respect to services, supplies or works arising within the Republic of Bulgaria for the preceding three years derives from the provision of such services, supplies or works to undertakings wherewith the said undertaking is affiliated;
7. contracts awarded by a joint venture, formed by a number of contracting entities for the purpose of carrying out an activity covered under Articles 7a through 7e incl. herein to one of the partners in the said joint venture.
8. (new) contracts awarded by a partner in a joint venture, formed by a number of contracting authorities for the purpose of carrying out an activity covered under Articles 7a through 7e incl. herein, to such a joint venture, provided that the said joint venture has been set up to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting authorities will be part thereof for at least the same period.
9. service contracts awarded by a contracting authority to another contracting entity under Items 1, 3 of Article 7 herein or a joint venture of such contracting entities which enjoy exclusive rights to provide such services pursuant to a law, secondary legislation or an administrative act; the act for granting exclusive rights is issued in compliance with the provisions of the Treaty.

10. supply, service or works contracts financed by more than 50 per cent by other States or by international or foreign organizations, where the provider of the financing has selected the supplier, contractor or service provider or has stipulated the way for its selection;

11. contracts of the National Health Insurance Fund for medicinal drugs under Article 45 (6) of the Health Insurance Act.

**(2)** (new) In the cases referred to in Item 5 of Paragraph (6) when, an affiliated undertaking has realized no turnover for the preceding three because of the date on which the affiliated undertaking was created or commenced activities, it will be sufficient that its business plans provide for at least 80% of its average annual turnover to be realized from the supplies, services or works, which will be awarded to affiliated undertakings.

**(3)** Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the percentages referred to in Item 5 of Paragraph (1) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works to those affiliated undertakings.

**(4)** Contracting authorities shall notify the Public Procurement Agency when requested thereby of:

1. the cases whereto the exceptions covered under Item 2 of Paragraph (1) are applied;
2. the subject of the contracts referred to in Item 3 of Paragraph (1);
3. the name of the affiliated undertaking, the objects and the value of the contract, as well as the proofs of existence of circumstances referred to in Items 6, 7 and 8 of Paragraph (1) in the cases where the those exceptions apply.

**Article 13. (1)** The procedures under the Law shall not apply to public procurement contracts:

1. associated with national defence or national security within the meaning of Art. 296 of the Treaty;
2. which are subject of classified information constituting a state secret, or where the performance of the public procurement contracts must be accompanied by special security measures in accordance with the effective legislation;
3. upon implementation of an international treaty, concluded in compliance with the Treaty, between the Republic of Bulgaria and a third country, covering supplies, services or works intended for joint implementation or exploitation by the signatory States;
4. pursuant to a special procedure of an international organization when it provides more than 50% of the financing of the contract;
5. awarded in implementation of an international treaty associated with the deployment of troops and support for the participation of armed forces and police contingents in international missions and exercises;

**(2)** (Entered into force since 06.04.2004) The terms and a procedure for the award of public procurement contracts in the cases referred to in Items 1 and 2 of Paragraph (1) shall be established by an ordinance adopted by the Council of Ministers following a proposal by the Minister of Interior, the Minister of Defence, the Minister of Economy and Energy and the Minister of Finance. The said ordinance shall furthermore establish the terms and a procedure for conclusion of compensatory (offset) arrangements, as well as the cases in which the said arrangements shall be admissible.

**(3)** In the cases referred to in Item 3 and Item 4 of Paragraph (1), the contracting authorities shall notify the Public Procurement Agency of the concluded international treaties and conducted procedures within seven days.

**Article 14. (1)** The terms and procedure for public procurement awards, established in this Law shall be applied mandatorily upon award of public procurement contracts which have the following values, net of value added tax as follows:

1. in respect of works: not less than BGN 1,800,000 and, where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 5,000,000;
2. in respect of supplies: not less than BGN 150,000 and, and, where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 250,000;
3. in respect of services: not less than BGN 90,000 and, where the place of performance of the procurement contract is outside Bulgaria, not less than BGN 250,000;
4. design contest: not less than BGN 30,000.

(2) Upon award of a public procurement contract including simultaneously supply of goods and provision of services, Item 3 of Paragraph (1) shall apply where the value of the services exceeds the value of the goods.

(3) (new) Where the object of a public procurement contract is the provision of services, but it includes also works, resulting from the main object of the contract, it shall be awarded as a public service contract.

(4) Where contracting entities covered under Items 1 to 4 of Article 7 herein subsidize by more than 50 per cent a works contract, the persons receiving the subsidy and awarding the contracts shall be obligated to comply with the provisions of this Law where the total value of the said contract, net of value added tax, is above the threshold fixed in Item 1 of Paragraph (1).

(5) In cases where the contracting entities covered under Items 1 to 4 of Article 7 herein subsidize by more than 50 per cent a service contract which is related to a works contract, the persons receiving the subsidy and awarding the service contract shall be obligated to comply with the provisions of this Law where the total value of the said contract, net of value added tax, is above the threshold fixed in Item 3 of Paragraph (1).

(6) In the cases under Para 4 and 5, the contracting entities are obligated to exercise control over the persons who have received subsidy for their compliance with the law.

(7) (Entered into force sine 06.04.2004) The terms and a procedure for the award of public procurement contracts below the thresholds fixed under Paragraph (1) shall be established by an ordinance adopted by the Council of Ministers following a proposal of the Minister of Economy and Energy.

**Article 15. (1)** The value of a public procurement contract shall be fixed as of the date of the decision to initiate a public procurement award procedure.

(2) For the purpose of establishment of the public procurement award procedure under Article 14 herein, the value of the public procurement contract shall be calculated as follows:

1. in the case of a supply contract having as its object the lease, rental with or without option to buy, as well as hire purchase, where the term of the said contract is fixed at:

(a) one year or less: the total contract value for the duration of the contract;

(b) more than one year: the total contract value for the duration of the contract, including the estimated residual value of the procurement contract;

(c) the term is not fixed or the term cannot be defined - the monthly value multiplied by 48.

2. in the case of recurrent supply and/or service contracts, on the basis of:

(a) the actual aggregate value of similar contracts, concluded over the previous financial year and adjusted for anticipated changes in quantity or value of the relevant supply or service; or

(b) the estimated aggregate value of the supply and/or the services during the twelve months following the first delivery or service or for the duration of the supplies and/or services, where the said duration is greater than twelve months;

3. in the case of a supply, service and/or works contract providing for options - the maximum permitted total value, including use of the option clauses;

4. in the case of a service contract which does not specify a total price where:

(a) the term of the contract is fixed at four years or less: the total contract value for the duration of the contract;

(b) the term of the contract cannot be determined in advance or the term of the contract is more than four years - the value of the monthly instalment multiplied by 48;

5. in the case of an insurance service contract: the insurance premium payable and other forms of remuneration; 6. in the case of a financial service contract: the price of the service, inclusive of fees, commissions or interest and other forms of remuneration;

7. in the case of a service contract preceded by a design contest, as well as in the case of a design contest followed by a service contract, the value shall be calculated on the basis of the price of the service and the total value of the contest prizes and other payments to tenderers in the contest;

8. in the case of a works contract: on the basis of the value of construction and supply of all goods and provision of all services for execution of the works, where provided by the contracting authority;

9. in the case of a design contest: the value of the procurement contract shall include the total value of the contest prizes and other payments to tenderers in the contest;

10. in the case of a framework agreement or a dynamic purchasing system: on the basis of the maximum estimated value net of VAT of all the contracts envisaged for conclusion for the period of validity of the said agreement or system.

(3) For the purpose of calculating the value of a public procurement contract, account shall be taken of all payments to the supplier, contractor or service provider of the public procurement contract net of value added tax, including any form of option and any renewals of the contract covered under Article 90, Paragraph 1, item 9 and, Article 103, Paragraph 2, item 8.

(4) Where a public procurement contract is split into several lots, each one a subject of a contract, the value of the procurement contract shall equal the sum total of the values of all lots. Where the total estimated value of all such lots is equal or exceeds the thresholds laid down in Article 14 Paragraph 1, the order applicable to the total values of the contract shall be followed in the awarding of each lot.

(5) The selection of a method for calculation of the public procurement contract value shall not be used with the intention of avoiding the application of the Law.

(6) It shall be inadmissible to split up a public procurement contract with the intention of avoiding the Law, even in stage-by-stage construction, where the completed stage cannot be granted a use permit as a self-contained building work.

(7) It shall be inadmissible to include supplies and services, which are not necessary for its execution in the calculation of the public works contract value.

### **Section III**

#### **Types of Procedure**

**Article 16. (1)** Public procurement contracts shall be awarded by means of conduct of an open procedure, a restricted procedure, a competitive dialogue and negotiated procedures.

(2) Repealed.

(3) Repealed.

(4) An open procedure shall be a procedure whereby all interested persons may submit a tender.

(5) A restricted procedure shall be a procedure whereby only qualified candidates invited by the contracting authority may submit a tender.

(6) **(new)** “Competitive dialogue” shall be a procedure in which any interested party may request to participate and whereby the contracting authority conducts a dialogue with the qualified candidates admitted to that procedure, with the aim of selecting one or more proposals meeting its requirements, whereupon the contracting authority invites the candidates which have offered suitable proposals to submit tenders.

(7) The negotiated procedures shall be:

1. a negotiated procedure with publication of a notice, whereby the contracting authority negotiates the terms of the contract with one or more tenderers selected on a pre-qualification stage by the contracting authority;

2. a negotiated procedure without publication of a notice, whereby the contracting authority negotiates the terms of the contract with one or more particular persons.

(8) Contracting authorities covered under Items 1-4 of Art. 7 herein shall make a decision on the award of a public procurement contract by open and restricted procedure in all cases when the conditions for the conduct of competitive dialogue or negotiated procedures are not fulfilled.

**Article 16a.** A design contest shall be a procedure whereby the contracting authority acquires a plan or a design selected by an independent jury after being put out to competition with or without the award of prizes.

**Article 16b (1)** The contracting authorities may determine the contractor of a public procurement contract under open, restricted or negotiated procedure with publication of a notice in the cases under Art. 84, Item 1 using electronic auction, as well as in the cases under Art. 93c, Para 2 and Art. 93i, where the public procurement contract specifications can be defined precisely.

(2) Object to electronic auctions shall not be public service and works contracts with an object intellectual activity, such as design of works.

(3) The use of electronic auction is included in the public procurement contract notice.

(4) The electronic auction shall not be applied if it prevents, restricts or violates competition, and it also cannot change the public contract object included in the published notice and in the specifications.

(5) The rules and regulations of the application of electronic auctions shall be established in the Rules for the Implementation of the Law.

**Article 16 c (1)** The contracting authorities reserve the right to participate in public contract award procedures to specialized enterprises or sheltered workshops, provided the object of the contract is included in a list approved by the Council of Ministers or the contract is fulfilled in the context of employment protection programmes for people with disabilities.

(2) The contracting authority is obligated to include the requirement under Para 1 in the contract notice.

## **Chapter Two**

### **AUTHORITIES. PUBLIC PROCUREMENT REGISTER**

#### **Section I**

##### **Authorities**

**Article 17.** The Minister of Economy and Energy shall implement the state policy in the field of public procurement.

**Article 18.** (Entered into force since 06.04.2004) **(1)** Public Procurement Agency shall be established with the Minister of Economy and Energy, hereinafter referred to as "the Agency," to assist the said Minister in the implementation of the state policy in the field of public procurement.

(2) The Agency shall be a legal person with a head office in Sofia.

(3) The Agency shall be financed by the State budget and by incomes from activities related to the elaboration of additional materials and provision of services in the field of public procurement.

(4) The activity, structure, organization of work and the number of staff of the Agency shall be determined by Rules of procedure adopted by the Council of Ministers.

**Article 19.** (Entered into force since 06.04.2004) **(1)** The Agency shall be managed and represented by an Executive Director, who shall be appointed by the Minister of Economy and Energy.

**(2)** The Executive Director of the Agency shall perform the following functions:

1. issue methodological guidelines on the application of this Law and of the statutory instruments of secondary legislation thereto related;

2. alert the competent authorities so as to exercise control over compliance with the Law;

3. when receiving a signal, appeal before the Commission for the Protection of Competition contract notices for opening of procedures, which include conditions or requirements, providing an advantage or unjustifiably restricting the participation of any parties in public procurement ;

4. file claims in court for declaring public procurement contracts null and void in cases of violations of the Law;

5. elaborate drafts of statutory instruments and issues statements on international treaties in the field of public procurement;

6. maintain a Public Procurement Register;

7. maintain lists of contracting authorities covered under Article 7 herein and notify the European Commission of any changes to the said lists;

8. maintain, with the assistance of the professional associations and organizations in the relevant sector, a list of persons whom contracting authorities may recruit as outside experts upon conduct of public procurement award procedures;

9. elaborate standard forms for contract and award notices, statistical reports and for conducted design contests;

10. coordinate the activities relating to the training of all tenderers in the public procurement process;



11. **(Entered into force since 06.04.2004)** participate in the international cooperation of the Republic of Bulgaria with organizations in other countries in the field of public procurement;
12. submit an annual report on the operation of the Agency to the Minister of Economy and Energy;
13. collect and summarize the case law on application of this Law and monitors the public procurement system;
14. collaborates in the field of public procurement with business organizations;
15. provide summarized information based on requested criteria form the Public Procurement Register;
16. supports the process of e-procurement;
17. notify the European Commission of all contracts referred to in Item 3 of Article 13 (1) herein;
18. send to the European Commission, at its request, information under Art. 12 Para 4.
19. send to the European Commission annual statistical reports;
20. notify the European Commission of any legal or factual problems related to the participation of Bulgarian persons in public procurement procedures for the award of services contracts in third countries;
21. notify the European Commission of any legal or factual problems related to the participation of Bulgarian persons in public procurement award procedures in third countries, which are the result of infringement of the provisions of the international labour legislation;
22. may determine on his/her initiative or on request of the contracting authorities experts from the Agency to participate as observers in the conduct of procedures for the award of public contracts with values above the the values referred to in Art. 45a, Para 1 and 2;
23. promote best practices in the field of public procurement.

**(3)** In connection with the execution of his powers, the executive director shall have the right to require the necessary information from the contracting authorities.

**(4)** The contracting authorities are obligated to provide the required information under Para 3 within a time period set by the executive director of the Public Procurement Agency.

**(5)** The information referred to in Items 1, 6 to 8, and 12 to 13 of Paragraph (2), as well as approved standard forms under Item 9 and the Public Procurement Nomenclature, shall be posted on the Internet.

**(6)** By 31 March of every year, the annual report under Para 2, Item 2 is submitted by the Minister of Economy and Energy for approval by the Council of Ministers.

**(7)** The standard forms under Para 2, item 9 are approved by the Minister of Economy and Energy and are published in the State Gazette.

**Article 20. (1)** The executive director shall exercise his/her power under Art. 19, Para 2, Item 3 prior to the expiry of the time period for the receipt of:

1. tenders or projects – in open procedure or open design contest;
2. requests to participate – the rest of the procedures.

**(2)** The executive director shall exercise his/her power under Art. 19, Para 2, Item 3 if the signal for violation is received no later than 10 days before the expiry of the time period under Para 1.

**Article 20a (1)** The observers under Art. 19, Para 1, Item 22 shall be present at the work of the commission appointed by the contracting authority for the conduct of the procedure for award of public contract and shall watch for the keeping of the requirements of the Law.

**(2)** The executive director of the Agency shall send a statement to the contracting authority regarding the work of the commission in every procedure where observers are present.

**(3)** The order for determining the observers and the rules for their work shall be defined in the Rules for the Implementation of the Law.

**Section II**  
**Public Procurement Register**

**Article 21.** (1) A Public Procurement Register shall be established.

(2) The Public Procurement Register shall be public.

(3) The contracting authorities shall be obligated to submit the information envisaged for entry into the Public Procurement Register to the Executive Director of the Agency.

(4) The contracting authorities are obligated to provide statistical reports for the awarded contracts under the regulations provided in the Rules of the Implementation of the Law.

**Article 22.** The Public Procurement Register shall contain:

1. decisions for opening and termination of public contract award procedures, as well as decisions for extension of the time period for submission of offers or requests for participation;
2. the notices envisaged for entry into the Register;
3. the information for the awarded public procurement contracts ;
4. any other information as specified in the Rules on implementation of Law.

**Part Two**  
**PUBLIC PROCUREMENT AWARD**  
**Chapter Three**  
**GENERAL PROVISIONS FOR PUBLIC PROCUREMENT AWARD**

**Section I**  
**Prior Information Notice**

**Article 23. (1)** The contracting authorities shall dispatch a prior information notice for all award procedures or for conclusion of framework agreements which they intend to open over the following twelve months to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register or publish on the buyer's profile:

1. for supply of goods or for provision of services under Item 1 of Article 5 (1) herein, subdivided by category, where the total value, net of value added tax, for the relevant category of goods, is equal to or greater than BGN 450,000;

2. for works, where the total value of the procurement contract, net of value added tax, is equal to or greater than the thresholds referred to in Item 1 of Article 14 (1) herein.

**(2) (new)** When the contracting authorities publish prior information notices on their buyer's profile, they shall send to the Agency and the *State Gazette*, electronically, notification under approved form. The prior information notices cannot be published on the buyer's profile before the date of the dispatch of the notification.

**(3) (new)** The notices referred to in Item 1 of Paragraph (1) and the notification under Para 2 for supplies must be dispatched no later than the 1<sup>st</sup> of March.

**(4)** When the contracting authorities intend to use the shortened time periods under Art. 64, Para 2, they shall dispatch prior information notice also for public procurement contracts the total value of which net of VAT is below the values under Para 1.

**(5)** In the cases referred to in Item 1 of Paragraph (1), the category of goods shall be established by contracting authorities by reference to the Public Procurement Nomenclature, and the category of goods - by reference to Annex 2.

**(6)** Publication of a prior information notice shall not bind the contracting authority to conduct the relevant public procurement award procedures.

**Article 24.** (1) A prior information notice must include not more than 650 words and must be based on the standard form under Art. 19, Para 7. Contracting authorities shall dispatch any such notice to the *State Gazette* and to the Agency in electronic form as well.

## **Section II**

### **Decision for Opening Public Procurement Award Procedures and Contract Notice**

**Article 25. (1)** The contracting authority shall adopt a decision to open a public procurement award procedure, whereby the said authority shall approve the contract notice and the contract documents. Any such decision and notice shall be dispatched to the Agency for entry into the Public Procurement Agency in electronic form as well.

**(2)** A public procurement notice must include at least the following information:

1. name, address, telephone and fax numbers and e-mail address of the contracting authority, and contact person;
2. type of procedure;
3. object of procurement contract and quantity or scope, including such information about lots;
4. reference number according to the Public Procurement Nomenclature;
5. place and time limit for performance of the procurement contract;
6. minimal requirements for the economic and financial standing of the candidate or tenderer, for the technical abilities and qualifications thereof, where the contracting authority establishes such requirements, as well as specification of the references required to be provided in evidence;
7. terms and amount of the participation guarantee and of the contract performance guarantee;
8. terms and method of payment;
9. period of tender validity;
10. criterion to be applied in the evaluation of tenders;
11. **(new)** indication of whether variants shall be authorized;
12. **(new)** possibility for the tenderers to submit offers for one, for all or for one or more lots – when the object of the contract includes several lots;
13. address and time limit for receipt, price and ways of payment of the contract documents;
14. address and time limit for receipt of requests to participate or tenders;
15. place and date of the opening of tenders;
16. date of publication of the prior information notice referred to in Article 23 herein, if any;
17. date of dispatch of the notice.

**(3)** In the notice, the contracting authority may furthermore provide for:

1. possibility for conduct of electronic auction;
2. a requirement to establish a legal person where the tenderer which has been selected as supplier, contractor or service provider is a group of natural and/or legal persons; the newly established legal person is bound by the tender submitted by the group.
3. Repealed 4. Criteria for complex evaluation of the tender, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders.

**(4) (new)** In restricted procedures, negotiated procedures with publication of a notice and in the competitive dialogue procedure, contracting authorities may limit by the contract notice the number of candidates that will be invited to tender, to negotiate or to conduct a dialogue with, provided that a sufficient number of candidates meeting the requirements is available. In such cases, the contract notice shall indicate the objective and non-discriminatory criteria or rules as the contracting authorities intend to apply, the minimum number of candidates as will be invited and, on judgement of the contracting authorities, the maximum number of such candidates

**(5)** No terms or requirements providing an advantage or unjustifiably restricting the participation of any parties in the public procurement contracts may be included by contracting authorities in the decision, notice, or documents.

(6) The requirements referred to in Item 6 of Paragraph (2) and the extent of the information and documents as are required according to the notice must be related and proportionate to the complexity of the object and the volume of the public procurement contract.

**Article 26. (1)** In the notice referred to in Article 25 herein, the contracting authority may furthermore establish additional requirements for the performance of the public procurement contract related to environmental protection, unemployment and creation of jobs for persons with disabilities, while complying with the requirements referred to in Article 25 (5) herein.

(2) In the cases under Para 1, the when preparing the tender, the tenderers are obligated to present also the way for meeting the additional requirements.

**Article 27. (1)** The notice referred to in Article 25 (2) herein must not be greater than 650 words and must be based on the standard form referred to in Art. 19, Para 7 herein.

(2) (Amend. SG No31/08.04.2005, entered into force since 01.05.2005) The public procurement notice shall be dispatched in electronic form and shall be published on the Internet site of the *State Gazette* not later than five days after the dispatch thereof.

(3) (Amend. SG No31/08.04.2005, entered into force since 01.05.2005). After publication of the notice in the *State Gazette*, the contracting authority may also publish an advertisement of the public procurement contract in one local newspaper or a national daily newspaper. Any such advertisement shall state, at a minimum, the object of public procurement contract and the date of publication of the notice on the Internet site of the *State Gazette*, and may not contain any information which was not included in the said notice.

### **Section III**

#### **Contract Documents for Participation in a Public Procurement Award Procedure**

**Article 28. (1)** The contract documents for participation in a public procurement award procedure must contain:

1. the decision to open a public procurement award procedure;
2. the contract notice;
3. a complete description of the object of procurement contract, including such information about lots;
4. technical specifications;
5. (new) the minimum requirements to be met by the variants and any specific requirements for the presentation thereof, where the contracting authority authorizes variants;
6. the investment project designs, where they are required in a public works contract;
7. the criteria to be applied in the evaluation of tenders, the relative weight to be accorded to each such criterion, and the methods for complex evaluation of the tender, where the criterion of the most economically advantageous tender applies;
8. a standard form of the tender, as well as guidelines for drawing up of the tender;
9. the draft of a contract;
10. the draft of an arbitration agreement, signed by the contracting authority, when it proposes such.

(2) The methods referred to in Item 7 of Paragraph (1) shall contain precise directions for determining the evaluation under each criterion and for determining the complex evaluation of the tender, including the relative weighting which the contracting authority gives to each of the criteria chosen to determine the most economically advantageous tender. The relative weighting of the different criteria can be expressed by providing maximum values within the framework of the general evaluation.

(3) The price of the contract documents may not exceed the actual costs of the preparation thereof. Upon request of the interested party the contracting authority may not refuse to send the contract documents at the expense of the person who made the request.

(4) The contract documents shall be available for purchase until expiry of the time limit for the submission of tenders or requests to participate. The persons have the right to examine the documentation on the spot, before they purchase it.

**Article 29. (1)** Within ten days before expiry of the time limit fixed for the submission of tenders or requests to participate, the persons may request in writing additional information relating to the documents for participation from the contracting authority. The contracting authority shall be obligated to reply within three days after receipt of any such request.

**(2)** The contracting authority shall dispatch any additional information referred to in Paragraph (1) to all persons that have purchased the contract documents and that have indicated a mailing address, without identifying the inquiring person in the reply thereof. Any such additional information shall furthermore be attached to the contract documents which are to be purchased by other candidates.

## **Section IV**

### **Technical Specifications**

**Article 30. (1)** The contracting authority shall give the technical specifications in the contract documents, defining the said specifications by reference to:

1. Bulgarian standards, which implement European, international standards, European technical approvals or common technical specifications, or other technical standards of European standardization bodies, accompanying the said indication by the words “or equivalent”;
2. Bulgarian standards, technical approvals or specifications, related to the design, the calculation method and the execution of the works, as well as, to the materials used, accompanying the said indication by the words “or equivalent” where standards referred to in Item 1 do not exist;
3. performance characteristics or functional requirements which allow the precise definition the object of procurement contract. The functional requirements may include environmental characteristics.
4. the performance characteristics or functional requirements under Item 3, accompanied by reference to specifications under Item 1 or 2 the conformity whereto is recognized as compliance with the performance characteristics or functional requirements;
5. specifications under Item 1 or 2 for particular characteristics, and for others – by reference to the performance characteristics or functional requirements under Item 3.

**(2)** In the cases under Para 1, item 3, where the contracting authority has provided for environmental requirements are included, it may use specifications or parts of European or national eco-labels, or other eco-labels, provided that they fulfil the following requirements:

1. the specifications are appropriate to define the characteristics of the supplies and services;
2. the requirements for the label are drawn up on the basis of scientific information;
3. the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organizations can participate,
4. they are accessible to all interested parties.

**(3)** The contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents;

**(4)** In the cases under Para 2 the contracting authorities accept as proof the technical dossier of the manufacturer or a test report or a certificate drawn up by a recognised body.

**Article 31. (1)** In the context of provision of the technical specifications of the candidates or tenderers in the procedures and in the conclusion of the public contract, the contracting authorities may indicate which part of the information that is provided is confidential in nature.

**(2)** The candidates or tenderers do not have the right to disclose the information under Para 1.

**Article 32 (1)** The technical specifications must afford the candidates or tenderers equal access to participation in the procedure and must not unjustifiably hinder competition.

**(2)** The technical specifications must not be defined by reference to a specific make, source, a particular process, trade mark, patent, type, a specific origin or production with the effect of favouring or eliminating certain persons or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the object of procurement contract according to the procedure established by Articles 30 herein is not possible and provided that any such reference is obligatorily accompanied by the words “or equivalent”.

**Article 33. (1)** In the cases covered under Article 30 (1) Item 1 or 2 herein, the contracting authority may not exclude a tender on the grounds of non-conformity of the goods or services tendered to the technical specifications defined by the said authority, provided that the tenderer prove in the tender thereof that the solution proposed thereby complies with the requirements defined in the said technical specifications.

**(2)** In the cases covered under Article 30 (1) herein, the contracting authority may not exclude a tender which complies with a Bulgarian standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardization body, if the tenderer proves in the tender thereof that the said standards relate to the performance and functional requirements defined by the contracting authority.

**(3)** In the cases referred to in Paragraphs (1) and (2), the tenderer shall furnish as evidence a technical dossier of the manufacturer or a test report or a certificate drawn up by a recognized body.

**(4)** In the submission of the tender the tenderer may indicate which part of the tender is confidential and he may require from the contracting authority not to disclose it.

**(5)** The contracting authority shall not disclose information provided by candidates or tenderers which they have designated as confidential in terms of technical or trade secrets, with the exception of the cases under Art. 44 and Art. 73, Para 4 and 5.

## **Section V**

### **Examination, Evaluation and Ranking of Tenders**

**Article 34. (1)** The contracting authority shall appoint a commission for the conduct of a public procurement procedure, designating the composition of the said commission and substitute members.

**(2)** Any such commission shall consist of at least three members, of whom one shall mandatorily be a qualified lawyer and the remaining members shall be persons possessing the professional expertise and practical experience required in accordance with the object and complexity of the procurement contract.

**(3)** The contracting authority may furthermore recruit outside experts as members of or consultants to the commission.

**(4)** In an open procedure, the commission shall be appointed by the contracting authority after expiry of the time limit fixed for the receipt of tenders, and in a restricted procedure, negotiated procedure or competitive dialogue - the commission shall be appointed after the final date fixed for receipt of the requests to participate.

**(5)** The contracting authority shall give the commission a time limit for completion of the work thereof which must be consistent with the specificity of the public procurement contract and may not exceed the time limit for the validity of the tender.

**(6)** The remunerations of the members of the commission and all expenses arising in connection with the work of the said commission shall be for the account of the contracting authority.

**Article 35. (1)** To be eligible for appointment as members of or consultants to the commission, persons must declare that they:

1. have no material interest in the award of the public procurement contract to a particular candidate or tenderer;
2. are not "connected persons," within the meaning given by the Commerce Act, to any candidate or tenderer in the procedure or to any subcontractor named by any such candidate or tenderer, or to any members of the management or supervisory bodies thereof.

**(2)** The members of the commission and the consultants shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with their work on the commission.

**(3)** The members of the commission and the consultants shall submit declarations on conformity with the circumstances referred to in Paragraph (1) and on compliance with the requirements referred to in Paragraph (2) to the contracting authority upon the appointment thereof and at each stage of the procedure upon occurrence of any intervening change in the circumstances as declared.

**Article 36. (1)** The commission shall make decisions by a majority of the members thereof. Should any member of the commission dissent from a decision adopted, the said member shall sign the protocol with a dissenting opinion and shall set forth the reasoning thereof in writing.

**(2)** Should, for any valid reason, any member of the commission be unable to perform the duties thereof and may not be replaced by a substitute member, the contracting authority shall issue an order designating a new member.

**Article 37. (1)** The contracting authority shall select the supplier, contractor or service provider of the public procurement contract on the basis of evaluation of the tenders under one of the following criteria specified in the notice:

1. the lowest price tendered;
2. the most economically advantageous tender.

**(2)** When the criterion chosen is the most economically advantageous tender, the contracting authority shall be obligated to specify the criteria, the relative weighting which it gives to each of the criteria and the method of evaluation under each criterion. Where weighting is not possible for demonstrable reasons, the contract authority shall indicate the criteria in descending order of importance.

**(3)** The criteria covered under Paragraph (1) shall apply solely in respect of the tenders of tenderers which are not excluded from the procedure on the grounds provided for in Articles 46 through 48 incl. herein and which satisfy the requirements of economic and financial standing, professional qualifications and technical knowledge and ability as declared by the contracting authority.

**(4)** Where the criterion for evaluation of the tenders is that of the most economically advantageous tender and the contracting authority has indicated in the public procurement notice that variants are authorized, all variants submitted, which meet the requirements specified under Item 5 a of Article 28 (1) herein, shall be subject to evaluation.

**(5)** In the cases referred to in Paragraph (4), only the highest ranked variant submitted by a tenderer shall be included in the ranking.

**Article 38.** The procedure for the award of a public contract is completed with:

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

**Article 39. (1)** The contracting authority shall terminate a public procurement award procedure by reasoned decision in the cases where:

1. no tenders or requests to participate have been submitted, or no candidates or tenderers have been admitted to participation;
2. none of the tenders or requests to participate is responsive to the terms and conditions as announced in advance by the contracting authority;
3. all tenders, which are responsive to the terms and conditions as announced in advance by the contracting authority, exceed the financial resources which the said authority can ensure;
4. the first or second-ranked tenderers successively decline to conclude a public procurement contract;
5. the necessity to conduct the procedure is eliminated as a result of a material change in circumstances, including an impossibility to ensure financing for performance of the procurement contract for any reasons which the contracting authority could not have foreseen;
6. irregularities have been established in the initiation and conduct of the procedure which cannot be corrected without change of the terms under which the procedure has been announced;
7. due to the presence of one of the grounds under Art. 42 no public procurement contract is concluded.

**(2)** Within three days after the decision referred to in Paragraph (1), the contracting authority shall be obligated to notify the candidates or tenderers of the termination of the public procurement award procedure, as well as to dispatch a copy of the said decision to the Executive Director of the Agency.

**(3)** In the cases referred to in Item 3 of Paragraph (1), the contracting authority shall mandatorily include in the decision the lowest price tendered and may not conclude a contract of the same subject at a price equal to or greater than the price specified in the decision upon conduct of a successive procedure within the same year.

(4) Upon termination of the public procurement award procedure under Items 3, 5 and 6 of Paragraph (1), the contracting authority shall reimburse the candidates or tenderers for the expenses incurred thereby on purchase of the contract documents within fourteen days after the decision referred to in Paragraph (1).

**Article 40.** The contracting authority may initiate a new public procurement award procedure with the same object only where the originally announced procedure has been terminated and no claim has been lodged against the decision on termination, or where an appeal has been lodged against the said decision and the dispute has been settled.

## **Section VI**

### **Public Procurement Contract**

**Article 41. (1)** The contracting authority shall conclude a written public procurement contract with the tenderer that has been selected as supplier, contractor or service provider of the procurement contract as a result of the conducted procedure.

(2) The public procurement contract shall mandatorily include all proposals contained in the tender of the tenderer, on the basis of which he has been selected as contractor.

(3) The contracting authority shall conclude the contract referred to in Paragraph (1) within one month after the expiry of the period for review of the decision on selection of a supplier, contractor or service provider of the public procurement contract, in the cases when no claim has been lodged or a claim has been lodged, but no imposition of an interim measure has been requested.

(4) When a claim has been lodged against the decision for the selection of contractor with a request for the imposition of an interim measure, the contracting authority shall conclude a contract within a one-month period from the entry into force of the decision of the Commission for the Protection of Competition which rejects the request for the imposition of an interim measure;

(5) It shall be inadmissible to conclude public procurement contracts of indefinite duration.

**Article 42.** The public procurement contract shall not be concluded with a tenderer, selected as supplier, contractor or service provider that, upon signature of the said contract:

1. fails to present documentary proof of registration in compliance with the requirement established by Article 25 (3), Item 2 herein;
2. fails to fulfil the obligation under Article 47 (9) and Article 48 (2) herein;
3. fails to provide the determined performance guarantee.

**Article 43. (1)** The parties to a public procurement contract may not amend the said contract.

(2) **(new)** An amendment to a concluded public procurement contract is allowed only as an exception:

1. when as a result of a extreme urgency the time periods of the contract have to be amended;
2. in case of amendment to state regulated prices or reduction of the contracted prices in interest of the contracting authority.

(3) The contracting authority may terminate a public procurement contract if as a result of any circumstances which have occurred after the conclusion of the said contract it is not in a position to perform the obligations thereof. In such a case, the contracting authority shall be liable to the supplier, contractor or service provider for damages for the detriment incurred by the conclusion of the contract.

**Article 44. (1)** The contracting authority shall be obligated to dispatch information on each public procurement contract as concluded or on each framework agreement as concluded to the Agency for entry into the Public Procurement Register not later than seven days from conclusion of any such contract or framework agreement.

(2) The information referred to in Paragraph (1) must be based on the standard form referred to in Article 19, Para 7 herein.

(3) Information under Paragraph (1), the disclosure of which conflicts with a statute shall not be entered into the Public Procurement Register. In such a case, the contracting authority shall justify this to the Agency.

(4) Information which, according to the standard form referred to in Article 19, Para 7 herein, is not intended for publication, shall be used only for statistical purposes.



(5) The information on contracts concluded on the basis of a dynamic purchasing system may be sent on a quarterly basis. In such case, the contracting authority shall send the information within seven days after the end of each quarter.

(6) Contracting authorities shall be obligated to send information on each contract concluded on the basis of a framework agreement to the Agency within seven days after conclusion of such contract.

(7) Contracting authorities shall be obligated to inform the Agency in the cases when they have received report from the European Commission for violations, which it has established, in the conduct of the public procurement award procedure.

(8) In the cases under Para 7, the contracting authorities shall send within a three-day period the whole correspondence accompanied with a written statement on it.

**Article 45.** Any unregulated matters in connection with the conclusion, performance and termination of public procurement contracts shall be governed by the provisions of the Commerce Act and of the Obligations and Contracts Act.

## **Section VII**

### **DISPATCH OF INFORMATION TO THE EUROPEAN COMMISSION**

**Article 45a. (1)** Contracting authorities under Art. 7, items 1-4 shall be obligated to send to the European Commission the notices for opening of public procurement procedure and contract award notices when the lev equivalent of the public procurement contract equals or exceeds:

1. EUR 137,000 – for supplies and services covered under Annex 2 to Item 1 of Article 5 (1) herein and design contest, as well as supply of goods under Annex 4;
2. EUR 211,000 – for services under Annex 3 to Art. 5, Para 1, item 2;
3. EUR 5, 278,000 – for works.
4. EUR 211,000- for supply of goods, which are not included in the list under Annex 4, where the supply is provided by contracting authorities, working in the field of national security.

(2) Contracting authorities referred to in Article 7, item 5 and 6 shall be obligated to send to the European Commission the notices for opening of public procurement procedure and contract award notices when the lev equivalent of the public procurement contract equals or exceeds: :

- (a) EUR 422,000 – for supplies, services and design contest;
- (b) EUR 5,278,000 – for works.

(3) The contracting authorities are obligated to send to the European Commission or to publish on the buyer's profile prior information notices when the lev equivalent of the public procurement contract equals or exceeds:

1. EUR 750 000 – for supplies and services under Annex 2 to Art. 5, Para 1, item 1;
2. EUR 5 278 000 – for works.

(4) The information referred to in Para 1 shall be sent according to Art. 44, Para 2-5.

(5) The notices under Para 1 and 2 shall be sent by electronic means, by post or by fax for publication in the Official Journal of the European Union. In the cases under Art. 76, Para 3 and Art. 86, Para 3, the notices are sent by fax or by electronic means.

(6) Contracting authorities which publish prior information notices on their buyer's profile shall send to the European Commission, by electronic means, notification under approved form. The prior information notices cannot be published on the buyer's profile before the data of dispatch of the notification.

(7) The notices, drawn up and sent by electronic means, are published in the Official Journal of the European Union no later than 5 day after dispatch. Notices, which are not sent by electronic means are published no later than 12 days after their dispatch, and in the cases under Art. 76, Para 3 and Art. 86, Para 3 – no later than 5 days after their dispatch. In exceptional cases on request of the contracting authorities under Art. 7, item 5 or 6, notices, sent by fax, are published within a 5-day period.

**(8)** Public procurement notices shall be dispatched for publication in full in one official language of the European Union as chosen by the contracting authority, this original language version constituting the sole authentic text.

**(9)** Notices and their contents may not be published in the Republic of Bulgaria before the date on which they are sent to the European Commission.

**(10)** Notices published in the Republic of Bulgaria may not contain information other than that contained in the notices dispatched to the European Commission, but shall mention the date of dispatch of the notice to the European Commission.

**(11)** Contracting authorities must supply, at request, proof of the date on which notices are dispatched and the confirmation of the date of publication of the information sent, given by the European Commission.

## **Chapter Four**

### **GENERAL RULES FOR PARTICIPATION IN PUBLIC PROCUREMENT AWARD PROCEDURE**

#### **Section I**

##### **Requirements to the Candidates and Tenderers**

**Article 46.** Any candidate or tenderer meeting the requirements as announced in advance, may participate in a public procurement award procedure. Dir. 18, Art. 44. Item 2

**Article 47. (1)** The contracting authority shall exclude from participation in a public procurement award procedure a candidate or tenderer who:

1. has been convicted by an effective sentence, unless rehabilitated, for:
  - a) a criminal offence against the financial, tax or social security system, including money laundering under Art. 253-260 of the Penal Code;
  - b) bribery under Art. 301-307 of the Penal Code;
  - c) participation in a criminal organization under Art. 321 and 321a of the Penal Code;
  - d) a criminal offence against property under Art. 194-217 of the Penal Code;
  - e) a criminal offence against the economy under Art. 219-252 of the Penal Code;
2. has been declared bankrupt;
3. is in a procedure for winding up or in a similar procedure under the national laws and statutory instruments of secondary legislation;

**(2)** The contracting authority may exclude from participation in a public procurement award procedure a candidate or tenderer who:

1. is the subject of pending proceedings for a declaration of bankruptcy or has reached an out-of-court arrangement with the creditors thereof within the meaning given by Article 740 of the Commerce Act, and in the cases where the candidate or tenderer is a foreign person, is in a similar procedure under the national laws and statutory instruments of secondary legislation, including where the activities thereof are under administration by the court or the candidate or tenderer has suspended business activities;
2. is deprived of rights to practice a particular profession or activity according to the legislation of the country where the violation has been committed.
3. that has incurred any pecuniary obligations to the State or to a municipality within the meaning given in Article 162 (2) of the Tax-Insurance Procedure Code, established by an effective act of a competent authority, save as where a rescheduling or deferral of the said obligations has been allowed, or has not fulfilled any obligations relating to the payment of social security contributions or of taxes, in accordance with the legal provisions of the country in which the candidate or tenderer is established;

**(3)** The contracting authority shall indicate in the public procurement notice the circumstances for exclusion of the candidate or tenderer for participation covered under Paragraph (2).

**(4)** The requirements referred to in of Paragraph (1) and item 2 and 3 of Paragraph (2), as indicated in the notice shall furthermore apply to the managing directors or to the members of the management bodies of the candidates or

tenderers and, in the case where the said members are legal persons, their representatives in the relevant management body.

(5) Candidates or tenderers where a member of the managing or supervisory board, as well as a person acting deputy for such a position is a connected person within the meaning of § 1 of the Law for the State Servant with the contracting authority or with high-ranked officials in its organization, cannot participate in the public procurement award procedure.

(6) In the cases referred to in Item 12 of Article 90 (1) and Item 11 of Article 103 (2) the contracting authorities cannot demand of the tenderers the requirements under Items 2 and 3 of Paragraph (1) and Item 1 of Para 2..

(7) Where the candidate or tenderer envisages participation of subcontractors in the performance of the procurement contract, the requirements referred to in Paragraph (1) and (5) and the requirements as indicated in the notice covered under Paragraph (2) shall also apply to the said subcontractors.

(8) Upon submission of a tender or a request to participate, the tenderer or candidate shall certify by means of a declaration the non-existence of the circumstances covered under Paragraph (1) and (5) and the requirements included in the notice under Para 2.

(9) Upon signature of the public procurement contract, the tenderer that has been selected as supplier, contractor or service provider, shall be obligated to present documents certifying the non-applicability of the circumstances covered under Paragraph (1) and Paragraph (2).

**Article 48. (1)** Any foreign natural or legal person, whereto any of the circumstances covered under Article 47 (1) and (2) applies in the country where the said person is established, shall be ineligible for participation in a public procurement award procedure.

(2) Upon signature of the public procurement contract, the tenderer referred to in Paragraph (1), that has been selected as supplier, contractor or service provider, shall be obligated to present documents certifying the non-applicability of the circumstances covered under Article 47 (1) herein and those covered under Article 47 (2) as indicated in the notice as issued by a competent authority or an extract from a court register, or an equivalent document by a judicial or administrative authority of the country in which the said tenderer is established.

(3) Where the relevant foreign State does not issue the documents referred to in Paragraph (2) or where the said documents do not cover all cases covered under Article 47 (1) and (2) herein, the tenderer shall submit a declaration on oath if the national law of the said tenderer provides for such declarations.

(4) Where the relevant national law does not provide for a declaration on oath, the tenderer shall submit a solemn declaration made before a judicial or administrative authority, a notary or a competent professional or trade body in the country where the he is established.

**Article 49. (1)** The contracting authority may require each candidate or tenderer to prove its enrolment on one of the professional or trade registers of the country where the candidate is established, or to provide a declaration on oath or a certificate of the existence of such enrolment, issued by the competent authorities according to the national law of the said candidate.

(2) In procedures for the award of public service procurements, insofar as candidates or tenderers have to possess a particular authorization or to be members of a particular organization in order to be able to perform the service concerned in their country of origin, the contracting authority may require them to prove that they hold such authorization or membership.

**Article 50. (1)** As evidence of the economic and financial standing of the candidates or tenderers, the contracting authority may require that they provide one or more of the following documents:

1. appropriate statements from banks or copy of a professional liability insurance policy;
2. the annual financial statement or any of the constituent parts thereof, where publication of the said parts is required by the legislation of the country in which the candidate or tenderer is established;
3. a statement of the overall turnover and/or of the turnover in respect of the supplies, services or works which are object of the procurement contract, for the three previous years, depending on the date on which the candidate or tenderer was set up or started trading.

(2) If, for any valid reason, the candidate or tenderer is unable to provide the references required by the contracting authority, the said candidate or tenderer may prove the economic and financial standing thereof by any other appropriate document .

**(3)** The requirements for the economic and financial standing of the candidates or tenderers, which the contracting authority establishes, must take account of the value and object of the public procurement contract.

**Article 51. (1)** As evidence of the technical ability and/or qualifications of the candidates or tenderers, the contracting authority may require that they provide one or more of the following documents according to the nature, quantity and object of the procurement contract:

1. a list of the principal supply and service contracts performed in the past three years, including the sums, dates and recipients, accompanied by certificates of satisfactory execution;
2. (new) a list of the works contracts performed over the past five years, accompanied by certificates of satisfactory execution for the most important works; the said certificates shall indicate the value, date and site of works, as well as whether the said works was executed according to the rules of the trade and in accordance with the statutory requirements;
3. a description of the technical facilities, the quality assurance, and the study and research facilities;
4. a list of the technicians involved, including those responsible for quality control;
5. samples, description and/or photographs of the goods to be supplied, the authenticity of which must be certified if the contracting authority so requests;
6. certificates drawn up by accredited quality management institutes or agencies attesting the conformity of the products by reference to the relevant specifications or standards;
7. documents certifying the educational and professional qualifications of the candidate or tenderer and/or of the managerial staff thereof, or of the persons responsible for carrying out the service or the works, as well as the delivery when it includes services and / or the siting and installation of project;
8. a statement of the average annual manpower and of the size of managerial staff of the candidate or tenderer for the last three years;
9. a statement of the tools, plant or technical equipment available to the candidate or tenderer for performance of the public procurement of services or works; Directive 2004/18/EC, Article 48 (2) (h)
10. a statement of the technicians whom the candidate or tenderer can call upon for carrying out the works, whether or not they belong to the firm;
11. for public procurement contracts of works and services, description of the environmental protection measures that the candidate or tenderer will apply when performing the procurement contract, if the contracting authorities have provided for such in the notice;

**(2)** In procedures for the award of public procurement contract of supplies requiring siting or installation work, the provision of services and/or the execution of works, contracting authorities may set requirements to the candidates or tenderers regarding their skills, efficiency, experience and reliability in providing the service or in executing the installation or the works.

**Article 51 a. (1)** A candidate or tenderer may use the resources of other natural or legal persons in the performance of the contract, provided that the said candidate or tenderer produces proof that he has these resources at his disposal.

**(2)** The conditions of Paragraph (1) shall furthermore apply where a candidate or tenderer in the procedure is a group of natural and/or legal persons.

**Article 52.** Where the object of a public procurement contract is complex or is required for a special purpose, the contracting authority may carry out a check of the technical ability of the candidate or tenderer and, if necessary, on the study and research facilities and the quality assurance measures thereof. Alternatively, the contracting authority may request that such a check be carried out on its behalf by a competent official body of the country in which the candidate or tenderer is established, subject to the agreement of the said body.

**Article 53. (1)** Should the contracting authority require the production of certificates drawn up by independent bodies for attesting conformity of the candidate or tenderer to quality management systems, the contracting authority shall define the quality management systems by reference to the relevant European standards series.

**(2) (new)** In the cases referred to in Item 11 of Article 51 (1), the contracting authority shall require the production of certificates drawn up by independent bodies attesting the compliance of the candidate or tenderer with certain environmental protection standards and shall refer to the Community Eco-Management and Audit Scheme (EMAS)

of the European Union or to environmental protection standards based on the relevant European or international standards.

(3) The independent bodies referred to in Paragraphs (1) and (2) must be accredited under the relevant European standards series by the Bulgarian Accreditation Service Executive Agency or by a foreign accreditation body which is a full member of the European Co-operation for Accreditation.

(4) The contracting authority shall accept equivalent certificates from bodies established in other Member States, as well as other evidence of equivalent quality assurance or environmental protection measures.

**Article 53a. (1)** The candidate or tenderer may present a certificate for registration in an official list of approved economic operators in a EU Member-state.

(2) In the cases under Para 1, the contracting authority cannot eliminate a candidate or tenderer from a public procurement award procedure or refuse to conclude a contract with him, on the grounds that he has not presented one of the documents under Art. 48, Para 2, Art. 50, Para 1 and 2, Art. 51, Art. 53, Para 1, in case the circumstance is proved by the presented certificate.

## **Section II**

### **Tender**

**Article 54. (1)** In drawing up a tender, each tenderer must strictly observe the terms and conditions announced by the contracting authority.

(2) Before expiry of the time limit fixed for the submission of tenders, each tenderer in a procedure may modify, supplement or withdraw the tender thereof.

**Article 55. (1)** Each tenderer in a public procurement award procedure shall have the right to submit a single tender.

(2) Where the criterion of the most economically advantageous tender applies in the evaluation of the tenders and the contracting authority has authorized the possibilities for the provision of variants, the tenderer may submit several variants in the tender thereof.

(3) (new) Only variants meeting the minimum requirements as laid down by the contracting authority shall be taken into consideration.

(4) No party that has given their consent and is named as a subcontractor on the tender of another tenderer, may submit a separate tender.

**Article 56. (1)** Each tender must contain:

1. documentary proof of registration of the tenderer or, where a natural person, an identity document;
2. documentary proof of provision of a participation guarantee;
3. evidence of economic and financial standing under Article 50 herein, as specified by the contracting authority in the public procurement notice;
4. evidence of technical ability and/or qualifications under Article 51 herein, as specified by the contracting authority in the public procurement notice;
5. a declaration on non-existence of the circumstances covered under Article 47, Para 1, 2 and 5.
6. (repealed)
7. the subcontractors that will participate upon performance of the procurement contract and the share of the participation thereof, where the tenderer envisages subcontractors;
8. time limit for performance of the procurement contract;
9. price tendered;
10. a declaration to the effect that the price tendered complies with the minimum labour cost requirement, in the cases where the public procurement contract is of works;
11. any other information indicated in the notice or in the contract documents;
12. a list of the documents contained in the tender, signed by the tenderer.

(2) Where the tenderer envisages participation of subcontractors, the documents referred to in Items 1, 3, 4, 5 and 10 of Paragraph (1) shall be submitted for each subcontractor.

(3) Where the tenderer in the procedure is a group of entities which is not a legal person, the documents referred to in Items 1, 3, 4, 5 and 10 of Paragraph (1) shall be submitted by each natural or legal person included in the said group.

(4) Where the tenderer in the procedure is a foreign natural or legal person or a group of such persons, the tender shall be submitted in the Bulgarian language, and the documentary proof referred to in Item 1 of Paragraph (1) shall be produced in a legalized translation, whereas the documents referred to in Items 3, 4, 5 and 10 of Paragraph (1), which are in a foreign language, shall be produced both in the original and in a translation. Where the tenderer is a group of entities, the documents shall be produced by each natural or legal person included in the said group.

**Article 57. (1)** The tender shall be submitted sealed in an opaque envelope by tenderer or by an authorized representative thereof, in person or by registered mail with advice of delivery. On the said envelope, the tenderer shall indicate a mailing address, a telephone number and, if possible, a fax number and an e-mail address and, where the tender is for lots, the lots to which the said tender applies.

(2) The price tendered shall be submitted in a separate sealed in an opaque envelope, inscribed "Price Tendered" and inserted into the envelope containing the tender.

(3) Upon receipt of any tender, the consecutive number, date and hour of receipt shall be marked on the envelope, and the said particulars shall be entered in an incoming register wherefor a document shall be issued to the bearer.

(4) The contracting authority shall reject and shall immediately return to the tenderers any tenders submitted after expiry of the time limit for the receipt or in envelopes which are unsealed or physically unsound. These circumstances shall be noted in the register referred to in Paragraph (3).

(5) A tender may furthermore be submitted by electronic means under the terms and according to the terms and procedures established by the Electronic Document and Electronic Signature Act. In such case, the tenderer shall be obligated to submit to the contracting authority all documents which do not exist in electronic format according to the procedure established by Paragraph (1) before expiry of the time limit for the receipt of tenders.

(6) The terms and procedures for the receipt and safe custody of the tenders submitted by electronic means shall be provided for in the Rules for the implementation of the law.

**Article 58. (1)** The period of tender validity shall be the period during which the tenderer shall be bound by the terms of the tender thereby submitted.

(2) The contracting authority shall fix the period referred to in Paragraph (1) in calendar days.

(3) The contracting authority may require from the ranked tenderers to extend the period of tender validity thereof until the point of conclusion of the public procurement contract.

**Article 58 a. (1)** The preparation and conduct of procedures is realized by the contracting authorities. They are responsible for the acceptance and keeping of requests to participate, tenders and projects.

(2) The exchange of information may be conducted by post, by fax or by electronic means under the rules and procedures of the Law for the Electronic Document and the Electronic Signature, or by a combination of these means chosen by the contracting authority. The chosen means of communication must be generally accessible.

(3) The exchange and storage of information in the course of the public procurement award procedure is done in a way as to guarantee the integrity, authenticity and confidentiality of the requests to participate and the tenders.

(4) All activities between the contracting authorities and candidates or tenderers shall be in writing

(5) The decisions of the contracting authority, of which he is obligated to inform the candidates or tenderers, are presented personally upon signature or they are sent with a registered letter, by fax or by electronic means under the rules and regulations of the Law for the Electronic Document and the Electronic Signature.

(6) The contracting authority is obligated to keep the full documentation for the conduct of every public procurement procedure for at least 4 years after the termination of the execution of a contract.

### **Section III**

#### **Guarantees**

**Article 59. (1)** Each candidate or tenderer shall provide a guarantee for participation in the public procurement award procedure, and the tenderer that has been selected as supplier, contractor or service provider, shall provide a performance guarantee upon signature of the contract.

**(2)** The contracting authority shall determine the terms and the amount of the participation guarantee as a fixed sum of money which may not exceed 1 per cent of the value of the procurement contract.

**(3)** The contracting authority shall determine the terms and the amount of the contract performance guarantee as a percentage of the value of the public procurement contract, which may not exceed 5 per cent of the value of the said procurement.

**(4)** The contracting authority shall also require other performance guarantees in the cases specified by a Law.

**(5) Repealed.**

**Article 60. (1)** Guarantees shall be provided in one of the following forms:

1. a cash deposit;
2. a bank guarantee.

**(2)** The candidate or tenderer or the selected supplier, contractor or service provider shall be free to choose a form of the participation guarantee or of the performance guarantee, as the case may be.

**Article 61. (1)** The contracting authority shall have the right to retain possession of the participation guarantee when the candidate or tenderer in a public procurement award procedure:

1. withdraws the request thereof after expiry of the time limit fixed for the receipt of requests or withdraws the tender thereof after expiry of the time limit fixed for the receipt of tenders;
2. lodges a claim against the decision of the contracting authority announcing the results of the prequalification stage or the decision for selection of contractor - until settlement of the dispute;
3. is selected as supplier, contractor or service provider but fails to fulfil the obligation thereof to conclude a public procurement contract.

**(2)** In the cases covered under Paragraph (1), Items 1 and 3, where the candidate or tenderer has provided a bank guarantee, the contracting authority shall have the right to proceed with exercise of the rights arising from the said guarantee.

**Article 62. (1)** The contracting authority shall release the participation guarantees:

1. provided by any excluded candidates: within three working days after expiry of the time limit for the lodgement of an appeal against the decision of the contracting authority on qualification;
2. provided by any excluded tenderers and ranked candidates: within three working days after expiry of the time limit for the lodgement of an appeal against the decision of the contracting authority on selection of a supplier, contractor or service provider;

**(2)** Repealed;

**(3)** Upon termination of the public procurement award procedure, the guarantees provided by all candidates or tenderers shall be released within three working days after expiry of the time limit for the lodgement of an appeal against the decision on termination.

**(4)** The contracting authority shall release the guarantees referred to in Paragraph (1) without owing interest for the period during which the said guarantees were in the legal possession thereof.

**Article 63.** The terms and time limits for retention or release of the performance guarantee shall be regulated in the public procurement award contract.

**Chapter Five**  
**OPEN PROCEDURE**

**Section I**

**Open Procedure Preparation**

**Article 64. (1) (Amend. SG No 31/08.04.2006 entered into force since 01.05.2006)** Upon conduct of an open procedure, the contracting authority shall dispatch the public procurement notice simultaneously to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register not later than fifty-two days before expiry of the time limit fixed for the receipt of tenders.

(2) The time limit referred to in Paragraph (1) may be shortened to thirty six days, provided that the prior notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Paragraph (1) and contains the information which is available at the date of dispatch of the said notice.

(3) The time limit referred to in Paragraphs (1) and (2) may be shortened by seven days where the notice is transmitted by electronic means, and by five more days where the contracting authority offers full access by electronic means to the contract documents from the date of publication of the notice in electronic format and if the notice specifies an Internet address at which these documents are accessible.

(4) In the cases under Para 2 and 3 the time period for the receipt of tenders cannot be shorter than twenty two days.

**Article 65. (1)** When fixing the time limit for the receipt of tenders, the contracting authority must take account of the complexity of the procurement contract and the time required for drawing up tenders.

(2) The contracting authority shall be obligated to extend the time limit for the receipt of tenders by not more than thirty days where the initially determined time period is insufficient, due to a necessity of:

1. on-the-spot inspection of the documents supporting the contract documents;
2. on-site inspection of performance;

(3) The contracting authorities can extend the time period for the receipt of tenders by no more than 30 days when no tender has been received within the time limit fixed for the receipt of tenders.

(4) Any change of the time limit fixed for the receipt of tenders must be published and entered into the Register. Where the deferral is fixed in days, it shall begin to run as from the date of publication on the Internet site of the *State Gazette*.

**Article 66.** (Repealed)

**Article 67.** (Repealed)

**Section II**

**Examination, Evaluation and Ranking of Tenders**

**Article 68. (1)** The commission, appointed by the contracting authority to examine, evaluate and rank the tenders, shall commence work after receipt from the contracting authority of the list of tenderers and of the tenders as submitted.

(2) Upon alteration of the date and hour of the opening of tenders, the candidates shall be notified in writing.

(3) The commission shall open the envelopes in the order of submission thereof and shall check the contents of the tenders against the list referred to in Item 12 of Article 56 (1) herein.

(4) (new) At the opening of the tenders, at least three members of the commission sign the envelope with the price tendered and when the criterion is the most economically advantageous tender, all enclosures, which the commission will evaluate according to the announced criteria, are also signed.

(5) The tenderers in the procedure or authorized representatives thereof shall have the right to be present at the actions of the commission referred to in Paragraph (3) and (4).

(6) The commission shall verify whether the tenders are responsive to the terms and conditions as announced in advance.



(7) The commission may verify at any time the data as stated by the tenderers, request clarifications in relation to the certificates and documents presented under 50-53, as well as require in writing the submission, within a time limit thereby established, of additional evidence of the circumstances set forth in any tender.

The previous Para 7 is repealed.

**Article 69. (1)** The commission shall propose exclusion from the procedure of any tenderer:

1. that has failed to submit any of the documents required under Article 56 herein;
2. where the circumstances covered under Article 47 (1) and (5) herein apply and those indicated in the notice covered under Article 47 (2) are present;
3. that has submitted a tender which is non-responsive to the terms and conditions as announced in advance by the contracting authority;
4. that has submitted a tender which does not satisfy the requirements established by Article 57 (2) herein.

(2) The commission may not propose exclusion of a tenderer when in Member State in which it is established, the said tenderer is entitled to provide the relevant service, regardless of his status or legal organization.

(3) In the course of the procedure, the tenderers shall be obligated to notify the contracting authority of any intervening changes in the circumstances covered under Article 47 (1) and (5) herein and those indicated in the notice covered under Article 47 (2) within seven days after the occurrence of any such change.

**Article 70. (1)** Should any tenderer tender a price which is more than 30 per cent lower than the average price of the rest of the tenders for the specific public procurement contract, the commission must request from the said tenderer a detailed justification in writing of the price so tendered. The commission shall allow reasonable time for submission of the said justification, which shall not be less than three working days from receipt of the request therefor.

(2) The commission may accept the justification in writing referred to in Paragraph (1) and not exclude the tender where objective circumstances are cited, relating to:

1. an original solution as to the performance of the public procurement contract;
2. the technical solutions proposed;
3. the exceptionally favourable conditions available to the tenderer;
4. the economics of the performance of the public procurement contract;
5. the obtaining of State aid.

(3) Should a tenderer fail to submit the justification in writing as requested within the time limit as established, or should the commission determine that the circumstances cited are not objective, the commission shall propose the said tenderer to be excluded from participation in the procedure.

(4) Where the commission establishes that a tender is abnormally low because the tenderer has obtained State aid and the said tenderer is unable to prove, within a time limit fixed that the said aid was granted legally, the commission may propose the said tender to be rejected and the said tenderer to be excluded.

**Article 71. (1)** The commission shall examine the tenders admitted and shall evaluate the said tenders in accordance with the terms and conditions as announced in advance.

(2) Where the contracting authority has allowed the submission of variants in the tender, the commission may not reject a variant on the sole grounds that selection of the said variant would lead to conclusion of a service contract rather than a supply contract or vice versa.

(3) The commission shall rank the tenderers according to the extent to which the tenders are responsive to the terms and conditions as announced in advance by the contracting authority.

**Article 72. (1)** The commission shall draw up a protocol on the examination, evaluation and ranking of the tenders which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the tenderers and the tenders who and which have been proposed for exclusion from the procedure, and the grounds for the exclusion thereof;
3. the opinions of the consultants;

4. the results of the examination and evaluation of the admitted tenders, including a brief description of the tenders submitted by the tenderers and the evaluations under each criterion, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders;
  5. the ranking of the tenderers whereof the tenders have been admitted to examination and evaluation;
  6. the date of drawing up of the protocol.
- (2) The protocol of the commission shall be signed by all members [thereof] and shall be delivered to the contracting authority together with the full set of documents.
- (3) The commission shall conclude the work thereof by delivery of the protocol to the contracting authority.

### **Section III**

#### **Selection of Supplier, Contractor or Service Provider**

**Article 73. (1)** Within five working days after completion of the work of the commission, the contracting authority shall issue a reasoned decision declaring thereby the ranking of the tenderers and the tenderer that has been selected as supplier, contractor or service provider.

(2) In the decision referred to in Paragraph (1), the contracting authority shall furthermore specify the tenderers and tenders who and which have been excluded from participation in the procedure and the grounds for the exclusion thereof.

(3) The contracting authority shall dispatch the decision referred to in Paragraph (1) to the tenderers within three days after the issuing of the said decision. The contracting authority shall inform the European Commission in the cases under Art. 70, Para 4.

(4) Should a tenderer request so in writing, the contracting authority shall be obligated to afford the said tenderer access to the protocol within three days from the receipt of the request. The contracting authority may refuse access to some of the data contained in the protocol where disclosure of the said data conflicts with a statutory instrument or prevents, restricts or infringes competition.

(5) Should a tenderer request so in writing, the contracting authority shall be obligated to present a copy of the protocol under the conditions of Para 4 within three days of the receipt of the request.

**Article 74. (1)** The contracting authority shall conclude a public procurement contract with the tenderer that has been ranked highest by the commission and that has been selected as supplier, contractor or service provider.

(2) Should the tenderer selected as supplier, contractor or service provider decline to conclude a contract, the contracting authority may terminate the procedure or select as supplier, contractor or service provider the second highest ranked tenderer and conclude a contract therewith.

### **Chapter Six**

#### **RESTRICTED PROCEDURE**

**Article 75. (1)** In the public procurement notice awarded by a restricted procedure, the contracting authority may limit the number of candidates whom the contracting authority intends to invite to submit tenders and this number may not be less than five. The contracting authority may furthermore indicate the maximum number of candidates. The number of invited candidates must be sufficient in order to ensure free and fair competition.

(2) The contracting authority shall indicate in the public procurement notice objective and non-discriminatory criteria or rules that the said authority will apply upon selection of the candidates referred to in Paragraph (1).

**Article 76. (1) (Amend. SG No 31/08.04.2006, entered into force since 01.05.2006)** The contracting authority shall dispatch the public procurement notice simultaneously to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for the receipt of the requests to participate in the pre-qualification stage from the candidates.

(2) **(new)** The time limit referred to in Paragraph (1) may be shortened by seven days where the notice is transmitted by electronic means.

(3) When, for reasons of extreme urgency, the time limit referred to in Paragraph (1) cannot be kept, the contracting authority under Art. 7, items 1-4 may fix a time limit for the receipt of requests to participate in the pre-

qualification which shall not be less than fifteen days from the date of dispatch of the notice, or not less than ten days if the notice was sent by electronic means.

**(4)** In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the public procurement notice.

The previous Para 4 is repealed.

**Article 77. (1)** The contracting authority shall conduct pre-qualification for the purpose of selecting the candidates possessing the financial and technical ability required to perform the public procurement contract.

**(2)** Any candidate may submit a request to participate in the pre-qualification stage.

**(3)** A request to participate must contain:

1. documentary proof of registration of the candidate, where a legal person, or an identity document, where a natural person;
2. a declaration on non-existence of the circumstances covered under Article 47 (1), (2) and (5);
3. Repealed;
4. evidence of economic and financial standing under Article 50 herein, as specified by the contracting authority in the public procurement notice;
5. evidence of technical ability and/or qualifications under Article 51 herein, as specified by the contracting authority in the public procurement notice;
6. the subcontractors that will participate upon performance of the public procurement contract and the share of the participation thereof, where participation of subcontractors is envisaged;
7. documentary proof of provision of a participation guarantee.

**(4)** Where the candidate envisages participation of subcontractors, the documents referred to in Items 1, 2, 4 and 5 of Paragraph (3) shall be submitted for each subcontractor.

**(5)** Where the candidate in the procedure is a group of persons which is not a legal person, the documents referred to in Items 1, 2, 4, 5 and 6 of Paragraph (3) shall be submitted by each natural or legal person included in the said group.

**(6)** When fixing the time limits for the receipt of requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up requests to participate.

**(7)** The contracting authorities may extend the time limit for the receipt of requests to participate by no more than 30 days, when no requests to participate have been received within the set time limit.

**Article 78. (1)** The request to participate shall be submitted according to the procedure established by Paragraphs (1), (3), (4) and (5) of Article 57 herein by fax, or shall be made by telephone.

**(2) (new)** Where a request to participate is communicated by telephone, the candidate must confirm the said request to participate in writing, before expiry of the time limit fixed for the receipt of such requests.

**(3) (new)** Where a request to participate has been sent by fax, the contracting authority may require the candidate to confirm the said request in writing by letter dispatched with advice of delivery or by electronic means. Any such requirement, as well as the time limit for receipt of the confirmation in writing, must be stated in the public procurement notice.

**(4) (new)** The terms and procedures for the receipt and safe custody of the requests to participate submitted by electronic means or sent by fax shall be provided for in the Rules for the implementation of the law.

**(5)** In the pre-qualification, the contracting authority shall have no right to require a tender, and the candidate shall have no right to submit a tender.

**Article 79. (1)** The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 through 36 incl. herein.

**(2)** The commission shall examine the requests to participate as submitted and shall select the candidates on the basis of the documents submitted according to the notice and certifying the economic and financial standing thereof, and the technical ability and/or qualifications thereof to perform the public procurement contract. The candidates or authorized representatives thereof may be present at the opening of the requests.

**(3) (new)** In case the contracting authority has not limited by the notice the number of candidates that will be invited to submit tenders, the said contracting authority shall be obligated to invite all candidates meeting the selection criteria and the minimum levels of technical ability.

**(4) (new)** In case the contracting authority has limited by the notice the number of candidates that will be invited to submit tenders, the said contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

**(5)** Where, in the cases referred to in Paragraph (4), the number of candidates meeting the requirements indicated in the restricted procedure notice exceeds the announced maximum number of persons that will be invited to tender, the commission shall make a selection on the basis of the objective and non-discriminatory criteria as indicated in the notice.

**(6) (new)** Where the number of candidates meeting the selection criteria and the minimum levels of technical ability is below the minimum number indicated in the notice, the contracting authority may continue the procedure by inviting all candidates meeting the selection criteria and possessing the required technical ability. In such case, the contracting authority may not invite tenders from other parties that did not request to participate, or from candidates that do not possess the required technical ability.

**(7)** The commission shall draw up a protocol for the results of the selection referred to in Paragraph (2) which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates that do not satisfy the requirements announced by the contracting authority, as well as the reasons for this;
3. a list of the candidates that satisfy the requirements covered under Paragraph (2) and will be invited to submit tenders and, where the number of such candidates exceeds the number of candidates that will be invited to tender as indicated in the notice, the selected candidates on the basis of the objective and non-discriminatory criteria as indicated in the notice;
4. the date of drawing up of the protocol.

**(8)** Within five working days after the date of the protocol, the contracting authority shall declare by a decision the candidates proposed by the commission that will be invited to submit tenders. The said decision shall furthermore specify the candidates that do not satisfy the requirements announced by the contracting authority and the reasons for this.

**(9)** Within three days from the taking of decision under Para 8, the contracting authority shall dispatch it to the Agency and the candidates that have not been admitted, and it dispatches simultaneously to all selected candidates a written invitation to submit tender.

**Article 80.** An invitation to submit tender for participation in the restricted procedure must contain:

1. a time limit and place for submission of the tenders;
2. number and date of publication of the public procurement notice;
3. a copy of the specifications and any supporting documents, if they are not included in the documentation for participation or electronic address for accessing the specifications and the supporting documents, where they are made available by electronic means;
4. the criteria, the relative weighting thereof and the methods for complex evaluation of the tender, or the criteria in descending order of importance, unless indicated in the public procurement notice.

**Article 81. (1)** In the invitation referred to in Article 80 herein, the contracting authority shall fix a time limit for receipt of the tenders, which shall not be less than forty days from the date of dispatch of the said invitation.

**(2)** The time limit referred to in Paragraph (1) may be reduced to twenty-two days, provided that the prior information notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Article 76 (1) herein and contains the information available at the date of dispatch of the said notice.

**(3)** The time limit referred to in Para 1 may be reduced by five days if from the date of publication of the notice, the contracting authority provides full access by electronic means to the documents for participation in the procedure and in the notice presents an Internet address where the documents can be accessed.

(4) In the cases referred to in Article 76 (3) herein, the contracting authority may fix a time limit for the receipt of tenders which shall not be less than ten days from the date of dispatch of the invitation referred to in Article 80 herein.

(5) In the cases referred to in Article 76 (3) herein, within seven days before expiry of the time limit for the receipt of tenders, each candidate may request in writing additional information relating to the contract documents from the contracting authority. The contracting authority shall be obligated to reply within three days after receipt of any such request and to notify the other tenderers according to the procedure established by Article 29 (2) herein.

(6) Upon fixing a time limit for the receipt of tenders, the contracting authority must take account of the complexity of the procurement contract and the time required for drawing up tenders.

(7) The contracting authority shall be obligated to extend the time limit for the receipt of tenders by not more than thirty days where there is a necessity for:

1. on-the-spot inspection of the supporting documents;
2. a visit to the site of performance;

**Article 82. (1)** Each tender must satisfy the requirements covered under Article 56 herein.

(2) A tenderer need not submit the documents which the said candidate has submitted with the request to participate.

**Article 83. (1)** The examination, evaluation and ranking of tenders shall follow the procedure established by Articles 68 through 72 incl. herein.

(2) A supplier, contractor or service provider of the public procurement contract shall be selected and a contract shall be concluded according to the procedure established by Article 73 and Article 74 herein.

## Chapter Six “a”

### COMPETITIVE DIALOGUE

**Article 83a. (1)** The contracting authority may award a public procurement contract by means of competitive dialogue where the procurement contract is particularly complex, which precludes award of the said procurement applying an open or restricted procedure.

(2) A public procurement contract is considered to be “particularly complex” where the contracting authority is objectively unable to define:

1. the technical specifications referred to in Article 30 herein, and/or
2. the financial or legal make-up of the procurement contract.

(3) In the decision for the award of a public procurement contract by means of competitive dialogue, the contracting authority shall motivate the choice of this procedure and approve the notice and the descriptive document.

(4) The contracting authorities shall determine their needs and requirements in the contract notice and/or in the descriptive document, which a substitute for the technical specifications.

(5) In awarding a public procurement contract by means of a competitive dialogue, the contracting authority shall evaluate the tenders on the sole basis of the award criterion for the most economically advantageous tender.

**Article 83b. (1)** The contracting authority shall dispatch the public procurement notice simultaneously to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for the receipt of requests to participate in the competitive dialogue.

(2) The time limit referred to in Paragraph (1) may be shortened by seven days if the notice is transmitted by electronic means as well.

(3) When fixing the time limits for the receipt of requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up requests to participate.

**Article 83c. (1)** The contracting authority may indicate in the notice the minimum and the maximum number of candidates that the said contracting authority intends to invite to conduct a competitive dialogue with, the said

minimum number being not less than three. The number of invited candidates must be sufficient to guarantee free and fair competition.

(2) The contracting authority may provide for the competitive dialogue to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage, by applying the award criteria as indicated in the notice or in the descriptive document.

**Article 83d. (1)** The pre-qualification for the candidates that have submitted a request shall follow the procedure established by Article 79 (1) through (6) incl. herein.

(2) The commission draws a protocol of the results of the pre-qualification, which contains:

1. the composition of the commission and list of consultants;
2. list of the candidates that do not satisfy the requirements announced by the contracting authorities and the grounds for that;
3. list of the candidates that meet the requirements and will be invited to participate in the dialogue;
4. date of drawing the protocol.

(3) Within a period of five working days from the date of the protocol, the contracting authorities shall announce with a decision the candidates, proposed by the commission, which will be invited to participate in the dialogue. The decision includes also the candidates which do not satisfy the requirements announced by the contracting authorities and the grounds for that.

(4) Within a period of three days after completion of the pre-qualification, the contracting authority shall simultaneously and in writing invite the selected candidates to take part in the dialogue, and he will send the decision under Para 3 to the Agency and the candidates that have not been admitted.

**Article 83e.** An invitation to take part in the dialogue shall contain at least the following information:

1. number and date of publication of the public procurement notice;
2. a copy of the descriptive document and any supporting documents, or an electronic address for access to the said documents when they are made available by electronic means;
3. the date and the place for the conduct of the dialogue;
4. the criteria, the relative weighting thereof and the methods for complex evaluation of the tender, or the criteria in descending order of importance, unless indicated in the public procurement notice or in the descriptive document.

**Article 83f. (1)** The commission which conducted the pre-qualification shall open a dialogue with each of the candidates approved, the aim of which shall be to identify the parameters of the procurement contract best suited to satisfying the needs of the contracting authority.

(2) All basic characteristics of the procurement contract may be discussed during the dialogue.

(3) All candidates participating in the dialogue shall be ensured equality of treatment, providing them identical information.

(4) The commission may not reveal to the other tenderers solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his or her agreement.

(5) The solutions proposed and the agreements reached with each candidate shall be recorded in a separate protocol, which shall be signed by the members of the commission and by the candidate.

(6) Upon conclusion of the dialogue with all candidates, the commission shall draw up a report to the contracting authority, proposing therein the candidates to be invited to submit a tender.

**Article 83g. (1)** Within five working days after presentation of the report by the commission, the contracting authority shall issue a decision declaring that the dialogue is concluded and designating the candidates that the said contracting authority will invite to submit tenders.

(2) Within three days after the decision under Paragraph (1), the contracting authority shall dispatch the said decision simultaneously to the Agency and to all candidates that have participated in the dialogue and he shall send a written invitation to submit a tender to the designated candidates.

(3) In the invitation referred to in Paragraph (2), the contracting authority shall indicate the deadline for the receipt of the tenders and the address to which the tenders must be sent.

(4) A tender must meet the requirements of the contracting authority and must contain all solutions proposed during the dialogue for the performance of the procurement contract.

(5) At the request of the commission, tenders may be modified, complemented and specified. Any such modification, complementation and specification may not involve changes to the basic features of the tender or the invitation to submit a tender, if this is likely to distort competition or have a discriminatory effect on candidates.

(6) The commission shall evaluate the tenders received on the basis of the award criteria as laid down in the notice or the descriptive document and shall choose the most economically advantageous tender.

(7) The commission may ask the tenderer identified as having submitted the most economically advantageous tender to clarify certain characteristics of the tender or to confirm the commitments contained in the said tender, provided that this does not have the effect of modifying the basic characteristics of the tender or of the invitation to submit a tender and does not risk distorting competition or causing discrimination against the candidates.

**Article 83h.** The contracting authority shall select the supplier, contractor or service provider of the public procurement contract and shall conclude a contract therewith according to the procedure established by Article 73 and Article 74 herein.

## Chapter Seven

### NEGOTIATED PROCEDURES

#### Section I

##### Negotiated Procedure with Prior Publication of Notice

**Article 84.** Contracting authorities may award a public procurement contract by a negotiated procedure with publication of a notice solely where:

1. the open or restricted procedure or the competitive dialogue has been terminated under Item 2 of Article 39 (1) herein and the terms and conditions as originally announced have not been substantially altered;
2. in exceptional cases, when the nature of the supply, service or works, or the risks attaching thereto, do not permit prior overall pricing;
3. when the nature of the service to be procured is such that the technical specifications cannot be established with sufficient precision to permit the award of the procurement contract according to the rules governing open or restricted procedures;
4. the procurement contract is of services referred to in Item 2 of Article 5 (1) herein;
5. in works, when the works involved are performed solely for the purpose of research, testing or development, and not with the aim of ensuring profitability or recovering research and development costs;

**Article 85.** In the decision referred to in Article 25 (1) herein, the contracting authority shall be obligated to justify the choice of a negotiated procedure with publication of a notice.

**Article 86. (1)** (Amend. SG No. 31/08.04.2005, entered into force since 01.05.2005) The public procurement notice shall be dispatched simultaneously to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for the receipt of requests to participate in the procedure.

(2) (new) The time limit referred to in Paragraph (1) may be shortened by seven days where the notice is transmitted by electronic means.

(3) When, for reasons of extreme urgency, the time limit referred to in Paragraph (1) cannot be kept, the contracting authority under Art. 7, Items 1-4 may fix a time limit for the receipt of requests to participate which shall not be less than fifteen days from the date of dispatch of the notice or not less than ten days where the notice has been dispatched by electronic means.

(4) In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the public procurement notice.

(5) In the public procurement notice, the contracting authority may limit the number of candidates that the said contracting authority intends to invite to negotiate, and the said number may not be less than three. The contracting authority may furthermore indicate the maximum number of candidates. The number of candidates must be sufficient in order to ensure free and fair competition.

(6) The contracting authority shall indicate in the public procurement notice the objective and non-discriminatory criteria or rules which the said authority shall apply upon selection of the candidates under Paragraph (5).

(7) In the public procurement notice the contracting authority may provide for the negotiated procedure to take place in successive stages, with the number of tenders considered being reduced at each successive stage, with the aim of achieving the fullest possible conformity of the tenders with the requirements as announced.

(8) When fixing the time limits for the receipt of requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up requests to participate.

(9) The contracting authority may extend the time limit for receipt of requests to participate by no more than thirty days in the case when no requests have been received within the time limit set.

**Article 87. (1)** The request to participate in a negotiated procedure with publication of a notice must satisfy the requirements covered under Paragraphs (3) to (5) of Article 77 herein.

(2) The request shall be submitted according to the procedure established by Paragraphs (1), (3), (4) and (5) of Article 57 herein or by fax, or shall be made by telephone.

(3) Where a request to participate is communicated by telephone, the candidate must confirm in writing, before expiry of the time limit fixed for the receipt of such requests.

(4) Where a request to participate has been sent by fax, the contracting authority may require the candidate to confirm the said request in writing by letter dispatched with advice of delivery or by electronic means. Any such requirement, as well as the time limit for the receipt of such confirmation in writing, must be stated in the public procurement notice.

**Article 88. (1)** The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 through 36 incl. herein.

(2) The commission shall examine the requests as submitted and shall select the candidates on the basis of the documents submitted according to the notice regarding the economic and financial standing thereof, the technical ability and/or qualifications to perform the public procurement contract. The candidates or authorized representatives thereof may be present at the opening of the requests.

(3) **(new)** In case the contracting authority has not limited by the notice the number of candidates that will be invited to negotiate, the said contracting authority shall be obligated to invite all candidates meeting the selection criteria and the minimum levels of technical ability.

(4) **(new)** In case the contracting authority has limited by the notice the number of candidates that will be invited to negotiate, the said contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

(5) Where, in the cases referred to in Paragraph (4), the number of candidates meeting the requirements indicated in the notice for the negotiated procedure with prior publication of notice exceeds the announced maximum number of persons that will be invited to negotiate, the commission shall make a selection on the basis of the objective and non-discriminatory criteria as indicated in the notice.

(6) **(new)** Where the number of candidates meeting the selection criteria and the minimum levels of technical ability is below the minimum number indicated in the notice, the contracting authority may continue the procedure by inviting all candidates meeting the selection criteria and possessing the required technical ability. In such case, the contracting authority may not invite to negotiate other parties that did not request to participate, or candidates that do not possess the required technical ability.

(7) The commission shall draw up a protocol for the results of the selection referred to in Paragraph (2) which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates that do not satisfy the requirements announced by the contracting authority, as well as the grounds for this;



3. a list of the candidates that meet the requirements covered under Paragraph (2) and will be invited to negotiate and, where the number of such candidates is greater than three, the selected candidates on the basis of the objective and non-discriminatory criteria as indicated in the notice;

4. the date of drawing up of the protocol.

(8) Within five working days after the date of the protocol under Para 7, the contracting authority shall declare by a decision the candidates proposed by the commission that will be invited to participate in the negotiations. The said decision shall furthermore specify the candidates that do not satisfy the requirements announced by the contracting authority and the reasons for this.

(9) Within a three-day period from the taking of decision under Para 8, the contracting authority shall dispatch it to the Agency and to the candidates that have not been admitted, and it shall despatch simultaneously to all candidates under Para 7, Item 3 written invitations to participate in the negotiations.

**Article 89. (1)** An invitation to participate in negotiations must contain:

1. a date and place for conduct of the negotiations;

2. a requirement to produce additional evidence of the circumstances as declared, should any such evidence be necessary;

3. a time limit for the receipt of the initial tender, which may not be less than ten days from the date of dispatch of the invitation;

4. the address to which the tender must be sent;

5. the date of publication and the number of the public procurement notice;

6. a copy of the specifications and any supporting documents if they are not included in the document for participation, or an electronic address for access to the specifications and the other supporting documents, where they are made available by electronic means.

(2) The commission shall conduct the negotiations with the tenderers invited in order to determine the contractual clauses according to the requirements as announced

(3) The proposals made and the arrangements reached with each tenderers shall be recorded in a separate protocol which shall be signed by the members of the commission and by the tenderer.

(4) After the conduct of the negotiations, the commission shall draw up a report to the contracting authority, whereby the commission shall propose a ranking of the tenderers to the said authority.

(5) Following the procedure established by Article 73 and Article 74 herein, the contracting authority shall select the tenderer that has been ranked highest by the commission as supplier, contractor or service provider of the public procurement contract.

## Section II

### Negotiated Procedure without Publication of a Notice

**Article 90. (1)** Contracting authorities may award a public procurement contract by a negotiated procedure without publication of a notice solely where:

1. the open or restricted procedure has been terminated under Item 1 of Article 39 (1) herein and the terms and conditions as originally announced have not been substantially changed;

2. in the cases referred to in Item 1 of Article 39, Para 1 herein, contracting authorities invite only the candidates who have submitted tenders and who meet the requirements included in the notice for the open or in the restricted procedure or the competitive dialogue.

3. the award of the public procurement contract to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a statute or of an administrative act;

4. because of a *force majeure*, the time limits for conduct of an open or a restricted procedure or of a negotiated procedure with publication of a notice cannot be complied with;

5. the products which are the object of procurement contract are manufactured purely for the purpose of research, experimentation, study or development, and this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

6. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;

7. the service is awarded after organization of a design contest, dispatching invitations to all ranked candidates in accordance with the terms and conditions of the contest, to participate in the negotiations;

8. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:

(a) the additional service or works cannot be technically or economically separated from the subject of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement contract;

(b) the aggregate value of the additional service or works does not exceed 50 per cent of the value of the main procurement contract;

9. the repetition of a service or work has to be entrusted to the same service provider or contractor not later than three years following the award of the original procurement contract, subject to the following conditions:

(a) the original procurement contract has been awarded by open or restricted procedure and the notice of the said procurement has mentioned the possibility of such an award;

(b) the aggregate value of the said procurement was included when the value of the original procurement contract was established;

(c) the new procurement contract conforms to a basic project for the implementation of which the original procurement contract was awarded;

10. Repealed;

11. the object of procurement contract is the supply of goods specified according to a list proposed by the State Commission on Commodity Exchanges and Wholesale Markets and approved by the Council of Ministers in the Regulations for Application of the Act.

12. it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, which has resulted upon sale of the property of commercial corporations that have been put into liquidation or adjudicated bankrupt.

(2) In the cases referred to in Items 6 and 9 a of Paragraph (1), the duration of the additional contract may not be longer than three years.

**Article 91. (1)** In the decision on public procurement award by a negotiated procedure without publication of a notice, the contracting authority shall justify the choice of this procedure and shall approve the invitation to participate.

(2) In the invitation to participate in a negotiated procedure without publication of a notice, the contracting authority shall specify the object of procurement contract, as well as requirements for its performance. The said invitation may furthermore include requirements for the economic and financial standing under Art. 50 and for the technical ability and/or qualifications of the candidate under Art. 51.

**Article 92.** An invitation to participate in a negotiated procedure without publication of a notice shall be dispatched to the selected parties and to the Agency, with the exception of the cases referred to in Item 11 and 12 of Article 90 (1) herein.

**Article 93. (1)** The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 through 36 incl. herein.

(2) (repealed)

(3) The commission shall conduct negotiations with the candidates in order to determine the contractual terms according to the requirements as specified by the contracting authority in the invitation to participate.

(4) When the contracting authority has invited more than one candidate, the proposals made and the arrangements reached with each of them shall be recorded in a separate protocol which shall be signed by the members of the commission and by the candidate.

(5) After conduct of the negotiations, the commission shall draw up a report to the contracting authority, whereby the commission shall propose a ranking of the tenderers to the said authority.

(6) Following the procedure established by Article 73 and Article 74 herein, the contracting authority shall select the tenderer that has been ranked first by the commission as supplier, contractor or service provider of the public procurement contract.

(7) The provisions of Paragraphs (1) to (6) shall not apply in the cases referred to in Item 11 of Article 90 (1) herein and the contract shall be concluded according to the procedure established by the Law for the Commodity Exchanges and Market-places.

(8) The provisions of Paragraphs (1) to (6) shall not apply in the cases referred to in Item 12 of Article 90 (1) herein and the contract shall be concluded according to the procedure established in the Commercial Act.

## Chapter Seven “a”

### FRAMEWORK AGREEMENT

**Article 93a. (1)** A “framework agreement” shall be an agreement concluded between one or more contracting authority and one or more potential suppliers, contractors or service providers of public procurement contracts, whereof the purpose is to pre-establish the terms, governing the contracts which the parties intend to conclude during a given period not longer than four years, including with regard to the prices and, where possible, the quantity envisaged. As an exception the period of the framework agreement may be longer than four years and the contracting authority declares the reasons for this in the notice.

(2) When the contracting authority concludes a framework agreement with several persons, their number cannot be less than three, provided that there is a sufficient number of potential contractors meeting the selection criteria and/or sufficient number of tenders meeting the conditions announced in advance by the contracting authority.

(3) Contracting authorities may conclude framework agreements for public procurement awards on the basis of each procedure conducted with the exception of a negotiated procedure without a prior call for competition. In the conclusion of a framework agreement the criteria under Art. 37 are applied.

(4) In the cases of concluding a contract on the basis of a framework agreement, the party may not make substantial amendments to the terms laid down in the said framework agreement.

(5) A framework agreement may not be concluded or applied if it prevents, restricts or distorts competition.

**Article 93b.** When the framework agreement establishes all the terms, the contracting authority concludes a public contract applying these terms.

**Article 93c. (1)** Where the framework agreement is concluded with a single person and it does not establish all the terms, the contracting authority shall require in writing that this person supplement its tender.

(2) Where the framework agreement is concluded with several persons and it does not establish all the terms, the contracting authority:

1. shall invite in writing all parties to the framework agreement for every contract to be concluded;
2. shall fix a suitable time limit for the submission of tenders for each specific contract which is to be concluded, taking into account the subject matter and the time needed to send in tenders;
3. shall keep confidential the content of the tenders, submitted in writing until expiry of the time limit for the receipt of tenders;
4. the contracting authority shall select as supplier, contractor or service provider under the relevant contract the tenderer that has submitted the best tender on the basis of the award criteria set out in the framework agreement.

**Article 93d.** The contracting authority shall select a supplier, contractor or service provider according to the procedure established by Article 73 herein and shall conclude a contract according to the procedure established by Article 74 herein.

## Chapter Seven “b”

### DYNAMIC PURCHASING SYSTEMS

**Article 93e. (1)** A “dynamic purchasing system” shall be a completely electronic process for making commonly used purchases, the market characteristics of which meet the requirements of the contracting authority. Any such systems may not last for more than four years and are open throughout the period of validity thereof for admission of any tenderer that satisfies the selection criteria and that has submitted an indicative tender complying with the specifications. The period of validity of a system may be extended in exceptional cases, and any such extension must be duly justified.

**(2)** Dynamic purchasing system shall be set up through open procedure.

**(3)** The system shall be open to any tenderer that:

1. satisfies the requirements set by the contracting authority in the procurement notice;
2. has submitted an indicative tender which complies with the specifications as defined by the contracting authority;
3. has submitted all documents as required by the contracting authority in the notice.

**(4)** The indicative tenders referred to in Item 2 of Paragraph (3) may be altered at any time within the period of validity of the system provided that they continue to comply with the specifications.

**(5)** Upon setting up a system referred to in Paragraph (1) and awarding public procurement contracts through any such system, contracting authorities shall use solely electronic means.

**Article 93f. (1)** Upon setting up a dynamic purchasing system, contracting authorities shall:

1. publish a contract notice, expressly indicating that such a system is set up;
2. determine the technical specifications under the order of Articles 30 through 33 incl. herein, the nature of the purchases, as well as all the necessary information concerning the system, the type and technical characteristics of the electronic means used.

**(2)** From the publication of the notice for the setting up the system to the expiry of the period of its validity, contracting authorities shall offer by electronic means full, direct and unrestricted access to the technical specifications as well as to any additional documents, indicating in the notice the Internet address at which such documents may be consulted.

**Article 93g. (1)** An indicative tender for admission to a dynamic purchasing system may be submitted at any time within the period of validity of the system.

**(2)** The contracting authority shall appoint a commission according to the procedure established by Articles 34 through 36 incl. herein for examination of the tenders referred to in Paragraph (1).

**(3)** The commission shall examine each indicative tender submitted and, on the basis of the criteria and rules as announced, shall propose to the contracting authority to admit or to refuse admission of the candidate to the dynamic purchasing system.

**(4)** The contracting authority shall be obligated to make a decision within fifteen days after submission of the indicative tender and to inform the candidate of the admission thereof to the dynamic purchasing system or of the refusal to be admitted, within a three-day period from the date of the decision.

**Article 93h. (1)** Before the award of every separate public procurement supply contract the contracting authority shall publish a simplified notice, inviting all interested persons to submit an indicative tender in accordance with Item 2 of Article 93f (1) herein and shall fix a time limit for the submission of indicative tenders according to Art. 93f, Para1, item 2 that may not be less than fifteen days from the date of dispatch of the notice.

**(2)** The indicative tenders shall be evaluated and the candidates shall be admitted to the system under the order of Art. 93g, Para 2-4.

**Article 93i. (1)** After making the decisions referred to in Article 93g (4) herein, the contracting authority shall invite all admitted to the dynamic purchasing system to submit a tender for each specific public procurement contract for purchasing to be awarded under the system.

(2) In the invitation referred to in Paragraph (1), the contracting authority shall fix a time limit for the submission of tenders and may formulate more precisely the award criteria for the public procurement contract.

**Article 93j. (1)** The commission referred to in Article 93g (2) herein shall examine and rank the tenders, and shall propose to the contracting authority to conclude a public supply contract with the tenderer whose tender has received the highest evaluation on the basis of the award criteria as set out in the notice or in the invitation referred to in Article 93i herein.

(2) The contracting authority shall select a contractor according to the procedure established by Article 73 herein and shall conclude a contract according to the procedure established by Article 74 herein.

**Article 93k. (1)** A dynamic purchasing system may not be applied if it prevents, restricts or distorts competition.

(2) The access to the dynamic purchasing system and participation in it are free and free-of-charge for all interested parties.

## **Chapter Eight**

### **DESIGN CONTEST**

#### **Section I**

#### **Design Contest Preparation**

**Article 94. (1)** The provisions of this Chapter shall apply upon conduct of a design contest:

1. organized as part of a procedure for the award of a public procurement contract of a service;
2. with the award of prizes and/or payments to tenderers in the contest.

(2) A design contest shall be organized for acquisition of:

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

(3) The rules and procedure for the conduct of contests in spatial planning and investment design shall be determined with an ordinance of the Council of Ministers.

**Article 95. (1)** A design contest may be open or restricted.

(2) In an open contest, all interested entity may submit projects.

(3) In a restricted contest, projects may be submitted solely by qualified candidates that have been invited by the contracting authority.

**Article 96. (1)** The contracting authority shall make a decision to organize a design contest, whereby the said authority shall approve the contest notice and the contest programme.

(2) The contest programme must contain:

1. the project assignment and directions as to the implementation thereof;
2. all technical data as shall be necessary for implementation of the project;
3. the criteria to be applied in the evaluation of projects, the relative weight to be accorded to each such criterion, and the methods for complex evaluation of the project.

(3) The price of the contest programme may not exceed the actual costs of the preparation thereof.

**Article 97. (1)** (Amend. SG No 31/08.04.2006, entered into force since 01.05.2005) The contracting authority shall dispatch a design contest notice simultaneously to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register not later than:

1. fifty-two days before expiry of the time limit for the receipt of projects, in the case of an open contest;
2. thirty-seven days before the time limit for the receipt of requests to participate in a restricted contest.

(2) The design contest notice must contain up to 650 words and must be drawn up according to the standard form under Art. 19, Para 7.

(3) Repealed.

(4) In restricted contest the contracting authority may limit in the notice the number of tenderers that will be invited to present projects but their number cannot be less than five.

(5) In the notice for restricted design contest the contracting authority shall set objective and non-discriminatory rules that will be applied in the selection of the candidates.

## **Section II**

### **Conduct of Design Contest**

**Article 98. (1)** (new) Requests to participate in a restricted design contest may be submitted in writing according to the procedure established by Paragraphs (1), (3), (4) and (5) of Article 57 herein, by fax or by telephone. Where a request is made by telephone, it must be confirmed in writing before expiry of the time limit for the receipt of such requests.

(2) (new) In the restricted design contest notice, the contracting authority may include a requirement that requests to participate made by fax must be confirmed by post or by electronic means.

(3) The contracting authority shall conduct pre-qualification and send invitations to the selected candidates to submit projects according to the procedure established by Articles 79 through 81 (1) incl. herein.

**Article 99. (1)** The contracting authority shall appoint a jury consisting of not fewer than three members for examination and ranking of the projects.

(2) The members of the jury must satisfy the eligibility requirements covered under Article 35 herein.

(3) Where the tenderers in the contest are required to possess a particular professional qualification or licensed competence, at least a third of the members of the jury must possess the same qualification or competence or its equivalent.

(4) The jury shall be autonomous in making its decisions and in expressing opinions on the projects.

**Article 100. (1)** The contracting authority shall designate an officer to receive the projects, which have been submitted following the procedure established by Art. 57 Para 1 and 5.

(2) The person referred to in Paragraph (1) shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with the projects and shall pledge so in writing.

(3) The projects as submitted shall be assigned a number in the order of receipt, and a list of the numbers and the corresponding names of tenderers shall be drawn up. The said list shall be inserted into an envelope, which shall be sealed and shall not be opened until the date of declaration of the results of the contest.

(4) In an open contest, the tenderers shall produce data and evidence of the professional qualifications and licensed competence thereof in a separate opaque envelope, which shall be opened after the projects are ranked.

**Article 101. (1)** The jury shall examine the projects and shall draw up a protocol on the ranking thereof. Ranking shall be based on the criteria as announced in advance in the notice for opening of procedure.

(2) The jury shall draw up a protocol recording the ranking of the projects, which shall be signed by all members.

(3) The protocol shall furthermore state the remarks of the jury and any points which may need additional clarification or specification.

(4) In the cases referred to in Paragraph (3), the jury shall notify the tenderers and shall give them an opportunity to answer the questions, whereafter amends and completes the protocols appropriate.

(5) In an open contest, the jury shall propose for exclusion from the ranking any tenderers in the contest that do not satisfy the requirements referred to in Para 1.

(6) The contracting authority shall declare by a decision the ranking of the tenderers in the contest according to the protocol of the jury, as well as the prizes and/or the other payments.

(7) The contracting authority shall also dispatch information on the contest as organized to the Agency for entry into the Public Procurement Register not later than seven days after making the decision referred to in Paragraph (6).

(8) The information referred to in Paragraph (7) shall be drawn up in the standard form referred to in Para 7 of Article 19 herein.

(9) Information under Para (7) whereof the disclosure conflicts with a law shall not be entered in the Public Procurement register. In such a case the contracting authority shall justify this to the Agency.

### **Part Three**

## **PUBLIC PROCUREMENT AWARDS BY CONTRACTING AUTHORITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SECTORS**

### **Chapter Nine**

## **COMMON RULES FOR PUBLIC PROCUREMENT AWARD**

### **Section I**

#### **General Dispositions**

**Article 102. (1)** The provisions of Part three shall be applied by:

1. the contracting entities covered under Item 5 and Item 6 of Article 7 herein;
2. the contracting authorities covered under Items 1, 3 and 4 of Article 7 herein, where carrying out any of the activities covered under Articles 7a through 7e incl. herein.

(2) Any public procurement contract, which is intended to cover several activities covered under Articles 7a through 7e incl. herein and other activities under this Law, shall be subject to the rules applicable to the activity for which the said procurement is principally intended.

(3) In case one of the activities for which a public procurement contract is intended is subject to the special rules of this Part and the other to the general rules of the Law, or if it is objectively impossible to determine for which activity the procurement contract is principally intended, the said procurement shall be awarded according to the procedure established by the general rules of the Law.

(4) In case one of the activities for which a public procurement contract is intended is subject to the special rules of this Part and the other is not subject to either the general or the special provisions of the Law, and if it is objectively impossible to determine for which of the activities the procurement contract is principally intended, the said procurement shall be awarded according to the procedure established by this Part.

**Article 103. (1)** The contracting authorities make a decision for the award of public procurement contracts through an open procedure, restricted procedure and negotiated procedure in all cases where the conditions for the conduct of negotiated procedure without publication of notice are not present.

(2) Contracting authorities take a decision to award public procurement contracts by negotiated procedure without prior publication of notice solely where:

1. the open procedure, the restricted procedure, or the negotiated procedure with publication of a notice has been terminated because no tenders or no requests to participate have been submitted, or no candidates or tenderers have been admitted, and the terms and conditions as originally announced are not substantially altered;
2. the award of the public procurement contract to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a statute or of an administrative act;
3. for reasons of extreme urgency brought about by a *force majeure*, the time limits for conduct of an open or a restricted procedure or of a negotiated procedure with a prior call for competition cannot be adhered to;
4. the contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek those ends;
5. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;
6. the service is awarded after organization of a design contest, dispatching invitations to all ranked candidates in accordance with the terms and conditions of the contest, to participate in the negotiations;

7. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:
- (a) the additional service or works cannot be technically or economically separated from the subject of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement contract;
  - (b) the aggregate value of the additional service or works does not exceed 50 per cent of the value of the main procurement contract;
8. the repetition of a work has to be entrusted to the same service provider or contractor subject to fulfilment of the following conditions:
- (a) the original procurement contract has been awarded by open or restricted procedure or negotiated procedure with publication of a notice and the notice of the said procurement has mentioned the possibility of such an award;
  - (b) the aggregate value of the said procurement was included when the value of the original procurement contract was established;
  - (c) the new procurement contract conforms to a basic project for the implementation of which the original procurement contract was awarded;
9. the object of procurement contract is the supply of goods specified according to a list proposed by the State Commission on Commodity Exchanges and Market-places and approved by the Council of Ministers in the Regulations for the Implementation of the Law;
10. the procurement contract is awarded on the basis a prequalification system or a framework agreement concluded according to the procedure established by this Law;
11. it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, which has resulted upon sale of the property of commercial corporations that have been put into liquidation or adjudicated bankrupt.
- (3) In the cases referred to in Item 5 and Item 8 of Paragraph (2), the total duration of the additional contract may not be longer than three years.
- (4) In the cases under Para 2, Item 9, the contract shall be concluded under the order of the Law for the Commodity Exchanges and Market Places.
- (5) In the cases under Para 2, Item 11, the contract shall be concluded under the order of the Commercial Act.
- Article 104. (1)** In an open procedure, when the contracting authority has sent a prior information notice, the time limit for the receipt of tenders can be reduced to twenty two days from the date of dispatch of the notice for opening of the procedure.
- (2) When the notice for opening of the procedure is also sent by electronic means, the time limit under Para 1 can be reduced by seven days.
- Article 104a (1)** The time limit for the receipt of requests to participate in restricted procedures and negotiated procedures with publication of notice may not be less than thirty seven days from the date of dispatch of the notice.
- (2) The time limit under Para 1 can be reduced by seven days if the notice has also been by electronic means.
- (3) The time limit for the receipt of tenders in restricted and negotiated procedures with publication of notice may be determined by an agreement between the contracting authority and the candidates qualified. An agreement is allowed only provided that all candidates are given equal time limit to draw up and submit tenders.
- (4) When no agreement under Para 3 can be achieved, the time limit is determined by the contracting authority and cannot be less than twenty four days from the date of dispatch of the invitation to submit tenders or to take part in the negotiations.
- (5) In the cases under Para 4, when the contracting authority provides full access by electronic means to the documents for participation and if in the notice it has included an Internet address where the documents can be accessed, the time limit may be reduced by five days.



## Section II

### Qualification System

**Article 105. (1)** Contracting authorities may establish and use systems of qualification of suppliers, contractors or service providers of public procurement contracts.

**(2) (new)** The qualification systems may involve different qualification stages.

**(3)** The qualification systems shall be established on the basis of objective criteria and rules to be established by the contracting authority, which may be updated as required.

**(4)** The qualification criteria and rules shall include requirements for economic and financial standing under Article 50 (1) herein, and/or technical ability and/or professional qualifications under Article 51 (1) herein and may include the requirements covered under Article 47 (1) and (2) herein.

**(5) (new)** Where the criteria and rules for qualification include technical specifications, the provisions of Articles 30 through 32 incl. herein shall apply.

**(6) (new)** Where the criteria and rules for qualification of candidates include requirements relating to economic and financial standing and technical ability and/or qualifications, the candidate may rely on the resources of third parties, whatever the legal nature of the relationship between itself and those third parties. In such cases, the candidate must be in a position to prove to the contracting authority that these resources will be available thereto throughout the period of validity of the qualification system. In case the candidate is a group of natural and/or legal persons, the said candidate may refer to the resources of a tenderer in the said group or of third parties under the same conditions.

**(7) (new)** The criteria and rules for qualification, referred to in Paragraph (3) shall be made available to the candidates on request. The updating of the said criteria and rules shall be communicated to the persons included in the pre-qualification system.

**(8)** (Amend. SG No 31/08.04.2005, entered into force since 01.05.2005) Contracting authorities shall dispatch a notice on the existence of qualification systems established thereby to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register. Where the system is of a duration greater than three years, the notice shall be published annually.

**(9)** The notice referred to in Paragraph (8) shall be based on a standard form under Art. 19, Para 7.

**(10)** Where the description of the object of the qualification system and/or the qualification criteria and rules is of a large volume, the contracting authority shall include a brief description in the notice, whereas the detailed requirements shall be included in the contract documents.

**(11)** Where the contracting authority uses a qualification system, the said authority shall select the candidates for participation in restricted procedures and tenderers in negotiated procedures in accordance with the requirements of the said system.

**(12)** Where a contracting authority considers that the qualification system of another person meets its requirements, the said authority shall inform the interested parties that the he/she shall use the said system.

**Article 106. (1)** A request to participate in the qualification system may be submitted at any time within the duration of the said system.

**(2)** The contracting authority shall appoint a commission for examination of the requests to participate in the qualification system according to the procedure established by Articles 34 through 36 incl. herein.

**(3)** The commission shall examine each request received and, on the basis of the objective criteria and rules as announced, shall propose to the contracting authority to accept or to refuse inclusion of a candidate in the qualification system.

**(4)** The contracting authority shall be obligated to make a decision within six months after submission of the request for inclusion in the qualification system.

**(5)** If the decision referred to in Paragraph (4) will take longer than four months, the contracting authority shall inform the candidate, within two months after submission of the request, of the reasons justifying a longer period and of the date by which a decision will be made.

**(6)** Within fifteen days after the date of the decision referred to in Paragraph (4), the contracting authority shall inform the candidate of the inclusion thereof in the qualification system or of the refusal of such inclusion. A refusal shall have to be justified.

(7) In reaching a decision referred to in Paragraph (4) or when the criteria and rules are being updated, the contracting authorities may not:

1. impose conditions of an administrative, technical or financial nature on some candidates which are not imposed on others;
2. require tests or proof which duplicate evidence already provided by the candidate.

(8) Contracting authorities shall keep a written record of qualified suppliers, contractors or service providers, and the said record may be divided into categories, according to the object of procurement contract for which the qualification is valid. In the cases referred to in Article 105 (12) herein, the contracting authority shall be obligated to provide information on the system and the record to other contracting authorities.

(9) The contracting authority may bring the qualification of a candidate to an end where the said candidate has ceased to meet the criteria for qualification as announced. The contracting authority shall be obligated to notify the candidate of the intention to bring qualification to an end at least fifteen days beforehand, together with the reason or reasons justifying the proposed action.

**Article 107.** Repealed.

**Article 108.** Repealed.

## Chapter Ten

### SPECIAL RULES

**Article 109. (1)** Under the provisions of Art. 23, the contracting entities covered under Items 5 and 6 of Article 7 herein may dispatch to the *State Gazette* for publication on the Internet site thereof and to the Agency for entry into the Public Procurement Register a periodic indicative notice or periodic indicative notice being a call for competition of the public procurement contracts or framework agreements they intend to award over the following twelve months. The type of notice is chosen by the awarding authority.

(2) The contracting authorities may publish on the buyer's profile a periodic indicative notice for the public procurement contracts or framework agreements they intend to award over the following twelve months under the conditions of Art. 23, Para 2.

**Article 110.** When the contracting authorities publish a periodic indicative notice relating to major projects which have previously been included in a periodic indicative notice, they may not repeat this information, provided that they indicate the notice wherein the said information has been included.

**Article 111.** Contracting authorities may announce a public procurement award by restricted procedure and by negotiated procedure with a prior publication of notice and by:

1. repealed
2. by means of a periodic indicative notice being a call for competition, published according to the procedure established by Article 23 herein;
3. by means of a notice on the existence of a qualification system under Para 9 herein.

**Article 112. (1)** The periodic indicative notice being a call for competition serves as an invitation for expression of interest for participation in the procedure on the part of potential candidates.

(2) The periodic indicative notice being a call for competition must contain up to 650 words and to be drawn up according to the standard form under Art. 19, Para 7.

(3) The periodic indicative notice being a call for competition must furthermore include the following information, if available at the date of dispatch of the said notice:

1. possibility to conclude framework agreements;
2. possibility to award additional procurement contracts;
3. date scheduled for start and for completion of performance of the procurement contract;
4. duration of the contract;
5. requirements for the economic and financial standing of the candidate, as well as for the technical ability and/or qualifications thereof;
6. terms and amount of the participation guarantee and of the contract performance guarantee;

7. (new) the criteria for selection of a supplier, a contractor or a service provider and the relative weighting of the said criteria in the integral evaluation of the tender;
8. address and final date for the receipt, the price and method of payment of the price to be paid for such documents;
9. other information specified in the standard form as approved by the Minister of Economy and Energy.

**Article 113. (1)** Contracting authorities shall make available on request by the interested parties the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which the said authorities intend to apply to contracts covered by periodic indicative notices.

(2) Where the technical specifications are based on documents available to interested parties, the inclusion of a reference to those documents shall be sufficient.

**Article 114. (1)** When a negotiated procedure with a publication of a notice or a restricted procedure has been announced by means of a periodic indicative notice being a call for competition, the contracting authority shall dispatch an invitation to participate in the procedure to all candidates that have expressed interest within the time limit referred to in the periodic indicative notice being a call for competition.

(2) The invitation to participate in the procedure shall be dispatched simultaneously to all candidates not later than twelve months after the date of publication of the periodic indicative notice being a call for competition. The said invitation shall be dispatched not later than thirty-seven days prior to the time limit for the receipt of requests to participate and when the invitation has been sent by electronic means, the time limit for the receipt of requests to participate may be shortened by seven days.

(3) Where the periodic indicative notice being a call for competition does not include the information covered under Article 112 (3) herein, the contracting authority shall make the said information available to the candidates by means of the invitation referred to in Paragraph (1), furthermore indicating:

1. the address and date for the submission of requests to participate;
2. documents which must be attached to the requests to participate.

(4) Where the contracting authority has ensured direct and unrestricted access, by electronic means to the information covered under Article 112 (3) herein from the day of publication of the prior information notice, the invitation to participate in the procedure shall indicate the Internet address at which this information is accessible.

(5) The contracting authority shall conduct pre-qualification according to the procedure established by Articles 77 through 79 incl. herein.

(6) When selecting tenderers for a restricted procedure or for a negotiated procedure with a publication of a notice , the contracting authority may not:

1. impose administrative, technical or financial conditions on some candidates which would not be imposed on the other candidates;
2. require tests or evidence which would duplicate objective evidence already available.

**Article 115.** When the negotiated procedure or the restricted procedure has been announced by means of a notice on the existence of a qualification system, the contracting authority shall select tenderers from the qualified candidates in accordance with such a system.

**Article 116.** Repealed.

**Article 117. (1)** The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement contract in a restricted procedure shall follow the procedure established by Articles 68 through 74 incl. herein.

(2) The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement contract in a negotiated procedure shall follow respectively the procedure established by Articles 88 and 89 herein.

**Article 118. (1)** The contracting authority may exclude a tender for supply where the proportion of the goods originating in third countries exceeds 50 per cent of the total value of the goods constituting the tender.

**(2) (new)** The provision of Para 1 shall not be applicable if there is a contract concluded between the European union or the Republic of Bulgaria and a third country, which provides comparable and effective access for Bulgarian persons to participation to public procurement contracts in this country.

**(3)** The origin of the goods shall be determined in accordance with the effective customs legislation.

**(4)** Where two or more tenders are equivalent in the light of the criterion applied in the evaluation of tenders, preference in the ranking shall be given to the tenders which may not be excluded according to Paragraph (1). The prices of the said tenders shall be considered equivalent if the price difference does not exceed three per cent.

**(5)** A tender may not be preferred to another according to Paragraph (4) where its acceptance would oblige the contracting authority to acquire goods having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance.

**Article 118a. (1)** Where a public procurement contract having as its object research and development services is awarded by an open or restricted procedure or by a negotiated procedure with publication of a notice, contracting authorities need not indicate the nature and quantity of the service provided in the information on a contract concluded in case such publication would breach a commercial secret. In such case, the information shall contain any information contained in the notice.

**(2)** Where a public procurement contract having as its object research and development services is awarded by a negotiated procedure without a publication of a notice under Item 4 of Article 103 (2) herein, contracting authorities need not indicate the nature and quantity of the service provided in the information on a contract concluded.

**(3)** In case of a contract concluded through a qualification system, the information on a contract concluded shall contain at least the information on the supplier, contractor or service provider included in the list under Article 106 (8) herein.

**Article 118b. (1)** When an activity under art. 7a-7e is directly exposed to competition, the controlling body in the respective field may inform the Agency by dispatching a statement accompanied with proof of the exclusion of this activity from the scope of the Law.

**(2)** Within a one-month period the Agency shall dispatch the documents under Para 1 to the European Commission for taking a decisions.

**Article 119.** The provisions of Part Two shall apply, *mutatis mutandis*, to any matters unregulated in Part Three.

## **Part Four**

### **APPEAL AND CONTROL**

#### **Chapter Eleven**

##### **APPEAL**

**Article 120. (1)** Every decision, action or lack of action on the part of the contracting entities in the public award procedure prior to the conclusion of the public contract or the framework agreement shall be subject to legal review before the Commission for the Protection of Competition.

**(2)** The claim may be submitted by any person having or having had an interest in obtaining a particular contract in a 10 day period after his/her notification for a decision or an action, which is subject to review and if he/she has not been notified – from the date of coming to the knowledge or from the date on which the deadline for the particular action expired.

**(3)** The claim before the Commission for the Protection of Competition cannot be submitted after the conclusion of the public contract or the framework agreement.

**(4)** The claim shall not suspend the contract award procedure, unless the Commission for the Protection of Competition imposes an measure of suspension.

**Article 120a. (1)** Any person having or having had an interest in obtaining a particular contract may file a claim for declaring null and void of a public contract and demand redress the damage, harmed in result of violation of the Law in the public award procedure under the rules of the Civil Procedure Code.

**(2)** Public procurement contract shall be null and void, when the contract has been concluded without the conduct of a procedure under the Law, when the grounds for this was present.

**Article 121. (1)** The claim shall be submitted to the Commission for the Protection of Competition with copy to the contracting authority, which decision, action or lack of action is subject to review.

**(2)** The claim shall be written in Bulgarian and shall contain the following:

1. The body to which it is submitted;
2. Name, head office and address of management and information for the court registration of the claimant – legal person; name, address and Personal Identification Number of the claimant when he is a natural person;
3. Name, address and information for the court registration of the contracting authority;
4. Information for the public contract and the decision, action or lack of action which is subject to review;
5. Complaints and the request of the claimant;
6. Signature of the person filing the claim or his authorized representative

**(3)** The request for the imposition of an interim measure shall be filed simultaneously with the claim.

**(4)** The claim shall be accompanied by the evidence in its support, which are in posses of the claimant, and a document for the paid state fee also, set in the Tariff approved by the Council of Ministers.

**(5)** If the claim does not meet the requirements under Para 2 or no document for paid state fee is presented, the Commission for the Protection of Competition informs the claimant about this and gives him a three-day period to correct the irregularities.

**(6)** The Commission for the Protection of Competition shall not initiate proceedings when:

1. the claim is submitted after the deadline under Art. 120, Para 2;
2. the irregularities have not been corrected within the time period under Para.5;
3. no document for the state fee paid is presented.
4. the claim has been filed after the conclusion of the public contract.

**(7)** In the cases under Para.6, the chairman of the Commission for the Protection of Competition shall return the claim with an instruction, which shall be subject to review before a three-member panel of the Supreme Administrative Court within a seven-day period from its communication.

**(8)** The contracting authority may correct the infringement until the announcement of the decision of the Commission for the Protection of Competition.

**Article 121a. (1)** Under a reasoned request from the claimant the Commission for the Protection of Competition may impose an interim measure - suspension of the public award procedure. In making a decision on the request the commission shall assess the unfavourable consequences of the delay of the public award procedure and the real danger for serious harm to the public interest or the interests of the parties.

(2) For the imposition of an interim measure the claimant shall present a deposit of 1% of the value of the public contract, but not more than 50 000 BGN as a monetary deposit in a bank account of the CPC or a bank guarantee.

(3) The Commission for the Protection of Competition shall set the amount of the deposit up to 50 000 BGN when the value of the public contracts cannot be determined.

**Article 122. (1)** Within a three-day period from the submission of the claim or from the correction of the irregularities in it, the Chairman of the Commission for the Protection of Competition shall initiate proceedings and determines a person for reporting the case.

(2) Within a seven-day period from the initiation of proceedings, the Commission for the Protection of Competition in a closed session shall pass a ruling regarding the request for imposition of an interim measure.

(3) The Commission for the Protection of Competition shall impose an interim measure with a ruling and set the amount of the deposit, which shall be presented by the claimant within a five-day period from the communication.

(4) The interim measure shall be considered imposed from the date of the presentation of the deposit.

(5) The Commission for the Protection of Competition shall inform the parties and the Public Procurement Agency for the imposed interim measure on the day of imposition.

(6) The ruling for the imposition of an interim measure shall be subject to review before a three-member panel of the Supreme Administrative Court within a seven-day period from the communication of the interim measures to the parties. The review of the decision shall suspend neither the proceedings before the Commission for the Protection of Competition, nor execution of the imposed interim measure.

(7) The deposit shall be subject to return with an order of the Chairman of the Commission for the Protection of Competition within a seven-day period from the entry into force of the ruling which rejects the imposed interim measure or from the entry into force of the decision which grants the claim under Art. 120. In the case when the claim is rejected the deposit provided shall be transferred as revenue to the state budget.

**Article 122a. (1)** The person determined to report the case shall conduct an investigation of the circumstances relating to the claim in which activity he/she is assisted by an administration.

(2) Written evidence, oral explanations and expert opinions shall be permitted in the proceedings before the Commission for the Protection of Competition.

(3) When expert opinions are presented in the proceedings before the Commission for the Protection of Competition, the resources for payment to the experts shall be provide in advance by the party that has requested the expertise. When the expertise is initiated by the Commission for the Protection of Competition, the costs for the experts' fees shall be awarded to the claimant, if the claim is not granted or the proceedings have been suspended, and they shall be awarded to the contracting authority in the cases under Art. 122d, Para 1, item 2.

(4) The parties in the proceedings, the state authorities and the officials shall be obligated to assist the Commission for the Protection of Competition in the fulfilment of the obligations assigned to it by the law.

(5) All evidence, gathered in the proceedings shall not be announced if it is industrial, trade or other secret protected by law. When it contains data representing classified information, the procedure provided for in the Law for the Protection of the Classified Information should be applied.

(6) After the conclusion of the investigation the parties shall be permitted to get acquainted with the evidence gathered in the proceedings.

(7) The parties shall be obligated to present all the evidence at the latest, on the day before the session for the hearing of the claim.

**Article 122b. (1)** After the conclusion of the investigation the person determined to report the case shall present the materials to the chairman who shall set the time for the open session for the hearing of the claim.

(2) The parties shall be summoned under the rules of the Civil Procedure Code. In case of summation the terms under Art.41, Para 5 of the Civil Procedure Code shall not apply.

(3) The parties may use lawyer's defence.

**Article 122c. (1)** The sessions shall be considered regular when at least five of the members of the Commission for Protection of the Competition are presented.

(2) The Commission for Protection of the Competition shall take decisions with open vote and with a majority of four votes. In case there are less than seven members present at the session and the majority of four votes cannot be reached, it is deemed that the claim is left with no consideration or that the request for an interim measure is denied.

(3) A member of the Commission shall be obliged to challenge himself/herself on one in the cases when:

1. he/she has acted as a representative of one of the parties;
2. he/she has had an employment or civil law relationship with one of the parties;
3. due to other circumstances, that member may be considered biased or interested, directly or indirectly, in the outcome of the proceedings.

(4) The session shall begin by the settlement of the preliminary issues regarding the regularity of the procedure.

(5) In the cases referred to in paragraph (3) the parties may challenge a member of the Commission.

(6) The parties to the case can be asked questions by an order determined by the chairman.

(7) When he considers that the circumstances related to the claim are clarified, the chairman shall give the parties the possibility to make statements.

(8) Upon clarification of the dispute from factual and legal point of view, the chairman shall close the session.

**Article 122d. (1)** The Commission for the Protection of Competition in a closed session shall pass a decision:

1. not to grant the claim;
2. to set aside the unlawful decision of the contracting authority or to establish an unlawful action or lack of action and to return the public award procedure to the last lawful decision or action;

(2) In the cases under Para 1, item 2, the Commission for the Protection of Competition may issue obligatory prescriptions through each stage of the public award procedure.

(3) When proceedings have been initiated before the Commission for the Protection of Competition and no interim measure has been imposed, the contracting authority shall be obligated to inform the commission if he/she concludes a public contract before the commission issues a decision over the claim.

(4) In the cases under Para 3, when a public contract is concluded, the Commission for the Protection of Competition shall not grant the claim or shall establish the unlawfulness of the decision, action or lack of action of the contracting authority. The concluded public contract shall keep its validity, and the interested persons have the right to seek damages under the order of the Civil Procedure Code.

(5) The decision of the commission shall be in writing and shall contain:

1. the body who has issued it;
2. the factual and the legal grounds for its issuance;

3. the motivation;
4. the exposition;
5. the body and the period within which the decision can be appealed.

**(6)** A member of the commission who does not agree with the decision shall sign it with a dissenting opinion which is attached to the decision.

**Article 122e. (1)** The Commission for the Protection of Competition shall issue a decision over the claim within a two-month period from the initiation of proceedings.

**(2)** The decision accompanied with the motivation shall be drawn and announced at the latest within a fourteen-day period from the express an opinion on the claim.

**Article 122f. (1)** The decision of the Commission for the Protection of Competition shall be subject to review before a three-member committee of the Supreme Administrative Court within a fourteen-day period from the communication of the decision to the parties.

**(2)** The decision of the Supreme Administrative Court shall be final.

**Article 122g. (1)** The Commission for the Protection of Competition shall terminate the proceedings with a ruling:

1. when the claim is established to be inadmissible ;
2. if the claimant – a natural person has died, or the legal person has been deleted from the register;
3. when the claim is withdrawn.

**(2)** The rulings under Para. 1 shall be subject to review under the procedure stipulate in Art. 122, Para 6.

**Article 122h.** All unsettled issues relating to the review procedure before the Commission for the Protection of competition shall be regulated respectively by the order for review of individual administrative acts.

**Article 122i.** The Commission for the Protection of Competition shall dispatch the decisions under Art. 122d to the Public Procurement Agency within a seven-day period from their announcement.

**Article 122j. (1)** The conditions and order for the review under this Law shall be applied respectively to public contracts determined with the Ordinance under Art. 14, Para 7.

**(2)** In the review of acts of the contracting authorities in the award of public contracts, determined with the Ordinance under Art. 13, Para 2, the order for review of individual administrative acts shall be applied.

**Article 122l. (1)** Any contracting authority and any tenderer in a public award procedure may offer the conclusion of an arbitration agreement for hearing disputes between them over the conclusion of a public contract or a framework agreement.

**(2)** The contracting authority may offer an arbitration agreement in the documents, which the tenderer may sign and submit together with the offer. The arbitration agreement shall designate the selected Arbitration court.

**(3)** The disputes before the arbitration court shall be heard according to the rules of the Law on the International Commercial Arbitration or the Rules of procedure of the respective Arbitration court.



## **Chapter Twelve**

### **CONTROL**

**Article 123. (1)** Control over compliance with this Law shall be exercised by the National Audit Office and by the authorities of the Agency for the State Financial Inspection.

**(2)** The contracting authorities covered under Article 7 (1) herein, which fall within the scope of the National Audit Office Act, shall be subject to control by the National Audit Office

**(3)** The contracting authorities covered under Article 7 herein, which fall within the scope of the Law for the State Financial Inspection, shall be checked by the authorities of the Agency for the State Financial Inspection as to compliance with this Act within the framework of financial inspection.

**(4)** Any contracting authorities, which are not subject to financial inspection under the Law for the State Financial Inspection, shall be checked by the authorities of the Agency for the State Financial Inspection as to compliance with the public procurement regime by means of checks.

**(5)** The orders on the performance of checks by the authorities of the Agency for the State Financial Inspection shall be issued by the Director of the Agency or by officers authorized thereby.

**(6)** The orders referred to in Paragraph (5) shall be unappealable.

**(7)** The Director of the Public Procurement Agency may request from the authorities of the Agency for the State Financial Inspection to exercise the powers thereof in a specific case.

**Article 124. (1)** Upon performance of any checks referred to in Article 123 herein, the authorities of the Agency for the State Financial Inspection shall have the right:

1. to gain free access to the subject of the audit;
2. to examine the full set of documents associated with public procurement awards and with the activities requiring public procurement award;
3. to require documents, information and reference briefs associated with the public procurement contracts from the officers at the subjects of the audit.

**(2)** The persons in the subjects to the audit shall be obligated to cooperate with the authorities of the Agency for the State Financial Inspection and to provide the requisite documents, information and reference briefs associated with public procurement contracts.

**Article 125.** Upon performance of any checks referred to in Article 123 herein, the control authorities shall be obligated:

1. to identify themselves, producing an official identity card and an order on performance of the check;
2. to record accurately the results of the control activity;
3. to respect the confidentiality of any information as may have come to the knowledge thereof upon performance of the checks.

**Article 126. (1)** The control authorities of the Agency for the State Financial Inspection shall draw up a report on the results of each check as performed, containing the findings as arrived at, supported by evidence, conclusions, and recommendations.

**(2)** The report referred to in Paragraph (1) shall be served on the contracting authority.

**(3)** Should any administrative violations be ascertained, the control authorities shall draw up written statements on administrative violations.

**(4)** Should there be reason to believe that criminal offences have been committed, the records of the check shall be transmitted to the prosecuting magistracy.

**(5)** Where any breaches of the public procurement award procedures have been ascertained, the relevant parts of the report of the conducted financial inspection or of the report referred to in Paragraph (1) regarding the breaches of the procedures as ascertained shall be dispatched simultaneously to the Director of the Public Procurement Agency.

(6) Information on the results of the exercised control as to compliance with this Law may be provided solely by the Director of the Agency for the State Financial Inspection and by officers thereby authorized, as well as by the Director of the Public Procurement Agency in the cases referred to in Paragraph (5).

### **Chapter Thirteen**

#### **ADMINISTRATIVE PENALTY PROVISIONS**

**Article 127.** (1) The written statements ascertaining violations of this Law shall be drawn up by officers of the Agency for the State Financial Inspection within six months after the day whereon the offender is exposed but not later than three years after the commission of the said violation.

(2) The penalty decrees shall be issued by the Minister of Finance or by officers authorized thereby.

(3) The ascertainment of violations, the issuing, appeal against and execution of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

**Article 127a. (1)** In case of non-fulfilment of decisions and/or rulings of the Commission for the Protection of Competition that have entered into force or of the obligation under Art. 122a, Para 4, a fine shall be imposed on the natural persons and respectively, a property fine – on the legal persons and sole traders in the amount from BGN 5,000 to BGN 100,000.

**(2)** The Commission for the Protection of Competition shall establish the committed violation and shall impose the penalties under Para 1 with a decision which is subject to appeal before the Supreme Administrative Court.

**(3)** The penalty payments and fines of decisions of the commission which have entered into force shall be collected under the order the Tax-insurance Procedure Code.

**Article 127b.** The Commission for the Protection of Competition shall dispatch the decisions under Art. 127a, Para 2 to the Public Procurement agency within a seven-day period from their announcement.

**Article 128. (1)** Any contracting authority, which violates the prohibition of Art. 15, Para 4-7, shall be liable to a penalty payment from BGN 2,000 to BGN 10,000, and the person referred to in Article 8 (2) or (3) herein shall be punishable by a fine from BGN 200 to BGN 1,000.

**Article 128a.** Any contracting authority which in the conduct of a procedure violates the time limits under Art. 64, Art. 76, Para 1-3, Art. 81, Para 1-3, Art. 83b, Para 1 and 2, Art. 86, Para 1-3, Art. 93h, Para 1, Art. 97, Para 1, Art. 104, Art. 104a, Para 1, 2 and 4 and Art. 114, Para 2 shall be liable to a penalty payment in the amount from BGN 1,000 to 2,000, and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 200 to BGN 1,000.

**Article 128b.** Any contracting authority which violates the prohibition under Art. 25, Para 5 shall be liable to a penalty by a penalty payment in the amount from BGN 2,000 to BGN 10,000 and the person under Art. 8, Para 1 or 3 – by a fine in the amount from BGN 500 to BGN 3,000.

**Article 128c.** Any contracting authority which stipulates the technical specifications in violation of Art. 32, Para 2 shall be liable to a penalty payment in the amount from BGN 1,000 to BGN 3,000, and the person under Art. 8, Para 2 or 3 – to fine in the amount from BGN 500 to 1000.

**Article 128d.** Any member of the commission for the award of public contract who in violation of Art. 36, Para 3 takes a request to participate or a tender outside the premise when the session of the commission takes place shall be liable to a fine in the amount from BGN 100 to BGN 500.

**Article 128e.** Any contracting authority who concludes a contract in violation of Art. 41, Para 2 shall be liable to a penalty payment in the amount from BGN 5,000 to BGN 20,000 and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 1,000 to 3,000.

**Article 129. (1)** Any contracting authority who does not conduct a procedure for the award of public contract when the grounds for this are present or changes or supplements a public contract in violation of Art. 43, Para 1, shall be liable to a penalty payment in the amount from BGN 10,000 to BGN 50,000, and the person under Art. 8, para 2 or 3 – to a fine in the amount from BGN 1,000 to BGN 5,000.

**(2)** The penalties under Para 1 shall also be imposed to any contracting authority or a person under Art. 8, Para 2, who concludes a contract on the basis of a framework agreement, the conditions in which differ substantially from those set in the framework agreement.

**Article 129a. (1)** Any contracting authority that does not send the information under the Art. 45a, Para 1 and 2, shall be liable to a penalty payment in the amount from BGN 5,000 to BGN 10,000 and the person under Art. 8, para 2 or 3 – to fine in the amount from BGN 200 to BGN 1,000.

**(2)** Any contracting authority that does not send the information under Art. 122d, Para 3 to the Commission for the Protection of Competition, shall be liable to a penalty payment in the amount from BGN 1,000 to BGN 3,000 and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 100 to BGN 500.

**Article 129b.** Any contracting authority that does not keep the documents for the conducted public procurement procedure for the time limit set in Art. 58s, Para 6, shall be liable to a penalty payment in the amount from BGN 1,000 to BGN 3,000 and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 200 to BGN 1,000.

**Article 130. (1)** Any contracting authority under Art. 7, Items 1-4 that conducts a negotiated procedure without the grounds for this under Art. 84 or 90 being present, shall be liable to a penalty payment in the amount from BGN 5,000 to BGN 20,000 and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 500 to BGN 3,000.

(2). Any contracting authority under Art. 7, Items 5 and 6 that conducts a negotiated procedure without publication of notice without the grounds for this under Art. 103, Para 2 being present, shall be liable to a penalty payment in the amount from BGN 5,000 to BGN 20,000 and the person under Art. 8, Para 2 or 3 – to a fine in the amount from BGN 500 to BGN 3,000.

**Article 131. (1)** Any person under Art. 8, Para 2 or 3 that terminates a procedure without the grounds for this under Art. 39, Para 1 being present, shall be liable to a fine in the amount from BGN 500 to BGN 1,000.

(2) Any person under Art. 8, Para 2 or 3 that opens a new procedure in violation of Art. 40, shall be liable to a fine in the amount from BGN 200 to BGN 500.

(3) Any person under Art. 8, Para 2 or 3 that concludes a public contract in violation of Art. 42, shall be liable to a fine in the amount from BGN 1,000 to BGN 5,000.

**Article 132. (1)** Any person under Art. 8, Para 2 or 3 that fails to send in time the information subject to entry in the Public Procurement Register, shall be liable to a fine in the amount from BGN 500 to BGN 1,000.

(2) Any person under Art. 8, Para 2 or 3 that fails to send in time the information, indicated in Art. 19, Para 6 and in Art. 44, Para 7 or any other information requested by the executive director of the Public Procurement Agency, shall be liable to a fine in the amount from BGN 500 to BGN 1,000.

**Article 132a.** Any person that fails to present to the bodies of the Agency for the State Financial Inspection within the time limits set by them, documents, reports and information in violation of Art. 124, Para 2, shall be liable to a fine in the amount from BGN 100 to BGN 200.

**Article 133.** In case the violations under Art. 128-132a are repeated, the perpetrator shall be imposed a fine, respectively a penalty payment, in double amount.

§ 147, § 1 of the Supplementary Provisions shall be amended in the following way:

§ 1. Within the meaning given by this Law

1. **“Public procurement contract”** is a written contract for pecuniary interest between one or more suppliers, contractors or service providers and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services, concluded after a procedure conducted according to the law.

2. **“European technical approval”** means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by bodies designated for this purpose by the Member State;

3. **“Operation of airports”** shall be the performance of activities related to: maintenance of the airfield and development of airport infrastructure; containment and elimination of obstacles; maintenance of visual signalling devices; arrangement of emergency rescue, salvage and fire-prevention services for flights both within the airport perimeter and in the surrounding area; airport security; commissioning of the elaboration and updating of the master plan and cadastral plan of the airport.

4. **“Operation of maritime or river ports”** shall be the performance of activities related to: maintenance of the water areas adjacent to public transport ports; the navigable and approach channels; survey and dredging; maintenance of moorage walls, port call facilities, port industrial track and crane tracks, fire-protection, water-supply and sewerage system, high and low voltage power lines, public-transport surfacing within the perimeter of ports.

5. **“Electronic auction”** is a repetitive (standard) process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

6. **“Electronic means”** shall mean electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

7. “Legislation of the state where the candidate or tenderer is established” shall be:

a) for natural persons – their native law within the meaning of Art. 48 of the Code of the International Civil Law;

b) for legal persons – the law of the state determined according to Art. 56 of the Code of the International Civil Law;

c) for groups which are not legal persons – the law of the state where they are registered or established.

8. **“Most economically advantageous tender”** shall be the tender which is most responsive to the criteria as announced in advance by the contracting authority and the weight to be accorded to each such criterion, directly related to the object of public procurement contract with regard to quality, price, technical merit, aesthetic and functional characteristics, characteristics related to environmental protection, running costs, warranty after-sales service and technical assistance, delivery date, etc.

9. A **“Candidate”** in a procedure shall be a natural or legal person who or which has submitted an invitation to take part in a restricted procedure, a negotiated procedure with a publication of a notice, or a competitive dialogue or restricted design contest.

10. **“Public Procurement Nomenclature”** shall be a reference nomenclature, which is used to define the object upon the award of public procurement contracts and shall be equivalent to the commonly accepted reference nomenclature in the European Union applicable to public procurement contracts (Common Procurement Vocabulary - CPV). In the event of established differences between the CPV and NACE (Nomenclature generale des activities economiques dans les Communautes Europeennes) nomenclatures, or between the CPV and CPC (Central Product Classification) nomenclatures, the NACE or the CPC nomenclature respectively shall take precedence.

11. **“Compensatory (offset) arrangement”** shall be any contact whereby a supplier, contractor or service provider of a public procurement contract undertakes to the contracting authority to make investments, to conclude and perform contracts for the supply of Bulgarian goods or for services or works by Bulgarian corporations, to make available to Bulgarian corporations technical equipment, technologies, licences for use of industrial property rights, or to transfer intellectual property rights to any such corporations.

12. **“Minimum labour costs”** shall be the minimum amount of remuneration of labour, defined as a minimum monthly amount of the contributory income differentiated by economic activities and occupations grouped by qualification according to Item 1 of Article 8 of the Public Social Insurance Budget Act for the respective year.

13. **“Network in the field of transport”** shall be any network whereof the operating conditions are laid down by the State or a municipality, and which shall include the routes to be served, the capacity to make the transport service available, and the frequency of the service.

14. **“Force majeure”** shall be circumstances of extraordinary nature, which the contracting authority, providing due care, could not and was not obligated to foresee or avoid.

15. **“Common technical specification”** shall mean a technical specification laid down in accordance with a procedure recognized by a Member State and published in the *Official Journal of the European Union*.

16. **“Lot”** shall be such a part of the object of public procurement contract which even though it may be an separate object of public procurement, it is systematically related to the other lots of the object of public procurement contract .

17. **“Written”** or **“in Writing”** shall mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

18. **“Recognized body”** shall be a body, accredited by the Bulgarian Accreditation Service Executive Agency or by a foreign accreditation body which is a full member of the European Co-operation for Accreditation.

19. **“Repeated violation”** shall be any violation which is committed within one year after the entry into force of a penalty decree whereby the offender was penalized for a violation of the same kind.

20. **“Buyer’s profile”** shall be an Internet address of the contracting authority which may include the prior information notices, information on invitations to submit tenders, contracts concluded, procedures terminated and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an electronic mail address.

21. A **“body governed by public law”** shall be any legal person, which regardless of its commercial or industrial character is established for the specific purpose of meeting needs in the general interest and which fulfils any of the following criteria:

- (a) more than half of the income thereof for the preceding budget year is financed by the state budget, by the budgets of public social insurance or the National Health Insurance Fund, by the municipal budgets, or by any contracting authorities covered under Item 1 of Article 7 or under Item 3 of Article 7 herein;
- (b) more than half of the members of the management or supervisory body thereof are appointed by any contracting authorities covered under Item 1 of Article 7 or under Item 3 of Article 7 herein;
- (c) which is subject to management supervision on the part of any contracting authorities covered under Item 1 of Article 7 or under Item 3 of Article 7 herein.

Management supervision shall be presumed when a person exerts, in any way whatsoever, a dominant influence on the activity of another person.

A medical-treatment facility which is a commercial corporation and more than 30 per cent of the income whereof for the preceding year is for the account of the state budget and/or a municipal budget and/or the budget of the National Health Insurance Fund, shall likewise be a body governed by public law.

22. A **“dominant influence”** shall be presumed when any contracting authorities covered under Item 1 of Article 7 herein, or any bodies governed by public law or any other persons:

- (a) own more than 50 per cent of the capital of the undertaking, or
- (b) hold blocking minority rights to the capital of the undertaking, or
- (c) can appoint more than half of the members of the management or supervisory bodies of the undertaking.

23. A **“public undertaking”** shall be any trader, within the meaning given by the Commerce Act or by the legislation of any Member-state, over which any contracting authorities covered under Items 1, 3 or 4 of Article 7 herein, may exercise directly or indirectly a dominant influence.

24. An **“Affiliated undertaking”** shall be any undertaking:

- (a) the annual accounts of which are consolidated with those of a contracting authority; or
- (b) over which a contracting authority may exercise, directly or indirectly, a dominant influence; or
- (c) which may exercise a dominant influence over any contracting authority covered under Item 5 or 6 of Article 7 herein, or
- (d) in common with any contracting authority covered under Article 7 herein, is subject to the dominant influence of another undertaking.

25. **“Sheltered workshops or cooperations of people with disabilities”** shall be the ones within the meaning of Art. 28, Para 1 of the Law for the Integration of People with Disabilities or their equivalent according to the legislation of the member state.

26. **“Special and exclusive rights”** shall be rights granted by law or by a competent state authority on grounds provided for by law, the effect of which is to reserve the exercise of activities, including those defined in Articles 7a through 7e herein for one or more persons, and which substantially limits the ability of other persons to carry such activities.

27. **“Standard”** shall be a technical specification approved by a recognized standardization body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- a) **“international standard”**: a standard adopted by an international standards organization and made available to the general public;
- b) **“European standard”**: a standard adopted by a European standards organization and made available to the general public;
- b) **“national standard”**: a standard adopted by a national standards organization and made available to the general public.

28. A **“work”** means the outcome of over-ground, semi-underground, underground and under-water building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

29. **“Technical reference”** shall be any product produced by European standardization bodies, other than official standards, according to procedures adopted for the development of market needs.

30. **“Technical specifications of works”** shall be the totality of technical prescriptions contained in the contract documents, defining the characteristics required of a material and a product to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements, including accessibility for disabled persons, and conformity assessment, performance characteristics, safety or dimensions, including quality assurance procedures, terminology, symbols, testing and test methods, packaging, marking and labelling. They shall also include rules relating to design, testing, construction supervision and conditions for acceptance of works and methods or techniques of construction, as well as all other technical conditions which the contracting authority is in a position to prescribe, by virtue of a statute or of statutory instruments of secondary legislation, in relation to finished works and to the materials or parts which they involve.

31. **“Technical specifications of services or supplies”** shall be the specification in a document defining the required characteristics of a product or a service, such as: quality levels, environmental performance levels, design for all requirements, including accessibility for disabled persons, and conformity assessment, production process or method, use or the product, safety, dimensions, requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking, labelling, user instructions, conformity assessment procedures.

32. A **“third country”** is a country which is a member of the European Union.

33. A **“tenderer”** in a procedure shall be a natural or legal person who or which has submitted a tender.

34. **“Fixed public service networks”** shall be:

a) transfer and distribution networks within the meaning of the Law for the Energy – for activities under Art. 7a;

b) water system and sewage system within the meaning of Art. 32 and 33 of § 1, Para 1 of the Supplementary Provisions of the Law for the water – for activities under Art. 7b.

## TRANSITIONAL AND FINAL PROVISIONS

§ 148. (1) The procedures, opened with a decision before the entry into force of this law, shall be completed under the present order.

(2) The disputes over procedure under Para 1 shall be completed under the present order only before the regional and district courts.

§ 149. The cases pending before the courts and the Arbitration court with the Public Procurement Agency, initiated before the entry into force of this law, shall be completed under the present order.

§ 150. (1) The Council of Ministers shall bring the issued secondary legislation in compliance with the provisions of the law in two-months period after its publication.

(2) The Council of Ministers shall dismiss the chairman of the Court of Arbitration with the Public Procurement Agency within a one month’s period after the entry into force of the Law.

§ 151. In Art. 38, Para 2 and Art. 43, Para 1 of the Law for the National Audit Office the words “minister of state administration and administrative reform” are substituted with the words “executive director of the Public Procurement Agency”.

§ 152. In the Law for Protection of the Competition (Publ. SG. 52/8 May 1998, amend. SG. 112/29 Sep 1998, amend. SG. 81/14 Sep 1999, amend. SG. 28/19 Mar 2002, amend. SG. 9/31 Jan 2003, amend. SG. 107/9 Dec 2003, amend. SG. 105, 2005) the following Art. 47 a is created:

**“Article 47a.** The funds gathered from fees and expenses due under this law, the Concessions Law and the Public Procurement Law, as well as the collected fines and penalty payments under decisions of the Commission for the Protection of Competition which have entered into force at the amount of 25%, shall be spend for improvement of the qualification and stimulation of the employees included in the total number of the staff of the commission, under terms and conditions regulated in the Rules of Procedure of the commission.”

§ 153. In Art. 126a of the Civil procedure Code (Prom. SG. 12/8 Feb 1952, amend. SG. 92/7 Nov 1952, amend. SG. 89/6 Nov 1953, amend. SG. 90/8 Nov 1955, amend. SG. 90/9 Nov 1956, amend. SG. 90/11 Nov 1958, amend.

SG. 50/23 Jun 1961, amend. SG. 90/10 Nov 1961, corr. SG. 99/12 Dec 1961, amend. SG. 1/4 Jan 1963, amend. SG. 23/22 Mar 1968, amend. SG. 27/3 Apr 1973, amend. SG. 89/9 Nov 1976, amend. SG. 36/8 May 1979, amend. SG. 28/8 Apr 1983, amend. SG. 41/28 May 1985, amend. SG. 27/4 Apr 1986, amend. SG. 55/17 Jul 1987, amend. SG. 60/5 Aug 1988, amend. SG. 31/21 Apr 1989, amend. SG. 38/19 May 1989, amend. SG. 31/17 Apr 1990, amend. SG. 62/2 Aug 1991, amend. SG. 55/7 Jul 1992, amend. SG. 61/16 Jul 1993, amend. SG. 93/2 Nov 1993, suppl. SG. 87/29 Sep 1995, amend. SG. 12/9 Feb 1996, amend. SG. 26/26 Mar 1996, amend. SG. 37/30 Apr 1996, amend. SG. 44/21 May 1996, amend. SG. 104/6 Dec 1996, amend. SG. 43/30 May 1997, suppl. SG. 55/11 Jul 1997, amend. SG. 124/23 Dec 1997, amend. SG. 21/20 Feb 1998, amend. SG. 59/26 May 1998, suppl. SG. 70/19 Jun 1998, suppl. SG. 73/26 Jun 1998, amend. SG. 64/16 Jul 1999, suppl. SG. 103/30 Nov 1999, amend. SG. 36/2 May 2000, suppl. SG. 85/17 Oct 2000, amend. SG. 92/10 Nov 2000, amend. SG. 25/16 Mar 2001, amend. SG. 105/8 Nov 2002, amend. SG. 113/3 Dec 2002, suppl. SG. 58/27 Jun 2003, amend. SG. 84/23 Sep 2003, suppl. SG. 28/6 Apr 2004, amend. SG. 36/30 Apr 2004, amend. SG. 38/3 May 2005, amend. SG. 42/17 May 2005, amend. SG. 43/20 May 2005, amend. SG. 79/4 Oct 2005, amend. SG. 86/28 Oct 2005, amend. SG. 99/9 Dec 2005, amend. SG. 105, 2005 and SG. 17/24 Feb 2006) the words “and under Art. 120 of the Public Procurement Law” are deleted.

**§ 154.** In the Law on the Municipal Debt (Publ. SG. 34/19 Apr 2005, amend. SG 105, 2005) the following amendments are made:

1. Art. 19 is amended in the following way:

“Art. 19. The procedure for the selection of a financial institution and financial agent is conducted under the order of the PPL.”

2. Art. 20 - 38 are repealed.”

3. In Art. 54, Para 3, Item 1, the words “Art. 31, Para 2” are deleted.

4. In Art. 58, Para 1, the words “and 32” are deleted.

**§ 155.** In the Law for the Bulgarian National bank (Publ. SG. 46/10 Jun 1997, suppl. SG. 49/29 Apr 1998, amend. SG. 153/23 Dec 1998, amend. SG. 20/5 Mar 1999, suppl. SG. 54/15 Jun 1999, amend. SG. 109/18 Dec 2001, amend. SG. 45/30 Apr 2002, amend. SG. 10/28 Jan 2005, amend. SG. 39/10 May 2005) the following amendments are made:

1. Para 4 is created to Art. 48:

“(4) The control of the fulfilment of the Public procurement law is exercised by the National audit office. The Agency for the State Financial Inspection does not perform checks of the Bulgarian National Bank.”

2. In Art. 49, Para 4 is amended in the following way:

“(4) The international auditor shall be selected by the managing committee for a period of three years following a procedure conducted under the order of the PPL.”

**§ 156.** In the Law for the Railway Transport (Publ. SG. 97/28 Nov 2000, amend. SG. 47/10 May 2002, amend. SG. 96/11 Oct 2002, amend. SG. 70/10 Aug 2004, amend. SG. 115/30 Dec 2004, amend. SG. 77/27 Sep 2005, amend. SG. 88/4 Nov 2005) Art. 54 the following amendments are made:

1. In Para 3 the words “In the contract under Para 2” are substituted with the words “The contract under Para 2 shall be awarded under the order of the Public Procurement Law and in it.”

2. In Para 4 the words “and the order for the award and fulfilment of the obligations” are deleted.

**§ 157.** In the Law of the Spatial Planning (Publ. SG. 1/2 Jan 2001, amend. SG. 41/26 Apr 2001, amend. SG. 111/28 Dec 2001, amend. SG. 43/26 Apr 2002, amend. SG. 20/4 Mar 2003, amend. SG. 65/22 Jul 2003, amend. SG. 107/9 Dec 2003, amend. SG. 36/30 Apr 2004, amend. SG. 65/27 Jul 2004, amend. SG. 28/1 Apr 2005, amend. SG. 76/20 Sep 2005, amend. SG. 77/27 Sep 2005, amend. SG. 88/4 Nov 2005, amend. SG. 94/25 Nov 2005, amend. SG. 95/29 Nov 2005, SG 103, 2005, SG 105, 2005) the following amendments are made:



1. In Art. 118, Para 3, the words “under terms and conditions determined by the ordinance under Art. 126, Para 2” are substituted with “under the order of the Public Procurement Law”.

2. In Art. 126:

a) Para 1 is amended in the following way:

“(1) The investigation and the design of development plans, as well as the choice of a development conception for them shall be awarded under the order of the Public Procurement Law.”;

b) Para 2 is repealed.

3. In Art. 137:

a) Para 4 is amended in the following way:

“(4) The elaboration of investment projects shall be awarded under the order of the Public Procurement Law>”

b) Para 5 is repealed.

3. In Art. 230, Para 4, sentences two and three are deleted.

**§ 158.** In the Law of Integration of the People with Handicaps (In Force from 1st of January 2005, Publ. SG. 81/17 Sep 2004, amend. SG. 28/1 Apr 2005, amend. SG. 88/4 Nov 2005, amend. SG. 94/25 Nov 2005, amend. SG. 103/23 Dec 2005, amend. SG. 105/29 Dec 2005) Art. 30 is amended in the following way:

“Art. 30. The Council of Ministers shall approve a list of the goods and services which are awarded to specialized undertakings or sheltered workshops under the order of the Public Procurement Law.”

**§ 159.** In the Law for the Underground Natural Resources (Publ. SG. 23/12 Mar 1999, amend. SG. 28/4 Apr 2000, amend. SG. 108/14 Dec 2001, amend. SG. 47/10 May 2002, amend. SG. 86/30 Sep 2003, amend. SG. 28/1 Apr 2005, amend. SG. 94/25 Nov 2005) the following amendments are made:

1. In Art. 8 the words “under the Law for the Award of State and Public Contracts” are substituted with “under the Public Procurement Law”;

2. In Art. 20, Para 2, the words “state contracts” are substituted with “public contracts”.

**§ 160.** The law shall enter into force on 01.07.2006 with the exception of § 12, Item 1 a (in respect to Item 2) and j (in respect to sentence 2), § 13, Item 1b, § 20, Item 1 c (the part about informing the European Commission of changes to the lists) and Item 1 I (in respect to items 17-22), § 46, Item 4 (in respect to Para 7), § 47, § 78 (in respect to sentence 2), and § 124, which shall enter into force from 1<sup>st</sup> January 2007.

#### **Annex No 1 to Art. 3, Para 1, item 3 b**

Section	Group	Class	Name of the position
45			Construction
	45.1		Site preparation
			Demolition and wrecking
		45.11	of buildings;
			earth moving
		45.12	Drilling and boring works
			Building of complete
	45.2		constructions or parts
			thereof; civil engineering
			General construction of
		45.21	buildings and civil engineering
			works

	45.22	General construction of buildings and civil engineering works
	45.23	Construction of highways, roads, airfields and sports facilities
	45.24	Construction of water projects
	45.25	Other construction work involving special trades
45.3		Building installation
	45.31	Installation of electrical wiring and fittings
	45.32	Insulation works activities
	45.33	Plumbing
	45.34	Other building installation
45.4		Building completion
	45.41	Plastering
	45.42	Joinery installation
	45.43	Floor and wall covering
	45.44	Painting and glazing
	45.45	Other building completion
45.5		Renting of construction or demolition equipment with operator
	45.50	Renting of construction or demolition equipment with operator

\* **Note.** The section, group, class and name of the position, pointed out in the table, are in compliance with the National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, Para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).

#### Annex No 2 to Art. 5, Para 1, Item 1

Category	Services	Code of NCPEA-2003(1)
1.	Maintenance and repair services (including installing) of machines and Facilities	50.20, 50.40.4, 52.7 All sub-categories of sector D, which Refer to repair, maintenance and installing
2.	Land transport services (2), including armoured car services, and courier services,	60.21.3, 60.21.4, 60.21.5, 60.22.1, 60.23.1, 60.24.1, 60.24.22, 60.24.30, 64.12.1, 74.60.14

3.	Air transport services of passengers and freight,	62.10.1, 62.10.22, 62.10.23, 62.20, 62.30
4.	Transport of mail by land (2) and by air	60.24.21, 60.10.21
5.	Telecommunication services	64.20.1, 64.20.2
6.	Financial services	
	a) insurance services (3)	66.01, 66.02, 66.03, 67.20
	b) banking and investment services (3)(4)	65.12, 65.2, 67.1, 67.2
7.	Computer and related services	72.21.1, 72.22, 72.30, 72.40, 72.50, 72.60
8.	Research and development services (5)	73.10, 73.20
9.	Accounting and auditing services	74.12.1, 74.12.2
10.	Marketing research and opinion polling services	74.13.1
11.	Management consulting services(6)	74.14.1, 74.14.2, 74.15
12.	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	74.20.2, 74.20.3, 74.20.4, 74.20.5, 74.20.6, 74.20.7, 74.30
13.	Advertising services	74.30
14.	Building-cleaning services and property management services	74.70, 70.31, 70.32
15.	Publishing and printing services on a fee or contract basis	22.21, 22.22.3, 22.23, 22.24, 22.25, 22.3
16.	Sewage and refuse disposal services; sanitation and similar services	90.01, 90.02, 90.03

**Notes:**

1. National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, Para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).
2. Except the railroad transport services, including in category 18.
3. Including financial services, connected with the acquisition or leasing of land, existing buildings or other immovable properties, as well as in establishing of limited real rights under art. 4, item 1.
4. Except these of art. 4, item 3.
5. Except these of art. 4, item 4.
6. Except services, connected with arbitration and conciliation.

**Annex No 3 to Art, 5, Para 1, Item 3**

Category No	Services	Code of NCPEA-2003(*)
17.	Hotel and restaurant services	55
18.	Rail transport services (including metropolitan)	60.10, 60.21.1

19.	Water transport services	61
20.	Supporting and auxiliary transport services; services of tourist agencies	63
21.	Legal services	74.11
22.	Personnel placement and supply services, without the services of the Agency for employment	74.50
23.	Investigation and security services, except armoured car	74.60 (except 74.60.14)
24.	Educational services	80
25.	Health and social services	85
26.	Recreational, cultural and sporting services	92 (except 92.11.1, 92.11.2, 92.31.1)
27.	Other services	

**Note.** (\*)National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, Para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).

#### Annex No 4 to Article 45 a

#### LIST OF PRODUCTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE

- Chapter 25: Salt, sulphur, earths and stone, plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes except:  
ex 27.10: special engine fuels
- Chapter 28: Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except:  
ex 28.09: explosives  
ex 28.13: explosives  
ex 28.14: tear gas  
ex 28.28: explosives  
ex 28.32: explosives  
ex 28.39: explosives  
ex 28.50: toxic products  
ex 28.51: toxic products  
ex 28.54: explosives
- Chapter 29: Organic chemicals except:  
ex 29.03: explosives  
ex 29.04: explosives  
ex 29.07: explosives  
ex 29.08: explosives  
ex 29.11: explosives  
ex 29.12: explosives  
ex 29.13: toxic products  
ex 29.14: toxic products  
ex 29.15: toxic products  
ex 29.21: toxic products  
ex 29.22: toxic products  
ex 29.23: toxic products

- ex 29.26: explosives
- ex 29.27: toxic products
- ex 29.29: explosives
- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilisers
- Chapter 32: Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
- Chapter 33: Essential oils and resinoids, perfumery, cosmetic or toilet preparations
- Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
- Chapter 35: Albuminoidal substances, glues, enzymes
- Chapter 37: Photographic and cinematographic goods
- Chapter 38: Miscellaneous chemical products, except:
  - ex 38.19: toxic products
- Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except:
  - ex 39.03: explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof, except:
  - ex 40.11: bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur, manufactures thereof
- Chapter 44: Wood and articles of wood, wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard, articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except:
  - ex 82.05: tools
  - ex 82.07: tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances, parts thereof, except:
  - ex 84.06: engines

- ex 84.08: other engines
- ex 84.45: machinery
- ex 84.53: automatic data-processing machines
- ex 84.55: parts of machines under heading No 84.53
- ex 84.59: nuclear reactors
- Chapter 85: Electrical machinery and equipment, parts thereof, except:
  - ex 85.13: telecommunication equipment
  - ex 85.15: transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except:
  - ex 86.02: armoured locomotives, electric
  - ex 86.03: other armoured locomotives
  - ex 86.05: armoured wagons
  - ex 86.06: repair wagons
  - ex 86.07: wagons
- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof, except:
  - ex 87.08: tanks and other armoured vehicles
  - ex 87.01: tractors
  - ex 87.02: military vehicles
  - ex 87.03: breakdown lorries
  - ex 87.09: motorcycles
  - ex 87.14: trailers
- Chapter 89: Ships, boats and floating structures, except:
  - ex 89.01A: warships
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except:
  - ex 90.05: binoculars
  - ex 90.13: miscellaneous instruments, lasers
  - ex 90.14: telemeters
  - ex 90.28: electrical and electronic measuring instruments
  - ex 90.11: microscopes
  - ex 90.17: medical instruments
  - ex 90.18: mechano-therapy appliances
  - ex 90.19: orthopaedic appliances
  - ex 90.20: X-ray apparatus
- Chapter 91: Manufacture of watches and clocks
- Chapter 92: Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
- Chapter 94: Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except:
  - ex 94.01A: aircraft seats
- Chapter 95: Articles and manufactures of carving or moulding material
- Chapter 96: Brooms, brushes, powder-puffs and sieves
- Chapter 98: Miscellaneous manufactured articles