

# **LAW ON PUBLIC PROCUREMENT (\*)**

## **(Unofficial translation, Official Gazette no. 24/19)**

(\*) This Law shall provide harmonisation with:

- DIRECTIVE 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and repealing Directive 2004/18/EC, CELEX number of the regulation 32014L0024;
- DIRECTIVE 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, CELEX number of the regulation 32014L0025; and
- DIRECTIVE 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, CELEX number of the regulation 32007L0066.

### **TITLE I**

#### **GENERAL PROVISIONS**

#### **Chapter 1**

##### **Scope, definitions and principles**

##### **Article 1**

###### **Scope of the Law**

This Law shall regulate the manner and procedures for awarding public contracts, the competences of the Public Procurement Bureau, the competences of the State Appeals Commission on Public Procurement and the review procedures in awarding public contracts, but also the review procedures in awarding concessions and public private partnership contracts.

##### **Article 2**

###### **Meaning of the terms used in this Law**

Specific terms used in this Law shall have the following meaning:

1. 'Public contract' shall mean a contract concluded in writing between one or more economic operators and one or more contracting authorities and having as its object the supply of products, the provision of services or the execution of works;
2. 'Public procurement procedure' shall mean a procedure conducted by one or more contracting authorities, having as its aim or activity the purchase or acquisition of products, services or works;
3. 'Public supply contract' shall mean a public contract having as its object the procurement of one or more products through purchase, hire-purchase or lease with or without an option to buy the products. A public supply contract may also include siting and installation operations;
4. 'Public service contract' shall mean a public contract having as its object the procurement of services, except for those referred to in point 5 of this paragraph;
5. 'Public works contract' shall mean a public contract having as its object:
  - a) the execution or design and execution of works related to one or more construction activities;
  - b) the execution of a work or both the design and execution of a work; and
- c) the realisation, by whatever means, of a work according to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;
6. 'Economic operator' shall mean any natural person or legal entity or group of such persons/entities, including any temporary associations, which offer products, services or works on the market or in the public procurement procedures;
7. 'Tenderer' shall mean an economic operator that has submitted a tender;

8. 'Candidate' shall mean an economic operator that requests to participate or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure with publication of a contract notice, in a negotiated procedure without publication of a contract notice, in a competitive dialogue or in an innovation partnership;
9. 'Subcontractor' shall mean a legal entity or natural person that supplies products, provides services or executes works directly related to the performance of the contract or framework agreement for the tenderer with whom the contracting authority has concluded a public contract or framework agreement;
10. 'Tender documentation' shall mean any document produced by the contracting authority or referred to by the contracting authority, and which describes or determines the elements of a specific procurement or procedure, including the contract notice, the prior information notice or periodic indicative notice used as a substitute for the contract notice, the technical specifications, the descriptive document, the proposed contract conditions, the forms to be filled in by candidates or tenderers, information on generally applicable regulations and any additional documents;
11. 'Acceptable tender' shall mean a tender submitted by the tenderer, which meets the selection requirements, the needs and demands specified by the contracting authority in the technical specifications and the other tender documents, which is timely, which does not have an abnormally low price, and which has a final price that does not exceed the funds that have been provided or that could be additionally provided by the contracting authority in accordance with this Law;
12. 'Unsuitable tender' shall mean a tender that does not correspond to the needs and demands specified by the contracting authority in the tender documentation without substantial modifications;
13. 'Unsuitable request to participate' shall mean a request to participate submitted by a candidate that should be excluded for failing to meet the selection requirements in the procedure;
14. 'Centralised purchasing activities' shall mean activities conducted continuously in one of the following forms:
  - a) the acquisition of supplies and services intended for multiple contracting authorities or
  - b) the award of public contracts or framework agreements for supplies, services or works intended for more contracting authorities;
15. 'Ancillary purchasing activities' shall mean activities for support of the contracting authority when conducting its purchasing activities, in particular in the following forms:
  - a) technical infrastructure enabling the contracting authority to award public contracts or framework agreements for supplies, services or works; and/or
  - b) advice concerning the design or conduct of public procurement procedures;
16. 'Central purchasing body' shall mean a contracting authority providing centralised purchasing activities and ancillary purchasing activities;
17. 'Single document for proving the capacity' shall mean a document issued by the Central Register of the Republic of Macedonia, which contains data proving the elements of the economic operator's capacity;
18. 'Written' or 'in writing' shall mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means, provided that the security of the content is ensured and the signature is identifiable;
19. 'Electronic means' shall mean electronic equipment for the processing and storage of data (including digital compression), which is transmitted, conveyed and received by wire, radio or optical means or by other electromagnetic means;
20. 'Life cycle' shall be all consecutive and/or interlinked stages, including the required research and development, production, trading in accordance with the conditions, transport, use and maintenance throughout the existence of the product or the work or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

21. 'Design contest' shall mean a procedure that enables the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;
22. 'Innovation' shall mean the implementation of a new or significantly improved product, service or process, including the production and construction processes, a new marketing method, or a new organisational method in business practices, organisation of the workplace or organisation of external relations, with the purpose of helping to solve societal challenges;
23. 'Label' shall mean any document, certificate or attestation confirming that the products, services, works, processes or procedures meet the specified requirements;
24. 'Label requirements' shall mean the requirements to be met by the works, products, services, processes or procedures in order to obtain a specific label;
25. 'Classical public sector' shall mean the public sector not covered by utilities;
26. 'Utilities' shall mean activities in the area of water, energy, transport and postal services, which are covered in Articles 11, 12, 13, 14 15, 16 and 17 of this Law;
27. 'Technical specifications' shall mean:
  - a) in the case of public works contracts, the totality of the technical prescriptions contained in the tender documentation defining the characteristics required of the materials, products or supplies, so that they fulfil the use for which they are intended by the contracting authority; those characteristics include levels of environmental and climate performance, description of all requirements (including accessibility for disabled persons) and conformity assessment, performance level, safety or dimensions, including the procedures for quality assurance, terminology, symbols, testing methods, packaging, marking and labelling, and also user instructions, production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing rules, conditions for testing, for inspection and for acceptance of the works executed, methods or techniques of construction, and all other technical conditions which the contracting authority is entitled to prescribe in compliance with the general and specific regulations, in relation to the works and to the materials or parts which they involve; and
  - b) in the case of public supply or service contracts, a specification defining the characteristics of a product or a service, such as quality levels, environmental and climate performance levels, description of all requirements (including accessibility for disabled persons) and conformity assessment, performance level, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, and also user instructions, production processes and methods at any stage of the life cycle of the supply or service, and conformity assessment procedures;
28. 'Standard' shall mean a document developed by consensus and adopted by a recognised standardisation body that provides, for common and repeated use, rules, guidelines and characteristics for certain activities or results of such activities, which is aimed at the achievement of the optimum degree of order in a given area, namely:
  - a) 'international standard' shall be a standard adopted by an international standardisation organisation and which is made available to the public,
  - b) 'European standard' shall be a standard adopted by a European standardisation organisation and which is made available to the public, and
  - c) 'national standard' shall be a standard adopted by a national standardisation body and which is available to the public;
29. 'Technical reference' shall mean any document other than European or national standards, which is produced by a national or European standardisation body, and which is in accordance with procedures adapted to the market needs;

30. 'Electronic System for Public Procurement (hereinafter referred to as: ESPP)' shall mean a single information system available on the Internet, which is used in order to enable greater efficiency, transparency and cost-effectiveness in the field of public procurement;
31. 'Electronic marketplace for small-value procurement' shall mean an electronic platform in the type of electronic catalogue managed by the Public Procurement Bureau and used for small-value procurement in accordance with the requirements laid down in this Law;
32. 'Dynamic purchasing system' shall mean a system set up as a completely electronic process, open throughout its term to all economic operators satisfying the selection criteria, and which is used for common purchases that are generally available on the market and that meet the needs of the contracting authority;
33. 'Equivalent' shall mean that the goods or services tendered have the same or better technical features than those set out in the technical specification of the subject-matter of the procurement;
34. 'Market price' shall mean the price on the relevant market considering the subject-matter of the procurement, the market development, the requirements of the tender documentation such as the method of payment, delivery period, quantities, warranty period, means of assurance etc.;
35. 'Common Procurement Vocabulary -CPV (hereinafter referred to as: CPV)' shall mean a single classification system of nomenclatures for products, services and works, applicable in the public procurement procedures and providing uniformity with the other existing nomenclatures for products, services and works;
36. 'Framework agreement' shall mean a written agreement between one or more contracting authorities and one or more economic operators establishing the essential terms that will govern the public contracts to be awarded in a given period, in particular regarding the price and, where appropriate, the quantity envisaged;
37. 'Responsible person in the contracting authority' shall be an official heading a state authority, a mayor of the local self-government unit or a director of a legal entity;
38. 'Special or exclusive right' shall mean a right granted by a competent authority by way of a law, bylaw or an administrative act, which limits the exercise of activities in the utilities sector to one or more entities and which substantially affects the ability of other entities to carry out such activities.
39. 'State authorities' shall be bodies of the state administration and bodies of the legislative and judicial power.
40. 'Electronic catalogue' shall mean an organised descriptive list of supplies or services offered by the economic operators through the ESPP;
41. 'Conformity assessment body' shall be a body performing conformity assessment activities including calibration, testing, certification and inspection, which is accredited in accordance with the substantive regulations.
42. 'Variant' shall mean a tender in which the tenderer offers a subject-matter of procurement meeting the minimum requirements, or standards set out by the contracting authority in the tender documentation, but in a different manner, with other technical characteristics or methods than those laid down in the technical specification.

#### Article 3

##### **Principles underlying public procurement**

(1) The regulation, development of the public procurement system and its implementation are based on the principles of free movement of goods, freedom of establishment, freedom to provide services, as well as the principles of economy, efficiency, competition between economic operators, transparency, equal treatment of economic operators and proportionality.

(2) In conducting public procurement, the contracting authority shall be obliged to comply with the obligations for environmental protection, social policy and labour protection arising from the regulations in the Republic of Macedonia, collective agreements and from international agreements and conventions ratified in accordance with the Constitution of the Republic of Macedonia.

#### Article 4

##### **Principle of economy, efficiency and effectiveness in the use of public funds**

(1) The contracting authority shall conduct public procurement in a manner ensuring the economic, efficient and effective use of public funds and successful attainment of objectives from its operations, defined in accordance with the regulations governing the use of budget and other public funds.

(2) The contracting authority shall conduct public procurement in a manner ensuring adequate quality of the subject-matter of the procurement considering its purpose and value.

(3) The contracting authority shall conduct public procurement in a time and manner prescribed by this Law and regulations adopted on the basis of this Law, with minimum cost in the public procurement procedure.

#### Article 5

##### **Principle of competition between economic operators**

(1) In the public procurement procedure, the contracting authority shall not unduly limit the competition between economic operators.

(2) The contracting authority shall conduct the public procurement procedure in accordance with the regulations for protection of the competition and it shall not limit potential tenderers by selecting the type of procedure or by implementing the procedure in contravention of this Law.

(3) The contracting authority shall not require the tenderer to hire specific subcontractors to perform the contract or ask the tenderer to perform any other activities, such as export of specific products or services.

#### Article 6

##### **Principle of transparency**

(1) The contracting authority shall conduct public procurement procedures in a transparent manner and in accordance with the provisions of this Law and regulations adopted on the basis of this Law.

(2) The principle of transparency shall be ensured by the publication of the public procurement plan, the contract notices and award notices of this Law, the tender documentation and the public contract, and their modifications and supplements.

#### Article 7

##### **Principle of equal treatment and non-discrimination of economic operators**

The contracting authority shall ensure the equal treatment of economic operators in all stages of the public procurement procedure and regarding all elements of the tender, considering the mutual recognition and proportionality of the requirements concerning the subject-matter of the procurement.

#### Article 8

##### **Principle of proportionality**

The public procurement procedure shall be conducted in proportion to the subject-matter of the procurement, in particular with regard to the selection, defining and application of conditions, requirements and criteria, which must be logically related to the subject-matter of the procurement.

#### Chapter 2

##### **Contracting authorities and rules for procurement in the classical public sector and in the utilities**

#### Article 9

##### **Contracting authorities**

(1) Contracting authorities, within the sense of this Law, shall be:

a) state authorities and bodies of the local self-government units;

b) legal entities established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and which are financed, for the most part, by the contracting authorities referred to in point a) of this paragraph or by such legal entities, or which are subject to control over their operations by the contracting authorities referred to in point a) of this paragraph or by such legal entities, or in which more than half of the members

- in their managerial or supervisory board are appointed by the contracting authorities referred to in point a) of this paragraph or by such legal entities;
- c) associations established by one or more contracting authorities referred to in points a) and b) of this paragraph;
  - d) public enterprises, joint stock companies and limited liability companies in which the contracting authorities referred to in points a), b) and c) of this paragraph have a dominant direct or indirect influence through ownership, i.e. if they hold the major share of the company's capital, have a majority of the votes of the stockholders or appoint more than half of the members of the managerial or supervisory board of the enterprise or the company, and which perform one or more activities in the utilities sector, in the cases when they award public contracts or conclude framework agreements with the purpose of performing the relevant activities; and
  - e) any legal entity, other than those referred to in points a), b), c) and d) of this paragraph, which carries out one or more activities in the utilities sector, based on a special or exclusive right, in the cases when it awards public contracts or concludes framework agreements with the purpose of carrying out the relevant activities.
- (2) Rights which have been granted in a procedure with public announcement and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of paragraph (1) point e) of this Article.
- (3) The Government of the Republic of Macedonia (hereinafter referred to as: the Government) shall determine an indicative list of contracting authorities referred to in paragraph (1) of this Article.

#### Article 10

##### **Rules for public procurement in the classical public sector and in the utilities**

- (1) The provisions of this Law shall apply to all contracting authorities, unless otherwise regulated in accordance with this Law.
- (2) The contracting authority referred to in Article 9 paragraph (1) points a), b) and c) of this Law shall apply the provisions relating to the utility activities in the cases where it conducts a public procurement procedure for supplies, services or works for carrying out an activity in the utilities sector. For procurement of other supplies, services or works that are not intended for carrying out utility activities, the contracting authority shall apply the provisions relating to the classical public sector.
- (3) The contracting authority<sup>1</sup> referred to in Article 9 paragraph (1) point d) of this Law shall apply the rules relating to the utility activities in the cases where it conducts a public procurement procedure for supplies, services or works for carrying out activities in the utilities sector, but also for procurement of other supplies, services or works that are not intended for carrying out utility activities.
- (4) The contracting authority referred to in Article 9 paragraph (1) point d) of this Law shall apply the rules relating to the utility activities in the cases where it conducts a public procurement procedure for supplies, services or works for carrying out activities in the utility sector; while for procurement of other supplies, services, or works that are not intended for carrying out utility activities, it shall not be obliged to apply this Law.

#### Chapter 3

##### **Utility activities**

#### Article 11

##### **Gas and heat**

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<sup>1</sup> Note by the translator: The Macedonian terminology recognizes only the term 'contracting authority' even in relation to utilities, so, in the translation, contracting authority shall also mean 'contracting entity'.

(1) In the field of gas or heat, the public procurement rules for utility activities shall concern the provision and operation of fixed networks intended to provide services to the public in connection with the production, transport or distribution, or supply of gas or heat to such networks.

(2) The supply of gas or heat, by a contracting authority referred to in Article 9 paragraph (1) points d and e) of this Law, to networks intended to provide services to the public shall not be considered as a relevant activity within the meaning of this Article, if:

the production of gas or heat is the consequence of carrying out an activity that is not a utility activity; and

- the supply of gas or heat to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20% of the contracting authority's turnover, considering the average for the preceding three years, including the current year.

(3) Supply, within the meaning of this Article, shall include generation or production as well as wholesale and retail sale, except production of gas in the form of extraction.

## Article 12

### Electricity

(1) In the field of electricity, the public procurement rules for utility activities shall concern the provision and operation of fixed networks intended to provide services to the public in connection with the production, transport or distribution, or the supply of electricity to such networks.

(2) The supply of electricity, by a contracting authority referred to in Article 9 paragraph (1) points d and e) of this Law, to networks intended to provide services to the public shall not be considered as a relevant activity within the meaning of this Article, if:

- the production of electricity takes place for the purpose of satisfying its own consumption that is necessary for carrying out an activity that is not a covered activity; and
- the supply of electricity to the public network depends only on the contracting authority's own consumption and has not exceeded 30% of the total own production of electricity, considering the average for the preceding three years, including the current year.

(3) Supply, within the meaning of this Article, shall include generation or production as well as wholesale and retail sale.

## Article 13

### Water

(1) In the field of water, the public procurement rules for utility activities shall concern the provision and operation of fixed networks intended to provide services to the public in connection with the production, transport or distribution of drinking water, or the supply of drinking water to such networks.

(2) The public procurement rules for utility activities shall also apply to public procurement procedures and design contests conducted by a contracting authority which pursues an activity referred to in paragraph (1) of this Article, and which are connected with:

- hydraulic engineering projects, irrigation or land drainage, where more than 20% of the total volume of water is used for drinking; or
- disposal or treatment of sewage.

(3) The supply of drinking water, by the contracting authority referred to in Article 9 paragraph (1) points d) and e) of this Law, to networks intended to provide services to the public shall not be considered as a relevant activity within the meaning of this Article, if:

- the production of drinking water is necessary for carrying out activities that are not utility activities; and
- the supply to the networks depends only on the contracting authority's own consumption and has not exceeded 30% of the total own production of drinking water, considering the average for the preceding three years, including the current year.

(4) Supply, within the meaning of this Article, shall include generation or production as well as wholesale and retail sale.

## Article 14

### **Transport services**

(1) The public procurement rules for utility activities shall concern the provision or operation of networks providing services to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

(2) A network shall be considered to exist, within the meaning of paragraph (1) of this Article, in the cases where the service is provided under operating conditions laid down by a competent authority of the Republic of Macedonia or by a local self-government unit, which include conditions on the routes to be served, the capacity to be made available or the frequency of the service.

### **Article 15**

#### **Ports and airports**

The public procurement rules for utility activities shall concern the exploitation of a geographical area for the purpose of the provision of airport infrastructure, inland ports or other terminal facilities to carriers by air or carriers by inland waterway.

### **Article 16**

#### **Postal services**

(1) The public procurement rules for utility activities shall concern the provision of:

- postal services and/or
- other services than postal services, which are provided by a contracting authority that also provides postal services within the meaning of paragraph (3) of this Article, provided that the conditions set out in Article 26 of this Law are not satisfied.

(2) The item addressed with full address that is to be carried by a postal service provider shall be a postal item. Postal items shall include items of correspondence (letter and postal card), items for blind people, direct mail, books, catalogues, newspapers, periodicals and packages containing merchandise with or without a designated value.

(3) Services consisting of the clearance, transport, sorting and distribution of postal items in the domestic and international postal traffic shall be postal services, which include services falling within or services falling outside the scope of the universal services, in compliance with the regulations governing the postal services.

(4) Services other than postal services shall be the services for mail service management, in particular services both preceding and subsequent to despatch, including mailroom management services or services concerning postal items that are not included in paragraph (2) of this Article, such as direct mail bearing no address.

### **Article 17**

#### **Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels**

The public procurement rules for utility activities shall concern the exploitation of a geographical area for the purpose of:

- extraction of oil or gas; and
- exploring for or extracting coal or other solid fuels.

### **Chapter 4**

#### **Specific situations**

### **Article 18**

#### **Procurements subsidised or co-financed by contracting authorities**

(1) The provisions of this Law shall apply to:

- a) procedures for public procurement of works in the classical public sector which are subsidised or co-financed directly by the contracting authorities referred to in Article 9 paragraph (1) points a), b) and c) of this Law by more than 50% and the estimated value of which, net of VAT, is equal to or greater than EUR 1,000,000 in Denar equivalent, where those contracts involve:
  - civil engineering activities or



- building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes; and
- b) procedures for public procurement of services in the classical public sector which are subsidised or co-financed directly by the contracting authorities referred to in Article 9 paragraph (1) points a), b) and c) of this Law by more than 50% and the estimated value of which, net of VAT, is equal to or greater than EUR 130,000 in Denar equivalent.
- (2) The provisions of this Law shall apply to procedures for public procurement of supplies and services in the classical public sector which are subsidised or co-financed by the contracting authorities referred to in Article 9 paragraph (1) points a), b) and c) of this Law by more than 50% in cooperation with associations, organisations or institutes, provided that the estimated value of the supplies or services, net of VAT, is equal to or greater than EUR 40,000 in Denar equivalent.
- (3) For procurements of paragraphs (1) and (2) under this Article, the contracting authority shall undertake all necessary actions to ensure the compliance with the provisions of this Law, if the entity beneficiary of the subsidy or co-financing awards the public contract or if the contracting authority awards such contract for and on behalf of that entity.

#### Article 19

##### **Public procurement involving defence and security aspects**

- (1) The provisions of this Law shall apply to the procedures for public procurement of supplies, services or works in the fields of defence and security, except for the public procurement of supplies, services and works regulated by the Law on Public Procurement in the Fields of Defence and Security.
- (2) Notwithstanding paragraph (1) of this Article, the provisions of this Law shall not apply to procedures for public procurement of supplies, services or works in the fields of defence and security:
  - a) if the public procurement procedures are conducted in a third country, including for civil purchases, when the armed forces of the Republic of Macedonia are deployed or conducting military drills outside the territory of the Republic of Macedonia, where operational needs require the contracts to be awarded to economic operators established in the territory where the operations are conducted;
  - b) if a state authority of the Republic of Macedonia awards a public contract to a state authority of a third country relating to:
    - the supply of military equipment or security-sensitive equipment;
    - security-sensitive services;
    - security-sensitive works;
    - services or works directly linked to military equipment or security-sensitive equipment;
    - services or works for specific military purposes;
  - c) if procurements are intended for carrying out intelligence and counter-intelligence activities, laid down by the Law governing public procurement in the fields of defence and security;
  - d) if conducting a public procurement procedure or a design contest in accordance with this Law would lead to the supply of information the disclosure of which is contrary to the essential security interests of the Republic of Macedonia;
  - e) if the essential security interests of the Republic of Macedonia cannot be safeguarded by less intrusive measures, such as requirements for protecting the confidentiality of information published by contracting authorities in the public procurement procedure or design contest in accordance with the requirements of this Law;
  - f) if the awarding and performance of the public contract or design contest are classified by a security classification in accordance with the regulations on protection of classified information or must be accompanied by special security measures in accordance with the regulations of the Republic of Macedonia, in the case where the competent authority finds that the essential interests of the state cannot be safeguarded by less intrusive measures, such

as the requirements for protecting the confidentiality of information published by contracting authorities in the public procurement procedure or design contest in accordance with the requirements of this Law;

- g) which are conducted by the contracting authority in accordance with public procurement rules other than the rules set out in this Law, which are laid down by:
- an international agreement concluded between the Republic of Macedonia and a third country covering products, services or works intended for joint implementation or exploitation of a project by the signatories to that international agreement;
  - a concluded international agreement relating to the stationing of troops and concerning the undertakings of the Republic of Macedonia or a third country; or
  - an international organisation;
- h) which are conducted by the contracting authority in accordance with the rules of an international organisation or an international financial institution, where the contract or design contest is completely financed by the international organisation or by the international financial institution. In the case where the contract or contest is for the most part co-financed by an international organisation or an international financial institution, the contracting authority and the organisation, or the institution shall agree on the applicable rules.

## Article 20

### **Mixed public contracts**

- (1) Public contracts which have as their subject-matter different types of procurement shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract.
- (2) In the case of mixed public contracts where the subject-matter of the procurement consists partly of specific services and partly of services not covered by Title V of this Law, the public procurement procedure may be conducted in accordance with Title V of this Law, provided that the value of the other services is lower than the thresholds defined in Article 40 of this Law.
- (3) In the case of mixed public contracts consisting partly of services and partly of supplies, the main subject-matter of the procurement shall be determined depending on which of the estimated values of the services or supplies is the highest.
- (4) In the case of public contracts which have as their subject-matter elements regulated by other laws, the contracting authority may decide to conduct separate procedures or a single procedure for the individual parts. If the contracting authority decides to conduct separate procedures for the individual parts, the decision on which law shall apply to these separate procedures shall be taken based on the characteristics of the individual part.
- (5) If in the cases under paragraph (4) of this Article, the contracting authority decides to conduct a single procedure, this Law shall apply, irrespective of the value of the parts that would otherwise fall under a different law and irrespective of which law would have applied to those parts, except in the cases referred to in Article 22 of this Law.
- (6) In the case of mixed public contracts that include supplies, services and works, as well as concessions, the mixed contracts shall be awarded in accordance with this Law, provided that the estimated value of the part constituting a public procurement within the meaning of this Law is equal to or greater than the thresholds set out in Article 40 of this Law.
- (7) Where the different parts of the procurement in question are objectively not separable, the law to be applied shall be determined on the basis of the main subject-matter of that procurement.

(8) Notwithstanding paragraphs (4), (5), (6) and (7) of this Article, in the case of public procurement procedures falling within the classical public sector and in the utilities, the contracting authority may decide to conduct separate procedures or a single procedure for each activity. If the contracting authority decides to conduct separate procedures, the decision as to which rules shall apply to the award of each of the separate contracts shall be taken on the basis of the characteristics of each activity separately. The decision whether to conduct a single procedure or more separate procedures shall not be taken with the purpose of excluding the application of this Law or of the Law regulating concessions.

(9) If the contracting authority decides to conduct separate procedures, the public contract for carrying out activities falling within the classical public sector and the utilities shall be awarded according to the rules applicable to the activity for which the contract is principally intended.

(10) If the contracting authority decides to conduct separate procedures, and it is objectively impossible to determine for which activity the contract is principally intended, then:

- a) the public contract shall be awarded by applying the provisions for the classical public sector, if one of the activities is a utility activity and the remaining activities fall under the classical public sector;
- b) the public contract shall be awarded by applying the provisions for the utilities, if one of the activities is a utility activity, and the remaining activities are subject to the Law regulating concessions and public private partnerships; and
- c) the public contract shall be awarded by applying the provisions for the utilities, if one of the activities is a utility activity, and the remaining activities are not subject to the application of this Law or the Law regulating concessions and public private partnerships.

#### Article 21

##### **Mixed public contracts involving defence and security aspects**

(1) The provisions of this Law shall apply to mixed contracts the subject-matter of which is covered by this Law and by the Law regulating procurement in the fields of defence and security.

(2) Where the different parts of the contract are objectively separable, the contracting authority may conduct separate procedures or a single procedure for the separate parts.

(3) If the contracting authority decides to conduct separate procedures for the individual parts, the decision on which law shall apply to these separate procedures shall be taken based on the characteristics of the individual part.

(4) If the contracting authority decides to conduct a single procedure, the contract may be awarded by applying the Law regulating procurement in the fields of defence and security, provided that the conduct of a single procedure is justified for objective reasons.

(5) The decision whether to conduct a single procedure or more separate procedures shall not be taken with the purpose of excluding the application of this Law or of the Law regulating procurement in the fields of defence and security.

#### Chapter 5

##### **Exclusions from the scope of application of the Law**

#### Article 22

##### **Public procurement for the needs of the diplomatic and consular representations**

(1) The provisions of this Law shall not apply when awarding public contracts for the needs of the diplomatic and consular representations of the Republic of Macedonia abroad with an estimated value up to EUR 20,000 in Denar equivalent for supplies and services, or up to EUR 50,000 in Denar equivalent for works, except Articles 3, 4, 5, 6, 7 and 8 of this Law.

(2) Public contracts for the needs of diplomatic and consular representations of the Republic of Macedonia abroad with an estimated value exceeding the amounts referred to in paragraph (1) of this Article shall be awarded in accordance with the provisions of this Law.

#### Article 23

### **General exclusions**

(1) The provisions of this Law shall not apply to:

1. public procurement and design contests conducted or organised by the contracting authority in accordance with procedures different from those laid down in this Law and which are established by a legal instrument creating international law obligations, such as an international agreement, concluded between the Republic of Macedonia and a third country and covering supplies, services or works intended for the joint implementation or exploitation of a project by the countries signatories to that international agreement
2. public procurement and design contests conducted or organised by the contracting authority in accordance with the rules of an international organisation or an international financial institution, where the contract or design contest is completely financed by the international organisation or by the international financial institution. In the case where the contract or contest is for the most part co-financed by an international organisation or an international financial institution, the contracting authority and the organisation, or the institution shall agree on the applicable rules;
3. public procurement of:
  - a) services for purchase or rental of land, existing buildings or other immovable property or concerning rights thereon;
  - b) services for purchase, development, production or co-production of programme material intended for audio-visual services or radio services awarded by audio-visual or radio service providers;
  - c) terms for broadcasting of radio or TV programmes;
  - d) arbitration and conciliation services;
  - e) services for legal representation of clients by lawyers in:
    - an arbitration or conciliation procedure in the Republic of Macedonia, in a third country or before an international arbitration or conciliation instance;
    - proceedings before the courts in the Republic of Macedonia, the courts, tribunals or bodies governed by public law in a third country or before international courts, tribunals or institutions;
  - f) legal advice services provided by lawyers in preparation of any of the proceedings referred to in point e) of this paragraph;
  - g) notary services for document certification and authentication;
  - h) legal services provided by trustees or appointed legal guardians of minors or other legal services the providers of which are designated by a court or are designated by law to carry out specific tasks under the supervision of a court;
  - i) other legal services that are connected with the exercise of official authority;
  - j) financial services in connection with the issue, trading or transfer of securities or other financial instruments within the meaning of the substantive regulations governing the capital market and the operations of the National Bank of the Republic of Macedonia;
  - k) borrowings and loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
  - l) employment contracts;
  - m) services that are provided by non-commercial organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except patient transport ambulance services;
  - n) public passenger transport services by rail or by metro.
4. service contracts awarded by the contracting authority to another contracting authority or to an association of contracting authorities, if they have an exclusive right pursuant to a law, bylaw or an administrative act published in the "Official Gazette of the Republic of Macedonia" or in an official municipal journal for providing the services in question;

5. research and development services, except to those covered by the CPV codes from 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5, in cases when the benefit from those services accrues exclusively to the contracting authority for its use in the conduct of its own affairs and the services are wholly remunerated by the contracting authority;
6. public procurement and design contests, if they are conducted by a contracting authority providing postal services within the meaning of Article 16 paragraph (3) of this Law for the pursuit of the following activities:
  - a) added value services linked to electronic means and which are provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
  - b) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by point 3 under j) of this paragraph, in particular postal money orders and postal cashless operations;
  - c) philatelic services; or
  - d) logistics services, including services combining physical delivery or warehousing with other non-postal functions;
7. public procurement in the utility activities which are conducted for resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive rights to sell or lease the subject-matter of the procurement, and other entities are free to sell or lease it under the same conditions;
8. public procurement and design contests conducted by the contracting authorities referred to in Article 9 paragraph (1) points d) and e) of this Law for the pursuit of utility activities abroad;
9. public procurements the subject-matter of which is the purchase of water, if they are awarded by a contracting authority pursuing one or more of the utility activities referred to in Article 13 paragraph (1) of this Law; and
10. public procurement the subject-matter of which is the supply of energy or fuel for the production of energy, if they are awarded by a contracting authority pursuing one or more of the utility activities referred to in Article 11 paragraph (1), Article 12 paragraph (1) or Article 17 of this Law.

#### Article 24

##### **Public procurement between contracting authorities**

- (1) The provisions of this Law shall not apply to public contracts in the classical public sector which are awarded by the contracting authority referred to in Article 9 paragraph (1) points a), b) and c) of this Law to a legal entity where:
  - a) the contracting authority exercises over the legal entity, independently or together with other contracting authorities, a control similar to that which it exercises over its own organisational units;
  - b) the controlled legal entity carries out more than 80% of its activities in the performance of tasks entrusted to it by one or more controlling contracting authorities or entrusted to it by other legal entities controlled by one or more contracting authorities;
  - c) in the controlled legal entity there is no private capital participation; and
  - d) the value of the subject-matter of the procurement is the same as or lower than the market price.
- (2) The contracting authority shall be deemed to exercise a control similar to that which it exercises over its own organisational units, where it exercises a decisive influence over both strategic objectives and significant decisions of the legal entity. Such control may also be exercised by another legal entity, which is controlled in the same way by that contracting authority.

(3) The provisions of this Law shall also not apply where the controlled legal entity which is itself a contracting authority referred to in Article 9 paragraph (1) points a), b) and c) of this Law awards a public contract to a contracting authority referred to in Article 9 paragraph (1) points a), b) and c) of this Law which controls this legal entity, or to another legal entity controlled by the same contracting authority, provided that there is no private capital participation in the legal entity being awarded the public contract.

(4) The provisions of this Law shall not apply to contracts concluded exclusively between one or more contracting authorities referred to in Article 9 paragraph (1) points a), b) and c) of this Law where:

- a) the contract establishes or implements a cooperation between the contracting authorities with the aim of ensuring that the public services they deliver are performed with a view to achieving objectives they have in common;
- b) this cooperation is implemented based on needs solely relating to the public interest;
- c) the contracting authorities perform on the market less than 20% of the activities concerned by the cooperation; and
- d) the value of the subject-matter of the procurement is equal to or lower than the market price.

(5) For the determination of the percentage of activities referred to in paragraph (1) point b) and paragraph (4) point c) of this Article, the average total turnover or another appropriate factor relating to the activity shall be taken into consideration, such as costs incurred by the legal entity or contracting authority with respect to supplies, services and works in a period of three years preceding the conclusion of the contract.

(6) Where, because of the date on which the legal entity or contracting authority was established, commenced activities or because of a reorganisation of its activities, data about the turnover or about another appropriate factor relating to the activity is not available or is no longer relevant, it shall be sufficient if the legal entity or contracting authority shows that the data is credible, particularly in the business plan.

(7) In the cases where the procurement is conducted pursuant to this Article, the legal entity being awarded the contract shall provide the supplies, services or works by applying this Law, irrespective of whether the legal entity is a contracting authority.

#### Article 25

##### **Public contracts awarded to an affiliated undertaking or to a group of contracting authorities of which the contracting authority forms part**

(1) The provisions of this Law shall not apply to awarding public contracts in the utility activities:

- by a contracting authority to an affiliated undertaking; or
- by a group of contracting authorities formed exclusively for the purpose of carrying out a utility activity to a company affiliated to one or more of the contracting authorities forming part of that group.

(2) The provisions under paragraph (1) of this Article shall apply only where at least 80% of the average turnover of the affiliated undertaking over the preceding three years derives from the provision of such supplies, services or works to the undertakings with which it is affiliated.

(3) An affiliated undertaking shall mean an undertaking:

- that is subject to a dominant influence by the contracting authority, directly or indirectly;
- that may exercise a dominant influence over the contracting authority; or
- that together with the contracting authority is subject to the dominant influence of another undertaking.

(4) Dominant influence shall exist where one entity directly or indirectly:

- owns the majority of the capital in the other entity;
- controls the majority of the votes attaching to the shares or stocks issued by the other entity; or
- can appoint more than half of the members in the management bodies or in the supervisory board.

(5) The provisions of this Law shall not apply to awarding public contracts in the utility activities:

- by a group of contracting authorities formed exclusively for carrying out a utility activity to a contracting authority forming part of that group; or
- by a contracting authority to a group of contracting authorities formed exclusively for carrying out a utility activity of which that contracting authority forms part.

(6) In the cases where the procurement is conducted pursuant to this Article, the legal entity being awarded the contract shall provide the supplies, services or works by applying this Law, irrespective of whether the legal entity is a contracting authority.

#### Article 26

##### **Utility activities directly exposed to competition**

(1) The provisions of this Law shall not apply to public procurement and design contests in the utilities provided that the contracting authority demonstrates before the Commission for Protection of Competition that the activity is directly exposed to competition on the relevant market in the Republic of Macedonia.

(2) The decision as to whether the activity is directly exposed to competition shall be taken pursuant to the provisions of the regulations for protection of competition, and in particular: the characteristics of the products or services, the existence of alternative products or services that are substitutable, the prices and the actual or potential presence of more than one supplier.

(3) The geographical reference market for which exposure to competition is assessed shall consist of the area in which specific economic operators are involved in the supply or demand of products or services, in which the conditions of competition are sufficiently homogeneous and can be distinguished from the neighbouring areas, in particular because the conditions of competition are significantly different in those areas.

(4) The assessment, in particular, shall take into account the type and characteristics of specific products or services, the existence of market entry barriers or consumer preferences, significant differences of the economic operators' market shares between the area concerned and neighbouring areas, or substantial price difference.

(5) The contracting authority, referred to in Article 9 paragraph (1) points d) and e) of this Law, which considers that the activity concerned is directly exposed to competition on the market may submit an application to the Commission for Protection of Competition to determine the direct exposure to competition pursuant to this Law.

(6) The application referred to in paragraph (5) of this Article shall contain, in particular:

- an indication of the activity considered by the contracting authority to be directly exposed to competition;
- facts and evidence confirming the assertions; and
- reference to the provisions of the laws, bylaws and other regulations or agreements regarding the fulfilment of the requirements under this Article.

(7) The provisions of this Law shall not apply to public procurement and design contests if the Commission for Protection of Competition:

- decides that the activity concerned is directly exposed to competition in accordance with the provisions of this Law and the regulations for protection of competition within 90 working days as of the date of submission of the application; or
- fails to decide on such application within the time limit referred to in indent 1 of this paragraph.

#### Chapter 6

##### **General rules**

#### Article 27

##### **Conditions relating to the Government Procurement Agreement of the World Trade Organization and other international agreements**

The contracting authority, in the public procurement procedures, shall not accord a less favourable treatment to economic operators established in countries signatories to the Government Procurement Agreement of the World Trade Organization, or to other international contracts or agreements that are ratified in accordance with the Constitution of the Republic of Macedonia.

#### Article 28

##### **Economic operators**

Any economic operator shall have the right to participate, independently or as a member of a group of economic operators, in a public procurement procedure, in accordance with Article 107 of this Law.

#### Article 29

##### **Reserved contracts**

(1) The contracting authority may reserve the right to participate in public procurement procedures to economic operators having as their main aim the social and professional integration of people with disabilities or people from socially vulnerable groups and which are reinvesting the profit for that purpose in accordance with the Law.

(2) In the cases referred to in paragraph (1) of this Article, at least 30% of the employees of the economic operator shall be people with disabilities or people from socially vulnerable/excluded groups, in accordance with the regulations in the area of labour and social protection.

(3) The economic operators referred to in paragraph (1) of this Article shall prove they fulfil the requirement under paragraph (2) of this Article by submitting a document issued by a competent authority.

(4) In the case of reserved contracts, the economic operator may only hire subcontractors that meet the requirements referred to in paragraph (1) of this Article.

(5) The contracting authority that intends to conduct a procedure for a reserved contract shall indicate this in the contract notice and in the tender documentation.

#### Article 30

##### **Data protection**

(1) The contracting authority shall not disclose information submitted by the economic operator which has been designated as a trade secret or identified as classified information, unless otherwise provided for by this or other laws.

(2) The contracting authority shall have to ensure the protection of data, which in accordance with the regulations for personal data protection or protection of classified information are considered as personal or classified information.

(3) The economic operator may, by virtue of a law, other regulation or a general legal act, designate specific data as a trade secret or as classified, including the technical or trade secrets contained in the tender or request to participate, provided that it indicates the legal grounds on the basis of which they are designated as secret or as classified.

(4) The economic operator shall not designate as a trade secret or as classified information: the price of the tender, the life cycle costing, the specifications of supplies, services or works in the tender, the quantities, the data concerning the selection criteria, the public documents, extracts from public registers and other data which in accordance with the special regulations have to be published or shall not be designated as trade secrets or as classified information.

(5) Once the decision on selection or on cancellation of the procedure is declared final, all documents from the public procurement procedure, except the data constituting trade secrets, classified information and personal data, shall be considered public information.

(6) Before the decision on selection or on cancellation of the procedure becomes final, the rules governing the access to public information shall not apply.

#### Article 31



### **Communication between the contracting authority and the economic operators**

- (1) All communications and exchange of information in accordance with the provisions of this Law and, in particular, the submitting of tenders or requests to participate shall be made by using electronic means through the ESPP.
- (2) The ESPP and its technical characteristics shall be non-discriminatory, generally available and interoperable with the information and communication technologies products in general use and shall not restrict economic operators' access to the public procurement procedure.
- (3) Notwithstanding paragraph (1) of this Article, the contracting authority shall not be obliged to require the use of electronic means through the ESPP in the following cases:
  - a) if due to the specialised nature of the procurement, the use of electronic means through the ESPP would require specific tools, devices or file formats that are not generally available or supported by the generally available software;
  - b) if the programmes supporting file formats suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available software, or if they are protected by a license and the contracting authority cannot provide their downloading or remote use;
  - c) if the tender documentation requires the submission of physical or scale models which cannot be transmitted by using electronic means; and
  - d) in the negotiated procedure without publication of a contract notice, design contest, procurement of specific services, and in the conduct of negotiations or dialogue in the procedures involving a stage of negotiations or dialogue.
- (4) The communication that, in accordance with the cases under paragraph (3) of this Article, is not conducted by using electronic means through the ESPP shall be carried out personally, through an authorised postal services provider or other suitable carrier or in combination with using electronic means through the ESPP.
- (5) Notwithstanding paragraph (1) of this Article, the contracting authority shall not be obliged to require the use of electronic means through the ESPP in the submission of tenders, provided that the use of other means of communication is necessary because of a breach of security of the ESPP or for the protection of security-sensitive information requiring a level of protection that cannot be properly ensured by using electronic means through the ESPP.
- (6) The contracting authority, which pursuant to paragraph (3) of this Article, permits the submission of tenders by using other means of communication shall explain the reasons for this decision.
- (7) The tenders and requests to participate may be reviewed only after the expiry of the time limit for their submission.
- (8) The contracting authority shall accept electronic signatures in accordance with the regulations governing the electronic identification.
- (9) For the use of the ESPP, the contracting authorities and economic operators shall pay fees in accordance with the Tariff Book adopted by the Minister of Finance.
- (10) Assets realised by collecting the fees shall be revenues of the Public Procurement Bureau that are to be used for improvement and development of the public procurement system.
- (11) The method of using the ESPP shall be prescribed by the Minister of Finance.
- (12) The users of ESPP shall be solely responsible for the accuracy of data entered in the ESPP.

### **Article 32**

#### **Nomenclature**

- (1) The CPV nomenclature shall be used in the public procurement procedures.
- (2) The Government shall adopt the CPV.

### **Article 33**

#### **General measures for prevention of corruption**

- (1) The contracting authority shall be obliged to take all necessary measures in the planning process, in the public procurement procedure and in the performance of the contract, aimed at timely detection of corruption and elimination or mitigation of the detrimental consequences of corruption.

(2) The responsible person and other managerial persons of the contracting authority shall be obliged to give the public procurement officers all orders and instructions in writing or by using electronic mail.

(3) The public procurement officer shall be obliged to refuse in writing the execution of an order and instruction given by the responsible person or other managerial persons of the contracting authority, if it is in contravention of this Law.

(4) In the cases referred to in paragraph (3) of this Article, the public procurement officer shall not be transferred to another position or have his/her employment terminated in a period of twelve months from the day when the officer refused to execute the order, provided that he/she performs the duties pertaining to the job in accordance with the Law.

#### Article 34

##### **Reporting corruption**

(1) The public procurement officer or any other person engaged by the contracting authority, and any interested party that has information of corruption shall be obliged to inform thereof the State Commission for Prevention of Corruption or the Public Prosecution Office of the Republic of Macedonia.

(2) The person referred to in paragraph (1) of this Article shall not have his/her employment terminated, or shall not be transferred to another position because he/she has reported corruption in public procurement acting in good conscience and with good intentions.

#### Article 35

##### **Prohibition for engagement by the contractor**

(1) A person from the contracting authority who has been involved in public procurement procedures, where the total value of the contracts awarded to a specific contractor in the last year before the end of his/her term of office or employment is higher than 5% of the total value of all contracts concluded by the contracting authority in that period, or persons relate to him/her, shall not within two years from the end of his/her term of office or employment with the contracting authority:

- a) be employed by, conclude a temporary service agreement or be in any other way engaged by that contractor or by entities affiliated with that contractor;
- b) directly or indirectly receive a pecuniary remuneration or gain any other benefit from the contractor or its affiliated entities; and/or
- c) obtain stakes or shares in the contractor or in an entity affiliated with that contractor.

(2) Where the provisions under paragraph (1) of this Article are breached, the contracting authority shall notify thereof the State Commission for Prevention of Corruption and the Public Prosecution Office of the Republic of Macedonia.

#### Article 36

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

(1) The persons participating in the preparation of the tender documentation shall not be tenderers or members in a group of tenderers in the contract award procedure.

(2) The participation in the technical dialogue shall not be considered as participation in the development of the tender documentation within the meaning of paragraph (1) of this Article.

#### Article 37

##### **Application of the Law on Prevention of Conflict of Interests**

The provisions of the Law on Prevention of Conflict of Interests shall accordingly apply to the public procurement procedures with a view to preventing conflict of interests.

#### Article 38

##### **Statement for absence of conflict of interests**

(1) In the public procurement procedure, the chairperson, deputy chairperson, members of the public procurement committee and their deputies (hereinafter referred to as: the committee), as well as the responsible person shall sign a statement for absence of conflict of interest that shall form part of the dossier of the conducted procedure.

(2) In the case of conflicts of interest of the chairperson, deputy chairperson, members of the committee and their deputies, they shall withdraw from the work of the committee, shall inform the responsible person thereof, and shall be replaced by other persons.

(3) In the case of conflicts of interest of the responsible person, he/she shall authorise, by a special decision, another person from among the officials or managerial staff of the contracting authority to adopt the relevant decisions and to sign the contract, and he/she shall inform the management body or the body controlling its operations to that effect.

## Chapter 7

### General rules on application of the Law

## Article 39

### Calculation of the estimated value

(1) The contracting authority shall estimate the value of a public contract by calculating the total amount for the performance of the contract, net of VAT, taking into consideration the market conditions, any option and any potential renewal or increase in the value of the contract, provided they can be foreseen when making the estimate.

(2) Where the contracting authority provides a possibility for awarding prizes or remunerations to economic operators, it shall include them in the estimated value of the public contract.

(3) Where a contracting authority is comprised of separate organisational units, the estimated value shall be calculated by the sum of the estimated value of the contracts of all individual organisational units. Where a separate organisational unit is independently responsible for its public procurement procedures or certain types of public procurement, the estimated value may be set at the level of the unit in question. The organisational unit shall be independently responsible for its public procurement procedures, provided that it independently assumes the rights and obligations.

(4) The estimated value of the public contract shall be calculated during the development of the annual public procurement plan. The contracting authority, before adopting the public procurement decision, shall adjust the estimated value of the specific public contract determined in the annual public procurement plan, provided that there were some changes in the value.

(5) In framework agreements and dynamic purchasing systems, the contracting authority shall take into consideration the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

(6) In the case of innovation partnerships, the contracting authority shall take into consideration the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership, as well as the maximum estimated value net of VAT of the supplies, services or works to be procured at the end of the envisaged partnership.

(7) The total value of the public works contract shall be determined by taking into consideration the cost of the execution of construction activities and the total estimated value of all supplies and services that are necessary to perform the contract and which are made available to the contractor by the contracting authority.

(8) Where the contracting authority procures supplies, services or works by awarding more contracts in the form of separate lots of one public procurement procedure, the estimated value shall be calculated as a sum of all lots from the contract award procedure.

(9) Where the contracting authority awards a public supply or service contract that has to be extended within a given period, the estimation of the contract value shall be based on the following:

- the total actual value of all successive similar contracts for procurement of the same type awarded during the preceding 12 months adjusted, where possible, to the changes in quantity

- or value which could occur in the course of the 12 months following the conclusion of contract;  
or
- the total estimated value of all successive similar public contracts expected to be awarded in the following 12 months, starting from the moment of the first delivery, or during the financial year where that is longer than 12 months.
- (10) The estimated value of a public supply contract involving hire-purchase or leasing with or without the option to buy the products shall depend on the term of the relevant contract, namely:
- in the case of a fixed-term contract where that term is less than or equal to 12 months, the estimated value shall be calculated by taking into consideration all payments to be made during the term of that contract;
  - in the case of a fixed-term contract where that term is greater than 12 months, the estimated value shall be calculated by taking into consideration all payments to be made during the term of that contract, including the estimated residual value of the supplies; or
  - in the case of a contract the term of which cannot be defined at the moment when the estimation is made, the estimated value shall be calculated by multiplying the monthly value to be paid by the number 48.
- (11) Where the contracting authority awards a public contract for insurance services, the estimated value of such service contracts shall be calculated based on the insurance premium payable and all other forms of remuneration relating to the services in question.
- (12) Where the contracting authority awards a public contract for banking or other financial services, the estimated value of such service contract shall be calculated based on the fees, commissions, interest and all other forms of remuneration relating to the services in question.
- (13) Where the contracting authority awards a public service contract for development of a design or plan in the field of town and country planning, architecture or engineering, the estimated value of such service contract shall be calculated based on the fees or commissions payable and all other forms of remuneration relating to the services in question.
- (14) Where the contracting authority awards a public service contract the total estimated value of which cannot be envisaged, but the average monthly remuneration may be estimated, then the method for estimating the value shall depend on the term of the contract, namely:
- in the case of a fixed-term contract where that term does not exceed 48 months, the estimated value shall be calculated by taking into consideration the full term of the contract;  
or
  - in the case of a contract without a fixed term or if the term of the contract is greater than 48 months, the estimated value shall be calculated by multiplying the monthly estimated value by the number 48.
- (15) The Minister of Finance shall prescribe the types of construction activities that are subject to the public works contract.

#### Article 40

##### **Thresholds for application of the Law**

- (1) The provisions of this Law shall apply to public procurement procedures and design contests having an estimated value net of value-added tax (hereinafter referred to as: VAT) that is equal to or greater than the following thresholds:
- a) in the classical public sector:
    - EUR 1,000 in Denar equivalent for supplies or services or for a design contest;
    - EUR 5,000 in Denar equivalent for works; and
    - EUR 10,000 in Denar equivalent for specific services.
  - b) in the utilities:
    - EUR 2,000 in Denar equivalent for supplies or services or for a design contest in the contracting authorities referred to in Article 9 paragraph (1) point d) of this Law;
    - EUR 10,000 in Denar equivalent for works in the contracting authorities referred to in Article 9 paragraph (1) point d) of this Law;

- EUR 20,000 in Denar equivalent for specific services, except for the services covered by the CPV code 79713000-5 in the contracting authorities referred to in Article 9 paragraph (1) point d) of this Law;
- EUR 400,000 in Denar equivalent for supplies or services or for a design contest in the contracting authorities referred to in Article 9 paragraph (1) point e) of this Law;
- EUR 5,000,000 in Denar equivalent for works in the contracting authorities referred to in Article 9 paragraph (1) point e); and
- EUR 1,000,000 in Denar equivalent for specific services in the contracting authorities referred to in Article 9 paragraph (1) point e) of this Law.

(2) The contracting authority shall not use methods for calculating the estimated value of contracts so as to obtain a value lower than the actual procurement value, with the intention of avoiding a specific procedure defined by this Law.

(3) The contracting authority shall not divide the procurement into more individual procurements with a lower value in order to avoid the application of this Law.

(4) When there is a need of procurement for which a public procurement procedure has already been conducted in the current year, and which could not have been foreseen at the time when the procedure was being conducted, the contracting authority shall take into consideration the total estimated value of the relevant need when selecting the type of procedure.

(5) The contracting authority from Article 9 paragraph (1) points a), b), c) and d) of this Law shall enter procurements with a value below the thresholds under paragraph (1) of this Article in the quarterly records that are publicly available on the ESPP.

(6) The total value of procurements below the thresholds referred to in paragraph (1) of this Article in the contracting authorities from Article 9 paragraph (1) points a), b), and c) of this Law shall not exceed EUR 12,000 in Denar equivalent in the current year, whereas in the contracting authorities from Article 9 paragraph (1) point d) of this Law it shall not exceed EUR 24,000 in Denar equivalent in the current year.

#### Article 41

##### **Obligation to publish**

(1) Notices and award notices under Article 63 of this Law for procedures with a value net of VAT estimated to be equal to or greater than the thresholds referred to in Article 40 paragraph (1) of this Law shall be published on the ESPP.

(2) The contract notices in the simplified open procedure, open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure with publication of a contract notice, competitive dialogue and in the innovation partnership shall also be published in the Official Gazette of the Republic of Macedonia.

(3) The contract notice and notice for design contest shall also be published in the Official Journal of the European Union, provided that the estimated value net of VAT is equal to or greater than the following thresholds:

a) in the classical public sector:

- EUR 130,000 in Denar equivalent for supplies or services and for design contests;
- EUR 5,000,000 in Denar equivalent for works; and
- EUR 750,000 in Denar equivalent for specific services.

b) in the utilities:

- EUR 400,000 in Denar equivalent for supplies or services and for design contests;
- EUR 5,000,000 in Denar equivalent for works; and
- EUR 1,000,000 in Denar equivalent for specific services.

(4) In the cases under paragraph (2) of this Article, the time limit for the receipt of tenders or requests to participate is counted from the date of publication on the ESPP.

(5) The publication of a contract notice for utility activities could also be made by means of:

- a) a periodic indicative notice in accordance with Article 66 of this Law, in the case of a restricted procedure and in the case of a negotiated procedure with publication of a contract notice;

- b) a notice on the existence of a qualification system in accordance with Article 67 of this Law, in the case of a restricted procedure, negotiated procedure with publication of a contract notice, competitive dialogue or innovation partnership.
- (6) In the cases under paragraph (5) point a) of this Article, the contracting authority shall invite the economic operators that have expressed their interest in the public procurement procedure, following the publication of the periodic indicative notice, to confirm their interest in accordance with Article 73 of this Law.

#### Article 42

##### **Availability of the tender documentation in electronic form**

- (1) The contracting authority shall make the tender documentation available to any interested economic operator by using electronic means for the purpose of providing full direct access through the ESPP simultaneously with the publication of the contract notice and with the invitation referred to in Article 73 of this Law. The tender documentation shall be attached in a format that could be directly used by the economic operators.
- (2) Notwithstanding paragraph (1) of this Article, the contracting authority shall make the tender documentation available in hard copy or by using a magnetic medium only where:
- the ESPP does not support the format type in which the tender documentation or a part thereof is prepared, and it shall fill in an explanation on the ESPP to that effect; or
  - publishing a contract notice for a public private partnership contract.
- (3) In the cases under paragraph (2) indent 1 of this Article, the contracting authority shall explain the reasons in the ESPP.
- (4) No fee shall be charged for obtaining the tender documentation.

#### Title II

### **PUBLIC PROCUREMENT BUREAU**

#### Article 43

##### **Status**

- (1) The activities relating to the development of the public procurement system, and the ensuring of rationality, efficiency and transparency in the conduct of public procurement shall be carried out by the Public Procurement Bureau (hereinafter referred to as: the Bureau), as a state administration body within the Ministry of Finance.
- (2) The Bureau shall have the capacity of a legal entity.
- (3) The funding of the Bureau shall be provided from the Budget of the Republic of Macedonia and from its own revenues.

#### Article 44

##### **Management of the Bureau**

- (1) The Bureau shall be managed by a Director who represents the Bureau, organises and ensures the legal and efficient performance of duties and tasks, and undertakes measures within the competence of the Bureau pursuant to the Law.
- (2) The Director shall be appointed and dismissed by the Government upon the proposal by the Minister of Finance for a mandate of four years.
- (3) A person may be appointed as Director of the Bureau if he/she meets the following requirements:
1. is a citizen of the Republic of Macedonia;
  2. has not been the subject of a sentence or misdemeanour sanction pronounced by a final judgment involving prohibition to pursue a profession, activity or duty at the moment of appointment;
  3. has acquired at least 240 credits according to the ECTS, or has completed VII/1 level of education in the field of law or economics; and
  4. has minimum seven years of working experience, at least five of which are in the field of public procurement.

5. holds one of the following internationally recognised certificates of English language competence, not older than five years:
- TOEFL with a score of at least 74 points;
  - IELTS with a score of at least 6 points;
  - ILEC (Cambridge English: Legal) with a minimum level B2;
  - FCE (Cambridge English: First) – passed;
  - BULATS with a score of at least 60 points; or
  - APTIS – minimum level B2.
- (4) The mandate of the director shall end:
- with the expiry of the mandate;
  - with the fulfilment of the retirement conditions; and
  - if the person passes away.
- (5) The director may be dismissed even before the end of the mandate referred to in paragraph (2) of this Article if he/she:
- requests to be dismissed;
  - with a dismissal by the Government at the proposal of the Minister;
  - permanently loses his/her ability to perform the office, which is determined by the Government;
  - has been convicted by a final judgment for a criminal offense to an unconditional imprisonment of at least six months; or
  - performs activities incompatible with his/her office as a member or Director of the Public Procurement Bureau.

#### Article 45

##### **Competences of the Bureau**

- (1) The Bureau shall perform the following activities:
- initiate proposals for the adoption of laws and other acts in the field of public procurement to the Minister of Finance;
  - monitor and analyse the enforcement of this Law and other public procurement regulations, the functioning of the public procurement system, and initiate modifications for the purpose of improving the public procurement system;
  - provide opinions regarding the provisions and the application of this Law and make them publicly available on its web page;
  - develop manuals and brochures on the public procurement rules;
  - provide opinions on the fulfilment of the requirements in the negotiated procedure without publication of a contract notice in accordance with the rules of this Law;
  - perform administrative control in accordance with the requirements of this Law;
  - develop instructions as internal guidelines on the internal organisation of the PPB in the conduct of administrative control;
  - manage, develop and improve the Electronic System for Public Procurement (hereinafter referred to as: ESPP) and the electronic marketplace for small-value procurement;
  - develop new electronic tools for the purpose of increasing the transparency, efficiency and economy of the public procurement procedures;
  - manage the database from the public procurement procedures and make it publicly available through the ESPP;
  - process and analyse public procurement data and prepare statistical reports;
  - immediately inform the contracting authorities, and if necessary, the competent authorities regarding the identified irregularities from the notifications received;
  - disable the use of the ESPP for those users that do not comply with their obligations towards the ESPP in accordance with the provisions of this Law;
  - undertake corrective actions in the event of a technical error on the ESPP, crash or unavailability of the ESPP and upon a decision by the State Appeals Commission on Public Procurement;

- remove the negative reference published for an economic operator based on a decision by a competent authority or at the request of the contracting authority accompanied by a statement of the person issuing the negative reference given before the competent authority about a committed technical error;
- analyse the explanations by the contracting authority in accordance with Article 31 paragraph (6) and Article 42 paragraph (3) of this Law, and if they are unfounded, it shall indicate the omission committed to the contracting authority;
- propose to the Minister of Finance a Code of Ethics in the conduct of public procurement;
- prepare models of tender documentation and model forms for the procedures regulated by this Law;
- determine the minimum requirements regarding the professional qualifications of persons performing professional tasks in the field of public procurement;
- organise and conduct training for education of officers and other experts in connection with public procurement;
- prepare instructions as internal guidelines for preparation and implementation of the public procurement education and the training for public procurement trainers which are published on its web page;
- cooperate with the contracting authorities referred to in Article 9 of this Law and with the economic operators, professional research institutions, associations or with experts in specific fields, in relation to public procurement;
- cooperate with international institutions and other foreign entities in the activities connected with the development of the public procurement system, plan and coordinate the foreign technical assistance in the field of public procurement;
- submit an annual report to the Government regarding its activities in the functioning of the public procurement system; and
- perform other activities in accordance with this Law.

(2) The Code of Ethics in the conduct of public procurement shall be adopted by the Minister of Finance.

#### Article 46

##### **Public procurement education**

- (1) The Bureau shall prepare and deliver education on public procurement and issue certificates for passed exam for public procurement officer, and it shall keep a register thereof that shall be publicly available on the web page of the Bureau.
- (2) The education on public procurement shall be provided by trainers holding a certificate for trainers issued by the Bureau based on a passed exam for trainers.
- (3) Notwithstanding paragraph (2) of this Article, the Bureau may issue a certificate for trainer without a passed exam for trainer to persons with a minimum 3-year length of service in professional activities in the field of public procurement in the Bureau and in the expert service of the State Appeals Commission on Public Procurement.
- (4) The participants in the education shall pay a fee that is determined by a Tariff Book adopted by the Minister of Finance. The fee shall be determined on the basis of the costs for organising and delivering the education.
- (5) After completing the education, an exam shall be taken in accordance with the public procurement education programme.
- (6) The Director of the Bureau shall form a committee in charge of implementing the education and examination, and the committee implementing the education for trainers shall be composed of managerial administrative servants from among the staff in the Bureau working on professional activities in the field of public procurement.
- (7) The certificate for passed exam for a public procurement officer shall be valid for three years, and the certificate for trainer shall be valid for two years from the date of its issuance.



(8) The certificate for passed exam for public procurement officer shall be extended for an additional three years by attending a training for extension of the certificate and passing an exam for extension of the certificate for public procurement officer.

(9) The certificate for passed exam for public procurement trainer shall be extended for an additional two years by attending a training for extension of the certificate and passing an exam for extension of the certificate for public procurement trainer.

(10) The public procurement officers and public procurement trainers shall submit an application for attending the relevant training to the Bureau no later than by the expiry of the certificate, or otherwise it shall not be renewed.

(11) The education programme, the planning, the method of implementing the education and examination, the method of issuing and extending the validity of the certificate for passed exam for a public procurement officer shall be prescribed by the Minister of Finance.

### Title III

## **RULES ON CONDUCTING PUBLIC PROCUREMENT**

### Chapter 1

#### **Procedures**

### Article 47

#### **Type of procedures**

The contracting authority, in a manner and under the conditions prescribed by this Law, shall use the following public procurement procedures:

- a) small-value procurement
- b) simplified open procedure;
- c) open procedure;
- d) restricted procedure;
- e) competitive procedure with negotiation;
- f) competitive dialogue;
- g) innovation partnership;
- h) negotiated procedure without publication of a contract notice; and
- i) negotiated procedure with publication of a contract notice.

### Article 48

#### **Small-value procurement**

(1) The contracting authority may carry out small-value procurements of supplies and services with an estimated value up to EUR 10,000 in Denar equivalent and of works up to EUR 20,000 in Denar equivalent.

(2) The small-value procurement shall be conducted in the following manners:

- by the publication of a contract notice for small-value procurement, where the minimum time limit for the receipt of tenders shall be seven days from the date when the contract notice was published; or
- through the electronic marketplace for small-value procurements on the ESPP, for the acquisition of standard supplies and services.

(3) In the cases under paragraph (2) indent 1 of this Article, any economic operator shall have the right to submit a tender following the publication of the contract notice.

(4) In the cases under paragraph (2) indent 2 of this Article, the contracting authority shall select the tender with the lowest price that corresponds to the demands and requirements in the brief description of the subject-matter of the procurement.

(5) The contracting authority shall publish a notice on the electronic marketplace for small-value procurement concerning its intention to conduct a procurement at least 48 hours before conducting the procurement, and it shall provide a brief description of the subject-matter of procurement.

(6) In small-value procurements, the contracting authority shall only specify the requirement for pursuing a professional activity.

(7) The Minister of Finance shall prescribe in more detail the types of procurement and manner of conducting small-value procurement through the electronic marketplace for small-value procurement.

#### Article 49

##### **Simplified open procedure**

(1) The contracting authority may carry out a simplified open procedure for procurement of supplies and services with an estimated value up to EUR 70,000 in Denar equivalent and of works up to EUR 500,000 in Denar equivalent.

(2) In the simplified open procedure, any interested economic operator may submit a tender in response to the contract notice published.

(3) The tender shall be accompanied by the declaration for proving the capacity or qualification documents.

(4) Prior to adopting the decision on selection of the most advantageous tender, the economic operator the tender of which has been evaluated as the most advantageous one shall be obliged to submit the qualification documents, if it has not submitted them with the tender.

(5) The contracting authority shall accept the documents for determining of the capacity referred to in paragraph (4) of this Article even if those have been issued after the time limit for receipt of tenders.

(6) The minimum time limit for the receipt of tenders shall be 15 days from the date on which the contract notice was published on the ESPP.

#### Article 50

##### **Open procedure**

(1) The open procedure shall be conducted in one phase and it may be conducted for any subject-matter of the procurement, where any interested economic operator may submit a tender with the required documentation for determining of the qualifications and any other documents in accordance with the requirements in the tender documentation.

(2) The minimum time limit for the receipt of tenders shall be 30 days from the date on which the contract notice was published on the ESPP.

(3) Notwithstanding paragraph (2) of this Article, where the contracting authority has published a prior information notice, or a periodic indicative notice in the case of public procurements in the utilities, which was not used as a substitute for the contract notice, the minimum time limit for the receipt of tenders shall be 20 days, if:

- a) the prior information notice or the periodic indicative notice included all the information contained in the contract notice, which was available at the time of publication; and
- b) the prior information notice or the periodic indicative notice was published minimum 35 days and maximum 12 months before the date on which the contract notice was published.

(4) Notwithstanding paragraph (2) of this Article, where a state of urgency, which will be duly substantiated by the contracting authority in the public procurement decision, renders impracticable the time limit referred to in the same paragraph, the contracting authority may fix a time limit which shall be not less than 20 days from the date on which the contract notice was published.

#### Article 51

##### **Restricted procedure**

(1) The restricted procedure shall be conducted in two phases and it may be conducted for any subject-matter of the procurement, where any interested economic operator may submit a request to participate in response to the contract notice published.

- (2) The request to participate shall be accompanied by the documentation for determining of the qualifications in accordance with the requirements in the tender documentation for the first phase.
- (3) The minimum time limit for receipt of requests to participate in public procurements falling under the classical public sector shall be 30 days from the date on which the contract notice was published.
- (4) The time limit for the receipt of requests to participate in public procurements falling under the utilities, as a general rule, shall be no less than 30 days from the date on which the contract notice was published, and if a periodic indicative notice is used as a substitute for the contract notice, as a general rule, the time limit shall be no less than 30 days from the date on which the invitation to confirm interest was sent, and, in any event, it shall not be less than 15 days.
- (5) After the completion of the first phase, the committee shall prepare a report on the assessment of the qualifications of the candidates and a list of qualified candidates.
- (6) Based on the committee's report, the contracting authority shall adopt a decision on the selected candidates to which it shall deliver an invitation to tender, and only the selected candidates may submit a tender in the second phase.
- (7) The contracting authority may limit the number of suitable candidates to be invited to submit a tender in the second phase, based on objective and non-discriminatory criteria set out in the tender documentation.
- (8) The minimum time limit for the receipt of tenders in the classical public sector shall be 25 days from the date on which the invitation to tender was sent.
- (9) The time limit for the receipt of tenders in public procurements falling under the utilities may be set by mutual agreement between the contracting authority and the selected suitable candidates, provided that they have the same time to prepare and submit their tenders. In the absence of such mutual agreement, the minimum time limit for the receipt of tenders in the second phase shall be ten days from the date on which the invitation to tender was sent.
- (10) Where the contracting authority has published a prior information notice, the minimum time limit for the receipt of tenders referred to in paragraph (8) of this Article may be shortened to ten days, if:
- a) the prior information notice or the periodic indicative notice included all the information contained in the contract notice, which was available at the time of publication; and
  - b) the prior information notice or the periodic indicative notice was published minimum 35 days and maximum 12 months before the date on which the contract notice was published.
- (11) Notwithstanding paragraphs (3), (4) and (8) of this Article, where a state of urgency, which will be duly substantiated by the contracting authority in the public procurement decision, renders impracticable the time limits set out in this Article, the contracting authority may fix a time limit which shall be not less than:
- a) 15 days from the date on which the contract notice was published as a time limit for the receipt of requests to participate in the first phase; and
  - b) ten days from the date on which the invitation to tender was sent to the selected candidates as a time limit for the receipt of tenders in the second phase.

## Article 52

### **Competitive procedure with negotiation**

- (1) The contracting authority may use a competitive procedure with negotiation only for public procurements falling under the classical public sector in the following cases:
- a) for procurement of supplies, services or works, provided that:
    - the needs of the contracting authority cannot be met without adaptation of readily available solutions;
    - the subject-matter of the procurement includes design or innovative solutions;
    - due to specific circumstances related to the type, the complexity or the legal and financial makeup or because of the risks attaching to them, the public contract cannot be awarded without prior negotiations; or

- the technical specifications cannot be established with sufficient precision by the contracting authority in accordance with the requirements of this Law;
  - b) for procurement of supplies, services or works, where in response to a simplified open procedure, an open procedure or a restricted procedure at least two tenders have been submitted and they all:
    - are not in compliance with the tender documentation;
    - were received late;
    - are abnormally low; or
    - exceed the funds provided by the contracting authority. In the cases referred to in this point, the contracting authority shall not be obliged to publish a contract notice, provided that it includes in the procedure all tenderers that meet the requirements for participation and for which there are not reasons to be excluded, and which during the prior simplified open procedure, open procedure or restricted procedure submitted tenders in accordance with the formal requirements of the procurement procedure.
- (2) In the competitive procedure with negotiation, any interested economic operator may submit a request to participate in response to the contract notice published.
- (3) The request to participate shall be accompanied by the documentation for determining of the qualifications in accordance with the requirements in tender documentation for the first phase.
- (4) The contracting authority shall identify the subject-matter of the procurement in the tender documentation by providing a description of its needs and the characteristics required of the supplies, services or works to be procured and specify the criteria for selection of the most advantageous tender. The contracting authority shall also indicate which elements of the description define the minimum requirements to be met by all economic operators. The information provided shall be sufficiently precise to enable economic operators to identify the type and scope of the required solutions and decide whether to request to participate in the procedure.
- (5) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was published, while the minimum time limit for the receipt of initial tenders shall be 25 days from the date on which the invitation to submit initial tenders was sent.
- (6) Where the contracting authority has published a prior information notice, the minimum time limit for the receipt of tenders referred to in paragraph (5) of this Article may be shortened to ten days, if:
- a) the prior information notice or the periodic indicative notice included all the information contained in the contract notice, which was available at the time of publication; and
  - b) the prior information notice or the periodic indicative notice was published minimum 35 days and maximum 12 months before the date on which the contract notice was published.
- (7) Notwithstanding paragraph (5) of this Article, where a state of urgency, which will be duly substantiated by the contracting authority in the public procurement decision, renders impracticable the time limits set out in this Article, the contracting authority may fix a time limit which shall be not less than:
- a) 15 days from the date on which the contract notice was published as a time limit for the receipt of requests to participate in the first phase; and
  - b) ten days from the date on which the invitation to tender was sent to the selected candidates as a time limit for the receipt of tenders in the second phase.
- (8) After the completion of the first phase, the committee shall prepare a report on the assessment of the qualifications of the candidates and a list of qualified candidates.
- (9) Based on the committee's report, the contracting authority shall adopt a decision on the selected candidates to which it shall deliver an invitation to submit an initial tender.
- (10) Only those candidates invited to do so by the contracting authority following its assessment of their qualifications may submit an initial tender which shall be the basis for the subsequent negotiations.
- (11) The contracting authority may limit the number of suitable candidates to be invited to submit an initial tender, based on objective and non-discriminatory criteria set out in the tender documentation.

(12) With a view to improving the content of tenders, the contracting authority shall negotiate with tenderers the initial and all subsequent tenders, except for the final tenders. The minimum requirements and the criteria for selection of the most advantageous tender shall not be subject to negotiations.

(13) The contracting authority may award public contracts on the basis of the initial tenders without negotiation, provided that it has reserved this possibility in the contract notice.

(14) The contracting authority shall ensure equal treatment of all tenderers in the negotiations and it shall not provide information in a discriminatory manner, which may give some participants an advantage over others.

(15) All tenderers participating in the next phase shall be informed by the contracting authority, in writing, of any changes to the technical specifications or other parts of the descriptive document, except for the minimum requirements and criteria for selection of the most advantageous tender. Following those changes, the contracting authority shall provide sufficient time for tenderers to be able to prepare and re-submit the amended tenders, where necessary.

(16) The contracting authority shall not reveal to the other participants the confidential information of a candidate participating in the negotiations without its consent. Such consent shall refer to the information that the contracting authority intends to impart with the other candidates or tenderers.

(17) In the competitive procedure with negotiation, the contracting authority may envisage that the negotiations will take place in successive phases in order to reduce the number of tenders to be negotiated, and it shall indicate this in the contract notice or in the descriptive document.

(18) Where the contracting authority intends to conclude the negotiations, it shall inform the other tenderers about the last round of negotiations and set a time limit to submit any new or revised tenders, unless it has disclosed the number of rounds in the contract notice or in the tender documentation, or where it negotiates with only one tenderer.

(19) After the receipt of the final tenders, the contracting authority shall verify if they are in conformity with the minimum requirements, and it shall award the public contract on the basis of the criteria for selection of the most advantageous tender.

## Article 53

### **Competitive dialogue**

(1) The competitive dialogue shall be conducted in three phases, namely:

- a pre-selection phase,
- dialogue phase and
- phase for submitting a final tender.

(2) The contracting authority may conduct a competitive dialogue if the following conditions have been met:

a) for procurement of supplies, services or works, provided that:

- the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- the subject-matter of the procurement includes design or innovative solutions;
- due to specific circumstances related to the nature, the complexity or the legal and financial makeup or the risks attaching to them, the public contract cannot be awarded without prior negotiations; or
- the technical specifications cannot be established with sufficient precision by the contracting authority in accordance with the requirements of this Law;

b) for procurement of supplies, services or works, where in response to an open or a restricted procedure at least two tenders have been submitted and they all:

- are not in compliance with the tender documentation;
- were received late;
- are abnormally low or exceed the funds provided by the contracting authority. In the cases referred to in this point, the contracting authority shall not be obliged to publish a contract notice, provided that it includes in the procedure all tenderers that meet the requirements

for participation and for which there are no reasons to be excluded, and which during the prior open or restricted procedure submitted tenders in accordance with the formal requirements of the procurement procedure.

(3) Notwithstanding paragraph (2) of this Article, with regard to public procurement falling under utilities, the competitive dialogue procedure may be used as a regular procedure without prior determining whether the requirements under paragraph (2) of this Article have been met.

(4) In the competitive dialogue procedure, any interested economic operator may submit a request to participate accompanied by the documentation required for determining of the qualifications.

(5) The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was published.

(6) The time limit for the receipt of requests to participate in public procurements falling under the utilities, as a general rule, shall be no less than 30 days from the date on which the contract notice was published, and, in any event, it shall not be less than 15 days.

(7) After the completion of the first phase, the committee shall prepare a report on the assessment of the qualifications of the candidates and a list of qualified candidates.

(8) Based on the committee's report, the contracting authority shall adopt a decision on the selected candidates to which it shall deliver an invitation to participate in the dialogue.

(9) Only those candidates invited to do so by the contracting authority following its assessment of their qualifications may participate in the dialogue.

(10) The contracting authority may limit the number of suitable candidates to be invited to participate in the dialogue phase.

(11) In the competitive dialogue procedure, the contract shall be awarded only according to the criterion of the best price-quality ratio.

(12) The contracting authority shall set out its needs and requirements in the contract notice, which shall be defined in more detail in the tender documentation for the first phase, and also the criteria for selection of the most advantageous tender and an indicative timeframe.

(13) The contracting authority shall open a dialogue with the suitable candidates where all aspects of the public procurement could be discussed with the purpose of identifying and defining the means best suited to satisfying its needs.

(14) The contracting authority shall ensure equal treatment of all participants in the dialogue and it shall not provide information in a discriminatory manner, which may give some participants an advantage over others.

(15) For each meeting, the contracting authority shall keep minutes about the issues that were discussed. The minutes shall also be signed by the selected candidate with whom the dialogue was conducted.

(16) The contracting authority shall not reveal to the other participants the solutions proposed by a candidate participating in the dialogue or its other confidential information without the consent of that candidate. Such consent shall refer to the information that the contracting authority intends to reveal to the other candidates.

(17) The contracting authority may envisage that the procedure will take place in successive phases in order to reduce the number of potential solutions by applying criteria for selection of the most advantageous tender, and it shall indicate this in the contract notice or in the tender documentation.

(18) The contracting authority shall continue the dialogue until it can identify one or more solutions that are capable of meeting its needs.

(19) When the contracting authority will conclude the dialogue and inform thereof the participants involved in the final part of the dialogue, it shall invite each of them to submit their final tenders on the basis of the solution or solutions agreed, which were presented and specified in more detail during the dialogue.

(20) The final tender shall contain all the elements required and necessary for the performance of the project.

(21) The contracting authority may request that the tenderer clarify its final tender, specify it in more detail and optimise it, however, that shall not involve changes to the essential elements of the tender or of the tender documentation.

(22) The contracting authority shall assess the tenders received on the basis of the criteria for selection of the most advantageous tender laid down in the contract notice or in the tender documentation.

(23) The contracting authority may negotiate with the tenderer identified as having submitted the tender presenting the best price-quality ratio to confirm the financial commitments or other requirements of the tender by finalising the terms of contract, provided this does not modify the essential elements of the tender, including the needs and requirements set out in the tender documentation and does not distort the competition or has discriminatory effects.

(24) The contracting authority may specify in the tender documentation the amount of the prizes or payments to the participants in the dialogue.

#### Article 54

##### **Innovation partnership**

(1) The contracting authority may use an innovation partnership if it has a need of innovative products, services or works that cannot be met by the procurement of products, services or works already available on the market. The contracting authority shall set out the reasons and the need for innovative products, services or works in the tender documentation, as well as the minimum demands concerning the subject-matter of the procurement, and the minimum selection requirements that have to be sufficiently precise to enable economic operators to identify the type and scope of the required solutions and decide whether to request to participate in the procedure.

(2) In the innovation partnership procedure, any interested economic operator may submit a request to participate accompanied by the documentation required for determining of the qualifications.

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

(4) The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was published.

(5) The time limit for the receipt of requests to participate in public procurements falling under the utilities, as a general rule, shall be no less than 30 days from the date on which the contract notice was published, and, in any event, it shall not be less than 15 days.

(6) Only those candidates invited to do so by the contracting authority following its assessment of their qualifications may submit an initial tender in the innovation partnership procedure.

(7) The contracting authority may limit the number of suitable candidates to be invited to participate in the innovation partnership.

(8) In the innovation partnership procedure, the contract shall be awarded only according to the criterion of the best price-quality ratio.

(9) The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners in an individual phase, and also payment of remunerations in appropriate instalments.

(10) Based on the targets referred to in paragraph (9) of this Article, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of a partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that it has indicated this in the tender documentation as well as the conditions for the use of such possibility.

(11) The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the individual phases are set by taking into consideration the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

(12) The contracting authority may negotiate with tenderers the initial and all subsequent tenders, except for the final tender, with the purpose of improving their content. The minimum requirements and the criterion on the selection of the most advantageous tender shall not be subject to negotiations.

(13) The contracting authority shall ensure equal treatment of all participants in the negotiations and it shall not provide information in a discriminatory manner, which may give some participants an advantage over others.

(14) The contracting authority shall inform all tenderers participating in the next phase of any changes to the technical specifications or other parts of the tender documentation. Following those changes, the contracting authority shall provide sufficient time for tenderers to be able to prepare and re-submit the amended tenders, where necessary.

(15) In the innovation partnership procedure, the contracting authority may envisage that the negotiations will take place in successive phases in order to reduce the number of potential solutions, and it shall indicate this in the contract notice or in the tender documentation.

(16) In selecting candidates, the contracting authority shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(17) Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs of the contracting authority that cannot be met by existing solutions.

(18) The contracting authority shall define the arrangements applicable to intellectual property rights in the tender documentation. The contracting authority shall not reveal to the other partners the solutions proposed or other confidential information communicated by a partner without that partner's agreement. Such agreement shall refer to the information that the contracting authority intends to impart with the other partners.

## Article 55

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

(1) The contracting authority may conduct a negotiated procedure without publication of a contract notice for supplies, services or works in the following cases:

- a) where no tenders or no suitable tenders have been submitted in response to two previously conducted open procedures or simplified open procedures, or where no requests to participate or no suitable requests to participate have been submitted in the first phase of two previously conducted restricted procedures, provided that the requirements in the tender documentation are not substantially altered. The total price of the final tender proposed in the negotiated procedure shall not exceed the tender price submitted by the tenderer in the previous unsuccessful public procurement procedure;
- b) where the public procurement falling under the utilities is purely for the purpose of research, experimentation, study or development, and not for the purpose of securing a profit or recovering the research and development costs, provided that the award of such contract does not affect the competitiveness in the award of subsequent public contracts with those purposes;
- c) where the supplies, services or works can be supplied only by a particular economic operator for the following reasons:
  - the aim of the public procurement is the creation or acquisition of a unique work of art or artistic performance;



- where competition for the subject-matter of the procurement is absent due to technical reasons;
  - for the protection of exclusive rights, including intellectual property rights;
- d) where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the other procedures cannot be applied. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.
- (2) The grounds for the use of the negotiated procedure without publication of a contract notice under paragraph (1) point c) indents 2 and 3 of this Article may only apply when no reasonable alternative or substitute exists and where the absence of competition is not the result of an unjustified narrowing down of the specifications of the subject-matter of the procurement.
- (3) The negotiated procedure without publication of a contract notice may be used in public procurement of supplies:
- a) manufactured purely for the purpose of research, experimentation, study or development, but not for supplies in mass production that would secure a profit or recovery of the research and development costs;
  - b) when the contracting authority has to procure additional deliveries from the original contractor for the purpose of partial replacement of common supplies or installations or extension of the existing supplies or installations, where a change of the tenderer would oblige the contracting authority to buy material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in the operation and maintenance. The duration of the additional procurements shall not exceed three years from the conclusion of the original contract, and their value shall not exceed 20 % of the original contract's value;
  - c) quoted and purchased by the contracting authority on a stock exchange;
  - d) which are procured under particularly favourable terms from a tenderer which is winding up its business activities (liquidation or bankruptcy), from a receiver or liquidator, upon a prior agreement with the creditors;
  - e) in the utilities sector, by taking a particularly advantageous opportunity available for a very short time at a price considerably lower than the normal market price;
- (4) The negotiated procedure without publication of a contract notice may be used in public procurement of services:
- a) which are procured under particularly favourable terms from a tenderer which is winding up its business activities (liquidation or bankruptcy), from a receiver or liquidator, upon a prior agreement with the creditors;
  - b) where the contract concerned follows a design contest and is awarded to the best ranked participant or to one of the best ranked participants. If the contract is awarded to one of the best ranked participants, the contracting authority shall invite all of them to participate in the negotiations.
- (5) In the cases referred to in paragraph (1) points c) and d), the contracting authority shall initiate the negotiated procedure without prior publication of a contract notice only upon receiving a prior opinion from the Bureau.
- (6) Notwithstanding paragraph (5) of this Article, the contracting authority shall not be obliged to obtain a prior opinion before initiating a negotiated procedure without prior publication of a contract notice pursuant to paragraph (1) point d) of this Article if there is a direct threat to human safety, life and health.
- (7) The Bureau shall issue the opinion referred to in paragraph (5) of this Article within ten working days from the day of receipt of the request, or five working days in the cases under paragraph (1) point d) of this Article.
- (8) If the Bureau fails to issue the opinion referred to in paragraph (5) of this Article within the time limit referred to in paragraph (7) of this Article, the contracting authority may initiate a procedure without it.

- (9) The contracting authority shall indicate and explain, in the public procurement decision, the reasons why it chose to conduct a negotiated procedure without publication of a contract notice.
- (10) During the negotiations, the contracting authority shall disclose, in advance and in writing, the last round of negotiations, unless the number of rounds has been published in the documentation relative to the contract award, or where it negotiates with only one candidate.
- (11) The contracting authority shall not be obliged to determine the qualification of the economic operators in the negotiated procedure without publication of a contract notice.
- (12) The contracting authority shall also enclose in the contract award notice the opinion of the Bureau in the cases where that is obligatory.
- (13) The form and content of the request for an opinion referred to in paragraph (7) of this Article shall be prescribed by the Minister of Finance.

#### Article 56

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

- (1) The contracting authority may use the negotiated procedure with publication of a contract notice from the utility activities.
- (2) In the negotiated procedure with publication of a contract notice, any interested economic operator may submit a request to participate in response to the contract notice published.
- (3) The request to participate shall be accompanied by the documentation for determining of the qualifications.
- (4) The time limit for the receipt of requests to participate, as a general rule, shall be no less than 30 days from the date on which the contract notice was published, and if a periodic indicative notice is used as a substitute for the contract notice, as a general rule, it shall be no less than 30 days from the date on which the invitation to confirm interest was sent, and, in any event, it shall not be less than 15 days.
- (5) After the completion of the first phase, the committee shall prepare a report on the assessment of the qualifications of the candidates and a list of qualified candidates.
- (6) Based on the committee's report, the contracting authority shall adopt a decision on the selected candidates to which it shall deliver an invitation to submit an initial tender.
- (7) Only those candidates invited to do so by the contracting authority following its assessment of their qualifications may submit an initial tender which shall be the basis for the subsequent negotiations.
- (8) The contracting authority may limit the number of suitable candidates to be invited to submit an initial tender.
- (9) The time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected suitable candidates, provided that all candidates have the same time to prepare and submit their tenders. In the absence of such mutual agreement, the minimum time limit for the receipt of initial tenders shall be ten days from the date on which the invitation to tender was sent.

#### Chapter 2

##### **Special manners for conduct of the procedure**

#### Article 57

##### **Framework agreement**

- (1) The contracting authority may conclude a framework agreement by applying one of the procedures provided for in Article 47 of this Law.
- (2) The term of a framework agreement in the classical public sector shall not exceed three years, and in the utilities sector it shall not exceed five years, save in exceptional cases duly justified, which are directly related to the subject-matter of the procurement and appropriately explained by the contracting authority in the public procurement decision.

(3) The individual public contracts shall be awarded on the basis of a framework agreement in a manner laid down in this Article, specifically by those contracting authorities clearly identified for this purpose in the contract notice or in the invitation to confirm interest to those economic operators parties to the framework agreement.

(4) The individual public contracts shall be concluded before the expiry of the term of the framework agreement.

(5) In the award of the individual contracts, the essential terms and conditions laid down in the framework agreement shall not be modified, in particular in the cases referred to in paragraph (7) of this Article.

(6) Where the framework agreement is concluded with a single economic operator, the individual contracts shall be awarded in accordance with the terms and conditions in the framework agreement.

(7) Where the framework agreement is concluded with more economic operators, the individual contracts shall be awarded in one of the following ways:

- a) without reopening competition, where the agreement sets out all the terms and conditions for the supply of the products, the provision of the services or the execution of the works, and the objective conditions for selecting one of the economic operators, party to the framework agreement, which were indicated in the tender documentation for conclusion of that framework agreement;
- b) with reopening of competition amongst the economic operators, parties to the framework agreement, where the framework agreement does not set out all the terms and conditions for the supply of the products, the provision of the services or the execution of the works; or
- c) partly without reopening of competition in accordance with point a) of this paragraph, and partly with reopening of competition, in accordance with point b) of this paragraph, where the framework agreement sets out all the terms and conditions for the supply of the products, the provision of the services or the execution of the works, and where the contracting authority has indicated this option in the tender documentation for the conclusion of the framework agreement, has defined objective criteria about the choice whether it will carry out a reopening of competition or award the contract without reopening competition, and has specified which terms and conditions may be subject to reopening of competition.

(8) The provision under paragraph (7) point c) of this Article may apply to any lot of the framework agreement for which all the terms and conditions for the supply of products, the provision of services or the execution of works have been set out, regardless of whether all the terms and conditions for the supply of products, the provision of services or the execution of works for the other lots in the framework agreement have been set out.

(9) The reopening of competition pursuant to paragraph (7) points b) and c) of this Article shall be based on the same terms and conditions applied for the conclusion of the framework agreement and, where necessary, on more precisely formulated terms and conditions, and based on other terms and conditions in the tender documentation in accordance with the following procedure:

- for every public contract, the contracting authority shall submit a request for quotation through the ESPP to all economic operators, party to the framework agreement;
- the contracting authority shall fix a reasonable time limit for receipt of tenders, taking into account the complexity of the subject-matter of the procurement and the time needed to prepare and submit the tenders;
- the tenders shall be submitted through the ESPP and the contracting authority shall open them within the time limit specified. The content of the tenders shall remain confidential until the contracting authority informs the tenderers on the selection made.
- the contracting authority shall award each public contract to the economic operator which has submitted the best tender on the basis of the criteria for selection of the most advantageous tender set out in the framework agreement; and

- the contracting authority shall be obliged to deliver the decision on selection or on cancellation of the procedure for reopening of competition to all economic operators, party to the framework agreement.

(10) The framework agreement with more economic operators shall not oblige the parties to conclude an individual public contract, whereas the framework agreement with one economic operator shall oblige the parties to conclude an individual public contract if the contracting authority has envisaged that in the tender documentation.

## Article 58

### **Dynamic purchasing system**

(1) The dynamic purchasing system may be divided into categories of products, services or works that are objectively defined based on the important characteristics of the subject-matter of the procurement. Such characteristics may refer to the maximum allowed size of the individual contracts or to the geographic area in which the individual contracts will be performed.

(2) When conducting public procurements under a dynamic purchasing system, the contracting authority shall apply the rules of the restricted procedure, except for the rules relating to the minimum time limit for receipt of requests to participate and of tenders. All candidates satisfying the requirements for participation shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited.

(3) Where the contracting authority has divided the dynamic purchasing system into categories of products, services or works, it shall define the relevant selection criteria for each category separately.

(4) With regard to the conduct of procurement under the dynamic purchasing system, the following time limits shall apply:

- a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the notice for setting up a dynamic purchasing system was published. Where a periodic indicative notice is used as a substitute for a contract notice in the utilities sector, the minimum time limit, as a general rule, shall be 30 days from the date on which the invitation to confirm interest was sent. The time limit for receipt of requests to participate shall no longer apply once the invitation to tender for the first individual procurement has been sent;
- b) the minimum time limit for receipt of tenders shall be at least ten days from the date on which the invitation to tender was sent to the economic operators included in the system.

(5) All communications in the context of the dynamic purchasing system shall be made by electronic means only.

(6) The contracting authority shall set up a dynamic purchasing system in the following manner:

- a) publish a notice where it indicates the setting up of a dynamic purchasing system and its period of validity;
- b) indicate in the tender documentation, in particular, information on the nature and estimated quantity of the individual purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including information how the dynamic purchasing system operates, the electronic equipment used and the technical connections and specifications for connection;
- c) indicate the possible division into categories of products, services and works, as well as the important characteristics of each category; and
- d) during the period of validity of the system, offer unrestricted and full direct access to the tender documentation in accordance with Article 42 of this Law.

(7) During the period of validity of the dynamic purchasing system, the contracting authority shall give all economic operators the possibility of requesting to participate in the system. The contracting authority shall assess the submitted requests to participate in the system in accordance with the selection criteria within ten working days from the date of their receipt. That time limit may be prolonged to 15 working days in justified cases, in particular because of the need to examine additional documents or to verify whether the economic operator meets the requirements for participation.

(8) Notwithstanding paragraph (7) of this Article, the contracting authority may prolong the time limit for assessment of the requests to participate as long as the invitation to tender for the first individual public procurement under the dynamic purchasing system has not been sent. In this case, the contracting authority shall indicate in the tender documentation for how long it intends to prolong this period.

(9) The contracting authority shall inform the economic operator whether it has been admitted to the dynamic purchasing system, within three days after adopting the decision.

(10) The contracting authority shall invite all economic operators admitted in the dynamic purchasing system, in accordance with Article 73 of this Law, to submit a tender for each individual public procurement under the dynamic purchasing system. Where the dynamic purchasing system has been divided into categories of products, services or works, the contracting authority shall invite everyone admitted to the category corresponding to the individual public procurement to submit a tender.

(11) The contracting authority shall award the public contract to the most advantageous tenderer in accordance with:

- the criteria for selection of the most advantageous tender defined in the notice for setting up a dynamic purchasing system;
- where a periodic indicative notice is used as a substitute for the notice, in accordance with the criteria for selection of the most advantageous tender specified in the invitation to confirm interest;
- where a notice on the existence of a qualification system is used, in accordance with the criteria for selection of the most advantageous tender specified in the invitation to tender.

(12) The contracting authority may define more precisely the criteria for selection of the most advantageous tender in the invitation to tender, where necessary.

(13) The contracting authority may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit new and updated documents for determining of the capacity, within five working days from the date on which that request is transmitted.

(14) The contracting authority shall indicate the period of validity of the dynamic purchasing system in the notice. For any change in the period of validity, the contracting authority shall publish on the ESPP:

- a) a notice, which was the means of publication used initially, where the period of validity is changed, but the system is not terminated;
- b) a contract award notice, where the system is terminated.

## Article 59

### Electronic auction

(1) The contracting authority may use an electronic auction in which it will receive new prices, revised downwards, or new values concerning certain elements of tenders, and the auction shall be structured as a repetitive electronic process, which takes place after an initial full evaluation of the tenders and enables the ranking of tenders by using automatic evaluation methods.

(2) An electronic auction may be used only if the technical specifications are precisely defined in the open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure with publication of a contract notice, small-value procurement with publication of a contract notice and simplified open procedure, as well as in reopening of competition under framework agreement with more economic operators and under a dynamic purchasing system.

(3) An electronic auction shall not be used in public procurement of certain services or works having as their subject-matter intellectual services, which cannot be ranked by using automatic evaluation methods.

(4) Subject to an electronic auction may be the following:

- price only, where the criterion for selection of the most advantageous tender is the lowest price only; or

- the price and/or the new values of the part of the tender that is subject to the electronic auction indicated in the tender documentation, where the criterion for selection of the most advantageous tender is the best price-quality ratio or the lowest price by using a cost-effectiveness approach.

(5) The contracting authority that decides to hold an electronic auction shall indicate this in:

- the contract notice;
- the invitation to confirm interest, where a periodic indicative notice is used as a substitute for the contract notice; or
- the invitation to tender, where a notice on the existence of a qualification system is used.

(6) Where an electronic auction is used, the tender documentation shall contain in particular the following information:

- the part of the tender that will be subject of the electronic auction, provided that it is quantifiable and can be expressed in figures or %;
- any limits on the value up to which the part referred to indent 1 of this paragraph may be improved, in accordance with the technical specifications of the subject-matter of the procurement;
- the information which will be made available to the tenderers in the course of the electronic auction, and when this information will be made available to them;
- the relevant information concerning the electronic auction process; and
- the conditions under which the tenderers will be able to bid, and in particular the minimum differences allowed in the process of reverse bidding.

(7) Before commencing the electronic auction, the contracting authority shall make a full evaluation of the qualifications of tenderers and their initial tenders in accordance with the requirements and criteria set in the tender documentation.

(8) The contracting authority shall invite simultaneously, by electronic means, all tenderers that have submitted acceptable tenders to submit new prices or new values for that part of the tender which is the subject of electronic auction.

(9) The invitation shall specify the starting date and time of the electronic auction, the manner of carrying out the auction and any relevant information concerning the connection to the electronic devices used.

(10) If the best price-quality ratio or lowest cost based on the cost-effectiveness approach is the criterion for selection of the most advantageous tender, the invitation shall also state the outcome of the full evaluation of the relevant initial tender of the tenderer to which the invitation is sent, and the mathematical formula to be used in the negative bidding to determine the automatic re-rankings on the basis of the new prices and values submitted.

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

(12) Throughout each phase of an electronic auction, all tenderers shall have access to all information enabling them to ascertain their rankings at any moment. Where it has been previously indicated in the invitation, the tenderers may also receive other information concerning the prices or values submitted by the other tenderers. The number of participants in each phase of the auction may also be disclosed, however, the identity of the tenderers shall not be disclosed in any phase of the electronic bidding.

(13) The electronic auction shall be closed in one or more of the following manners:

- at a previously indicated time for which the tenderers have been informed in the invitation referred to in paragraph (8) of this Article;
- when the number of phases indicated in the invitation referred to in paragraph (8) of this Article has been completed, where the invitation also contains a timeframe for each phase; or
- when new prices or new values that meet the requirements concerning the minimum differences are no longer received, where the contracting authority has indicated in the invitation the time that is allowed to elapse after receiving the last tender, and before the electronic auction is closed.

(14) Where the contracting authority intends to close the auction in combination of paragraph (13) indents 2 and 3 of this Article, the invitation to participate in the auction shall indicate the timetable for each phase of the auction.

(15) The contracting authority shall award the public contract on the basis of the results obtained after the electronic auction is closed and on the criteria for selection of the most advantageous tender.

(16) If after the initial evaluation only one acceptable tender remains in the public procurement procedure, the electronic auction shall not be conducted.

## Article 60

### **Electronic catalogue**

(1) The contracting authority may require tenders to be submitted in the form of an electronic catalogue or the tender to include an electronic catalogue.

(2) Tenders submitted in the form of an electronic catalogue may be accompanied by other documents completing the tender.

(3) The economic operator shall compile the electronic catalogue with a view to participating in given public procurement procedure in accordance with the technical specifications and format established by the contracting authority.

(4) The electronic catalogue shall comply with the requirements for electronic communication tools and with any additional requirements set by the contracting authority.

(5) Where it is allowed or required to submit tenders in the form of electronic catalogues, the contracting authority shall indicate this in:

- the contract notice;
- the invitation to confirm interest, where a periodic indicative notice is used as a substitute for the contract notice; or
- the invitation to tender, where a notice on the existence of a qualification system is used.

(6) In the tender documentation, the contracting authority shall indicate all the necessary information concerning the format, the electronic equipment used and the technical connections and specifications related to the catalogue.

(7) Where a framework agreement has been concluded with more economic operators based on the tenders in the form of electronic catalogues, the contracting authority may decide to reopen competition for specific procurements on the basis of the updated catalogues, where:

- a) it shall invite the tenderers to submit electronic catalogues adapted to the requirements of the procurement in question; or
- b) it shall notify the tenderers about its intention to collect from the electronic catalogues that have been already submitted the information needed to constitute tenders adapted to the requirements of the specific procurement, provided that this has been envisaged in the tender documentation for the procedure in which the framework agreement was concluded.

(8) Where the contracting authority reopens competition in accordance with paragraph (7) point b) of this Article, it shall notify all tenderers of the date and time at which it intends to collect the information needed to constitute tenders adapted to the requirements of the specific procurement and shall give tenderers the possibility to refuse such collection of information. The time limit from the notification of tenderers until the collection of information shall not be less than five working days.

(9) Before awarding the public contract, the contracting authority shall present the collected information to the tenderer so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any errors.

(10) The contracting authority may award contracts under a dynamic purchasing system by requiring that tenders for the individual contracts are to be submitted in the form of an electronic catalogue.

(11) The contracting authority may award contracts under a dynamic purchasing system in accordance with paragraph (7) point (b), paragraphs (8), (9) and (10) of this Article, provided that the request to participate in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. The candidate shall complete the catalogue in question once it is informed of the contracting authority's intention to constitute tenders.

#### Article 61

##### **Centralised purchasing activities and central purchasing body**

- (1) The contracting authority may acquire supplies or services from a central purchasing body.
- (2) The contracting authority may acquire supplies, services or works based on a contract concluded by a central purchasing body, by using a dynamic purchasing system or qualification system operated by the central purchasing body or based on a framework agreement concluded by a central purchasing body.
- (3) The contracting authority may use a dynamic purchasing system operated by a central purchasing body, provided that this was mentioned in the call for competition setting up that system.
- (4) It shall be deemed that the contracting authority has conducted a proper public procurement procedure if it had acquired supplies, services or works in accordance with the contract concluded by the central purchasing body.
- (5) The contracting authority that acquires supplies, services or works in accordance with paragraph (2) of this Article shall be responsible for fulfilling the obligations arising from this Law for those parts of the procedure that it conducts itself, and in particular for:
  - a) awarding public contracts under a dynamic purchasing system operated by a central purchasing body;
  - b) conducting a reopening of competition under a framework agreement concluded by a central purchasing body;
  - c) pursuant to Article 57 paragraph (7) points a) or b) of this Law, determining which of the economic operators, party to the framework agreement, shall be awarded the public contract.
- (6) The contracting authority may use services for the provision of centralised and ancillary purchasing activities from the central purchasing body without applying the procedures provided for in this Law.
- (7) Public procurement for the needs of the administration bodies or of the public institutions founded by the state may be conducted in a centralised manner by a contracting authority established by a Government act, while for the needs of the bodies of the local self-government units and the public services founded by the local self-government, a contracting authority established by an act of the competent authority of the local self-government.
- (8) The decision referred to in paragraph (7) of this Article shall define, in particular, the subject-matter of the procurement, the term of the public contract and the time schedule for conducting the public procurement procedure.

#### Article 62

##### **Occasional joint procurement**

- (1) Joint procurement shall be made in a coordinated manner through one contracting authority on behalf of a group of contracting authorities, following the conclusion of an agreement for conducting a joint procurement.
- (2) The agreement for conducting a joint procurement shall define all rights and obligations pertaining to the contracting authorities with respect to the economic operator with whom the public contract will be concluded.

#### Chapter 3

##### **Notices**

#### Article 63

##### **Types of notices**

The notices shall be as follows:



1. prior information notice or periodic indicative notice;
2. notice on the existence of a qualification system;
3. contract notice and design contest notice;
4. voluntary ex ante transparency notice;
5. contract award notice;
6. notice for modifications and additional information in the procedure;
7. procedure cancellation notice;
8. notice for modification of a contract during its term; and
9. notice for a contract performed.

#### Article 64

##### **Manner of publication**

- (1) The notices under Article 63 of this Law that have been submitted for publication until 15:30 o'clock shall be published on the ESPP on the same day when they are sent for publication.
- (2) The notice which the contracting authority is obliged to publish in the Official Journal of the EU, pursuant to the requirements of this Law, shall be sent for publication by the contracting authority within three working days from the date on which the notice was published on the ESPP.
- (3) The public procurement procedure shall commence with the publication of the contract notice on the ESPP, or the dispatch of the invitation to tender in a negotiated procedure without publication of a contract notice.

#### Article 65

##### **Calculation of time limits**

- (1) The day when a specific event has occurred or a specific action has been taken shall not be counted when calculating the time limits, and the time limit shall start to run from the first following working day.
- (2) State holidays, Saturdays and Sundays shall not affect the start and the running of time limits, except in the cases where the time limits have been expressed in working days.

#### Article 66

##### **Prior information notice or periodic indicative notice**

- (1) The contracting authority may publish a prior information notice for procurements falling under the classical public sector or a periodic indicative notice for procurements falling under the utilities sector informing the public of its intention to conduct a public procurement in a given future period.
- (2) The period covered by the prior information notice or the periodic indicative notice shall be a maximum of 12 months from the date on which the notice was published, except in the case of procurement of specific services, where this period may be longer.
- (3) For procurements falling under the utilities sector, the contracting authority may use a periodic indicative notice as a substitute for the contract notice in the restricted procedure and in the negotiated procedure with publication of a contract notice.
- (4) In the cases referred to in paragraph (3) of this Article, the notice shall refer to the supplies, services or works that are the subject of the public contract to be awarded. The notice shall indicate the type of procedure to be conducted and that a contract notice will not be published, therefore the contracting authority shall invite the interested economic operators to express their interest to participate in the procedure on the basis of that notice.
- (5) In the cases under paragraph (3) of this Article, the periodic indicative notice shall be published minimum 35 days and maximum 12 months prior to the date on which the contracting authority has sent an invitation to confirm interest to the candidate concerned.

#### Article 67

##### **Notice on the existence of a qualification system**

(1) Where the contracting authority decides to set up a qualification system, it shall publish a notice on its existence indicating the purpose of the qualification system and how the interested economic operators may have access to the rules concerning its operation.

(2) The contracting authority shall indicate the term of the qualification system in the notice on the existence of the system. For any change in the term of the system, the contracting authority shall publish on the ESPP:

- a) a notice on the existence of a qualification system, where the term is changed, but the system is not terminated;
- b) a contract award notice, where the system is terminated.

#### Article 68

##### **Voluntary ex ante transparency notice**

(1) The contracting authority may publish a voluntary ex ante transparency notice where it awards a public contract in a negotiated procedure without publication of a contract notice.

(2) The notice referred to in paragraph (1) of this Article shall be published on the same date on which the contracting authority delivers the decision on selection to the tenderers.

#### Article 69

##### **Notice for modifications or additional information in the procedure**

The contracting authority shall publish a notice for modifications or additional information in the procedure where it:

- modifies or supplements the contract notice or other notices used as a substitute for the contract notice; and/or
- modifies, replaces or supplements the tender documentation.

#### Article 70

##### **Contract award notice, simplified contract award notice, design contest award notice and notice for a contract performed**

(1) The contracting authority shall mandatorily publish a contract award notice on the ESPP within ten days after the conclusion of the contract in an open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation partnership or negotiated procedure with or without publication of a contract notice, by awarding a public contract or concluding a framework agreement.

(2) The contracting authority shall mandatorily publish a simplified contract award notice on the ESPP within ten days after the conclusion of the contract in small-value procurement, simplified open procedure and in procurement of specific services.

(3) The contract award notice and the simplified contract award notice published by the contracting authority shall be accompanied by a sample of the contract or framework agreement concluded. The contracting authority shall not disclose information having the status of personal data in accordance with the regulations on personal data protection.

(4) Where the contracting authority falling under the utilities sector has used a periodic indicative notice as a substitute for the contract notice and has decided that it will not award further public contracts during the period covered by this notice, it shall specifically indicate this in the contract award notice.

(5) In the case of a framework agreement or a dynamic purchasing system, the contract award notice for the individual contracts shall be published as a group notice for all individual contracts concluded in the last three months based on the framework agreement or on the dynamic purchasing system, within ten days after the end of each quarter.

(6) Notwithstanding paragraphs (1) and (2) of this Article, the contracting authority shall not have to publish certain information on the public contracts or framework agreement concluded where its release would be contrary to the provisions of a special law.

(7) The contracting authority shall mandatorily publish a design contest award notice within ten days after organising a design contest.

(8) The contracting authority shall fill in a notice for a contract performed in the ESPP within ten days from the date when the contract was completely performed.

#### Article 71

##### **Contract notice and design contest notice)**

(1) Contract notices shall be used as a means of publishing the procurement procedure, except for the negotiated procedure without publication of a contract notice.

(2) For public procurement falling under the utilities sector, the contracting authority may, as a substitute for the contract notice, use another notice, in a manner and under conditions set out in this Law.

(3) Design contest notices shall be used when organising design contests.

#### Article 72

##### **Notice for modification of a contract during its term**

The contracting authority shall mandatorily publish a notice for modification of a contract during its term and a sample of the modification of the contract within ten days following the date on which the public contract or framework agreement was modified in accordance with Article 119 of this Law.

#### Article 73

##### **Invitations to candidates**

(1) In the restricted procedure, innovation partnership, competitive procedure with negotiation and negotiated procedure with publication of a contract notice, the contracting authority shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue phase.

(2) Where the contracting authority for public procurements falling under the utilities sector uses a periodic indicative notice as a substitute for the contract notice, it shall simultaneously invite the economic operators which have expressed their interest to confirm their interest.

(3) The invitation referred to in paragraphs (1) and (2) of this Article shall contain in particular the following information:

- a) the electronic address in the ESPP on which the tender documentation has been made directly available by electronic means;
- b) a reference to the number of the notice published;
- c) the time limit and manner for the receipt of tenders;
- d) in a competitive dialogue, the date and place set for the start of the dialogue;
- e) any additional documents to be submitted by the economic operators in order to verify the declarations or to supplement the documents submitted in the first phase.

(4) In the case of competitive dialogues or innovation partnerships, the information referred to in paragraph (3) point c) of this Article shall be indicated in the invitation to tender.

(5) Where the contracting authority for public procurements falling under the utilities sector uses a periodic indicative notice as a substitute for the contract notice, it shall invite all selected candidates to confirm their interest on the basis of detailed information for the specific public procurement before selecting the suitable candidates.

#### Article 74

##### **Qualification systems**

(1) In order to determine the qualification of the tenderers, the contracting authorities for public procurements falling under the utilities sector may establish and operate a system of qualification of tenderers.

(2) The contracting authority may accept and use the qualification systems established by other contracting authorities.

- (3) The qualification system shall be established by publishing a notice on the existence of a qualification system on the ESPP.
- (4) The qualification system shall contain objective rules and criteria for the selection of economic operators requesting to be admitted in the system.
- (5) The qualification system shall consist of the regular public procurement procedures with regard to the selection of the economic operators and it shall be in accordance with the regular public procurement procedures with regard to the preparation of technical specifications or technical standards, and such specifications may be modified as needed.
- (6) The qualification system may operate and apply in stages.
- (7) Where the qualification system lasts longer than three years, the notice on the existence of a qualification system shall be published once a year.
- (8) The economic operator may submit an application to be admitted to the qualification system at any time, and the evaluation of the qualifications shall be conducted as soon as possible, but not later than six months from the date of the receipt of the application.
- (9) Where the evaluation of the qualifications of the economic operator requesting to be admitted to the qualification system lasts longer than four months from the date of the receipt of the application, the contracting authority shall be obliged to notify the economic operator thereof within two months from the date of the receipt of the application, as well as of the date when the contracting authority expects to have completed the evaluation of the qualifications.
- (10) The contracting authority shall adopt a written decision with a detailed explanation of the reasons for admission or rejection of the admission of an economic operator to the qualification system, and it shall deliver this decision to the economic operator as soon as possible, but not later than 15 days from the date of adoption.
- (11) The contracting authority shall keep a list of qualified economic operators admitted to its qualification systems, divided into categories according to the subject-matter of public contracts for which the qualification is valid.
- (12) The contracting authority shall ensure that the list of qualified economic operators is publicly available on its web page.

## **Chapter 4**

### **Conduct of the procedure**

#### **Section 1**

#### **Planning and preparation**

##### **Article 75**

##### **Planning**

- (1) Based on the planned funding sources, the contracting authority shall adopt a plan for its total procurement needs in the current year per types of supplies, services and works, in accordance with the CPV, which shall define the subject-matter of the procurement, the expected start of the procedure, the estimated value of the contract and the type of the public procurement procedure.
- (2) The total procurement needs shall also include the needs to be satisfied as a joint procurement or under a central purchasing body, as well as the procurement of specific services.
- (3) After adopting the plan under paragraph (1) of this Article, the contracting authority shall publish it on the ESPP by the end of January in the current year.
- (4) Where necessary, the contracting authority may modify and/or supplement the plan referred to in paragraph (1) of this Article throughout the year, in accordance with the planned or provided funds for public procurement and it shall publish them on the ESPP.
- (5) The form, content and manner of developing the annual public procurement plan shall be prescribed by the Minister of Finance.

##### **Article 76**

##### **Preliminary market consultations**

(1) The contracting authority, after having adopted the public procurement decision, and before publishing the contract notice, may conduct a technical dialogue with the economic operators, namely:

- to make the tender documentation it plans to use in the procedure available to the public through the ESPP;
- to enable each interested economic operator to give its own proposals and comments to the tender documentation published, by using electronic means or by organising a joint meeting at a previously fixed time and date; and
- to review the proposals and comments received and, if they are acceptable, to implement them appropriately in the tender documentation.

(2) The committee shall draw up minutes for the technical dialogue conducted, which contain a brief description of the proposals and comments by the economic operators, as well as an explanation for not accepting those proposals and comments that have not been implemented in the tender documentation. The minutes shall be a part of the procedure dossier.

(3) The contracting authority shall deliver the minutes of the conducted technical dialogue through the ESPP to all economic operators that have given proposals and comments on the tender documentation published within three days after the end of the dialogue.

#### Article 77

##### **Public procurement decision**

(1) The contracting authority shall decide on the need for public procurement.

(2) The public procurement decision shall define the subject-matter of the procurement, the amount and source of funds required to perform the contract, the manner and procedure for the contract award, and it shall designate the composition of the committee, as well as the process of hiring external experts, where necessary.

(3) The public procurement decision shall include an explanation of the need for the procurement.

(4) The public procurement decision shall also state the reasons and the explanation for applying the negotiated procedures, the competitive dialogue or the innovation partnership, where the contracting authority conducts a negotiated procedure, a competitive dialogue or an innovation partnership, the urgency reasons for reducing the time limits prescribed by this Law, and the reasons behind the impossibility to divide the subject-matter of the procurement into lots.

(5) Where during the public procurement procedure, the most advantageous tender has higher price than the amount of funds set out in the public procurement decision, the contracting authority may amend the decision and provide additional funds necessary to perform the contract, provided that, based on an analysis performed, the contracting authority determines that this is more cost-effective than repeating the procedure and the price offered does not exceed the threshold prescribed for that type of procedure in accordance with this Law.

(6) Notwithstanding paragraph (2) of this Article, the contracting authority may decide that the procedure for small-value procurement shall be conducted by the organisational unit instead of the public procurement committee, and it shall indicate this in the decision.

#### Article 78

##### **Formulation of the public procurement into lots**

(1) The contracting authority may formulate the subject-matter of the procurement into more separate lots, based on objective criteria per type, characteristics, purpose, time or place of execution, and it shall define the subject-matter and the size of the separate lots by taking into consideration the possibility of small and medium-sized enterprises to participate in the public procurement procedure.

(2) Where the contracting authority has not formulated the subject-matter of the procurement into more separate lots in the open or restricted procedure, it shall explain the main reasons for that in the public procurement decision.

(3) The contracting authority shall indicate in the contract notice, in the invitation to confirm interest or in the invitation to tender, whether tenders may be submitted for one, for several or for all of the lots.

(4) The contracting authority may limit the number of lots that may be awarded to one tenderer, provided that it specifies the maximum number of lots per tenderer in the contract notice, in the invitation to confirm interest or in the invitation to tender. In such cases, it shall specify in the tender documentation the non-discriminatory criteria or rules to be applied for determining which lots will be awarded to a specific tenderer where that tenderer has been selected as the most advantageous one for more lots than the maximum number by applying the criteria for selection of the most advantageous tender.

(5) Where more than one lot may be awarded to the same tenderer, the contracting authority may award the contract by combining several or all lots provided that it has specified in the contract notice, in the invitation to confirm interest or in the invitation to tender that it reserves the possibility of determining the lots or groups of lots that may be combined.

(6) Where the subject-matter of the procurement is composed of more items within one lot, the contracting authority shall not form that lot in a manner unjustifiably limiting the competition to only one economic operator, regardless if the subject-matter of the contract is formed in one or more lots.

#### Article 79

##### **Competences and composition of the committee**

(1) The committee shall conduct the public procurement procedure in an autonomous and independent manner, in accordance with this Law.

(2) The committee, depending on the contract award procedure, shall perform the following activities:

- participate in the preparation of the tender documentation;
- implement a technical dialogue with the economic operators;
- reply to the questions and requests for clarification of the tender documentation;
- open the tenders or requests to participate;
- determine the qualification of the economic operators;
- determine the selected candidates;
- check the technical proposals submitted by the tenderers regarding the conditions and requirements set out in the technical specifications or in the descriptive document;
- check the financial proposals submitted by the tenderers regarding the price and the relevant financial and other conditions determined in the tender documentation;
- determine which tenders are unacceptable, and the reasons why those tenders are considered to be unacceptable;
- determine which tenders are acceptable and/or suitable;
- propose the most advantageous tender or cancellation of the procedure;
- draw up a procedure outcome report;
- notify the participants in the procedure about the outcome of the conducted procedure;
- participate in the preparation of a reply to an appeal; and
- perform other activities in accordance with this Law.

(3) The committee shall be obliged to act in accordance with the Code of Ethics in the conduct of public procurement procedures.

(4) The committee shall be composed of an odd number of members, and it may also include their deputies.

#### Article 80

##### **Person or an organisational unit for public procurement**

(1) The contracting authority shall designate a person, or an organisational unit that is to cover also the activities in the field of public procurement.

(2) The person referred to in paragraph (1) of this Article shall be a person who has acquired at least 180 credits according to the ECTS, or has completed VI/1 level of education and who holds a proper certificate for passed exam for a public procurement officer.

(3) The person/persons from the organisational unit referred to in paragraph (1) of this Article shall perform the following activities:

- participate in the development of the public procurement plan;
- prepare the public procurement decision;
- conduct small-value procurement;
- participate in the preparation of the tender documentation;
- publish the contract notice;
- advise the committee during the conduct of the contract award procedure;
- participate as a member of the public procurement committee in contract award procedures with an estimated value exceeding EUR 130,000 in Denar equivalent for supplies and services and exceeding EUR 5,000,000 in Denar equivalent for works;
- draft the necessary acts pursuant to the procedure outcome report;
- update the data submitted to the ESPP, in accordance with this Law;
- publish a negative reference in the ESPP;
- give guidelines and instructions to the contracting authority about acting in an appeal procedure, in cooperation with the committee;
- be in charge of the dossiers from the procedures conducted, in accordance with the regulations on office and archive operations; and
- perform other activities in accordance with this Law.

(4) The person/persons referred to in paragraph (1) of this Article shall be obliged to act in line with the Code of Ethics in the conduct of public procurement.

#### Article 81

##### **Tender documentation**

(1) The contracting authority shall indicate in the tender documentation the requirements, conditions, criteria and other necessary information, so as to ensure that the economic operator has complete, accurate and precise information regarding the manner in which the public procurement procedure is to be conducted.

(2) The tender documentation, depending on the type of procedure, shall contain in particular:

- general information regarding the contracting authority;
- instructions regarding the legal time limits and the necessary requirements for participation;
- the minimum selection criteria and documents to be submitted by the tenderers or candidates so as to prove that they meet the selection criteria;
- technical specifications or, when applying a competitive dialogue, negotiated procedures and an innovation partnership, a descriptive document;
- instructions regarding the preparation and submission of the technical and financial proposal;
- detailed and complete information regarding the criteria for selection of the most advantageous tender;
- instructions regarding the review procedures in the public procurement procedure; and
- information regarding the compulsory provisions of the public contract.

(3) Notwithstanding paragraph (2) of this Article, in the case of small-value procurement with publication of a contract notice, the contracting authority shall prepare a simplified tender documentation containing in particular instructions on submitting tenders and technical specifications, whereas in the use of the electronic marketplace for small-value procurement only a brief description of the subject-matter of the procurement.

(4) The contracting authority shall be obliged to answer any questions or requests for clarification or modifications that could be posed by the economic operators in relation to the tender documentation, provided that they are submitted at least eight days before the time limit for receipt of tenders or requests to participate, or six days in the simplified open procedure and four days in the small-value procurement with publication of a contract notice.

(5) The contracting authority, within the time limit referred to in paragraph (6) of this Article, on its own initiative or based on the questions or requests submitted by the economic operators, may modify or supplement the tender documentation.

(6) The answers and the modifications and supplements to the tender documentation shall be made available by the contracting authority free of charge in the same manner as it has made available the tender documentation, but not later than six days from the time limit for receipt of tenders or requests to participate, or four days in the simplified open procedure and two days in the small-value procurement with publication of a contract notice.

(7) The contracting authority may indicate in the tender documentation whether it will require transfer of the intellectual property rights.

## Article 82

### Technical specifications

(1) The subject-matter of the procurement shall be described in a clear, unambiguous, complete and neutral manner ensuring the ability to compare the tenders regarding the terms and requirements set out by the contracting authority.

(2) The description of the subject-matter of the procurement shall contain technical specifications and, where necessary, it shall be supplemented by sketches, design documents, drawings, models etc.

(3) The technical specifications shall be set out in the tender documentation.

(4) The technical specifications shall lay down the characteristics required of the supplies, services or works. Those characteristics may also refer to a specific process or method of production or provision of the requested supplies, services or works or to a specific process for another stage of their life cycle, even where such factors do not form part of their material substance, provided that the characteristics are linked to the subject-matter of the procurement and are proportionate to its value and its objectives.

(5) For procurement intended to be used by natural persons, whether general public or staff of the contracting authority, the contracting authority in the preparation of the technical specifications shall take into account the accessibility criteria for persons with disabilities, or shall draw up the specifications in accordance with the design for all users principle, except in duly justified cases.

(6) Technical specifications shall provide equal access of all economic operators to the public procurement procedure and shall not create unjustified obstacles to the market competition in public procurement.

(7) The technical specifications shall be formulated in one of the following ways:

- a) in terms of the performance or functional requirements, including requirements for environmental protection, provided that these parameters are described in a sufficiently precise manner to allow tenderers to accurately understand the subject-matter of the procurement and to allow the contracting authority to select the most advantageous tender;
- b) by reference, as a rule, in the following order: application of Macedonian standards in accordance with the European standards, European technical approvals, common technical specifications used in the European Union, international standards or other technical references established by the European standardisation bodies. Where they are not prescribed, the technical specifications shall be defined by reference to Macedonian standards, national technical approvals or national technical specifications referring to the use of products, the design or the execution of works. Each reference shall be accompanied by the words 'or equivalent';
- c) in terms of the performance or functional requirements as referred to in point a) of this paragraph, with reference to the standards, technical approvals, common technical



- specifications referred to in point b) of this paragraph, as a possible means of conforming with the performance or functional requirements; or
- d) by reference to the technical specifications referred to in point b) of this paragraph for certain characteristics, and by reference to the performance or functional requirements referred to in point a) of this paragraph for other characteristics.
- (8) The contracting authority shall not define technical specifications referring to a specific production, performance, particular process or trademarks, patents, types or a specific origin of products with the effect of favouring or eliminating certain economic operators or certain products.
- (9) Notwithstanding paragraph (8) of this Article, such reference shall be permitted only in exceptional cases, where a sufficiently precise description of the subject-matter of the contract for all interested parties pursuant to the provisions of this Article is not possible, and it shall be accompanied by the words 'or equivalent'.
- (10) Where the contracting authority has formulated the technical specifications in accordance with paragraph (7) point (a) of this Article, it shall not reject a tender for supplies, services or works which complies with a Macedonian standard that, on the other hand, is in accordance with a European standard, a European technical approval, a common technical specification used in the European Union, an international standard or a technical reference system established by European standardisation bodies, where the specifications defined by this standard, approval, common technical specification, international standard or technical reference system refer to the performance or functional requirements, which have been laid down in the public procurement procedure by the contracting authority.
- (11) In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 84 of this Law, that the supplies, services or works in compliance with the standard meet the performance or functional requirements laid down by the contracting authority.

## Article 83

### Labels

- (1) Where the contracting authority purchases supplies, services or works with specific environmental, social or other characteristics, it may, in the technical specifications, the criteria for selection of the most advantageous tender or the contract performance conditions, require specific labels as proof that the supplies, services or works meet the required characteristics, provided that the following conditions are fulfilled:
- a) the label requirements only concern criteria which are linked to the subject-matter of the procurement and are appropriate to define the characteristics of the supplies, services or works that are the subject-matter of the procurement;
  - b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
  - c) the labels are established in an open and transparent procedure in which all relevant stakeholders may participate, including state authorities, consumers, social partners, manufacturers, distributors and non-governmental organisations;
  - d) the labels are accessible to all interested parties; and
  - e) the label requirements are set by a third entity over which the economic operator applying for the label cannot exercise a decisive influence.
- (2) Where the contracting authority does not require the supplies, services or works to meet all of the label requirements, it shall indicate which requirements have to be fulfilled.
- (3) The contracting authority requiring a specific label shall accept all labels that confirm that the supplies, services or works meet equivalent label requirements.
- (4) Where for reasons that are not attributable as an omission, the economic operator could not obtain the label indicated by the contracting authority or an equivalent label within the time limit for the receipt of tenders, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator proves that the supplies, services or works tendered fulfil the requirements of the label or the requirements set out by the contracting authority.

(5) Where the label fulfils the requirements set out in paragraph (1) points b), c), d) and e) of this Article, but also sets out requirements not linked to the subject-matter of the procurement, the contracting authority shall not require that label, but may define the technical specification by reference to detailed specifications of the label concerned, or, where necessary, parts thereof that are linked to the subject-matter of the procurement and are appropriate to define its characteristics.

#### Article 84

##### **Test reports, certification and other means of proof**

(1) The contracting authority may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as proof of the conformity with the requirements or criteria set out in the technical specifications, the criteria for selection of the most advantageous tender or the contract performance conditions.

(2) Where the contracting authority requires the submission of certificates issued by a conformity assessment body, it shall also accept certificates issued by other equivalent conformity assessment bodies.

(3) The contracting authority shall also accept other appropriate means of proof for the fulfilment of the requirements, such as a technical dossier of the manufacturer where the economic operator had no access to the certificates or test reports referred to in paragraph (1) of this Article or could not obtain them within the time limit for the receipt of tenders, provided that the lack of access is not an omission on the part of the economic operator and provided that the economic operator thereby proves that the supplies, services or works tendered meet the requirements or criteria set out in the technical specifications, the criteria for selection of the most advantageous tender or the contract performance conditions.

#### Article 85

##### **Variants**

(1) The contracting authority may allow or require tenderers to submit variants, and it shall indicate this in the contract notice or in the invitation to confirm interest. Where variants have not been allowed or requested, their submission shall not be allowed.

(2) Variants shall be linked to the subject-matter of the procurement.

(3) The contracting authority allowing or requiring the submission of variants shall define in the tender documentation the minimum obligatory requirements to be met by the variants, as well as all specific requirements for their submission, and in particular whether the variant may be submitted only where a tender, which is not a variant, has also been submitted.

(4) The contracting authority shall define the criteria for selection of the most advantageous tender in such a manner that they could apply to variants meeting the minimum requirements as well as to acceptable tenders which are not variants.

(5) The contracting authority shall take into consideration only those variants meeting its minimum requirements.

(6) Where the contracting authority has allowed the submission of variants, it shall not reject a variant that has been selected as the most advantageous, on the sole ground that:

- the public supply contract according to the variant selected as the most advantageous one shall become a public service contract; or
- the public service contract according to the variant selected as the most advantageous one shall become a public supply contract.

#### Article 86

##### **Setting time limits**

(1) When fixing the time limits for the receipt of tenders and requests to participate, the contracting authority shall take account of the complexity of the public procurement and the time needed to prepare the tenders or requests to participate, and it shall be obliged to respect the minimum time limits set out in this Law.

(2) Where it is needed to make a visit to the site or inspect the documents supporting the tender documentation, the time limit for the receipt of tenders shall be longer than the minimum time limits for implementation of the procedures referred to in Article 47 of this Law, so as to enable all economic operators to become aware of all the information needed to prepare the tenders.

(3) With a view to enabling all economic operators to become aware of all the information needed to prepare the tenders, the time limit for the receipt of tenders or requests to participate shall be extended proportionally to the complexity of the modification or supplementation of the tender documentation in the last eight days before the time limit for the receipt of tenders or requests to participate, or in the last six days in the simplified open procedure or four days in the small-value procurement with publication of a contract notice.

## Section 2 **Qualitative selection**

### Article 87

#### **Requirements for determining of qualification**

In determining the qualification of economic operators, the contracting authority shall identify:

- whether there are grounds for exclusion from the procedure;
- whether the qualitative selection requirements laid down in Articles 89, 90, 91 and 92 of this Law have been fulfilled; and
- whether the quality assurance standards and environmental management standards laid down in Articles 93 and 94 of this Law have been met.

### Article 88

#### **Grounds for exclusion from the procedure**

(1) The contracting authority shall exclude an economic operator from the public procurement procedure where it has established that, in the last five years, the economic operator or the person who is a member of the management or supervisory body of that economic operator or has powers of representation, decision or control therein, has been the subject of a conviction by final judgment for a crime that includes elements of the following criminal offences laid down in the Criminal Code:

- participation in a criminal organisation;
- corruption;
- contributions and tax evasion;
- terrorism or offences linked to terrorist activities;
- money laundering or terrorist financing; and
- abuse of child labour and trafficking in human beings.

(2) The contracting authority shall exclude from the public procurement procedure the economic operator that:

- a) has unpaid taxes, contributions or other public duties, unless the economic operator is approved delayed payment of taxes, contributions or other public duties, in accordance with the special regulations and it pays them on a regular basis;
- b) is under a bankruptcy or liquidation procedure;
- c) has been imposed a secondary sentence involving prohibition to participate in open call procedures, procedures for awarding public contracts and contracts for public private partnership;
- d) has been imposed a secondary sentence involving temporary or permanent prohibition to pursue a certain activity;
- e) has been the subject of a misdemeanour sanction involving prohibition to pursue a profession, activity or duty, or a temporary prohibition for pursuing a specific activity; or
- f) presents false information or does not submit the information required by the contracting authority.

(3) The contracting authority shall exclude an economic operator from the public procurement procedure where that economic operator until the expiry of the time limit for the receipt of tenders or requests to participate is on the negative reference list referred to in Article 101 paragraph (13) of this Law.

(4) The contracting authority shall exclude an economic operator from the public procurement procedure when the ground for exclusion is specified in the tender documentation:

- a) where the contracting authority has justified reasons to conclude that the economic operator has entered into agreements with other economic operators aimed at or resulting in distortion of competition. It shall be deemed that the contracting authority's conclusion referred to in this point is justified where the Commission for Protection of Competition, pursuant to the notification by the contracting authority, informs that contracting authority within 15 days that it will initiate a misdemeanour procedure;
- b) where the economic operator has shown significant or persistent deficiencies in the fulfilment of key obligations under prior public contracts or prior concession contracts and public private partnership contracts concluded with that contracting authority, which led the contracting authority to unilaterally terminate the contract, request compensation of damages or undertake other comparable sanctions;
- c) where the economic operator unduly influences the decision-making process of the contracting authority or obtains confidential information that may confer upon it undue advantages in the public procurement procedure.

#### Article 89

##### **Requirements for qualitative selection of economic operators**

(1) The requirements for qualitative selection of economic operators shall be the following:

- a) suitability to pursue the professional activity;
- b) economic and financial standing; and
- c) technical and professional ability.

(2) As requirements for qualitative selection of the economic operator, the contracting authority may only use the requirements set out in paragraph (1) of this Article.

(3) The contracting authority shall include in the public procurement procedure only those requirements necessary to ascertain that the economic operator is able to perform the contract, and all requirements shall be directly related and proportionate to the subject-matter of the public procurement, its complexity and value, or to the lot of the subject-matter of the procurement in procurements divided into lots.

(4) The contracting authority shall mandatorily determine the suitability to pursue the professional activity, and it may determine the economic and financial standing and the technical and professional ability.

(5) The contracting authority shall indicate the requirements for participation, which are expressed as minimum parameters, including the relevant means of proof, in the contract notice, in the invitation to confirm interest or in the periodic indicative notice where it is used as a substitute for a contract notice.

#### Article 90

##### **Suitability to pursue the professional activity**

(1) As a requirement for determining the suitability to pursue a professional activity, the contracting authority shall require each economic operator to submit proof that it is registered as a natural person or a legal entity for pursuing the activity related to the subject-matter of the procurement or proof that it belongs to a relevant professional association in accordance with the regulations of the country where it is registered.

(2) In determining the suitability to pursue a professional activity by economic operators, the contracting authority shall also require proof issued by a competent authority for fulfilment of the special conditions for pursuing the activity prescribed in accordance with the Law and which are related to the subject-matter of the procurement.

#### Article 91

##### **Economic and financial standing**

(1) The contracting authority may set out the minimum requirements to confirm that the economic operators possess the necessary economic and financial capacity to perform the contract.

(2) In the context of paragraph (1) of this Article, the contracting authority may require that the economic operator:

- (a) has a certain minimum yearly income, including a certain minimum income in the activity covered by the subject-matter of the public procurement;
- (b) has a certain minimum value of operational indicators, which, inter alia, express the levels of stability, liquidity and performance, including a comparison with the indicators of the activity average relating to the subject-matter of the public procurement; and/or
- (c) ensures an appropriate level of professional risk indemnity insurance.

(3) The contracting authority shall not require that the minimum yearly income be twice the estimated value of procurement.

(4) Where the contracting authority requires information from the financial statements of the economic operator, it shall specify in the tender documentation the methods and conditions to be used for assessing the fulfilment of that requirement for participation, and they shall be transparent, objective and non-discriminatory.

(5) Where the public procurement is divided into lots, paragraph (3) of this Article shall apply in relation to each individual lot.

(6) With regard to a framework agreement with more economic operators that involves reopening of competition, the yearly turnover requirement shall be calculated on the basis of the expected maximum size of the individual contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.

(7) In the case of dynamic purchasing systems, the yearly income requirement shall be calculated on the basis of the expected maximum size of the individual contracts to be performed under that system.

#### Article 92

##### **Technical and professional ability**

(1) The contracting authority may set out the minimum requirements ensuring that the economic operators possess the necessary human and technical resources to perform the contract in a quality manner.

(2) The contracting authority may require that economic operators have a sufficient experience demonstrated by suitable references from previous procurements.

(3) In public procurement of works, services or supplies involving siting or installation operations, the contracting authority may evaluate the professional ability of economic operators to provide the works, services or installation operations with regard to their skills, performance, experience and reliability.

#### Article 93

##### **Quality assurance standards**

(1) Where it is required to submit certificates issued by independent bodies attesting the compliance with certain quality assurance standards, the contracting authority shall refer to the quality assurance systems based on the relevant European standards or international standards. According to the mutual recognition principle, the contracting authority shall accept the equivalent certificates issued by bodies established in the Member States of the European Union.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority shall also accept other equivalent evidence of the quality assurance systems, where, for reasons that are not attributable as an omission to the economic operator, it was not able to obtain the requested certificate within the time limit for the receipt of the tender/request to participate, provided that it proves that the proposed quality assurance measures comply with the required quality assurance standards.

#### Article 94

##### **Environmental management standards**

(1) Where the contracting authority requires the compliance with certain environmental management standards, it shall refer to:

- the Eco-Management and Audit Scheme (EMAS); or
- the environmental management standards based on the relevant European or international standards certified by accreditation institutions or attestation authorities or by the relevant European or international bodies accredited for certification.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority shall also accept other equivalent evidence of environmental management measures, where, for reasons that are not attributable as an omission to the economic operator, it was not able to obtain the requested means of proof within the time limit for the receipt of the tender/request to participate, provided that it proves that these measures are equivalent to those required in accordance with the applicable environmental management systems or standards.

#### Article 95

##### **Means of proof for the ability**

(1) Economic operators shall submit a single document for proving the capacity and/or certificates, statements and other documents indicated in this Article as means of proof that:

- there are no grounds for exclusion specified in Article 88 of this Law;
- the requirements for qualitative selection have been fulfilled in accordance with Article 90, 91 and 92 of this Law; and
- the quality assurance standards and/or environmental management standards have been met in accordance with Articles 93 and 94 of this Law.

(2) The contracting authority shall not require means of proof for the ability other than those referred to in this Article and in Articles 93 and 94 of this Law.

(3) Where economic operators rely on the capacities of other entities, they shall be obliged to demonstrate by valid means of proof that they will have the necessary resources for performance of the contract at their disposal.

(4) As documents of the absence of grounds for exclusion referred to in Article 88 of this Law, the contracting authority shall accept the following documents:

- a) as regards Article 88 paragraph (1) of this Law, a statement by the economic operator or a single document for proving the capacity;
- b) as regards Article 88 paragraph (2) of this Law, a certificate issued by the competent authority in the Republic of Macedonia or in a third country in which the economic operator is registered or a single document for proving the capacity;
- c) as regards Article 88 paragraph (3) of this Law, an extract from the negative reference list which the contracting authority obtains from the ESPP.

(5) Where the country in which the economic operator is registered does not issue the documents referred to in paragraph (4) of this Article, or where these do not cover all the cases under Article 88 of this Law, the contracting authority shall accept a declaration by the economic operator certified by a competent authority.

(6) The documents specified in Article 88 paragraphs (1) and (2) of this Law shall not be older than six months after the time limit for the receipt of tenders or requests to participate.

(7) As proof of the economic and financial standing of economic operators, the contracting authority may require one or more of the following documents:

- a) appropriate bank statements;
  - b) evidence of relevant professional risk indemnity insurance;
  - c) balance sheets issued by a competent authority, or audited balance sheets or extracts from the balance sheets, where publication of the balance sheet is prescribed by law in the country in which the economic operator is registered; and
  - d) statement of the undertaking's overall income (information from the income statement issued by a competent authority, or an audited income statement) and, where required, a statement of the income in the area covered by the public contract for a maximum of the last three financial years for which such information is available, depending on the date on which the undertaking was set up or commenced its operations, as far as such information is available.
- (8) In the public procurement procedures, the technical and professional ability of the economic operator may be proven in one or more of the following manners:
- a) a list of the principal deliveries of supplies or services provided over the past three years, with the sums, dates and buyers (contracting authorities or economic operators), by providing a certificate of deliveries effected or services provided. In order to ensure an adequate level of competition, the contracting authority may, where necessary, take into account the evidence of relevant supplies delivered or services provided more than three years ago, and it shall indicate this in the tender documentation;
  - b) a list of the works carried out over the past five years accompanied by a certificate of satisfactory execution of the most important works. In order to ensure an adequate level of competition, the contracting authority may, where necessary, take into account the evidence of works carried out more than five years ago, and it shall indicate this in the tender documentation;
  - c) a description of the technicians or technical bodies involved in the performance of the public contract, especially those responsible for quality control, and, in the case of public works contracts, those involved in the execution of the works, irrespective of whether or not they are employed at the economic operator;
  - d) a description of the technical facilities and measures used by the economic operator for ensuring quality and description of its study and research facilities;
  - e) an indication of the supply chain management and tracking system that the economic operator will be able to apply when performing the contract;
  - f) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent authority of the country of establishment, on the production capacities or, where necessary, on the study and research facilities, and on the quality control measures;
  - g) the educational and professional qualifications of the service provider or contractor or those of its managerial staff, provided that they are not evaluated as a criterion for selection of the most advantageous tender;
  - h) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
  - i) a statement of the average annual manpower of the service provider or contractor and its number of managerial staff for the last three years;
  - j) a statement of the instruments, plants or technical equipment available to the service provider or contractor for the performance of the contract;
  - k) an indication of the portion of the public contract which the economic operator intends to subcontract; and
  - l) with regard to the products to be supplied:
    - samples, description and/or photographs of the products to be delivered, and the authenticity of which must be certified by the economic operator where the contracting authority so requests; and

- certificates and reports issued by official quality control bodies of recognised competence attesting the conformity of products clearly identified by references to specifications and standards.

#### Article 96

##### **Reliance on the capacities of other entities**

- (1) In the public procurement procedure, the economic operator may, with a view to fulfilling the requirements for qualitative selection relating to the economic and financial standing and the technical or professional ability, rely on the capacities of other entities, regardless of the legal links between them.
- (2) In the public procurement procedure, the economic operator may rely on the capacities of other entities so as to prove that it fulfils the requirements for qualitative selection relating to the educational and professional qualifications or to the relevant professional experience, only if the other entities will execute the works or provide the services for which these capacities are required.
- (3) Where an economic operator relies on the capacities of other entities, it shall be obliged to prove the reliance by valid evidence demonstrating that those entities will put the relevant resources at its disposal.
- (4) The contracting authority shall verify whether the entities on the capacity of which the economic operator relies fulfil the relevant requirements for qualitative selection and whether there are grounds for their exclusion.
- (5) Where an economic operator relies on the capacities of other entities with regard to requirements relating to the economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.
- (6) The group of economic operators may rely on the capacities of the group members or of other entities in a manner laid down in paragraphs (1), (2), (3), (4) and (5) of this Article.
- (7) In the case of public procurement of supplies involving sitting or installation operations, services and works, the contracting authority may require that certain critical tasks be performed by the tenderer, and in the case of a joint tender by the participants in that group.

#### Section 3

##### **Reduction of the number of qualified candidates, tenders or solutions**

#### Article 97

##### **Reduction of the number of qualified candidates to be invited to participate**

- (1) In the restricted procedure, competitive procedure with negotiation, negotiated procedure with publication of a contract notice, competitive dialogue and innovation partnership, the contracting authority may limit the number of qualified candidates that it will invite to tender or to participate in the dialogue, provided that the minimum number of qualified candidates was set in accordance with this Article.
- (2) The contracting authority shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules it intends to apply so as to reduce the number of qualified candidates, the minimum number and, where necessary, the maximum number of candidates it intends to invite.
- (3) In the restricted procedure, the minimum number of candidates shall be five; whereas in the competitive procedure with negotiation, in the competitive dialogue and in the innovation partnership, the minimum number of candidates shall be three.
- (4) Notwithstanding paragraph (3) of this Article, where the number of qualified candidates is below the minimum number, the contracting authority may:
  - cancel the procedure; or
  - continue the procedure with the qualified candidates only, provided that there are minimum two qualified candidates.
- (5) The contracting authority shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities.



#### Article 98

##### **Reduction of the number of tenders and solutions**

- (1) Where the contracting authority uses the option of reducing the number of tenders referred to in Article 52 of this Law or the option of reducing the solutions under Articles 53 and 54 of this Law, it shall do so by applying the criteria for selection of the most advantageous tender set out in the contract notice and in the tender documentation.
- (2) The reduced number of tenders or solutions shall ensure genuine competition in the final stage of the negotiations or of the dialogue.

#### Section 4

##### **Selection of the most advantageous tender**

#### Article 99

##### **Criteria for selection of the most advantageous tender**

- (1) The contracting authority shall award the public contract based on the most economically advantageous tender.
- (2) The most economically advantageous tender shall be identified on the basis of the price or cost; by using the cost-effectiveness approach, such as life-cycle costing; or as the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and social aspects linked to the subject-matter of the procurement that may cover:
  - a) quality and technical value, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and sale and purchase conditions;
  - b) organisation, qualification and experience of the staff that will perform the contract, where the quality of the staff assigned can have a significant impact on the performance of the contract; and
  - c) after-sales services and technical support, and, in exceptional cases, delivery conditions such as delivery date, method of delivery and delivery period or period of completion.
- (3) The price or cost may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.
- (4) Where the price of certain products or the remuneration for certain services is prescribed by law or other regulations, the contracting authority shall not use the price as a criterion for selection of the most advantageous tender in the public procurement procedure.
- (5) In the procedures for public procurement of services for software development, architecture or engineering services, translation services and consultancy services, the contracting authority shall not use the price as sole criterion for selection of the most advantageous tender.
- (6) The criteria for selection of the most advantageous tender shall be non-discriminatory, proportionate and directly linked to the subject-matter of the procurement. The criteria shall be directly linked to the subject-matter of the procurement where they relate to the supplies, services or works to be provided, in any respect and at any stage of their life cycle, including factors covered by a specific process of production, provision or trading of those supplies, services or works or by a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.
- (7) The contracting authority shall define the criteria for selection of the most advantageous tender in a way that will enable it to perform an efficient review and evaluation of tenders, and verification of information submitted by tenderers, and in case of doubt, to verify the accuracy of the information and proof provided in the tenders.
- (8) The contracting authority shall specify, in the tender documentation, the weightings for each individual criterion chosen, and the total sum shall be 100.
- (9) Notwithstanding paragraph (8) of this Article, weightings shall not be used where the most economically advantageous tender is selected on the basis of price alone.

(10) With regard to the criteria for selection of the most advantageous tender for purchasing foodstuffs, preference shall be given to foodstuffs within the quality programmes (such as seasonally produced foodstuffs by an integrated approach, seasonally produced foodstuffs by organic agricultural methods, etc.), foodstuffs produced in compliance with the national regulations for food and foodstuffs quality, which are non-perishable and permanently processed, and where higher quality of such foodstuffs is ensured in terms of greater freshness and lower environmental impact during transportation.

#### Article 100

##### **Life-cycle costing**

(1) Life-cycle costing of the supplies, services or works shall cover parts or all of the following costs:

a) costs borne by the contracting authority or other users, such as:

- costs relating to acquisition or purchase;
- costs of use, such as consumption of energy and other resources;
- maintenance costs;
- end of life costs, such as collection and recycling costs;

b) costs for eliminating the impact of the products, services or works on the environment during their life cycle, provided that their monetary value can be determined and verified, and which may include the cost of emissions of greenhouse gases and of other pollutants, and other climate change mitigation costs.

(2) Where the contracting authority applies the life-cycle costing as a criterion for selection of the most advantageous tender, it shall indicate in the tender documentation the data to be provided by the tenderers and the method for determining of the life-cycle costs on the basis of that data.

(3) The method referred to in paragraph (2) of this Article, which will be used for determining of the costs specified in paragraph (1) point b) of this Article, shall fulfil the following conditions:

- a) to be based on objectively verifiable and non-discriminatory criteria, and it shall not unduly favour or disadvantage certain economic operators, in particular, where it has not been intended for repeated or continuous application;
- b) to be accessible to all interested parties; and
- c) the economic operators to be able to provide the data required without unreasonable difficulties, including economic operators from third countries signatories to the international agreements ratified in accordance with the Constitution of the Republic of Macedonia.

#### Chapter 5

##### **Means of assurance**

#### Article 101

##### **Tender guarantee**

(1) The contracting authority shall require a tender assurance in the form of a bank guarantee or a statement on steadiness of the tender and that shall be indicated in the contract notice and in the tender documentation.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority shall not require a tender assurance in the form of a bank guarantee in small-value procurement and in simplified open procedures.

(3) In the cases of a bank guarantee, the contracting authority shall express the required value as a percentage of the tender value, and it shall not require a guarantee amount exceeding 3% of the tender value, net of VAT.

(4) By means of the statement on steadiness of the tender, the tenderer shall declare that it will not take the actions referred to in paragraph (6) of this Article. If the tenderer violates the statement given, the contracting authority shall exclude the tenderer from the procedure and shall act in accordance with paragraph (7) of this Article.

(5) The tender guarantee shall be submitted together with the tender, and it cannot be subsequently submitted after the expiry of the time limit for the receipt of tenders.

- (6) The contracting authority shall collect the bank guarantee of the tender if the tenderer:
- withdraws its tender before the expiry of its validity period;
  - fails to accept the correction of the arithmetical errors made by the committee;
  - fails to sign the public contract in compliance with the requirements of the tender documentation and the tender submitted; or
  - fails to provide the performance guarantee, if so required by the contracting authority in the tender documentation.
- (7) If the bank guarantee of the tender is collected, or if the statement on steadiness of the tender is violated, the contracting authority shall publish on the ESPP a negative reference that results in exclusion of the tenderer concerned from all future public procurement procedures in a period of six months from the date of publication. The period of exclusion referred to in this paragraph shall be extended for additional three months for every next negative reference, but not exceeding one year.
- (8) The prohibition to participate in contract award procedures, in accordance with the conditions referred to in paragraph (7) of this Article shall also apply to the group of economic operators having as a member an economic operator with a negative reference.
- (9) For the situations referred to in paragraph (6) indents 1 and 2 of this Article, the proposal for issuing a negative reference shall be included in the procedure outcome report.
- (10) For the situations referred to in paragraph (6) indents 3 and 4 of this Article, the proposal for issuing a negative reference shall be submitted to the responsible person of the contracting authority by the person or organisational unit for public procurement.
- (11) For publishing a negative reference according to the cases under paragraph (6) of this Article, the contracting authority shall decide by a decision on selection or cancellation of the procedure, and the economic operator shall have the right to appeal in a review procedure pursuant to this Law.
- (12) The negative reference referred to in paragraph (7) of this Article shall be published by the contracting authority within three working days from the day on which the decision on selection or cancellation of the procedure becomes final.
- (13) On the basis of the negative references published, a list is created of negative references issued that shall be available on the ESPP.
- (14) After the expiry of the period laid down in paragraph (7) of this Article, the negative reference published shall be automatically deleted from the list of negative references issued.
- (15) The bank guarantee has to be valid at least until the day after the expiry of the tender validity period.
- (16) The contracting authority, in exceptional cases for which it is not at fault, may require from the tenderers to extend the validity period of the bank guarantee.
- (17) The bank guarantee shall be returned to the tenderers that have not been chosen as the most advantageous within the period of its validity.
- (18) The bank guarantee shall be returned to the winning tenderer after it signs the public contract and submits the performance guarantee, if required.

## Article 102

### **Performance guarantee**

- (1) The contracting authority may require from the winning tenderer to provide a performance guarantee in the form of a bank guarantee and it shall indicate this in the contract notice and in the tender documentation.
- (2) The amount of the performance guarantee may range from 5% to 15% of the value of the public contract.
- (3) Notwithstanding paragraph (1) of this Article, the performance guarantee shall not be required in the case of design contests, public contracts for consultancy services and in awarding framework agreements.
- (4) A performance guarantee may be required for individual contracts awarded on the basis of a framework agreement.
- (5) The performance guarantee shall have to be valid until the public contract is fully completed.

(6) The performance guarantee shall be returned to the contractor within a period of 14 days following the date on which the public contract is completely performed.

(7) When the period for execution of the contract has been extended or its value has been increased, the contractor shall have to respectively extend the validity and value of the performance guarantee.

#### Article 103

##### **Advance payment guarantee**

(1) The contracting authority, in accordance with the obligations arising from the public contract, may provide for an advance payment.

(2) For the contracting authorities falling under the classical public sector, the advance payment shall not exceed 20% of the contract value.

(3) Prior to making the advance payment referred to in paragraph (2) of this Article, the contracting authority shall mandatorily require the contractor to provide a bank guarantee that is equivalent to the amount of the agreed advance payment.

#### Article 104

##### **Using other types of guarantees)**

(1) The contracting authority may also set out in the tender documentation other types of guarantees in accordance with a special law and depending on the nature of the subject-matter of the procurement for aspects of the contract not covered by the guarantees referred to in Articles 101, 102 and 103 of this Law.

(2) Where the contracting authority requires other types of guarantees, it shall stipulate in the tender documentation the type and conditions of the guarantee.

#### Section 6

##### **Rules on the conduct of public procurement procedures**

#### Article 105

##### **Preparation and submission of tenders**

(1) The tenderer shall prepare its tender in accordance with the tender documentation.

(2) The tender shall be binding for the entire validity period determined by the contracting authority.

(3) The contracting authority, in exceptional cases for which it is not at fault, may require from the tenderers to extend the validity period of the tenders.

(4) The tenderer shall submit the tender with price including all costs and discounts to the total price of the tender, net of VAT, which is shown separately, in Denar or in currency as specified in the tender documentation.

(5) In the procurement of consultancy services, the technical and financial proposals shall be submitted in separate documents.

(6) The tender price shall be expressed for the total subject-matter of the procurement. Where the subject-matter of the procurement is divided into lots, the price of the tender shall be expressed separately for the respective lot for which the tender is submitted in accordance with the tender documentation.

(7) The contracting authority shall specify in the tender documentation the currency or currencies in which the price of the tender can be expressed, as well as the currency that is to be used for the evaluation of tenders. The exchange rate list to be used shall be that of the National Bank of the Republic of Macedonia, and the exchange rates shall be the ones that have been valid 14 days prior to the time limit for the receipt of tenders.

(8) The tenderer may modify, replace or withdraw its tender before the expiry of the time limit for the receipt of tenders.

#### Article 106

##### **Joint tender**

(1) The contracting authority in the public procurement procedure for services or works, as well as in the public procurement procedure for supplies covering additional services or siting and installation operations, may require the legal entities to indicate the names and relevant professional qualifications of the staff responsible for the performance of the contract.

(2) Groups of economic operators, including temporary associations, may also participate in the public procurement procedures, in accordance with the regulations on protection of competition. The contracting authority shall not require the group of economic operators to have a specific legal form as a requirement for submitting a joint tender or a joint request to participate.

(3) The contracting authority may clarify in the tender documentation how groups of economic operators are to meet the requirements for determining the economic and financial standing or technical and professional ability, provided that this is proportionate and justified by objective reasons.

(4) The conditions for performance of the public contract that must be met by the groups of economic operators, and which are different from those imposed on individual participants in the public procurement procedure, shall also be proportionate and justified by objective reasons.

(5) The joint tender, as an integral part, shall include a contract for submitting a joint tender through which the members in the group of economic operators assume liability towards each other and towards the contracting authority for performance of the public contract, and it shall particularly contain the following data:

- the member of the group that will act as group leader, i.e. that will submit the tender and represent the group before the contracting authority;
- the member of the group that will sign the public contract on behalf of the group of economic operators;
- the member of the group that will issue the invoice and account to which the payments shall be made;
- a brief description of the obligations of each member of the group of economic operators for performance of the contract; and
- other data which the contracting authority will set out in the tender documentation.

(6) The members of the group of economic operators shall be jointly and severally liable towards the contracting authority for the obligations assumed by the tender.

(7) A member of the group of economic operators cannot withdraw from the group of economic operators until the public contract is concluded if:

- it is the leader of the group of economic operators;
- the group of economic operators cannot prove that it fulfils the selection criteria which were required in the procedure without that member; or
- the other members of the group do not jointly and severally assume the obligations of the group member that wants to withdraw from the group of economic operators.

(8) The withdrawal of a member of the group of economic operators, contrary to paragraph (7) of this Article, shall be deemed as a withdrawal of the joint tender.

(9) The contracting authority, once the winning tender has been selected, may require the group of economic operators to assume a specific legal form for the performance of the contract.

#### Article 107

##### **Rule for participation in one tender or in one request to participate**

(1) The candidate or tenderer, within the same public procurement procedure, may participate only in one request to participate or tender.

(2) All requests to participate or tenders shall be rejected if the candidate or the tenderer:

- participates in more than one individual request to participate or tender and/or as a member in a joint request to participate or tender; or
- participates as a subcontractor in another individual request to participate or tender and/or as a member in a joint request to participate or tender.

(3) The economic operator may participate as a subcontractor in more than one request to participate or tender.

#### Article 108

##### **Opening of tenders**

(1) The opening of tenders in the small-value procurement with publication of a contract notice, simplified open procedure, open procedure, the second phase of the restricted procedure and the phase of submission of tenders in the competitive dialogue shall be public.

(2) The opening of tenders shall commence at the time indicated in the tender documentation as the time limit for the receipt of tenders, except in the procurement of consultancy services.

(3) No tender shall be rejected at the opening of tenders.

(4) At the moment when the opening of tenders starts, the ESPP shall allow tenderers to have access to the following information:

- number of the contract notice for which each tender is submitted;
- name of the tenderer; and
- tender price and the currency in which the tender is expressed.

(5) At the moment when the opening of tenders starts, the ESPP shall allow the committee to have full access to all documents submitted by the tenderers.

(6) In the procurement of consultancy services, the committee shall first evaluate the technical proposals, and after the evaluation of technical proposals, in accordance with the requirements set out in the tender documentation, it shall schedule the opening of financial proposals of the acceptable tenderers, and all tenderers shall be informed about the date and time of the opening of financial proposals.

(7) Prior to evaluating the tenders, the committee shall draw up minutes of the opening of tenders, which shall include the following information:

- of the contracting authority;
- time of the opening of tenders;
- reference number of the contract notice;
- name and surname of the members of the committee and their deputies;
- number of tenders received;
- name of the tenderers;
- prices offered;
- comments by the tenderers; and
- other information that they consider necessary.

(8) The minutes shall be signed by the chairperson of the committee or his/her deputy.

(9) The ESPP shall make the minutes of the opening of tenders available to all tenderers that have submitted their tenders immediately after it is uploaded to the system.

(10) The Minister of Finance shall prescribe the form and content of the minutes from the opening of tenders.

#### Article 109

##### **Evaluation of tenders**

(1) In the open procedure and simplified open procedure, the committee, prior to the evaluation of tenders, shall verify whether the tenderer's qualification documents are complete and valid.

(2) When verifying the completeness and validity of the tenderer's qualification documents and during the evaluation of the tender, the committee may require that tenderers clarify or supplement their documents, provided that there are no significant deviations from the required documentation. The committee shall not confer advantages in favour of a certain economic operator by using the requested clarifications or supplements.

(3) The tenderer shall submit the requested clarification through the ESPP within the time limit fixed by the committee.

- (4) No changes to the financial and technical proposals, except for correction of arithmetical errors, shall be required, offered or allowed by the committee or by the tenderer.
- (5) The committee may directly ask the tenderer, with the purpose of clarifying the tender, to translate elements of the tender related to the technical documentation for which they allowed, in the tender documentation, to be drawn up in a foreign language, and they shall set a reasonable time limit to that effect.
- (6) The committee shall not evaluate the unacceptable tenders.
- (7) The evaluation of tenders shall be conducted only in accordance with the criteria stated in the tender documentation.
- (8) After the evaluation, the committee shall rank the tenders and prepare a proposal for the selection of the most advantageous tender.
- (9) The member of the committee who disagrees with the proposal for selection of the most advantageous tender, shall state his/her opinions prepared as a comment accompanying the procedure outcome report.
- (10) In the evaluation of tenders in the restricted procedure, negotiated procedures, competitive dialogue and innovation partnership, the committee shall appropriately apply the provisions of this Article.
- (11) The Minister of Finance shall prescribe the manner for correcting arithmetical errors in the phase of the evaluation of tenders.

#### Article 110

##### **Abnormally low tenders**

- (1) The contracting authority shall require the economic operator, in a reasonable period not shorter than five days, to explain the price or costs indicated in the tender, where it considers that the tender is abnormally low in relation to the supplies, services or works that are subject to the public contract, or where there is a doubt that the contract will be performed. The contracting authority shall, in any event, require an explanation of the price where the value of the tender is lower by more than 50 % than the average price of the acceptable tenders and is more than 20 % lower than the next ranked tender, where it has received at least three acceptable tenders.
- (2) The explanation referred to in paragraph (1) of this Article shall particularly relate to:
- the economics of the manufacturing process, of the services provided or of the construction method;
  - the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the provision of the products or services or for the execution of the works;
  - the originality of the supplies, services or works proposed by the tenderer;
  - compliance with obligations referred to in Article 3 paragraph (2) of this Law;
  - the fulfilment of the requirements relating to subcontractors; and
  - the possibility of the tenderer to use state aid.
- (3) The contracting authority shall reject the tender only where the explanation or evidence submitted is not sufficient to account for the low price or costs proposed, taking into account the elements referred to in paragraph (2) of this Article.
- (4) The contracting authority shall reject the tender where it has established that it is abnormally low because it does not comply with the applicable obligations for environmental protection, social policy and labour protection arising from the regulations in the Republic of Macedonia, collective agreements and from international agreements and conventions ratified in the Republic of Macedonia.
- (5) Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, the tender may be accepted if, after requesting additional clarifications, the tenderer proves that state aid was awarded to it within three days from the date of receipt of the request.

#### Article 111

##### **Procedure outcome report**

(1) In the simplified open procedure, open procedure, restricted procedure, negotiated procedures, competitive dialogue and innovation partnership, the committee shall draw up a procedure outcome report.

(2) Depending on the procedure conducted, the report referred to in paragraph (1) of this Article shall include in particular:

- the name and address of the contracting authority, the subject-matter and estimated value of the procurement;
- the names of the selected candidates or tenderers and the reasons for their selection;
- the names of the candidates or tenderers whose requests to participate or tenders have been rejected and the reasons for their rejection;
- the reasons for the rejection of tenders found to be abnormally low;
- the name of the tenderer or tenderers whose tender was selected as the most advantageous one, and the method and reasons for the selection.

(3) The report on the assessment of the qualifications of the candidates in the restricted procedure, competitive dialogue, competitive procedure with publication, negotiated procedure with publication of a contract notice and innovation partnership shall form an integral part of the procedure outcome report.

(4) In the selection of the most advantageous tender, the responsible person shall be obliged to accept the report of the committee containing the proposal for selection of the most advantageous tender, except where it establishes that the proposal has been drawn up contrary to the provisions of this Law.

(5) The manner of filling in and the format and content of the form of the procedure outcome report referred to in paragraph (1) of this Article shall be prescribed by the Minister of Finance.

#### Article 112

##### **Decision on the selection of the most advantageous tender**

(1) The contracting authority shall select the most advantageous tender and shall adopt a decision to that effect.

(2) The contracting authority shall be obliged to adopt a decision on selection or on cancellation of the procedure within a time limit that is not longer than the time limit for the receipt of tenders or requests to participate in the specific procedure, counting from the day specified as the closing date for the receipt of tenders or requests to participate, and not counting the days during which the contracting authority waits for another entity to take certain actions.

(3) The contracting authority may, until the expiry of the time limit for lodging an appeal, correct errors in the names or numbers, in the text or other obvious errors in the decision that it has adopted.

(4) The contracting authority shall conclude the public contract with the tenderer whose tender has been selected as the most advantageous on the basis of the technical and financial proposal within 30 days from the date when the selection decision becomes final, but not later than the validity period of the tender.

(5) Where the winning tenderer withdraws from concluding the contract, or if the contract is terminated due to late or poor performance, the contracting authority may conclude a contract with the second-best tenderer if the difference in the price is not higher than 5% vis-à-vis the initial winning tender.

#### Article 113

##### **Informing candidates and tenderers**

(1) The contracting authority, depending on the public procurement procedure, shall inform the candidates or the tenderers of the decisions reached concerning the qualifications assessed, the selection of the most advantageous tender, the conclusion of the framework agreement, the admittance to a dynamic purchasing system or the cancellation of the public procurement procedure. The notification shall be sent within three days from the date of adoption of the respective decision, except in the cases of administrative control.



(2) The notification shall be accompanied by a copy of the respective decision.

(3) The notification referred to in paragraph (1) of this Article shall be dispatched through the ESPP.

(4) Depending on the public procurement procedure, with the notification referred to in paragraph (1) of this Article, the contracting authority shall be obliged to inform the tenderer or tenderers whose tender has been selected as the most advantageous one, as well as the candidates or tenderers that have been rejected or the tender of which has not been selected as the most advantageous, about the reasons for adopting that decision, namely, any:

- unsuccessful candidate, of the reasons for the rejection of its request to participate;
- any tenderer whose tender has been rejected, of the reasons for the rejection of its tender, with a detailed explanation as to why the tender is unacceptable; and
- any tenderer that has submitted an acceptable tender which was not selected as the most advantageous, of the name of the successful tenderer or tenderers and the reasons for the selection.

(5) Following the delivery of the decision on selection of the most advantageous tender or on cancellation of the procedure, and before the expiry of the time limit for lodging an appeal, the economic operators participating in the procedure shall have the right to inspect the entire documentation in the procedure, including the tenders or request to participate submitted, except for those documents designated as trade secret.

#### Article 114

##### **Cancellation of the procedure**

(1) The contracting authority may cancel the public procurement procedure and adopt a decision on cancellation of the procedure to that effect, where:

- the number of candidates is below the minimum number envisaged for the public procurement procedures in accordance with this Law;
- no tenders or no acceptable tenders have been submitted;
- unforeseeable changes occurred in the budget of the contracting authority;
- the tenderers have offered prices and conditions for performance of the public contract which are less favourable than the actual prices and conditions on the market;
- it establishes that the tender documentation contains important omissions or deficiencies;
- it obtains instructions from the Bureau to cancel the procedure in an administrative control or due to a technical problem of the ESPP that cannot be otherwise resolved; or
- due to unforeseeable and objective circumstances, the needs of the contracting authority have changed.

(2) Where the public procurement procedure is cancelled pursuant to paragraph (1) indent 7 of this Article, the contracting authority shall not conduct a new procedure for the same subject-matter of procurement in a period of one year from the date when the decision on cancellation of the procedure was adopted.

(3) The contracting authority shall inform all participants in the public procurement procedure through the ESPP, not later than three days from the date of the cancellation, concerning the cancellation of the obligations of the participants arising from the submission of tenders and the reasons for the cancellation of the procedure.

(4) The contracting authority shall publish a notice on cancellation of a part or of the entire public procurement procedure on the ESPP within ten days from the date of the cancellation of the procedure.

#### Article 115

##### **Standstill period**

The contracting authority shall not sign the public contract and proceed with its execution until the decision for selection of the most advantageous tender becomes final, except:

- in the case of a negotiated procedure without publication of a contract notice;
- where only one tenderer whose tender is selected as the most advantageous participated in the procedure; or

- in the case of individual public contracts based on a framework agreement, a dynamic purchasing system, or a qualification system.

#### Title IV

### PERFORMANCE OF THE PUBLIC CONTRACT OR OF THE FRAMEWORK AGREEMENT

#### Article 116

##### **Concluding public contracts or framework agreements**

- (1) The contracting parties shall conclude the public contract or framework agreement in writing, within the validity period of the most advantageous tender, but not later than 30 days from the date when the selection decision becomes final.
- (2) The public contract or framework agreement shall be concluded in accordance with the conditions specified in the tender documentation and in the tender.
- (3) In the case of a framework agreement with more economic operators, the contracting authority shall conclude one framework agreement with all economic operators or individual framework agreements with each economic operator separately.
- (4) The individual contract on the basis of a framework agreement shall be concluded in writing, and a purchase request, release order, sales agreement etc. may also have the effect of a contract provided that they contain all essential elements of the contract.

#### Article 117

##### **Contract performance**

- (1) The contracting parties shall perform the public contract or framework agreement in accordance with the conditions specified in the tender documentation and in the most advantageous tender selected.
- (2) The contracting authority shall be obliged to perform oversight as to whether the performance of the public contract or framework agreement is in compliance with the terms of the contract.
- (3) The provisions of the Law regulating obligations and the substantive provisions governing the subject-matter of the procurement shall apply appropriately to the responsibility of the contracting parties for compliance with the contractual obligations, in addition to the provisions of this Law.

#### Article 118

##### **Subcontracting**

- (1) The tenderer may subcontract a share of the public contract.
- (2) Where the tenderer hires a subcontractor in the performance of the public contract, in the tender, it shall:
  - indicate all subcontractors, and every share of the contract it intends to subcontract;
  - provide contact details and legal representatives of the proposed subcontractors;
  - provide qualification documents for the proposed subcontractors; and
  - submit an application from the subcontractor for direct payments, where so requested by the subcontractors.
- (3) The contractor, during the performance of the public contract, may request the contracting authority to:
  - change the subcontractors for that share of the public contract that has previously been subcontracted;
  - introduce one or more new subcontractors the total share of which shall not exceed 30% of the value of the public contract, net of VAT, regardless of whether or not it has previously subcontracted a share of the contract;
  - take over the performance of a share of the public contract that has previously been subcontracted.
- (4) Where it includes new subcontractors, the contractor, together with the application shall also provide the data and documents referred to in paragraph (2) of this Article.

- (5) The contracting authority shall not approve the contractor's application:
- in the cases referred to in paragraph (3) indents 1 and 2 of this Article, where the contractor in the public procurement procedure has relied on the capacity of the subcontractor that it intends to change, and the new subcontractor does not meet the same requirements or there are grounds for exclusion;
  - in the cases referred to in paragraph (3) indent 3 of this Article, where the contractor in the public procurement procedure has relied on the capacity of the subcontractor to prove its capabilities, and the contractor itself does not meet those requirements or where that share of the contract has already been performed.
- (6) The contracting authority may reject the proposal to replace a specific subcontractor, or to include a new subcontractor, where that could affect the smooth performance or execution of the works.
- (7) The contracting authority shall inform the contractor of the rejection of the subcontractor within ten days from the date of receipt of the application.
- (8) Direct payments to the subcontractor shall be obligatory for the contracting authority and for the contractor where the subcontractor has requested direct payment in accordance with the requirements of this Law, and to that effect:
- the subcontractor shall provide an approval on the basis of which the contractor's liabilities shall be covered by the contracting authority;
  - the contractor, together with its invoice or interim certificate, shall provide the invoices or interim certificates of the subcontractor that it has previously approved.
- (9) Where no direct payments to subcontractors have been envisaged, the contracting authority shall require that the contractor provides a written statement by the subcontractor that the subcontractor has been paid for the supplies delivered, the services provided or the works executed, within 60 days from the date on which the contractor's invoice has been paid by the contracting authority.

#### Article 119

##### **Modification of the public contract during its term**

- (1) The public contract or framework agreement may be modified without conducting a new public procurement procedure in the following cases:
1. where the modifications, irrespective of their monetary value, have been provided for in the tender documentation in clear, precise and unequivocal manner, such as price revision clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used, but they shall not lead to substantial modifications of the nature of the public contract or of the framework agreement;
  2. for procurement of supplies, services or works from the initial contractor which have not been covered by the original contract, and which have become necessary due to unforeseeable circumstances, and where the replacement of the contractor:
    - is not possible for economic or technical reasons, such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procedure; and
    - would cause significant difficulties or substantial increase in the costs for the contracting authority;
  3. where the modification has been brought about by circumstances that the contracting authority could not foresee and it does not substantially alter the nature of the public contract or framework agreement;
  4. where the initial contractor is replaced by a new economic operator that meets all the requirements initially set out in the tender documentation of the conducted procedure, and which is a legal successor of the initial contractor following corporate restructuring, including takeover, merger, acquisition or bankruptcy, provided that it does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Law;

5. where the modification, irrespective of its value, is not substantial within the meaning of paragraph (4) of this Article.
- (2) In the cases referred to in paragraph (1) points 2 and 3 of this Article, the total value of the modifications to the public contract or framework agreement shall not exceed 20 % of the value of the original contract or of the framework agreement. Where several successive modifications are made, that limitation shall apply to the cumulative value of all modifications. Where the public contract contains a price revision clause, the basis for calculation of the maximum value allowed relating to the modifications shall be the contract value with the updated price.
- (3) The contracting authority having modified a contract or framework agreement, in accordance with paragraph (1) points 2 and 3 of this Article, shall publish a notice on the modification of a contract during its term within ten days from the date on which the contract modifying the original contract is concluded.
- (4) The modification of a public contract or a framework agreement shall be considered to be substantial where it renders the contract or the framework agreement significantly different from the public contract or framework agreement initially awarded, and in particular where:
- a) the modification introduces conditions which, had they been part of the initial public procurement procedure, would have allowed for the participation of other candidates than those initially invited, or for the acceptance of a tender as the most advantageous one other than that originally selected, or would have allowed the participation of additional participants in the public procurement procedure;
  - b) the modification changes the economic balance of the public contract or the framework agreement in favour of the contractor in a manner which was not provided for in the original contract or framework agreement;
  - c) the modification extends the scope of the public contract or framework agreement considerably;
  - d) another economic operator replaces the initial contractor, except in the cases referred to in paragraph (1) point 4) of this Article.
- (5) For modifications of the provisions of a public contract or a framework agreement during its term not covered by paragraph (1) of this Article, the contracting authority shall be obliged to conduct a new public procurement procedure in accordance with this Law.
- (6) The reasons for modifying the contract or framework agreement and their explanation shall be appropriately documented by the contracting authority.
- (7) In the cases under paragraph (1) point 2 of this Article, the documentation relating to the modifications shall include an explanation of all the reasons why the supplies, services or works are necessary, the reasons why they were not covered by the original contract or framework agreement, and the economic and technical reasons due to which the initial contractor cannot be changed.
- (8) In the cases under paragraph (1) point 3 of this Article, the documentation relating to the modifications shall include a description of the modifications, the reasons for the modifications and the circumstances due to which the contracting authority could not foresee them in the award of the original contract or framework agreement, and an explanation as to why these modifications do not alter the nature of the contract or framework agreement.

## Article 120

### **Termination of the public contract**

The contracting authority shall terminate the public contract or the framework agreement during its term where:

- a) the contract has been substantially modified, which results in the obligation to conduct a new public procurement procedure;
- b) the contractor has been in one of the situations due to which the contracting authority had to exclude it from the public procurement procedure, but it has not been aware of this fact during the procedure; or

- c) the contract or framework agreement should not have been awarded to the contractor due to serious infringements of this Law, which is established by the competent court in a final judgment.

## Title V **SPECIFIC SERVICES**

### Article 121

#### **Procurement of specific services**

- (1) Public procurement of specific services shall be conducted in accordance with this Title.
- (2) The contracting authority may decide to conduct public procurements under this Title by applying the relevant procedure in accordance with Article 47 of this Law, and it shall apply the rules for the specific procedure.
- (3) In conducting public procurement of specific services, in accordance with this Title, the contracting authority shall apply the public procurement principles laid down in this Law with regard to transparency, identifying the subject-matter of the procurement, the technical specifications, and the need to ensure quality, continuity, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the cooperation and strengthening of the role of the users and innovation.
- (4) The contracting authority may decide to select the most advantageous tender on the basis of the best price-quality ratio criterion, taking into account the quality and sustainability of specific services.
- (5) The Minister of Finance shall define in more detail the types of specific services.

### Article 122

#### **Notices for specific services**

- (1) The contracting authority conducting a procurement of specific services with an estimated value exceeding the thresholds specified in Article 40 of this Law shall make known its intention by any of the following means, except where the requirements for the application of the negotiated procedure without publication of a contract notice have been met:
- a) by means of a contract notice;
  - b) by means of a prior information notice, or by means of a periodic indicative notice in the utilities sector, and the notice shall refer specifically to the types of services that will be the subject-matter of the procurement. The notice shall indicate that the contracts will be awarded without further publication and it shall include an invitation for the interested economic operators to express their interest;
  - c) in the utilities sector, by means of a notice on the existence of a qualification system, which shall be published continuously.
- (2) The contracting authority shall publish a simplified contract award notice about the outcome of the public procurement procedure for specific services.
- (3) The notices referred to in paragraph (2) of this Article may be published on a quarterly basis, and the contracting authority shall publish them within ten days after the end of each quarter.

### Article 123

#### **Reserved contracts for procurement of specific services**

- (1) The contracting authority in the public procurement procedure may decide to reserve the right to participate for certain organisations, exclusively in the procurement of health, social and cultural services covered by the CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8.
- (2) Where the contracting authority uses this possibility, the organisation referred to in paragraph (1) of this Article shall fulfil the following conditions:

- a) its objective is the provision of public services linked to the delivery of the services referred to in paragraph (1) of this Article;
  - b) the profits are reinvested with a view to achieving the organisation's objectives in accordance with the Law;
  - c) the structures of management or ownership of the organisation are based on employee ownership in accordance with the Law, or require the active participation of employees, users or stakeholders; and
  - d) the contracting authority, within the past three years, has not awarded a contract to the organisation for this type of services in accordance with this Article.
- (3) The term of the contract shall not be longer than three years.
- (4) To determine the fulfilment of the requirements under paragraph (2) of this Article, the contracting authority shall require proof in the form of acts of incorporation or a statute of the organisation.
- (5) The contracting authority using this possibility for reserved contracts shall indicate this in the contract notice or in the notice specified in Article 122 of this Law.

## Title VI

### **RULES GOVERNING DESIGN CONTESTS**

#### Article 124

##### **Application**

- (1) The provisions of this Title shall apply to:
- a) design contests organised as part of a procedure for public procurement of services or as part of a procedure for public procurement of works in the case of design and execution of works; and
  - b) design contests with prizes or payments to participants.
- (2) In the cases referred to in paragraph (1) point a) of this Article, the estimated value of the design contest shall be based on the estimated value of the public service contract, including any possible prizes or payments to the participants.
- (3) In the cases referred to in paragraph (1) point b) of this Article, the estimated value shall be determined as a total amount of the prizes and payments, including the estimated value of the public service contract which might subsequently be awarded in accordance with Article 55 paragraph (4) of this Law, provided that the contracting authority has announced its intention to award such contract in the contest notice.

#### Article 125

##### **Notices**

- (1) The contracting authority shall publish a contest notice for organising and carrying out a design contest. Where the contracting authority intends to award a public service contract pursuant to Article 55 paragraph (4) of this Law, it shall indicate this in the contest notice.
- (2) The contracting authority that has organised a design contest shall publish the results of the contest within ten days from the date on which the contest was completed.
- (3) Notwithstanding paragraph (2) of this Article, the contracting authority shall not be obliged to disclose the information on the outcome of the contest, where its release would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of the economic operators, or might affect fair competition between service providers.

#### Article 126

##### **Rules on the organisation of a design contest**

- (1) The contracting authority, when organising and implementing a design contest, shall apply the rules which are in compliance with the general provisions of this Law and the provisions of this Title.
- (2) The contracting authority shall not limit the admission of participants to design contests:

- a) by reference to the territory or part of the territory of the country;
  - b) on the grounds that under the substantive regulations the participants have to be only natural persons or only legal entities.
- (3) Where the contracting authority limits the number of participants in the design contest, it shall lay down clear and non-discriminatory requirements for participation.
- (4) The number of selected participants shall be sufficient to ensure genuine competition.

#### Article 127

##### **Jury**

- (1) The evaluation of the plans or designs presented in the design contest shall be carried out by a jury appointed by the contracting authority and composed of at least three members who are independent of the participants in the contest and have the relevant professional qualifications and experience in that field.
- (2) Where the participants in the contest are required to have a particular professional qualification, at least a third of the members of the jury shall have the same qualification as the participants or an appropriate professional qualification.
- (3) Anonymity of the participants shall be observed until the jury has reached its opinion or decision.
- (4) The jury shall be autonomous in the work and in the adoption of its decisions.
- (5) The jury shall examine the plans and designs submitted on the basis of the evaluation criteria indicated in the contest notice.
- (6) The jury shall submit a report to the contracting authority and to the participants, signed by all its members, which shall present the ranking of the plans or designs based on their qualitative evaluation and the specific remarks, and, where necessary, a list of issues that have to be clarified.
- (7) The jury may invite the participants in the contest to answer the questions referred to in paragraph (6) of this Article in order to clarify any aspects concerning the proposed plan or design.
- (8) The jury shall keep minutes of the discussions conducted in accordance with the provisions under paragraph (7) of this Article.

#### Title VII

### **COMPLETION OF THE PROCEDURE AND RECORDS OF THE PUBLIC PROCUREMENT PROCEDURES**

#### Article 128

##### **Completion of the procedure**

- (1) The public procurement procedure shall be completed on the date when the decision on selection or cancellation of the procedure becomes final.
- (2) The contracting authority shall return the samples, models and documents envisaged to be returned to the tenderers in the tender documentation within 30 days after the completion of the procedure.

#### Article 129

##### **Records of the public procurement procedures**

- (1) The contracting authority shall keep special records of the public procurement procedures.
- (2) The records referred to in paragraph (1) of this Article shall be kept in a separate record book in an electronic form on the ESPP.
- (3) The record book records all documents arising from the relevant public procurement procedure.
- (4) Following the completion of the public procurement procedure, the contracting authority shall form a dossier of the public procurement procedure.
- (5) The contracting authority shall keep the dossier of the procedure in accordance with the time lines laid down in the regulations governing archive and office operations.
- (6) Depending on the public procurement procedure conducted, the procedure dossier shall contain in particular:
- the public procurement decision;
  - the prior information notice or periodic indicative notice;
  - the minutes of the technical dialogue conducted;

- the contract notice;
- the tender documentation;
- the received requests to participate;
- the communication between the contracting authority and the economic operators;
- the report on the assessment of the qualifications of the candidates;
- the decision on the selection of qualified candidates;
- the tenders received;
- the reports by external experts;
- the report on the evaluation conducted;
- the decision on the selection of the most advantageous tender or on cancellation of the procedure;
- the public contract or framework agreement signed;
- the contract award notice; and
- the notice for a contract performed.

(7) A sample of the dossier of the procedure that has been conducted by electronic means through the ESPP shall be kept in the ESPP for at least five years from the date of conclusion of the public contract or from the date when the decision on cancellation of the procedure becomes final in a manner ensuring the preservation of data integrity.

(8) The manner of record-keeping for the public procurement procedures, and the content of the record book shall be prescribed by the Minister of Finance.

## Title VIII

### **REVIEW PROCEDURES**

#### Chapter 1

#### **State Appeals Commission on Public Procurement**

#### Article 130

##### **(Competence of the State Commission)**

(1) The State Appeals Commission on Public Procurement (hereinafter referred to as: the State Commission) shall be competent to:

- resolve appeals in the public procurement procedures prescribed by this Law;
- resolve appeals in the procedures for awarding contracts for concessions and public private partnership; and
- other matters in accordance with the Law.

(2) The State Commission shall decide on the legality of the actions and failures to undertake actions, as well as on the decisions as individual legal acts adopted in the procedures referred to in paragraph (1) of this Article, and on other matters in accordance with the Law.

(3) The State Commission shall also decide on other requests allowed to be submitted in the review procedure by the parties to the procedure.

(4) The provisions of this Title shall accordingly apply in the provision of review and remedies in the contract award procedures for concessions and public private partnership.

(5) An appeal is not allowed in public procurement procedures in which the State Commission is a contracting authority, but an administrative dispute may be initiated before the competent court. The lawsuit shall delay the conclusion of the public contract or framework agreement until the judgment becomes effective.

(6) The Administrative Court shall decide within 15 days from the date of receipt of the lawsuit referred to in paragraph (5) of this Article.

#### Article 131

##### **Capacity of the State Commission**

(1) The State Commission shall be a state authority, which is independent and autonomous in its operations and shall have the capacity of a legal entity.



- (2) The State Commission shall have an expert service.
- (3) The expert service shall be headed by a secretary general of the State Commission who shall also participate on the sessions of the State Commission without the right to vote.
- (4) The provisions of the Law on Administrative Servants and the Law on Public-Sector Employees shall apply to the persons employed in the expert service.
- (5) The seat of the State Commission shall be in Skopje.
- (6) The State Commission shall be financed from the Budget of the Republic of Macedonia.

#### Article 132

##### **Composition and appointment**

- (1) The State Commission shall be composed of a chairperson and four members, who shall carry out their office professionally, full-time, and cannot have another office and be employed at another position.
- (2) The chairperson and at least two of the members of the State Commission shall be from the field of law.
- (3) The chairperson and the members of the State Commission shall be appointed by means of an open competition published in at least three daily newspapers distributed on the entire territory of the Republic of Macedonia, one of which shall be a newspaper being published in a language spoken by at least 20% of the citizens who speak an official language other than the Macedonian, and they shall be dismissed by the Assembly of the Republic of Macedonia, upon a proposal by the Committee on Elections and Appointment Issues of the Assembly of the Republic of Macedonia.
- (4) The chairperson and the members of the State Commission shall be appointed for a period of five years with the right to one reappointment.
- (5) A person may be appointed as a member of the State Commission if he/she:
  1. is a citizen of the Republic of Macedonia;
  2. has not been the subject of a sentence or misdemeanour sanction pronounced by a final judgment involving prohibition to pursue a profession, activity or duty at the moment of appointment;
  3. has acquired at least 240 credits according to the ECTS, or has completed VII/1 level of education from the relevant field;
  4. has minimum seven years of working experience, at least five of which are in the field of public procurement; and
  5. holds one of the following internationally recognised certificates of English language competence, not older than five years:
    - TOEFL with a score of at least 74 points;
    - IELTS with a score of at least 6 points;
    - ILEC (Cambridge English: Legal) with a minimum level B2;
    - FCE (Cambridge English: First) – passed;
    - BULATS with a score of at least 60 points; or
    - APTIS – minimum level B2.
- (6) A person may be appointed as chairperson of the State Commission if he/she:
  1. is a citizen of the Republic of Macedonia;
  2. has not been the subject of a sentence or misdemeanour sanction pronounced by a final judgment involving prohibition to pursue a profession, activity or duty at the moment of appointment;
  3. has acquired at least 240 credits according to the ECTS, or has completed VII/1 level of education in the field of law;
  4. has passed the bar exam;
  5. in the last five years, has not been a member of the management bodies of a political party; and
  6. has minimum seven years of working experience, five of which are in the field of public procurement.

7. holds one of the following internationally recognised certificates of English language competence, not older than five years:

- TOEFL with a score of at least 74 points;
- IELTS with a score of at least 6 points;
- ILEC (Cambridge English: Legal) with a minimum level B2;
- FCE (Cambridge English: First) – passed;
- BULATS with a score of at least 60 points; or
- APTIS – minimum level B2.

(7) The chairperson and the members of the State Commission shall elect the deputy chairperson from among their ranks by a majority of votes, according to the principle of rotation every six months.

(8) The chairperson and the members of the State Commission cannot be members of other authorities and bodies elected or appointed by the Assembly of the Republic of Macedonia or by the Government.

(9) The chairperson and the members of the State Commission shall be entitled to a salary during their term of office. The coefficient for calculation of the salary of the chairperson of the State Commission and of the members shall be determined by the Assembly of the Republic of Macedonia.

#### Article 133

##### **Dismissal of the chairperson or of the members of the State Commission**

(1) The Assembly of the Republic of Macedonia shall dismiss the chairperson and/or a member of the State Commission before his/her term of office expires where he/she:

- requests to be dismissed;
- permanently loses his/her ability to perform the office, which is established by the Assembly of the Republic of Macedonia;
- has been convicted by a final judgment for a criminal offense to an unconditional imprisonment of at least six months;
- meets the retirement conditions;
- performs other activities incompatible with his/her office as a chairperson or member of the State Commission; or
- the chairperson or the member passes away.

(2) The chairperson (or the deputy in case of a dismissal of the chairperson) shall be obliged to inform the Assembly of the Republic of Macedonia of the existence of reasons for dismissal of the chairperson or the member of the State Commission before the expiry of his/her term of office.

(3) The Assembly of the Republic of Macedonia shall initiate a procedure for establishing a proposal for the appointment of a chairperson and members of the State Commission at least three months before the expiry of their term of office. The appointment procedure shall be completed at least 30 days before the regular expiry of the term of office of the chairperson and the members.

#### Article 134

##### **Rules of Procedure**

The manner of work and the decision-making process of the State Commission shall be regulated by Rules of Procedure.

#### Article 135

##### **Reports of the State Commission**

(1) The State Commission shall submit an annual report of its activities to the Assembly of the Republic of Macedonia by the end of March in the current year for the previous year.

(2) Upon request of the Assembly of the Republic of Macedonia, the State Commission shall also be obliged to submit a report for a period shorter than one year.

(3) The annual report shall contain in particular:

- the number of cases received;
- the number of cases resolved (dismissed, rejected and accepted appeals);

- the number of procedures cancelled;
- the number of unresolved cases;
- the number of cases for which an administrative dispute has been initiated (rejected and accepted cases);
- a statistical analysis of the review procedures; and
- an evaluation of the legal remedies system and the public procurement system as a whole.

(4) The expert service of the State Commission shall prepare the annual report on the work of the State Commission.

(5) The State Commission shall adopt financial, strategic plans and an annual work programme of the State Commission, which it shall submit to the Assembly of the Republic of Macedonia not later than by the end of March in the current year, and it shall organise their implementation.

(6) The financial and strategic plans, as well as the annual work programme of the State Commission shall be approved by the Assembly of the Republic of Macedonia.

#### Article 136

##### **(Prohibition to influence the State Commission)**

Any form of influence on the decision-making of the State Commission shall be prohibited and, in particular, any misuse of the public authorisations in order to influence the course and the outcome of the procedure.

#### Chapter 2

##### **General provisions of the appeal procedure**

#### Article 137

##### **Legal nature and principles of the appeal procedure**

(1) The actions in the appeal procedure that have not been regulated by the provisions of this Law shall be subject to the provisions of the Law on General Administrative Procedure.

(2) The appeal procedure shall be based on the principles of legality, efficiency, availability, transparency and contradiction.

(3) The appeal procedure shall resolve the legality of the procedures, actions, failures to undertake actions, and decisions adopted in the public procurement procedures, as well as the legality of the public contracts and framework agreements concluded without applying a public procurement procedure.

(4) Any agreement between the parties that affects or could affect the outcome of the appeal procedure shall be prohibited.

(5) Any contract concluded contrary to the provisions specified in paragraph (4) of this Article shall be null and void.

#### Article 138

##### **Right to appeal**

(1) Any economic operator having legal interest in obtaining the public contract or framework agreement, and which has suffered or could suffer damage by a possible violation of the provisions of this Law, may initiate a review procedure against the decisions, actions and failures to undertake actions by the contracting authority in the public procurement procedure.

(2) The review procedure may also be initiated by the Public Procurement Bureau and the state attorney of the Republic of Macedonia when protecting the interests of the state or the public interest.

(3) The entities referred to in paragraphs (1) and (2) of this Article (hereinafter referred to as: appellants) shall have the right to appeal.

#### Article 139

##### **Parties to the appeal procedure**

The parties to the appeal procedure shall include the appellant, the contracting authority, the selected candidate and the successful tenderer.

#### Article 140

##### **Rules for evidencing**

- (1) In the appeal procedure, the parties shall be obliged to present all facts used as grounds for their requests, as well as the actions or failures to undertake actions by the contracting authority in the public procurement procedure, and to provide adequate evidence to that effect.
- (2) In the appeal procedure, the contracting authority shall be obliged to prove the facts and circumstances on the basis of which it has reached its decision, undertaken actions or failed to undertake actions in the conduct of the public procurement procedure subject to the review procedure.
- (3) In the appeal procedure, the appellant shall be obliged to prove or to render possible the existence of facts and reasons concerning the right to appeal, violation of the procedure or violation of the substantive law, which are indicated in the appeal.

#### Article 141

##### **Actions of the State Commission and major infringements of the Law**

- (1) In the appeal procedure, the State Commission shall act within the allegations in the appeal, and it shall verify *ex officio* whether major infringements have been committed pursuant to paragraph (2) of this Article.
- (2) Major infringements of the Law, within the meaning of paragraph (1) of this Article, shall include:
  1. setting a shorter time limit for the receipt of tenders or requests to participate than the minimum time limit laid down by this Law;
  2. the modification of the contract notice has not been published, where such obligation was envisaged pursuant to the provisions of this Law;
  3. the candidate or tenderer should have been excluded from the public procurement procedure because there had been grounds for its exclusion;
  4. after the expiry of the time limit for receipt of tenders in the open or restricted procedure, the contracting authority has conducted negotiations or the tenderer has modified its tender contrary to the provisions of this Law;
  5. the selection criteria have not been defined in accordance with this Law; and
  6. the tender documentation is not in compliance with this Law, and has resulted or could have resulted in discrimination of economic operators or limiting of the market competition;
- (3) The State Commission shall not review the factual and legal situation on which it has decided in a prior appeal in the same public procurement procedure.

#### Chapter 3

##### **Lodging an appeal**

#### Article 142

##### **Manner of lodging an appeal**

- (1) The appeal shall be lodged with the State Commission in electronic form, and it shall be delivered simultaneously to the State Commission and the contracting authority through the ESPP.
- (2) Notwithstanding paragraph (1) of this Article, the appeal in the cases referred to in Article 31 paragraph (3) of this Law shall be lodged and delivered in paper form.
- (3) Where the appeal is in electronic form, the date when the appeal is dispatched to the ESPP shall be considered as the date of receipt.
- (4) Where the appeal is in paper form, the date when the appeal is dispatched to the State Commission shall be considered as the date of receipt.
- (5) The case shall be distributed to be processed to the Chairperson and members of the State Commission by an electronic random selection, through an electronic system for distribution of cases.

#### Article 143

**Time limits for lodging an appeal in the open procedure, simplified open procedure and small-value procurement**

(1) In the open procedure, the appeal shall be lodged within ten days, while in the simplified open procedure and in the small-value procurement within five days, from the date of:

1. the publication of the contract notice, regarding the content of the contract notice or the tender documentation;
2. the publication of the notice for modifications and additional information, regarding the content of the modifications and additional information;
3. the opening of tenders, regarding the failure by the contracting authority to properly reply to the questions or requests for clarifications or modifications of the tender documentation submitted in good time; or
4. the receipt of the decision on selection of the most advantageous tender or on cancellation, regarding the procedure for evaluation and selection of the most advantageous tender or the reasons for cancellation of the procedure.

(2) The appellant that has failed to lodge an appeal with reference to the provisions under paragraph (1) points 1, 2 and 3 of this Article shall not have the right to appeal for the same legal basis in a subsequent stage of the procedure.

**Article 144**

**Time limits for lodging an appeal in the restricted procedure, competitive procedure with negotiation, negotiated procedure with publication of a contract notice, competitive dialogue and innovation partnership**

(1) In the restricted procedure, including the dynamic purchasing system, competitive procedure with negotiation, negotiated procedure with publication of a contract notice, competitive dialogue and innovation partnership, the appeal shall be lodged within ten days from the date of:

1. the publication of the contract notice, regarding the content of the contract notice or the tender documentation;
2. the publication of the notice for modifications and additional information, regarding the content of the modifications and additional information;
3. the receipt of the decision on selection of qualified candidates, regarding the reasons for the selection, or the reasons for not selecting the candidates;
4. the receipt of the invitation to tender, to participate in the dialogue or in the negotiations, or to provide additional documents, regarding the failure by the contracting authority to properly reply to the questions or requests for clarifications or modifications of the tender documentation submitted in good time, as well as the content of the invitation or the additional documents, except where those documents have not been made available simultaneously with the publication of the contract notice;
5. the receipt of the decision on rejection of the initial tender or solution, regarding the evaluation of the initial tender or solution;
6. the opening of tenders or final tenders, regarding the failure by the contracting authority to properly reply to the questions or requests for clarifications or modifications of the tender documentation submitted in good time; or
7. the receipt of the decision on selection of the most advantageous tender or on cancellation, regarding the procedure for evaluation and selection of the most advantageous tender or the reasons for cancellation of the procedure.

(2) The appellant that has failed to lodge an appeal with reference to the provisions under paragraph (1) points 1, 2, 3, 4, 5 and 6 of this Article shall not have the right to appeal for the same legal basis in a subsequent stage of the procedure.

**Article 145**

**Time limits for lodging an appeal in the negotiated procedure without publication of a contract notice**

(1) In the negotiated procedure without publication of a contract notice, the appeal shall be lodged within ten days from the date of publication of the voluntary ex ante transparency notice, regarding the cases and compliance with the requirements for the choice of this procedure, the content of the tender documentation and the evaluation and selection of tenders.

(2) Where the contracting authority has not published a voluntary ex ante transparency notice, the appeal shall be lodged within ten days from the date of receipt of the decision on selection or on cancellation, regarding the tender documentation, the evaluation and selection of tenders, or the reasons for cancellation of the procedure.

(3) The appellant that has failed to lodge an appeal with reference to the provisions under paragraphs (1) and (2) of this Article shall not have the right to appeal for the same legal basis in a subsequent stage of the procedure.

(4) Where the contracting authority has not published a voluntary ex ante transparency notice, the appeal shall be lodged within 30 days from the date of publication of the contract award notice, regarding the cases and compliance with the requirements for the choice of this procedure.

(5) Where the contracting authority has not published a voluntary ex ante transparency notice and failed to publish a contract award notice, the appeal shall be lodged pursuant to Article 147 of this Law.

#### Article 146

##### **Time limits for lodging an appeal in the procedure for public procurement of specific services**

(1) In the procedure for public procurement of specific services, the appeal shall be lodged within ten days from the date of:

1. the publication of the contract notice, regarding the content of the contract notice or the tender documentation;
2. the publication of the notice for modifications and additional information, regarding the content of the modifications and additional information; or
3. the receipt of the decision on selection of the most advantageous tender or on cancellation, regarding the failure by the contracting authority to properly reply to the questions or requests for clarifications or modifications of the tender documentation submitted in good time, as well as regarding the procedure for evaluation and selection of the most advantageous tender or the reasons for cancellation of the procedure.

(2) The appellant that has failed to lodge an appeal with reference to the provisions under paragraph (1) points 1 and 2 of this Article shall not have the right to appeal for the same legal basis in a subsequent stage of the procedure.

#### Article 147

##### **Time limit for lodging an appeal when concluding contracts without prior conduct of a public procurement procedure**

The time limit for appeal in the case of a contract concluded without prior conduct of a public procurement procedure shall be 60 days from the moment of becoming aware of that contract, and may be lodged not later than after the expiry of the six-month period from the date on which the contract was concluded.

#### Article 148

##### **Time limit for lodging an appeal when awarding individual contracts under a framework agreement**

The time limit for lodging an appeal when awarding individual contracts under a framework agreement with more economic operators shall be three days from the date of receipt of the selection decision, regarding the award procedure for the individual contract on the basis of the framework agreement.

#### Article 149

##### **Time limit for lodging an appeal in the case of modifications of a contract during its term**

(1) The time limit for appeal when concluding a contract for modification of a public contract during its term shall be ten days from the date of publication of the notice for modification of a contract during its term, regarding the cases and circumstances justifying the modification of the contract.

(2) Where the contracting authority has not published a notice for modification of the contract, the appeal shall be lodged pursuant to Article 147 of this Law.

#### Article 150

##### **Time limit for lodging an appeal in other cases**

In all other cases not covered by the provisions in Articles 143, 144, 145, 146, 147, 148 and 149 of this Law, the time limit for lodging an appeal shall be ten days from the date of receipt of the notice or decision resolving a specific right of the appellant, or from the expiry of the time limit for undertaking the action, regarding the actions, decisions, procedures and failures to undertake actions by the contracting authority, which should have been undertaken pursuant to the provisions of this Law, or other actions infringing a subjective right of the appellant.

#### Article 151

##### **Withdrawal of the appeal**

(1) The appellant may withdraw the appeal until the moment when the State Commission adopts a decision on the appeal.

(2) Where the appeal has been lodged by a group of economic operators, it may be withdrawn only if all members of the group agree to its withdrawal.

(3) The withdrawal of the appeal cannot be cancelled.

(4) Where the appeal is withdrawn, the State Commission shall terminate the procedure.

#### Article 152

##### **Actions of the contracting authority relating to the appeal**

(1) The contracting authority shall be obliged immediately, and not later than five days from the date of receipt of the appeal, to make the following documents available to the State Commission through the ESPP:

- the appeal with all enclosures, data and proof of the date of receipt;
- the reply to the appeal with an explanation of the facts and the legal allegations, as well as the appeal requests, chronology of the contract award procedure, with allegations of the major elements of the public procurement procedure (estimated value, data on the contract notice, the procedure of the opening of tenders, evaluation of the tenders, selection decision, etc.);
- the tenders of the tenderers, and at least the tender of the appellant, the successful tenderer and the qualified tenderers that had the possibility of being selected; and
- other evidence for the existence of presupposed circumstances for adoption of the legal decisions, actions or failures to undertake actions in the contract award procedure.
- 

#### Article 153

##### **Failure to act by the contracting authority**

(1) Where the contracting authority fails to act in accordance with Article 152 of this Law, the State Commission shall call upon it to undertake the actions within five days by indicating the legal consequences if it fails to do so.

(2) Where the contracting authority has failed to act in accordance with the call referred to in paragraph (1) of this Article, the State Commission shall adopt a decision without the documentation specified in Article 152 of this Law.

#### Article 154

##### **Notification of the successful tenderer and candidate**

(1) The State Commission shall notify the successful tenderer or candidate on the existence of an appeal procedure through the ESPP, without delay, provided that there is such tenderer or candidate in the phase when the appeal has been lodged.

(2) The successful tenderer or candidate may provide its reply to the appeal within three days from the date of receipt of the notification referred to in paragraph (1) of this Article.

Chapter 4  
**Content and effect of the appeal**

Article 155  
**Content of the appeal**

- (1) The appeal shall contain the following elements:
- information on the appellant (name and surname, name of the economic operator, address of residence and seat);
  - information of the legal representative or the legal proxy;
  - name and seat of the contracting authority;
  - number and date of the public procurement procedure and data on the contract notice;
  - number and date of the decision on selection of the most advantageous tender, cancellation of the procedure or other decisions adopted by the contracting authority;
  - data about the actions or failures to undertake actions by the contracting authority;
  - description of the state of facts;
  - description of the irregularities and explanation thereof;
  - proposed evidence;
  - appeal request and/or request for compensation of the procedural costs; and
  - signature of the authorised person.
- (2) The appellant shall be obliged to provide proof that it has paid the fee for conducting the procedure.

Article 156  
**Handling incomplete appeals**

- (1) Where the appeal submitted does not contain at least the data referred to in Article 155 paragraph (1) indents 1, 3, 4, 5 and 9 of this Law, the State Commission shall request the appellant to supplement its appeal and it shall set a time limit that cannot be longer than five days.
- (2) Where the appellant fails to act upon the request referred to in paragraph (1) of this Article, the appeal shall be dismissed as incomplete, unless its content allows for the procedure to be conducted and it contains an appeals request.

Article 157  
**Effect of the appeal**

- (1) The appeal lodged shall suspend the conclusion of the public contract and of the framework agreement until the decision of the State Commission becomes final.
- (2) Notwithstanding paragraph (1) of this Article, the State Commission may approve the conclusion of the contract or of the framework agreement upon a request of the contracting authority.
- (3) Where the subject-matter of the procurement has been divided into lots, the appeal lodged against the selection decision shall suspend the conclusion of the contract or of the framework agreement for the specific lot of the subject-matter of the procurement which is appealed.
- (4) The appeal lodged against a voluntary ex ante transparency notice shall suspend the conclusion of the contract or of the framework agreement for all lots of the subject-matter of the procurement.
- (5) The appeal shall not suspend the continuation of the procedure until the conclusion of the contract or of the framework agreement, unless the State Commission imposes an interim measure.
- (6) The public contract and framework agreement signed in contravention of this Article shall be null and void.

Article 158  
**Request to conclude the contract or framework agreement**

- (1) The contracting authority may submit a request to conclude the public contract or framework agreement. The request shall be submitted simultaneously with the reply to the appeal.
- (2) The request submitted contrary to paragraph (1) of this Article shall be rejected.
- (3) The request to conclude the contract or framework agreement may be submitted for reasons that could cause damage if the procedure is not conducted, and which are disproportionate to its value.



(4) The State Commission shall decide on the request to conclude the public contract or framework agreement within three days from the date of its receipt.

#### Article 159

##### **Interim measures**

(1) The appellant, together with the appeal, may submit an application for interim measures with the aim of timely correcting the alleged infringement of the Law or preventing the alleged damage.

(2) The following may be subject to the application for interim measures:

1. suspension of the public procurement procedure;
2. preventing the adoption or implementation of a specific decision or action of the contracting authority; or
3. preventing the initiation of a new public procurement procedure for the same or similar subject-matter of the procurement contrary to the provisions of this Law.

(3) In the application for interim measures, the appellant shall be obliged to prove or to render possible the existence of the circumstances on which its application is based.

(4) The State Commission shall decide on the application for interim measures within five days from the date on which it was provided with the documentation specified in Article 152 of this Law.

(5) The decision imposing interim measures shall also lay down their duration.

(6) Having regard to the potential consequences from the interim measures to all interested parties that could be harmed by these measures, including the public interest, the State Commission may reject the application where it establishes that the negative consequences of the interim measures override their benefit.

#### Chapter 5

##### **Decision-making of the State Commission**

#### Article 160

##### **Decision-making in the appeal procedure**

(1) In the appeal procedure, the State Commission may:

1. terminate the appeal procedure;
2. dismiss the appeal due to lack of jurisdiction, because the appeal is inadmissible, incomplete, late, because there is lack of legal interest and because it is lodged by an unauthorised person;
3. reject the appeal because it is unfounded;
4. uphold the appeal and annul the decision, the procedure or action concerning the illegal elements, including the discriminatory technical, financial and other requirements of the contract notice or the tender documentation;
5. cancel the public contract or framework agreement, or a part thereof;
6. decide on the request for compensation of the costs in the appeal procedure;
7. decide on the application for interim measures;
8. decide on the request to conclude the public contract or framework agreement;
9. impose a fine;
10. declare the decision to be null and void; or
11. order the party to take certain actions.

(2) The State Commission shall adopt a decision on the main subject, and reach a conclusion on the other issues.

(3) The decision shall include a reasoning of the State Commission's decision.

(4) The decision of the State Commission shall become final following its delivery in accordance with Article 167 of this Law.

(5) All parties shall be obliged to respect and implement the final decision of the State Commission.

(6) The contracting authority shall be obliged to act in accordance with the decision of the State Commission within 30 days from the date of receipt of the decision, and it shall apply the legal interpretation and the comments given in the decision of the State Commission.

#### Article 161

##### **Rights of the parties to the appeal procedure**

- (1) The parties to the appeal procedure shall have the right to state their opinion on the requests and allegations of the other party and to propose evidence.
- (2) To each of the parties, the State Commission shall deliver the submissions based on which it deliberates on the main subject or which are proposing new facts and evidence.

#### Article 162

##### **Hearing**

- (1) The parties may propose a hearing for the purpose of clarifying the complex state of facts or certain legal issues, with an explanation of the reasons for such proposal.
- (2) The State Commission shall decide on the proposal for holding a hearing.
- (3) The State Commission may also decide on holding a hearing when it establishes that the hearing is necessary to clarify the complex state of facts or certain legal issues.
- (4) Minutes shall be kept during the hearing.
- (5) The hearing shall be public, but the public may be excluded for the purpose of protecting confidential information in accordance with the law.

#### Article 163

##### **Cancellation of the public contract or of the framework agreement**

- (1) In the appeal procedure, the State Commission shall cancel the public contract or framework agreement, completely or partially, where the contracting authority has concluded:
  - a public contract or framework agreement without previously having conducted a public procurement procedure, where that is contrary to the provisions of this Law;
  - a public contract or framework agreement in a public procurement procedure without publication of a contract notice, when that is contrary to the provisions of this Law;
  - a public contract or framework agreement in contravention of Article 115 of this Law;
  - a public contract or framework agreement in contravention of Article 157 of this Law;
  - a public contract or framework agreement in contravention of Article 159 of this Law; and
  - an individual public contract on the basis of a framework agreement or a dynamic purchasing system in contravention of Article 57 paragraph (7), or Article 58 of this Law.
- (2) Depending on the reasons for cancellation referred to in paragraph (1) of this Article, taking into consideration all relevant circumstances, including the gravity of the infringement of this Law and the actions of the contracting authority, the State Commission shall cancel the public contract or framework agreement, including all its legal effects from the moment of its conclusion or only concerning its contractual obligations that have not yet been performed.
- (3) The State Commission may decide that the public contract or the framework agreement is to remain into force, completely or partially, although it has been concluded contrary to the requirements referred to in paragraph (1) of this Article where, considering all relevant circumstances, it establishes that there are overriding, justified reasons relating to the general interest of the Republic of Macedonia, due to which the contract or framework agreement should remain into force.
- (4) The economic interests may be considered as justified reasons, within the meaning of paragraph (3) of this Article, only in exceptional cases when the cancellation of the contract or the framework agreement would lead to disproportionate consequences.
- (5) The economic interests directly related to the subject-matter of the public contract or the framework agreement, such as the expenses incurred due to late performance, expenses for conducting a new public procurement procedure, expenses that might be incurred due to change of the contractor and expenses for legal obligations resulting from the cancellation of the public contract or the framework agreement shall not be considered as justified reasons within the meaning of paragraph (3) of this Article.

#### Article 164

## **Fines**

- (1) Where the State Commission, in accordance with Article 163 paragraph (2) of this Law, cancels the public contract or the framework agreement relative to those contractual obligations that have not yet been performed, or where it adopts a decision pursuant to Article 163 paragraph (3) of this Law, it may impose a fine on the contracting authority.
- (2) Where the State Commission rejects the application for interim measures or approves the conclusion of the public contract or framework agreement, depending on the decision for the main subject, it may impose a fine on the contracting authority.
- (3) The decision shall specify the amount of the fine and the time limit in which the contracting authority is obliged to pay the fine.
- (4) The fine shall be determined proportionately to the performance of the public contract that has been partially cancelled, the remaining contractual obligations which have not yet been performed, or the entire contract the conclusion of which was allowed by the State Commission, and it shall be imposed in the amount from 10% to 20% of the contract value.
- (5) The funds from the fine imposed in accordance with the provisions of this Law shall be revenue of the Budget of the Republic of Macedonia.

## **Article 165**

### **Fee for the conduct of the procedure**

- (1) In the procedure before the State Commission, the appellant, in addition to the administrative fee, shall also pay a fee for the conduct of the procedure depending on the amount of the tender, specifically:
  - up to EUR 10,000 in Denar equivalent, the fee shall be EUR 50 in Denar equivalent;
  - from EUR 10,000 to EUR 70,000 in Denar equivalent, the fee shall be EUR 100 in Denar equivalent;
  - from EUR 70,000 to EUR 130,000 in Denar equivalent, the fee shall be EUR 150 in Denar equivalent; or
  - over EUR 130,000 in Denar equivalent, the fee shall be EUR 200 in Denar equivalent;
- (2) Where there is no tender, the amount of the fee for conducting the procedure shall be calculated on the basis of the estimated value of the public contract, and the State Commission shall inform the appellant about the amount of the fee and the time limit in which the appellant has to submit proof of the payment.
- (3) The fee for the conduct of the procedure shall be revenue of the Budget of the Republic of Macedonia.
- (4) The entities referred to in Article 138 paragraph (2) of this Law shall be exempted from payment of the fee for the conduct of the procedure.

## **Article 166**

### **Costs of the appeal procedure**

- (1) In the procedure before the State Commission, each party shall previously bear the costs resulting from its own actions.
- (2) The State Commission shall decide on the costs in the appeal procedure, and it shall determine who shall bear the costs, what would be the amount of the costs, and to whom and in what time limit they should be paid.
- (3) The request for compensation of the costs in the appeal procedure shall be fully determined, specified and submitted before the adoption of the decision.
- (4) The party that has initiated and lost the procedure shall be obliged to compensate the justified costs incurred during the procedure to the opposing party.
- (5) Where the appeal is withdrawn or dismissed, the appellant shall be obliged to compensate the justified costs in the procedure to the contracting authority.
- (6) Where the appeal is partially upheld, the State Commission may decide that each party is to cover its own costs, to divide the costs of the appeal procedure into equal shares or proportionally to the upholding of the appeal.

(7) Where the appeal is upheld in its entirety, the contracting authority shall be obliged to compensate the justified costs in the procedure to the appellant.

#### Article 167

##### **Decision-making and delivery of decisions**

- (1) The State Commission shall decide on the appeal cases at a session by a majority of the total number of members. The session shall be convened by the chairperson of the State Commission.
- (2) The State Commission may work only if there are at least three members present at the session. The chairperson and/or the deputy shall mandatorily attend the sessions of the State Commission.
- (3) A member of the State Commission shall not abstain from voting.
- (4) The sessions of the State Commission shall not be public.
- (5) Separate minutes shall be kept for the deliberation and the voting. The minutes shall be signed by all present members of the State Commission and the minutes-taker.
- (6) The State Commission shall decide within 15 days after the documentation relating to the case is made complete.
- (7) The decisions of the State Commission shall be delivered to the parties in the procedure electronically, through the ESPP, within 48 hours after the end of the session on which the decision was adopted.
- (8) The decisions shall be published on the web page of the State Commission.

#### Article 168

##### **Expert's report**

- (1) If in the appeal procedure there is a need of expert knowledge to establish or assess a specific fact in the public procurement procedure, and the State Commission does not have such knowledge, it may decide, at the request of the parties or at its own initiative, to request an expert's report.
- (2) The expert's report shall be provided by experts recorded in the register of experts.
- (3) The costs for an expert's report shall borne by the party that has requested this, by an advance payment following the information by the State Commission relative to the amount of the costs. Where the State Commission requests an expert's report at its own initiative, the costs shall be borne by the State Commission.
- (4) The reward and remuneration for the expert's report provided shall be determined in accordance with the regulations on expert's report.

#### Article 169

##### **Recusal in the event of conflicts of interest**

- (1) The chairperson, deputy or member of the State Commission shall be recused from working on a particular case because of the existence of conflicts of interest:
  1. where he/she has a business relationship with the party;
  2. where the party or its legal representative is his/her blood relative in the direct line of descent or a collateral relative up to the fourth degree inclusive, is an in-law up to the second degree inclusive, is or was a spouse or partner from common law marriage, is an adoptive parent or adoptee; or
  3. where there are other circumstances brining his/her impartiality into question.
- (2) The parties may request the recusal of the chairperson, deputy or members of the State Commission.
- (3) As soon as some of the reasons for recusal referred to in paragraph (1) of this Article become known, the member or deputy chairperson of the State Commission shall be recused from working on the particular case and he/she shall notify the chairperson thereof.
- (4) As soon as some of the reasons for recusal become known, the chairperson of the State Commission shall be recused from working on the particular case and he/she shall notify the deputy chairperson thereof.
- (5) The chairperson of the State Commission shall decide on the request for the recusal of the members and of deputy chairperson of the State Commission.

(6) The members of the State Commission shall decide on the request for recusal of the chairperson of the State Commission.

## Chapter 6

### **Court protection and civil law provisions**

#### Article 170

##### **Court protection**

- (1) The decision of the State Commission shall not be subject to appeal, but an administrative dispute may be initiated before the Administrative Court.
- (2) In the event of an administrative dispute, the State Commission shall make the entire file of the procedure for the case available in electronic form through the ESPP within five days from the date when the lawsuit was submitted.
- (3) The decision on the administrative dispute shall be adopted within 30 days from the date of receipt of a complete lawsuit.
- (4) Where the Administrative Court annuls the decision of the State Commission, through its judgement, it shall also decide on the appeal in the public procurement procedure.
- (5) The State Commission shall publish the decision of the Administrative Court on its web page without anonymization.

#### Article 171

##### **Compensation for damages**

Any person who has suffered damage due to an infringement of this Law shall have the right to request compensation for damages before the competent court pursuant to the general regulations on compensation for damages.

## Title IX

### **ADMINISTRATIVE CONTROL AND AUDIT**

#### Article 172

##### **Subject of the administrative control**

- (1) Administrative control over the application of this Law, except in public procurement procedures of the contracting authorities referred to in Article 9 paragraph (1) point (e) of this Law, shall be performed by the Bureau before dispatching the decision on selection or on cancellation of the procedure.
- (2) The administrative control shall be conducted in the seat of the Bureau.
- (3) The administrative control shall apply to public procurement procedures with an estimated value exceeding EUR 500,000 in Denar equivalent in the acquisition of supplies or services and exceeding EUR 2,000,000 in Denar equivalent in the acquisition of works.
- (4) In addition to the administrative control in the procedures referred to in paragraph (3) of this Article, the Bureau may perform administrative control over any public procurement procedure based on a risk assessment concerning a breach of the provisions under this Law and by a random selection.
- (5) If the Bureau, in performing the administrative control, identifies one or more irregularities that qualify as a breach pursuant to this Law or as an offence, it may file misdemeanour charges to the competent court or notify the competent public prosecution office of the Republic of Macedonia.
- (6) The Minister of Finance shall prescribe in more detail the manner of selecting the procedures that will be subject to administrative control, and the manner of performing the administrative control.

#### Article 173

##### **Integrity of the process of performing administrative control**

- (1) The administrative control shall be performed by civil servants of the Bureau.
- (2) A civil servant employed in the Bureau shall be excluded from participation in an administrative control of a particular case, if he or she:

- participated in drafting the tender documentation for the procedure subject to administrative control;
- is a blood relative in the direct line of descent or a collateral relative up to the fourth degree inclusive, is an in-law up to the second degree inclusive, is or was a spouse or partner from common law marriage, is an adoptive parent or adoptee of the person in the contracting authority who participated in the conduct of the procedure being subject to administrative control; or
- during the preceding three years, was employed by the contracting authority or was hired by the contracting authority for a specific remuneration.

(3) The civil servant in the Bureau shall immediately inform the Director of the Bureau about the existence of one or more reasons referred to in paragraph (3) of this Article for his or her exclusion from the administrative control in a given case.

(4) The Director of the Bureau shall decide on the exclusion of the civil servant from the administrative control in a given case by means of a decision.

#### Article 174

##### **Information about the conduct of administrative control**

(1) The Bureau shall inform the contracting authority through the ESPP about the conduct of administrative control over its public procurement procedure, and about the time limit for completing the administrative control.

(2) The Bureau shall inform the contracting authority that it shall not continue the procedure until the Bureau concludes that the procedure is in compliance with this Law or until the contracting authority proceeds in accordance with the Bureau's instructions.

#### Article 175

##### **Time limit for completing the administrative control**

The administrative control shall be performed within 10 days from the date when the Bureau informed the contracting authority about the conduct of an administrative control.

#### Article 176

##### **Minutes from the administrative control performed**

(1) After the administrative control is completed, the servants who have performed it shall write up minutes from the administrative control performed.

(2) The Minister of Finance shall prescribe the content of the minutes from the administrative control performed.

#### Article 177

##### **Effect of the administrative control**

(1) The administrative control shall end with the submission of minutes from the administrative control performed.

(2) If during the administrative control no irregularities have been identified affecting the outcome of the procedure, the contracting authority shall continue the procedure.

(3) If the Bureau identifies irregularities affecting the outcome of the procedure, it shall give instructions about what the contracting authority has to undertake to remove the irregularities or to cancel the procedure if that is not possible in this phase of the procedure.

#### Article 178

##### **Rights and obligations of the contracting authority concerning the administrative control**

(1) The contracting authority shall be obliged to act in accordance with the instructions by the Bureau, unless it submits an additional explanation.

(2) The contracting authority may submit an additional explanation to the Bureau within three working days from the date of receipt of the minutes on the administrative supervision performed.

(3) The Bureau shall decide, within five working days from the date of receiving the additional explanation, whether:

- to accept and modify and supplement the initial minutes, if it agrees with the additional explanation provided by the contracting authority or
- to confirm the findings of the initial minutes, if it does not accept the additional explanation provided, in which case, it will send to the State Commission by electronic means through the ESPP the entire documentation that was attached.

(4) In the cases referred to in paragraph (3) indent 2 of this Article, the State Commission shall review both the instructions by the Bureau and the additional explanation by the contracting authority and it shall decide whether the additional explanation is acceptable.

(5) The State Commission shall decide within five working days from the date of delivery of the documentation through the ESPP. The decision by the State Commission shall be final and binding for both the contracting authority concerned and the Bureau.

(6) No fee shall be charged for conducting the procedure before the State Commission in accordance with the conditions referred to in this Article.

(7) The provisions under Title VIII of this Law shall accordingly apply to the procedure before the State Commission in accordance with this Article, unless otherwise regulated in this Article.

#### Article 179

##### **Annual data about administrative control performed**

The data from the administrative controls performed in the current year shall form an integral part of the Bureau's annual report concerning its activities in the functioning of the public procurement system delivered to the Government.

#### Article 180

##### **Audit**

Audit of the use and spending of funds for public procurement by the contracting authorities referred to in Article 9 paragraph (1) points a), b), c) and d) of this Law shall be performed by the State Audit Office.

#### Title X

##### **MISDEMEANOUR PROVISIONS**

#### Article 181

##### **Misdemeanour provisions for the contracting authority**

(1) The responsible person or the authorised person in the legal entity that is a contracting authority shall be fined for a misdemeanour with an amount of EUR 500 to 1,000 in Denar equivalent where it:

1. fails to apply this Law in procurements that it subsidises or co-finances by more than 50% contrary to Article 18 paragraph (3) of this Law;
2. wrongly estimates the value of the procurement or unduly divides the procurement into separate procedures in a manner that will result in circumventing the application of this Law or in selecting an inappropriate public procurement procedure contrary to Article 40 paragraphs (2) and (3) of this Law;
3. fails to publish a public procurement plan within the time limit specified in Article 75 paragraph (3) of this Law;
4. conducts a procedure without adopting a public procurement decision;
5. procures supplies, services or works in a competitive dialogue without meeting the legal requirements for the application of that procedure referred to in Article 53 of this Law;
6. procures supplies, services or works in a competitive procedure with negotiation or in a negotiated procedure without publication of a contract notice without meeting the legal

- requirements for the application of that procedure referred to in Article 52, or Article 55 of this Law;
7. fails to publish a notice referred to in Article 63 of this Law or fails to act in accordance with Article 70 paragraph (3) of this Law;
  8. requires a bank guarantee exceeding 3% of the tender value net of VAT, contrary to Article 101 paragraph (3) of this Law.
  9. fails to return the bank guarantee to the tenderers that have not been chosen as the most advantageous within the period of its validity, contrary to Article 101 of this Law.
  10. requires a bank guarantee for quality and timely performance of the contract that is lower than 5%, and higher than 15% of the public contract value, contrary to Article 102 of this Law.
  11. requires a bank guarantee contrary to Article 102 paragraph (3) of this Law.
  12. fails to return the bank guarantee for quality and timely performance of the contract contrary to Article 102 paragraph (6) of this Law.
  13. fails to comply with the standstill period, although it was obliged to do so pursuant to Article 115 of this Law;
  14. during the performance of the public contract or framework agreement, it makes modifications contrary to Article 119 of this Law; and
  15. fails to respect the final decision of the State Commission.
- (2) The responsible person in the legal entity that is a contracting authority shall be fined for a misdemeanour with an amount of EUR 1,000 to 2,000 in Denar equivalent where it:
1. fails to comply with the time limits for receipt of tenders or requests to participate laid down in this Law;
  2. does not have at least one public procurement officer with a valid certificate for a public procurement officer pursuant to Article 80 of this Law;
  3. fails to collect the bank guarantee of the tender in the cases referred to in Article 101 paragraph (6) of this Law;
  4. receives a bank guarantee with a validity shorter than the date when the tender validity expires, contrary to Article 101 paragraph (15) of this Law.
  5. where the bank guarantee was not requested, and it should have been requested;
  6. where the bank guarantee is not valid until the full completion of the public contract contrary to Article 102 paragraph (5) of this Law;
  7. where it fails to extend the validity of the bank guarantee when the time limit for contract performance is extended;
  8. where it fails to increase the value of the bank guarantee when the contract value is increased;
  9. where it requires an advance payment guarantee exceeding 20% of the contract value;
  10. where it fails to obtain a bank guarantee from the contractor in the amount of the advance payment agreed, contrary to Article 103 of this Law;
  11. fails to adopt a decision on the selection of the most advantageous tender or a decision on cancellation of the procedure within the time line specified in Article 112 paragraph (2) of this Law;
  12. fails to conclude the public contract or the framework agreement within the time limit specified in Article 112 paragraph (3) of this Law;
  13. defines the conditions in the public contract or framework agreement in such a manner that the essential elements deviate from the requirements contained in the tender documentation contrary to Article 116 paragraph (2) of this Law;
  14. fails to adopt a decision on the qualified candidates in the procedure where the ability of economic operators is determined in a separate phase;
  15. terminates the public contract or the framework agreement contrary to Article 120 of this Law.

#### Article 182

#### **Misdemeanour provisions for the economic operator**



(1) A small trade company that is an economic operator shall be fined for a misdemeanour with an amount ranging from EUR 500 to 1,500 in Denar equivalent, where it:

1. performs the public contract with a subcontractor that has not been approved by the contracting authority in accordance with Article 118 of this Law;
2. fails to provide the contracting authority with a statement in accordance with Article 118 paragraph (9) of this Law.

(2) A medium-sized and a large trade company shall be fined with an amount ranging from EUR 1,000 to 5,000 in Denar equivalent for a misdemeanour referred to in paragraph (1) of this Article.

(3) The responsible person in the legal entity referred to in paragraph (1) and (2) of this Article shall be fined with an amount of EUR 50 to 250 in Denar equivalent for a misdemeanour referred to in paragraph (1) of this Article.

#### Article 183

##### **Setting of the amount of fines**

Setting of the amount of fines for misdemeanours prescribed by this Law shall be done in accordance with the Law on Misdemeanours.

#### Article 184

##### **Misdemeanour body**

Misdemeanour proceedings shall be conducted and the misdemeanour sanctions prescribed for in this Law shall be imposed by a competent court.

#### Title XI

##### **TRANSITIONAL AND FINAL PROVISIONS**

#### Article 185

(1) The regulations prescribed for in this Law shall be adopted within six months from the date when this Law starts to apply.

(2) Until the date of entry into force of the regulations prescribed for in this Law, the existing regulations shall apply.

#### Article 186

The certificates for passed exam issued in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No. 136/2007; 130/2008; 97/10; 53/11; 185/11; 15/13; 148/13; 160/13; 28/14; 43/14; 111/14; 130/14; 180/14; 78/15; 192/15; 27/16; 120/16; 165/17 and 83/18) shall remain valid during the period for which they had been issued, but not longer than one year from the date when this Law starts to apply.

#### Article 187

The Director of the Bureau appointed before the date of entry into force of this Law shall continue performing his/her duties until the end of the term of office for which he/she was appointed.

#### Article 188

The chairperson and members of the State Commission appointed before the date of entry into force of this Law shall continue performing their duties until the end of the term of office for which they were appointed.

#### Article 189

Public procurement procedures initiated before the date when this Law starts to apply shall be completed in accordance with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No. 136/2007; 130/2008; 97/10; 53/11; 185/11; 15/13; 148/13; 160/13; 28/14; 43/14; 111/14; 130/14; 180/14; 78/15; 192/15; 27/16; 120/16; 165/17 and 83/18).

#### Article 190

The Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No. 136/2007; 130/2008; 97/10; 53/11; 185/11; 15/13; 148/13; 160/13; 28/14; 43/14; 111/14; 130/14; 180/14; 78/15; 192/15; 27/16; 120/16; 165/17 and 83/18) shall cease to be effective on the date when this Law becomes applicable.

#### Article 191

The provisions under Articles 29 and 123 of this Law shall start to apply as of 1 January 2020.

The provisions under Article 48 of this Law concerning the electronic market for small-value procurements shall start to apply as of 1 July 2020.

#### Article 192

This Law shall enter into force on the eighth day following that of its publication in the "Official Gazette of the Republic of Macedonia", and it shall start to apply as of 1 April 2019.