

# LAW

## ON PUBLIC PROCUREMENT

("Off. Herald of RS", Nos. 124/2012, 14/2015 and 68/2015)

### I. BASIC PROVISIONS

#### 1. *Scope of the Law and Definitions*

##### Scope of the Law

###### Article 1

This Law governs the planning of public procurement, conditions, manner and procedure of public procurement; it governs the centralization of public procurement; it governs the public procurement in the areas of water management, energy, traffic and postal services and in the area of dense and security; it establishes the manner of recording data in public procurement; it determines the tasks, manner of operation and organizational form of the Public Procurement Office and the Republic Commission for the Protection of Rights in Public Procurement Procedures; it determines the manner of protecting the rights in public procurement procedures and in other cases in accordance with the law; it also governs other issues of relevance for public procurement.

Appendices 1 through 3 are integral parts of this Law.

##### Contracting Authority

###### Article 2

Contracting authority in terms of this Law means:

- 1) Government body, body of the autonomous province and local government body;
- 2) Legal person established with the aim of satisfying the needs of the public interest, which do not have an industrial or trade character, if any of the following conditions is met:
  - (1) That over 50% is financed from the contracting authority's funds;
  - (2) That the contracting authority monitors the operation of that legal person;
  - (3) That more than a half of members of such legal person's monitoring body or managing body are appointed by the contracting authority.

3) (*Deleted*)

Upon proposal of the ministry in charge of finance and the Public Procurement Office, the Government determines the list of contracting authorities referred to in paragraph 1, item 1) of this Law.

The list of contracting authorities is published in the "Official Herald of the Republic of Serbia" and on the Public Procurement Portal.

Persons not on the list referred to in paragraph 2 of this Article, which meet the conditions under paragraph 1 of this Article, shall apply this Law.

## Meaning of Terms

### Article 3

Specific terms used in this Law have the following meanings:

- 1) **Public procurement** is a procurement of goods, services or works by the contracting authority, in the manner and under the conditions prescribed by this Law;
- 2) **Public procurement contract** is a binding contract concluded in written or electronic form between one or several bidders and one or several contracting authorities, whose subject is procurement of goods, provision of services or execution of works;
- 3) **Bidder** is a person who in public procurement procedure offers goods, provision of services or to execution of works;
- 4) **Applicant** is a person who has submitted an application during the first phase of the restrictive procedure, in competitive dialogue, or in qualifying procedure;
- 5) **Interested person** is every person who has the interest to conclude a specific public procurement contract or framework agreement;
- 6) **Candidate** is a person whose qualification was acknowledged in the first phase of the restrictive or qualifying procedure, or in competitive dialogue;
- 7) **Supplier** is a bidder with whom the framework agreement or public procurement contract was concluded;
- 8) **Public procurement tasks** are public procurement planning; conducting of the public procurement procedure, including but not limiting to participation in the public procurement commission; drafting of the tender documents; drafting documents in public procurement procedure; drafting public procurement contracts; monitoring the implementation of public procurement; any other tasks related to public procurement procedure;
- 9) **Person engaged in public procurement tasks** is a person operating in the tasks of planning, conducting, and implementing public procurements, fully employed or contracted in terms of the law governing employment relations;

10) **Representative of contracting authority** is a member of the managing or supervisory board of contracting authority, contracting authority's manager entrusted with public procurement tasks, responsible person of contracting authority and person engaged in public procurement tasks;

11) **Related persons** are spouses, extramarital partners, lineal kin, collateral kin up to the third degree of consanguinity, in-laws up to the second degree of kinship, adopter and adoptee, transferor and transferee of management rights, and persons related pursuant to the law that governs profit tax of legal persons;

It. 12) - 14) (*Deleted*)

15) **Open procedure** is a procedure in which all interested persons may submit bids;

16) **Restrictive procedure** is a procedure that is conducted in two phases and in whose second phase the bid may be submitted only by the candidates;

17) **Qualifying procedure** is a procedure that is conducted in two phases so that all interested persons may apply during the whole period of validity of the candidates' list, and the contracting authority, pursuant to the conditions contained in the tender documentation, acknowledges their qualification every six months and invites them to submit bid in the second phase of the procedure;

18) **Negotiating procedure** is a procedure in which the contracting authority directly negotiates elements of public procurement contract with one or several bidders;

19) **Competitive dialogue** is a procedure where all interested persons may apply, and the ones who were acknowledged with qualification (candidates) the contracting authority conducts dialogue in order to find solution that shall satisfy its needs, while inviting the candidates to submit bids based on the adopted solution(s);

20) **Framework agreement** is an agreement between one or multiple contracting authorities and one or multiple suppliers, purpose of which is to establish the terms of contract to be awarded during a specified period, which relate to prices and, where appropriate, to quantities;

21) **Dynamic procurement system** is a procedure of electronic procurement of standardized goods and services that are generally available on the market and satisfy contracting authority's needs, which is open to all interested parties who file an initial bid that meets the technical specifications, and which is limited to a specific period of time;

22) **Design contest** is a procedure that the contracting authority applies to acquire design or project most often in the areas of urban planning, architecture and construction, engineering, or data processing, whilst the selection of designs is carried out by a previously appointed jury, following the conducted contest;

23) **Low-value public procurement** is a procurement estimated value of which is not higher than the value set by this Law, whilst the total estimated value of procurements of the same type at the annual level is not higher than the value set by this Law;

- 24) **Exclusive right** is a right pursuant to which only a specific person may perform certain activity within a specified geographical area, and which was granted or derives from law, separate regulation, or individual decision, or a contract or agreement, which was adopted or concluded by the Republic of Serbia, territorial autonomy or local government;
- 25) **Special right** is a right pursuant to which specific persons may perform specific activity in a specific geographical area, and which was granted or derives from law, separate regulation, or individual decision, or a contract or agreement, which was adopted or concluded by the Republic of Serbia, territorial autonomy or local government;
- 26) **Network** is a set of immovable objects mutually connected, designated for the transfer of matter, electronic signals and energy for the purpose of their distribution to and from consumers, as well as a set of objects designated for the movement of means of transportation in order to provide services to consumers;
- 27) **Offered price** is a price set by bidder in the bid, expressed in dinars, covering all expenses that are related with the subject of public procurement and determined as such in tender documentation;
- 28) **Comparable market price** is a price in the relevant market taking into consideration the subject-matter of public procurement, development of the market, requirements under tender documentation such as the mode of payment, quantities, delivery deadlines, period of validity of contract, collateral, warranty period, etc.;
- 29) **Criterion** is a measure used for evaluating, comparing and assessing bids;
- 30) **Application** is a request of interested person to participate in the first phase of the restrictive procedure, qualification procedure, or competitive dialogue;
- 31) **Timely bid** is a bid received by the contracting authority within deadline specified in the invitation to submit bids;
- 32) **Adequate bid** is a bid which is timely and determined to fully comply with all technical specifications;
- 33) **Acceptable bid** is a bid which is timely, one that contracting authority did not reject due to essential deficiencies, which is adequate, one that does not restrict or condition either the rights of contracting authority or the obligations of bidder, and which does not exceed the amount of estimated value of the public procurement;
- 34) **Discount on the bidding price** is a method of determining the price that bidder may offer in its bid only when public procurement subject is subdivided into several lots, and the contracting authority is not in the position to foresee such a method in the tender documentation as the element of the criterion;
- 35) **Public procurement by lots** is a procurement whose subject is subdivided into several separate units of the same kind, and which is designated as such in the invitation to submit bids and in tender documentation;

36) **Electronic bid** is a bid or part of the bid submitted by bidder to the contracting authority in electronic form and, as such, has to be foreseen by tender documentation, to meet the principles of electronic operation according to special regulations, and to constitute an unambiguous entirety with other parts of the same bidder's bid;

37) **Electronic auction** is a contest between bidders in public procurement procedure, by way of electronically offering new, more advantageous bids, which the contracting authority ranks by an automatic evaluation method;

38) **Common Procurement Vocabulary** is a reference classification system for subjects of public procurement, applicable to public procurement contracts, which simultaneously ensures conformity with other existing classifications.

## ***2. Subject Matter of Public Procurement Contract***

### **Procurement of Goods**

#### **Article 4**

The subject matter of public procurement contract may be:

- 1) Purchase of goods;
- 2) Renting of goods;
- 3) Leasing of goods (with or without option to buy).

Public procurement contract may also comprise provision of services, where such services are necessarily linked to public procurement of goods (assembling, transport, insurance, or other services defined by the contracting authority).

The subject matter of contract on public procurement of goods is also the procurement of goods under paragraph 1 of this Article that contracting authority finances in the amount exceeding 50%.

In case under paragraph 3 of this Article, the party responsible for application of provisions of this Law is the contracting authority which finances the procurement of goods.

### **Procurement of Works**

#### **Article 5**

The subject matter of contract on public procurement is:

- 1) Execution of works, or designing and execution of works, described in the Regulation on Classification of Activities, Sector F - Construction ("Official Herald of RS", No. 54/10).
- 2) Execution of works in construction of a construction facility taken as an entirety, which meets all the economic and technical requirements of the contracting authority;

The subject matter of public procurement of works is also the performance of works described in the Regulation on Classification of Activities, Sector F - Construction ("Official Herald of RS", No. 54/10), which are directly or indirectly financed by the contracting authority in the amount exceeding 50% of procurement value.

In case under paragraph 2 of this Article, the party responsible for application of provisions of this Law is the contracting authority that finances the procurement of works.

## **Procurement of Services**

### **Article 6**

The subject matter of contract on public procurement of services is the services listed in Appendix 1.

It is deemed that the contract on public procurement of services is also the public procurement contract whose subject matter includes:

- 1) Services and goods, provided that the estimated value of services exceeds the estimated value of goods encompassed by this contract;
- 2) Services and supporting works under Article 5 of this Law necessary for implementation of the contract.

The provisions of this Law also apply to procurement of services that are directly or indirectly financed by the contracting authority in the amount which exceeds 50% of procurement value.

In case under paragraph 3 of this Article, the party responsible for application of provisions of this Law is the contracting authority that finances the procurement of services.

## **Mixed Procurements**

### **Article 6a**

If the subject matter of public procurement contract consists of several subject matters in terms of Art. 4-6 of this Law, the subject matter is determined according to the basic subject matter of the contract. If the subject matter of the contract comprises goods and services, i.e. services referred to in Appendix 1 and other services, the basic subject matter of the contract is the one that constitutes the greater part of the estimated value of public procurement.

If for procurement of a part of the subject matter of procurement the application of the provisions of this Law is mandatory, and to the other part the provisions of this Law do not apply:

- 1) If the subject matter of procurement is objectively divisible - contracting authority may conduct separate procurement procedures or award one contract in the public procurement procedure, except in the case of procurements referred to in Article 128 of this Law;

2) If the subject of procurement is objectively indivisible - contracting authority shall award one contract in the public procurement procedure, except in the case of procurements referred to in Article 128 of this Law.

If the procurements referred to in Art. 127 and 128 of this Law are also contained in the subject matter of procurement:

1) If the subject matter of procurement is objectively divisible - the contracting authority may conduct separate procurement procedures or award one contract:

(1) Without application of this Law, if the subject matter of procurement also comprises procurements referred to in Article 128 of this Law and if awarding one contract is particularly justifiable by objective reasons and is not adopted with a view to avoid application of the provisions of this Law;

(2) In the course of public procurement procedure in the field of defense and security, if the subject matter of procurement also comprises procurements referred to in Article 127 of this Law and if awarding one contract is particularly justifiable by objective reasons and is not adopted with a view to avoid application of the basic provisions of this Law;

2) If the subject matter of procurement is objectively indivisible - the contracting authority shall award the contract without application of this Law, if the subject matter of procurement also comprises procurements referred to in Article 128 of this Law, i.e. in the course of public procurement procedure in the field of defense and security, if the subject of procurement also comprises procurements referred to in Article 127 of this Law.

## **Procurements Exempt from the Law**

### **Article 7**

The provisions of this law are not applied by the contracting authorities to:

1) Procurements from persons or organizations which are, in terms of this Law, deemed as contracting authority and which are holders of exclusive right to conduct the activities that are the subject matter of public procurement;

2) Procurements, i.e. design contests that contracting authorities are obliged to carry out in accordance with procurement procedures established:

(1) By an international treaty or other document on the basis of which an international obligation has arisen, and which is concluded with one or multiple states and/or narrower political-territorial units and which pertains to works, goods or services intended for joint application or joint utilization by the signatories;

(2) By act of donation, if such procurement is financed from donation funds;

(3) By international organizations;

2a) Procurements and design contests carried out in accordance with the rules established by international organizations or international financial institutions, if such procurements, i.e. design contests are fully financed by such organizations, i.e. institutions. In the case of procurements and design contests financed, for the most part, by an international organization or an international financial institution, the parties shall agree on procurement procedures to be applied;

3) For the purpose of ensuring the basic living conditions in cases of natural disasters or technical and technological accidents whose consequences imperil lives or health of people or the environment, in compliance with legislation governing protection from such disasters;

4) Procurements whose exclusive and direct purpose is the performing of activities in electronic communications and the selling of electronic communication services in terms of the law governing electronic communication, on the condition that other economic operators are providing those services in the relevant market;

5) Procurements of goods procured, with prior approval from the Government, from the Republic Commodity Reserves Directorate;

6) Procurements of goods and services that contracting authority purchases for resale, for processing and sale, as well as for providing services or performing works in the market, under the condition that the contracting authority does not have exclusive or special rights of resale or rent of such goods, i.e. providing services or performing works for which those goods and services shall serve;

7) Procurements of goods and services related to safety colors for the production of banknotes, identity documents and excise stamps, to procurements of security paper for the production of banknotes and identity documents, of OVD security elements for the production of banknotes, identity documents and chips for producing identity documents, and procurements of services of money transport, as well as security for transports of money, cash and effective foreign currencies deliveries;

8) Procurements of notary services;

9) Procurements of services of the central bank and procurements of financial services related to the sale, purchase or transfer of securities or other financial instruments, in individual transactions of the contracting authority with the aim of raising funds or capital;

10) Purchase, development, production or co-production of radio and television program or broadcasting time; however, this Law applies to the procurement of goods, services or works necessary for production, co-production or broadcasting of such programs;

11) Procurements of services of arbitration and amicable dispute resolution;

12) Entering into employment relationship and working outside the scope of employment in terms of the law governing the rights, duties and liabilities arising from employment, i.e. arising from work, except for service contract. In the case of conclusion of service contract subject matter of which is independent execution of certain intellectual task in the field of science or education or carrying out some artistic or other activity in the field of culture, in accordance with law, and individual value of which does not exceed 12,000,000 dinars, including taxes and



contributions, on an annual basis, i.e. for the contract validity period if the contract validity period exceeds one year, the provisions of this Law do not apply;

13) Loan services regardless of whether they are in connection with sale, purchase or transfer of securities or other financial instruments;

14) Legal services, and in particular:

(1) Attorney's representation services:

- In the process of arbitration or amicable dispute resolution, in the country and abroad, as well as before international arbitration or international body for amicable dispute resolution;
- In the proceedings before courts or other public authorities in the country and abroad or before international courts, tribunals or institutions;

(2) Legal advice services provided by the attorney in preparation of procedures referred to in sub item (1) of this item, or when there is a clear indication and a strong probability that such procedure will take place;

(3) Legal services provided by legal representatives or guardians or other legal services executors of which have been chosen by the court or have been designated to perform certain tasks under the court supervision;

(4) Legal services connected with the exercise of official authority;

15) Obtainment or lease of land, existing buildings or other immovable property and rights associated therewith;

16) Procurements of goods and services value of which is estimated to be lower than 15,000,000 dinars, for the needs of diplomatic and consular missions, international missions and performance of other activities of the Republic of Serbia abroad, as well as to procurements of works for such needs value of which is estimated to be lower than 30,000,000 dinars;

17) Financing of performance of certain activity particularly through grants which is connected with the obligation of compensation of the funds received if they have not been used for intended purposes, if the funds are awarded to interested parties in a transparent manner under equal terms.

In the case of procurements under paragraph 1 of this Article, the contracting authority shall act in line with the principles set forth in this Law.

### **Article 7a**

The provisions of this Law do not apply to contracts concluded by the contracting authority with another legal person if all of the following conditions are met:

1) Contracting authority performs supervision over such legal person similar to supervision it performs over its organizational units in terms of paragraph 2 of this Article;

2) Legal person subject to supervision by the contracting authority, conducts more than 80% of its activities in the Republic of Serbia with a view to performing tasks entrusted to it by the contracting authority or entrusted to it by other legal persons supervised by that contracting authority;

3) In the supervised legal entity there is no participation of private capital that has a decisive influence on decision-making, i.e. on prevention of decision-making, in accordance with the applicable regulations.

It is considered that the contracting authority performs supervision over a legal person similar to supervision it performs over its organizational units in terms of paragraph 1, item 1) of this Article, if it has a decisive influence on strategic objectives and on significant decisions of that legal entity. Such supervision may also be performed by another legal person over whom the contracting authority performs supervision in the same manner.

Paragraph 1 of this Article also applies in the case where a supervised legal person that is a contracting authority, concludes a contract with a contracting authority that performs supervision over it or with another legal person supervised by the same contracting authority, provided that in that legal person therewith the contract is concluded there is no participation of private capital that has a decisive influence.

The provisions of this Law do not apply to contracts concluded by the contracting authority with another legal person that is not supervised by the contracting authority in accordance with paragraph 1 of this Article, if all of the following conditions are met:

1) Contracting authority along with other contracting authorities performs supervision over that legal entity similar to the one they perform over their organizational units in terms of paragraph 5 of this Article;

2) \Legal person that is supervised by those contracting authorities, conducts more than 80% of its activities in executing tasks entrusted to it by those contracting authorities or entrusted to it by other legal persons supervised by those contracting authorities;

3) In the supervised legal person there is no participation of private capital that has a decisive influence on decision-making, i.e. on prevention of decision-making, in accordance with the applicable regulations.

It is considered that contracting authorities jointly perform supervision over the legal person in terms of paragraph 4, item 1) of this Article if all of the following conditions are met:

1) Bodies of the supervised legal person competent for decision-making are composed of representatives of all contracting authorities performing supervision over that legal person. Individual representatives may represent several or all contracting authorities;

2) These contracting authorities may jointly exercise a decisive influence on strategic objectives and on significant decisions of that legal person;

3) Supervised legal entity does not have interests different from the interests of contracting authorities performing supervision over it.

The provisions of this Law do not apply to contracts concluded by two or more contracting authorities if all of the following conditions are met:

- 1) Contract establishes or determines cooperation between contracting authorities in order to carry out public services which they are obliged to carry out, and with a view to realize their common interests;
- 2) Establishment of such cooperation is conducted solely for the purposes in the public interest;
- 3) Contracting authorities realize in the open market less than 20% of the activities to which the cooperation relates.

For determining percentage amount referred to in paragraph 1, item 2), paragraph 4, item 2) and paragraph 6, item 3) of this Article the average of the total sales revenues is taken into account for the period of the preceding three years or for a shorter period if due to the date of establishment, commencement of activities, due to reorganization of their activities or other justifiable reasons no data are available for the preceding three years and if the business projections of that person result in fulfillment of prescribed condition.

## **Reserved Public Procurements**

### **Article 8**

Contracting authority may conduct public procurement procedure in which only institutions, organizations, associations or economic operators dealing with vocational training, professional rehabilitation and employment of disabled persons may participate, on the condition that these persons make no less than 30% of employees, where all participants in joint offer and all subcontractors must come from the stated group.

In case of procurement under paragraph 1 of this Article, contracting authority shall state in the invitation to place bids that the reserved public procurement is carried out.

## ***3. Public Procurement Principles***

### **Principle of Efficiency and Cost-Effectiveness**

#### **Article 9**

Contracting authority shall ensure that goods, services or works procured in public procurement procedure are of appropriate quality having in mind the purpose, intended use and value of public procurement.

Contracting authority shall ensure that public procurement procedure is conducted and awarding of contracts is made within time limits and in the manner prescribed by this Law, with minimum costs related to the procedure and carrying out of public procurement.

## **Principle of Ensuring Competition**

### **Article 10**

Contracting authority shall facilitate as much competition as possible in a public procurement procedure.

Contracting authority may not limit competition, and in particular, it may not prevent any bidder from participating in public procurement by unjustified use of the negotiating procedure or by using discriminatory conditions, technical specifications, or criteria.

## **Principle of Transparency in Public Procurement Procedure**

### **Article 11**

Contracting authority shall ensure publicity and transparency in public procurement procedure, observing but not limiting itself only to the obligations arising from this Law.

## **Principle of Equality of Bidders**

### **Article 12**

Contracting authority shall ensure equal position of all bidders in all phases of public procurement procedure.

Contracting authority may not impose conditions that would constitute national, territorial, subject-matter or personal discrimination among bidders, or discrimination arising from the classification of the business activity performed by the bidder.

## **Principle of Environmental Protection and Ensuring Energy Efficiency**

### **Article 13**

Contracting authority shall procure non-polluting goods, services and works, or those having minimal influence on the environment, or those that ensure adequate decrease in energy consumption - energy efficiency, and, when justifiable, to define environmental advantages of the subject matter of public procurement, energy efficiency, and total costs of procurement subject-matter's service life, as elements of the criterion for the most advantageous bid.

## ***4. Data Protection, Documentation and Keeping Records of the Procedure***

### **Data Protection**

### **Article 14**

Contracting authority shall:

1) Keep confidential all data on bidders contained in a bid that the bidder designated as such in the bid in compliance with the law;

2) Refuse to disclose information that would amount to breach of confidentiality of data received in a bid;

3) Keep as a business secret the names of interested parties, bidders and applicants, as well as information on submitted bids, or applications, until the opening of bids or applications.

Evidence on fulfillment of mandatory requirements, price and other information from the bid relevant for applying elements of the criterion and for the ranking of bids shall not be deemed confidential.

## **Determination of Confidentiality**

### **Article 15**

Contracting authority may require in tender documents the protection of confidentiality of information it places at the disposal of bidders including their subcontractors.

Contracting authority may condition the release of tender documents by signing of declaration or agreement to retain confidentiality of data, where such data represent business secrets in terms of the law which governs trade secret protection, or where they represent secret data in terms of the law which governs data confidentiality.

Person who has received data designated as confidential shall safeguard and protect them irrespective of the degree of this confidentiality.

## **Documentation and Keeping Records of the Procedure**

### **Article 16**

Contracting authority shall:

1) Keep records of all actions and documents during planning, conducting the procedure and implementing public procurement;

2) Safeguard all the documentation pertaining to public procurement in line with regulations governing documentation and archives, for at least ten years from the expiry of the contracted deadline for implementation of an individual public procurement contracts, or five years from the moment the decision to suspend the procedure was made;

3) Keep records on all concluded public procurement contracts and the records of suppliers.

## ***5. Language in Public Procurement Procedure***

### **Article 17**

Contracting authority prepares tender documents and conducts the procedure in Serbian language.

Contracting authority may prepare tender documents in a one foreign language regularly used in international trade in the field that is the subject matter of public procurement.

Bidder submits the bid in the language of tender documents, or in the language specified by the contracting authority in the tender documents.

### **Article 18**

Contracting authority may also allow submission of bids, in entirety or in part, in a foreign language, especially in the part pertaining to technical characteristics, quality and technical documentation.

In case under paragraph 1 of this Article, contracting authority shall specify the part of bid which may be submitted in a foreign language and specify this foreign language.

Where contracting authority finds, in the course of the review and evaluation of bids, that a part of bid should be translated into Serbian language, it shall set an adequate deadline to the bidder for translating that part of the bid.

In the case of dispute, the Serbian version of tender documents and bid prevails.

## **6. Currency**

### **Article 19**

The values in public procurement procedure are stated in dinars.

Contracting authority may allow the bidder to state the price in the bid value in one foreign currency, in which case it shall state in the tender documents that values shall be converted into dinars using the corresponding middle exchange rate of the National Bank of Serbia valid on the day when the opening of bids was initiated.

Where bidder was allowed to state the price in the bid in a foreign currency, contracting authority shall specify in tender documents the currency which can be used to state the prices in the bid.

Where the stated price includes import custom duties and other taxes, bidder shall cite that part separately in dinars.

## **7. Communication**

### **Article 20**

Communication in public procurement procedure and in relation with execution of public procurement tasks is carried out in writing, i.e. by means of mail, e-mail or fax, as well as by means of publishing by the contracting authority on the Public Procurement Portal.

Chosen means of communication has to be widely available, so not to limit possibility for participation of interested parties in public procurement procedure.

Communication shall be made so as to observe all deadlines set by this Law and, to this end, when it is possible, by using electronic means.

Communication shall be carried out in a manner which enables protection of confidential data and information about interested parties, information on bids and bidders until opening of bids, keeping records of actions taken in the procedure and keeping records of documents in accordance with the regulations that govern the field of documentation and archives.

Tools used in means of electronic communication and their technical characteristics shall be widely available and interoperable, so that they use information technology products in general usage.

Where a document in public procurement procedure was delivered by contracting authority or bidder by e-mail or fax, the party that carried out the delivery shall require the other party to confirm the receipt of that document in the same way and that other party shall do so when it is needed as proof of executed delivery.

## II. PREVENTION OF CORRUPTION AND CONFLICT OF INTEREST

### *1. Prevention of corruption*

#### **Common Measures for Prevention of Corruption**

##### **Article 21**

Contracting authority shall take all necessary measure to prevent corruption in the course of public procurement planning, public procurement procedure, or implementation of public procurement contract, in order to timely reveal corruption, to remedy or mitigate adverse consequences of the corruption, and to sanction the actors of corruption in compliance with the law.

Where under the circumstances of a specific case it is not worthwhile to effect communication as set forth under Article 20, paragraph 1 of this Law, person employed in tasks of public procurement or other persons shall draft the minutes or in other manner record the undertaken actions.

Contracting authority's manager and the responsible person shall provide all instructions and guidelines to employees engaged in public procurement tasks, either in writing or via electronic mail.

Employee engaged in public procurement tasks shall refuse to act pursuant to an instruction of the responsible person where such guideline or instruction is contrary to regulations.

In case that the person referred to in paragraph 4 of this Article refuses to act pursuant to instruction, he may not be transferred to other tasks or get his employment contract rescinded within the period of twelve months from the day of refusal of the instruction, provided that he performs the tasks in compliance with the law.

The Public Procurement Office shall draft a model of internal plan for preventing corruption in public procurement.

Contracting authority whose total estimated annual value of public procurement exceeds one billion dinars shall adopt an internal plan for preventing corruption in public procurement.

## **Internal Bylaw and Procurement Control**

### **Article 22**

Contracting authority shall adopt a bylaw to regulate the internal process of public procurement procedure in detail, and in particular the manner of planning procurement (criteria, rules, and the way for determining the subject matter of public procurement and estimated values, method of market analysis and research), responsibility for planning, public procurement procedure targets, the manner of executing obligations in the procedure, the manner of ensuring competition, conducting and controlling public procurements, the mode for monitoring implementation of public procurement contract.

The Public Procurement Office determines in detail the contents of the bylaw under paragraph 1 of this Article.

Where the Public Procurement Office, after the adoption of internal bylaw, identifies inconsistencies between that bylaw and the provisions of this Law, it shall notify thereon the relevant contracting authority, together with the proposal on how to comply and the deadline.

Where contracting authority fails to act in the manner and within the deadline under paragraph 3 of this Article, the Office shall notify thereon the body in charge of supervising the operation of the contracting authority and the State Audit Institution, and initiate the proceedings before the Constitutional Court.

Contracting authorities shall publish the internal bylaw on their web page.

## **Protection of Integrity of the Procedure**

### **Article 23**

Person, who has participated in planning of the public procurement, in preparing the tender documents or separate parts thereof, and the person related to him, may neither act as a bidder or as a bidder's subcontractor, nor cooperate with bidders or subcontractors in the course of bid preparation. In that case, the contracting authority shall reject the bid and notify the competent government bodies without delay.

If a bidder, i.e. an applicant, directly or indirectly gave, offered or promised a benefit or tried to find out confidential information or to influence in any way the contracting authority's actions in the course of public procurement procedure, the contracting authority shall urgently notify the competent government bodies.

## **Duty to Report Corruption**



## **Article 24**

Person engaged in public procurement or any other person employed by contracting authority, as well as any interested person who possesses information on existence of corruption in public procurement, shall immediately notify thereon the Public Procurement Office, the government body authorized for combating corruption, and the competent prosecutor's office.

Person under paragraph 1 of this Article can neither get employment or other type of employment engagement contract rescinded, nor can he be transferred to another work position just because he, acting conscientiously and in good faith, has reported corruption in public procurement, whereas the contracting authority shall grant full protection to that person.

Person under paragraph 1 of this Article may also address the public if:

- 1) He has reported corruption to the authorized person of contracting authority or the competent body, but no follow-up activity in response to the report has been done within an appropriate period of time;
- 2) Government body authorized to fight corruption or competent prosecutor's office failed to undertake any kind of activity within a month from the day of the submission of the report;
- 3) He filed the complaint to civil supervisor, and the civil supervisor failed to provide feedback on the measures taken.

Person under paragraph 1 of this Article may also address the public even though the conditions under paragraph 3 of this Article were not fulfilled, if the estimated value of public procurement is larger than the amount under Article 57 of this Law, or if the subject matter of the public procurement is particularly important for operation of the contracting authority or for the interests of the Republic of Serbia.

In case of violation of labor or other fundamental rights of the person under paragraph 1 of this Article due to reporting corruption, that person is entitled to indemnification by the contracting authority.

Contracting authority shall, within its internal plan under Article 21 of this Law, separately regulate the manner of reporting corruption in the public procurement procedure and separately regulate the protection of rights of the person referred to in paragraph 1 of this Article.

## **Prohibition of Working Engagement with Supplier**

### **Article 25**

Representative of the contracting authority who has in any way participated in public procurement procedures or persons related to him, where total value of contracts awarded to a specific supplier within the last year prior to termination of office or employment of the representative of the contracting authority exceeds 5% of total value of all contracts that this contracting authority has concluded over that period, within the next two years after termination of office or employment with this contracting authority, may not:

- 1) Conclude employment contract, service contract, or in any other way be professionally engaged with that supplier or with persons related to that supplier;
- 2) Receive from this supplier or persons related to him, directly or indirectly, any pecuniary remuneration or any other benefit;
- 3) Acquire a share or stocks of supplier or persons related to that supplier.

In case of breach of prohibition under paragraph 1 of this Article, the contracting authority shall notify thereon the government body authorized to fight corruption and the competent prosecutor's office.

## **Declaration of Independent Bid**

### **Article 26**

Contracting authority shall foresee a declaration of an independent bid as a part of tender documents.

In declaration of an independent bid, the bidder confirms under full financial and criminal responsibility that the bid was submitted independently, without any agreement with other bidders or interested parties.

Declaration under paragraph 2 of this Article is delivered in each individual public procurement procedure.

## **Duty to Report Competition Breach**

### **Article 27**

In case of existence of reasonable doubt in veracity of declaration of independent bid, the contracting authority shall immediately notify the organization competent for protection of competition.

Each interested person or person employed or in any other way work engaged by the interested person, shall notify the organization competent for protection of competition, if possessing any information on violation of competition in the public procurement procedure.

Person under paragraph 2 of this Article may neither get employment or other type of work engagement contract rescinded, nor may he be transferred to another work position because he, acting conscientiously and in good faith, has reported violation of competition in the procedure of public procurement.

In the case referred to in paragraphs 1 and 2 of this Article, the contracting authority may continue the public procurement procedure, whereas the contract, if concluded with the bidder for whom there is a suspicion of violation of competition, shall be terminated by operation of law if the organization competent for protection of competition determines the existence of violation of competition.

## **Civil Supervisor**

### **Article 28**

Where contracting authority conducts public procurement procedure whose estimated value exceeds RSD 1 billion, the procedure is monitored by civil supervisor.

Persons eligible to be appointed for a civil supervisor are prominent experts in the domain of public procurement or in the field related to subject matter of public procurement.

Also eligible for a civil supervisor is an association dealing with public procurements, prevention of corruption, or prevention of conflict of interest.

Person not eligible to be appointed for civil supervisors is the one employed or otherwise commissioned to work for the contracting authority, or for the person related to the contracting authority, or the one who is a member of a political organization

Requirements and criteria for appointment and the mode of operation of civil supervisor are regulated in detail by the Public Procurement Office.

Civil supervisor is appointed by the Public Procurement Office, not later than the day set in the annual public procurement plan as the tentative day to initiate public procurement procedure, i.e. within not later than 30 days from the day the public procurement plan was received.

Contracting authority may not initiate public procurement procedure before the appointment of civil supervisor.

Civil supervisor shall supervise the public procurement procedure and, to this end, shall have permanent insight into procedure, documents and communication between contracting authority and interested parties, i.e., bidders.

Civil supervisor shall file report on conducted public procurement procedure to the committee of the National Assembly in charge of finance or to the assembly of autonomous province or local government, and to the Public Procurement Office, within the term of 20 days from the day the contract was concluded or the decision on suspending the procedure was adopted.

Where civil supervisor has reasonable doubt in the legality of public procurement procedure, he shall notify thereon the competent government bodies and the public.

Civil supervisor is not entitled to remuneration for his work.

## ***2. Prevention of Conflict of Interest***

### **Conflict of Interest**

#### **Article 29**

Conflict of interests for the purpose of this Law exists when relation between the representative of the contracting authority and the bidder may impact impartiality of the contracting authority in making decision in the public procurement procedure, namely:

- 1) If contracting authority's representative or to him related person is involved in bidders' management;
- 2) If contracting authority's representative or to him related person holds more than 1% of bidder's share or stocks;
- 3) If contracting authority's representative or to him related person is employed or work engaged by the bidder or has business relationship with the bidder.

### **Prohibition on Concluding Contract**

#### **Article 30**

Contracting authority may not conclude public procurement contract with the bidder in case of existence of conflict of interest, if existence of conflict of interest has influenced or could have influenced the decision-making in the course of public procurement procedure.

Person involved in conflict of interest may neither be a subcontractor for the bidder to whom the contract was awarded, nor a member of the group of bidders to whom the contract was awarded.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall, at the request of the contracting authority, approve the concluding of contract under paragraph 1 of this Article, provided that contracting authority proves that prohibition to conclude contract would cause great difficulties in work or operation of the contracting authority which are disproportionate to the value of public procurement, or that it would substantially endanger the interests of the Republic of Serbia, that it has taken all measures to prevent adverse consequences, that other bidders do not meet requirements of the procedure, or that, after the ranking of their bids, the difference in prices is 10% higher or that the number of weighted points is higher by ten in favor of the selected bidder.

Decision under paragraph 3 of this Article is published on the web page of the contracting authority, the Republic Commission for the Protection of Rights in Public Procurement Procedures, and on the Public Procurement Portal.

## **III. CONDITIONS AND MANNER OF CONDUCTING PUBLIC PROCUREMENT PROCEDURE**

### ***1. Public Procurement Procedure***

#### **Types of Procedures**

#### **Article 31**

Public procurement procedures are as follows:

- 1) Open procedure;
- 2) Restrictive procedure;
- 3) Qualifying procedure;
- 4) Negotiating procedure with publishing an invitation to place bids;
- 5) Negotiating procedure without publishing an invitation to place bids;
- 6) Competitive dialogue;
- 7) Design contest;
- 8) Low-value public procurement procedure.

Contract is awarded in open or restrictive procedure.

Contract may also be awarded in other public procurement procedures, provided that the requirements prescribed for that by this Law are met.

## **Open Procedure**

### **Article 32**

Open procedure is a procedure wherein all interested persons may submit bids.

## **Restrictive Procedure**

### **Article 33**

Restrictive procedure is a procedure conducted in two phases and wherein all interested persons may submit bids.

In the first phase, the contracting authority invites all interested parties to submit applications and recognizes qualification to applicants whom it finds to meet previously set requirements for qualification.

After having recognizing qualification, the contracting authority publishes notice from Appendix 3F of this Law.

In the second phase of restrictive procedure, the contracting authority invites all applicants to whom it has recognized qualification (candidates) to submit bids.

Contracting authority may initiate second phase of restrictive procedure if it has at least three candidates.

Contracting authority initiates the second phase of restrictive procedure within a term not longer than six months of the moment the decision on recognizing qualification became final in administrative procedure.

## **Qualification Procedure**

### **Article 34**

Contracting authority may conduct qualification procedure when it is not possible to plan in advance the public procurement from the aspect of volume, quantities and time, and the subjects matter of such procurement are occasional services or consumables, or occasional repairs or works on regular maintenance, that are provided, delivered or performed according to the standard, usual specifications, rather than according to specific demands of the contracting authority.

In qualification procedure, the contracting authority invites all interested persons to submit a bid and recognizes qualification of applicants whom it finds to meet previously set requirements for qualification.

Within the deadline set in invitation to apply, the contracting authority makes a decision to recognize qualification that contains a list of at least 5 candidates and a period of validity of recognized qualifications, which may last up to 3 years, and within the reasoning of the decision it shall state the reasons for rejection of other applications.

The decision referred to in paragraph 3 of this Article the contracting authority publishes on the Public Procurement Portal and on its web page within a term of three days from the day of rendering.

Contracting authority shall update the list of candidates every six months by recognizing qualification of each applicant who fulfils requirements and who has in the meantime submitted application for qualification recognition.

The invitation to file applications in qualifying procedure which includes requirements for recognition of qualification and tender documents, the contracting authority shall publish on the Public Procurement Portal and on its web page, so that they are available to all interested parties during the entire period of validity of the list of candidates.

Contracting authority shall exclude a candidate from the list of candidates if he ceases to meet the requirement for qualification recognition, whereof it shall adopt a decision that contains in its reasoning the reasons for exclusion of the candidate and which it delivers to all candidates within three days from the day of its adoption and publishes it on the Public Procurement Portal and on its web page.

During the period of validity of the list of candidates, the contracting authority invites all candidates from the list to submit a bid and at the same time publishes the invitation on the Public Procurement Portal and on its web page.

At the moment of sending invitation to submit bids, the list of candidates shall contain at least five candidates.

## **Negotiating Procedure with Publication of the Invitation to Submit Bids**

### **Article 35**

Contracting authority may conduct negotiating procedure with publication of the invitation to bid:

1) Where in open, restrictive or qualifying procedure or in competitive dialogue, all bids it received were unacceptable, provided that the originally defined requirements for participation in the procedure, technical specifications and criteria for awarding contract, i.e. framework agreement are not altered. If the contracting authority decides to only invite to the negotiating procedure all the bidders that participated in the open, restrictive or qualification procedure, or in competitive dialogue, to supplement their bids, so as to make them acceptable, it does not have to publish invitation to submit bids. The price offered in this negotiating procedure may not be higher than the price offered in the open, restrictive or qualifying procedure, i.e. in the competitive dialogue;

2) In exceptional cases where, due to the nature of goods, services or works, as well as the related risks, it is not possible to estimate the public procurement value in advance;

3) In the case of public procurement of services, if the nature of these services is such that their specifications may not be sufficiently precisely determined so as to facilitate conducting of open or restrictive procedure and there are no conditions to conduct competitive dialogue;

In the case referred to in paragraph 1, item 2) of this Article the provisions of this Law relating to estimated value do not apply.

Contracting authority may conduct negotiating procedure in multiple phases, so as to reduce the number of bids which require negotiating by means of applying requirements, specifications and criteria determined in the invitation to submit bids and in tender documents.

Contracting authority shall in its tender documents define the contractual elements to be negotiated on, the manner of negotiation, and keep the minutes on negotiation.

Contracting authority shall ensure in the course of negotiating procedure that the contracted price does not exceed the comparable market price, and check the quality of public procurement subject matter with due diligence.

## **Negotiating Procedure without Publication of the Invitation to Submit Bids**

### **Article 36**

Contracting authority may conduct negotiating procedure without publication of the invitation to submit bids:

1) If it did not receive any bid or application in open or restrictive procedure, or if all bids were inadequate, provided that the originally defined subject of public procurement and conditions for participation in the procedure, technical specifications and criteria for awarding the contract, i.e. framework agreement are not altered;

2) If, due to technical or artistic reasons of the subject matter of the public procurement, or due to reasons related to the protection of exclusive rights, the procurement may be executed only by a particular bidder;

3) If, for reasons of extreme urgency brought about by extraordinary circumstances or unforeseen events, whose appearance in no case depends on the will of the contracting authority, the contracting authority was not able to act within the time limits laid down for open or restrictive procedure. The circumstances which justify such urgency may not be in any relation to the contracting authority;

4) For additional deliveries of goods by the original supplier intended as a partial replacement of products, materials or installations, or as an extension of volume of the existing products, materials or installations, where a change of supplier or provider of services would oblige the contracting authority to procure material having different technical characteristics which, in turn, would result in disproportionate technical difficulties in operation and maintenance, where total value of all additional deliveries may not exceed 15% of total value of the contract originally concluded and that there elapsed no more than three years since the conclusion of the original contract;

5) In case of additional services or works not included in the original project or in the original public procurement contract, which, due to unforeseeable circumstances, have become necessary for implementation of the public procurement contract, on condition that the contract is concluded with the original service provider, that the total value of all additional services or works (unforeseen works) does not exceed 15% of total value of the contract originally concluded, that there elapsed no more than three years since the conclusion of the original contract, and that:

(1) Such additional services or works may not be separated, in technical or economical sense, from the original public procurement contract without causing disproportionate technical difficulties or disproportionately high costs to the contracting authority, or

(2) Such services or works, which contracting authority could procure separately from the implementation of the original contract, are necessary in order to implement the original public procurement contract;

6) In case of procurements of goods under particularly advantageous conditions from a supplier going through bankruptcy or liquidation, apart from involuntary liquidation, in accordance with regulations governing company liquidation and bankruptcy;

7) In case of public procurement of goods offered and purchased in commodity exchange;

8) In case of public procurement of services that are part of the continuation of a design contest organized in accordance with this Law, if the contract was concluded with the awarded participant or participant in the contest, and if the contracting authority includes each of them in negotiating procedure;

Prior to initiating negotiating procedure under paragraph 1, items 2) through 6), the contracting authority shall request opinion of the Public Procurement Office on the justifiability of applying the negotiated procedure.



The Public Procurement Office shall prescribe the form and the contents of the request under paragraph 2 of this Article.

Within a term of ten days from the day of receipt of complete request under paragraph 2 of this Article, the Public Procurement Office shall scrutinize the existence of basis for applying negotiating procedure and, in the course of scrutiny, it may demand from the contracting authority additional information and data necessary for establishing facts relevant for making the opinion.

The Public Procurement Office shall publish the opinion referred to in paragraph 4 of this Article on the Public Procurement Portal.

Scrutinizing the existence of basis for applying negotiating procedure suspends further activities of the contracting authority in the procedure, except in case of negotiating procedure under paragraph 1, item 3) of this Article even where opinion is not delivered or published within the deadline under paragraph 4 of this Article.

Upon adopting decision on initiation of negotiating procedure, the contracting authority shall, simultaneously with sending invitations to submit bids, publish tender documents and a notice of initiation of the procedure containing information set out in Annex 3G.

Contracting authority shall, whenever it is possible, ensure competition by inviting multiple persons to participate in the procedure, and ensure that the contracted price does not exceed the comparable market price, as well as to check the quality of public procurement subject matter with due diligence.

Contracting authority shall define in tender documents the contractual elements to be negotiated and the manner of negotiation, and to keep minutes on the negotiation.

The Public Procurement Office drafts the instruction on types and manner of negotiation.

## **Competitive Dialogue**

### **Article 37**

Contracting authority may conduct competitive dialogue in the case when public procurement subject matter is particularly complex, so that public procurement contract may not be concluded by applying the open or restrictive procedure.

Subject matter of public procurement is deemed to be particularly complex if the contracting authority is objectively not able to determine:

- 1) Technical specifications of the public procurement subject matter;
- 2) Legal or economic structure of the public procurement.

In the case that contracting authority objectively is not able to determine economic structure of public procurement in terms of paragraph 2, item 2) of this Article, the provisions of this Law relating to estimated value do not apply.

Contracting authority invites all interested parties to submit applications and recognizes qualification to applicants based on previously set requirements.

The decision on recognizing qualification contains reasons which elaborate why reason other applications were rejected, and the contracting authority publishes it on the Public Procurement Portal and on its web page.

In order to preserve competition, the contracting authority may decide to keep data on candidates as business secret, and in that case, instead of decision referred to in paragraph 5 of this Article, it delivers an individual notification.

Contracting authority conducts dialogue with all applicants with recognized qualification (candidates) in order to find the solution which would satisfy its needs.

During the course of entire procedure, and especially in the dialogue phase, the contracting authority shall ensure equal treatment of bidders, in particular by making sure not to offer some information to some bidders which could result in disadvantage of other bidders.

Contracting authority conducts dialogue until it identifies the solution, i.e. solutions capable of satisfying its needs.

Contracting authority conducts dialogue with a candidate only about the solution offered by that candidate.

Contracting authority may not disclose to candidates solutions or other information concerning a solution offered by some of the candidates.

Contracting authorities may stipulate in the invitation to submit bids and in the tender documents that the procedure is conducted in multiple phases in order to decrease the number of solutions to be discussed through dialogues.

In the case referred to in paragraph 12 of this Article, the number of candidates in the dialogue phase may not be less than three, unless a lower number of interested parties apply.

Contracting authority shall deliver a reasoned decision to the candidate who was excluded from dialogue.

After the contracting authority identifies the solution, i.e. solutions capable of satisfying its needs, it invites all candidates who were not excluded from dialogue to submit their final bids based on one or more adopted solutions presented during the dialogue.

Decision on awarding contract in competitive dialogue is adopted by applying the criterion of the economically most advantageous bid.

Elements of the criterion are determined in tender documents before the dialogue phase.

## **Design Contest**

### **Article 38**

Contracting authority conducts design contest in the fields of urban planning, architecture, construction, engineering, and data processing.

Contracting authority conducts design contest by applying the rules for open or restrictive procedure, unless otherwise provided for by this Article.

Contracting authority publishes call for competition in design contest, in the manner prescribed for publishing contract notice and in accordance with Appendix 3E.

The right to participate in tender may not be limited:

- 1) To a specific geographic area or a part of that area;
- 2) On the grounds of requirement that participants may exclusively be legal or natural persons.

Design contest may be organized:

- 1) As a procedure that precedes the awarding of public procurement contract;
- 2) As a procedure to disburse remuneration to participants.

In the case under paragraph 5, item 1) of this Article, the estimated value of public procurement is based on the estimated value of public procurement of services including possible remunerations or compensations to participants.

In the case under paragraph 5, item 2) of this Article, the estimated value of public procurement is based on the aggregate value of remunerations or compensations to participants including the estimated value of contracts on public procurement of services that could be subsequently awarded in negotiating procedure under Article 36, paragraph 1, item 8) of this Law, where contracting authority in its call for participation in the contest did not exclude this option.

Design, plan or project is selected by an independent jury.

Members of this jury may only be natural persons who are not in conflict of interest in terms of Article 29 of this Law.

Where contracting authority requests participants in the contest to possess particular professional qualifications or experience, at least a third of members of the jury must have at least equal qualifications or experience.

The jury is autonomous in deciding, and considers anonymous designs, plans, or projects solely according to the criteria set in the call for participation and in tender documents.

The jury compiles a report on evaluation of design, plan or project, which is signed by all members of the jury. Notes and parts of design, plan, i.e. project that need to be clarified are entered into the report.

Anonymity must be observed until the jury makes its decision, or until the report is compiled.

After the report is compiled, participants may be invited to clarify some parts of design, plan or project. In that case, minutes are kept on the conversation between the members of the jury and participants.

After having conducted the procedure, the contracting authority publishes a report on the outcome of the contest in compliance with Annex 3K.

## **Low-Value Public Procurement Procedure**

### **Article 39**

Low-value public procurement, in terms of this Law, is a procurement whose estimated value does not exceed 5,000,000 dinars, whereby even the total estimated value of procurements of the same type on the annual basis does not exceed 5,000,000 dinars.

Contracting authorities are not under obligation to apply the provisions of this Law to procurements whose estimated value does not exceed 500,000 dinars, if the total estimated value of procurements of the same type on the annual basis does not exceed 500,000 dinars.

When conducting procurement under paragraph 2 of this Article, contracting authority shall prevent existence of any conflict of interest, ensure competition, and make sure that the contracted price does not exceed the comparable market price.

Public procurement procedure is conducted by public procurement officer, or person employed on tasks of public procurement, unless the complexity of the subject matter of public procurement demands involvement of other competent persons.

Contracting authority in a low-value public procurement procedure may invite the minimum of three persons, who, according to information obtained by the contracting authority, are capable of performing procurement, submitting bids and simultaneously publishes invitation to submit bids on the Public Procurement Portal and on its own web page.

In individual low-value public procurement procedure whose value does not exceed the amount referred to in paragraph 2 of this Article, instead of concluding public procurement contract, the contracting authority may issue to the most advantageous bidder a purchase order if it contains essential elements of the contract.

### **Article 39a**

To procurement of services referred to in Appendix 2, the provisions of this Law governing low-value public procurement may apply, regardless of the estimated value of public procurement.

## ***2. Special Forms of Public Procurement Procedure***

### **Framework Agreement**

#### **Article 40**

Contracting authority may conclude a framework agreement after having conducted public procurement procedure referred to in Article 31 of this Law.

Framework agreement is concluded with one or multiple bidders, and the contracting authority shall state in the invitation to submit bids, i.e. applications with how many bidders the framework agreement is being concluded.

If the contracting authority does not receive a predetermined number of acceptable bids, the contracting authority may conclude the framework agreement with a lower number of bidders, i.e. even with one.

Framework agreement may not last more than three years, and if it is concluded with one bidder it may not last longer than two years.

Framework agreement may be used only by contracting authorities that are precisely specified in the framework agreement, or by those which may be clearly deducted from the content of the framework agreement.

Public procurement contracts concluded on the basis of a framework agreement shall be awarded before the end of the duration of the framework agreement, with the proviso that the duration of certain contracts concluded on the basis of the framework agreement does not need to coincide with the duration of such framework agreement, but if needed may last shorter or longer.

Framework agreement may not be used in a way that would prevent, restrict or distort competition and equality of bidders.

When concluding public procurement contract on the basis of framework agreement, the parties may not alter essential terms of the framework agreement.

A purchase order may be issued on the basis of the framework agreement, instead of the public procurement contract, if it contains the essential elements of the contract.

The Public Procurement Office shall draft models and instruction on the manner of concluding framework agreements.

## **Conclusion of Public Procurement Contract on the Basis of Framework Agreement**

### **Article 40a**

If a framework agreement is concluded with one supplier, the contract is concluded on the basis of the terms foreseen in the framework agreement and the bid submitted in public procurement procedure for the conclusion of the framework agreement.

If the framework agreement is concluded with several suppliers, the public procurement contract on the basis of the framework agreement may be concluded in one of the following ways:

1) According to the terms the contract was awarded as determined in the framework agreement, on the basis of already submitted suppliers' bids, without reopening competition among suppliers;

2) By means of reopening competition among suppliers, if by means of framework agreement all the terms for awarding a contract have not been determined.

In the case referred to in paragraph 2, item 2) of this Article, the contracting authority shall:

(1) Send an invitation to all the suppliers with which it concluded a framework agreement to submit a bid;

(2) Foresee appropriate time limit for submission of bids;

(3) Ensure that bids are not opened before the expiry of the time limit for submission of bids;

(4) Adopt a decision on awarding the contract to a supplier who has submitted the most favorable bid on the basis of the criteria stated in tender documents for a framework agreement.

In the case referred to in paragraph 3 of this Article the contracting authority shall publish the decision on awarding the contract on the Public Procurement Portal and on its web page.

Contracting authority in the case referred to in paragraph 3, item 2) of this Article may also use the electronic auction.

## **Dynamic Procurement System**

### **Article 41**

Contracting authority shall establish a dynamic procurement system using exclusively electronic means, by application of the rules of open procedure, unless specified otherwise by this Article.

Electronic means and information system, i.e. information technology used to establish and run a dynamic procurement system, shall be widely accessible to interested parties and shall not lead to limitation of competition.

The contracting authority publishes invitation to submit bids, thereby inviting all interested parties to submit their initial bids.

Technical specifications of public procurement subject matter shall be precisely specified, so that bidders are able to submit adequate bids.

Invitation to submit initial bids is valid for the entire duration of the dynamic procurement system and an interested party may, at any moment, submit the initial bid thus requesting to be admitted into the system.

If the bidders' bid is evaluated as acceptable, the bidder shall be admitted into the dynamic procurement system.

Contracting authority shall, within 15 days from the day of receipt of the initial bid, evaluate it and decide whether to admit the bidder into the dynamic procurement system.

In the duration of the dynamic procurement system, the bidders admitted into the system may improve or amend their initial bid, provided that they observe all technical specifications set by the contracting authority.

Prior to conclusion of each individual public procurement contract, the contracting authority publishes, on the Public Procurement Portal and on its web page, a notice of dynamic procurement system's existence, thereby concurrently inviting all interested parties to submit initial bid and take part in the dynamic procurement system.

If, after the publication of the notice under paragraph 9 of this Article, the contracting authority receives an initial bid, it shall evaluate the initial bid before inviting members of the dynamic procurement system to submit final bids.

The most advantageous bid is chosen by applying criteria set in the public invitation referred to in paragraph 3 of this Article, but these shall be such to enable automatic evaluation of the bids and ranking of the bids with the aid of electronic means.

Dynamic procurement system may not last longer than four years, and in the duration of this system the contracting authority may not change terms for admission into the system.

Contracting authority may not condition the submission of initial bids or the admission into the dynamic procurement system by paying a fee, a deposit, etc.

### ***3. Electronic Auction***

#### **Requirements for Application of Electronic Auction**

##### **Article 42**

Contracting authority shall apply electronic auction where a public procurement subject matter may be clearly and objectively described.

Electronic means and information system, i.e. technology used to apply electronic auction, shall be widely accessible to interested parties and shall not result in restriction of competition.

Contracting authority may conduct electronic auction in open, restrictive or negotiating procedure referred to in Article 35, paragraph 1, item 1) of this Law.

Contracting authority may conduct electronic auction at the occasion of submission of bids for public procurement contract based on the concluded framework agreement.

Electronic auction may only be conducted concerning the criteria or the elements of the criteria which may be quantified in a clear and comprehensible manner, so that it is possible to present

them in numbers or percentages, i.e. that they are suitable for automatic evaluation with the aid of electronic means, without any type of intervention of the contracting authority.

## **Manner of Application of Electronic Auction**

### **Article 43**

Contracting authority explicitly states in its invitation to submit bids that electronic auction shall be conducted.

Contracting authority shall specify in tender documents:

- 1) Criterion or elements of the criterion which are the subject matter of the electronic auction;
- 2) Limits within which the values of bids concerning the criterion or elements of the criterion may or must be altered;
- 3) Conditions under which bidders may alter bids;
- 4) Data available to bidders during electronic auction, or the time when they shall be available;
- 5) Manner of conducting electronic auction;
- 6) Equipment used to conduct electronic auction and technical specifications necessary for the connection with the information system of the contracting authority.

Before the start of electronic auction, the contracting authority performs expert evaluation of bids, by applying the criterion and all elements of the criterion specified in the invitation to submit bids and the tender documentation.

The evidence of fulfilling requirements for participation in the procedure that cannot be sent electronically, contracting authority shall deliver in paper copy before the expiry of deadline for the submission of bids.

Invitation to submit bids shall be delivered electronically simultaneously to all bidders which, based on the previous expert evaluation of bids, were determined to have submitted acceptable bids.

Invitation to submit bids contains:

- 1) Relevant data for using the information system of the contracting authority;
- 2) Date and hour of the beginning of electronic auction;
- 3) Results of the previous expert evaluation of bids;
- 4) Mathematical formula to be applied in electronic auction, which enables automatic setting of changes in ranking of bids according to newly offered prices, i.e. other elements of the criterion for awarding the contract (hereinafter: mathematical formula).



Mathematical formula shall contain weighting points for all elements of the criterion set by the contracting authority in the invitation to submit bids and in the tender documents, adjusted for evaluation of altered values of parts of a bid.

Where bid variants are allowed, a special mathematical formula is made for each variant.

Electronic auction may be conducted in multiple consecutive phases and may start not earlier than two days from the day the invitation under paragraph 5 of this Article was delivered.

## **Electronic Auction in Case of Submission of Electronic Bid**

### **Article 44**

If bids in public procurement procedure are submitted in electronic format, the contracting authority may conduct electronic auction without a special invitation to bidders, immediately after the bids were opened and automatically ranked, on condition that each of the bidders is enabled to access information on the current ranking and the offered values of other bidders' bids.

In its invitation to submit bids, the contracting authority declares the intention to conduct electronic auction in the manner set forth in paragraph 1 of this Article.

## **Transparency of Electronic Auction**

### **Article 45**

While carrying out the electronic auction, the contracting authority shall enable the bidders to inspect the data on the basis of which they can, in every moment, determine the order of submitted bids and number of bidders, but in such way so not to reveal the identity of the bidder.

## **End of Electronic Auction**

### **Article 46**

Contracting authority ends the electronic auction in one or more of the following ways:

- 1) By determining the exact date and hour of the end of the electronic auction;
- 2) By ceasing to receive new prices or elements of the criterion that satisfies requirements regarding minimal differences. Contracting authority clearly states in the invitation to submit bids the time allowed to lapse after the receipt of the last bid amendment and before the end of electronic auction;
- 3) At the end of the number of electronic auction phases set in the invitation to submit bids.

After the end of the electronic auction, the contracting authority makes a decision to award the contract based on the results of the automatic bid ranking.

### **Article 47**

*(Deleted)*

#### **4. Centralized Public Procurements**

### **Centralized Public Procurement Body**

#### **Article 48**

The Centralized Public Procurement Body is a contracting authority that concludes framework agreements or awards contracts for goods, services or works intended for contracting authorities, or directly purchases goods i.e. services for the needs of contracting authorities.

The Centralized Public Procurement Body shall shape the public procurement procedure in lots, whenever possible, so as to facilitate participation of small and medium-sized companies.

The Centralized Public Procurement Body may be established at the national, provincial or local government level.

Multiple local governments may establish a joint body for centralized public procurements.

The Centralized Public Procurement Body may be established by multiple contracting authorities.

The establishment and manner of operation of bodies under paragraphs 3-5 of this Article is regulated by law, government regulation, decision of contracting authority, or agreement between contracting authorities.

### **Administration for Joint Services**

#### **Article 49**

The Administration for Joint Services of the Republic Bodies (hereinafter: the Administration for Joint Services) is a body for centralized public procurements for the needs of government bodies and organizations, including judicial authorities.

Subject matter of the public procurement under paragraph 1 of this Article, terms, way of planning of centralized public procurements and conducting public procurement procedure by the Administration for Joint Services is more closely regulated by the Government.

The Administration for Joint Services, as the body for centralized procurements, shall shape the public procurements in lots whenever possible.

The Administration for Joint Services monitors implementation of contracts and framework agreements and keeps united electronic records of suppliers.

The Administration for Joint Services may propose measures for improvement of the public procurement system.

If the contracting authority which procures goods and services pursuant to paragraph 1 of this Article has objections to the concluded contract or framework agreement, it shall notify thereon the State Audit Institution.

Based on the proposal from the ministry in charge of finance and the Public Procurement Office, the Government makes the list of contracting authorities referred to in paragraph 1 of this Article.

The list of contracting authorities under paragraph 1 of this Article is published in the "Official Herald of the Republic of Serbia" and on the Public Procurement Portal.

## **Conducting Public Procurement Procedure by Multiple Contracting Authorities**

### **Article 50**

Contracting authorities may jointly conduct a specific public procurement procedure or one contracting authority may authorize another contracting authority to conduct public procurement procedure or undertake certain actions in such procedure, in its name and on its behalf.

In the case referred to in paragraph 1 of this Article contracting authorities adopt a separate decision.

The contents of decision under paragraph 2 of this Article are determined by the Public Procurement Office.

Contracting authorities conducting public procurement are jointly and severally liable for the legality and correctness of that procedure.

## ***5. Procurement Plan***

### **Article 51**

Contracting authority shall adopt an annual public procurement plan containing the following information:

- 1) Ordinal number of public procurement;
- 2) Subject matter of public procurement;
- 3) Estimated value of public procurement;
- 4) Type of public procurement procedure;
- 5) Tentative date for initiating procedure;
- 6) Tentative date for concluding contract;
- 7) Tentative duration of contract.

Contracting authority states in the public procurement plan referred to in paragraph 1 of this Article if it conducts procurement through the body for centralized procurements.

Public procurement plan, amendments and additions to the plan shall be published by the contracting authority on the Public Procurement Portal within a term of ten days from the day of adoption.

Amendment regarding the increase in the estimated value of public procurement for more than 10%, amendment to the subject matter of public procurement, or planning of a new public procurement is considered to be amendments and additions to the public procurement plan.

If some data from the public procurement plan constitute a business secret in terms of the law governing protection of the trade secret, or constitute secret data in terms of the law governing data secrecy, such data from the plan shall not be published.

In the case referred to in paragraph 5 of this Article the public procurement plan shall be delivered in the original form to the Public Procurement Office and the State Audit Institution.

The form of the public procurement plan, as well as the manner of publication on the Public Procurement Portal, is regulated in more detail by the Public Procurement Office.

## ***6. Initiation of a Procedure***

### **Conditions to Initiate a Procedure**

#### **Article 52**

Contracting authority may initiate a public procurement procedure if the procurement is envisaged by the annual public procurement plan.

In exceptional cases, where it is not possible to plan public procurement in advance or for reasons of urgency, contracting authority may initiate a public procurement procedure even if the procurement is not envisaged by the public procurement plan.

Obligations that the contracting authority assumes by the public procurement contract shall be stipulated in accordance with the regulations governing the budget system, i.e. disposal of funds.

### **Decision to Initiate a Procedure**

#### **Article 53**

Contracting authority initiates the public procurement procedure by adopting a decision, in written form, to initiate the procedure, which contains:

- 1) Name and address of the contracting authority, or business name;
- 2) Ordinal number of the public procurement for the current year;

- 3) Subject matter of the public procurement, name and designation from the common procurement vocabulary;
- 4) Type of public procurement procedure;
- 5) Estimated value of the public procurement in total, and also, for each lot separately, whenever possible;
- 6) Tentative dates for conducting individual phases of public procurement procedure;
- 7) Data on budget appropriation or financial plan.

In case of applying negotiating procedure or competitive dialogue, the decision contains the reasons for applying such procedure.

In case of applying negotiating procedure without invitation to submit bids, the decision also contains basic particulars of persons who shall be invited to submit a bid by the contracting authority, and the reasons for sending an invitation to those persons.

The decision may also contain other elements, if the contracting authority assesses that they are necessary for conducting public procurement procedure.

## **Public Procurement Committee**

### **Article 54**

Public procurement procedure is conducted by public procurement committee (hereinafter: the Committee) established by the contracting authority's decision.

The decision to establish the Committee (hereinafter: the decision) is made by the contracting authority's body competent for rendering decisions on initiation of public procurement procedure.

The decision contains:

- 1) Name and address of the contracting authority, i.e. business name;
- 2) Legal basis for making the decision;
- 3) Name of the body making the decision;
- 4) Name of the decision;
- 5) Statements on establishing the Committee, subject matter of public procurement, number of the public procurement, appointment of members of the Committee, competences and duties of the Committee, tasks of the Committee and deadlines for their execution.

A decision is adopted to appoint the deputy members of the Committee.

The Committee has at least three members, out of whom one is a public procurement officer or person with law faculty degree, the second degree college studies (master academic studies, specialized academic studies, specialized professional studies), or the basic college studies in duration of at least four years.

In public procurement procedures whose estimated value is higher than the three times amount referred to in Article 39, paragraph 1 of this Law, the public procurement officer shall serve as a member of Committee.

Persons with adequate professional education in the area involving the subject matter of the public procurement are appointed as members of the Committee.

Where the contracting authority does not have an employee with adequate professional education in the field of the subject matter of public procurement, a person not employed by the contracting authority may be appointed as the member of the Committee.

Persons that may be involved in conflict of interests for the specific subject matter of public procurement may not be appointed to the Committee.

After making the decision, members of the Committee sign a statement confirming that they are not involved in any conflict of interest in the given public procurement. If they consider that they may be involved in a conflict of interest or if in the course of the public procurement procedure they find out that they may get into a conflict of interest, the members of the Committee notify the body that made the decision thereof without delay, which takes the necessary measures in order to avoid the occurrence of adverse consequences in the further course of the public procurement procedure.

The Committee shall conduct public procurement procedure set in the decision on initiation of the procedure and is responsible for the legality of the procedure.

The Committee:

- 1) Prepares tender documents, contract notices, amendments and additions to tender documents, additional information or clarifications related to the preparation of bids or applications;
- 2) Opens, reviews, evaluates, and ranks bids or applications;
- 3) Conducts negotiating procedure;
- 4) Drafts written report on expert evaluation of bids;
- 5) Prepares decision proposal on awarding a contract, decision proposal on concluding a framework agreement, decision proposal on cancelling the public procurement procedure, as well as decision proposal on recognizing qualification;
- 6) Decide concerning a submitted request for the protection of rights;

7) Undertakes other actions in the procedure, depending on the type of procedure and the subject matter of procurement.

Communication with the interested persons and bidders is done exclusively by members of the Committee.

## **7. Public Procurement Notices**

### **Types of Notices**

#### **Article 55**

Public procurement notices are as follows:

- 1) Prior notice;
- 2) Invitation to submit bids and applications;
- 3) Notice on dynamic procurement system;
- 4) Invitation to participate in design contest;
- 5) Notice on recognizing qualification;
- 6) Notice on concluded framework agreement;
- 7) Notice on initiation of negotiating procedure without publication of the invitation to submit bids;
- 8) Notice on concluded contract;
- 9) Notice on the results of tender;
- 10) Notice on cancelling of public procurement procedure;
- 11) Notice on extension of deadline for submission of bids, i.e. applications;
- 12) Decision on amendment to public procurement contract;
- 13) Notice on submitted request for the protection of rights;
- 14) Notice on annulment of public procurement procedure.

Contents of notices on public procurement are determined in Appendix 3.

The Public Procurement Office shall determine standard forms for public procurement notices in accordance with the Appendix 3 of this Law.

## **Common Procurement Vocabulary**

### **Article 56**

Contracting authority shall use names and designations contained in the common procurement vocabulary when defining public procurement subject matter in public procurement notices.

The Government issues a decree to determine the common procurement vocabulary in accordance with the corresponding vocabulary of the European Union - the CPV (the Common Procurement Vocabulary).

## **Method of Publishing Notices**

### **Article 57**

Public procurement notices are published on the Public Procurement Portal and on the contracting authority's web page.

Public procurement notices estimated value of which is higher than the one of the low-value public procurement referred to in Article 39 of this Law, is also published on the Portal of Official Gazettes of the Republic of Serbia and Legislation Databases.

The Government gives consent to the amount of the fee for publishing public procurement notices on the Portal of Official Gazettes of the Republic of Serbia and Legislation Databases.

Where the estimated value of public procurement exceeds 250,000.000 dinars for goods and services, or 500,000.000 dinars for works, the contracting authority shall publish public procurement notice referred to in Article 55, paragraph 1, items 2) through 4) of this Law also in a foreign language commonly used in international trade in the field of the subject matter of public procurement.

Contracting authority which has no web page is not under the obligation to create a web page for the sake of publishing public procurement notices.

### **Article 58**

Contracting authority may also publish invitation to submit bids or applications in some specialized journal according to the subject matter of the specific public procurement.

When deciding on publishing the notice in the manner stated in paragraph 1 of this Article, the contracting authority especially takes care about the estimated value of public procurement, costs of publishing, type, complexity and specifics of public procurement subject matter, development of domestic market and number of domestic bidders capable of executing the procurement.

## **Prior Notice**

### **Article 59**



Contracting authority may publish a prior notice on intention to conduct public procurement procedure.

The content of prior notice is stipulated in Appendix 3A.

## **Publishing Invitation to Submit Bid and Invitation to Submit Applications**

### **Article 60**

Contracting authority shall publish invitation to submit bid in:

- 1) Open procedure;
- 2) Low-value public procurement procedure;
- 3) Negotiating procedure with publication of the invitation to submit bids;

Contracting authority shall publish an invitation to submit applications in:

- 1) Restricted procedure;
- 2) Qualifying procedure;
- 3) Competitive dialogue.

The content of invitation to submit bids is determined in Appendix 3B, and the content of invitation to submit applications in Appendix 3C.

## ***8. Tender Documentation***

### **Preparation and Contents of Tender Documentation**

#### **Article 61**

Contracting authority shall prepare tender documentation so that bidders can prepare acceptable bids pursuant to it.

Contracting authority is not under the obligation to publish estimated value of public procurement.

Data contained in the tender documentation shall be identical with data contained in the invitation to submit bids

Tender documentation, according to the type of procedure and the nature of the subject matter of public procurement, contains:

- 1) Instruction to bidders how to prepare a bid;
- 2) Bid template;

- 3) Requirements and instruction how to prove fulfillment of requirements;
- 4) A model contract;
- 5) Type, technical characteristics (specifications), quality, quantity and description of goods, works or services, manner of conducting control and ensuring quality assurance, execution time limit, place of execution or delivery of goods, possible additional services, etc.;
- 6) Technical documentation and plans;
- 7) Template of the structure of the offered price, with instruction how to fill it out;
- 8) Template for expenses incurred in preparation of bid;
- 9) Declaration of independent bid;

Contracting authority may specify in tender documents the type of financial security instruments by which the bidders secure the fulfillment of their obligations in the public procurement procedure, as well as fulfillment of their contractual obligations, i.e. the refund of advance payment (various forms of pledging securities or other movable property, mortgages, promissory notes, guarantees given by other legal person possessing adequate creditworthiness, bank guarantees, insurance policies, etc.).

Contracting authority shall request collateral to secure refund of the advance payment, where tender documents stipulate advance payment, irrespective to the percent or the amount of the advance payment.

In case of conducting public procurement procedure of estimated value exceeding the amount referred to in Article 57 of this Law, the contracting authority shall request collateral to ensure fulfillment of contractual obligations.

Tender documents may also contain other elements that, in regard to the subject matter of public procurement and the type of procedure, are necessary for preparation of a bid.

Contracting authority shall mark with an ordinal number each page of tender documents and state the total number of pages of tender documents.

The Public Procurement Office shall govern in more detail the mandatory elements of tender documents and determine the framework models of tender documents.

## **Publication and Delivery of Tender Documents**

### **Article 62**

Simultaneously with publishing the invitation to bid, contracting authority shall publish tender documents on the Public Procurement Portal and on its web page.

In case where a part of tender documents is confidential, the contracting authority shall in the part of tender documents it has published indicate how and under which conditions the interested parties may take over the confidential parts of the tender documents.

## **Amendments and Additions to Tender Documents**

### **Article 63**

Where contracting authority amends or supplements tender documents within the time period for submission of bids, it shall publish such amendments or additions without delay on the Public Procurement Portal and on its web page.

Interested person may request from the contracting authority, in written form, additional information or clarifications concerning the preparation of the bid, whereby he may also indicate to the contracting authority the possible deficiencies and irregularities identified in the tender documents, no later than five days before the expiry of the time limit for bid submission.

In the case referred to in paragraph 2 of this Article, the contracting authority shall, within a term of three days from the day of receipt of the request, publish the reply on the Public Procurement Portal and on its web page.

Communication concerning additional information, clarifications and answers is done as set forth by Article 20 of this Law.

If the contracting authority amends or supplements the tender documents eight days or less before the expiry of the time period for submission of bids, the contracting authority shall extend the deadline for submission of bids and publish a notice on extension of the time period for submission of bids.

After the expiry of time limit envisaged for submission of bids, the contracting authority may not amend or supplement the tender documents.

## ***9. Estimated Value of Public Procurement***

### **Manner of Determining the Estimated Value of Public Procurement**

#### **Article 64**

The estimated value of public procurement is expressed in dinars, without value added tax.

The estimated value of public procurement covers the entire amount payable to the bidder.

The estimated value of public procurement shall be based on completed examination, research of the market of the public procurement subject matter which includes check of the price, quality, guarantee period, maintenance and similar, and must be valid at the time of the initiation of procedure.

Contracting authority may neither determine the estimated value of public procurement, nor can it divide the same type of public procurement into several procurements with the intention of

avoiding application of this Law or the rules determining the type of procedure in relation to the estimated value of public procurement. Public procurement of the same type is procurement that has the same or a similar purpose, whereby the same bidders with regard to the nature of the activity they carry out are able to furnish it.

## **Determining Estimated Value of Public Procurement of Goods**

### **Article 65**

The basis for calculating the estimated public procurement value is determined in the following manner:

- 1) In case when the subject matter of the contract is sale, rental or leasing and where the duration for which the contract is concluded is 12 months or less, the total estimated contract value for its full duration is taken into account, whereas where the duration is longer than 12 months, the total contract value includes the estimated value for the first 12 months and the estimated value for the residual period until the expiry of the contract;
- 2) In case when the contract referred to in item 1) of this paragraph is concluded for an indefinite period, as well as in the case when there is uncertainty regarding the time period for which the contract is concluded, the monthly estimated value of the contract multiplied by 48 is used.

In the case of periodic contracts, as well as the contracts which need to be extended after the lapse of a certain time period, the estimated value of the public procurement is determined:

- 1) Based on the value of similar periodic contracts concluded during the previous budget year or during the previous 12 months, adjusted with the expected changes in terms of quantity or value of goods whose procurement is the subject matter of the contract in the period of 12 months, as of the day of conclusion of the original contract;
- 2) Based on the total estimated value of similar periodic contracts during 12 months after the first delivery or during the duration of the contract, if the duration of the contract is longer than 12 months.

## **Determining the Estimated Value of the Public Procurement of Services**

### **Article 66**

When calculating the estimated value of public procurement of services, the contracting authority shall include all expenses concerning such service that the bidder shall incur.

For certain services, the contracting authority takes into account the following amounts:

- 1) For insurance services - the premium amount and other types of payments charged in connection with the service;
- 2) For banking and other financial services - fees, commissions, and other types of payments charged in connection with the service;

3) *(Deleted)*

4) For design, architectural services, spatial planning and the like - the fee or commission.

Where contracting authority cannot determine the estimated value of service due to duration of the contract, the value of service is determined in the following manner:

1) Where the period of duration for which the contract is concluded is definite, and if that duration is 36 months or less, the total value of contract for the entire duration;

2) Where the period of duration for which the contract is concluded is indefinite, the monthly estimated value multiplied by 48.

### **Determining the Estimated Value of Public Procurement of Works**

#### **Article 67**

The estimated value of public procurement of works is determined by taking the total works value as the basis for calculating the value of public procurement of works.

When determining the estimated value of public procurement of works, the contracting authority includes in the value of works also the value of all goods and services necessary for execution of the contract on public procurement of works.

Besides the estimated value, in the decision on initiating the procedure, the contracting authority shall separately state the value of material, goods and services that it supplies itself.

### **Determining the Estimated Value of Public Procurement in Lots**

#### **Article 68**

Where the subject of public procurement is shaped in lots, the contracting authority determines the estimated value of each lot.

The estimated value of public procurement shaped in lots includes the estimated value of all lots over the contract period.

Contracting authorities may not apply the low-value public procurement procedure, i.e. avoid the application of this Law, for one separate lot, if the sum of values of all lots is higher than the amount under Article 39, paragraph 1 of this Law.

### **Determining the Estimated Value in Individual Procedures**

#### **Article 69**

In case of qualifying procedure, framework agreement, and dynamic procurement system, the estimated public procurement value is determined as the value of all contracts foreseen during the validity of the list of candidates, framework agreement, or the dynamic procurement system.

## **10. Technical Specifications**

### **General Rules on Technical Specifications**

#### **Article 70**

Technical specifications and design documents, for the purpose of this Law, represent technical requirements which are mandatory and integral part of tender documents which determines the described characteristics of goods, services or works. They must ensure that the goods, services or works which are being procured, are described in a manner that is objective and meets the needs of contracting authority.

In case of procurement of goods and services, technical specifications determine characteristics of goods or services such as the dimensions, level of quality, including methods for quality assurance, safety, level of environmental impact, energy consumption, consumption of other vital resources while using the product, accessibility for all users (including accessibility for disabled persons) and compliance assessment, use of product, as well as other characteristics concerning the product such as the name under which the product is sold, terminology, designation, testing and methods of testing, packaging, marking and labeling, production process and the procedure of compliance assessment.

In case of procurement of works, besides characteristics determined in paragraph 2 of this Article, technical specifications may also contain regulations on designs and calculation of expenses, testing, inspection and conditions for takeover, as well as the techniques and method of construction.

Contracting authority shall state technical specifications in the tender documentation that relates to each of the public procurements.

### **Determining Technical Specifications**

#### **Article 71**

Contracting authority defines technical specifications in one of the following ways:

- 1) With reference to technical specifications under Article 70 of this Law and Serbian, European, international or other standards and related documents, so that each reference shall be accompanied by the words "or equivalent";
- 2) In the form of characteristics or functional requirements, which may include environmental characteristics and requirements concerning energy efficiency and which shall be sufficiently precise and clear so that the bidders could prepare adequate bids and the contracting authorities could procure goods, services or works adequate to their objective needs;
- 3) In the form of characteristics or functional requirements, as described under item 2) of this paragraph, with reference to specifications and standards or related documents under item 1) of this paragraph which are considered as rebuttable presumption of fulfillment of such characteristics or functional requirements;

4) With reference to specifications and standards or related documents under item 1) of this paragraph for certain characteristics, and with reference to characteristics or functional requirements under item 2) of this paragraph.

When defining technical specifications in tender documents, the contracting authority shall prescribe mandatory compliance with technical standards for accessibility of disabled persons, i.e. that the technical solution is accessible to all users.

In the case of defining technical specification as defined in paragraph 1, item 1) of this Article, the contracting authority may not reject the bid because the offered goods, services or works do not fulfill the set requirements regarding the defined specification and the required standard, if the bidder offers adequate evidence that the goods, services or works he offers fulfill the requirements from specification and the required standard in the substantially equal way.

In the case of defining technical specification as defined in paragraph 1, item 2) of this Article, the contracting authority may not reject the bid, if the bidder offers adequate evidence that the offered goods, services or works meet the Serbian, European, international or other standards or related documents, and if he proves that these standards fulfill the required characteristics or functional requirements.

A certificate, manufacturer's technical dossier, or testing report issued by authorized organization may serve as adequate evidence referred to in paragraphs 3 and 4 of this Article.

Notwithstanding the provisions of paragraph 1, item 1) of this Article, if the technical regulation refers to the Serbian standard, such standard is mandatory and applicable as the technical regulation, without mentioning the words "or equivalent".

The competent ministry shall establish whether the technical regulations and standards referred to in paragraph 6 of this Article exist.

In the case referred to in paragraph 6 of this Article, the contracting authority shall also accept another standard which fulfills the requirements of the Serbian standard, as well as the evidence substantiating this.

## **Using Technical Specifications**

### **Article 72**

Contracting authority may neither use, nor refer to technical specifications or standards which designate goods, services or works of a specific make, source, or construction.

Contracting authority may not indicate in tender documents any particular trade mark, patent, or type, or a specific origin or production.

Contracting authority may not include in tender documents any provision that would result in favoring or eliminating certain bidders, in the manner referred to in paragraphs 1 or 2 of this Article, unless the contracting authority is unable to describe the subject matter of the contract in a way that would make specifications clear enough to bidders.

Stating of elements such as a trademark, patent, type or manufacturer shall be accompanied by the words "or equivalent".

## **Use of Marks**

### **Article 73**

If the contracting authority intends to procure goods, services or works with specific environmental, social or other characteristics, it may request in the technical specifications, contract award criteria or contract implementation requirements, specific marks as proof that goods, services or works correspond to the required characteristics provided that all of the following conditions are met:

- 1) That a request for marking solely concerns the criteria that are in connection with the subject matter of public procurement and that it is appropriate for defining the characteristics of the subject matter of public procurement;
- 2) That a request for marking is determined on the basis of objectively verifiable and non-discriminatory criteria;
- 3) That marks are determined in an open and transparent procedure with participation of all interest groups, such as government bodies, service users, social partners, consumers, producers, distributors, non-governmental organizations etc.;
- 4) That the marks are available to all interested persons;
- 5) That the requests for marking are determined by a third party over which an interested person, i.e. supplier who has applied for obtaining the mark may not exercise decisive influence.

If the contracting authority requests precisely determined mark, it shall accept all marks confirming that goods, services or works meet the requirements of appropriate marking.

In a situation where an interested person was clearly not able to obtain certain mark requested by the contracting authority in the tender documents or an appropriate mark, the contracting authority shall accept another appropriate way of proving that may also include manufacturer's technical documentation provided that the interested person proves that goods, services or works he offers meet the requirements of a certain mark or certain requirements envisaged by the contracting authority.

## **Statement of Essential Requirements and Fees for using Patents**

### **Article 74**

Essential requirements not included in the applicable technical norms and standards, and relating to environmental protection, safety, and other factors of common interest, shall be applied and expressly stated in tender documents.



Contracting authority shall state in the tender documents that the patent usage fee, as well as the liability for breach of protected intellectual property rights of third persons, is borne by the bidder.

## **11. Requirements for Participation in Public Procurement Procedure**

### **Mandatory Requirements**

#### **Article 75**

Bidder in public procurement procedure shall prove that:

- 1) He is registered with the competent body, or entered in the appropriate register;
- 2) He or his legal representative have not been convicted of any criminal act as members of an organized criminal group; that he has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;
- 3) *(Deleted)*
- 4) He has paid due taxes, health and pension insurance and other public charges in accordance with laws of the Republic of Serbia or a foreign country if having a registered seat in its territory;
- 5) He has valid permit issued by competent body to carry out the activity which is the subject matter of public procurement, if such permit is stipulated by special regulation;

Contracting authority shall require from the bidders or candidates to explicitly state when preparing their bids that they obeyed the obligations arising from applicable legislation on safety at work, employment and working conditions, environmental protection, as well as that they do not have a ban on carrying out the activity which is in force at the time of submission of bid.

### **Additional Requirements**

#### **Article 76**

Contracting authority sets the additional requirements in tender documents for participation in public procurement procedure.

Contracting authority sets the additional requirements in tender documents for participation in public procurement procedure concerning financial, operational, technical and personnel capabilities whenever it is necessary having in mind the subject matter of public procurement.

Contracting authority may provide in tender documents that bidder has to prove that it is not undergoing liquidation or bankruptcy procedure, or preliminary liquidation procedure.

Contracting authority may also define other additional requirements for participation in public procurement procedure, especially if they relate to social and environmental issues.

Contracting authority may set additional requirements concerning the fulfillment of bidder's obligations towards its subcontractors or suppliers.

Contracting authority sets requirements for participation in the procedure in such way that these requirements do not discriminate bidders and that are in logically related to the subject matter of public procurement.

When a commercial bank acts as bidder in public procurement procedure, it shall provide data in accordance with its obligation to guarantee confidentiality of information about its clients, pursuant to the law governing the activities of banks.

## **Proof of Fulfillment of Requirements**

### **Article 77**

Bidder proves the fulfillment of requirements referred to in Article 75, paragraph 1 of this Law by supplying the following evidence:

- 1) Excerpt from register of the competent authority;
- 2) Certificate of the competent court, i.e. competent police administration;
- 3) *(Deleted)*
- 4) Certificate of the competent tax authority and organization for compulsory social insurance, or certificate of the competent authority that the bidder is in the privatization process;
- 5) Valid licenses for the performance of relevant activity, issued by the competent authority.

Bidder may prove fulfillment of requirements referred to in Article 76, paragraph 2 of this Law by supplying the following evidence with the bid:

- 1) Report on solvency or scoring issued by the competent body; balance sheet with opinion of the authorized auditor, or excerpt from such balance sheet; statement of bidder's overall income from sale and earnings from products, works or services to which the public procurement contract relates - for no longer than the previous three financial years; opinion or statement of banks or other specialized institutions. Minimum annual income required from bidders shall not be higher than the double estimated value of public procurement, except in extraordinary cases where this is necessary due to special risks related to the subject matter of public procurement. Contracting authority shall specify in tender documents which proof referred to in this item it has chosen and/or which other proofs evidencing the financial and economic capacity the bidder has to submit;
- 2) One or more proofs appropriate to the subject matter of contract, the quantity and the intended purpose, such as:
  - (1) List of most important works performed, goods delivered or services provided, over a period not longer than eight years for works, or five years for goods and

services, together with the amounts, dates and lists of purchasers or contracting authorities;

(2) Professional references accompanying the list of most important works performed, goods delivered or services provided;

(3) Description of bidder's technical equipment and devices, quality assurance measures, and research and development capacities;

(4) Statement on key technical staff and other experts, who shall be responsible for contract implementation, as well as on persons responsible for quality control;

(5) Sample, description or photograph of the product, and description of works or services that bidder shall perform or provide. In case of doubt, the contracting authority may demand proof of authenticity of samples, descriptions or photographs;

(6) Compliance declaration, certificate, accreditation and other results of compliance assessment according to standards and related documents for compliance assessment, or any other appropriate instrument by which bidder proves the compliance of bid with technical specifications or standards requested in tender documents.

The proof referred to in paragraph 1, items 2) to 4) shall not be older than two months prior to opening of bids, or, in the case of qualifying procedure, prior to updating the list.

Contracting authority may determine in tender documents that fulfillment of all or of some requirements, other than requirements referred to in Article 75, paragraph 1, item 5) of this Law, is to be proved by submitting a statement, whereby the bidder under full material and criminal responsibility confirms that he fulfils requirements.

In case where the procedure referred to in Article 36, paragraph 1, items 4) through 7) of this Law is carried out, the contracting authority determines the manner of proving fulfillment of requirements referred to in Article 75, paragraph 1 of this Law, which shall be adequate to the circumstances of given procurement, except for the requirements referred to in Article 75, paragraph 1, item 5) of this Law.

Contracting authority shall duly observe lawful interests of bidders, by protecting their technical and business secrets in terms of the law governing protection of business secrets.

Bidder, candidate, or supplier, shall inform contracting authority, in writing and without delay, of any change concerning fulfillment of requirements referred to in the public procurement procedure, which occurs before the decision is rendered or the contract is concluded, during the list of candidates validity period, i.e. during the public procurement contract validity period, and document it in the prescribed manner.

When determining evidence which prove fulfillment of requirements, the contracting authority pays attention to the costs of obtaining such evidence, i.e. makes sure that the costs of obtaining evidence are not disproportional to the evaluated value of public procurement.

Provisions of this Article shall apply mutatis mutandis to natural persons acting as bidders, and to applicants.

The Public Procurement Office regulates in detail the manner of proving fulfillment of requirements.

## **Register of Bidders**

### **Article 78**

Organization competent for registration of economic operators keeps public register of bidders - entrepreneurs and legal persons (hereinafter: register of bidders) who fulfill mandatory requirements referred to in Article 75, paragraph 1, items 1) through 4) of this Law.

Register of bidders is available on a web page.

Every person registered with the organization competent for registration may submit a request to be inscribed into the register of bidders, by submitting documents which prove fulfillment of mandatory requirements.

Organization authorized to issue proofs referred to in Article 77, paragraph 1 of this Law, or body authorized to pronounce sanctions and measures that prevent participation of persons in public procurement procedure, shall notify organization competent for registration of economic operators, immediately after having detected changes or pronouncing a sanction or measure against a person registered in register of bidders,

Person registered in register of bidders is not under the obligation to prove fulfillment of mandatory requirements when submitting a bid or an application.

The following data on bidders and changes of data on bidders are registered in the register of bidders:

- 1) Identification/ registration number;
- 2) Tax identification number;
- 3) Business name and address of the seat;
- 4) Personal name and personal citizen's number, or number of passport and the issuing state, bidder's legal representative, if this legal representative is a natural person, and business name and identification number of bidder's legal representative, if this legal representative is a legal person.

Bidder's registration date, i.e. date of change of any data on bidder that are the subject of registration are also registered in the register of bidders.

Bidder is deleted from the register of bidders pursuant to bidder's request to be deleted, or *ex officio* if it ceases to fulfill any of legally prescribed requirements.

Appeal addressed to the minister in charge of economy may be filed against the decision of registrar in charge of the register of bidders.

Minister in charge of economy prescribes the contents of the register of bidders and the documentation filed with the application to register a bidder.

## **Manner of Submitting Evidence**

### **Article 79**

Evidence of fulfillment of requirements may be submitted as uncertified copies, and contracting authority may, before rendering a decision on awarding a contract, demand from the bidder, whose bid was evaluated as the most advantageous on the grounds of the report of public procurement committee, to present the original or certified copy of all or some of the evidence.

Where bidder has submitted the statement referred to in Article 77, paragraph 4 of this Law, the contracting authority shall, prior to rendering a decision on awarding the contract, request from the bidder whose bid was evaluated as most advantageous to submit a copy of the requested proofs of fulfillment of requirements, and may also request to inspect the original or certified copy of all or of some of proofs. Contracting authority may also request proofs from other bidders. Contracting authority is not under the obligation to request from bidder to submit all or some of evidence if it possesses appropriate proofs for the same bidder from other public procurement procedures at that contracting authority.

Contracting authority is not under the obligation to act in the manner specified in paragraph 2 of this Article in case of low-value public procurement and negotiating procedure referred to in Article 36, paragraph 1, items 2) and 3) of this Law estimated value of which is lower than the amount referred to in Article 39, paragraph 1 of this Law.

If the bidder, within the given, adequate deadline, which may not be shorter than five days, fails to submit evidence referred to in paragraphs 1 and 2 of this Article, the contracting authority shall refuse its bid as unacceptable.

Contracting authority shall state in tender documents that the bidder is not obliged to supply evidence that is publicly available at web pages of competent bodies, and to specify such evidence.

Contracting authority may not refuse a bid as unacceptable just because it does not contain evidence defined by this Law or by tender documents, if the bidder has stated in its bid the web page which contains requested data and which is publicly available.

Where evidence of fulfillment of requirements is electronic document, the bidder submits a carbon copy of electronic document, in accordance with the law governing electronic document, unless the electronic bid is submitted where evidence is delivered in original electronic format.

Where bidder has registered seat in another state, the contracting authority may verify whether documents by which the bidder proves fulfillment of requested requirements were issued by the competent authorities of that state.

Where bidder could not obtain the requested documents within the deadline for submission of the bid, because, according to the regulations of its state of registration, the documents could not have been issued before the moment of bid submission, and if the bidder provides appropriate evidence thereon together with the bid, the contracting authority shall allow the bidder to deliver the required documents later, within an appropriate time period.

If the evidence referred to in Article 77 of this Law is not issued in the state wherein the bidder has its seat, instead of evidence the bidder may submit its written statement, given under criminal and material liability and certified by the court or administrative body, public notary, or another competent body of that state.

## **12. Bid with Subcontractor and Joint Bid**

### **Bid with Subcontractor**

#### **Article 80**

The contracting authority shall, in tender documents, request from the bidder to state in the bid whether it shall partly entrust the execution of public procurement to a subcontractor, and to state in its bid the percentage of total procurement value that it shall entrust to the subcontractor, which cannot be larger than 50%, as well as a part of the procurement subject matter it shall execute through a subcontractor.

Where contracting authority conducts public procurement procedure aiming to conclude a framework agreement or individual public procurement, whose estimated value exceeds the amount under Article 59 of this Law, it may require from the bidder to execute a certain part of public procurement, according to its value or subject matter, through a subcontractor who is a sole trader or a small legal person within the meaning of regulations governing accounting and auditing.

Where bidder states in a bid that it shall entrust the subcontractor with partial execution of procurement, it shall state the name of the subcontractor, and if contracting authority and bidder conclude the contract, that subcontractor shall be named in the contract.

The bidder shall provide the contracting authority, at its request, access to the subcontractor's premises in order to inspect the fulfillment of requirements.

Bidder shall, on behalf of the subcontractors, provide evidence on fulfillment of mandatory requirements under Article 75, paragraph 1, items 1) through 4) of this Law, and evidence on fulfillment of requirements under Article 75, paragraph 1, item 5) of this Law for the part of procurement it shall execute through a subcontractor.

Where implementation of a part of public procurement whose value does not exceed 10% of total value of public procurement requires fulfillment of a mandatory requirement referred to in Article 75 paragraph 1, item 5) of this Law, the bidder may prove fulfillment of that requirement through a subcontractor to whom it has entrusted the execution of that segment of procurement.

In addition to mandatory requirements, contracting authority in tender documents defines what other requirements the subcontractor has to fulfill and in what manner to prove it, while those requirements may not be such to limit the submission of a bid containing a subcontractor.

Bidder or supplier is fully responsible to the contracting authority for execution of obligations under public procurement procedure, i.e. for performance of contractual obligations, irrespective of the number of subcontractors.

Contracting authority may, at the request of subcontractor and where the nature of the subject of procurement allows this, transfer due claims directly to subcontractor for share of procurement that is implemented by that subcontractor.

In the case under paragraph 9 of this Article, the contracting authority shall enable the supplier to object if the claim has not become due.

Contracting authority stipulates in tender documents the rules of procedure relating to paragraphs 9 and 10 of this Article, which do not influence the responsibility of supplier.

Supplier may not hire as subcontractor any person not named in the bid, otherwise the contracting authority shall realize the collateral and terminate the contract, unless where termination of the contract could cause significant damage to contracting authority.

In the case under paragraph 12 of this Article, the contracting authority shall notify the organization authorized for the protection of competition.

Supplier may hire as subcontractor a person not named in the bid, where subcontractor after submission of the bid sustained an enduring insolvency, provided that such person fulfils all requirements set for subcontractor and provided that it obtains prior consent from the contracting authority.

The provisions of this Article shall apply mutatis mutandis to applicants in restrictive procedure, qualifying procedure, and in competitive dialogue.

## **Joint Bid**

### **Article 81**

Bid may be submitted by a group of bidders.

Each bidder from the group of bidders shall individually fulfill mandatory requirements under Article 75, paragraph 1, items 1) through 4) of this Law, whereas additional requirements are fulfilled jointly, unless, due to justified reasons, the contracting authority decides otherwise.

Requirement under Article 75, paragraph 1, item 5) of this Law shall be fulfilled by the bidder from the group of bidders entrusted with the part of procurement which requires fulfillment of that requirement.

Integral part of a joint bid is an agreement whereby bidders from the group mutually, and towards the contracting authority, undertake to execute public procurement. Such agreement contains:

- 1) Information on a member of the group who is to be main contractor, i.e. who shall submit the bid and represent the group of bidders before the contracting authority and

2) Description of tasks of each bidder from the group of bidders in contract implementation.

Agreement under paragraph 4 of this Article also governs other matters that the contracting authority determines in tender documents.

Contracting authority may not demand from the group of bidders to associate into some specific legal form in order to submit a joint bid.

Bidders submitting joint bid have unlimited joint and several liability towards the contracting authority.

A cooperative may submit a bid independently, in its own name but on behalf of members of the cooperative, or a joint bid in the name of the cooperative members.

Where a cooperative submits bid in its own name, for obligations stemming from public procurement procedure and public procurement contract, both the cooperative and its members are liable, in accordance with the law.

Where a cooperative submits a joint bid in the name of its members, for obligations from public procurement procedure and public procurement contract, members of the cooperative have unlimited joint and several liability.

Contracting authority may request the members of group of bidders to state in bids the names and adequate professional qualifications of persons who shall be responsible for implementation of the contract.

The provisions of this Article shall apply mutatis mutandis to applicants in restrictive procedure, qualifying procedure and in competitive dialogue.

### ***13. Negative References***

#### **Article 82**

Contracting authority may reject a bid if it possesses evidence that, over the previous three years, prior to the moment the invitation to submit bids was published, the bidder has, in a public procurement procedure:

- 1) Acted contrary to prohibition under Articles 23 and 25 of this Law;
- 2) Violated competition;
- 3) Supplied false data in a bid, or unjustifiably refused to sign a public procurement contract after it had been awarded to it;
- 4) Refused to supply evidence and collateral to which it has committed in the bid.

Contracting authority may reject a bid where it possesses evidence confirming that the bidder failed to fulfill its obligations under the previously concluded public procurement contracts that



related to the same subject of procurement, over a period of previous three years prior to the moment the invitation to submit bids was published.

The evidence referred to in paragraphs 1 and 2 of this Article may be:

- 1) A final court decision or a final decision of another competent body;
- 2) A legal instrument on realized collateral for securing the fulfillment of obligations in public procurement procedure or in fulfillment of contractual obligations;
- 3) A legal instrument on paid contractual penalty;
- 4) A complaint from a consumer, i.e. user, where these were not rectified within the contracted deadline;
- 5) A report by the supervisory body on works that were not executed in accordance with the project or contract;
- 6) A statement on termination of the contract due to failure to fulfill the essential elements of the contract, given in the manner and under conditions prescribed by the law governing contracts and torts;
- 7) Evidence that persons not named in the bid were hired as subcontractors or members of the group of bidders in implementation of the public procurement contract;
- 8) Other appropriate evidence relevant to the subject of public procurement, which refers to fulfillment of obligations in earlier public procurement procedures or relating to previously awarded public procurement contracts.

Contracting authority may reject a bid if it possesses evidence under paragraph 3, item 1) of this Article which refers to procedure executed or contract awarded by another contracting authority, if the subject matter of the public procurement was of the same type.

### **Article 83**

*(Deleted)*

## **14. Criteria for Awarding Contract**

### **Determining the Criterion**

### **Article 84**

Contracting authority shall publish in invitation to submit bids and in tender documents the same criterion and elements of the criterion for awarding contract.

Elements of the criterion on the basis of which the contracting authority shall award the contract shall be described and evaluated, shall not be discriminatory, and shall be logically related to the subject of public procurement.

Contracting authority states, describes and evaluates, in tender documents, the criterion and all elements of the criterion it intends to apply, and in particular it states the methodology for allocation of weighting points for each element of the criterion, which shall enable subsequent objective verification of bid evaluation.

Contracting authority shall define in tender documents the elements of the criterion, i.e. the manner based on which it shall award the contract in the situation when there are two or more bids having equal number of weighted points, or the same offered price.

When evaluating bids, the contracting authority shall apply only the criterion and elements of the criterion contained in tender documents, in the way they were described and evaluated.

## **Types of Criteria**

### **Article 85**

Criteria for evaluating bids are:

- 1) Economically most advantageous bid, or
- 2) Lowest price offered.

Criterion of economically most advantageous bid is based on various elements of the criterion, depending on the subject matter of public procurement, such as:

- 1) Offered price;
- 2) Discount to the prices from the pricelist of contracting authority;
- 3) Deadline for delivery or performance of service or works within the minimum acceptable deadline that does not compromise the quality, and the maximum acceptable deadline;
- 4) Current costs;
- 5) Cost effectiveness;
- 6) Quality;
- 7) Technical and technological advantages;
- 8) Environmental advantages and environment protection;
- 9) Energy efficiency;
- 10) After-sale servicing and technical assistance;
- 11) Warranty period and type of warranties;
- 12) Obligations concerning spare parts;

- 13) Post-warranty maintenance;
- 14) Number and quality of engaged staff;
- 15) Functional characteristics;
- 16) Social criteria;
- 17) Service life costs etc.

The elements of the criterion of the economically most advantageous bid may be divided into sub-criteria.

Requirements for participation referred to in Articles 75 and 76 of this Law may not be defined as elements of the criterion.

Contracting authority shall assign in tender documents the relative significance (weight) to each element of the criterion, i.e. sub-criterion; in such way that total sum of weighted points amounts to 100.

Contracting authority chooses among the submitted bids using the criterion of the economically most advantageous bid, by ranking them on the basis of weighted points determined for the elements of the criterion.

## **Advantage for Domestic Bidders and Domestic Goods**

### **Article 86**

Where applying the criterion of economically most advantageous bid, and in a situation with bids submitted by a domestic and a foreign bidder which provide services or perform works, the contracting authority shall select the bid of most advantageous domestic bidder, provided that the difference in the final sum of weighted points between most advantageous bid of the foreign bidder and most advantageous bid of the domestic bidder is not higher than 5 in favor of the bid of foreign bidder.

Where applying the criterion of economically most advantageous bid, and in situation with bids of bidders offering goods of domestic origin, and bids of bidders offering goods of foreign origin, the contracting authority shall choose as the most advantageous bid the bid of bidder offering goods of domestic origin, provided that the difference in the final sum of weighted points between most advantageous bid of the bidder offering goods of foreign origin and most advantageous bid of the bidder offering goods of domestic origin is not higher than 5 in favor of the bid of the bidder offering goods of foreign origin.

Where applying the criterion of lowest offered price, and in situation with bids of domestic and foreign bidders that provide services or perform works, the contracting authority shall select the bid of domestic bidder, provided that its offered price is not higher than 5% in comparison to the lowest price offered by the foreign bidder.

Where applying the criterion the of lowest offered price, and in a situation with bids of bidders providing goods of domestic origin and bids of bidders providing goods of foreign origin, the contracting authority shall select the bid of the bidder which offers goods of domestic origin, provided than its price offered is not more than 5% higher compared to the lowest price offered by bidder who offers goods of foreign origin.

Customs duties are calculated into the foreign bidder's price.

Domestic bidder is a resident legal person, in terms of the law governing profit taxes of legal persons, or a resident natural person, in terms of the law governing citizens' income tax.

In case of joint bid, a group of bidders is considered to be a domestic bidder if each member of the group of bidders is the person referred to in paragraph 6 of this Article.

In case of a bid that includes a subcontractor, the bidder is considered to be a domestic bidder, if the bidder and its subcontractor are persons referred to in paragraph 6 of this Article.

Where bidder supplies evidence that it offers goods of domestic origin, the contracting authority shall, before ranking the bids, invite all other bidders whose bids were evaluated as acceptable, to state whether they offer goods of domestic origin and to supply evidence thereon.

Advantage under paragraphs 1 through 4 of this Article, granted in public procurement procedures the participants of which are the bidders from signatory states of the Central Europe Free Trade Agreement (CEFTA 2006) shall be applied mutatis mutandis with the provisions of that agreement.

Advantage under paragraphs 1 through 4 of this Article, granted in public procurement procedures the participants of which are the bidders from signatory states of the Stabilization and Association Agreement between the European Communities and their Member States, on one side, and the Republic of Serbia, on the other side, shall be applied mutatis mutandis with the provisions of that agreement.

The Ministry in charge of economy shall regulate in detail the manner of proving compliance with requirements referred to in paragraphs 2 and 4 of this Article.

The manner of applying the advantage expressed in price, in the procedures wherein the criterion is economically most advantageous bid is more closely regulated by the Government.

## ***15. Bid in Public Procurement Procedure***

### **Manner of Bid Submission**

#### **Article 87**

Bidder submits the bid directly, by mail or electronic means.

Bidder submits the bid in a sealed envelope or box, sealed in such manner that during bid opening it can be determined with certainty that it is being opened for the first time.

Bidder may submit only one bid.

Bidder which independently submitted bid may not participate at the same time in a joint bid, or act as subcontractor; also the same person may not participate in multiple joint bids.

Contracting authority shall refuse all bids submitted contrary to prohibition referred to in paragraph 4 of this Article.

Within the time limit for submission of the bid, the bidder may amend, supplement, or cancel its bid in the manner specified in tender documents.

## **Costs of Bid Preparation**

### **Article 88**

Bidder may include in its bid the total amount and the structure of costs of bid preparation.

Costs of preparation and submission of the bid are borne exclusively by the bidder who may not seek reimbursed from the contracting authority.

Where public procurement procedure was cancelled due to reasons related to the contracting authority, the contracting authority shall reimburse the bidder for the expenses of sample or model production, if these were made in compliance with the technical specifications of the contracting authority, and for the expenses for acquiring collateral, provided that the bidder requested reimbursement of these expenses in its bid.

## **Submitting Electronic Bid**

### **Article 89**

Electronic bid is a bid or a part of a bid which the bidder submits to the contracting authority in electronic format, and which fulfils all requirements in accordance with the law governing electronic signature, electronic document, and electronic business. Electronic bid shall have a timestamp.

Where only a part of the bid is delivered in electronic form, it must make an unambiguous whole with the other parts of the same bidder's bid.

Bidder may submit the bid in electronic form, provided that the contracting authority defined such possibility in tender documents.

Information system of the contracting authority shall provide technologically independent reception of bids and shall be available to all interested parties free of charge.

Means (devices) for reception of electronic bids, assisted by technological devices and appropriate procedures, shall secure that:

- 1) Electronic bids are signed in accordance with the legislation that govern the manner of their protection;

- 2) Electronic signature is authorized by qualifying confirmation;
- 3) Electronic bid has a timestamp, i.e. that the date, hour and minute of the receipt of the bid may be correctly determined;
- 4) Before the moment for bid opening, defined in advance, no one has access to data from bids;
- 5) It can be easily detected if there has been a violation of prohibition of access to data from bids;
- 6) Only persons authorized by contracting authority may set and change the date and hour of bid opening;
- 7) Only authorized persons have access to data from bids, and only so through their simultaneous action if there are several of them.

Information system of the contracting authority shall facilitate the archiving of electronic bids in accordance with the regulations governing electronic business and regulations governing documentation and archives.

Provisions of this Article apply mutatis mutandis to the submission of electronic bids.

## **Bid Validity Period**

### **Article 90**

Contracting authority determines the bid validity period and such period shall be stated in the bid, but may not be shorter than 30 days from the day of opening of bids.

Where the bid validity period expired, contracting authority shall in writing request the bidder to extend the period of bid validity.

Bidder which accepts the request for extension of the bid validity period may not change the bid.

## **Bids with Variants**

### **Article 91**

Where the criterion for selection is the economically most advantageous bid, the contracting authority may allow submission of bids with variants.

Contracting authority shall explicitly state in its invitation to submit bid and in tender documents whether it is allowed to submit bids with variants, because otherwise it is presumed that submission of bids with variants is not allowed.

Where submission of bids with variants is allowed, the contracting authority shall define in tender documents which requirements all variants must fulfill in order to be acceptable.

If submission of bids with variants is allowed, the contracting authority may not reject a variant of the bid just because its acceptance would transform the contract on public procurement of goods into the contract on public procurement of services, or vice versa.

## **Uncommonly Low Price**

### **Article 92**

Contracting authority may reject a bid due to its uncommonly low price.

For the purpose of this Law, uncommonly low price is the offered price which substantially deviates from comparable market price thus raising doubts in feasibility of implementing the public procurement pursuant to the offered conditions.

Where contracting authority assesses that a bid contains abnormally low price, it shall demand the bidder a detailed explanation of all constituent elements of the bid it considers relevant, in particular those concerning the cost effectiveness of the construction method, production or selected technical solutions, in view of exceptionally favorable circumstances for implementing contract available to the bidder, or in view of the originality of products, services or works proposed by the bidder.

In the case under paragraph 3 of this Article, the contracting authority shall set an appropriate deadline for bidder's response.

After having received requested explanation, the contracting authority shall check the relevant constituent elements of the bid referred to in paragraph 3 of this Article.

Contracting authority shall in particular check the fulfillment of bidder's or candidate's obligations arising from the applicable legislation on safety at work, employment and working conditions, environmental protection and protection of intellectual rights, and may demand that the bidder provides adequate evidence.

## **Additional Explanations, Control and Permitted Corrections**

### **Article 93**

Contracting authority may request from bidders additional explanations that shall be useful in the course of examining, evaluating and comparing bids, and may also conduct control (insight) at the bidder or its subcontractor.

Contracting authority may request from the selected bidder in the procedure of competitive dialogue to confirm the obligations accepted in the bid.

Contracting authority may not demand, allow, or offer, alterations to the elements of bid relevant for applying the criterion for awarding contract, or a change that would make an inappropriate or unacceptable bid into an appropriate or acceptable one, unless otherwise follows from the nature of public procurement procedure.

Subject to the bidder's consent, the contracting authority may correct arithmetic errors noticed in the course of examining the bid after the concluded opening of bids.

In case of difference between the unit and the total price, the unit price shall prevail.

Where bidder disagrees with the correction of arithmetic errors, the contracting authority shall reject its bid as unacceptable.

## **16. Time Limits in Public Procurement Procedure**

### **Setting Deadline for Submission of Bids**

#### **Article 94**

Deadline for submission of bids shall be adequate to the time needed for preparation of an acceptable

Setting the deadline under paragraph 1 of this Article shall mean the setting of date and hour up to which the bids may be submitted.

### **Time Limit for Submission of Bids in Open Procedure and of Application in Restrictive and Qualifying Procedures and in Competitive Dialogue**

#### **Article 95**

Time limit for submission of bids in open procedure, i.e. applications in restrictive and qualifying procedures and in competitive dialogue may not be shorter than:

1) 35 days from the day of publishing invitation to submit bids, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law;

2) 30 days from the day of publishing of the invitation to submit bids, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law;

Time limit for submission of bids in open procedure, i.e. applications in the restrictive and qualification procedure and in competitive dialogue may not be shorter than:

1) 20 days from the day the invitation to submit bids was published, if the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law and if the contracting authority published a prior notification within a term not shorter than 35 days, and no longer than 12 months prior to publication of the invitation.

2) 15 days from the day of publishing of the invitation to submit bids, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law and where the contracting authority published a prior notification within a term not shorter than 35 days, and no longer than 12 months prior to publishing of the invitation.

### **Time Limit for Submission of Bids in Restrictive and Qualifying Procedures**



## **Article 96**

Time limit for submission of bids in restrictive procedure may not be shorter than 20 days from the day on which contracting authority sent the invitation to candidates.

Time limit for submission of bids in qualifying procedure may not be shorter than eight days from the day when the contracting authority sent the invitation to candidates.

### **Time Limit for Submission of Bids in Negotiating Procedure with Publication of Invitation to Submit Bids**

## **Article 97**

Time limit for submission of bids in negotiating procedure with publication of the invitation to submit bids may not be shorter than 25 days from the day of publishing of the invitation.

If the contracting authority conducts negotiating procedure referred to in Article 35, paragraph 1, item 1) of this Law and decides to invite exclusively and all bidders who participated in open, restrictive or qualifying procedure or competitive dialogue to supplement their bids, so as to make them acceptable, it shall set a time limit suitable to time needed to supplement a bid.

### **Time Limit for Submission of Final Bids in Competitive Dialogue**

## **Article 98**

Time limit for submission of final bids in competitive dialogue may not be shorter than 20 days from the day of sending the invitation to chosen candidates.

### **Time Limit for Submission of Bids in Low-Value Public Procurement Procedure**

## **Article 99**

Time limit for submission of bids in low-value public procurement procedure may not be shorter than eight days from the day of publishing of the invitation to submit bids.

### **Time Limit for Submission of Initial Bids in the Dynamic Procurement System**

## **Article 100**

Time limit for submission of initial bids during the dynamic procurement system is 15 days from the day of publishing of the invitation to submit bids.

## **Calculation of Time Limits**

## **Article 101**

Time limit for submission of bids is calculated from the day of publishing of the invitation to submit bids on the Public Procurement Portal, i.e. from the day of sending of invitation to submit bids.

## **17. Receiving and Opening Bids**

### **Receiving Bids**

#### **Article 102**

When receiving a bid, the contracting authority shall note down on envelope or box containing the bid the time of receipt and file the number and date of the bid according to the order of receipt. If the bid was delivered directly, the contracting authority hands over to the bidder the confirmation of receipt of the bid.

For electronically submitted bid, the contracting authority shall ensure that the information system sends confirmation of receipt immediately after receiving the bid.

It is prohibited to provide information on received bids, and the contracting authority shall keep the bids in such a way that they do not come into possession of unauthorized persons.

### **Opening of Bids**

#### **Article 103**

Opening of bids is performed immediately after the expiry of the term for submission of bids, i.e. on the same day.

Opening of bids is public and any interested person may be present.

Only authorized representatives of bidders may be actively involved in the procedure of bids' opening.

Contracting authority shall exclude the public in the procedure of bids' opening, if that is necessary to protect data which represent trade secret in terms of the law governing the protection of trade secrets, or which represent secret data in terms of the law governing data secrecy.

In the case referred to in paragraph 4 of this Article, the contracting authority renders a decision to determine the reasons for exclusion of public and whether such exclusion of public also refers to representatives of the bidder, as well.

### **Minutes on Opening of Bids**

#### **Article 104**

Contracting authority shall take minutes on the procedure of bid opening, in which it enters the following data in the following sequence:

- 1) Date and time of the beginning of bids' opening;
- 2) Subject matter and estimated value of public procurement in total and separately for each lot;

- 3) Names of the public procurement committee members participating in the procedure of bids' opening;
- 4) Names of bidders' representatives present at the bids' opening;
- 5) Names of other present persons;
- 6) Numbers under which a bid was filed;
- 7) Name of a bidder, i.e. code of a bidder;
- 8) Offered price and possible discounts offered by a bidder;
- 9) Data from a bid which are defined as elements of the criterion and which can be presented numerically;
- 10) Identified shortcomings of a bid;
- 11) Possible objections of bidders' representatives concerning the bids' opening procedure.

Bidder's representative participating in the bid opening procedure is entitled to, during the bids' opening, to examine the data from the bid which is entered in the minutes on bids' opening.

Contracting authority may not perform expert evaluation of a bid during the bids' opening.

If an untimely bid is submitted, the contracting authority shall, upon completion of the opening procedure, return it to the bidder unopened, with an indication that it has been submitted untimely.

During this procedure, the contracting authority shall ensure protection of confidential information from a bid in accordance with Article 14 of this Law.

The minutes on bids' opening are signed by members of the committee and representatives of bidders who take a copy of the minutes.

Contracting authority shall deliver the minutes to bidders who did not participate in the bids' opening procedure within a term of three days from the day of opening.

Provisions of this Article also apply mutatis mutandis to the procedure of applications' opening.

## ***18. Awarding the Contract***

### **Report on Expert Evaluation of Bids**

#### **Article 105**

Public procurement committee shall draft written report on expert evaluation of bids.

The report referred to in paragraph 1 of this Article shall particularly contain the following data:\*

- 1) Subject matter of public procurement;
- 2) Estimated value of public procurement in aggregate and separately for each lot;
- 3) Basic data on bidders;
- 4) Rejected bids, reasons for their rejection and price offered in those bids;
- 5) Where a bid has been rejected due to its abnormally low price, detailed explanation - the manner in which that price was determined;
- 6) Manner of applying the methodology for weighting points allocation;
- 7) Name of the bidder to whom the contract is awarded, and where the bidder stated the procurement shall be carried out with the assistance of a subcontractor, name of the subcontractor as well.

Provisions of this Article apply mutatis mutandis to the report on expert evaluation of applications.

### **Essential Deficiencies in Bid**

#### **Article 106**

Contracting authority shall refuse a bid if:

- 1) Bidder fails to prove it fulfils mandatory requirements for participation;
- 2) Bidder fails to prove it fulfils additional requirements;
- 3) Bidder fails to provide the requested collateral;
- 4) Offered period of validity of the bid is shorter than the stipulated one;
- 5) Bid contains other deficiencies due to which is not possible to determine the actual contents of the bid, or to compare it with other bids.

### **Conditions for Awarding the Contract**

#### **Article 107**

Contracting authority shall refuse all unacceptable bids after examining and evaluating the bids in public procurement procedure.

Contracting authority shall rank acceptable bids by applying the criterion for awarding the contract defined in the invitation to submit a bid and in the tender documentation.

After having performed expert evaluation of bids, based on the report of the committee, the contracting authority renders a decision on awarding the contract, if it has received at least one acceptable bid.

Contracting authority may award the contract to bidder whose bid contains offered price higher than the estimated value of public procurement, where it is not higher than comparable market price and where prices offered in all adequate bids are higher than the estimated value of public procurement.

In the case referred to under paragraph 4 of this Article, the contracting authority shall, after rendering the decision, deliver a reasoned report to the Public Procurement Office and the State Audit Institution.

Contracting authority renders a decision on recognizing qualification, i.e. on concluding a framework agreement, pursuant to requirements set forth by this Law.

## **Decision on Awarding the Contract**

### **Article 108**

Based on the report of expert evaluation of bids, the contracting authority shall render a decision on awarding the contract within a term defined in the invitation to submit bids.

Term under paragraph 1 of this Article shall not be longer than 25 days from the day of bids' opening, except in especially justified cases, such as are the volume or complexity of bids, or complexity of methodology of weighting points allocation, in which cases the term may be 40 days from the day of bids' opening.

In low-value public procurement procedure, the term under paragraph 1 of this Article shall not be longer than ten days.

Decision on awarding contract shall be reasoned and shall particularly contain data from the report on expert evaluation of bids and instruction on legal remedy.

The contracting authority shall publish the decision on awarding the contract on the Public Procurement Portal and on its web page within a term of three days from the day of rendering.

If certain data from the decision constitute a business secret in terms of the law governing trade secret protection or constitute secret data in terms of the law governing data secrecy, such data from the decision shall not be published.

In the case referred to in paragraph 6 of this Article the decision is delivered in the original form to the Public Procurement Office and the State Audit Institution.

Provisions of this Article apply mutatis mutandis to the decision on concluding a framework agreement, decision on recognizing qualification and the decision on cancelling the procedure.

## **Decision on Cancelling Public Procurement Procedure**

## **Article 109**

Contracting authority renders a decision on cancelling public procurement procedure on the grounds of the report on expert evaluation of bids, if the requirements were not met for awarding contract or for decision on concluding the framework agreement, or if requirements were not met for rendering decision on recognizing qualification.

Contracting authority may cancel public procurement procedure for objective and provable reasons which could not have been foreseen at the time of initiation of the procedure and which make it impossible for initiated procedure to be completed or due to which contracting authority's need for the relevant procurement ceased, for which reasons it shall not be repeated during the same budget year or within the next six months.

Contracting authority shall explain in writing its decision to cancel the public procurement procedure, particularly stating the reasons for cancelling the procedure and instruction on legal remedy and to publish it on the Public Procurement Portal and on its web page within three days from the day of rendering such a decision.

Contracting authority shall, within a term of five days from the day of finality of the decision on cancelling public procurement procedure, publish a notification on cancellation of the public procurement procedure which contains the data referred to in Appendix 3L.

Contracting authority shall decide on expenses of bid preparation referred to in Article 88, paragraph 3 of this Law, in the decision on cancelling public procurement procedure.

Final decision on cancelling the procedure represent an enforceable document for the purpose of expenses of bid preparation under Article 88, paragraph 3 of this Law.

If certain data from the decision constitute a business secret in terms of the law governing trade secret protection or constitute secret data in terms of the law governing data secrecy, such data from the decision are not be published.

In the case referred to in paragraph 7 of this Article the decision is delivered in the original form to the Public Procurement Office and the State Audit Institution.

## **Insight into Documents**

### **Article 110**

Bidder, candidate, i.e. applicant are entitled to insight into documents on conducted public procurement procedure after rendering of the decision on recognition of qualification, decision on conclusion of the framework agreement, or decision on awarding the contract, or decision on cancellation of the procedure, whereof they may file a written request to the contracting authority.

Contracting authority shall enable the person under paragraph 1 of this Article to have insight into and copy documents from the procedure, at the expense of such person, within a term of two days from the day of receipt of written request, under obligation to protect data in accordance with Article 14 of this Law.

## **Informing Bidders**

### **Article 111**

Within a term of five days since rendering decision, the contracting authority may hold a separate meeting with each bidder, where members of public procurement committee shall explain the manner of conducting the procedure, defining requirements for participation, manner of determining specification of public procurement subject matter, manner of determining elements of the criterion, and methodology for weighting points allocation, reasons for bid rejection, ranking of bids, etc.

If majority of bids are refused in public procurement procedure whose estimated value is higher than the amount defined in Article 57 of this Law, contracting authority shall organize notification of bidders. If only two bids were submitted and one out of the two was refused, it shall not be deemed that most bids were refused.

During notification, bidders may ask questions and give their proposals on how to improve the procedure.

Minutes are taken about notification of bidders and conversation with bidders.

During notification of bidders, the contracting authority shall protect data in accordance with Article 14 of this Law.

## ***19. Public Procurement Contract***

### **Conditions for Conclusion of Public Procurement Contract**

#### **Article 112**

Contracting authority may conclude public procurement contract, i.e. framework agreement, after rendering decision to award contract or decision to conclude framework agreement and if, within deadline defined by this Law, no request for the protection of rights was filed, or if such request for the protection of rights was rejected or refused.

Contracting authority may conclude public procurement contract even before the expiry of the time limit for filing request for the protection of rights:

- 1) Based on a framework agreement;
- 2) In the case of applying negotiating procedure under Article 36, paragraph 1 item 3) of this Law;
- 3) In the case of applying dynamic procurement system;
- 4) In the case of low-value public procurement procedure under Article 39, paragraph 6 of this Law;

5) Where only one bid was submitted, except in negotiating procedure without publication of the invitation to submit bids.

## **Deadline for Concluding Contract**

### **Article 113**

Contracting authority shall deliver the public procurement contract to the bidder to whom the contract was awarded within a term of eight days from the day of expiry of time limit for filing the request for the protection of rights.

Where contracting authority fails to deliver signed contract to bidder within the time limit under paragraph 1 of this Article, the bidder is not under obligation to sign the contract which shall not be considered as withdrawal of bid and the bidder shall not sustain any consequences due to that, except in case of duly filed request for the protection of rights.

Where the bidder to whom contract was awarded refuses to sign the public procurement contract, the contracting authority may conclude the contract with the first following most advantageous bidder.

Where in case under paragraph 3 of this Article, due to the methodology for awarding weighting points, it is necessary to determine who is the first following most advantageous bidder, the contracting authority shall again perform expert re-evaluation of bids and make the decision on awarding the contract.

## **Electronic Format of Contract**

### **Article 114**

Public procurement contract may be concluded in electronic format in accordance with the law governing electronic document and electronic signature.

## **Amendments during the Term of the Contract**

### **Article 115**

Contracting authority may, after conclusion of a public procurement contract without conducting public procurement procedure, increase volume of the public procurement subject matter, provided that the contract value may be increased up to a maximum of 5% of the total value of the contract originally concluded, whereby the total value of the contract increase may not be higher than the value referred to in Article 39, paragraph 1 of this Law, i.e. Article 124a for contracting authorities in the areas of water management, energy, transport and postal services, under the condition that such possibility is clearly and precisely stated in tender documentation and public procurement contract.

After conclusion of public procurement contract, the contracting authority may allow change of price and other essential elements of the contract due to objective reasons which shall be clearly and precisely defined in tender documentation, public procurement contract, i.e.



prescribed by special regulations. Harmonization of price with clearly predefined parameters in the contract and tender documentation is not considered to be a change of price.

Limits referred to in paragraph 1 of this Article do not relate to surpluses of works if they are contracted.

Subject matter of public procurement may not be changed by means of amendment to public procurement contract referred to in paragraphs 1 and 2 of this Article.

In the case referred to in para. 1 and 2 of this Article the contracting authority shall adopt a decision on amendment to the contract containing data in accordance with Appendix 3M and to publish it on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of adoption thereof.

### **Notification on Concluded Public Procurement Contract**

#### **Article 116**

Contracting authority shall publish a notification on concluded public procurement contract or framework agreement within a term of five days from the day of conclusion of the contract, or the framework agreement.

Contracting authority may quarterly, within a term of 15 days following the end of the quarter, publish notifications on public procurement contracts concluded pursuant to the framework agreement or in the dynamic procurement system.

## **IV. PUBLIC PROCUREMENT IN THE AREAS OF WATER MANAGEMENT, ENERGY, TRANSPORT AND POSTAL SERVICES**

### ***Contracting Authority***

#### **Article 117**

Contracting authority in the areas of water management, energy, transport and postal services is:

- 1) Contracting authority referred to in Article 2 of this Law that performs activities in the areas of water management, energy, transport and postal services, when conducting procurement for the purpose of performing these activities;
- 2) Person who performs activities in the areas of water management, energy, transport and postal services, pursuant to exclusive or special rights, when conducting procurement for the purpose of performing these activities;
- 3) Public enterprise which performs activity in the areas of water management, energy, transport and postal services, when conducting procurement for the purpose of performing these activities.

Exclusive or special right that has been granted on the basis of objective criteria, in a transparent manner in the procedure wherein public disclosure was made, by applying the regulations on public procurement, public-private partnership and concessions or other procedure wherein objective criteria are applied and transparency and public disclosure are ensured, shall not be considered exclusive or special right in terms of paragraph 1, item 2) of this Article.

Public enterprise in terms of paragraph 1, item 3) of this Article, is any enterprise over which contracting authority may exercise, directly or indirectly, a prevailing influence by virtue of ownership over it, financial participation in it or the rules which govern it. A prevailing influence by the contracting authority is considered to exist in any of the following cases wherein the contracting authority, directly or indirectly:

- (1) Holds the majority of the enterprise subscribed capital;
- (2) Controls the majority of the votes relating to the enterprise's stocks;
- (3) May appoint more than a half of the members of the supervisory body, administrative or managing body of such enterprise.

Requirements, manner and procedure of public procurement not specifically regulated by this chapter is subject to other provisions of this Law.

### ***Activities in Area of Water Management***

#### **Article 118**

For the purpose of this Law, activities in the area of water management are:

- 1) Construction or management of facilities and networks in order to provide services to consumers related to production, transport or distribution of potable water;
- 2) Supplying these networks with potable water;
- 3) Hydraulic engineering projects, irrigation or land drainage, provided that more than 20% of the total quantity of water generated by these projects, irrigation or land drainage is used as potable water;
- 4) Filtration and drainage of waste water.

Providing potable water to networks which provide services to consumers through a contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not be considered to an activity in the area of water management in terms of this Law, if:

- 1) Contracting authority referred to in Article 117, paragraph 1, item 2) of this Law produces potable water for performing activities other than activities in water management, energy, transport or postal services;

2) Supplying of public network depends solely on own production of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, and if that supply does not exceed 30% of the total production of potable water of that contracting authority, taking into account the average for the last three years including the current year.

## ***Activities in the Area of Energy***

### **Article 119**

For the purposes of this Law, activities in the area of energy are:

- 1) Exploration or extraction of oil and natural gas, exploration or mining coal and other mineral raw materials and other solid fuels;
- 2) Construction or management of facilities and networks in order to provide services to users related to production, transport, transmission or distribution of electricity, natural gas and heating energy;
- 3) Supplying these networks with electric and heating energy and natural gas.

Supplying electric energy to networks that provide services to users via a contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not considered to be activity in the area of energy in terms of this Law, if:

1) Contracting authority referred to in Article 117, paragraph 1, item 2) of this Law produces electric energy in the aim of performing activity other than activity of water management, energy, transport or postal services;

2) Supplying of public network depends only on own production of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, and if that supply does not exceed 30% of total electric energy production of that contracting authority, taking into account the average for the last three years, including the current year.

Supplying natural gas or heating energy to networks that provide services to users through the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is not considered to be activity in the area of energy in terms of this Law if:

1) Production of natural gas or heating energy by the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law is an inevitable consequence of performance of activities which are not activities in water management, energy, transport or postal services;

2) Supplying public network is intended solely for economic exploitation of that production and does not exceed 20% of total annual income of the contracting authority referred to in Article 117, paragraph 1, item 2) of this Law, taking into consideration the previous three years and the current year.

## ***Activities in the Area of Transport***

### **Article 120**

For the purpose of this Law, activities in the area of transport are:

- 1) Construction, maintenance and management of airports and river ports for the purpose of air and river transport;
- 2) Construction, maintenance and management of networks, as well as provision of services to users in the areas of railway transport, urban and suburban passenger transport on roads, conducted by trams, trolley-buses and buses.

A network is deemed to exist in the area of transport where the service is provided under conditions defined by the competent body, such as conditions on directions of provision of services, capacities of transport vehicles, frequency, and the like.

Providing services of bus transport is not an activity in the area of transport in terms of this Law, if other economic operators may freely conduct those activities in the relevant market.

### ***Activities in the Area of Postal Services***

#### **Article 121**

Activities in the area of postal service are provision of reserved and unreserved postal services in terms of the law governing postal services.

Activities in the area of postal services in terms of this Law are also the provision of other services which do not include postal services under conditions defined by this Article.

Other services are:

- 1) Services of managing postal service (services prior to and after delivery);
- 2) Services related to mail with no designated address which does not constitute mail in terms of the law governing postal services;
- 3) Philatelist services;
- 4) Logistics services which represent combination of physical delivery and/or storage and other non-postal services.

### ***Public Procurements in the Areas of Water Management, Energy, Transport and Postal Services to which this Law does not apply***

#### **Article 122**

The provisions of this Law do not apply to:

- 1) Procurements exempt from its application by Art. 7 and 7a of this Law;

2) Procurements that contracting authorities conduct for the purposes of performing activities in water management, energy, transport and postal services abroad, provided that it does not include the use of facilities and network within the Republic of Serbia;

3) The situation when contracting authority involved in the activity referred to in Article 118, paragraph 1, item 1) or 2) of this Law purchases potable water;

4) The situation when contracting authority involved in the activity referred to in Article 119, paragraph 1 of this Law procures:

(1) Energy or

(2) Fuel for energy production;

5) The situation when contracting authority procures from linked persons, or when a person which was established by contracting authorities exclusively for performing activities in water management, energy, transport or postal services procures from a person linked to one of the contracting authorities, provided that at least 80% of average revenue of the linked person in the last three years originates from the person with which it is linked;

6) The situation when a person established by multiple contracting authorities procures from its founders for the purposes of performing activity in water management, energy, transport or postal services;

7) The situation when a group of companies made up of contracting authorities in terms of the law governing companies, procures from a member of the group of companies solely for the purposes of performing activity in water management, energy, transport or postal services;

8) The situation when contracting authority procures from a group of companies whose integral part it is, provided that the group of companies was established with the aim of performing activity in water management, energy, transport and postal services, that it was established for at least a three year period, and that its founding act stipulates that contracting parties remain within it for at least three years.

## ***Procedures***

### **Article 123**

The awarding of contract is performed in open, restrictive or qualifying procedure, or in negotiating procedure with publication of the invitation to submit bids.

The awarding of the contract may also be performed in other public procurement procedures, provided that the requirements defined in this Law for that are fulfilled.

## ***Special Rules for Qualifying Procedure***

### **Article 124**

In its decision on recognition of qualification, the contracting authority also determines the period for which the qualification is recognized to candidates, which may not be longer than four years.

Contracting authority may update requirements for recognizing qualifications as necessary, and invite all candidates to submit applications in accordance with updated requirements.

In the case referred to in paragraph 2 of this Article, the contracting authority may not set additional requirements of any nature to certain candidates only, and may not request other proofs of requirements if the candidates have already proved the existing or the new requirements.

Contracting authority may also use the list of candidates of other contracting authorities, if it finds that those fulfill its demands.

In the case under paragraph 4 of this Article, the qualification of candidates is recognized for so long as the list of candidates remains valid.

### ***Special Rules for Low-Value Public Procurement***

#### **Article 124a**

Low-value public procurement in the areas of water management, energy, transport and postal services, in terms of this Law, is the procurement whose estimated value does not exceed 10,000,000 dinars, or in case of procurements of the same kind the total estimated value on an annual basis does not exceed 10,000,000 dinars.

### ***Condition of Reciprocity***

#### **Article 125**

If the bidders offer products originating from a country with which the Republic of Serbia has not concluded an agreement that would provide domestic bidders equal access to the market of that country, such a bid may be rejected if the share of products originating from that state exceeds 50% of the aggregate value of products from that bid.

For the purposes of this Article, the software used in equipment of electronic communications network is considered to be a product.

### ***Equal Bids***

#### **Article 126**

If two bids or multiple numbers of bids are equal, according to the criterion set under Article 85 of this Law, the contracting authority gives advantage to bids that cannot be refused on the basis of Article 125 of this Law.

Equal bids regarding the price, in terms of paragraph 1 of this Article, are deemed to be bids prices in which the price difference is no more than 3%.

Contracting authority shall not give advantage to a bid in accordance with paragraph 1 of this Article, if choice of such bid would obligate the contracting authority to procure a product with technical characteristics different than those belonging to the existing products.

## V. PUBLIC PROCUREMENTS IN THE FIELD OF DEFENSE AND SECURITY

### *Public Procurements in the Field of Defense and Security*

#### **Article 127**

Public procurements in the field of defense and security are the procurements of:

- 1) Weapons and military equipment including any of its integral parts, components and sets;
- 2) Security sensitive equipment including any of its integral parts, components and sets;
- 3) Goods, services or works directly related to sensitive military or security equipment or facilities under items 1) and 2) of this paragraph within any given period or in the entire service life;
- 4) Services and works solely for defense purposes;
- 5) Security sensitive works and security sensitive services.

Military equipment is equipment specially made or adjusted for military purposes, intended for use as weapons, ammunition or military material.

Sensitive security equipment, services and works are goods, services and works for security purposes, which include, request, and contain, secret information.

When conducting procurements under paragraph 1 of this Article, the contracting authority shall prevent any conflict of interests, to ensure competition whenever it is possible, and to ensure that the contracted price is no higher than the comparable market price.

On the basis of delivered procurement plan, the Government renders a decision to conduct the procedures and notifies thereof the competent committee of the National Assembly.

The Government regulates conditions, manner and procedure of public procurement in the field of defense and security and defines the list of goods, services and works referred to in paragraph 1 of this Article.

### *Public Procurements in the Area of Defense and Security exempt from this Law*

#### **Article 128**

Provisions of this Law and bylaw referred to in Article 127, paragraph 6 of this Law do not apply to the procurements:

- 1) Under Article 127 of this Law, where contracts were awarded in compliance with international agreements of the Republic of Serbia concluded with another state or international organization;
- 2) That are necessary and exclusively aimed to the needs of intelligence activities;
- 3) Performed abroad, when military or police forces are deployed outside of the territory of the Republic of Serbia, if operative needs demand that the contracts are concluded with legal persons or state bodies in the area of operations;
- 4) Within the cooperation programs based on research and development of a new product implemented jointly by the Republic of Serbia and one or multiple states or international organizations, if applicable to the subsequent phases of the entire or partial service life of such product;
- 5) Where application of public procurement procedure would result in disclosure of Information deemed as key for security, pursuant to a Government's decision.

In the case under paragraph 1, item 4) of this Article, the competent ministry, i.e. competent state body shall submit a report to the Government on implementation of the cooperation program.

### ***Special Rules of Procedure in Public Procurements in the Area of Defense and Security***

#### **Article 129**

Public procurement contract is awarded in restrictive or negotiating procedure with publishing invitation to submit bids, and in other public procurement procedures provided that the requirements set forth by this Law or bylaw referred to in Article 127, paragraph 6 of this Law are met.

In case of conducting restrictive procedure, Article 33, paragraph 5 of this Law does not apply.

In case of conducting negotiating procedure without publishing invitation to submit bids, the contracting authority does not obtain the opinion of the Public Procurement Office on the justifiability of applying the negotiated procedure.

Negotiating procedure referred to in Article 36, paragraph 1, items 4) and 5) of this Law may be conducted if no more than three years lapsed since the originally concluded contract, except in exceptional cases which are determined depending on the service life of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.

Framework agreement subject matter of which is public procurement in the field of defense and security may not last longer than five years, except in exceptional cases which are determined depending on the service life of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.



The subject matter of framework agreement may also be the works carried out exclusively for defense purposes and sensitive security works.

### ***Application of the Law by Subcontractors***

#### **Article 130**

Bidder may in his bid include the subcontractors hired for implementation of public procurement, or may state that he shall choose the subcontractors after the public procurement contract is concluded.

Provisions of this law apply to suppliers when choosing third parties as subcontractors, after conclusion of public procurement contract or framework agreement, if the contracting authority requested that supplier performs certain share of procurement through a subcontractor.

Subcontractors, as such included in the bid, or subcontractors that are part of a group of bidders who submitted a joint bid, and persons linked to them, are not considered to be third parties in terms of paragraph 1 of this Article.

When submitting bid, a list of persons not considered to be third parties in terms of paragraph 3 of this Article, as well as any subsequent changes, is attached.

### ***Reports on Conducted Procurements in Field of Defense and Security***

#### **Article 131**

Contracting authority submits an annual report to the Government and the competent committee of the National Assembly up to the 31 March of the current year, for the preceding year, on the conducted procurements under Articles 127 and 128 of this Law.

Report under paragraph 1 of this Article contains in particular the data on the subject matter of procurement, the manner in which the procedure was conducted, submitted bids, criterion for selection of the most advantageous bid, concluded contract, and supplier.

The Government regulates in more detail the format and contents of the report under paragraph 1 of this Article.

## **Va PUBLIC PROCUREMENTS INTENDED FOR ELIMINATION OF CONSEQUENCES OF NATURAL DISASTERS AND TECHNICAL AND TECHNOLOGICAL ACCIDENTS CRASHES**

### ***Notion of Natural Disaster and Technical and Technological Accident - Crash***

#### **Article 131a**

Natural disaster is an event of hydro meteorological, geological or biological origin, caused by action of natural forces, such as: earthquake, flood, flash flood, storm, heavy rains, atmospheric discharges, hailstorm, drought, rock fall or landslides, snow drifts and avalanche, extreme air

temperatures, accumulation of ice in watercourse, epidemics of contagious diseases, epidemics of livestock contagious diseases and occurrence of pests and other large-scale natural phenomena that may endanger the health and life of people or cause damage of bigger proportions, in accordance with the law governing emergency situations.

Technical and technological hazard - accident is a sudden and uncontrolled event or series of events that got out of control when managing certain work instruments and when handling hazardous substances in production, utilization, transport, traffic, processing, storage and disposal, such as: fire, explosion, equipment failure, traffic accident in road, river, rail and air traffic, accident in mines and tunnels, stoppage of operation of cableways for transport of people, demolition of dams, failure of electrical power plants, oil and natural gas plants, accidents in handling radioactive and nuclear substances the consequences of which threaten the safety and lives of people, material goods and the environment, in accordance with the law governing emergency situations.

### ***Subject Matter and Method of Determining Subject Matter of Public Procurement***

#### **Article 131b**

Public procurements conducted in order to eliminate the consequences of natural disasters and technical and technological hazards - accidents and other disasters (hereinafter: disasters and accidents), are procurements of goods, services or works in construction, reconstruction, adaptation or rehabilitation of facilities damaged in disaster or accident, as well as other procurements with a view to preventing prolonged harmful effect of disaster and accident, determined by the program of state assistance and recovery of the area affected by the disaster or accident, adopted by the Government (hereinafter: state recovery program), in accordance with the regulations governing protection and elimination of the consequences of disasters and accidents.

Measures and criteria for providing assistance, i.e. criteria, measures and procedure for recovery and rehabilitation of the consequences of disasters or accidents according to the area and territory are stipulated in the state recovery program.

The following are considered to be facilities referred to in paragraph 1 of this Article: family residential facilities, residential and residential-business facilities, flats in residential and residential- business facilities; electrical power facilities for generation, transmission and distribution of electrical energy; ore production and supply facilities; natural gas infrastructure facilities; roads and public railway infrastructure; telecommunication facilities, i.e. networks, systems and instruments, including also electronic communications infrastructure facilities (cable ducts); utility infrastructure facilities; special purpose facilities and publicly owned facilities for public use; facilities of cultural property and cultural infrastructure.\*

### ***Special Rules for Public Procurement Procedure Conducted in order to Eliminate Consequences of Disasters and Accidents***

#### **Article 131v**

Public procurements referred to in Article 132b, paragraph 1 of this Law are conducted in open procedure.

Provisions of this Law relating to public procurement plan, prior notice, manner of proving mandatory and additional requirements for participation in public procurement procedure, time limits for bids submission and time limits for decision-making by the Republic Commission for the Protection of Rights in Public Procurement Procedures are not applied in the public procurement procedure referred to in paragraph 1 of this Article.

### ***Deadline for Bids Submission and Manner of Proving Fulfillment of Requirements***

#### **Article 131g**

Deadline for bids submission in the public procurement procedure referred to in Article 132v, paragraph 1 of this Law may not be shorter than ten days from the day of publishing of the invitation to submit bids on the Public Procurements Portal.

In the course of public procurement procedure referred to in paragraph 1 of this Article fulfillment of mandatory and additional requirements for participation in public procurement procedure is proved by submission of statement whereby the bidder under full material and criminal responsibility confirms that he fulfills the requirements.

### ***Protection of Rights***

#### **Article 131d**

Request for the protection of rights shall not stay the activities of contracting authority in the procedure referred to in Article 132v, paragraph 1 of this Law.

Contracting authority may conclude public procurement contract even before expiry of the deadline for submission of the request for protection of rights.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall issue a decision on the request for the protection of rights within a term of five days from the day of receipt of duly completed request.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall decide on the appeal against the conclusion of the contracting authority within a term of three days from the day of receipt of the appeal.

The Republic Commission for the Protection of Rights in Public Procurement Procedures shall deliver the decision referred to in paragraphs 3 and 4 of this Article to the contracting authority, applicant and the selected bidder, within a term of two days from the day of adoption.

### ***Application of other Public Procurement Procedures***

#### **Article 131dj**

Contracting authority may decide to conduct public procurement of goods, services or works with a view to eliminate the consequences of disasters or accidents determined by the state recovery program, instead of in open procedure, by applying other type of public procurement procedure, if the requirements for its application prescribed by this Law are met.

In the case referred to in paragraph 1 of this Article the provisions of this Law that relate to public procurement plan, manner of proving mandatory and additional requirements for participation in public procurement procedure and to obtainment of the Public Procurement Office's opinion on the justifiability of the negotiating procedure without publishing invitation to submit bids, do not apply.

Fulfillment of mandatory and additional requirements for participation in public procurement procedure referred to in paragraph 1 of this Article, is proved by submitting a statement whereby a bidder under full material and criminal responsibility confirms that it fulfills the requirements.

### ***Procurements with a view to Eliminate the Consequences of Disasters and Accidents to which Law does not Apply***

#### **Article 131e**

Procurements with a view to eliminating the consequences of disasters and accidents to which this Law does not apply are procurements performed in order to ensure basic living conditions during and immediately after the occurrence of disaster and accident, in accordance with Article 7, paragraph 1, item 3) of this Law.

Procurements referred to in paragraph 1 of this Article are procurements of goods, services or works relating to:

- 1) Evacuation, i.e. relocation of people and animals, as well as material and cultural property, government bodies, companies and other legal entities, from endangered territory to a danger free territory, i.e. to the one that provides conditions for living and protection;
- 2) Providing emergency accommodation and emergency accommodation in suitable facilities; providing health care to sick persons or those injured in natural disaster;
- 3) Supplying of foodstuffs, drinking water, clothing, footwear, medicines and other items, i.e. means, to endangered and affected population, reunification of separated families, psychological support and creation of other living conditions;
- 4) Implementation of sanitary and hygienic conditions and sanitary and technical measures on the terrain, in a dwelling and buildings, with a view to preventing outbreaks of contagious diseases, epidemics and other harmful consequences for population and material property;
- 5) Removal, identification and immediate burial of killed, i.e. deceased, removal of animal corpses, pest control, decontamination and remediation of facilities and terrain;
- 6) Conducting appropriate actions and procedures for scanning the ruins, finding persons buried under rubble, securing the damaged and relocated parts of structures of buildings and facilities in order to prevent subsequent collapse, rescuing the buried under rubble, i.e. their removal outside of the zone of collapse, measures of first aid and emergency medical assistance, as well as other measures contributing to protection and rescue from rubble;
- 7) Undertaking measures for preserving resources essential to survival of facilities for water supply, maintaining the required volume of agricultural and other production and survival of

plant and animal fund through provision and preservation of the required quantities and types of resources necessary for the lives of the inhabitants, as well as cultural and historical, material and other essential resources;

8) Providing transportation and crossing over rivers and lakes, finding and pulling out the victims and drowned, removing water from flooded facilities and surfaces around facilities;

9) Undertaking urgent measures in order to prevent or delay water outflow from the riverbed in populated areas and flooding of residential facilities (placing bags of sand, cleaning of drainage canals etc.);

10) Undertaking other similar activities in order to ensure protection of life and health of vulnerable populations and animals, as well as for protection of material and cultural resources, in accordance with the regulations on protection against natural disasters and other accidents.

## VI. PUBLIC PROCUREMENT RECORDS AND REPORTS

### *Records and Reports on Public Procurements*

#### **Article 132**

Contracting authority shall collect and keep records of data concerning public procurement procedures and awarded public procurement contracts.

Contracting authority delivers in electronic format to the Public Procurement Office quarterly report on:

- 1) Conducted public procurement procedures;
- 2) Conducted public procurement procedures to which the contracting authority did not apply the provisions of this Law;
- 3) Conducted negotiating procedures without publication of invitation to submit bids;
- 4) Costs of preparation of bids in public procurement procedures;
- 5) Concluded public procurement contracts;
- 6) Unit prices of goods, services and most frequent works;
- 7) Amended public procurement contracts;
- 8) Cancelled public procurement procedures;
- 9) Public procurement procedures in which a request for the protection of rights was filed and cancelled procedures;
- 10) Implementation of public procurement contract.

The Public Procurement Office defines in detail the contents of reports on public procurements and the manner of keeping records on public procurements.

Contracting authority delivers reports referred to in paragraph 1 of this Article no later than on the 10th day of the month that follows the trimester.

The Public Procurement Office shall prepare aggregate quarterly report on conducted procedures and concluded public procurement contracts on the basis of the delivered quarterly reports of contracting authorities, and to post it on the Public Procurement Portal and its internet page within a term of a month after the expiration of time limit referred to in paragraph 4 of this Article.

### ***Reports on Public Procurements***

#### **Article 133**

The Public Procurement Office may request from the contracting authority a report with additional information on each individual public procurement contract or public procurement procedure.

Contracting authority shall submit the requested information to the Public Procurement Office without undue delay, and no later than eight days from the receipt of request of the Public Procurement Office.

The Public Procurement Office shall prepare semi-annual and annual report on public procurements on the basis of individual quarterly reports of the contracting authorities.

The Public Procurement Office shall publish semi-annual report on public procurement on the Public Procurement Portal and its internet page by 30 September, and the annual report by 31 March of the current year, for the previous year.

The report under paragraph 4 of this Article shall be submitted to the Government prior to its publishing.

In the report referred to in paragraph 4 of this Article, the Public Procurement Office gives a proposal for general and individual measures for improvement of the public procurement system.

Employees of the Public Procurement Office may perform additional paid activity, in accordance with the law governing rights and duties of civil servants, only on the basis of previous written consent of the committee of the National Assembly in charge of finance.

## **VII. PUBLIC PROCUREMENT OFFICER AND PUBLIC PROCUREMENT OFFICE**

### ***Public Procurement Officer***

#### **Article 134**

Contracting authority shall define, in its bylaw that regulates job classification, a position within which the tasks of public procurement shall be carried out.

Contracting authority whose overall annual value of planned public procurements exceeds the fivefold amount referred to in Article 39, paragraph 1 of this Law, shall have at least one public procurement officer.

A public procurement officer is a person trained to perform public procurement tasks.

The Public Procurement Office determines the manner and the program of professional training and manner of taking the qualifying exam for public procurement officer.

Contracting authority shall make it possible for person performing public procurement tasks to pass the qualifying exam for public procurement officer within three months from the day of employment, or the day when the conditions are met.

## ***Public Procurement Office***

### **Article 135**

The Public Procurement Office is a special organization that monitors the application of this Law, adopts bylaws and performs professional activities in the field of public procurement, monitors the conducting of public procurement procedures, controls the implementation of certain procedures, runs the Public Procurement Portal, prepares reports on public procurements, proposes measures for improvement of the public procurement system, provides professional assistance to contracting authorities and bidders, contributes to the creation of conditions for cost efficient, effective and transparent usage of public funds in public procurement procedure.

Functioning and organization of the Public Procurement Office is governed by legislation on civil service, unless this Law provides otherwise.

## ***Activities of the Public Procurement Office***

### **Article 136**

The Public Procurement Office performs the following activities:

- 1) Monitors the application of this Law;
- 2) Adopts bylaws in the area of public procurement;
- 3) Participates in drafting regulations in the area of public procurement;
- 4) Issues opinions on interpretation and application of provisions under this Law;
- 5) Examines the fulfillment of requirements for conducting negotiating procedure under Article 36 of this Law and for competitive dialogue;

- 6) Proposes a list of contracting authorities to the Government, according to data from reports and records on public procurements it possesses;
- 7) *(Deleted)*
- 8) Appoints civil supervisor;
- 9) Prepares framework agreement templates;
- 10) *(Deleted)*
- 11) Prescribes standard forms of public procurement ads;
- 12) *(Deleted)*
- 13) Prescribes the manner of keeping records and drafting public procurement reports;
- 14) Compiles quarterly and annual report on public procurements;
- 15) Prescribes the manner and program of professional training and the manner of taking the qualifying exam for a public procurement officer, and keeps the register of public procurement officers;
- 16) Manages the Public Procurement Portal;
- 17) Takes measures aimed at development and upgrading of the public procurement system;
- 18) Files request for protection of rights;
- 19) Informs the State Audit Institution and Budgetary Inspection when it identifies irregularities in conducting public procurement procedures and delivering public procurement reports;
- 20) Initiates misdemeanor procedure when learns in any way of a violation of this Law which may constitute grounds for misdemeanor liability;
- 21) Initiates the procedure for annulment of a public procurement contract;
- 22) Prepares templates for decisions and other documents that the contracting authority renders in public procurement procedure;
- 23) Collects statistical and other data on conducted procedures, concluded public procurement contracts and the overall efficiency of the public procurement system;
- 24) Publishes and distributes relevant professional literature;
- 25) Collects information on public procurements in other states;



26) Prepares plans and normative acts and, with consent of the Government, performs other activities related to negotiations on accession to the European Union in the domain of public procurement;

27) Cooperates with foreign institutions and experts in the field of public procurement;

28) Cooperates with other government bodies and organizations, bodies of a territorial autonomy and local government;

29) Performs other activities in accordance with the law.

In performing the Public Procurement Office's monitoring role in the application of this Law, all government bodies and organizations, offices and bodies of territorial autonomy and local government, contracting authorities and bidders, i.e. applicants, shall provide the demanded information and documents in their possession or under their control to the Public Procurement Office, within the given deadline by the Public Procurement Office.

The Public Procurement Office submit a special annual report on the monitoring of the application of this Law to the Government and the committee of the National Assembly in charge of finance, by April 30 of the current year, for the previous year.

### ***Director of the Public Procurement Office***

#### **Article 137**

The Public Procurement Office has a director appointed by the Government from among the ranks of public procurement experts, after having conducted public competition.

A person having college degree in the areas of law, economy or technical sciences from the second level studies (academic studies ending with a diploma - master, specialist academic studies, specialist professional studies), or college degree which the law equates with the academic title of master at the basic studies in the duration of at least four years, and having at least five years of work experience in public procurements tasks and who fulfils other requirements prescribed for the work in civil service bodies may be appointed for a director of the Public Procurement Office.

Director of the Public Procurement Office adopts a bylaw that regulates the job classification.

## **VIII. PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURE**

### ***1. Republic Commission for the Protection of Rights in Public Procurement***

#### **Procedures**

#### **Article 138**

The Republic Commission for the Protection of Rights in Public Procurement Procedures (hereinafter: the Republic Commission) is an autonomous and independent body of the Republic of Serbia, which ensures the protection of rights in public procurement procedures.

The Republic Commission has a status of legal person.

The seat of the Republic Commission is in Belgrade.

The Republic Commission has a seal, in accordance with the law.

The funds for operation of the Republic Commission are provided from the budget of the Republic of Serbia.

## **Jurisdiction**

### **Article 139**

Within its jurisdiction, the Republic Commission:

- 1) Decides on request for the protection of rights;
- 2) Decides on concluding of contract in the case referred to in Article 30, paragraph 3 of this Law;
- 3) Decides on appeal filed against the conclusion of contracting authority;
- 4) Decides on contracting authority's proposal that submitted request for the protection of rights does not prevent rendering of the decision, i.e. conclusion of the contract or framework agreement;
- 5) Decides on the proposal of the applicant who filed request for the protection of rights to prohibit the conclusion or performance of a public procurement contract;
- 6) Decides on expenses of the procedure for protection of rights and expenses for the preparation of bid;
- 7) Monitors and controls implementation of decisions it renders;
- 8) Imposes fines to contracting authority and the responsible person of the contraction authority;
- 9) Annuls public procurement contract;
- 10) Conducts misdemeanor proceedings in the first instance;
- 11) Initiates procedure for annulment of public procurement contract;
- 12) Cooperates with foreign institutions and experts in the field of public procurement;
- 13) Performs other tasks too, in accordance with law.

## **Composition and Appointment of the Republic Commission**

### **Article 140**

The Republic Commission has a president and eight members.

The National Assembly appoints and removes from office the president and members of the Republic Commission upon proposal of the committee of the National Assembly in charge of finance (hereinafter: the competent Committee) after the conducted public competition.

President and members of the Republic Commission shall be appointed to a five-year period.

The same person may be appointed as president of the Republic Commission twice.

The same person may be appointed as member of the Republic Commission no more than twice, provided that this person was not appointed as President of the Republic Commission.

The competent Committee initiates the procedure for determining proposal for the appointment of president and the members of the Republic Commission no later than six months prior to the expiry of their mandate, and the appointment procedure shall be completed no later than a month prior to the expiry of the mandate.

President of the Republic Commission represents the Republic Commission, manages its work and performs other activities in accordance with the law.

In the absence of the president of the Republic Commission, the Republic Commission shall be represented by the deputy president of the Republic Commission, appointed from the ranks of the members by the president of the Republic Commission.

## **Conditions for Appointment**

### **Article 141**

A person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has five years of work experience in the area of public procurement may be appointed as president of the Republic Commission.

President of the Republic Commission has a salary equal to the salary of President of the Higher Court.

A person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has three years of work experience in the area of public procurement may be appointed as member of the Republic Commission.

A person having college degree in the areas of legal, economic or technical and technological sciences from the second level studies (academic studies ending with a diploma - master, specialist academic studies, specialist professional studies), or college education which the law equates with the academic title of the master at the basic studies in the duration of at least four years, and having at least five years of work experience in public procurement tasks, acquired

certificate for public procurement officer, and who fulfils other requirements prescribed for the work in civil service may also be appointed as member of the Republic Commission.

At least five members of the Republic Commission are chosen among the persons fulfilling conditions referred to in paragraph 3 of this Article.

Member of the Republic Commission has a salary equal to the salary of a judge in the Higher Court.

## **Service of the Republic Commission**

### **Article 142**

The Republic Commission shall have its Service that performs professional, general-legal, financial-material and administrative-technical activities necessary for the operation of the Republic Commission. The Service is managed by the Secretary, who is appointed and removed from office by the President of the Republic Commission.

A person having college degree in the scientific field of legal science at the second level studies, i.e. college degree which the law equates with the academic title of master at the basic studies in the duration of at least four years and having at least five years of working experience in law-related jobs may be appointed as the Secretary of the Republic Commission.

Secretary and employees in the Service are subject to legislation governing employment in civil service.

The Republic Commission regulates internal organization and job classification in the Service.

## **List of Experts in Public Procurement**

### **Article 143**

The Republic Commission establishes and maintains the list of expert witnesses who, in accordance with requirements of this Law, participate in the work of the Republic Commission.

A person registered into the registry of permanent expert witnesses may be entered into the list of expert witnesses

## **Prevention of Conflict of Interest and Recusal**

### **Article 144**

President, i.e. member of the Republic Commission may not perform any other public duty, have any position in a political party, or engage in any other office, service, work, duty or activity that might impact his independence in work and performance, or that might decrease his reputation or the reputation of the office of the president or member of the Republic Commission.

President or member of the Republic Commission may not decide in the procedure for protection of rights if there are any reasons that may lead into doubting his impartiality.

President or member of the Republic Commission may not decide in the procedure for protection of rights if he has a relationship with a party to the procedure corresponding to the relationship between representative of the contracting authority and the bidder referred to in Article 29 of this Law.

A party in the procedure is entitled to demand recusal of a member of the Republic Commission due to reasons referred to in paragraphs 2 and 3 of this Article.

President of the Republic Commission decide on the request for recusal.

President, i.e. member of the Republic Commission may not be hired by the bidder who has been a party to a procedure in which he conducted the case, over the period of two years following the termination of his office, where the estimated value of procurement in such case exceeded the amount under Article 57 of this Law.

## **Inability to Work and Absence of Member of the Republic Commission**

### **Article 144a**

In case of inability to work or absence from work of the president or member of the Republic Commission, for a period longer than 60 days, the competent Committee may propose to the National Assembly, in order to replace the prevented or absent President or member of the Republic Commission, to appoint other person as acting president or member of the Republic Commission without conducting public competition until his return.

Person referred to in paragraph 1 of this Article shall fulfill the appropriate requirements for appointment referred to in Article 141 of this Law.

## **Removal from Office of Members of Republic Commission**

### **Article 145**

President or member of the Republic Commission shall be removed from office before expiry of his mandate, if:

- 1) Convicted of a crime to an unconditional sentence of at least six months of imprisonment and if the crime for which he was convicted makes him unfit to hold office;
- 2) He has permanently lost work capacity;
- 3) Established that he holds office in contravention of Article 144 of this Law;
- 4) Established that he performs duties unprofessionally and negligently;
- 5) Established that he does not meet appointment requirements under Article 141 of this Law;

6) He resigns.

Any person may file an initiative for removal from office of president or member of the Republic Commission to the competent Committee.

The competent Committee submits to the National Assembly a reasoned proposal for removal from office of president or member of the Republic Commission together with evidence for removal from office.

President, i.e. member of the Republic Commission shall be given an opportunity to give his view on the reasons for his dismissal in the National Assembly.

If the president, i.e. member of the Republic Commission is removed from office, a new President, i.e. member of the Republic Commission is appointed within a term of 90 days from the day of removal from office.

In case of removal from office of president of the Republic Commission, the office of the president shall be held by the deputy president referred to in Article 140, paragraph 8 of this Law, until the appointment of a new President.

## **Manner of Operation of the Republic Commission**

### **Article 146**

The Republic Commission works and makes decisions in panels of three members.

Each panel comprises of at least two members appointed in accordance with Article 141, paragraph 3 of this Law, one of whom is the chairman of the panel.

All members of the panel need to be present in the panel meeting for valid decision making.

In case of absence of a member of panel, he may be replaced by the president of the Republic Commission or member of the Republic Commission from another panel, designated by the president of the Republic Commission.

\*Members of the panel may, at their own initiative, decide to include an expert witness in the work of the panel, where they find it necessary for the proper establishing of facts and making a decision.

A person who has a relationship with a party to the procedure that corresponds to relationship between representative of the contracting authority and the bidder, as referred to in Article 29 of this Law, may not be appointed for the expert witness.

Reimbursement of expenses and remuneration to the expert witness is paid by the party that hired him, in accordance with the pricelist set by the Republic Commission.

Expert witness has no voting right in decision-making.

The Republic Commission issues general legal opinions concerning the application of legislation falling under its competences, in the general session with participation of the president and all members of the Republic Commission.

The general session is convened by the president of the Republic Commission, as necessary, upon request submitted by four members, or when among the panels contradiction arises regarding the application of legislation.

The manner of operation of the Republic Commission is regulated in more detail by the Rules of Procedure of the Republic Commission.

The Republic Commission adopts its Rules of Procedure by a two-third majority of votes of members and president of the Republic Commission.

## **Accountability**

### **Article 147**

The Republic Commission is accountable for its work to the National Assembly.

The Republic Commission delivers to the National Assembly an annual report on its work by 31 March of the current year for the previous year, wherein it specifically lists:

- 1) Partially or completely annulled procedures;
- 2) Procedures in which it made a decision that the filed request for the protection of rights does, or does not, suspend further activities in public procurement procedure;
- 3) Contracting authorities that failed to deliver requested documentation and reports;
- 4) Controls it performed at the contracting authorities, the results of such controls and the measures taken to remedy the identified irregularities;
- 5) Contracting authorities who failed to observe the instructions of the Republic Commission and have not remedied irregularities;
- 6) Irregularities that frequently occur in public procurement procedures and activities it has undertaken to remedy the found irregularities;
- 7) Contracts it has annulled;
- 8) Contracting authorities and their officers who were imposed with fines;
- 9) Initiated misdemeanor procedure;
- 10) Decisions it made in the misdemeanor procedure;
- 11) Decisions of the Administrative Court and the Higher Misdemeanor Court related to the decisions of the Republic Commission;

- 12) Other activities it has undertaken to protect the rights;
- 13) Procedures in which it did not act within the deadlines prescribed by this Law, and the reasons for the tardiness ;
- 14) Statistics relevant for monitoring the trends in the protection of rights;
- 15) Difficulties it faces in its work.

Where the competent Committee receives petition by either the contracting authority or bidder, or by another interested person who deems his rights were seriously violated in a procedure before the Republic Commission, or if it in another way learns information that indicate unprofessional or negligent performance of duty by members of this body, the competent Committee may request the Republic Commission to submit, within a specified deadline, a report on each individual case in which it has decided.

In the case under paragraph 3 of this Article, the Republic Commission shall deliver to the competent Committee, within the given deadline, the entire documentation on particular case, whereas the member of the Republic Commission panel who decided in that case may be invited to address the competent Committee and present orally the position of the Republic Commission regarding the case and the decision made.

## ***2. Procedure for the Protection of Rights***

### **Who may file for Protection of Rights**

#### **Article 148**

Request for the protection of rights may be filed by a bidder, applicant, candidate, i.e. interested person, who has interest in awarding contract, i.e. framework agreement in the particular public procurement procedure and who has suffered or could suffer damage due to the conduct of the contracting authority contrary to the provisions of this Law (hereinafter: the claimant).

Request for the protection of rights may be submitted by the Public Procurement Office, the State Audit Institution, public attorney and civil supervisor.

Bodies and organizations referred to in paragraph 2 of this Article are not under obligation to file a request for the protection of rights at the request of person referred to in paragraph 1 of this Article, if that person did not exercise the right to file the request.

In case of filing request for the protection of rights referred to in paragraph 2 of this Article, the same provisions of this Law that apply in case of request filed by claimant under paragraph 1 of this Article apply mutatis mutandis, except for provisions of Article 156, paragraph 1 of this Law.

The provisions of the law governing administrative proceedings apply mutatis mutandis to the issues of the protection of rights not defined by this Law.

### **Time Limits and Manner of Submission of Request for the Protection of Rights**



## Article 149

Request for the protection of rights is filed to the contracting authority, and a copy is simultaneously delivered to the Republic Commission.

Request for the protection of rights may be filed throughout the entire public procurement procedure, against any action of the contracting authority, unless otherwise specified by this Law.

Request for the protection of rights that challenges the type of procedure, the content of the invitation to submit bids or of the tender documentation shall be considered timely if received by the contracting authority seven days before the expiry of the time limit for the submission of bids at latest, and in low-value public procurement procedure and qualifying procedure if received by the contracting authority three days before the expiry of the time limit for the submission of bids, regardless of the manner of delivery and provided that the claimant, in accordance with Article 63, paragraph 2 of this Law, has indicated possible deficiencies and irregularities to contracting authority, and the contracting authority has failed to eliminate them.

Request for the protection of rights that challenges actions undertaken by contracting authority before the expiry of the time limit for the submission of bids, and after the expiry of the time limit referred to in paragraph 3 of this Law, shall be considered timely if filed until the expiry of the time limit for the submission of bids at latest.

Provisions of paragraphs 3 and 4 of this Article do not apply in case of negotiating procedure without publishing invitation to submit bids, if the claimant or a person linked to him has not participated in that procedure.

After adopting the decision on awarding contract, decision on concluding framework agreement, decision on recognizing qualification and decision on cancelling the procedure, term for filing the request for protection of rights is ten days from the day of publishing of the decision on the Public Procurement Portal, and five days in low-value public procurement procedure and when adopting decision on awarding contract based on framework agreement in accordance with Article 40a of this Law.

Actions of the contracting authority undertaken in public procurement procedure may not be challenged by a request for the protection of rights if the claimant knew or could have known the reasons for its filing before the expiry of the term for filing the request referred to in paragraphs 3 and 4 of this Article, and the claimant has failed to file it before the expiry of that term.

If the request for the protection of rights has been filed again by the same claimant in the same public procurement procedure, in such request the actions of contracting authority for which the claimant knew or could have known when filing the previous request may not be challenged.

Request for the protection of rights does not stay further activities of the contracting authority in public procurement procedure in accordance with the provisions of Article 150 of this Law.

Contracting authority publishes notification about the submitted request for the protection of rights, on the Public Procurement Portal and on its internet page no later than within a term of two days from the day of receiving the request for the protection of rights, containing data referred to in Appendix 3N.

## **Consequences of Submitted Request for the Protection of Rights and Provisional Measures**

### **Article 150**

In case of filed request for the protection of rights the contracting authority may not adopt a decision on awarding contract, decision on concluding framework agreement, decision on recognizing qualification and decision on cancelling the procedure, nor can it conclude a public procurement contract before adopting decision on the submitted request for the protection of rights, except in case of negotiating procedure referred to in Article 36, paragraph 1, item 3) of this Law.

Responsible person of the contracting authority may adopt decision that the contracting authority undertakes activities referred to in paragraph 1 of this Article before adopting decision on the submitted request for the protection of rights, where staying the activities of the contracting authority in public procurement procedure, i.e. in implementation of public procurement contract would cause great difficulties in work or operation of the contracting authority that are disproportionate to the public procurement value, and which must contain reasons.

The Republic Commission may, upon proposal of contracting authority, allow the contracting authority to undertake activities referred to in paragraph 1 of this Article before adopting the decision on filed request for the protection of rights, where staying the activities of the contracting authority in public procurement procedure, i.e. in implementation of the public procurement contract would significantly jeopardize the interests of the Republic of Serbia.

If request for the protection of rights has been filed after conclusion of the contract in accordance with Article 112, paragraph 2 of this Law, the contracting authority may not implement the public procurement contract until the adoption of decision on filed request for the protection of rights, except if requirements referred to in paragraphs 2 and 3 of this Article are met and if the contracting authority or the Republic Commission, upon proposal of the contracting authority, does not decide otherwise.

If the contracting authority considers that requirements referred to in paragraph 3 of this Article exist, it shall immediately upon receipt, without prior checking, deliver the request for the protection of rights and full documentation of the public procurement procedure to the Republic Commission with a reasoned proposal for adoption of the decision of the Republic Commission.

If the Republic Commission determines that the requirements are met, it issues a decision to accept the contracting authority's proposal referred to in paragraph 5 of this Article, within a term of five days from the day of the receipt of proposal and full documentation.

Contracting authority, without delay, delivers the decision referred to in paragraph 2 of this Article to the Republic Commission and publishes it on the Public Procurement Portal and on its internet page.

If the request for the protection of rights has been filed in case of conducting the negotiating procedure referred to in Article 36, paragraph 1, item 3) of this Law, the claimant may propose that the Republic Commission renders a decision to prohibit the contracting authority to conclude, i.e. implement the public procurement contract.

The Republic Commission shall, within a term of five days, render a decision to adopt the claimant's proposal referred to in paragraph 8 of this Article, provided that it determines that the conclusion, i.e. implementation of the public procurement contract without prior checking of the regularity of the procedure could cause substantial damage to public funds.

If the Republic Commission issues the decision referred to in paragraph 9 of this Article, the contracting authority may not conclude, i.e. implement the public procurement contract.

Contracting authority may decide to stay further activities in the request for the protection of rights was submitted, whereby it shall state in the notification about the submitted request for the protection of rights that it stays further activities in the public procurement procedure.

The provisions of this Article apply mutatis mutandis also to the framework agreement.

## **Content of Request for Protection of Rights**

### **Article 151**

Request for protection of rights contains:

- 1) Name and address of the claimant and contact person;
- 2) Name and address of the contracting authority;
- 3) Information on the public procurement that is the subject of the request, or on decision of the contracting authority;
- 4) Violations of legislation regulating the public procurement procedure;
- 5) Facts and evidence substantiating the violations;
- 6) Proof of paid fee referred to in Article 156 of this Law;
- 7) Claimant's signature.

If the submitted request for the protection of rights does not contain all mandatory elements referred to in paragraph 1 of this Article, the contracting authority shall reject such request by means of a conclusion.

Contracting authority delivers the conclusion referred to in paragraph 2 of this Article to the claimant and the Republic Commission within a term of three days from the day of adoption.

Claimant may file an appeal to the Republic Commission against conclusion of contracting authority referred to in paragraph 2 of this Article within a term of three days from the day of receipt of the conclusion, while simultaneously delivering a copy of the appeal to the contracting authority.

## **Prior Verification of Request for the Protection of Rights**

## **Article 152**

Upon receipt of request for protection of rights, the contracting authority verifies whether the request was filed within the time limit and whether it was lodged by person authorized to do so.

Where the request for protection of rights is untimely or filed by a not authorized person, the contracting authority shall issue a conclusion rejecting such request.

Contracting authority delivers the conclusion referred to in paragraph 2 of this Article to the claimant and the Republic Commission within a term of three days from the day of adoption.

Claimant may file an appeal to the Republic Commission against the conclusion referred to in paragraph 2 of this Article, within a term of three days from the day of receipt of that conclusion, while simultaneously delivering a copy of the appeal to the contracting authority.

Upon receipt of the appeal, the contracting authority shall, within a term of three days, deliver the required documentation from the public procurement procedure to the Republic Commission with a view to deciding upon appeal.

### **Actions of Contracting Authority after Preliminary Examination of Request for the Protection of Rights**

## **Article 153**

After preliminary examination, within a term of five days from the day of receipt of a duly completed request for protection of rights, the contracting authority shall:

- 1) Issue a decision to accept the request for protection of rights;
- 2) Deliver a response to the Republic Commission wherein it shall answer all allegations contained in the request for the protection of rights, and deliver full documentation from the public procurement procedure, with a view to deciding upon request for the protection of rights.

Contracting authority shall deliver the decision referred to in paragraph 1, item 1) of this Article to claimant, bidders and the Republic Commission, within a term of three days from the day of adoption.

If the contracting authority has not adopted by means of a decision referred to in paragraph 1, item 1) of this Article all allegations of the request for the protection of rights, the claimant may, by means of a written declaration, continue the procedure before the Republic Commission within a term of three days from the day of decision receipt, whereof he simultaneously notifies the contracting authority.

In the case referred to in paragraph 3 of this Article, the contracting authority shall, within a term of three days from the day of receipt of the claimant's written declaration, deliver full documentation from the public procurement procedure to the Republic Commission.

In the case referred to in paragraph 1, item 2) of this Article, the contracting authority shall notify the claimant in writing, within a term of three days from the day of request sending to the Republic Commission.

After receiving written notice on withdrawal of the request for protection of rights, the contracting authority, i.e. the Republic Commission shall issue a conclusion to terminate procedure for the protection of rights.

## **Procedure before the Republic Commission**

### **Article 154**

Upon receipt of the claimant's written declaration for continuation of procedure before the Republic Commission or contracting authority's response referred to in Article 153 of this Law, the Republic Commission establishes whether:

- 1) The request for protection of rights, i.e. written declaration has been filed within the time limit;
- 2) The claimant is authorized to proceed;
- 3) The request contains all mandatory elements referred to in Article 151 of this Law.

The Republic Commission shall issue a conclusion to reject the request for protection of rights if it determines that some of the requirements referred to in paragraph 1, items 1) to 3) of this Article have not been met.

Prior to rendering its decisions, the Republic Commission may demand additional documentation, data, explanations and opinions from contracting authority, claimant or other participants in the procedure, the Public Procurement Office and other persons, and to get insight into other documents of the parties involved in public procurement procedure, as well as to collect other data for the purpose of adopting the decision.

All persons and bodies referred to in paragraph 4 of this Article shall act within time line set by the Republic Commission in its request for obtaining documentation, data, clarifications and opinion.

In case that the bidder or the contracting authority failed to deliver the requested documentation, data, clarifications and opinion within the deadline referred to in paragraph 5 of this Article, the Republic Commission shall adopt a decision according to the state of available evidence in the case, i.e. the suspicion resulting from the lack of cited evidence shall be taken at the expense of the defaulting party.

## **Holding Oral Hearing**

### **Article 155**

Parties to the procedure may propose holding of oral hearing, if the complexity of factual or legal situation requires so.

Claimant may propose holding of oral hearing in the request for the protection of rights, and the contracting authority in its response to the request.

The Republic Commission decides on proposal for holding oral hearing.

Oral hearing is public and is held in the premises of the Republic Commission.

The public shall be excluded from the process, if necessary to protect business secret in terms of the law governing protection of business secret, or to protect data in terms of the law governing data secrecy.

Minutes are kept during oral hearing.

## **Fees and Procedure Expenses**

### **Article 156**

Claimant of the request for protection of rights shall pay a fee to a specified account of the budget of the Republic of Serbia, in the amount of:

- 1) RSD 60,000 in low-value public procurement procedure and negotiating procedure without publishing invitation to bid;
- 2) RSD 120,000 if the request for protection of rights is filed before opening of bids and if the estimated value does not exceed RSD 120,000,000;
- 3) RSD 250,000 if the request for protection of rights is filed before opening of bids and if the estimated value exceeds RSD 120,000,000;
- 4) RSD 120,000 if the request for protection of rights is filed after opening of bids and if the estimated value does not exceed RSD 120,000,000;
- 5) RSD 120,000 if the request for protection of rights is filed after opening of bids and if the sum of the estimated values of all disputed lots does not exceed RSD 120,000,000, provided that procurement is formulated in lots;
- 6) 0.1% of the estimated value of public procurement, i.e. price offered by the bidder to whom the contract was awarded, if the request for protection of rights is filed after opening of bids and if that value exceeds RSD 120,000,000;
- 7) 0.1% of the sum of the estimated values of all disputed lots of public procurement, i.e. price offered by the bidders to whom contracts were awarded, if the request for the protection of rights is filed after opening of bids and if that value exceeds RSD 120,000,000.

Each party to the procedure bears expenses resulting from its actions.

If request for the protection of rights is well-founded, contracting authority must compensate the expenses incurred in the process of protection of rights to the claimant, upon his written request.

If request for the protection of rights is not well-founded, the claimant shall compensate the expenses incurred in the process of protection of rights to the contracting authority, upon its written request.

If request for the protection of rights is partially accepted, the Republic Commission decides whether each party shall bear their own expenses or whether the expenses shall be divided proportionately to the accepted request for protection of rights.

The parties shall precisely state in their request the expenses whose compensation they seek.

Compensation of expenses may be requested up to the moment of adoption of decision by the contracting authority, i.e. the Republic Commission, on the submitted request for protection of rights.

Republic Commission makes the decision on expenses. Decision of the Republic Commission is an enforceable document.

## **Decision of the Republic Commission**

### **Article 157**

The Republic Commission decides within the limits of filed request for the protection of rights and shall address all allegations of the claimant, as well as violations which the claimant has been unaware of, and which have influenced the contracting authority's decision in public procurement procedure.

The Republic Commission also examines *ex officio* whether the legal requirements for application of certain public procurement procedure are met, whether the provisions of the law were violated due to which the public procurement contract may be annulled or the contract is considered null and void, as well as whether there are reasons due to which the public procurement procedure may not be finalized in a lawful manner.

In the case referred to in paragraph 2 of this Article, the Republic Commission may continue the procedure even if the claimant withdraws its request for the protection of rights.

The Republic Commission shall analyze evidence which it deems relevant for adopting a correct and lawful decision on the submitted request for the protection of rights.

By its conclusion, the Republic Commission:

- 1) Refuses request for protection of rights, i.e. written declaration on continuation of procedure before the Republic Commission;
- 2) Terminates the procedure on the grounds of written notice on withdrawal of request for the protection of rights, received before the adoption of decision;
- 3) Refuses the appeal as inadmissible, untimely, or lodged by an unauthorized person;
- 4) Refuses request for initiation of misdemeanor proceedings.

By its decision, the Republic Commission:

- 1) Accepts request for the protection of rights as well-founded, wholly or partially annuls the public procurement procedure;
- 2) Refuses request for the protection of rights as unfounded;
- 3) Confirms or annuls the conclusion of the contracting authority;
- 4) *(deleted)*
- 5) Accepts or refuses proposal of the contracting authority referred to in Article 30, paragraph 3 of this Law;
- 6) Accepts or refuses proposal referred to in Article 150, paragraph 5 and Article 150, paragraph 8 of this Law;
- 7) Imposes fines;
- 8) Annuls the contract;
- 9) Decides in misdemeanor proceedings.

The Republic Commission shall provide reasons for its decision and may order the contracting authority to take certain actions within a term not longer than 25 days for the sake of correct and lawful completion of the relevant public procurement procedure.

### **Time Limit for Adopting and Delivering Decision**

#### **Article 158**

The Republic Commission shall issue a decision on the request for the protection of rights within a term of 20 days from the day of the receipt of full documentation needed to establish the facts and to decide.

Republic Commission shall decide upon appeal against the conclusion of the contracting authority within a term of eight days from the day of receiving the appeal.

Time limit referred to in paragraph 1 of this Article, exceptionally, in particularly justifiable cases, may be extended for 15 days, whereof the claimant and the contracting authority are notified, together with explanation for extension of the time limit.

The Republic Commission shall deliver the decision referred to in para. 1 and 2 of this Article to contracting authority, claimant and the selected bidder, within a term of five days from the day of adoption.

Immediately after being delivered to parties in the procedure, the decision of the Republic Commission is published on the internet page of the Republic Commission and on the Public Procurement Portal.



Contracting authority shall notify all participants in the procedure of the adopted decision of the Republic Commission.

## **Right to Administrative Dispute**

### **Article 159**

No appeal may be lodged against decision of the Republic Commission.

Administrative dispute may be initiated against decision of the Republic Commission within a term of 30 days from the day of the receipt of the decision.

Administrative dispute may also be initiated in case where the Republic Commission has not adopted and delivered a decision within time limits set forth by Article 158 of this Law.

Initiation of administrative dispute does not postpone the enforcement of the decision of the Republic Commission.

## ***3. Special Competences of the Republic Commission***

### **Delivering Reports and Documentation**

#### **Article 160**

Contracting authority shall act pursuant to instructions of the Republic Commission contained in its decision within the term prescribed by that decision.

The Republic Commission may demand from the contracting authority to submit a report, documentation and statements of the representative of the contracting authority about the implementation of the decision of the Republic Commission.

Contracting authority shall submit the report, documentation and statements referred to in the previous paragraph within the time limit defined by the Republic Commission.

### **Control at Contracting Authority's Premises**

#### **Article 161**

Members of the Republic Commission may conduct control of the execution of the Republic Commission's decision.

The Republic Commission notifies the contracting authority about the conducting of control, no later than three days before the start of control.

In case of reasonable doubt of the risk of removal or changing the evidence located at the contracting authority, an unannounced control may be conducted at the contracting authority's premises.

Control at the contracting authority's premises is performed by at least two members of the Republic Commission's panel which has been deciding in the procedure regarding which the control is conducted.

Minutes are kept on the conducted control at the contracting authority's premises.

Member of the Republic Commission who conducts the control is authorized to:

- 1) Inspect and copy the documentation related to the subject matter of the subject public procurement;
- 2) Seal the business premises and documents during control;
- 3) Take statements from representatives of the contracting authority and other employees working at the contracting authority, and where special written statement is necessary, he shall set a deadline for submission of statement to the Republic Commission.

Contracting authority's representatives are entitled to be present during control and to give their objections which are recorded in the minutes of the control.

## **Fine**

### **Article 162**

The Republic Commission shall render a decision to impose a fine to contracting authority in the amount ranging from RSD 80,000 to RSD 1,000,000, and to the responsible person of the contracting authority in the amount ranging from RSD 20,000 to RSD 80,000, if the contracting authority:

- 1) Upon filed request for the protection of rights, fails to act in the manner and within the deadline set by Article 153, paragraph 1 of this Law;
- 2) Fails to supply additional documentation, data, clarifications and opinions pursuant to request of the Republic Commission and within the deadline set by the Republic Commission;
- 3) Fails to send a report and statements of the contracting authority's representative about the executed decision of the Republic Commission;
- 4) Fails to enable control in accordance with Article 161 of this Law;
- 5) Did not act pursuant to the decision of the Republic Commission.

The fine referred to in paragraph 1 of this Article is imposed by the panel of the Republic Commission that decides on the request for protection of rights.

The Republic Commission publishes the decision referred to in paragraph 1 of this Article on its internet page.

## **Annulment of Contract**

## **Article 163**

The Republic Commission may, on its own initiative, or upon request of the claimant or an interested party, annul the public procurement contract if it determines that contracting authority:

- 1) Concluded the public procurement contract by applying the negotiating procedure without prior invitation to submit bids, in absence of requirements prescribed for such procedure by this Law and without publishing notification on the initiation of the procedure and the decision on awarding contract;
- 2) Concluded the public procurement contract before expiry of the time limit for filing the request for protection of rights;
- 3) Concluded the public procurement contract after the filing of request for the protection of rights and before the decision of the Republic Commission;
- 4) Concluded the public procurement contract acting in contravention with the decision of the Republic Commission under Article 150 of this Law;
- 5) Concluded public procurement contract by violating provisions and conditions of the framework agreement.

Request for annulment of contract is submitted together with the request for protection of rights or within a term of 30 days from the day of learning the reason for annulment, and no later than a year after the contract has been concluded.

By annulment the public procurement contract is terminated, and the contracting parties shall return what they have received on the basis of such contract.

If what has been received on the basis of the annulled public procurement contract cannot be returned, or if the nature of what has been received contradicts its return, the contracting authority shall pay to *bona fide* supplier for the supplied goods, provided services or performed works.

If the annulment of the public procurement contract would have disproportionate consequences for the work or operation of the contracting authority or the interests of the Republic of Serbia, the Republic Commission shall not annul the public procurement contract, but may reduce the duration of contract, or impose a fine referred to in Article 162 of this Law.

The Republic Commission shall file a complaint for determining nullity of the public procurement contract when it learns in any manner that the concluded public procurement contract is null and void.

## **Ban on Abuse of Request for Protection of Rights**

### **Article 164**

It is banned to file a request for protection of rights for purposes other than those for which that right has been recognized.

The Republic Commission shall impose a fine referred to in Article 162 of this Law to the claimant whom it finds to have abused the request for protection of rights.

## **Misdemeanor Proceedings**

### **Article 165**

The Republic Commission conducts misdemeanor proceedings in the first instance for misdemeanors provided for by this Law.

Misdemeanor proceedings are conducted by the panel of the Republic Commission in whose work those members of the Republic Commission who participated in the work of the panel which decided in the procedure for the protection of rights related to the same procurement procedure, may not participate.

Misdemeanor proceeding before the Republic Commission is initiated at the request of the Public Procurement Office, the State Audit Institution, another authorized body, or *ex officio*, immediately after learning of the misdemeanor.

Appeal may be lodged to the Higher Misdemeanor Court against the first instance decision.

## **Proposal to Remove Responsible Person from Office**

### **Article 166**

The Republic Commission may submit a proposal for removal from office the manager or responsible person of the contracting authority for whom it establishes that, in spite of imposed fines in the procedure for the protection of rights or in misdemeanor proceeding, fails to act pursuant to decisions of the Republic Commission, or continues to seriously violate the provisions of this Law.

The proposal for removal from office is submitted to the body in charge of supervision over work, i.e. operation of the contracting authority.

## **4. Special Authorization of Organization authorized for Protection of Competition**

### **Article 167**

Organization authorized for protection of competition may ban a bidder or an interested party from participating in public procurement procedure, where it determines that the bidder or the interested party violated competition in public procurement procedure within the meaning of the law governing competition protection.

The measure referred to in paragraph 1 of this Article may last up to two years.

The decision referred to in paragraph 1 of this Article may be challenged in administrative dispute to be initiated within a term of 30 days from the day of receipt of the decision.

## **IX. NULLITY OF CONTRACTS**

## ***Null and Void Public Procurement Contracts***

### **Article 168**

Public procurement contracts are null and void:

- 1) If concluded without conducted prior public procurement procedure which the contracting authority has been obliged to conduct according to the provisions of this Law;
- 2) If concluded in contravention of the provisions of this Law governing prevention of corruption and conflict of interest;
- 3) If the contracting authority authorizes a third party, who is not a contracting authority, to conclude the contract in order to avoid the application of this Law;
- 4) If they represent amendments and additions to the original contract concluded in contravention of the provisions of this Law;
- 5) If concluded contrary to the decision of the Republic Commission.

## **X. PENAL PROVISIONS**

### ***Misdemeanors of Contracting Authority***

#### **Article 169**

Contracting authority shall be fined from RSD 100,000 to RSD 1,000,000 for a misdemeanor, if:

- 1) It fails to protect data on a bid and the bidder (Article 14);
- 2) It fails to keep records of all phases in public procurement procedure, fails to keep records on concluded public procurement contracts, or fails to keep documentation from public procurement procedure (Article 16);
- 3) It fails to perform communication in the manner prescribed by this Law or fails to publish internal bylaw and internal plan for preventing corruption in public procurement (Art. 20, 21 and 22);
- 4) It fails to publish or fails to deliver invitation to submit bids, tender documentation, amendments and additions to tender documentation, or response to the request for clarification of tender documentation and other ads (Art. 57, 62 and 63);
- 5) It fails to observe the provisions on setting and using technical specifications and standards (Articles 70-74);
- 6) It makes a decision on awarding contract without meeting the requirements for applying exemption (Article 107, paragraph 4);

- 7) It fails to render a decision within the deadline referred to in Article 108, paragraph 2 of this Law;
- 8) After having cancelled the public procurement procedure due to reasons foreseen in Article 109, paragraph 2 of this Law, it re-initiates public procurement procedure in the same budget Year, i.e. within the subsequent six months;
- 9) It fails to enable the bidder or applicant to have insight into documentation on the conducted public procurement procedure (Article 110);
- 10) It fails to deliver a report to the Public Procurement Office (Art. 132 and 133);
- 11) It does not have an employed public procurement officer, or if it fails to enable a person employed on tasks of public procurement to acquire certificate for public procurement officer (Article 134).

For the misdemeanor referred to in paragraph 1 of this Article a responsible person of the contracting authority shall also be punished with a fine ranging from RSD 30,000 to RSD 80,000.

Contracting authority shall be punished for a misdemeanor with a fine ranging from RSD 200,000 to RSD 1,500,000, if:

- 1) It procures goods, services or works without applying this Law when there were no reasons for exemption of application of this Law (Art. 7, 7a, 122 and 128);
- 2) It fails to reject bid offered by persons involved in planning of public procurement, preparing tender documentation or its certain parts, or if those persons collaborated with the bidder (Article 23);
- 3) It concludes public procurement contract in case when conflict of interest exists (Articles 29 and 30);
- 4) It conducts public procurement procedure which is not open or restrictive, without meeting necessary requirements for such procedure (Articles 34-39);
- 5) It fails to adopt public procurement plan, fails to publish public procurement plan or if it fails to observe the rules on drafting public procurement plan (Article 51);
- 6) It initiates public procurement procedure without meeting necessary conditions for the initiation of the procedure (Article 52);
- 7) (*Deleted*);
- 8) It concludes the contract without fulfilled requirements (Article 112);
- 9) It amends the public procurement contract contrary to the provisions of Article 115 of this Law;

10) After filed request for the protection of rights, it renders a decision, i.e. concludes a contract, or if contrary to the decision of the Republic Commission, it concludes or implements the public procurement contract (Article 150);

11) It fails to reimburse expenses of the procedure for the protection of rights to the claimant pursuant to decision of the Republic Commission (Article 156, paragraph 3);

12) It fails to act according to instructions contained in the decision of the Republic Commission within the time limit set in that decision (Article 157).

For misdemeanor referred to in paragraph 3 of this Article the responsible person of the contracting authority shall also be punished with a fine ranging from RSD 80,000 to RSD 150,000.

### ***Bidder's Misdemeanors***

#### **Article 170**

Bidder, i.e. applicant shall be punished for a misdemeanor with a fine ranging from RSD 100,000 to RSD 1,000,000, if:

- 1) He fails to protect confidential data about the contracting authority (Article 15);
- 2) He acts contrary to the provisions of Article 25 of this Law;
- 3) He fails to notify the contracting authority on the alterations of data, or if it supplies inaccurate data on fulfillment of requirements for participation in the procedure, or gives incorrect information concerning his professional references (Article 77);
- 4) He hires a person in the role of a subcontractor who was not stated in the bid or in public procurement contract in contravention to the provisions of this Law (Article 80);
- 5) Based on the decision by the Republic Commission, he fails to reimburse the expenses of procedure for protection of rights to the contracting authority (Article 156, paragraph 4).

For the misdemeanor referred to in paragraph 1 of this Article a responsible person of the bidder shall also be imposed with a fine ranging from RSD 30,000 to RSD 80,000.

For the misdemeanor referred to in paragraph 1 of this Article, a sole trader, as bidder, i.e. applicant, shall be imposed with a fine ranging from RSD 30,000 to RSD 200,000.

For the misdemeanor referred to in paragraph 1 of this Article, a natural person, as the bidder, i.e. applicant, shall be imposed with a fine ranging from RSD 30,000 to RSD 80,000.

For the misdemeanor referred to in paragraph 1, item 2) of this Article, a person commissioned to work shall be imposed with a fine ranging from RSD 50,000 to RSD 150,000.

### ***Statute of Limitations***

## **Article 171**

Statute of limitations for prosecuting misdemeanors occurs upon expiry of three years from the day of committed misdemeanor, referred to in Art. 169 and 170 of this Law.

# **XI. TRANSITORY AND FINAL PROVISIONS**

## ***Initiated Public Procurement Procedures***

### **Article 172**

Public procurement procedures initiated before the day this Law started applying are governed by legislation in force at the time they were commenced.

Decisions on recognizing qualification made in restrictive and qualifying procedure in compliance with regulations that were in force up to the entry into force of this Law, cease to apply, at the latest, six months from the day this Law enters into force.

## ***Initiated Procedures for Protection of Rights***

### **Article 173**

The procedures for the protection of rights initiated before this Law began applying are governed by the regulations under which they were initiated.

## ***Harmonization of Activities of the Administration for Joint Services***

### **Article 174**

Within a term of six months from the day of entry into force of this Law, the Government shall provide adequate working conditions for the Administration for Joint Services in accordance with its competences set forth by this Law, and especially concerning staff and technical capacities.

The Administration for Joint Services commences to perform tasks of a body for centralized public procurements within a term of eight months from the day of entry into force of this Law.

## ***Harmonization of Activities of the Public Procurement Office and the Republic Commission***

### **Article 175**

Within a term of six months from the day of entry into force of this Law, the Government shall provide adequate conditions for harmonization of activities of the Public Procurement Office and the Republic Commission in accordance with their competences under this Law.

The Government shall ensure unhindered running of the Public Procurement Portal within a term of two months from the day of entry into force of this Law.



On the day this Law enters into force, the Republic Commission proceeds with its tasks in compliance with the provisions of the Public Procurement Law ("Official Herald of RS", No. 116/08) until the day of this Law starts applying.

Mandates of the president and members of the Republic Commission appointed pursuant to the Public Procurement Law ("Official Herald of RS", No. 116/08), cease on the day this Law starts applying.

President and members of the Republic Commission shall be appointed in accordance with the provisions of this Law within a term of 90 days from the day this Law enters into force.

President and members of the Republic Commission appointed pursuant to the provisions of this Law enter office on the day of commencement of application of this Law.

### ***Adoption of Bylaws***

#### **Article 176**

Bylaws which are adopted pursuant to authorizations under this Law shall be adopted within a term of three months from the day this Law enters into force.

Bylaws referred to in Article 21, paragraph 6 and Article 22, paragraph 2 of this Law shall be adopted within a term of nine months from the day this Law enters into force.

### ***Repealing Previous Law and Bylaws***

#### **Article 177**

As of the day of commencement of application of this Law, the Public Procurement Law ("Official Herald of RS", No. 116/08) and bylaws adopted pursuant to that law cease to be in force.

As of the day of commencement of application of this Law, Article 5, paragraphs 1 and 5 of the Law on Stimulating the Construction Industry of the Republic of Serbia in the Environment of the Economic Crisis ("Official Herald of RS", Nos. 45/10, 99/11, and 121/12) cease to be in force.

### ***Entry into Force and Commencement of Application***

#### **Article 178**

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia", and is applied as of 1 April 2013, with exception of the provisions of Article 78 of this Law which are applicable as of 1 September 2013.

## ***INDEPENDENT ARTICLES OF THE LAW ON AMENDMENTS AND ADDITION TO THE PUBLIC PROCUREMENT LAW***

*("Off. Herald of RS", No. 14/2015)*

## **Article 2**

The public procurement procedures initiated until the day of entry into force of this Law are governed by the regulations under which they have been initiated.

## **Article 3**

The procedures for protection of rights initiated until the day of entry into force of this Law are governed by the regulations under which they have been initiated.

## **Article 4**

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia".

## ***INDEPENDENT ARTICLES OF THE LAW ON AMENDMENTS AND ADDITIONS TO THE PUBLIC PROCUREMENT LAW***

*("Off. Herald of RS", No. 68/2015)*

### **TRANSITIONAL AND FINAL PROVISIONS**

## **Article 86**

Bylaws that are adopted in accordance with the provisions of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15), shall be harmonized with the provisions of this Law within a term of 60 days from the day of its entry into force.

Until the adoption of bylaws pursuant to authorizations under this Law, bylaws which are not contrary to this Law and which were adopted pursuant to the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) shall be applied.

## **Article 87**

Contracting authority shall adopt and publish on its internet page the internal bylaw for preventing corruption in public procurement referred to in Article 21, paragraph 7 of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) within a term of three months from the day of entry into force of this Law.

Contracting authority shall publish on its internet page the internal bylaw referred to in Article 22 of the Public Procurement Law ("Official Herald of RS", Nos. 124/12 and 14/15) within a term of 60 days from the entry into force of this Law.

## **Article 88**

The public procurement procedures initiated until the day of entry into force of this Law are governed by regulations under which they have been initiated.

#### **Article 89**

The procedures for protection of rights are governed by regulations under which public procurement procedures have been initiated to which the protection of rights relates.

#### **Article 90**

Two new members of the Republic Commission shall be elected within a term of 90 days from the day of entry into force of this Law.

#### **Article 91**

As of the day of entry into force of this Law the provisions of Art. 12-18 of the Law on the Elimination of Consequences of Floods in the Republic of Serbia ("Official Herald of RS", No. 75/14) cease to be in force.

#### **Article 92**

This Law enters into force on the eighth day from the day of publication in the "Official Herald of the Republic of Serbia", with exception of the provisions of Article 24 of this Law that are applicable as of 1 January 2016.

### **Appendix 1**

## **SUBJECT MATTER OF PUBLIC PROCUREMENT OF SERVICES**

Category	
No.	Subject matter

1. Maintenance and repair services;
2. Land transport services (excluding railway transport services), including transport services in armored vehicles and courier services (other than postal transport);
3. Services of air transport of passengers and cargo (other than postal transport);
4. Land and air postal transport (other than railway transport services);
5. Electronic communication services;
6. Financial services:
  - Insurance services;

- Banking and investment services (other than financial services referred to in Article 7 of this Law);

7. Computer and other related services;

8. Services of research and development;

9. Accounting, auditing and bookkeeping services;

10. Services in the field of market research and public surveys;

11. Management consulting services and other related services (other than arbitration, settlement and related services);

12. Architectural services; engineering services; services of urban planning and landscape architecture; services of technical testing and analyses; services of energy audit and energy services;

13. Advertising services;

14. Services of cleaning of buildings and real estate management services;

15. Publishing and printing services on a part-time or contractual basis;

16. Waste removal, sanitary and other related services;

17. Hotel and restaurant services;

18. Railway transport services;

19. River transport services;

20. Additional and auxiliary transport services;

21. Legal services (other than legal services referred to in Article 7 of this Law);

22. Personnel recruitment services;

23. Investigative and security services (other than security services provided by transport in armored vehicles);

24. Education services and vocational training services;

25. Health care and social services;

26. Recreational, cultural and sports services;

27. Other services.

## **Appendix 2**

### **SERVICES REFERRED TO IN ARTICLE 39a**

Category	
No.	Subject matter
1.	Health care and social services;
2.	Legal services (other than procurement of legal services referred to in Article 7 of this Law);
3.	Hotel and restaurant services;
4.	Education services and vocational training services;
5.	Recreational, cultural and sports services.

## **Appendix 3**

### **CONTENT OF PROCUREMENT AD**

#### **A**

#### **Prior Notice**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Estimated date of publication of the invitation to submit bids and for conclusion of the contract;
6. Number of the contracts that the contracting authority intends to conclude;
7. Special note if the public procurement contract is reserved for institutions, organizations or commercial entities for vocational training, professional rehabilitation and employment of disabled persons;
8. Special note if a framework agreement is to be concluded;
9. *(Deleted)*

#### **B**

**Invitation to submit Bids**  
**(open, restrictive, qualifying and negotiating procedure with publication of an invitation to submit bids)**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Number of lots, if the subject matter of procurement is shaped in multiple lots;
7. Special note if the public procurement contract is reserved for institutions, organizations or commercial entities for vocational training, professional rehabilitation and employment of disabled persons;
8. In case of a negotiating procedure, the reason for application and the basis under law;
9. If a framework agreement is concluded, the duration of such framework agreement;
10. In case of submitting the electronic bid, application of electronic auction or dynamic procurement system - basic information about the information system of the contracting authority and necessary technical conditions for participation;
11. In case of application of a dynamic procurement system, duration of the system;
12. In case of obligation to submit a bid with a subcontractor, the percentage of procurement value performed by the subcontractor;
13. Criterion, elements of the criterion for awarding the contract;
14. Manner of obtaining tender documents, i.e. internet address where tender documentation is available;
15. Manner of submission of bid and deadline;
16. Location, time and manner of opening of bids;
17. Conditions under which the bidders' representatives may participate in the procedure of opening of bids;
18. Deadline for rendering decision;

19. Contact person.

## C

### **Invitation to submit Bids (First phase of the restrictive procedure, qualification procedure and competitive dialogue)**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. Description of requirements of the contracting authority in case of competitive dialogue;
5. For goods and services, description of the subject matter of public procurement, name and designation from the Common Procurement Vocabulary;
6. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
7. Number of lots, if the subject of procurement is shaped in multiple lots;
8. Special note if the qualification is reserved for institutions, organizations or commercial entities for the purpose of vocational training, professional rehabilitation and employment of disabled persons;
9. In case of submission of an electronic bid - basic information about the information system of the contracting authority and the necessary technical requirements for participation;
10. In case of qualifying procedure - time period for which the qualification of candidates is recognized;
11. Manner of obtaining tender documentation, i.e. internet address where tender documentation is available;
12. Manner of bid submission and deadline;
13. Location, time and manner of opening of bids;
14. Conditions under which the bidders' representatives may participate in the procedure of opening of bids;
15. Deadline for rendering the decision;
16. Contact person.

## **D**

### **Dynamic Procurement System Notification**

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. Note that it is about the system of permanent electronic procurement;
4. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Term of duration of the system;
7. Basic information about the information system of the contracting authority and the necessary technical conditions for participation;
8. Electronic address where the tender documents are available;
9. Manner of submission of the initial bid and deadline;
10. Contact person.

## **E**

### **Invitation to participate in Design Contest**

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. Description and requirement regarding design or project;
4. Manner and deadline for submission of design or project;
5. Special note if participation is reserved for a certain profession;
6. Criterion for grading design or project;
7. Names of jury members;
8. Whether jury decision binds the contacting authority;



9. If awarded, number and value of awards;
10. Whether contract shall be concluded with the winner;
11. Deadline for rendering decision of the contracting authority;
12. Contact person.

## **F**

### **Notification of Qualification Recognition (First phase of restrictive and qualifying procedure)**

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. For goods and services, description of subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Date of update of the candidate list and deadline for the submission of bids;
6. List of candidates;
7. Invitation to submit bids;
8. Manner of obtaining tender documents, i.e. address of the internet page where tender documentation was published;
9. Contact person.

## **G**

### **Notification of Initiation of Procedure (Negotiating procedure without publication of an invitation to submit bids)**

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;

4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Number and date of conclusion of the originally concluded contract in case of negotiating procedure referred to in Article 36, paragraph 1, items 4) and 5) of this Law;
6. Basis for applying negotiating procedure and information justifying their application;
7. Name and address of persons to whom the contracting authority shall send the invitation to submit bids.

## **H**

### **Notification on the Extension of the Deadline for Submission of Bids, i.e. Applications**

1. Name, address and internet page of the contracting authority;
2. Type of the contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Date of publishing invitation for submission of bids/applications;
7. Date of publishing notice on the extension of the deadline;
8. Reason for the extension of the deadline;
9. Time and place for submission of bids (new deadline);
10. Time and place of opening of bids.

## **I**

### **Notification on Concluded Framework Agreement**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;

3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Number of suppliers that the agreement was concluded with;
6. Date of conclusion and period of validity of the framework agreement.

## **J**

### **Notification on Concluded Contract**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Contracted value;
6. Criterion for awarding contract;
7. Number of received bids;
8. Lowest and highest price offered;
10. Lowest and highest offered price of acceptable bids;
11. Part or value of the contract to be executed through a subcontractor;
12. Date of issuance of the decision on awarding the contract;
13. Date of conclusion of contract;
14. Basic information on supplier;
15. Period of contract validity;
16. Circumstances constituting basis for amending the contract.

## **K**

### **Notification on Results of Contest**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Description and request in relation to the project or design;
4. Total number of participants;
5. Number of foreign participants;
6. Contest winner;
7. Awards.

## **L**

### **Notification on Cancellation of Public Procurement Procedure**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. For goods and services, description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
5. Estimated value of public procurement;
6. Number of submitted bids and information on bidders;
7. Reason for procedure cancellation;
8. Information on when the procedure is to be carried out again.

## **M**

### **Information in Decision on Amendments to Public Procurement Contract**

1. Name and address of the contracting authority;
2. Type of contracting authority;

3. For goods and services, description of subject matter of procurement, name and designation from the Common Procurement Vocabulary;
4. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, or name and designation from the Common Procurement Vocabulary;
5. Original contract value;
6. Amended contract value;
7. Objective reasons for amending the contract, along with an excerpt from the tender documentation or corresponding regulation that constitutes the basis for such amendment.

## **N**

### **Notification on Filed Request for Protection of Rights**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;
5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;
6. Phase of public procurement procedure wherein the request for protection of rights has been filed;
7. Information whether contracting authority stops further activities in public procurement procedure.

## **O**

### **Notification on Annulment of Public Procurement Procedure**

1. Name, address and internet page of the contracting authority;
2. Type of contracting authority;
3. Type of public procurement procedure;
4. For goods and services: description of the subject matter of procurement, name and designation from the Common Procurement Vocabulary;

5. For works, nature and extent of works and basic characteristics of works, place of execution of works, code from classification of activities, i.e. name and designation from the Common Procurement Vocabulary;

6. Grounds for annulment of procedure.