

On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**ENACTMENT**  
**PROCLAIMING THE LAW ON PUBLIC PROCUREMENTS**  
**(Official Gazette of the Republic of Montenegro, No 46/06 as of 21<sup>st</sup> July 2006)**

I hereby proclaim the Law on Public Procurements, adopted by the Parliament of the Republic of Montenegro at the seventh meeting of the first regular session in 2006, held on the 10<sup>th</sup> of July 2006.

Number: 01-1014  
Podgorica, 18 July 2006  
President of the Republic of Montenegro  
Filip Vujanovic, signed

## **Law on Public Procurements**

### **I GENERAL PROVISIONS**

#### **Subject of the Law** **Article 1**

This Law shall regulate: the conditions, manner and procedure for procurement of goods and services and award of execution of works in cases where the contracting authorities for procurements are obligors determined by this Law; the responsibilities of the administration body in charge of public procurement activities; the control of legality of public procurement procedures and protection of rights of participants in the public procurement procedure; the manner of maintaining statistics on public procurements and other matters relevant to the public procurements.

#### **Obligors under this Law** **Article 2**

Under this Law, the following shall be obliged to carry out procurement of goods and services and award the execution of works:

- 1) state bodies, bodies of state administration, organizations, institutions, and other users of funds of the budget of the Republic of Montenegro (hereinafter: the Republic) and other public funds;

- 2) bodies of local self-government, bodies of local government and organizations and institutions that are users of the budget funds of a local self-government unit and other public funds;
- 3) organizations for compulsory social insurance, established in accordance with laws regulating these types of insurance;
- 4) business organizations and other legal entities where the Republic or a local self-government unit or other obligors under this Law own more than 50% of shares or equity interests or have more than half of the members in a management body, and which perform the activity of a public interest and do not have an industrial or commercial character;
- 5) legal entities that use for a public procurement funds that are provided as subsidy or guarantee by the Republic or a local self-government unit or another obligor under this Law.

The administration body competent for public procurement activities shall prepare and publish the list of obligors under this Law.

The list of obligors under this Law referred to in paragraph 2 of this Article shall be updated at the latest until the 31<sup>st</sup> of December each year.

### **Cases of Exemption from the Application of the Law** **Article 3**

This Law shall not apply to:

- 1) procurements of arms, ammunition and other materials necessary for defense and safety of the Republic, which are proclaimed as confidential by law and other regulation, the execution of which must be followed by special security measures;
- 2) procurements executed on the basis of international agreement or contract concluded between the Republic and one or several states and international organizations, relating to:
  - a) delivery of goods, provision of services, execution of works, by which a joint application or realization of the project by signatory states is envisaged;
  - b) stationing and deploying military forces;
  - c) public procurements conducted based on a special procedure of international organization.
- 3) procurements including:
  - a) acquisition, development, production or co-production of programme material intended for radio-television broadcasting and contracts for the award of frequencies for radio-television broadcasting;
  - b) arbitration and reconciliation services, and notary' s services, except for the services referred to in Annex I, which is the integral part of this Law;
  - c) financial services regarding issuance, sale, purchase or transfer of securities or other financial instruments; specially transactions by a contracting authority, with the purpose of raising money and capital, and services of the Central Bank of Montenegro ;
  - d) services regarding employment.

This Law shall not apply to the procedure of awarding concessions and privatization of economy, as well as to sale and leasing of land, the existing buildings or other immovable property or rights arising from them, which are executed by obligors under this Law.

## Definitions Article 4

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

- 1) “**Public procurement**” shall mean a set of all actions and activities undertaken by a contracting authority for the purpose of procuring goods, performing services or executing works, for which it allocates the funds;
- 2) “**Contract of public procurement**” shall mean a written or electronic-form contract concluded between a contracting authority and bidder, the subject of which is procurement of goods, performance of service or execution of works;
- 3) “**Contract of public procurement of goods**” shall mean a written or electronic-form contract, which relates to purchase, leasing, rent or hire purchase, with or without the option to buy the goods, including necessary preparation of the location where works are to be executed and installation services performed;
- 4) “**Contract of public works**” shall mean a written contract, the subject of which is execution and/or execution and design of works relating to some of the activities determined by Annex I, or realization of the work that corresponds to requirements determined by contractual parties. The term “works” shall mean the outcome of construction or construction works taken as a whole, which itself is sufficient for fulfilling some economic or technical function;
- 5) “**Contract of public procurement of services**” shall mean a written or electronic-form contract, which relates to procurement of services not exempted from this Law. The contract of public procurement of services shall represent also a contract:
  - a) the subject of which are both goods and services, if the value of services exceeds the value of goods included in the contract;
  - b) the subject of which are services under Annex I of this Law that are incidental to the main contract;
- 6) “**Contracting authority**” shall mean the obligor referred to in Article 2 of this Law implementing a public procurement procedure and allocating funds for that purpose;
- 7) “**Bidder**” shall mean any legal entity or physical person submitting a tender for delivery of goods, provision of services or execution of works;
- 8) “**Tender price**” shall mean the price determined by the bidder in his tender on the basis of the published invitation;
- 9) “**Abnormally low price**” shall mean a price stated in the tender, so low that causes suspicion of a contracting authority about the possibility to carry out a public procurement;
- 10) “**Criterion**” shall mean an element used for evaluation, comparison and grading of submitted tenders;

- 11) **“Qualification requirement”** shall mean a requirement stated in the invitation to bid that must be fully met in the tender, since it represents a precondition for determining capacities of the bidder;
- 12) **“Open procedure”** shall mean a procedure where any interested business organization or entrepreneur may submit a tender;
- 13) **“Restricted procedure”** shall mean a procedure where any interested business organization or entrepreneur may ask to participate, but only business organizations or entrepreneurs that are solicited may submit their tenders;
- 14) **“Negotiated procedure”** shall mean a procedure where a contracting authority contacts a business organization or entrepreneur and negotiates terms of contract with one or more than one of them;
- 15) **“Design contest”** shall mean a procedure enabling a contracting authority to insure, mostly in areas of spatial planning, urbanism, architecture and civil engineering or data processing, a plan or design selected by a Contest Jury in a competitive procedure with or without giving prizes;
- 16) **“In writing”** shall mean any expression consisting of words or numbers that can be read, reproduced and subsequently communicated, and it may contain information that are transferred and kept in electronic devices;
- 17) **Public procurement in electronic form** shall mean a procurement conducted through the electronic system for public procurement;
- 18) **Electronic system for public procurement** shall mean a computerized system in general use accessible via the Internet, which is used with the aim to provide higher efficiency and cost-effectiveness in the area of public procurements;
- 19) **“Electronic tender”** shall mean any tender or part of the tender set forth in the conditions of the invitation to bid that is stored or submitted to a contracting authority in the electronic form and which is compliant with the principles of the safe electronic operations in accordance with the Law on Electronic Signature, and which shall represent unambiguously complete and logical unit with other parts of the tender of the same bidder. A contracting authority must determine, within tender documents, the form of electronic storage and the manner of submission of documentation or part of the documentation;
- 20) **“Electronic device”** shall mean electronic equipment for processing, including digital compression, and keeping data that are being transferred, communicated and received through wire, radio, optical or other electromagnetic devices;
- 21) **“Participation request”** shall mean the request submitted to a contracting authority by any interested person in the restricted procedure;
- 22) **“Updating criteria and requirements”** shall mean periodical adjustment carried out by a contracting authority during the qualification procedure, taking into account market conditions, development and other circumstances;
- 23) **“Tender price discount”** shall mean the method for determining a price that the bidder may offer only when the contract is awarded by lots, and a contracting authority cannot consider such a method as element for additional privilege;
- 24) **“Standard public procurement forms”** shall mean forms determined by the administration body in charge of public procurement activities, created in accordance with this Law;

- 25) **“Public funds”** shall mean budgetary funds and other funds, the grounds and sources of which are determined by law or other regulation;
- 26) **“Tender documents”** shall mean documents prepared by a contracting authority defining in greater details the subject of procurement, terms and procedure for selecting technical specification and characteristics and other relevant documents,
- 27) **“Public procurement by lots”** shall mean procurement, the subject of which is divided into several separate related units, and as such designated in the invitation for public bidding and tender documents;
- 28) **“Framework agreement”** shall mean agreement of limited duration concluded between a contracting authority and bidder for the purpose of determining a framework for contracts that shall be awarded within that period of time, especially with respect to subject of the contracts, and when applicable, with respect to envisaged values, scope or quantity, as well as the price.

## **Basic Public Procurement Principles**

### **Principle of Cost-Effectiveness and Efficiency Regarding the Use of Public Funds Article 5**

A contracting authority shall be obliged to provide cost-effective and rational use of public funds in a public procurement procedure and selection of the most advantageous tender.

### **Principle of Competition Article 6**

A contracting authority shall be obliged to undertake all necessary measures providing competition among potential bidders, in accordance with law.

A contracting authority cannot limit competition among bidders, especially it cannot limit potential bidders by unjustified application of restricted public procurement procedure or measures that favour certain bidders.

Entities preparing tender documents or some of its parts cannot act as bidders, sub-constructors or sub-contractors and cannot cooperate with bidders in preparing a tender, if it endangers competition.

### **Principle of Transparency of the Procedure Article 7**

Principle of transparency shall mean that public procurement procedures must be public, which is provided by announcing the invitation for public bidding and decision

on selection of the most advantageous tender in the manner prescribed by this Law and public procurement standard forms.

A bidder that participated in a public procurement procedure shall have the right to access and obtain data on the implemented public procurement procedure upon receiving the notice of contract award, in accordance with this Law.

### **Principle of Equality of Bidders Article 8**

A contracting authority must provide that all bidders in all phases of the public procurement procedure have equal treatment.

### **Rights of Bidders Whose Majority of Employees are Persons with Special Needs Article 9**

A contracting authority may in the text of invitation to public bidding and tender documents state that a contract shall be awarded under equal terms to bidders whose majority of employees are persons with special needs, who due to the nature or degree of their disability cannot perform their job under normal conditions.

### **Data and Documentation Protection and Recording the Procedure Article 10**

A contracting authority shall be obliged to keep all data on a bidder, contained in the tender, determined by law or other regulation as confidential.

A contracting authority may request protection of confidentiality of information and data that are placed at disposal of bidders when submitting technical specifications.

A contracting authority shall be obliged to keep names of bidders and submitted tenders as business secret until expiration of the deadline for opening tenders.

The person, who received the data referred to in paragraph 1 of this Article as confidential, shall be obliged to respect their confidentiality.

A contracting authority shall be obliged to record all phases and activities undertaken during implementation of a public procurement procedure.

A contracting authority shall be obliged to keep documents regarding public procurements in accordance with regulations on archive activities.

## **Language in Public Procurement Procedure**

### **Article 11**

A contracting authority shall prepare invitation to public bidding, tender documents and other documents necessary in a public procurement procedure, and it shall conduct the procedure in the language in official use in the Republic.

A contracting authority may prepare tender documents and some of its parts in a foreign language that is usually used in international trade.

A bidder shall give a tender in the language determined in the invitation for public bidding, i.e. the language in which the tender documents are written.

A contracting authority, which determines, during review and evaluation of tenders, that it is necessary to translate a part of the tender in the language officially used in the Republic, shall determine a deadline for a bidder to have this part of the tender translated.

In the case of a dispute, a version of tender documents, i.e. tender given in the language officially used in the Republic shall be relevant.

## **Currency**

### **Article 12**

A tender price, or value of a public procurement shall be denominated in euros.

## **Anti-Corruption Rules**

### **Article 13**

All contracting authorities, bidders and other participants in a public procurement procedure shall be obliged to undertake efficient and effective measures preventing corruption, misuse of official position, conclusion of the agreements for the purpose of deceiving third persons, provision of false data when submitting tenders, conflict of interest, lack of impartiality and transparency in implementation of public procurement procedures, and for that purpose, to improve high transparency standards, efficient internal audit system, open public bidding and determine objective criteria for selection and adoption of decisions.

A contracting authority shall be obliged to reject a tender, cancel a public procurement procedure or withdraw from conclusion of the contract, if it determines or has a reasonable doubt that a bidder tried to influence or tried to give or gave or accepted to give, indirectly or directly, to a public procurement officer, member of the Commission for Opening and Valuation of Tenders, or employee of a contracting authority or another person, a reward or benefit in any form, or any other value with respect to a decision or implementation of a procurement procedure, for the purpose of exerting the influence on contents of activities and decision of a contracting

authority regarding the tender, as well as due to doings, concealing, and false data presentation.

Contracting authorities shall be obliged to inform in writing bidders and the administration body in charge of public procurement activities in the cases referred to in paragraph 2 of this Article.

Contracting authorities shall be obliged to provide access and adequate information on organization and decision-making process in public procurement procedures to all interested persons.

### **Conflict of Interest Article 14**

Participants in a public procurement procedure shall be obliged to undertake necessary measures to remove the existence of conflict of interest.

Public procurement officer, members of the Commission for Opening and Valuation of Tenders, members of bodies adopting a decision on the submitted requests for protection of rights in a public procurement procedure and other persons participating directly and indirectly in a public procurement procedure, shall be obliged to timely inform a contracting authority and the administration body in charge of public procurement activities on actual or potential existence of conflict of interest.

Conflict of interest referred to in paragraph 2 shall especially occur when a person:

- (1) is a bidder, legal representative or proxy of a bidder;
- (2) is a relative in the straight line of kinship, and in collateral line up to the fourth degree, or is marital or extra-marital mate or relative in law up to the second degree, regardless whether a marriage is terminated or not;
- (3) is a guardian, adopter or adoptee of a bidder, his legal representative or proxy;
- (4) is a shareholder or member of the management bodies of a bidder;
- (5) has direct or indirect interest in a public procurement procedure, which enables personal acquisition of property, by exerting the influence on a decision-making process;
- (6) there are other circumstances causing a doubt in his impartiality.

A person who prepares tender documents and has any impact on implementation of a public procurement procedure cannot act as a bidder or sub-constructor or sub-contractor, and cannot cooperate with a bidder in preparing the tender.

Persons, who on behalf of a contracting authority, perform some of the activities of a public procurement, shall submit a statement in writing on existence or non-existence of the cases referred to in paragraphs 3 and 4 of this Article. The signed statement shall represent the integral part of the documentation of the respective public procurement.

In the case of existence of some of the cases referred to in paragraphs 3 and 4 of this Article, or if a person does not sign the statement referred to in paragraph 5 of



this Article, such a person shall be exempted from implementation of a public procurement procedure.

In the case when requests or tenders received by a contracting authority during the course of a public procurement procedure cause or may cause any conflict of interest, a contracting authority shall be obliged to undertake measures removing such conflict of interest.

### **Implementation Form of Public Procurements and Establishing Communication Article 15**

A public procurement may be implemented in a written or electronic form.

Every communication and information between a contracting authority and a bidder may be done by mail, electronic devices or combination of these means, at the choice of a contracting authority, as stated in the invitation to public bidding.

Selected communication device must be widely accessible in the manner that does not limit the access to information by bidders.

## **II PERFORMANCE OF ADMINISTRATIVE ACTIVITIES IN THE PUBLIC PROCUREMENT AREA**

### **Article 16**

The administration body competent for public procurement activities (hereinafter: the competent administration body) shall provide conditions for cost-effective, efficient and transparent use of public procurement means and establishment of competitive and equal conditions for all bidders.

### **Competencies of the Administration Body Article 17**

The competent administration body shall especially perform the following activities:

- 1) participate in drafting of laws, sub-normative regulations and other regulations on public procurements;
- 2) determine adequate standard forms for application of this Law;
- 3) monitor and analyze implementation of public procurement system from the point of view of compliance with EU law, and propose measures providing such a compliance;
- 4) provide a prior consent to contracting authorities on selection of type of the procedure in cases envisaged by this Law;

- 5) provide advising and consulting services in the public procurement area to contracting authorities, when asked to do so;
- 6) participate and cooperate in organizing a training of staff for performance of public procurement activities;
- 7) publish invitation for public bidding and decisions on awarded contracts on a website of that administration body in the cases envisaged by this Law;
- 8) improve the system of informing contracting authorities and bidders about regulations on public procurements, and publish and distribute adequate professional literature;
- 9) prepare a model of tender documents and contracts for typical public procurements;
- 10) initiate and encourage development of electronic procurement practice and communication in the public procurement area;
- 11) establish international cooperation with institutions and experts in the public procurement area;
- 12) inform the State auditing institution and submit reports to other competent bodies on cases of violation of public procurement procedures, which it finds out during performance of activities within its competence;
- 13) gather data from contracting authorities and keep adequate records;
- 14) prepare, publish and update a list of obligors under this Law on its website;
- 15) prepare uniform bases for establishing records and official lists of bidders, on the basis of data on concluded and executed contracts of public procurements;
- 16) monitor public procurement procedures, and provision of a public interest in such procedures;
- 17) publish bulletins on public procurements;
- 18) submit to the Government an annual report on public procurements in the Republic;
- 19) perform also other activities, in accordance with law.

At a request of the competent administration body, every contracting authority and bidder shall be obliged to provide access to documentation that follows up a course of the public procurement procedure to authorized officer of this body.

### **III PROCEDURE FOR AWARDING A CONTRACT OF PUBLIC PROCUREMENT**

#### **1. Types of Procedures**

##### **Article 18**

Procedures for public procurement of goods, services or execution of works shall be the following:

- a) open public procurement procedure;
- b) restricted public procurement procedure;
- c) negotiated public procurement procedure;

- d) conclusion of a framework agreement;
- e) direct solicitation of tenders (shopping method); and
- f) direct agreement.

A contracting authority shall choose, for the award of public procurement, as rule, either open or restricted procedure.

### **Value Scales Article 19**

A contracting authority, depending on a public procurement value, shall implement a public procurement procedure, as follows:

- in one of the manners envisaged by Article 18, paragraph 1, items 1 to 4 (public announcement of the invitation), in the cases when a public procurement value exceeds the amount of 10.000 euros for procurement of goods and services, i.e. 30.000 euros for procurement of works (**I value scale**);
- in the manner envisaged by Article 18, paragraph 1, item 5 (shopping method), in the cases when a public procurement value is from 2.000 to 10.000 euros for the procurement of goods and services, i.e. from 2.000 to 30.000 euros for procurement of works (**II value scale**);
- in the manner envisaged by Article 18, paragraph 1, item 6 (direct agreement), in the cases when a public procurement value is up to 2.000 euros (**III value scale**).

### **Open Public Procurement Procedure Article 20**

Open public procurement procedure shall mean a basic procurement method, for which invitation to public bidding is published, and in which all persons with interest to get a contract of public procurement may submit a tender in accordance with the requirements and conditions stated in the invitation to public bidding and tender documents.

### **Restricted Public Procurement Procedure**

#### **Article 21**

Restricted public procurement procedure may be applied only in the case when the subject matter of public procurement is:

- goods, services or construction works, that with respect to technical, staff and financial capacity, may be delivered, offered or exercised just by a limited number of bidders,
- goods, services or construction works a contracting authority continuously procures periodically and successively, and the volume of procurement and delivery time period cannot be determined in advance;

- goods, services or construction works for which the market with stable prices is established, which are not implemented in accordance with special requirements and conditions of a contracting authority.

During implementation of a restricted procedure, a contracting authority shall be obliged to:

- 1) in the first phase:
  - publish and announce invitation to public bidding ;
  - establish qualification of a bidder on the basis of data proving his legal status, business capacity, financial capacity, technical qualifications and staff qualifications;
  - select at least three qualified bidders.
- 2) in the second phase, forward the invitation to submit tenders to all qualified bidders.

Only qualified bidders may submit a tender.

In the second phase of a restricted procedure, a contracting authority may apply exclusively the criterion of the lowest offered price.

#### **Article 22**

A contracting authority shall be obliged to inform bidders, whose request for qualification is rejected, on reasons for rejecting the request that can be based exclusively on qualification requirements.

A contracting authority may exclude a bidder from a list of qualified bidders only for the reasons based on previously determined requirements.

### **Negotiated Procedure without a Prior Publication of Invitation to Public Bidding**

#### **Article 23**

A contracting authority may, exceptionally, award a contract of public procurement through a negotiated procedure without a prior publication of the invitation to public bidding, in the following situations:

- 1) Procurement of works, goods or services:
  - When not a single tender or not a single proper and acceptable tender is submitted in open and restricted procedure, provided that original requirements for the award of contract and contents of tender documents do not change significantly;
  - When due to technical or artistic requirements of a public procurement subject, or reasons related to protection of exclusive rights, the procurement may be realized only by a certain bidder;
  - When, exceptionally, due to provable reasons of extreme urgency caused by natural catastrophes, accidents and damages and other events unpredictable for a contracting authority, the minimum deadlines determined by this Law cannot be met. Circumstances

justifying extreme urgency of a procedure must not, in any case, be related to a contracting authority;

- 2) Procurement of goods:
  - When goods subject to public procurement are produced exclusively for the purpose of research, experimentation, study or development; this provision does not relate to quantity (serial) production aiming at profit generation or compensation of research and development costs;
  - In the case of additional deliveries carried out by a bidder to whom the contract has already been awarded, intended either for partial replacement of regular deliveries or for installation, or as expansion of the existing deliveries or installation, when the previous contracts are still effective; when there are no essential changes in prices and other requirements and when replacement of the bidder would oblige a contracting authority to procure material of different technical characteristics, which would result in incompatibility or disproportion of technical difficulties in its functioning and maintenance;
  - For goods offered and purchased on the Exchange market;
  - For procurement of goods under exceptionally favourable conditions either from a bidder under liquidation procedure or debtor in bankruptcy or through arrangement with creditors or in a similar procedure;
- 3) Procurement of services, when the respective contract is awarded upon the design contest conducted in accordance with provisions of Article 73 of this Law, and the contract shall be awarded to a winner or one of the winners of the contest; in the latter case, all winners of the contest shall be invited to participate in negotiations;
- 4) Procurements of services and works:
  - Not included in the originally considered project or in original contract, but which shall become necessary, due to unpredictable circumstances, for execution or performance of services or works described therein, and when such additional services or works cannot be technically or economically separated from the main contract without greater difficulties for a contracting authority. Such contracts can only be concluded with the bidder, who was awarded the main contract, and the total value of the contract awarded for additional services or works cannot exceed 25% of value of the main contract;
  - Representing repetition of similar services or works awarded to the bidder who was awarded a previous contract by the same contractual authority, provided that such services or works are in accordance with the basic project for which the first contract was awarded in accordance with open or restricted procedure. The possibility to conduct such a procedure shall be pointed out already during announcement of the invitation to public bidding for the first project, and a contracting authority shall consider the total estimated costs of subsequent services or works during evaluation of the contract value.

This procedure may be applied only during three years upon conclusion of the original contract.

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## **Negotiated Procedure with a Prior Publication of the Invitation to Public Bidding**

### **Article 24**

A contracting authority may exceptionally award a contract of public procurement through a negotiated procedure with a prior publication of the invitation to public bidding, in the following cases:

- 1) when in open and restricted procedure, it does not get any proper and acceptable tender, provided that originally determined subject of the public procurement and contents of tender documents cannot be significantly changed. It is not obligatory to publish the invitation to public bidding, in the case when a contracting authority includes in a negotiated procedure all bidders who submitted their tenders in open and restricted public procurement procedure;
- 2) when the nature of works, goods or services or risks associated to the concrete procurement do not allow total prices to be previously determined;
- 3) in case of the services referred to in item 6, Annex I and intellectual services like services including design of works, if the nature of services to be provided is such that specifications in the contract cannot be determined with sufficient preciseness to allow the award of contract by selecting the most advantageous tender, in accordance with rules regulating open or restricted procedures;
- 4) when relating to works executed exclusively for the purpose of research, testing or development, and not for the purpose of generating earnings or recovering research and development costs.

In cases referred to in paragraph 1 of this Article, a contracting authority shall negotiate with bidders about submitted tenders in order to adapt them to requirements stated in the invitation to public bidding, tender documents and additional documents, if any.

A contracting authority shall provide equal treatment of all bidders during negotiations, and it cannot provide information that gives advantage to certain bidders.

A contracting authority may envisage that the procedure is carried out in several phases in order to reduce a number of tenders to be negotiated, using award criteria stated in the invitation to public bidding or tender documents. Invitation to public bidding and tender documents, in that case, must include the possibility to have several phases of the contract award procedure.

## **Framework Agreements**

### **Article 25**

A contracting authority may conclude a framework agreement only upon implementation of open or restricted procedure in accordance with provisions of this Law.

On the basis of framework agreement concluded in accordance with paragraph 1 of this Article, a contracting authority shall have the right to separately conclude, during the entire contractual period, contracts with a successful bidder, with respect to every contract awarded on the basis of a framework agreement.

A contracting authority may consider the award of framework agreement only if one or several of the below given circumstances occur:

- a) subject of the contract are daily services or expendable goods not classified as permanent assets;
- b) subject of the contract are goods or services the prices of which or terms of delivery often change;
- c) subject of the contract are constant repairs or maintenance work;
- d) when a contracting authority should award several equal contracts within a year, and the framework agreement would provide reduction of procurement costs.

Upon conclusion of a framework agreement, its provisions cannot be changed.

Contracting authorities shall not be allowed to use framework agreements in a non-prescribed manner or in the manner preventing, limiting or distorting competition.

Duration of a framework agreement cannot be longer than 4 years, except for in exceptional cases envisaged by regulations.

If a framework agreement is concluded with one bidder, contracts based on such an agreement shall be awarded within the limits determined by the framework agreement.

For the award of such contracts, a contracting authority may contact a bidder, the party to the framework agreement, in writing, asking him to amend its tender, if necessary.

If a framework agreement is concluded with several bidders, the latter must be at least three in number, if there is sufficient number of bidders meeting selection criteria and/or acceptable tenders meeting the award criteria.

The contracts based on framework agreements concluded with several bidders may be awarded either:

- by applying requirements determined in the framework agreement without a repeat bidding procedure; or
- if all requirements are not determined by the framework agreement, when parties are again involved in bidding procedure on the basis of the same, and if necessary, more precisely formulated requirements, and where applicable, other requirements stated in specifications of the framework agreement, in accordance with the following procedure:
  - (a) for each contract to be awarded, a contracting authority, shall contact, in writing, a bidder capable to execute the contract;
  - (b) contracting authority shall determine a time limit long enough to enable submission of tenders for every individual contract, taking into account

- elements such as complexity of the subject of the contract and time necessary for sending tenders;
- (c) tenders are submitted in writing, and their contents remain confidential until the expiry of the envisaged time limit for response;
  - (d) contracting authority awards every contract to a bidder who submitted the best tender on the basis of award criteria stated in specifications of the framework agreement.

### **Prior Consent** **Article 26**

A contracting authority, prior to the commencement of a public procurement procedure, must acquire from the competent administration body a prior consent of meeting the requirements for implementation of that type of procedure, if he intends to apply:

- negotiated procedure without a prior publication of the invitation to public bidding;
- negotiated procedure with a prior publication of the invitation to public bidding; and
- award of contract through a framework agreement.

The prior consent shall be asked for in the form of a written request containing a legal ground, reasons and explanation for selecting a concrete method of procurement, proofs of meeting the requirements for application of the selected method of procurement, source of financial funds, amount of procurement and other data on procurement.

The competent administration body may ask a contracting authority to amend the request for a prior consent and submission of documentation within a certain deadline.

The competent administration body shall decide on the request of a contracting authority within 8 days as of the day of receiving the request or documentation and amended request.

A prior consent to commencing the procurement procedure shall be valid until the end of the budget or financial year.

If the competent administration body does not submit the consent within the deadline referred to in paragraph 4 of this Article, a contracting authority may commence a public procurement procedure.



## **2. Commencing the Procedure**

### **Public Procurement Plan and Provision of Funds for Public Procurement Article 27**

A contracting authority may commence a public procurement procedure, only if:

- a public procurement, in the cases envisaged by this Law, is determined in the public procurement plan of a contracting authority;
- it has provided, for that procurement, adequate funds, available for every payment envisaged by the contract.

Every contracting authority, which intends to carry out a public procurement in the following budget and business year, the amount of which exceeds 100,000 euros, shall be obliged to adopt and publish, in the manner envisaged by this Law, a public procurement plan, at the latest until the end of the previous year.

The provided funds for public procurement shall mean funds envisaged in the budget or provided in another manner envisaged by law.

If budget of the Republic, budget of local self-government unit or financial plan of another contracting authority are not adopted, a contracting authority may commence a public procurement procedure only up to the amount of funds planned in accordance with the regulation on temporary financing.

In the case of capital investments, a contracting authority must previously prepare and adopt a justification study in accordance with methodology for preparation, evaluation and execution of the justification study.

If the implementation of a public procurement procedure lasts several years, obligations due in the following years must be agreed in amounts envisaged by regulations governing the execution of the budget for each year separately.

### **Decision on Commencing the Procedure Article 28**

A contracting authority shall, prior to commencing a procurement procedure, make a decision on commencing and implementation of the procurement procedure.

The decision referred to in paragraph 1 of this Article shall, especially, include the following:

- 1) Data on a contracting authority (name, headquarters, address, unique registration number), number under which the procurement is recorded;
- 2) Subject, manner and deadline for implementing the procurement procedure;
- 3) Proof that a public procurement is determined by a public procurement plan, in the cases prescribed by Article 26, paragraph 2;
- 4) Estimated value of the public procurement;
- 5) Deadline for terminating the works, in case when the procurement subject is execution of works;

- 6) Source of funds allocated for public procurement, terms and manner of payment;
- 7) Other terms of procurement.

The head of a body, or competent body of a contracting authority shall make the decision.

### **Subject of the Procurement and its Division** **Article 29**

A contracting authority shall determine a subject of the procurement, which must be described clearly, understandably and unambiguously, so that all bidders may offer adequate goods, services and works per type, quality, price and other required characteristics and conditions.

The subject of procurement referred to in paragraph 1 of this Article may be divided into several separate units (lots), so that each unit (lot) may be contracted separately.

The bidder shall be obliged to state in the tender whether the tender relates to the entire procurement or just to certain lots.

If the bidder submits a tender for all lots, the tender must be submitted in such a manner that it can be evaluated for each lot separately.

## **3. Performance of Public Procurement Activities**

### **Public Procurement Officer** **Article 30**

Every obligor under this Law shall appoint a public procurement officer.

A person employed by the contracting authority and, as a rule, with university degree shall be appointed as the public procurement officer.

A public procurement officer shall carry out the following activities: prepare a public procurement plan, prepare text of a decision on commencing a public procurement procedure; give bidders tender documents; perform professional-administrative activities in realization of a public procurement procedure; implement and be responsible for a public procurement procedure of small value; keep documentation; keep records of public procurements; and prepare and submit reports on implemented public procurements to a head of the body or competent management body.

## **Commission for Opening and Evaluation of Tenders**

### **Article 31**

For the purpose of preparing and implementing a public procurement procedure, except for public procurement procedure of small value, a contracting authority shall be obliged to, simultaneously with adoption of the decision on commencing a public procurement procedure, establish the Commission for Opening and Evaluation of Tenders.

The Commission for Opening and Evaluation of Tenders shall have at least three members. At least one member of the Commission for Opening and Evaluation of Tenders shall be a graduated lawyer. In the Commission for Opening and Evaluation of Tenders, experts with expertise in the area subject to public procurement can be appointed, provided that at least one member of the Commission for Opening and Evaluation of Tenders must be employed with the contracting authority.

Notwithstanding paragraph 1 of this Article, the Commission for Opening and Evaluation of Tenders may be appointed, depending on the needs of a contracting authority and specificities of the public procurement subject, for a period of one year.

The Commission for Opening and Evaluation of Tenders shall prepare and implement a public procurement procedure in the manner to ensure that: tender documents are prepared in accordance with the needs of a contracting authority and provisions of the law; it shall prepare the text of invitation to public bidding; give explanations of the text of the invitation to public bidding and tender documents; implement a public opening of tenders; evaluate compliance of submitted tenders with requests given in the text of invitation to public bidding and tender documents; establish suitability of bidders; carry out review, evaluation and comparison of the submitted tenders; prepare a report on opening and evaluation of tenders; and propose to a contracting authority adoption of a decision on award of contract to a bidder whose bid was evaluated by the highest number of points.

## **4. Determining a Public Procurement Value**

### **Article 32**

A contracting authority shall be obliged to indicate estimated value of a public procurement in the invitation for public bidding.

A contracting authority shall be obliged to comply with requirements and manner of procurement determined by this Law in accordance with established values and it cannot, during a budget or financial year, divide a procurement subject that represents a single whole with the intention to avoid application of this Law and prescribed procurement procedure.

Standard forms of public procurements to be adopted by a competent administration body shall regulate more detailed requirements and manner for determining a public procurement value.

## **5. Public Procurement Transparency**

### **Publication Article 33**

In order to achieve a transparency principle, a contracting authority shall be obliged to publish in the manner envisaged by this Law:

- Framework contents of a public procurement plan – prior announcement;
- invitations to public bidding; and
- decisions on awarding the contract in a public procurement procedure.

### **Prior Announcement Article 34**

Every contracting authority, which pursuant to the provision of Article 27, paragraph 2 of this Law has the obligation to adopt a public procurement plan, shall be obliged to publish a prior announcement on the website of the competent administration body, stating the basic data and information from the public procurement plan, type, subject of a public procurement, planned value, quantity and conditions of a public procurement envisaged in the public procurement plan.

The prior announcement referred to in paragraph 1 of this Article shall be published at the latest until the end of the previous year for the following year.

### **Invitation to Public Bidding Article 35**

A contracting authority shall be obliged to publish invitation to public bidding on the website of the competent administration body, and in one daily newspaper issued and distributed on the entire territory of the Republic.

A contracting authority shall be obliged to publish, i.e. announce, the public invitation referred to in paragraph 1 of this Article:

1. in case of a public procurement in open public procurement procedure;
2. in the first phase of restricted procedure;
3. in the case of a public procurement in negotiated procedure with a prior publication of the invitation to public bidding; and
4. in the case of public procurement, by conclusion of a framework agreement.

The invitation to public bidding shall include data on contracting authority, subject of procurement, estimated value of the public procurement, participation requirements,

criteria, time and place of access to tender documents, time and place of submitting a tender, and public opening of tender, deadline for adoption of a decision on award of contract of public procurement, as well as the name of contact person who will provide additional information.

The invitation to public bidding may also contain other data necessary for more complete information provided to bidders regarding a public procurement subject.

The competent administration body shall determine more detailed contents, form and application form of the invitation to public bidding, and announcement by a special form.

The competent administration body, during the publishing phase, shall verify and ensure compliance of the text of invitation to public bidding with requirements prescribed by regulations on public procurements.

Invitation to public bidding not published and announced in the manner prescribed by this Law shall not have a legal effect.

### **Publication of the Decision on Awarding Contract Article 36**

A contracting authority shall be obliged to publish on the website of the competent administration body, the following:

- decision on the award of contract upon all invitations to public bidding;
- decision on the award of contract in a negotiated procedure without a prior publication of the invitation to public bidding;
- decision on procurements of small value, and
- decision on canceling a public bidding.

Contents, form and application form for the decisions referred to in paragraph 1 of this Article shall be determined by a competent administration body by a special form.

## **6. Tender documents**

### **Contents of Tender documents Article 37**

A contracting authority shall prepare tender documents in accordance with this Law and sub-normative regulations, so that bidders on the basis of the tender documents may prepare an acceptable tender. A contracting authority shall give in tender documents complete information on requirements and requests to be met by every bidder.

Tender documents, as determined by a contracting authority, shall especially consist of the following:

- 1) name of a contracting authority;
- 2) proof of existence of formally provided funds for public procurement, source of financing, estimated value of public procurement in euros;
- 3) selected procedure for the award of contract and information on whether conclusion of a framework agreement is envisaged;
- 4) form of the statement that a bidder accepts requirements from the invitation to public bidding and tender documents;
- 5) form for determining qualification and instructions on how to prove qualification of a bidder;
- 6) selection criteria establishing minimum requirements for qualification of bidders and information for carrying out such estimations;
- 7) description of requested goods, services or works;
- 8) quantity specification and/or technical specification, job/task description;
- 9) place of execution;
- 10) reviewed project, prepared by authorized persons, with the maximum deviation of +/- 10%;
- 11) stating possibility to submit tenders by lots;
- 12) deadlines for execution;
- 13) possibility to submit alternative tenders;
- 14) criteria, i.e. sub-criteria for selection of the most advantageous tender;
- 15) requirements of the proposed contract;
- 16) validity duration of the tender;
- 17) obligation to submit a guarantee for the tender; guarantee for good execution of contract ; guarantee for advance payment;
- 18) document of a contracting authority regarding the manner of regular payment of due obligations arising from the public procurement, given at the time of the contract conclusion;
- 19) place, date and time for receiving tenders;
- 20) place, date and time for opening tenders;
- 21) requirement regarding the use of language;
- 22) draft contract that will be concluded;
- 23) right to submit an objection.

Competent administration body shall determine standard application forms included in tender documents, and publish them on its website.

### **Technical Specifications**

#### **Article 38**

Technical specifications shall be obligatory part of tender documents.

Technical specifications must be non-discriminatory to all possible bidders and must be prepared in the manner to provide fair and active competition.

A contracting authority shall determine technical specifications with reference to laws, technical regulations and standards applicable in Montenegro, which are harmonized with the European standards. In case of absence of such technical regulations and standards, a contracting authority shall refer to the European standards or internationally accepted standards, technical regulations or norms.

## **Use of Technical Specifications**

### **Article 39**

A contracting authority cannot use or refer to technical specifications designating goods, services or works of a certain production, sources or construction, if such a designation could favour a certain bidder, or unjustifiably eliminate the others.

A contracting authority cannot designate in tender documents any individual trademark, patent or type, or special origin or production.

When a contracting authority cannot describe in tender documents a subject of the contract in the manner to have specifications sufficiently understandable to bidders, designation of elements such as trademark, patent, type or producer must be accompanied with the words " or equivalent" .

### **Article 40**

Technical specification must be precise and clear in order to enable bidders to prepare their tenders, and contracting authority to refuse goods, services or works not meeting the established objective requirements.

A contracting authority shall not be entitled to reject the tender:

- if the offered products, services and works do not meet the set requirements for standards stated in technical specification, and a bidder in his tender can prove that solutions offered meet in essentially equivalent manner requirements set in technical specification of tender documents; or
- when there are no applicable standards, technical regulations or norms with desired functional characteristics or requirements for execution of job, which also include those related to protection of public health and the environment.

## **Purchase of Tender Documents**

### **Article 41**

A contracting authority shall be obliged to, from the day of publishing the invitation to public bidding, enable interested bidders to have direct access to tender documents and to obtain them, or it shall, within two days from receiving the request, submit tender documents by mail, telefax or electronic mail.

In the case referred to in paragraph 1 of this Article, a contracting authority shall charge only the costs of copying and submission of tender documents.

A contracting authority cannot limit the deadline for submission of the request for delivery of tender documents.

### **Amendments to Tender Documents Article 42**

A contracting authority may make amendments to tender documents provided that they are accessible to interested bidders on the same day, and at the latest five days prior to expiration of the deadline determined for receiving tenders. In case such amendments envisage any essential change, the deadline for receiving tenders shall be prolonged for at least seven days.

Decision on prolonging the deadline for receiving the binds shall be published in the same manner in which the invitation to public bidding was published and announced.

### **Clarification of the Documents Article 43**

A contracting authority shall be obliged to submit, upon submitted request for clarification of tender documents, explanation to all bidders who took over tender documents without stating data on submitters of the request.

### **Guarantees Article 44**

A contracting authority may request from a bidder through the invitation to public bidding a guarantee of the tender for the purpose of protection from unserious tenders, performance guarantee, advance payment guarantee or other guarantee for protection from contract violation.

Tender guarantee shall not exceed 2% of the tender value, and the performance guarantee shall not exceed 5% of the contract value.

A contracting authority shall issue, at the time of contract conclusion, adequate documents providing a regular payment of due obligations arising from a public procurement.

Form, contents and manner of issuing the document referred to in paragraph 3 of this Article shall be prescribed by the Ministry in charge of the activities of finance.



## **7. Requirements and Suitability of Bidders**

### **Obligatory and Optional Requirements for Participation in a Public Bidding Procedure Article 45**

A bidder, in a bidding procedure, must prove the following:

- not to be convicted of crimes envisaged by this Law, and that a measure banning the performance of the activity subject to the public procurement is not imposed on him;
- to have business and professional capacity; and
- to regularly pay due obligations arising from taxes and contributions.

A contracting authority may, in the invitation to public bidding and tender documents, envisage that bidders should meet, in addition to the requirements referred to in paragraph 1 of this Article, the requirements relating to:

- economic and financial capacity, and
- professional-technical and staff capacity.

Suitability requirements and type of evidence of suitability of bidders shall be stated in the invitation to public bidding and tender documents.

### **Non-Conviction in a Criminal and Other Procedure Article 46**

Bidders, who participate in a public procurement procedure, shall be obliged to prove that they have not been convicted of a criminal offense of participation in criminal organization, corruption, fraud, money laundering, or a crime regarding professional performance of their activity, and that they were not pronounced a measure banning the performance of the activity subject to the public procurement, within the period of 2 years prior to submission of a tender.

### **Business and Professional Capacity Article 47**

Bidders, who participate in a public procurement procedure, shall be obliged to prove that they are registered for professional performance of the activity subject to public procurement, or valid license and/or approval of a competent body for professional performance of activity, depending on public procurement procedures, and such a license and/or approval is envisaged by special laws or regulations.

### **Economic and Financial Capacity Article 48**

A contracting authority may, in the invitation to public bidding and tender documents, envisage that bidders, who participate in a public procurement procedure, are

obliged to meet certain requirements regarding economic and financial capacity and prove them with one or several of the following documents:

- 1) report on accounting and financial condition – income statement and balance sheet, i.e. report of a licensed auditor in cases when prescribed so by the law regulating the issues of accounting and auditing, maximum for the last three years, or for the period from the registration;
- 2) adequate bank statements, confirmations or statements of financial suitability of bidders or, if needed, proof of relevant professional risk indemnity insurance;
- 3) statement of the total turnover and, if needed, with the turnover in the area included in the contract for the period of, at the most, last three available financial years, or for the period from registration.

### **Professional -Technical and Staff Capacity Article 49**

Professional-technical and staff capacity of a bidder in the procedure for the award of contract of public procurement of goods, envisaged in the invitation to public bidding and tender documents, must be determined in proportion to the nature and contents of a public procurement, and it shall be proved in one of the following manners:

- list of main deliveries carried out in the last two to three years, with values, dates and receivers, providing the documents in the form of receipts of carried out deliveries issued by bidders, or in case such receipts cannot be provided for the reason outside the bidder's control, only with the declaration of a bidder on performed deliveries;
- description of technical equipment and capacity, measures for ensuring quality, as well as the state of equipment and capacity for study and research;
- statements of engaged technical staff regardless whether they directly belong to the bidder;
- samples, descriptions or photographs of products subject to the delivery, the authenticity of which the bidder is obliged to confirm, if requested so by a contracting authority;
- certificates issued by agencies for quality control whose competency is recognized, attesting the suitability of products by clearly determined references to relevant specifications or standards;
- statement of every intent and subject of sub-contracting.

In the procedure for the award of contract of public procurement of services, a contracting authority may request from a bidder to ensure one or several of the following means, as proof of his technical and staff capacities:

- list of main services provided in the last two to three years, with the total amounts, dates and receivers, with the receipt of performed services issued by receivers, or in case such receipts cannot be provided for the reason outside the control of the bidder, only with the statement of the bidder regarding performed services;
- educational and professional qualifications of the bidder or qualifications of his management and especially qualifications of persons responsible for provision of concrete services;

- statements of engaged technical staff or technical bodies regardless whether they directly belong to the bidder;
- statement of the bidder about average annual number of employees and number of managers in the last three years;
- statement of technical equipment and capacity and measures at disposal of the bidder for performance of concrete services, and for ensuring quality;
- in case when services provided are complex, and if they are, exceptionally, ensured for special purposes, verification of technical equipment and capacity of the bidder, and if needed, its capacity to conduct studies and research, as well as measures for quality control implemented by a contracting authority or, on his behalf, a competent official body of the country where the bidder is registered;
- statement of every intent and subject of sub-contracting.

In procedures for the award of contract of public procurement of works, proofs of technical and professional capacities of a bidder may be provided in one or several following manners:

- list of works executed in the last 2 to 5 years with submission of certificates of satisfactory performance for the most important works, including the value, time and location of performance of works, and statements whether the works were performed in accordance with operating rules and whether they are terminated accordingly; in case when necessary, these certificates shall be directly submitted to a contracting authority by a competent body;
- educational and professional qualifications of a bidder, as well as qualifications of his management, and especially qualifications of persons who are responsible for execution of concrete works;
- statements of engaged technical staff or technical bodies, especially of those responsible for quality control, regardless whether they directly belong to the bidder;
- statement of the bidder about the average annual number of employees and number of managers in the last three years;
- statement of technical equipment the bidder has at his disposal for execution of concrete works;
- statement of every intent and subject of sub-contracting.

### **Authorizations of a Contracting Authority in Evaluating Suitability of Bidders Article 50**

A contracting authority shall exclude, from a further public procurement procedure, a bidder, for whom it determines:

- 1) that a final judgment was pronounced within the period of two years prior to submission of a tender for a committed criminal offence of participation on criminal organization, corruption, fraud, money laundry; crime regarding professional performance of its activity, or it is pronounced a measure banning performance of the activity subject to the public procurement;
- 2) that it is not registered or does not have a valid license or approval of a competent body for professional performance of activity;
- 3) that it is under liquidation procedure or it ceased to perform its activity;

- 4) that it failed to pay timely social insurance contributions and due taxes, in accordance with regulations;
- 5) that it did not submit or it submitted false data required in a public procurement procedure.

A contracting authority may exclude from a further public procurement procedure, a bidder for whom it determines:

1. that bankruptcy proceedings are initiated;
2. that it does not meet requirements envisaged in the invitation to public bidding and tender documents, regarding professional-technical and staff capacity;
3. that it failed to properly meet contractual obligations toward contracting authorities in previous public procurements procedures.

### **Proofs of Suitability Article 51**

A bidder shall be obliged to prove his suitability for participation in a public bidding.

A contracting authority cannot determine other suitability requirements and proofs, except those stated in this Law, or other requirements placing bidders in an unequal position.

Proofs shall be submitted in original, authenticated copy, or electronic form provided that they are not older than 6 months prior to the day of publication of the invitation to public bidding.

Proofs of meeting the requirements referred to in Article 45 of this Law shall be the following:

- extract from the court, professional or commercial registry of the state where the bidder is headquartered or valid permit, i.e. license of competent body for professional performance of the activity;
- proof that a legal entity is not under bankruptcy or liquidation procedure – confirmation of the court, i.e. competent body of the state where the headquarters are located;
- proof that payments to a bidder are not suspended – adequate bank statements, confirmation or statement of financial suitability from the bank whose client is the respective legal entity;
- proof that the bidder is not convicted by a final judgment of the crime referred to in Article 46 of this Law and that protective measure banning him to perform a certain business activity is not pronounced - extract from the criminal records or adequate confirmation by a competent body;
- report on accounting and financial condition – income statement and balance sheet, or report of the licensed auditor in cases prescribed by the law regulating accounting and auditing, for the last three years, or if business organization got registered later on, for the period from the registration;
- proof from the administration body in charge of tax activities and organization for pension and health insurance that taxes and contributions are paid;

- statement of a bidder of technical equipment of the bidder: equipment, devices, resources, staff, capacities, manner of ensuring the quality and participation of sub-constructers and/or sub-contractors;
- adequate samples and photographs of executed works and technical capacities.

If a contracting authority requests proofs on meeting quality requirements, certificates or licenses, it shall be obliged to accept equivalent certificates of authorized bodies of member states of the European Union or other countries. A contracting authority shall be obliged to accept the proof of meeting quality requirements, certificates or licenses in another form, if a bidder provides the proof that he does not have the possibility or right to ask for the respective certificates.

In case the bidder is headquartered in another country, evidence showing documentation must be authenticated by a competent body of the state where the bidder is headquartered (administration or judicial body, or chamber of commerce), or by that country's embassy in the Republic.

If the state where the bidder is headquartered does not issue the proofs referred to in paragraph 4 of this Article, such proofs may be replaced by the statement of the bidder under criminal and material liability, i.e. if in the state where the bidder is headquartered there are no legal provisions regarding statements under criminal and material liability, by the statement of the bidder given before the competent court or administration body or notary.

A bidder shall be obliged to inform in writing a contracting authority on a change, with no delay and at the latest within 5 days as of the day of the change occurrence in any of the proofs referred to in paragraph 4 of this Article, and to record it in a prescribed manner.

If a bidder does not submit some of the proofs of suitability envisaged by the invitation to public bidding and tender documents, his tender shall be rejected as incomplete.

## **8. Tender**

### **Tender Article 52**

In drafting a tender, bidder shall be obliged to comply with requirements given in the invitation to public bidding and tender documents.

A bidder may, during the deadline for submission of tenders, change and amend the tender or withdraw a tender in the form of written statement. Bidders shall submit changes and amendments to their tenders or withdraw the tenders in the same manner as in case of tender submission. In case of tender withdrawal, a contracting authority shall return a tender unopened to the bidder.

### **Timely Tender Article 53**

A timely tender shall mean a tender received by a contracting authority at the latest until the date and hour for receiving tenders, determined in the invitation to public bidding and tender documents.

A tender shall be submitted in person, by mail or in electronic form. The tender in electronic form must be protected by electronic signature, and the signature must be authenticated by a qualified certificate.

Upon receiving a tender, a contracting authority shall be obliged to write down date and hour of receiving the tender, and to issue a confirmation of receipt at the request of the bidder.

If a tender is submitted untimely a contracting authority shall, upon termination of the procedure for opening tenders, return the unopened tender to the bidder, with designation that it was untimely submitted.

### **Submission of a Joint Tender Article 54**

A tender may be submitted by a group of bidders having a joint and several liability.

In the case referred to in paragraph 1 of this Article, a contracting authority cannot require from joint bidders to be associated in a formal legal manner for submission of a joint tender.

In the case referred to in paragraph 1 of this Article, the bidders shall be obliged to submit a legal act, obliging them to jointly execute the contract, if they win the contract, provided that such form of the organization is necessary for a successful execution of the contract.

The legal act referred to in paragraph 3 of this Article shall specify responsibility of each individual bidder for execution of the contract.

Bidders shall be obliged to state in tenders names and adequate professional qualifications of persons who shall be responsible for execution of the contract.

### **Participation of Sub-Constructors and/or Sub-Contractors Article 53**

A contracting authority may envisage in the invitation to bidding and tender documents the possibility of sub-constructors or sub-contractors to participate.

A bidder shall also provide that his sub-constructors or sub-contractors, if the value of sub-contract exceeds 10% of the value of the contract, also meet the

requirements referred to in Article 45 of this Law, as well as the contract between the bidder and sub-constructor or sub-contractor for part of works or services that shall be performed by the sub-contractor, i.e. sub-constructor.

A bidder shall be fully responsible to a contracting authority for execution of the contract of public procurement regardless of the number of sub-constructors or sub-contractors.

### **Validity Period of the Tender Article 56**

Validity period of the tender shall be determined by a contracting authority in tender documents. The validity period of the tender cannot be shorter than the one stated in tender documents and, in any case, it cannot be shorter than 60 days as of the day of opening tenders.

During validity period of the tender, a contracting authority may request in writing from a bidder to prolong validity period to a certain deadline. If a bidder rejects the request for prolonging the validity period or does not prolong the validity period deadline or does not prolong tender guarantee, it shall be considered that the bidder refused the request of the contracting authority and withdrew the tender.

A bidder, who accepts to prolong the validity period of the tender and informs thereon the contracting authority in writing, cannot change the tender and shall be obliged to prolong the tender guarantee.

### **Offered Price Article 57**

A bidder shall submit a tender with price, in euros. Tender price shall be expressed by numbers and letters.

Tender price shall be given for the entire procurement subject or, when envisaged so by tender documents, separately for each lot of the procurement.

Tender price shall include all costs and discounts on the total tender price, without tax that is given separately after the price, unless otherwise determined by tender documents.

### **Change in Price Article 58**

Price of the public procurement with the deadline for execution of the contract up to 12 months cannot be increased, except for in the cases of market disturbances that could not be foreseen, the consequence of which is the increase in price of at least 20%.

Increase in price shall be possible for long-term procurement contracts with the execution deadline longer than 12 months.

Manner and conditions for a change in price must be determined in tender documents.

### **Abnormally Low Price Article 59**

If the price of the most advantageous tender is at least 30% lower than the average offered price of all substantially responsive tenders, a contracting authority may request a detailed explanation of all of its integral parts it considers relevant, and especially statement regarding the cost-effectiveness of the manner of construction, production or selected technical solutions with respect to exceptionally favourable terms the bidder has at his disposal for execution of the contract, or with respect to originality of products or works the bidder suggests.

A contracting authority shall be obliged to determine for a bidder, in the case referred to in paragraph 1 of this Article, a proper deadline for response, which cannot be longer than 20 days as of the day of the request submission.

A contracting authority shall be obliged to verify, upon receiving the explanation, relevant integral elements of the tender referred to in paragraph 1 of this Article, and if it evaluates that they are not justified to reject the tender.

### **Unusually Short Deadline Article 60**

If the deadline for execution of works or provision of services of the most advantageous tender is significantly shorter than the deadline determined in the invitation to public bidding, i.e. the deadline determined in other tenders, a contracting authority may require detailed explanation of all of its integral parts it considers relevant.

A contracting authority shall be obliged to determine for a bidder, in the case referred to in paragraph 1 of this Article, an adequate deadline for response, which cannot be longer than 20 days from the day of request submission.

A contracting authority shall be obliged to, upon obtaining the explanation, verify relevant integral elements of the tender referred to in paragraph 1 of this Article, and refuse the tender if it evaluates that they are not justifiable.



## **Withdrawal and Change in Tenders Article 61**

Upon expiration of the deadline for submission of tenders, a bidder cannot withdraw or change his tender, and if he does so or if he does not sign the contract when his tender is selected, a contracting authority may activate a guarantee given with the tender.

## **9. Deadlines in the Procedure of the Award of Contract of Public Procurement**

### **Deadline for Submission of Tenders Article 62**

In the invitation to public bidding and tender documents, a contracting authority shall be obliged to determine a deadline for submission of tenders, the manner of submission of tenders, place and time of public opening of tenders.

A contracting authority must determine a deadline that provides bidders with sufficient time to prepare and submit tenders.

Deadline for submission of tenders shall be calculated from a day of publishing the invitation to public bidding on the website of the competent administration body, i.e. from submission of the invitation to bidding in the second phase of a restricted public procurement procedure and in the negotiated procedure without a prior publication of the invitation to public bidding.

Tenders received upon expiration of the deadline for receiving tenders shall be rejected as untimely.

If it is necessary to review tender documents of a large volume or technical specifications of a large volume, visit a location and similar, for the purpose of preparing a tender, a contracting authority shall envisage the possibility to prolong the deadline.

### **Deadline for Submission of Tenders in Open Procedure Article 63**

Deadline for submission of tenders in open procedure cannot be shorter than 26 days as of the day of publishing a public invitation on the website of the competent administration body.

Deadline for submission of tenders referred to in paragraph 1 of this Article may be shortened, when reasons of urgency require so, but it cannot be shorter than 15 days upon publishing the invitation to public bidding on the website of the competent administration body.

## **Deadlines for Submission of Tenders in Restricted Public Procurement Procedure and Negotiated Procedure**

### **Article 64**

Deadline for submission of tenders for participation in restricted public procurement procedure in the first stage and negotiated procedure cannot be shorter than 20 days upon publishing the invitation to public bidding on the website of the competent administration body.

Deadline for submission of tenders referred to in paragraph 1 of this Article may be shortened, when required so by reasons of urgency, but it cannot be shorter than 15 days upon publishing the invitation to public bidding on the website of the competent administration body.

Deadline for submission of tenders, for participation in a restricted procedure in the second phase, cannot be shorter than 26 days from the day of sending the invitation to qualified bidders for submission of tenders.

## **10. Selection Criteria**

### **Establishing Criteria**

#### **Article 65**

A contracting authority shall be obliged to establish selection criteria, and when necessary sub-criteria, for the most advantageous tender in the invitation to tender and tender documents.

The criteria, referred to in paragraph 1 of this Article, must be clearly stated by words and maximum number of points that can be awarded on the basis of each individual criterion and sub-criterion.

Criteria and sub-criteria must not be discriminatory and should be logically connected to contents of the public procurement.

When grading and evaluating the tenders, a contracting authority shall be obliged to apply only those criteria and sub-criteria included in the invitation to public bidding and tender documents in the manner they are described and evaluated.

### **Types of Criteria**

#### **Article 66**

Criteria shall be the following:

1. economically most advantageous tender or
2. the lowest tender price.

The economically most advantageous tender shall mean a tender based on different sub-criteria depending on a subject of public procurement, especially on the following:

- 1) quality;
- 2) tender price;
- 3) esthetic and functional characteristics;
- 4) delivery deadline or deadline for performance of service or works;
- 5) current maintenance costs;
- 6) cost effectiveness;
- 7) technical and technological advantages;
- 8) program and degree of ecological protection of the environment;
- 9) post-sale servicing and technical assistance;
- 10) guarantee period, type and quality of guarantee and guarantee values;
- 11) obligations regarding spare parts;
- 12) post-guarantee maintenance and other.

A contracting authority shall determine, in the text of the invitation to bidding and tender documents, a value of points based on each sub-criterion on the basis of which selection of the most advantageous bidder shall be done, in such a way that the total number of points adds to 100.

A contracting authority shall make selection among the submitted tenders by applying the criterion of the economically most advantageous tender, by ranking them on the basis of sub-criteria and points determined for those sub-criteria.

Selection of the most advantageous tender, by application of the criterion of the lowest tender price shall be based on the lowest price as a single criterion, if all of the requirements, stated in tender documents, are met.

## **11. Public Opening of Tenders**

### **Public Opening of Tenders Article 67**

Tenders shall be opened publicly, immediately upon the expiration of the final deadline for submission of tenders, and at the latest an hour upon the expiration of this deadline.

Tenders shall be opened at open meeting of the Commission for Opening and Evaluation of Tenders held at the place and at the time determined in the text of the invitation to bid and tender documents.

All entities that submitted a tender may participate in the opening.

The Commission for Opening and Evaluation of Tenders shall previously determine the number of received tenders in the order of receiving them, verify authorizations

of bidders' representatives, determine changes or amendments to tenders and their timeliness and completeness. Bidder who revokes his tender shall not be entitled to attend the procedure of public opening of tenders.

In the case of public opening of tenders for services, if it was required by tender documents to submit a tender in separate envelopes, the Commission for Opening and Evaluation of Tenders shall firstly open the envelope with proofs of suitability of a bidder and then technical and financial proposal.

The Commission for Opening and Evaluation of Tenders shall be obliged to keep minutes of the procedure for opening tenders, including the following data:

- 1) number under which the tender is recorded;
- 2) subject of the procurement;
- 3) name and address of the bidder;
- 4) review of submitted proofs relating to suitability of the bidder;
- 5) tender price for subject of the procurement, or for certain lots;
- 6) comments, proposals and suggestions of authorized representatives of the bidder.

The competent administration body shall regulate more detailed contents, form and format of the minutes referred to in paragraph 6 of this Article by a special application form.

The minutes must be signed by members of the Commission for Opening and Valuation of Tenders and present, authorized representatives of bidders.

If some of the authorized representatives of bidders refuse to sign the minutes, the Commission for Opening and Valuation of Tenders shall be obliged to jointly state the reasons for refusal.

A contracting authority shall be obliged to provide that business secret of the bidder is kept during the course of the procedure.

A contracting authority shall be obliged to send bidders the minutes on opening of tenders within three days upon the day of terminating the procedure of opening of tenders.

### **Correct Tender Article 68**

Correct tender shall be a tender fully meeting requirements stated in the text of the invitation to public bidding and tender documents, as well as tender containing a slight deviation or flaws that do not have a significant impact on the tender.

Slight deviations and flaws under paragraph 1 of this Article shall mean, especially the following:

- differences in the use of codes;
- differences in standards;
- failure to include smaller items;

- established arithmetic errors;
- sub-contracts that are unclear or disputable;
- different construction methods;
- difference in the final delivery date;
- difference in delivery dynamics;
- time of termination when it is not of crucial importance;
- incompliance with some local technical regulations, which has not been envisaged as requirement in the invitation;
- any other requirement of lesser impact on the tender.

In case of determining slight deviations, a written explanation from the bidder shall be requested. In case when the bidder does not submit a written explanation or does not accept to correct a slight deviation, in the case of existence of calculation errors up to the amount of 3% of the tender value, his tender shall be rejected. The bidder shall be informed on rejection of his tender in writing and with no delay.

### **Incorrect Tender Article 69**

Incorrect tender shall be the tender:

- that is untimely;
- not in compliance with requirements stated in the text of the invitation to public bidding and tender documents;
- that is incomplete or contains deviations or inadmissible parts not compliant with the text of the invitation to public bidding and tender documents;
- that does not contain tender guarantee defined by the text of the invitation to public bidding;
- that does not contain proofs of suitability or requirements for qualification envisaged by law and text of the invitation to public bidding;
- of bidders who did not submit the proof of joint participation and appoint a bearer of the joint tender;
- of the bidder who was not invited to submit a tender in the second phase of the restricted public procurement procedure, negotiated procedure without publication of the invitation to public bidding and framework agreement;
- that does not clearly state the total price in absolute amount;
- for which a bidder refused to give requested explanation;
- that has calculation error of the value greater than 3%;
- if the bidder does not accept to correct calculation errors in the tender in the manner determined by law;
- if the bidder submitted two or more tenders in which he is a bidder or participant in joint tender;
- if the bidder failed to provide satisfactory response to the request of a contracting authority regarding the low tender price or abnormally short deadline.

Tenders having flaws referred to in paragraph 1 of this Article shall be rejected, stating the reasons for rejection.

## 12. Tender Evaluation

### Review, Evaluation and Comparison of Tenders Article 70

The Commission for Opening and Evaluation of Tenders shall review, evaluate and compare tenders at the closed meeting.

The methodology for expressing criteria in the form of adequate number of points, as well as the manner and procedure for evaluating and comparing tenders shall be prescribed by the Ministry in charge of the activities of finance.

Tenders shall be evaluated in the manner to examine their contents, in accordance with tender documents and bidding requirements.

In the mentioned procedure, the Commission for Opening and Evaluation of Tenders may have the assistance of special professional bodies and/or experts for certain areas subject to public procurement, engaged by a contracting authority at the proposal of the Commission for Opening and Evaluation of Tenders.

The procedure of reviewing, evaluating and comparing tenders until the notice of selection of the most advantageous tender shall be confidential.

Tenders, minutes and data relating to the review, explanation, evaluation, comparison and selection must be accessible to bidders during the period from receiving the notice of selection of the most advantageous tender until the expiration of the deadline for submitting a complaint.

The Commission for Opening and Evaluation of Tenders shall be obliged to keep minutes on review, evaluation and comparison of tenders containing:

- number of bidding procedures,
- subject of procurement;
- name and address of headquarters of bidders who submitted their tender in the order stated in the minutes on the public opening of tenders;
- analytical review of required and submitted proofs relating to capacities of a bidder and evaluation of suitability and acceptability of the tender;
- price of the tenders for subject of the procurement, or for lots;
- criteria and number of points assigned to every bidder for each determined criterion and sub-criterion with explanation of assigned number of points;
- comparative review of evaluation and analysis of tenders;
- opinion of the expert body or experts, if the Commission used their services;
- explanation of selection of the most advantageous tender;
- explanation if all of the tenders were rejected;
- explanation of the decision on canceling public bidding;
- list of attachments with the minutes and stated attachments;
- date of the minutes and signature of all members of the Commission.

On the basis of the minutes of review, evaluation and comparison of tenders, the Commission for Opening and Evaluation of Tenders shall prepare a special report on

a public procurement procedure to be submitted to a responsible person for the purpose of making a decision on selection of the most advantageous tender.

A competent administration body shall determine more detailed contents, form and format of the minutes referred to in paragraph 7 of this Article by a special application form.

### **Explanation of Tender Article 71**

The Commission for Opening and Evaluation of Tenders may ask for, during the procedure of reviewing, evaluating and comparing tenders, needed interpretations for the purpose of explaining tenders or removing doubts in validity of the tender, which must be provided by the bidders.

### **Cases when Public Bidding is Cancelled Article 72**

A contracting authority may cancel a public procurement procedure, in the following cases:

- 1) when none of the tenders received is a correct tender ;
- 2) when it is evaluated, prior to expiration of the deadline for submission of tenders, that it is necessary to substantially change tender documents;
- 3) when the need ceases for the subject of a public procurement and public procurement shall not be repeated during the budget or financial year;
- 4) when the amount of all offered prices exceeds the amount of planned and allocated funds for the particular public procurement.

A contracting authority shall be obliged to compensate costs of bidders incurred due to submission of tenders in cases of canceling public bidding referred to in items 2 and 3 of this Article.

A contracting authority shall be obliged to explain in writing the decision on cancellation of public bidding, especially stating the reasons for cancellation, and to submit it to bidders.

## **13) Decision-Making in a Public Procurement Procedure**

### **Decision on Selection of the Most Advantageous Tender Article 73**

A public procurement procedure shall be terminated by adoption of the decision on selection of the most advantageous tender, if a contracting authority does not previously cancel a public procurement procedure in cases envisaged by this Law.

The decision referred to in paragraph 1 of this Article shall be adopted by a head of the body, or authorized body of a contracting authority.

Decision on selection of the most advantageous tender shall be adopted within the deadline determined in the invitation to submission of tender, on the basis of the report referred to in Article 70 of this Law.

Decision on selection of the most advantageous tender must be explained and include, especially, the data referred to in Article 70 of this Law.

A contracting authority shall be obliged to submit the decision referred to in paragraph 1 of this Article to all bidders within 5 days as of the day of decision adoption.

In case it does not adopt the decision referred to in paragraph 1 of this Article within the specified deadline, the contracting authority shall be liable for damage incurred to bidders.

### **Contract of Public Procurement Article 74**

A contracting authority shall conclude a contract of public procurement with a bidder whose tender is selected as the most advantageous.

A contract of public procurement must be in accordance with the accepted tender, and it must contain a document for regular payment of all due obligations.

The contract referred to in paragraph 1 of this Article cannot be concluded before the expiration of the deadline for submission of objections.

If a proposal of the contract is not included in the bidding documents, a contracting authority shall send the proposal of the contract to a bidder within 8 days upon a final decision on selection of the most advantageous bidder.

A bidder shall be obliged to sign a proposal of the contract within 8 days upon receiving the contract and return it to the contracting authority together with requested guarantee for a proper execution of the contract.

If a bidder does not sign a proposal of the contract upon a repeat request of a contracting authority or if he fails to submit a guarantee for a proper execution of the contract as required by bidding documents, a contracting authority may conclude a contract with the following most advantageous bidder if a price difference is not greater than 10% with respect to the originally selected tender, or cancel bidding procedure and repeat a procurement procedure.

A bidder who was awarded the contract cannot conclude a sub-contract for any important part of the contract without a prior written approval of the contracting authority. Elements of the contract that are sub-contracted and identity of the sub-contractor must be communicated to a contracting authority timely before conclusion



of the sub-contract. A contracting authority shall inform the bidder on its decision within 15 days upon receiving the notice, stating the reasons in the case of rejection. The bidder who was awarded the contract shall be fully liable for realization of the contract.

## **IV SPECIAL CASES FOR THE AWARD OF CONTRACT**

### **Award of Contract of Public Procurement of Services through Contest**

#### **Article 75**

Subject of public procurement, in accordance with this Law, shall include contest for sketches, plans or designs that are the integral part of the procedure for the award of contract of public procurement of services, as well as individual contests for sketches, plans or designs, with award of prize and payment to participants in cases of services listed in Annex I, except for services of voice telephony, radio-telephony, paging and satellite services referred to in item 5 this Annex:

A contracting authority shall award a contract of public procurement of services through the contest in the areas of urban, construction and architectural planning, design and information technology.

Independent jury shall select a sketch, plan or design.

Only physical persons who are not related with participants in the competition may participate in the jury referred to in paragraph 3 of this Article.

If a contracting authority requires that participants in the competition have special professional qualifications or experience, at least 1/3 of the jury members must have at least equal qualifications or experience.

The jury shall be independent in decision-making process.

Plans and projects submitted by the candidates shall be considered by the jury anonymously and exclusively on the basis of criteria stated in the public invitation.

### **Consulting Services**

#### **Article 76**

A contracting authority may, upon a prior consent of the competent administration body, submit the invitation for submission of tenders for consulting service directly to bidders, if:

- 1) consulting service subject to public procurement can be obtained only from limited number of bidders, in which case, the invitation to submission of tenders shall be submitted to all such bidders;

- 2) time and costs necessary for evaluation of a great number of proposals would not be proportionate to the value of service subject to public procurement, provided that the invitation for submission of tenders is submitted to sufficient number of bidders in order to provide fair competition.

Invitation for submission of tenders for consulting services, in addition to the elements referred to in Article 33 of this Law, shall contain criteria and points per each criterion that shall be applied for evaluation of tenders, provided that the total sum of points per all criteria must be 100.

A contracting authority shall be obliged to base criteria referred to in paragraph 2 of this Article on:

- 1) qualifications, experience, reputation, reliability and professional and managerial capacities of the bidder and staff that shall be included in the provision of service;
- 2) degree to which a tender satisfies the needs of a contracting authority;
- 3) tender price, including potential secondary and related costs;
- 4) effects of the transfer of technology, knowledge and development of managerial and professional skills; and
- 5) other circumstances, depending on the nature of consulting service.

## **V PUBLIC PROCUREMENTS OF SMALL VALUE**

### **Direct Solicitation of Tenders (Shopping Method) Article 77**

A public procurement procedure by direct solicitation of tenders (shopping method) shall be implemented by soliciting at least three tenders.

Within three days upon expiration of the deadline for receiving tenders, a public procurement officer shall be obliged to consider the received tenders and make the minutes on opening and selection of the most advantageous tender.

Decision on selection of the most advantageous tender, by application of the shopping method, shall be published on the website of the competent administration body.

Bidders may submit only one tender each, which cannot be changed.

Contract of public procurement, under the shopping method, shall be awarded to a bidder offering the lowest price under equal conditions.

A contracting authority shall be obliged to comply with the requirements and manner of procurement determined by this Law in accordance with the determined values, and it must not divide the subject of public procurement during the budget or

financial year with the intention to avoid the application of this Law and prescribed procurement procedure.

Public procurement officer responsible for legality of implementation of a public procurement procedure under shopping method shall be obliged to keep records of public procurements under shopping method and submit the decision on selection of the most advantageous tender to the competent administration body, for the purpose of its publication on the website.

Bargaining between a contracting authority and bidder regarding elements of the tender shall not be allowed.

A public procurement procedure under shopping method may be implemented at the most twice a year, separately for each subject of public procurement of goods, services or works.

### **Direct Agreement Article 78**

Public procurement the value of which is up to 2,000 euros may be implemented through a direct agreement.

A contracting authority shall be obliged to provide that the total annual value of such procurements does not exceed 10% of its total annual budget for procurements.

Public procurement officer shall be obliged to keep records on public procurements implemented through direct agreement and state the number, value and name of the supplier in the annual report to the competent administration body.

## **VI PUBLIC PROCUREMENTS IN ELECTRONIC FORM**

### **Article 79**

Public procurements in electronic form shall be implemented in open and restricted public procurement procedure, in accordance with this Law, the Law on Electronic Signature and the Law on Electronic Trade.

### **Article 80**

The following must be provided for implementation of the electronic system of public procurements:

- a) communication, exchange and storage of information in the manner to provide the integrity of data and confidentiality of tenders;
- b) that contracting authorities review the contents of tenders only upon expiration of the deadline for their submission;

- c) that information relating to specificities necessary for electronic submission of tenders are accessible to all bidders and candidates.

Administration body in charge of activities regarding the development of information system shall prescribe more detailed contents and manner of usage of public procurements in electronic form.

#### **Article 81**

Electronic devices used for communication through the electronic system of public procurements, as well as their technical characteristics must be non-discriminatory, equally accessible to bidders and based on information and communication technology that is in general use, and which does not limit accessibility of public procurement procedures to bidders and candidates.

#### **Article 82**

A contracting authority shall be obliged to state in the decision on implementation of the procedure and in the text of the invitation to public bidding that the procedure shall be implemented in electronic form.

When a public procurement is implemented in electronic form, access to tender documents, amendments to the tender documents, proofs of suitability, clarifications of bidders, as well as other communication and information between contracting authorities and bidders, i.e. candidates shall be done through the electronic system of public procurements.

If the documents and other writings referred to in paragraph 2 of this Article do not exist or cannot be provided in electronic form, a bidder and candidate may submit them in writing, within the deadlines prescribed by this Law.

#### **Article 83**

A contracting authority shall be obliged to inform the competent administration body on every public procurement in electronic form within 15 days before submission of the invitation to public bidding for publication.

## **VII RECORDS ON PUBLIC PROCUREMENTS**

### **Keeping Records Article 84**

Contracting authorities shall be obliged to gather and record certain data on awarded contracts of public procurement in accordance with this Law, provided that the data are recorded separately for the award of contract of public procurements of goods, public procurements of services and public procurements of works.

The competent administration body shall determine forms for recording data on public procurements.

A contracting authority shall be obliged to submit a report on contracts of public procurements concluded in the previous year to the competent administration body at the latest until the 28<sup>th</sup> of February of the current year.

The competent administration body may request from every contracting authority a report on every individual contract awarded in a public procurement procedure, with additional information, if it is necessary for keeping records on data in the public procurement area, i.e. protection of public interest.

The competent administration body shall be obliged to prepare a summary report and to submit it to the Government at the latest until the 31<sup>st</sup> of May of the current year.

### **Documentation Keeping Article 85**

A contracting authority shall be obliged to keep documentation on a procurement procedure in the manner and in accordance with procedures prescribed by special regulations.

## **VIII CONTROL OVER APPLICATION OF LAW AND PROTECTION OF RIGHTS OF BIDDERS AND PUBLIC INTEREST**

### **Providing Legal Protection Article 86**

Protection of rights of bidders and public interest, in all phases of a public procurement procedure, shall be provided in the manner and under conditions prescribed by this Law.

Parties in the procedure and competent bodies must, fast and efficiently, resolve disputes arising from public procurement procedures.

Competent bodies, during consideration and decision-making on requests for protection of rights, shall apply provisions of the Law on General Administrative Procedure, unless otherwise prescribed by this Law regarding certain issues.

### **Objection to a Contracting Authority Article 87**

Every bidder and every interested person to whose rights and legal interests a public procurement procedure relates (interested person) shall be entitled to lodge an objection due to irregularities during the entire course of a public procurement procedure.

The objection, referred to in paragraph 1 of this Article may, for the purpose of protecting public interest, also be submitted by a competent state prosecutor, the competent administration body, state audit institution and other competent bodies. Objection shall be submitted to a contracting authority, in writing, in three copies directly or by registered mail with return receipt.

Objection shall state irregularities in a public procurement procedure, facts and proofs for committed violations and proposal for removing irregularities.

### **Deadlines for Submission of Objections Article 88**

Objection shall be submitted within 8 days as of the day of submission of the decision, i.e. action violating rights or other undertaken measure or activities violating rights in the procedure.

A contracting authority shall inform all participants in a public procurement procedure on submitted objection within three days of receiving the objection.

### **Legal Consequences of Objection Article 89**

Objection, submitted within a specified deadline, shall suspend all further activities of a contracting authority in a procedure of the award of contract of public procurement until adoption of the decision on objection.

### **Decision of a Contracting Authority on Objection Article 90**

A contracting authority shall reject the objection that is inadmissible, untimely and stated by an unauthorized person, in the form of a conclusion.

A contracting authority shall be obliged to consider timely submitted objection and make a decision thereon within 8 days upon receiving the objection.

The decision referred to in paragraph 2 of this Article may:

- 1) adopt the objection entirely or partially and alter the decision on selection of the most advantageous tender;

- 2) adopt the objection as grounded, and entirely or partially, cancel the procedure for award of the contract of public procurement;
- 3) reject the objection as groundless.

The reasoned decision referred to in paragraph 2 of this Article shall be submitted to a party that submitted the objection, at the latest within 3 days as of the adoption of the decision.

If the decision was not submitted to the party that submitted the objection within the deadline referred to in paragraph 4 of this Article, that party may continue the procedure for protection of his right as if the objection were rejected.

### **Complaint to the Commission for Control of Public Procurement Procedure Article 91**

Against the decision of a contracting authority deciding on the submitted objection, or if a contracting authority under paragraph 4 of Article 90 fails to make a decision within the specified deadline, a complaint may be lodged to the Commission for Control of Public Procurement Procedure (hereinafter: the State Commission) within 8 days upon receiving the decision on submitted objection.

### **Commission for Control over Public Procurement Procedures Article 92**

The State Commission shall be independent and autonomous.

The State Commission shall have president and two members.

The Government shall appoint president and members of the State Commission in the following manner: president, at the proposal of the Ministry in charge of the activities of justice; one member, at the proposal of the Ministry in charge of the activities of finance; and one member at the proposal of Community of Municipalities.

A person who graduated from the Faculty of Law, with passed bar examination and at least 15 years of relevant working experience may be appointed as president of the State Commission.

A person with university degree and at least 10 years of relevant working experience may be appointed as a member of the State Commission.

President of the State Commission shall represent the State Commission and manage its work.

President and members of the State Commission shall be appointed for the term of 4 years.

President and members of the State Commission cannot be: members of the Parliament, members of municipal assembly, heads of state bodies, organizations

and institutions that are users of the Budget of the Republic, heads of organizations for compulsory social insurance, main administrator and head of a local government body, as well as directors of public utility companies and other legal entities that are obligors under this Law.

The State Commission shall have a secretary, appointed by the Government at the proposal of the president of the State Commission.

Secretary of the State Commission may be a graduated lawyer, with at least 5 years of working experience in the public procurement area.

### **Competencies and Authorizations of the State Commission**

#### **Article 93**

The State Commission shall:

- 1) consider complaints of bidders regarding public procurement procedures and decide on them;
- 2) examine regularity of application of this Law and propose and undertake measures for correcting determined irregularities, thus providing competitive conduct of bidders and transparency of public procurement procedure;
- 3) determine principal positions for the purpose of uniform application of the Law;
- 4) perform also other activities in accordance with this Law.

### **Manner of Work of the State Commission**

#### **Article 94**

Manner of work of the State Commission shall be regulated in greater details by the Book of Rules.

Members of the State Commission must keep data relating to the state, military, official or business secret, and treat the documents they have access to in the course of their work, in accordance with the confidentiality degree.

#### **Article 95**

Funds for the work of the State Commission shall be provided in the Budget of the Republic.

President and members of the State Commission shall receive remuneration for their work.



### **Termination of the Term of Office and Revocation from the Duty Article 96**

The term of office of the president and members of the State Commission may be terminated, i.e. they may be revoked from the duty, only if:

- 1) they are convicted of a crime to unconditional imprisonment in duration of at least six months, or if convicted of a crime that makes them unworthy for performance of the function;
- 2) they die or permanently lose health capacity to perform the function;
- 3) they get appointed and start to perform the function incompatible with the duty in the State Commission;
- 4) if they submit the resignation and ask to be revoked;
- 5) without justified reason, do not perform duty in the State Commission for the period longer than three months.

President and member of the State Commission must be given the possibility to state their opinion on reasons for revocation.

### **Contents of the Complaint Article 97**

It is necessary to state the following in the complaint:

- 1) decision of the contracting authority against which the complaint is submitted;
- 2) description of irregularities committed by a contracting authority in a public procurement procedure;
- 3) reasons for which the decision is contested;
- 4) basic data on the complainant.

The State Commission may, when evaluates that the complaint does not contain these data, request from the complainant amendments to the complaint in accordance with paragraph 1 of this Article.

Deadline for amendments to the complaint cannot be longer than three days.

If a complainant fails to amend the complaint within the specified deadline, the State Commission shall continue the procedure and, in accordance with available data and circumstances, make a decision.

### **Suspensive Effect of the Complaint Article 98**

Timely and properly submitted complaint shall postpone conclusion of a contract of public procurement.

### **Action of the State Commission Article 99**

The State Commission shall decide within the limits of the statements in the complaint.

The State Commission shall also decide on violations of public procurement procedure prescribed by the law, which could have had significant impact on the award of contract of public procurement.

At request of the State Commission, a contracting authority shall be obliged to submit all papers and documents necessary for deciding on the complaint within three days upon receiving the request.

### **Deadlines for Decision Making Article 100**

In order to protect rights of bidders and contracting authorities, a procedure before the State Commission must be efficient and terminated as soon as possible.

The State Commission shall be obliged to adopt a decision, upon submitted complaint, within 15 days upon receiving files and complete documentation.

The deadline referred to in paragraph 2 of this Article, in especially justified cases, may be prolonged for at the most 10 days, and the complainant and contracting authority shall be informed thereon.

The State Commission shall submit the decision referred to in paragraph 2 of this Article to the complainant and contracting authority.

### **Decision Making of the State Commission Article 101**

The State Commission, by its conclusion, may:

- 1) reject the complaint, if the complaint is inadmissible, untimely and stated by an unauthorized person;
- 2) suspend the further procedure, on the basis of a written notice of the complainant regarding his withdrawal of the submitted complaint.

The State Commission, by its decision, may:

- 1) reject the complaint as groundless;
- 2) adopt the complaint as grounded, and entirely or partially, cancel the procedure for the award of contract and the adopted decision, indicate to a contracting authority the committed irregularities and order implementation of a new procedure and decision-making process, or undertake necessary measures removing the committed irregularities.

The State Commission shall be obliged to explain its decision.

The contracting authority shall be obliged to act in accordance with the instructions of the State Commission contained in the decision, within the deadline determined by the State Commission.

The State Commission may require from the contracting authority to submit to it the report on realization of orders contained in the decision referred to in paragraphs 1 and 2 of this Article.

If the State Commission determines that a contracting authority did not implement its decision adopted upon the complaint and reported case of irregularities, it shall inform thereon the Government, i.e. a competent body of a local self-government unit and suggest initiation of the procedure for determining liability.

### **Article 102**

The decision of the State Commission shall be final in an administrative procedure, but administrative dispute can be initiated against it before the Administrative Court of the Republic of Montenegro.

## **IX PUNITIVE PROVISIONS**

### **Offences**

#### **Article 103**

A pecuniary fine in the amount of 30 fold to 200 fold of the minimum wage in the Republic shall be imposed for an offence on a legal entity - contracting authority, if:

- 1) it does not protect data stated in the tender in accordance with adequate confidentiality degree (Article 10);
- 2) it awards a contract of public procurement without a prior implementation of the procedure prescribed by this Law (Article 18);
- 3) it divides a procurement subject representing a single whole, with the intention to avoid application of this Law and the prescribed procurement procedure (Article 32, paragraph 2);
- 4) it does not publish a prior notice, the invitation to public bidding, announcement and decision on the award of contract, in the manner prescribed by this Law (Articles 33, 34, 35 and 36);
- 5) it does not submit tender documents to all persons requesting the tender documents, in accordance with the public invitation (Article 41);
- 6) it envisages in the invitation to bidding requirements and criteria not in accordance with this Law, or changes requirements and criteria upon publication and announcement of the public invitation, without informing bidders thereon (Article 66, and Articles 45-51);

- 7) it does not determine, in the invitation to bidding, a deadline, manner of submission of tenders, place and time of public opening of tenders (Article 62);
- 8) it implements a public procurement procedure of small value (shopping method) contrary to provisions of Article 77 of this Law;
- 9) it does not keep records or documentation regarding public procurement (Articles 84, paragraph 1 and Article 85);
- 10) it does not submit data on implemented public procurement procedures within the envisaged deadline to the competent administration body (Article 84, paragraph 3);
- 11) it concludes a contract of public procurement before the expiration of the deadline for submission of request for protection of rights referred to in Article 88 of this Law;
- 12) it acts contrary to the provision of Article 89 of this Law on withholding the procedure in case of submitted request for protection of rights;
- 13) it does not submit documentation referred to in Article 99 of this Law;
- 14) it does not implement the decision of the State Commission referred to in Article 101 of this Law, within the specified deadline.

A pecuniary fine in the amount of 5 fold to 20 fold of the minimum wage in the Republic shall be imposed on a responsible person of the contracting authority for the offence referred to in paragraph 1 of this Article.

#### **Article 104**

A pecuniary fine in the amount of 30 fold to 200 fold of the minimum wage in the Republic shall be imposed for an offence on the legal entity - bidder, if:

- 1) it gives false data regarding professional/technical and staff capacity (Article 49);
- 2) it does not inform a contracting authority on changes in the data (Article 51).

A pecuniary fine in the amount of 5 fold to 20 fold of the minimum wage in the Republic shall be imposed for the offence referred to in paragraph 1 of this Article on a responsible person of the bidder.

A pecuniary fine in the amount of 5 fold to 12 fold of the minimum wage in the Republic shall be imposed for the offence referred to in paragraph 1 of this Article on a physical person, as bidder.

## **X TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 105**

Public procurements, for which public invitations are published before the effective day of this Law, shall be implemented in accordance with regulations based on which they were initiated.

### **Article 106**

The provisions of Article 46 of this Law, referring to criminal liability of legal entities, shall apply upon the effective day of the Law on Criminal Liability of Legal Entities.

### **Article 107**

The Public Procurement Commission, appointed in accordance with provisions of the existing Law, shall continue its work, rights, obligations and authorizations determined by this Law.

### **Article 108**

The competent administration body shall be established within 90 days from the effective day of this Law.

The Directorate for Procurements of the Republic shall carry out activities of the competent administration body until the day of its establishment.

### **Article 109**

The competent administration body shall take over servants and appointees of the Directorate for Procurements of the Republic who worked on public procurement activities within the deadline referred to in Article 107, paragraph 1 of this Law.

Assignment of servants and appointees referred to in paragraph 1 of this Article shall be done in accordance with the act on organization and systematization of the competent administration body.

Servants and appointees of the Directorate for Procurement of the Republic who are not assigned in accordance with paragraph 2 of this Article shall exercise their rights on the basis of labor in accordance with law regulating the rights of public servants and appointees.

### **Article 110**

The Directorate for Procurements of the Republic, from the day of the establishment of the competent administration body, shall continue to work under the previous name of the Administration for Common Services of State Bodies, until the adoption of the Government regulation regulating its competencies, rights and obligations.

The competent administration body shall take over official premises, means for work, objects, equipment, archive and other means used on the effective day of this Law by employees of the Directorate for Procurements of the Republic who worked on public procurement activities, within the deadline referred to in Article 107, paragraph 1 of this Law.

**Article 111**

Sub-normative regulations, the adoption of which is envisaged by this Law, shall be adopted within 90 days from the effective day of this Law.

**Article 112**

By its effective day, this Law shall supersede the Law on Public Procurements (Official Gazette of the Republic of Montenegro, No 40/01).

Sub-normative regulations adopted on the basis of the Law on Public Procurements (Official Gazette of the Republic of Montenegro, No 40/01) shall apply until the adoption of sub-normative regulations envisaged by this Law.

**Article 113**

This Law shall become effective on the 8<sup>th</sup> day upon its publication in the Official Gazette of the Republic of Montenegro.

**ANNEX I:****Services**

1. Maintenance and repair services;
2. Land transport services (except for rail transport services), including transportation services in armored vehicles and courier services (except for the transport of mail);
3. Air transport services of passengers and freight, except for the transport of mail;
4. Transport services of mail by land and by air (except for rail transport services);
5. Telecommunications services (except for voice telephony, radio telephony, paging and satellite services);
6. Financial services:
  - insurance services
  - banking and investment services (except for financial services in connection with the issuance, sale, purchase or transfer of securities or other financial instruments, and Central Bank services);
7. Computer and other related services;
8. Accounting, auditing and bookkeeping services;
9. Market research and public opinion polling services;
10. Management consulting services (except for arbitration and settlement);
11. Architectural services:
  - engineering services;
  - urban planning and landscape architecture services;
  - related scientific and technical consulting services;
  - technical testing and analysis services;
12. Advertising services;
13. Building-cleaning services and immovable property management services;
14. Publishing and printing services on a fee or contract basis;
15. Refuse disposal services, sanitary services and similar services.
16. Hotel and restaurant services;
17. Rail transport services;
18. River transport services;
19. Supporting and auxiliary transport services;
20. Legal services;
21. Personnel recruiting services;
22. Investigation and safety services (except for safety services regarding transportation in armored car services);
23. Education and vocational education services;
24. Health and social services;
25. Recreational, cultural and sports services;
26. Other services.