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Pursuant to Article IV 4. a) of the Constitution of the Bosnia and Herzegovina, the Parliament of Bosnia and Herzegovina, at session of the House of People, held on 27. September, 2004 and session of the House of Representative, held on 23. September, 2004, adopted

**LAW
ON PUBLIC PROCUREMENT FOR BOSNIA AND HERZEGOVINA**

**CHAPTER I.
GENERAL PROVISIONS**

**SECTION I.
PRINCIPLES AND DEFINITIONS**

**Article 1.
(Svrha i predmet zakona)**

(1) The purpose of this law is to establish the public procurement system in BiH, the rights, obligations and responsibility of participants in the procurement procedures and the procedure for the control of public procurement procedures with the objectives of ensuring that:

- a) public funds are used in the most cost-effective manner with respect to the purpose and the object of the public procurement.
- b) contracting authorities conduct their procurement and award their contracts according to the procedures set forth in this law and that
- c) in doing so, they shall take all necessary steps to ensure that fair and active competition among the potential suppliers can take place, by exercising equality of treatment, nondiscrimination and transparency.

(2) Public procurement refers to procurement of goods, services and works, performed by "contracting authorities" as specified in Article 3 of this Law, and subject to the rules set forth in this Law and its Implementing Regulations adopted pursuant to the provisions of Article 53 of this Law.

**Article 2.
(Definitions)**

- (1) "Accelerated Procedure" a special accelerated form of the restricted procedure can be used when compliance with the time limits are rendered impracticable for reasons of urgency, emergency, environmental threat or force majeure.
- (2) "Candidate" is a supplier that has sought an invitation to take part in a restricted or a negotiated procedure.

(3) "“Design contest” means the procedure which enables the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

(4) “Electronic means” mean wire, fax or other telecommunication terminal equipment designed for data transmission.

(5) “Framework agreement” means an agreement for a limited period between a contracting authority and a supplier, the purpose of which is to establish the framework for contracts to be awarded during the period, in particular with regard to the object of the contracts and, where appropriate, the amounts, extent or quantity envisaged, as well as the price.

(6) “Subsidies contracts” means contracts of all public works, supplies or services, which are subsidised directly or indirectly, by contracting authorities.

(7) “Negotiated procedure” means the procedure whereby the contracting authority negotiates the contract terms and conditions with one or several invited suppliers. It may be conducted with or without prior publication of a procurement notice only under the conditions set out in this Law.

(8) “Open procedure” means the procedure whereby any interested supplier may submit a tender.

(9) “Pre-qualification” means the procedure whereby the contracting authority selects, on the basis of the selection criteria laid down in the tender documents, candidates qualified to be invited to submit a tender in a restricted or a negotiated procedure.

(10) A “Public services contract” means a written contract for pecuniary interest relating to the provision of non-exempted services, and which is not a supplies or works contract as defined in paragraphs (10) and (11) respectively, of this Article. Services which are exempted from this Law are listed in Annex II, PART C, which is an integral part of this Law. A public procurement contract can be:

a) A public procurement contract having as its object both products and services shall be considered to be a public services contract, if the value of the services in question exceeds that of the products covered by the contract.

b) A public procurement contract having as its object services and including works activities within the meaning of Annex I of this Law that are only incidental to the principal object of the contract shall be considered to be a public services contract.

(11) A “Public supplies contract” means a written contract for pecuniary interest involving the purchase, lease, rental or hire purchase, with or without an option to buy, of goods (raw materials, products, equipment and other items of any form and size) including the necessary preparation of site and installation services.

(12) A “Public works contract” means a written contract for pecuniary interest having as its object either the execution, or both the execution and design, of works related to one of the activities referred

to in Annex I, which is an integral part of this Law, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A "work" means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

(13) "Request" means a document whereby a supplier seeks an invitation to take part in a restricted a negotiated procedure.

(14) "Restricted procedure" means the procedure in which any supplier wishing to become a candidate may request to participate and whereby only those qualified candidates invited by the contracting authority may submit a tender.

(15) The terms "supplier", "service provider" and "contractor" refer to any economic entity who may be a natural person or legal person or any group of such persons which offers goods, services or works on the market, respectively. Unless otherwise indicated, "supplier" shall refer to "supplier", "service provider" or "contractor".

(16) "Tender" means a document submitted by a supplier offering to supply products, provide services or perform works under the terms fixed by the contracting authority.

(17) "Tender documents" mean documents describing the object of the procurement, the contract conditions and the award procedure, that are published or presented by the contracting authority to the suppliers; these documents may include a procurement notice, an invitation to tender, technical specifications, draft contract and other relevant documents and explanations.

(18) "Tenderer" is a supplier that has submitted a tender.

(19) "Variant" means a tender offering characteristics of the object of the contract other than those specified in the tender documents.

(20) "Written" or "in writing" means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It includes information that is transmitted and stored by electronic means, provided the security of the content is ensured and the signature is identifiable.

SECTION II.

SCOPE OF APPLICATION

Article 3. (Contracting Authorities)

(1) A contracting authority shall be:

a) any administrative authority at BiH, Entity, Brčko District, Cantonal, City or Municipal level (hereinafter referred to as authorities at State or local levels of administration);

b) any public entity as defined in paragraph (2) of this Article;

c) any public enterprise carrying out one of the activities defined in paragraph (3) of this Article over which a contracting authority may exercise a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it.

(2) A public entity as mentioned in paragraph (1), item b), of this Article, means any entity:

a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and

b) having legal personality, and

c) financed, for the most part, by authorities at State or local levels of administration or by other public entities as defined in this paragraph; or subject to management supervision by those authorities or entities; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by authorities at State or local levels of administration or by other public entities as defined in this paragraph.

(3) The activities carried out by public enterprises referred to in paragraph (1), item c), of this Article, consist in:

a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:

1) water; or

2) electricity; or

3) gas or heat;

or the supply of water, electricity, gas or heat to such networks;

b) the exploitation of a geographical area for the purpose of:

1) exploring for or extracting oil, gas, coal or other solid fuels, or

2) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;

c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable;

d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

(4) Where an activity defined in paragraph (3) of this Article is, in addition, provided by one or more enterprises not falling within the definition of paragraph (1), item c), of this Article, the Council of Competition shall, upon the application of the Director of the Public Procurement Agency and on the basis of a request by a concerned contracting authority, declare whether the market for the activity in question (“the relevant market”) is competitive. Where that relevant market is declared to be

competitive, the Director of the Public Procurement Agency shall propose an amendment of this Law repealing the provisions of this Law to any defined contracting authority in respect of that activity.

(5) The Public Procurement Agency shall prepare lists of categories of contracting authorities. Should a contracting authority as defined by the paragraphs (1) to (3) of this Article not be on the lists established by the Public Procurement Agency, it is none the less covered by this Law.

Article 4.
(Contracts Subject to this Law)

(1) Contracting authorities shall award their public works, supplies and services contracts in accordance with the provisions of this Law and the Implementing Regulations.

(2) This Law shall also apply to the awarding of all public works, supplies or services contracts which are subsidised directly or indirectly by contracting authorities. The contracting authority giving such subsidies shall ensure compliance with this Law, where the subsidised contract is awarded by natural or legal persons other than itself, or shall itself comply with this Law where it awards the subsidised contract for and on behalf of those natural or legal persons.

(3) A framework agreement conducted pursuant to the provisions of Article 32 of this Law shall be a contract for the purposes of this Law concluded in accordance with this Law.

Article 5.
(Contracts Exempted from this Law)

(1) The following contracts may be exempted from the application of this Law:

(a) contracts related to state secrets as they are defined by the relevant BiH Laws, Regulations or Administrative Provisions in force;

(b) contracts, the execution of which must be accompanied by special security measures in accordance with the relevant BiH Laws, Regulations or Administrative Provisions in force;

(c) contracts awarded pursuant to an agreement under which the particular procedure of an international lending or donor organization applies;

(d) contracts in the field of defence related to the production of or trade in arms, munitions and war material;

(e) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or concerning rights thereon.

(2) Concession contracts shall be awarded according to the laws of BiH on concessions.

SECTION III.
COMMON PROVISIONS

Article 6.
(Threshold values)

(1) The value of a public procurement contract shall be estimated by the contracting authority at the beginning of the procurement procedure according to the provisions of paragraphs (5) to (8) of this Article. That value will determine which Chapter of this Law will apply to the award procedure, according to the provisions of paragraphs (2) and (3) of this Article.

(2) Primary threshold values:

a) When the contract value amounts to or exceeds KM 30 000 (thirty thousands) in the case of goods and services, or KM 60 000 (sixty thousands) in the case of works, the contracting authority shall proceed according to the rules set forth in Chapter II of this Law.

b) When the contract value is lower than KM 30 000 (thirty thousands) in the case of goods and services, or KM 60 000 (sixty thousands) in the case of works, the contracting authorities shall proceed according to the rules set forth in Chapter III of this Law.

(3) International threshold values:

When the contract value, in the case of goods and services, amounts to or exceeds KM 500 000 (five hundred thousands) for State authorities or KM 700 000 (seven hundred thousands) for local authorities or public entities as defined in Article 3, paragraph (2) of this Law, or, in the case of works amounts to or exceeds KM 2 000 000 (two million), the procedure shall, except in the case of the services listed in Annex II, PART B, of this Law, be open to international competition. The contracting authority shall proceed according to the rules set forth in Chapter II of this Law subject to the following provisions:

a) publication of the procurement notices indicated in Article 20 of this Law shall be supplemented by the publication of a short summary of the procurement notices in English;

b) the procurement notice shall in addition be published in accordance with Article 20, paragraph (4), of this Law;

c) the time limits contained in Article 21, paragraph (5) and paragraph (6), items a) and b), of this Law shall be increased by 12 (twelve) days in each case;

d) the two time limits contained in Article 21, paragraph (6), item c), of this Law shall each be increased by 12 (twelve) days and 10 (ten) days, respectively.

(4) The threshold values contained in this Article shall remain valid until such time as they are amended in the manner prescribed in the Implementing Regulations.

(5) The value of a public procurement contract shall be the estimated total amount, net of applicable indirect taxes, which is to be paid by the contracting authority for the object of the contract.

(6) The basis for calculating the value of a framework agreement shall be the estimated maximum value net of applicable indirect taxes of all the contracts envisaged for the period in question.

(7) The estimates mentioned in paragraph (5) and (6) of this Article must be valid at the time when the procurement notice is published, or in cases where such notice is not required, at the moment at which the contracting authority commences the contract award procedure.

(8) Contracting authorities must not split up the object of the contract with the intention of avoiding the application of the procurement procedures set forth in this Law. The contract may be split up only if all parts of the contract so split will be subject to the same procurement procedure as chosen for the whole contract according to the provisions of this Law.

Article 7. (Procurement Commission)

(1) For the execution of procurement procedures under Chapter II of this Law, the contracting authority shall appoint a Procurement Commission.

(2) For the execution of procurement procedures under Chapter III of this Law, the contracting authority may appoint a Procurement Commission.

(3) Provisions relating to the creation and conduct of the Procurement Commission shall be specified in the Implementing Regulations.

Article 8. (Language)

All the documents mentioned in this Law which are delivered by or submitted to contracting authorities in respect of contract award procedures governed by this Law shall be drawn up in one of the official languages of BiH, subject to the provisions of Article 6, paragraph (3), item a), of this Law. In addition, tender documents may also be prepared in the English language or any other appropriate language, preserving the total content of the information of the tender documents. A short summary of the procurement notices may in any case be prepared in the English or any other appropriate language for international publication as provided for in Article 20, paragraphs (4) and (5) of this Law.

Article 9. (Confidentiality)

Without prejudice to the laws of BiH on the Freedom of Access to Information:

a) Confidential information contained in any tender concerning the commercial, financial or technical information or trade secrets or know-how of the tenderers shall not be disclosed to any person not officially concerned with the procurement process under any circumstances.

b) After the public opening of tenders, no information relating to the examination, clarification and evaluation of tenders and the deliberations of the contracting authority or the Procurement Commission

shall be disclosed to any tenderer or any third party until the award decision is notified to the successful tenderer.

CHAPTER II.
PRIMARY CONTRACT AWARD PROCEDURES

SECTION I.
CHOICE OF AWARD PROCEDURE

Article 10.
(Types of Award Procedures)

A public supplies, services or works contract shall be awarded by means of one of the following procedures under the conditions set out in Article 11 of this Law:

- a) open procedure;
- b) restricted procedure with pre-qualification;
- c) negotiated procedure with publication of a procurement notice;
- d) negotiated procedure without publication of a procurement notice;
- e) design contest.

Article 11.
(Conditions for the use of Award Procedures)

(1) Unless the conditions of paragraphs (2) to (5) of this Article are fulfilled, the contracting authority shall award a contract on the basis of the open procedure.

(2) A restricted procedure may be used in the event of a large or complex procurement which requires a pre-qualification procedure. A consultancy services contract shall be awarded on the basis of the restricted procedure.

(3) The contracting authorities may exceptionally award contracts by the negotiated procedure, after publication of a procurement notice as described hereinafter. Contracts including any options or preceded by design contest are excluded from this procedure.

a) in the event when only non compliant tenders have been submitted in response to an open or restricted procedure, and the contracting authority has repeated the procedure on appropriately amended terms, provided that the contract conditions of the most lately conducted procedure are not substantially altered;

b) in exceptionally peculiar cases of works or services contracts, when the nature of the works or services or the risks attaching thereto do not permit prior overall pricing;

c) in respect of public works contracts, for works which are performed solely for purposes of research, experiment or development and not to establish commercial viability or to recover research and development costs.

(4) Contracting authorities may exceptionally award contracts by negotiated procedure without publication of a procurement notice as described hereinafter. Contracts including any options or preceded by design contest are excluded from this procedure.

a) in the case of public works, supplies or services contracts:

1) in the event when no tenders or non compliant tenders have been submitted in response to an open or restricted procedure, and the contracting authority has repeated the procedure on appropriately amended terms, provided that the contract conditions of the most lately conducted procedure are not substantially altered and all tenderers meeting the minimum qualification requirements are invited to negotiate;

2) in the event when no request to participate in a restricted procedure has been submitted or no qualified candidates have requested to participate in a restricted procedure, and the contracting authority has repeated the procedure on appropriately amended terms, provided that the contract conditions of the most lately conducted procedure are not substantially altered;

3) when, for essential, demonstrable technical or artistic reasons, or for reasons related to the protection of exclusive rights, the supplies may be delivered, services rendered or works executed only by particular suppliers, and there is no other alternative;

4) when, exceptionally, for demonstrable reasons of extreme urgency brought about by events unforeseeable by the contracting authority in question, the minimum time limits fixed in this Law for the accelerated restricted procedure cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

b) in the case of public supply contracts:

1) when the products involved are manufactured purely for the purpose of research, experiment, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

2) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where previous contracts were effective, where there is no substantial change in the prices and other conditions and where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may, as a general rule, not exceed 1 (one) year following the award of the initial contract;

3) for supplies quoted and purchased on a commodity market;

4) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure;

c) in the case of public services contracts, when the contract concerned follows a design contest executed according to the provisions of Articles 43 to 44 of this Law, and the contract shall be awarded to the winner or to one of the winners of the design contest; in the latter case, all winners shall be invited to participate in the negotiations;

d) in the case of public services and works contracts:

1) for additional services or works not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the services or works described therein, when such additional services or works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority. However, such contracts may only be concluded with the supplier to whom the main contract was awarded, and the aggregate value of contracts awarded for additional services or works may not exceed 50% (fifty percent) of the amount of the main contract;

2) for new services or works consisting of the repetition of similar services or works entrusted to the supplier to whom the same contracting authority awarded an earlier contract, provided that such services or works conform to a basic project for which a first contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the option of using this procedure shall be pointed out, and the total estimated cost of subsequent services or works shall be taken into consideration by the contracting authority, when it estimates the contract value. This procedure may be used only during the 3 (three) years following the conclusion of the original contract.

(5) Design contest may be used when the contracting authorities award contracts as referred in Article 2 paragraph (2) and Article 43 and 44 of this Law.

Article 12. **(Termination of Contract Award Procedure)**

(1) When a contract award procedure has been launched by publication of a procurement notice, it may be terminated only for the following reasons:

a) a contract or framework agreement is concluded;

b) the award procedure is cancelled for one of the following reasons:

1) no tenders are submitted within the specified final time limit;

2) none of the received tenders are compliant;

3) all compliant tenders contain prices which substantially exceed the contracting authority's budget;

4) the number of the received compliant tenders is less than 3 (three) and does not ensure a genuine competition on the contract concerned;

5) the number of qualified candidates is less than 3 (three) and does not ensure a genuine competition on the envisaged contract.

c) the award procedure is cancelled for other demonstrable reasons beyond the contracting authority's

control and not predictable at the time of launching the award procedure.

(2) Where a contract award procedure is cancelled without the award of a contract or conclusion of a framework agreement, a cancellation notice shall be published containing the information referred to in the Implementing Regulations.

SECTION II.

COMMON PROVISIONS ON TENDER DOCUMENTS AND SPECIFICATIONS

Article 13. (Essential information)

(1) The contracting authority shall prepare tender documents in compliance with the Law and the Implementing Regulations. In the tender documents, the contracting authority shall give comprehensive information about the contract conditions and award procedures sufficient for the tenderers to prepare their tenders on a genuinely competitive basis.

(2) Procurement notices prepared according to Article 19 of this Law shall be an integral part of the tender documents.

(3) The tender documents shall include clear information appropriate to the award procedure chosen. Tender documents shall include at least the following information as regulated in further details in the Implementing Regulations.

- a) the Contracting Authority;
- b) the award procedure chosen, and whether a framework agreement is envisaged;
- c) description of the products, services or works concerned; amount, extent or quantity;
- d) bills of quantity, technical specifications ,terms of reference;
- e) place of execution/performance or delivery;
- f) information on tendering for lots;
- g) time limits for completion/deliver of the object of the contract or duration of the contract;
- h) whether variants are allowed or not;
- i) selection criteria establishing the minimum requirements for the qualifications of candidates or tenderers, and required information for assessment thereof;
- j) contract award criteria fixed as “most economically advantageous tender” or “lowest price only”
- k) terms and conditions of the contract proposed;
- l) tender validity period;
- m) tender security; performance security; and any other securities required for interim payments;
- n) place, date and hour for receipt of request to participate;
- o) place, date and hour for receipt of tenders;
- p) place, date and hour for opening of tenders;
- q) currencies of prices;
- r) price breakdown;
- s) language requirements;

(4) The tender documents shall be drawn up according to the models and/or standard tender documents

prepared by the Public Procurement Agency.

(5) In preparation of the tender documents, the contracting authority shall observe the principles of equal treatment and non-discrimination between suppliers. The contracting authority must not use the advice of any person who may have any direct or indirect interest in the result of the award procedure if that is likely to affect the genuine competition on the contract concerned.

(6) The contracting authority may make amendments to the tender documents provided that they are made available to the interested suppliers on one and the same day and not later than 5 (five) days before the date fixed for the receipt of requests or tenders. Where such amendments imply any substantial change to the object of the contract, the time limit for the receipt of requests or tenders shall be extended accordingly and as a minimum by 7 (seven) days.

Article 14.
(Technical Specifications)

(1) Technical specifications shall be non-discriminatory with respect to suppliers and ensure fair and active competition.

(2) Without prejudice to compulsory technical regulations as they are defined in the BiH Laws on standardisation, the technical specifications shall make reference to:

a) 1) BiH standards that are in conformity with European standards, technical approvals or common technical specifications used in EU; or

2) internationally accepted standards, technical regulations or norms; or

3) other BiH standards or other references of a technical nature accompanied by the indication that products, services or works meeting other standards or technical references approved by internationally recognised standardisation institutions of other states that are at least substantially equivalent to the specified references, will also be acceptable.

b) The contracting authority shall have no right to reject a tender on the grounds that the products, services or works tendered for do not comply with the standards indicated in the technical specification, where the tenderer can prove in his or her tender, that the solutions he or she proposes satisfy in a substantially equivalent manner the requirements defined by the technical specifications of the tender documents;

c) or, where applicable standards, technical regulations or norms are unavailable, to the desired functional characteristics or performance requirements, which shall also include those related to the protection of health and safety of citizens, as well as of the environment; these characteristics or requirements must be precise and clear so as to allow the suppliers to draw up their tenders and the contracting authority to acquire the supplies, services or works fulfilling the objective requirements set by the contracting authority.

(3) Any inconsistency in the BiH technical regulations due to eventual differences in entities' relevant

legislation, shall in no case be grounds for rejection of any tender ensuring at least substantial equivalence of offered products, services or works to the references required by the contracting authority.

(4) The contracting authority shall reject all tenders offering supplies, services or works that fail substantially to meet the technical specifications contained in the tender documents.

(5) Reference to goods of a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain suppliers, products or methods is prohibited, except where the contracting authority is unable to give a description of the subject matter of the contract which is sufficiently precise and fully intelligible by using objective technical specifications. In such case the contracting authority must specify that it will accept products, services or methods that are equivalent in terms of their properties by adding the words “or equivalent”.

Article 15. (Tender Validity Period)

(1) A tender shall be valid for the period of time specified by the contracting authority. The period must not be shorter than that set in the tender documents and shall, in no event, be shorter than 30 days. If the tender does not specify the period of its validity, it shall be considered to be valid for the period indicated in the tender documents.

(2) As long as the tender validity period has not expired, the contracting authority may request tenders in writing to extending the validity period until a specified date. Any tenderer may reject such a request without losing the right to the tender security.

(3) A tenderer who agrees to extend the tender validity period and notifies the contracting authority thereof in writing, shall extend the validity period of the tender and provide an extended tender security. The tender must not be modified. If the tenderer fails to respond to the request made by the contracting authority as regards extension of the tender validity period, or does not extend the validity period or fails to provide an extended tender security, then it shall be deemed that such tenderer rejected the request of the contracting authority.

Article 16. (Tender Security. Security for the Performance of the Contract)

(1) The contracting authority may request that the effectiveness of tenders be guaranteed by appropriate tender securities. Tender securities shall not exceed 1-2% (one to two percent) of the tendered prices.

(2) The contracting authority may request that the performance of the contract be guaranteed by the appropriate performance securities. Performance securities shall not exceed 10% (ten percent) of the contract value.

(3) The contracting authority may not reject the tender security or the performance security on the grounds that the security was not issued by an economic entity of BiH, provided that the tender security

and the performance security and the institution who issued the security conform to the requirements set forth in the tender documents.

Article 17.
(Variants)

(1) The contracting authority shall indicate in the tender documents whether or not it authorises variants. Variants shall be allowed only where the criterion for the award of the contract is the most economically advantageous tender. Only variants meeting the minimum requirements laid down by the contracting authority in the tender documents shall be taken into consideration.

(2) In addition to the minimum requirements to be respected by the variants, the contracting authority shall state in the tender documents any specific requirements for their presentation.

(3) In the procedures for awarding public supplies or services contracts, the contracting authority which has admitted variants, may not reject a variant on the sole ground that it would lead to a service contract rather than a public supplies contract or vice versa.

Article 18.
(Provision of Tender Documents)

(1) The contracting authority may, as appropriate, provide the suppliers with tender documents:

- a) upon supplier's request;
- b) together with the invitation to tender;
- c) by placing them on the procurement website as provided for in the Implementing Regulations or using other electronic means.

(2) The contracting authority must dispatch the tender documents to the suppliers within 3 (three) days after the receipt of the request for the provision of the documents. If, on the basis of Article 21, paragraph (6), item c), of this Law the contracting authority reduces the time limits fixed for receipt of requests and tenders, the time limit for dispatching the tender documents shall be reduced to 2 (two) days.

(3) When providing the tender documents, the contracting authority shall observe the principles of equality and non-discrimination in respect of suppliers. The contracting authority must not provide any supplier with the tender documents before the procurement notice is published.

(4) The contracting authority may fix for all suppliers a single rate fee payable for the tender documents. The fee shall cover only the actual costs of reproducing and sending of the documents to the suppliers. Interested suppliers shall have the right to inspect the tender documents before purchase.

SECTION III.
TRANSPARENCY AND PUBLICITY REQUIREMENTS

Article 19.

(Procurement Notices)

(1) The contracting authority shall publish a procurement notice on the envisaged contract, except in cases where the contract is awarded by way of negotiated procedure without publication of a procurement notice. The procurement notice shall give interested suppliers sufficient information to enable them to assess whether they wish to tender for the envisaged contract.

(2) The procurement notice shall contain short information in line with the relevant essential information of the tender documents mentioned in Article 13 of this Law, and it shall have maximum 650 (six hundred fifty) words.

(3) The procurement notice shall contain the information and be set out in the form contained in the Implementing Regulations.

Article 20. (Publication of Notices)

(1) All procurement notices, contract award notices and cancellation notices shall be published by the contracting authorities in the Official Gazette of BiH. The notices published in the Official Gazette of BiH will be reproduced on the procurement website accessible via the Internet.

(2) The form and format of the notices to be published in the Official Gazette of BiH shall be fixed by the Public Procurement Agency in co-operation with the Editor's Office of the Official Gazette of BiH.

(3) In addition, contracting authorities may publish procurement notices, contract award notices and cancellation notices in publications or on websites other than those specified in paragraph (1) of this Article. Such notices must not be published in other publications or on other websites prior to the date of publication in the Official Gazette of BiH and must not contain additional or other information than the notices published in the Official Gazette of BiH.

(4) In the case of contracts whose value exceeds the international threshold values of Article 6, paragraph (3) of this Law, the procurement notice must in addition be published either in a journal or newspaper of international circulation or on the procurement website which guarantees international access as provided for in the Implementing Regulations.

(5) International publication as provided for in paragraph (4) of this Article may as well be used in the case of contracts whose value does not exceed the international threshold values.

Article 21. (Minimum Time Limits for the Submission of Requests and Tenders)

(1) The contracting authority shall specify the place, date and hour for submission of requests to participate in a restricted or negotiated procedure and/or for submission of tenders.

(2) In the event a request or tender is received after the specified date and hour, it shall be returned to the supplier unopened.

(3) The minimum time limits for the receipt of requests or tenders shall run from the date when the procurement notice is published in the Official Gazette of BiH or the date of dispatch of the invitation to tender to pre-qualified candidates.

(4) The minimum time limits for the receipt of requests or tenders fixed by the contracting authority must not be shorter than those set out in this Article and shall be sufficiently long to give interested parties reasonable time for drawing up and submitting their tenders. When fixing these time limits, the contracting authority shall take account of the complexity of the contract terms and the time required for drawing up requests and tenders.

(5) In the case of the open procedure, the minimum time limit for the receipt of tenders may not be less than 28 (twenty eight) days from the date of publication of the procurement notice in the Official Gazette of BiH.

(6) In the case of the restricted, accelerated or negotiated procedure:

a) the final time limit fixed for receipt of requests to participate shall be not less than 18 (eighteen) days from the date of publication of the procurement notice in the Official Gazette of BiH;

b) the final time limit fixed for receipt of tenders in the case of the restricted procedure shall be not less than 28 (twenty eight) days from the day of dispatch of the invitation to tender to the pre-qualified candidates;

c) where the conditions to apply the accelerated restricted procedure are met, the contracting authority shall have the right to fix a time limit for receipt of requests of not less than 8 (eight) days, and a time limit for receipt of tenders of not less than 5 (five) days.

(7) If, for whatever reason, the tender documents or parts thereof, although requested in good time, have not been supplied within the time limits fixed, or where it transpires after the provision of tender documents that tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time limits for the receipt of tenders shall be extended for a period of minimum 7 (seven) days, so that they allow all suppliers concerned to be aware of all the information needed to produce a tender.

(8) Interested suppliers may seek clarification of the tender documents from the contracting authority in writing in good time and not later than 10 (ten) days before the date of submission of requests or tenders. The contracting authority shall prepare a written answer, maintaining the genuine competitive basis of the award procedure, which shall be dispatched to all candidates or tenderers not later than 5 (five) days before the expiry of the time limit for the submission of request or tender. If the answer gives rise to amendments to the tender documents, the contracting authority shall, pursuant to Article 13, paragraph (5), of this Law extend the time limit for the submission of request or tender accordingly and as a minimum by a period of 7 (seven) days.

(9) Requests or tenders may be submitted by individual suppliers as well as by groups of suppliers as defined in Article 2, paragraph (14), of this Law. Such groups shall not be required to establish a new

legal person in order to submit a request or tender, but shall provide joint and several liability for their obligations.

(10) The contracting authority shall indicate in the tender documents, that the request or tender has to be submitted in writing and duly signed by a person authorised by the supplier. It shall also request to submit the tenders in a single sealed and signed or stamped envelopes, except in the event of tenders on consultancy services which will be submitted for in two envelopes as provided for in the Implementing Regulations. The pages of the tender (with supplements) should be numbered. The tender security documents as mentioned in Article 16 of this Law may be presented loose and not numbered.

(11) Upon the tenderer's request, the contracting authority shall furnish a confirmation of the receipt of the tender by specifying the date and time of receipt.

SECTION IV.

QUALIFICATION, SELECTION AND DISQUALIFICATION

Article 22.

(Verifying Suppliers' Qualifications)

(1) The contracting authority shall assess and verify whether a candidate or a tenderer is competent, reliable and capable of executing the contract against the minimum required qualifications requirements fixed in the tender documents, which the candidates and tenderers shall meet.

(2) In pursuance of paragraph (1) of this article, the contracting authority shall set forth in the tender documents, selection criteria establishing the minimum requirements for the qualification of candidates and tenderers with respect to their personal situation as provided for in Article 23 of this Law, their suitability to pursue professional activity as provided for in Article 24 of this Law, their economic and financial standing as provided for in Article 25 of this Law and their technical and/or professional ability as provided for in Article 26 of this Law. The contracting Authority shall request in the tender documents that candidates and tenderers must provide the information and documents proving their qualifications as specified by the contracting authority in accordance with the Articles 23 to 26 of this Law.

(3) The minimum qualification requirements for candidates and tenderers fixed by the contracting authority and the number of documents required to prove them must be related to and proportionate to the subject-matter of the contract. They must not have a restrictive effect on competition and must be reasonable, clear and precise. The contracting authority shall request from the suppliers only such information as is necessary to identify whether the supplier meets the qualification requirements set by the contracting authority. The requirements must not prejudice the supplier's right to protect intellectual property or commercial secrets.

(4) The contracting authority must not reject the request to participate or tender on the sole ground that it was submitted either by a legal or natural person.

(5) Only those candidates or tenderers whose qualifications meet the selection criteria fixed in the tender documents shall be allowed to continue in the procurement procedure.

Article 23.
(Limitations on Suppliers' Participation in Procurement Procedures)

(1) The contracting authority shall establish in the tender documents that a request to participate in a restricted procedure or a tender must be rejected if the candidate or tenderer:

a) is bankrupt or is being wound up or has entered into an arrangement with creditors or has suspended or limited business activities or who is in any analogous situation arising from a similar procedure under the relevant laws and regulations of BiH or its country of establishment;

b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or for an arrangement with creditors or of any other similar proceedings under the relevant laws and regulations of BiH or its country of establishment;

c) has been convicted by a judgement of any offence regarding his or her professional conduct within 5 (five) years from the date of submission of the request or tender;

d) has been found guilty by a competent courts of BiH of grave professional misconduct within 5 (five) years from the date of submission of the request or tender;

e) has not fulfilled its obligations relating to the payment of social security contributions in accordance with the relevant laws of BiH or its country of establishment;

f) has not fulfilled its obligations relating to the payment of taxes in accordance with the relevant laws of BiH or its country of establishment;

g) has misrepresented the information required under Articles 23 to 26 of this Law or has failed to supply the information.

(2) Where the contracting authority requests the candidates or tenderers to provide evidence that none of the cases quoted in paragraph (1), item a), b), c), e) or f), of this Article applies to the concerned supplier, it shall accept as sufficient the following evidence:

a) in cases referred to in paragraph (1), item a), b) or c), of this Article, the production of an extract from the "judicial record" or, failing this, of an equivalent document issued by a competent judicial or administrative authority of BiH or in the country of origin of or the country wherefrom that person comes, showing that the requirements have been met; such documents shall not be older than 3 (three) months;

b) in cases referred to in paragraph (1), item e) or f), of this Article, a certificate, not older than 3 (three) months, issued by the competent authority of BiH or any State concerned.

(3) A list of the BiH authorities, competent to issue the documents referred to in paragraph (2) of this Article, shall be compiled by the Public Procurement Agency.

Article 24.
(Suitability to Pursue Professional Activity)

A contracting authority may in the tender documents request the candidates or tenderers to prove their registration in the relevant professional or trade registers of the country in which they are established, or to provide a special statement or reference evidencing their right to pursue the relevant professional activity.

Article 25.
(Economic and Financial Standing of Candidates or Tenderers)

(1) In the tender documents or, where appropriate, the part of the tender documents relating to the prequalification the contracting authority shall specify the minimum requirements of economic and financial standing to be met by the candidates or tenderers and, as evidence that those requirements are met, may request them to provide one or more of the following references:

- a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- b) balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the supplier is established;
- c) a statement of the supplier's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last 3 (three) financial years available or since the date of registration or commencing the activity in the area concerned, where the supplier was registered or commenced activity less than 3 (three) years previously;
- d) profit and loss account for a maximum of the last 3 (three) financial years available or since the date of registration or commencing the activity in the area concerned, where the supplier was registered or commenced activity less than 3 (three) years previously.

(2) In the tender documents, the contracting authority shall specify which reference or references the candidates or tenderers must provide in order to prove their economic and financial standing.

Article 26.
(Technical and Professional Ability)

(1) The contracting authority shall specify the minimum requirements for the technical and/or professional ability of the candidates or tenderers to be met in accordance with paragraphs (2),(3),(4) and (5) of this Article and shall request them to provide one or more of the proofs referred to in paragraphs (2), (3), (4) and (5) of this Article.

(2) Concerning awarding of public supply contracts, evidence of the candidates' or tenderers' technical capability may be furnished by one or more of the following means:

- a) a list of the supplier's principal deliveries effected in the past 2 to 3 (two to three) the value, dates

and recipients involved, by providing documents in the form of certificates of delivery issued by recipients, or, if such certificates can not be obtained due to the reasons outside the supplier's control - simply declared by the supplier to have been effected;

b) a description of the supplier's technical facilities, its measures for ensuring quality and its study and research facilities;

c) indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier;

d) samples, descriptions and/or photographs of the products to be supplied, the authenticity of which must be certified by the supplier if the contracting authority so requests;

e) certificates drawn up by quality control agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards;

f) where the products to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country, where the supplier is registered, on the production capacities of the supplier and if necessary on its study and research facilities and quality control measures;

g) an indication of the elements of the contract which the supplier may intend to subcontract.

(3) Concerning awarding of public service contracts, contracting authorities may request the candidates or tenderers to furnish one or more of the following means as the evidence of their technical capability and professional ability:

a) a list of the principal services provided in the past 2 to 3 (two to three) years, with the total amounts, dates and recipients involved by providing documents in the form of certificates of delivery issued by recipients, or, if such certificates can not be obtained due to the reasons outside the service provider's control, simply declared by the service provider to have been effected;

b) the service provider's educational and professional qualifications and/or those of its managerial staff and, in particular, those of the person or persons responsible for providing the services;

c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider;

d) a statement of the service provider's average annual manpower and the number of managerial staff for the last 3 (three) years;

e) a statement of the technical facilities and measures available to the service provider for carrying out the services and for ensuring quality;

f) where the services to be provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official of the country, in

which the service provider is registered, on the technical capability of the service provider and, if necessary, on its study and research facilities and quality control measures;

g) an indication of the elements of the contract which the service provider may intend to subcontract.

(4) Concerning awarding of public works contracts, evidence of the candidate's or tenderer's technical capability and professional ability may be furnished by one or more of the following means:

a) a list of the works carried out over the past 3 to 5 (three to five) years, accompanied by certificates of satisfactory execution for the most important works; the certificates shall indicate the value, date and site of the works, and shall specify whether they were carried out according to the rules of the trade and properly completed; where necessary, the competent authority shall submit these certificates to the contracting authority direct;

b) the contractor's educational and professional qualifications and/or those of its managerial staff, and, in particular, those of the person or persons responsible for carrying out the works;

c) an indication of the technicians or technical bodies involved, especially those responsible for quality control, whether or not belonging directly to the contractor;

d) a statement of the contractor's average annual manpower and the number of managerial staff for the last 3 (three) years;

e) a statement of the technical equipment available to the contractor for carrying out the works;

f) a statement about any intended subcontracting and scope of subcontracting.

(5) Should contracting authorities require in the tender documents the production of certificates drawn up by competent bodies attesting the compliance of the supplier with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant international or standards series. The contracting authorities shall also accept other evidence of equivalent quality assurance measures from the suppliers who have no access to such certificates or no possibility of obtaining them within the relevant time limits.

Article 27. (Disqualification on Grounds of Conflict of Interest or Bribery)

(1) With due regard to the laws of BiH on Civil Service as well as other relevant legislation, the contracting authority shall reject a request to participate in a procurement procedure or a tender if the candidate or tenderer who submitted it, has given or is prepared to give a current or a former employee of the contracting authority a gift in the form of cash or in any non-cash form whatsoever as an attempt to influence an action or a decision or the course of the public procurement procedure. The contracting authority shall inform the tenderer and the Director of the Public Procurement Agency of the rejection of the request or tender and the reasons for it in writing, and shall make a note on it in the report on the procurement procedure.

(2) In case that requests or tenders received during the procurement procedure by the contracting authority cause or may cause any conflict of interest, the contracting authority shall, by acting in accordance with the relevant legislation of BiH or related internal rules, ensure that the purpose of this Law is effectively secured.

SECTION V. **CONDUCT OF THE PROCEDURES**

Article 28. **(Open Procedure)**

In conducting the open procedure, the contracting authority shall:

- a) prepare tender documents according to the provisions of Articles 13 to 17 and Article 21 of this Law;
- b) publish a procurement notice as provided for in Articles 19 to 20 of this Law, inviting any interested supplier to request the tender documents and to prepare and submit a tender fulfilling the requirements set forth in the tender documents;
- c) provide the suppliers with tender documents according to the provisions of Article 18 of this Law;
- d) organize and carry out the public opening of tenders received in due time as provided for in Article 33 of this Law;
- e) verify the tenderers' qualifications according to the selection criteria fixed in the tender documents as provided for in Articles 22 to 26 of this Law;
- f) evaluate and compare the tenders submitted by the qualified tenderers according to the contract award criteria fixed in the tender documents as provided for in Articles 34 to 37 of this Law, and thereby award the contract to the tenderer having submitted the lowest evaluated compliant tender;
- g) inform the tenderers about the decisions reached concerning the evaluation as provided for in Article 38 of this Law;
- h) offer the contract to the successful tenderer according to the provisions of Article 39 of this Law.

Article 29. **(Restricted Procedure)**

In conducting the restricted procedure, the contracting authority shall:

- a) prepare tender documents according to the provisions of Articles 13 to 17 and Article 21 of this Law. The tender documents may be prepared in two parts, corresponding to the pre-qualification phase and the tendering phase of the procedure;
- b) publish a procurement notice as provided for in Articles 19 to 20 of this Law, inviting any interested

- candidate to request the pre-qualification documents (if any apart from the procurement notice) and to submit a request for pre-qualification by attaching the information and the documents required;
- c) provide the suppliers with the pre-qualification documents (if any apart from the procurement notice) according to the provisions of Article 18 of this Law;
 - d) select the candidates to be invited to submit their tender in the manner provided for in Articles 22 to 26 of this Law;
 - e) inform the candidates about the decisions reached concerning the pre-qualification as provided for in Article 38 of this Law. Informing the selected candidates may take place at the same time as they are invited to submit their tender;
 - f) provide the selected candidates simultaneously with the tender documents according to the provisions of Article 18 of this Law, inviting them to prepare and submit a tender fulfilling the requirements set out in the tender documents.
 - g) organise and carry out the public opening of tenders received in due time as provided for in Article 33 of this Law;
 - h) evaluate and compare the opened tenders according to the contract award criteria fixed in the tender documents as provided for in Articles 34 to 37 of this Law, and thereby award the contract to the tenderer having submitted the lowest evaluated compliant tender ;
 - i) inform the tenderers about the decisions reached concerning the evaluation as provided for in Article 38 of this Law;
 - j) offer the contract to the successful tenderer according to the provisions of Article 39 of this Law.

Article 30.
(Conduct of the Negotiated Procedure)

- (1) The contracting authority shall conduct the negotiated procedure with publication of a procurement notice under the following conditions:
- a) carry through the pre-qualification procedure according to the provisions of Article 29 of this Law as appropriate for the negotiated procedure;
 - b) invite a minimum of 3 (three) qualified candidates to submit initial tenders and participate in negotiations on the technical, economic, legal and other aspects of the contract;
 - c) based on the results of the negotiations held, invite the participants to submit their final tender and among those identify the successful tenderer according to the evaluation criteria as set out in Article 34.
- (2) When applying the negotiated procedure without publication of a procurement notice, the contracting authority shall:

a) where more than one candidate is invited to negotiate, verify if the qualifications of the candidates meet the criteria specified in the invitation, negotiate the technical, economic, legal and other aspects of the contract and, based on the results of the negotiations held, invite the participants to submit their final tender and among those identify the successful tenderer according to the award criteria as set out in Article 34 of this Law;

b) when only one candidate is invited to negotiate, verify if the qualifications of the candidate meet the criteria specified in the invitation, and negotiate the technical, economic, legal and other aspects of the contract aiming at arriving at the most economically advantageous offer for the contracting authority.

(3) Further provisions relating to the conduct of the negotiated procedures shall be specified in the Implementing Regulations

Article 31.

(Requirements with respect to the Negotiated Procedure with or without publication of a procurement notice)

During the negotiated procedure, the contracting authority shall comply with the following requirements:

a) negotiations shall be held with each candidate separately;

b) no information obtained from the candidate and no information about the solutions proposed by the candidate may be revealed to third parties without the prior consent of that candidate;

c) all candidates/tenderers shall be subject to the same requirements and shall be provided with the same information; equality of treatment among all candidates/tenderers shall be ensured;

d) the proceedings of the negotiations shall be recorded and reported pursuant to the provisions of Article 41 of this Law.

Article 32.

(Framework Agreements)

(1) A contracting authority may conclude a framework agreement only following the execution of an open or a restricted procedure as provided for in this Law.

(2) Under a framework agreement concluded pursuant to paragraph (1) of this Article, the contracting authority shall subsequently be entitled throughout the period of the agreement to conclude contracts with the successful tenderer without following the procedures of this Law in respect of each contract awarded under the framework agreement.

(3) The contracting authority may consider awarding a framework agreement only if one or several of the following circumstances are present:

- a) the subject of the contract are day-to-day services or consumer goods, not classified as longterm assets;
- b) the subject of the contract are goods or services the prices and delivery conditions of which change often;
- c) the subject of the contract are continuous repair or maintenance works;
- d) where the contracting authority should award several identical contracts within 1 (one) year, and the framework arrangement would enable reducing the procurement costs.

(4) Once a framework agreement is concluded, its terms cannot be changed.

(5) Contracting authorities must not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

SECTION VI. EVALUATION AND AWARD

Article 33. (Opening of Tenders)

(1) Tenders shall be opened at a public tender opening immediately after the expiry of the time limit for submission of the tenders as indicated in the tender documents.

(2) Tenders shall be opened at a meeting of the Procurement Commission on the day and at the hour specified in the tender documents. All suppliers who submitted tenders in time or their representatives shall have the right to be present during the tender opening procedure. Change of the deadline for receipt of tenders shall result in change of the date for opening tenders.

(3) Envelopes shall be opened by the Chairperson of the Procurement Commission in open session whether or not the suppliers or their representatives are present at the meeting.

(4) The procedure for the opening of envelopes including that for tenders on consultancy services, as well as the rules on the announcing of the relevant information on the contents of the tenders, shall be set out in the Implementing Regulations.

(5) The outcomes of the opening procedure shall be recorded into the minutes of the meeting in accordance with templates for the meeting minutes prepared by the Public Procurement Agency.

(6) The meeting minutes from the opening procedure shall be submitted to all tenderers, presently or not later than 3 days after it, starting from the time when the tenders were opened.

(7) The subsequent tender analysis, evaluation and comparison procedures shall be conducted in camera by the Procurement Commission.

Article 34. (Contract Award Criteria)

(1) Upon completion of the selection of the qualified candidates or Tenderers as provided for in Articles 22 to 26 of this Law, the criteria on which the contracting authority shall base the award of contracts shall be:

a) either the most economically advantageous tender for the contracting authority, based on stipulated evaluation criteria identified according to the nature and scope of the subject matter of the public contract in question, for example: quality, price, technical merit, functional and environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion; or

b) the lowest price of a technically compliant tender.

(2) The contract shall be awarded to the qualified tenderer having submitted the lowest evaluated compliant tender in accordance with item a) and b) of paragraph (1) of this Article.

Article 35. (Evaluation of Tenders)

(1) The contracting authority shall evaluate and compare the tenders submitted by the qualified tenderers applying the contract award criteria stipulated in the tender documents in accordance with Article 34 of this Law.

(2) In open and restricted procedures, negotiations between the contracting authority and the tenderers on fundamental aspects of the contract, and in particular on prices, are prohibited. However, the contracting authority may request the tenderers to clarify their tenders without bringing about any changes in the substance of the tenders.

Article 36. (Abnormally Low Tenders)

(1) If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall request the tenderer to justify the offered price. If the tenderer fails to produce a justification to the satisfaction of the contracting authority, it shall be entitled to reject the tender.

(2) In order to obtain justification of the abnormally low price, the contracting authority shall request in writing that the tenderer concerned provides details of the relevant constituent elements of the tender, including price elements and calculations. The contracting authority shall take into consideration explanations relating to as appropriate:

- a) the economics of the manufacturing process, of the services provided or of the construction method;
- b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the supply of the goods or services or the execution of the work;
- c) the originality of the work, supplies or services proposed by the tenderer;
- d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

Article 37.
(Domestic Preferences)

In awarding contracts, domestic preferences may be taken into account only to the extent that they are permitted in the Implementing Regulations.

SECTION VII.
POST AWARD REQUIREMENTS

Article 38.
(Informing Candidates and Tenderers about Results)

(1) The contracting authority shall in writing simultaneously, but not later than within 7 (seven) days of the decision, inform candidates or tenderers, having submitted requests or tenders in time, about the decisions reached concerning the pre-qualification, the evaluation of the tenders or the cancellation of the procedure.

(2) The information to candidates shall as a minimum comprise, whether the addressed candidate is prequalified or not. If not, the reasons shall be given.

(3) In the information to tenderers, whose tender is rejected, the reasons of the rejection shall be given.

(4) The information to all tenderers shall as a minimum include the name of the tenderer awarded the contract and the reasons why that tender was selected subject to Article 9 of this Law.

(5) In the event that the procedure is cancelled, the information to candidates or tenderers shall state the reasons.

Article 39.
(Contracts)

(1) The contracting authority shall offer the contract to the qualified tenderer having submitted the lowest evaluated compliant tender in accordance with the provisions of Articles 35 to 37 of this law. The contract shall be concluded in accordance with the laws of BiH on obligations. No contract may be concluded within 15 (fifteen) days of the date on which tenderers have been informed of the result pursuant to Article 38, paragraph (1), of this Law.

(2) If the supplier, who has been given a proposal of contract award:

- a) refuses the award in writing, or
- b) fails to present security for the performance of the procurement contract, as prescribed in the tender documents, or
- c) fails to sign the procurement contract, or
- d) refuses to conclude the contract under the conditions laid down in the tender documents, the contracting authority shall propose awarding the contract to the supplier whose tender in the

descending order of tenders is next after that of the successful tenderer who refused the contract award.

(3) When awarding the procurement contract, the price given in the successful tender, as well as the contract terms and conditions specified in the tender documents must not be altered. If a price variation clause based on fixed, objective rules is permitted in the tender documents, such clause may be included in the contract.

(4) The supplier awarded the contract shall not subcontract any substantial part of the contract without the prior written permission of the contracting authority. The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the contracting authority in good time before the subcontracting. The contracting authority shall inform the supplier of its decision within 15 (fifteen) days of receiving the notification, stating its reasons if permission is denied. The supplier awarded the contract bears the full liability for the performance of the contract.

(5) The contracting authority shall make it a contract condition, that the supplier to whom a public procurement contract is awarded has no right to hire, to the purpose of performing the public procurement contract, individuals or legal persons that have participated in preparation of the tender documents or were member or invited expert of the Procurement Commission functioning at the respective contract award procedure, for at least 6 (six) months after the conclusion of the contract.

Article 40.
(Contract Award Notice)

(1) The contracting authority shall publish a contract award notice pursuant to Article 20 of this Law on the result of the award procedure. Such notices shall be published as soon as possible, but not later than within 30 (thirty) days of the conclusion of the contract.

(2) In the case of a framework agreement concluded in accordance with Article 32 of this Law, the contracting authority shall publish a contract award notice on the conclusion of the framework agreement and is not bound to publish a contract award notice for each contract awarded on the basis of that agreement.

(3) The contract award notice shall contain the information referred to in the Implementing Regulations.

Article 41.
(Report on the Procurement Procedure)

(1) The contracting authority shall prepare a report on all contract award procedures performed according to the provisions of this Chapter, including the cases where a framework agreement is concluded.

(2) The report shall include information as appropriate depending upon the award procedure chosen. It shall contain at least the information set out in the Implementing Regulations.

(3) The report shall be prepared and communicated to the Public Procurement Agency within 15 (fifteen) days after the date of terminating the procurement procedure. The Public Procurement Agency sets the rules and forms for the communication of the reports.

Article 42.
(Preservation of Documents)

The concluded procurement contracts, requests, tenders, tender documents and documents relating to examination and evaluation of requests and tenders as well as other procurement related documents shall be preserved according to the laws of BiH related to archiving.

SECTION VIII.
DESIGN CONTESTS

Article 43.
(Conducting a Design Contest)

- (1) A design contest shall be advertised following the provisions of Articles 19 and 20 of this Law.
- (2) The design contest shall be conducted in order to determine the participant/participants who submitted the best planning or design proposal, where it is intended:
 - a) to award a services contract to the winner of the contest or to one of the winners. In this case the contracting authority may let the design contest procedure be followed up by a services contract award procedure by means of the negotiated procedure without publication of a procurement notice as provided for in Article 11, paragraph (3), item c), of this Law, inviting the winner or all winners of the contest to negotiate the contract terms; or
 - b) to provide prizes to the winner or winners of the contest, or other rewards for participation.
- (3) The contracting authority shall establish rules for the organisation of the design contest and include them in the tender documents prepared according to Article 13 of this Law as appropriate.
- (4) Both legal and natural persons shall be allowed to take part in the design contest.
- (5) The admission of participants to design contests shall not be limited by reference to the specific territory or other restriction of discriminatory nature.
- (6) The contracting authority may decide to conduct pre-qualification of candidates to be invited to submit their projects. In such event, the contracting authority shall fix non-discriminatory qualification criteria capable of ensuring the genuine competition and include them in the tender documents.

Article 44.
(The Jury)

- (1) The projects submitted in due time by the tenderers shall be assessed by a jury, formed by the

contracting authority or the authorised body. The contracting authority must fully authorise the jury to perform the assessment of the projects and identify the winner or the winners. The jury shall be composed exclusively of natural persons who are independent of the participants in the contest. Only natural persons of impeccable reputation who have signed a declaration of impartiality and a statement of confidentiality shall be appointed members of the jury. Where a particular professional qualification is required from participants in a contest, the jury shall be composed with representation of this qualification.

(2) The jury shall be autonomous in its decisions or opinions. Only anonymously submitted projects shall be evaluated. The jury may find out the name of the successful participant/participants only after the jury has taken a decision as regards the best design(s) or project(s).

(3) The projects shall be evaluated subject to the evaluation criteria set forth in the tender documents, and these may not be necessarily based on the lowest price or the most economically advantageous offer.

(4) The jury shall make its decision only in its meetings. The meetings of the jury shall be entered into minutes, which shall be included in the report on the procedure drafted and submitted to the Public Procurement Agency according to the provisions of Article 41 of this Law.

CHAPTER III.

AWARDING OF CONTRACTS BELOW THE PRIMARY THRESHOLD VALUES

Article 45.

(Types of Award Procedures below the Primary Threshold Values)

(1) A supplies, services or works contract, the value of which is estimated by the contracting authority to an amount lower than the primary threshold value as follows from Article 6, paragraph (2), of this Law, may be awarded by one of the following procedures:

a) either a procedure as stipulated in Articles 10 to 11 of this law on the terms set out in those Articles and according to the rules of Chapter II of this Law, or

b) by a competitive request-for-quotations procedure according to the provisions of Article 46 of this Law, subject to paragraph (2) of this Article.

(2) A supplies, services or works contract, the value of which is estimated by the contracting authority according to the provisions of Article 6, paragraphs (5) to (8) of this Law to an amount equal to or lower than KM 3 000 (three thousands) may be awarded by direct agreement according to the provisions of Article 47 of this Law. The contracting authority must ensure that the annual total value of such purchases does not exceed 10% (ten percent) of its total annual procurement budget.

(3) The contracting authority shall prepare and communicate a report to the Public Procurement Agency on any contract awarded according to the provisions of this Chapter, as specified in the Implementing Regulations and pursuant to the model reporting format prepared by the Public Procurement Agency. Any documents related to the awarding of the contract shall be preserved

according to the provisions of Article 42 of this Law.

Article 46.
(Competitive Request for Quotations)

- (1) A competitive request-for-quotations is a procedure in which the contracting authority addresses a request for quotations for the supply of goods, services or works to such a number, but not less than 3 (three), of suppliers, service providers or contractors for the purpose of awarding the contract concerned in accordance with the provisions of paragraphs (3) to (6) of this Article.
- (2) The contracting authority may, in addition, publish an appropriate notice in the Official Gazette of BiH.
- (3) The request for quotations mentioned in paragraph (1) of this Article shall include adequate and sufficient information for the suppliers to prepare their offers on a genuinely competitive basis and shall indicate the exact time limit and place for receipt of quotations. The award of the contract shall be based on the lowest price only pursuant to Article 34, item b), of this Law.
- (4) Each of the suppliers, service providers or contractors may offer only one price and cannot change it. No negotiations of price shall be conducted.
- (5) The contracting authority shall evaluate the received quotations after the expiry of the time limit mentioned in paragraph (3) of this Article on the basis of the criteria fixed as provided for in paragraph (3) of this Article. If there are at least 3 (three) responsive quotations, the contracting authority shall award the contract to the supplier, service provider or contractor meeting the award criteria stated in the request for quotations.
- (6) Where there are less than 3 (three) responsive quotations, the contracting authority shall cancel the procedure and launch one further repeat procedure. However, where the contracting authority opted for the additional publication provided for in paragraph (2) of this Article, there shall be no requirement to repeat the procedure in the event of receiving less than 3 (three) responsive quotations, and the contracting authority may proceed directly to award the contract to the supplier offering the quotation meeting the criteria stated in the request for quotations, subject to the provisions of Articles 38 to 39 of this Law.
- (7) Models and/or standard documents for the competitive request-for-quotations procedure shall be prepared by the Public Procurement Agency.

Article 47.
(Direct Agreement)

Direct agreement is a procedure in which the contracting authority solicits a price proposal or quotation from a single supplier, service provider or contractor and negotiates or accepts that price as a condition for the final agreement. Such procedure shall be defined in an internal Book of Rules prepared by the contracting authority following the model prepared by the Public Procurement Agency.

CHAPTER IV.
IMPLEMENTATION AND ENFORCEMENT

SECTION I.
INSTITUTIONS

Article 48.
(Public Procurement Agency)

(1) A Public Procurement Agency (hereinafter Agency) is hereby established as an independent administrative organisation, with legal personality. The Agency shall have its seat in Sarajevo and shall have a seal in accordance with the Law on the Seal of the Institutions of BiH (Official Gazette of BiH no.12/98; 14/03).

(2) The Agency shall have two branch offices based in Banja Luka and Mostar. The branch offices shall not have status of legal entity and shall not be authorised for decision making without approval of the Agency. The branch offices shall have identical seal as the Agency, which shall additionally include name and location of the branch office, which is the only allowed differences.

(3) The Agency shall begin operations within 3 (three) months of the entry into force of this Law.

(4) The function of the Agency is to ensure the proper implementation of this Law. The detailed functions of the Agency will be defined in the Implementing Regulations. Those functions shall comprise:

- a) proposing amendments to this Law and its Implementing Regulations ensuring the effectiveness and suitability of that legislation;
- b) reinforcing the awareness among the contracting authorities and the suppliers of the public procurement legislation and its objectives, procedures and methods;
- c) publishing procurement manuals and guidelines and development and maintenance of standard forms and models, according to the provisions of this Law and its Implementing Regulations, to be utilized by the contracting authorities;
- d) providing technical assistance and advice to both contracting authorities and suppliers on the application and interpretation of the provisions of this Law and its Implementing Regulations;
- e) establishing systems for monitoring the compliance of the contracting authorities with this Law;
- f) collecting, analysing and publishing information about public procurement procedures and awarded public contracts;
- g) developing a nation-wide electronic information system to supplement the Official Gazette to publish tender documents;

h) initiating and supporting development of electronic procurement and communication within the field of public procurement;

i) publishing training information, manuals and other aids for professional development in public procurement;

j) maintaining a register of accredited trainers in public procurement.

k) submit annual report to Council of Ministers of BiH.

(5) The Agency shall have the Director and the Board.

(6) The Director of the Agency shall adopt the Book of Rules on internal organization of the Agency within 2 (two) months upon the establishment of the Agency.

(7) The Agency Board shall give approval for Implementing Regulations produced by the Director of the Agency.

(8) The Director is appointed to Senior Executive Manager pursuant to the provisions of the Law on Civil Service in the Institutions of BiH (Official Gazette of BiH no.12/02, 19/02, 35/03, 4/04, 17/04, 26/04 and 37/04) by the Council of Ministers of BiH for a period of 5 (five) years with the possibility of a single reappointment. The Director may be dismissed by the Council of Ministers of BiH on the proposal of the Board pursuant to the provisions of the Law on Civil Service in the Institutions of BiH.

(9) The Board of the Agency consists of 7 (seven) members. The members are: the Minister of Finance and Treasury of BiH, the Minister of Finance of FBiH, the Minister of Finance of RS, and four experts selected by open competition as provided for in the Implementing Regulations. The Mayor of Brčko District appoints an observer from the District to the Board. The Director of the Agency as well is an observer to the Board. The members of the Board, apart from the Ministers or their representatives, but including the observer from the District, serves on the Board for 5 (five) years, with the possibility of a single reappointment.

(10) The members of the Board, by a majority vote, choose a Chairman from amongst the members who will hold the position for a two-year term. The Board meets once each 3 (three) calendar months or more often, as the Chairman deems necessary. The Board shall be provided by the Agency with adequate resources and personnel support, so as to enable it to carry out its duties under this Law.

(11) All contracting authorities throughout BiH are obliged to co-operate with the Agency and its Director and Board when they are carrying out their activities within the scope of the responsibilities set forth in this Law and its Implementing Regulations.

Article 49. **(Procurement Review Body)**

(1) The enforcement of the provisions of this Law shall be secured by the procedure set out in Section Two of this Chapter, which in the second instance shall be operated by the Procurement Review Body

(hereinafter PRB).

- (2) The PRB is hereby established as an independent administrative organisation, with legal personality. The PRB shall have its seat in Sarajevo and shall have a seal in accordance with the Law on the Seal of the Institutions of BiH (Official Gazette of BiH no.12/98; 14/03).
- (3) The PRB shall begin operations within 3 (three) months of the entry into force of this Law.
- (4) The Chairman of the PRB shall adopt the Book of Rules on internal organizations of the PRB within two months upon the establishment of the PRB.
- (5) The PRB consists of 3 (three) members selected from among selected experts in administrative law and/or administrative procedure and their status shall be equal to such of an independent judge and incompatible with any direct or indirect, permanent or periodical duty, with the exception of academic activities, and 3 (three) members who are experts in the fields of works, public purchase, transportation and strategic business management, selected by open competition as provided for in the Implementing Regulations.
- (6) After completion of competition procedure, Council of Ministers will propose to the BiH Parliament members of the PRB, taking into the account that two members are from the FBiH and one from the RS.
- (7) Articleove URŽ-a imenuje Parlamentarna skupština Bosne i Hercegovine.
- (8) The PRB shall submit annual reports to the Parliament of BiH.

SECTION II.

REVIEW PROCEDURE

Article 50.

(Objections)

Any supplier who has a legitimate interest in a specific public procurement contract and believes that the contracting authority, during the contract award procedure concerned, has breached one or more provisions of this Law and/or its Implementing Regulations shall have the right to raise an objection against the procedure in the manner and within time limits set forth in Article 51 of this Law.

Article 51.

(Procedure and Time Limits for Lodging and Review of Objections)

- (1) Objections shall be filed in first instance with the concerned contracting authority in writing within 5 (five) days from the day the complainant became aware or should have become aware of the alleged breach of this Law and not later than 1 (one) year from the date of the alleged breach.
- (2) Upon receiving the complainant's written objection, the contracting authority shall suspend the ongoing contract award procedure until the objection is fully examined and a decision is taken before

the expiry of the time limit stated in paragraph (4) of this Article.

(3) The contracting authority must, if needed, extend the time limits of the contract award procedure for the period of suspension referred to in paragraph (2) of this Article. In case the time limits of the contract award procedure notified to the suppliers are changed due to consideration of objections, the contracting authority shall dispatch to suppliers a notice to the effect, indicating the reasons for the extension of the time limits.

(4) The contracting authority must examine the objection and take a justified decision within 5 (five) days of the receipt of the objection as well as informing the complainant of the taken decision and the justification thereof not later than on the next working day.

(5) If the contracting authority fails to examine the objection within the time limit specified in paragraph (4) of this Article, or rejects the objection, the complainant may file a written appeal with the Procurement Review Body within 5 (five) days from the first working day after the expiry of the time limit specified in paragraph (4) of this Article, or, in the case the objection in first instance is rejected by the contracting authority, from the day the complainant was informed hereon by the contracting authority. A copy of the appeal in writing shall simultaneously be notified to the contracting authority.

(6) Upon receiving the copy of the complainant's written appeal, the contracting authority shall suspend the ongoing contract award procedure for a period of 5 (five) days, unless the PRB instructs otherwise in writing.

(7) Paragraphs (5) and (6) of this Article are not applicable in the case of a direct agreement procedure pursuant to Article 45, paragraph (2), of this Law.

Article 52. (Powers of the Procurement Review Body)

(1) Upon receiving the complainant's written appeal, the PRB shall assure itself that the contracting authority has suspended the ongoing contract award procedure for a period of 5 (five) days, unless otherwise instructed by the PRB. Before the expiry of that time limit, the PRB shall take a decision whether or not an interim order according to paragraph (2) of this Article shall be issued, and inform the contracting authority thereof not later than on the next working day.

(2) At any time following the receipt of the complaint and before the conclusion of the contract, the PRB may, by interim order and pending its final decision in the case, suspend the contract award procedure in relation to which a breach is alleged or suspend the implementation of any decision or action taken by the contracting authority during the course of the procedure where:

- a) given the information available to the PRB it is more likely than not that the complainant will succeed in the complaint, and/or
- b) the grant of the suspension would not cause disproportionate harm to the public interest, the procuring authority or to the tenderers.

(3) Prior to the conclusion of a public procurement contract, the PRB has the power, if satisfied that a

decision or action taken by the contracting authority was in breach of any of the obligations of this Law, to:

- a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint;
- b) annul in whole or in part any act or decision of the contracting authority inconsistent with this Law, which power shall include the power to remove any technical or other specifications inconsistent with this Law;
- c) instruct the contracting authority to correct any breaches and to proceed with the contract award procedure following correction;
- d) order the termination of the contract award procedure;
- e) make an award for damages to the complainant who as a tenderer has suffered loss or damage as a result of a breach of this Law.

(4) Following the conclusion of a contract, the PRB has the power, if satisfied that a decision or action taken by the contracting authority was in breach of any of the obligations of this Law, to:

- a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint, and, if justified,
- b) award damages to the complainant who as a tenderer has suffered loss or damage as a result of a breach of this Law.

(5) The level of damages awarded under this paragraph shall be limited to the costs of tender preparation, or 10% (ten percent) of the tenderer's bid price, whichever is the greater. The PRB may, if satisfied that a decision or action taken by the contracting authority was in breach of any of the obligations of this Law, order the contracting authority to pay compensation to the complainant for the cost of bringing the complaint.

(6) The decisions of the PRB may be appealed to the Courts of BiH within a time limit of 45 (forty five) days after the decision is dispatched to the complainant. In case the decision is not brought to the Courts within that time limit, the decision of the PRB is final. The jurisdiction of the Courts arises only once the administrative review procedure before the PRB has been completed.

(7) Where the PRB is satisfied that an officer of the contracting authority has committed a deliberate and intentional breach of this Law with the effect of jeopardising the purpose of this Law as it is stipulated in Article 1 of this Law, it may in addition to the remedial powers referred to in paragraphs (1) to (5) of this Article, either:

- a) submit offence or criminal charge to the relevant court; or
- b) impose penalties in the form of fines amounting up to KM 4000 (four thousands).

(8) Within the framework of this Article, the working procedures of the PRB shall be established in the Implementing Regulations to include the publication of an annual report on the activities of PRB.

CHAPTER V.

ADOPTION OF IMPLEMENTING REGULATIONS

Article 53. (Implementing Regulations)

Within 30 (thirty) days of the entry into force of this Law, The Council of Ministers of BiH shall, upon a proposal of the Minister of Finance and Treasury of BiH, issue the Implementing Regulations clarifying the concepts of this Law in accordance with the provisions of this Law and specifically in pursuance of the Articles 1, 4, 6, 7, 12, 13, 18, 19, 20, 30, 37, 40, 41, 45, 48, 49, 50 and 52 of this Law.

CHAPTER VI.

TRANSITIONAL PROVISIONS, REPEALS, ENTRY INTO FORCE

Article 54. (Provisional Performance of the Tasks of the Public Procurement Agency and the Procurement Review Body)

(1) For a transition period of 3 (three) months from the entry into force of this Law, the tasks of the Public Procurement Agency shall be performed by the Ministry of Finance and Treasury of BiH.

(2) For a transition period of 3 (three) months from the entry into force of this Law, the tasks of the Procurement Review Body shall be performed by the Ministry of Finance and Treasury of BiH, the Ministry of Finance of Republika Srpska or the Ministry of Finance of the Federation of BiH, respectively.

Article 55. (Completion of Launched Contract Award Procedures)

All procurement proceedings that have been launched by publication of a procurement notice, according to the legislation on public procurement hitherto in force in BiH, before the entry into force of this Law and for which no procurement contract has been concluded, or against which judicial or any such other proceedings are being conducted, shall be completed in accordance with the legislation on public procurement hitherto in force in BiH.

Article 56. (Repeals)

(1) Upon entry into force of this Law, the Decision on the Procedure of Procurement of Goods, Services and Contract Awarding for the Needs of the Institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 13/03 and 7/04) shall be made null and void as well as all other regulations covering the matter regulated under this Law, with the exception of cases referred to in Article 55 of this Law.

(2) Within 60 days following the entry into force of this Law, the competent authorities of the entities and Brcko District of Bosnia and Herzegovina shall repeal: the Law on the Procedure of Procurement of Goods, Services and Contract Awarding in RS (Official Gazette of RS, No. 20/01); the Decree on

the Procedure of Procurement of Goods, Services and Contract Awarding in FBiH (Official Gazette of the Federation, No.40/03, 58/03 and 11/04); Book of Rules for Procurement of Goods, Services and Contract Awarding of Brcko District BiH (Official Gazette of Brcko District, No. 14/02), as well as other regulations covering the matter determined under this Law, with the exceptions of cases referred to in Article 55 of this Law and this Law shall apply in the entities and Brcko District.

Article 57.
(Entry into Force)

This Law shall enter into force on the 8th day after being published in the “Official Gazette of BiH” and ,it shall be published in the Official Gazettes of the entities and Brcko District of BiH.

Parliamentary Assembly of BiH no. 101/04

Chair of the House of Representatives Parliamentary Assembly BiH Martin Raguž

Chair of the House of Peoples Parliamentary Assembly BiH Goran Milojević

27 September, 2004.

Sarajevo