



## “ON PUBLIC PROCUREMENT”

Pursuant to Articles 78 and 83 paragraph 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY

OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

### **Scope of the law**

1. This law lays down rules on procurement procedures run by contracting authorities and entities for public contracts and design contests.
2. Procurement, within the meaning of this law, shall be the purchase of works, supply of goods or services through a public contract by one or more contracting authorities or entities from economic operators selected by such contracting authorities or entities, regardless of whether the works, supplies of goods or services are used for public purposes or not.

Article 2

### **Purpose**

The purpose of this law is:

- a) to increase efficiency and effectiveness in public procurement procedures;
- b) ensure good use of public funds and reduce procedure related costs;
- c) to encourage participation of economic operators in public procurement procedures;

- ç) to promote competition among economic operators;
- d) to ensure equal and non-discriminatory treatment of all economic operators, participating in public procurement procedures;
- dh) to ensure integrity, public trust and transparency in public procurement procedures.

### Article 3 **General principles**

- a) Contracting authorities and entities shall ensure equal and non-discriminatory treatment of economic operators and shall act in a transparent and proportionate manner.
- b) Contracting authorities and entities shall not circumvent the scope of application of this law or artificially restrict competition. Competition is considered to be artificially restricted when procurement is prepared with the aim of unfairly favouring or disfavouring specific economic operators.
- c) Contracting authorities and entities shall apply the requirements provided by the environmental, social and labour legislation as well as by the provisions of international agreements and conventions, ratified in accordance with the Constitution.

### Article 4 **Definitions**

For the purpose of this law, the following terms shall mean the following:

1. "**Contracting authority**" is any entity which is subject to this law as regards the implementation of its public contracts. These entities are:
  - a) constitutional institutions, other central institutions, independent institutions and local self-government units;
  - b) any entity which:
    - i. is established to pursue a general and non-economic or commercial interest;
    - ii. has legal personality;
    - iii. is funded mainly by the state, regional or local authorities or other public entities or is administered by them, or in cases where more than half of its administrative, managerial or supervisory board members are appointed by the state, regional or local authorities or other public entities;
  - c) organizations formed by one or several of these authorities or by one or more of these public bodies.
2. "**Electronic auction**" is the process which includes an electronic way of presenting new prices, of alterations and/ or new values on specific elements of the bid and that is performed after the preliminary evaluation of the bids, by classifying them through automatic evaluation methods. Some types of service contracts and some types of employment contracts, having intellectual work as their main scope, cannot be subject to an electronic auction.
3. "**Public Notices Bulletin**" is the bulletin where public procurement notices issued by the Public Procurement Agency and other public announcements are published.

4. **"Life cycle"** includes successive and/or inter-related stages, including the research and development to be carried out, its production, trade and conditions, transport, use and maintenance throughout the entire existence of the product or works or service provision, from purchase of raw materials or generation of resources to disposal, cleaning, termination of service or use.
5. **"Tender documents"** are documents produced or referred to by the contracting authority or entity to describe or determine the elements of the procurement or procedure thereof, necessary for the preparation of bids, including the contract notice, the prior or periodic information notice, when used as a means of invitation to tender, the technical specifications, descriptive document, proposed contract terms, forms for submission of documents by candidates and bidders, information on general applicable requirements and any additional document.
6. **"Contracting entities"** are:
  - a) contracting authorities or public enterprises, performing one of the activities referred to in articles 60 to 66 of this law;
  - b) entities which are not contracting authorities or public enterprises according to letter "a", but their activity is one of the activities referred to in articles 60 to 66 or any combination thereof, and operate on the basis of special or exclusive rights, conferred by a competent authority.
7. **"Equivalent"** is the good or service provided with equivalent characteristics to those defined in the technical specification of the procurement scope.
8. **"Label"** is any document, certificate or attestation that indicates that the relevant works, goods, services, processes or procedures meet certain criteria.
9. **"Public funds"** are:
  - a) any monetary value of the state budget, defined for use in public procurement;
  - b) any monetary value of the local budget, defined for use in public procurement;
  - c) aid funds or loans, provided by foreign donors, under an international agreement, where implementation of the procedures of this law is required;
  - ç) revenues from the state, local enterprises, companies and other entities, where the state owns the majority of the shares or the company's equity.
10. **"Common Procurement Vocabulary"** is the unique classification system of nomenclatures of goods, services and works that is applied in public procurement procedures and that ensures consistency with existing nomenclatures for goods, services and works.
11. **"Supply"**, for the purposes of articles 60, 61 and 62 of this law, includes generation, production, wholesale and retail, while gas production in the form of extraction is included in the scope of application of article 66 of this the law.
12. **"Innovation"** is the realization of a new or notably improved product, service or process, including, but not limited to, the production, construction or restructuring processes of a new trade method or a new organizational method in working practices.
13. **"Candidate"** is the economic operator, which seeks to participate or is invited to participate in phased procurement procedures.
14. **"Public contracts"** are paid contracts, concluded in writing, between one or more economic operators and one or more contracting authorities or entities, whose scope is the performance of works, supply of goods and services, in accordance with this law.
15. **"Classic sector contracts"** are public contracts concluded between one or more economic operators and one or more contracting authorities, excluding sectoral contracts.

16. "**Sectoral contracts**" are public contracts, concluded by contracting entities, operating in the water service, energy, transport and postal sectors, between one or more economic operators, which aim to perform the activities defined in Chapter X of this law.
17. "**Consultancy contracts**" are public contracts for consultancy services, of an intellectual and advisory nature excluding other types of services, where the physical aspects of the activity prevail.
18. "**Public supply contracts**" are public contracts, which scope is the purchase, purchase in parts or instalments, lease with or without the possibility of purchasing the goods. A public supply contract may secondarily include also placement and installation.
19. "**Public contracts for works**" are public contracts with the scope of:
- a) performing or designing and performing works related to one or more construction activities, as defined in the public procurement rules;
  - b) realization or designing and realization of a work;
  - c) realization by any means of a work, which corresponds to the requirements specified by
- the contracting authority exercising a decisive influence on the work type or project.
20. "**Public contracts for services**" are public contracts, with the scope of performing services, other than those included in point 19 of this article.
21. "**Design contests**" are those procedures that enable a contracting authority or entity to purchase, primarily in the fields of urban and rural planning, architecture and engineering, or data processing, a blueprint or project selected by a jury, after it has enrolled in the contest with or without a price quote.
22. "**Electronic communication**" includes information transmitted or stored through electronic means.
23. "**Monetary threshold**" is the monetary value, according to which, in accordance with this law and the public procurement rules, the procedural rules are determined, mainly in determining the time limits and procurement procedures to be used by the contracting authority or entity.
24. "**Conditions for obtaining the label**" are the requirements that must be met by the works, goods, services, processes or procedures to obtain this label.
25. "**Goods**" are anything material of economic value.
26. "**Program material**", in the meaning of letter "b" of paragraph 1 of article 7 of this law, are information, ideas, expressions of opinion, as well as works of authorship in the form of audio or in the form of moving images, with or without sound, which constitute an individual element within a list or catalogue created by the service provider, which becomes available to the public through electronic media, in order to inform, entertain, educate.
27. "**Framework Agreement**" is an agreement between one or more contracting authorities or entities and one or more economic operators, aimed to set out the terms of the contracts to be procured over a specified period of time, in particular terms relating to price and, where appropriate, to quantities provided.
28. "**In writing**" or "in written form" is any phrase consisting of words or figures which can be read, copied and communicated, including information transmitted and stored electronically.
29. "**Electronic mean**" is an electronic device for processing and storing data (including digital processing) that is transmitted, transmitted and received through cables, radios, optical devices or any other electromagnetic device.
30. "**Alternative bid**" is the bid by which the bidder meets the minimum requirements, respectively the standards, which the contracting authority or entity has defined in the tender

documents, but in a different manner, namely, with technical characteristics or methods other than those defined by the technical specifications.

31. **“Bidder”** is the economic operator, which submits a bid in a public procurement.

32. **“Economic Operator”** is any natural person or legal entity, or public entity or group of persons / entities, including companies with their temporary enterprise.

33. **“Central purchasing body”** is the contracting authority or entity, which:

- a) provides goods and / or services to the contracting authorities or entities;
- b) awards public contracts for works, goods or services, allocated to contracting authorities or entities.

34. **“Procurement selection procedures”** are the procedures undertaken by the contracting authorities or entities for the award of public contracts for goods, works and services.

35. **“Work”** is the result of construction or civil engineering works, taken together, which is sufficient in itself to fulfil an economic or technical function.

36. **“Public procurement rules”** are the rules included in bylaws adopted by the Council of Ministers in for the implementation of this law.

37. **“Public enterprise ”**, for the purpose of the implementation of this law, is any enterprise over which the contracting authorities may exercise directly or indirectly a dominant influence due to ownership over it, financial participation in it, or bas on its governing rules.

The dominant influence is considered when the contracting authorities, directly or indirectly, in relation to an enterprise:

- a) own the majority of the subscribed capital of an enterprise; or
- b) control the majority of votes related to the shares issued by the enterprise; or
- c) may appoint more than half of the administrative, managerial or supervisory bodies of the enterprise.

38. **“Technical specifications”** are:

a) in case of public procurement of works, summary of technical data included in the tender documentation, which define the necessary characteristics of materials, products or goods to be adapted to the use needed by the contracting authority or entity. These characteristics include impacts on life environment and climate impacts, description of all conditions, including quality assurance procedures, terminology, symbols, test methods, packaging, marking and labelling, as well as instructions for exploitation, production processes and methods of the scope.

Also, these characteristics include rules from the design and rules for cost estimation, conditions for testing, inspection and acceptance of completed works, construction methods or techniques, as well as all other technical conditions, which the contracting authority or entity has the right to determine in accordance with the general and special rules regarding the scope and the materials or parts included;

b) in the case of public procurement of goods or services, the specification defining the characteristics of the production or service, such as quality level, environmental impact and climatic effects, description of all conditions, including accessibility for persons with disabilities and conformity assessment, level of realization, production exploitation, safety or dimensions, including relevant requirements for the product in relation to the denomination under which it is sold, the terminology, symbols, tests and methods for testing, packaging, notes and labelling, as well as instructions for use, production processes and methods for each stage of the life cycle of the goods and services, and conformity assessment procedures.

39. **“Standard”** is a technical specification approved by a recognized standardization body for repeated or continuous use, the fulfilment of which is not mandatory and is as follows:

- a) "International standard" is a standard approved by an international standardization body and made available to the general public;
  - b) "European standard" is a standard approved by a European standardization body and made available to the general public;
  - c) "National standard" is a standard approved by a national standardization body and made available to the general public.
40. "**Dynamic purchasing system**" is a fully electronic purchase of goods, works or ordinary services procedure in the market, which meets the requirements of the contracting authority or entity, with a limited time and open to any economic operator, which meets the selection criteria and submits a bid in accordance with the specifications.
41. "**Electronic procurement system**" is a state database, created according to the legislation in force and used for conducting public procurement procedures and is administered by the Public Procurement Agency.
42. "**Special or exclusive rights**" are the rights conferred by a responsible authority of the Republic of Albania through legislative, regulatory or administrative provisions, the effect of which is to limit the exercise of activities provided in Chapter X of this law, for one or more entities, which significantly affect the ability of other entities to perform that activity. Rights that have been conferred through a competitive procedure, where transparency is guaranteed and where the granting of these rights is based on objective criteria, do not constitute "special or exclusive rights" within the meaning of the first paragraph.
43. "**Concentrated purchasing activities**" are activities that are carried out continuously in one of the following forms:
- a) purchase of goods and services for certain contracting authorities or entities; or
  - b) awarding public contracts or concluding framework agreements for goods, services or works dedicated to certain contracting authorities or entities.
44. "**Sectoral activity**" is the activity in the field of procurement in the sectors of water, energy, transport and postal services, which are included in Chapter X of this law.
45. "**Trade secret**" is according to the legislation in force on entrepreneurs and companies.
46. "**State secret**" is according to the legislation in force on classified information.
47. "**Conflict of interest**" is according to the legislation in force on the prevention of conflict of interest in the exercise of public functions.
48. "**Active ownership of shares or quotas in the capital**" is according to the legislation in force on entrepreneurs and companies.
49. "**Passive holding of shares or quotas in the capital**" is according to the legislation in force on entrepreneurs and companies.

## CHAPTER II

### SCOPE OF APPLICATION AND EXEMPTIONS

#### Article 5

#### **Mixed contracts**

1. Contracts, with a scope of two or more types of procurement for works, services or supplies, are awarded in accordance with the applicable provisions, according to the type of procurement that characterizes the main scope of the contract in question.

2. In the case of mixed contracts, which consist partly of the services provided in Chapter XII of this law and other services, or mixed contracts, which consist partly of services and partly of supplies, the main scope is determined in accordance with the higher value provided for the relevant services or supplies.

## Article 6

### **Mixed procurement covering several activities**

1. For public contracts having as their scope two or more activities, the procurement of which is regulated in different regimes, when different parts of it are objectively separable, the contracting authorities or entities may choose to award several separate contract for each of them or award a single contract, where for objective reasons, procurement in separate contracts is impossible. In any case, the choice between the procurement of a single contract and the procurement of several separate contracts should not be made with the intention of excluding the contract or contracts from the scope of this law.

2. When the contracting authorities or entities choose to award separate contracts, the decision on the rules applicable to each of them shall be taken on the basis of the characteristics of the particular activity concerned.

3. When the contracting authorities or entities choose to award a single contract, the following rules shall apply to the award of the contract:

a) in case of contracts, which a scope of procurement covered by the classical sector and the procurement for the performance of a sectoral activity, the applicable rules are determined according to the provisions governing the classical sector;

b) in case of mixed contracts, which contain elements of supply contracts, works and services according to this law and the law of concessions, the single contract shall be awarded in accordance with this law, if the estimated value of the part of the contract covered by this law, calculated in accordance with the provisions of this law, is equal to or greater than the upper monetary threshold;

c) in the case of mixed contracts, which contain elements of supply, works and services contracts according to this law and the procurement law in the field of defence and security, the single contract shall be awarded in accordance with the procurement rules in the field of defence and security.

4. When it is impossible for different parts of a mixed public contract to be separated, the single contract shall be awarded on the basis of rules applicable to its main scope.

5. For mixed contracts, for which it is impossible separate and it is impossible to determine which activity is the main scope, the applicable rules shall be defined as follows:

a) in the case of contracts, with a scope of procurement covered by the classical sector and the procurement for the performance of a sectoral activity, the applicable rules shall be determined according to the provisions governing the classical sector;

b) in the case of mixed contracts, which contain elements of supply, works and services contracts of the classical sector and concessions, the single contract shall be awarded in accordance with this law, if the estimated value of the part of the contract,

which constitutes a contract covered by this law, calculated in accordance with the provisions of this law, is equal to or greater than the upper monetary threshold;

c) in the case of mixed contracts, which contain elements of supply contracts, works and services of sectoral activities and concessions, the single contract shall be awarded in accordance with the rules provided for procurement in sectoral activities under this law;

ç) in the case of mixed contracts, which contain elements of supply contracts, works and services according to this law and according to the procurement law in the field of defence and security, the single contract shall be awarded in accordance with the procurement rules in the field of defence and security.

## Article 7

### **Special exemptions**

1. This law does not apply to public contracts and design contests for:

a) the purchase or lease by any financial means of land, of existing buildings or of other immovable property or of rights thereto. Except for contracts for financial services concluded at that moment, before or after the contract of purchase or lease of any form, which shall be subject to this law;

b) the purchase, development, production or co-production of the material of the intended program for audio-visual media services or radio media services, provided by the audio-visual or radio media service providers or the contracts for the broadcasting time or the provision of the program, which are awarded to audio-visual or radio media service providers;

c) arbitration and mediation services as follows:

i. legal representation of the contracting authority or entity by a lawyer, arbitration hearing or mediation; court proceedings before courts, international tribunals.

ii. legal advice given for the preparation of one of the proceedings referred to in subparagraph (i) of this sub-paragraph, or where there is a clear indication and high odds that the matter to which the consultancy is related becomes subject of such proceedings, provided that the consultancy is provided by a lawyer.

ç) notary services for verification and certification of documents with the original;

d) legal services provided by appointed administrators or guardians or other legal services, the providers of which are appointed by a court or adjudicating panel, or appointed by law to perform specific tasks under the supervision of such adjudicating panels or courts;

dh) bailiff services and other legal services, which are related, even accidentally, with the exercise of official authority;

e) financial services for the sale, purchase or transfer of securities or other financial instruments, in particular the actions of the contracting authority for the accumulation of monetary or capital values, loans, whether or not relating to the issue, sale, purchase or transfer of bonds or other financial instruments, as well as central bank services.

ë) research and development services, the results of which are used by all, except when the benefits go only to the contacting authority or entity for its use for internal



affairs and provided that the service performed is fully paid by this contracting authority or entity;

f) employment contracts;

g) civil protection services, civil emergencies and risk prevention services provided by non-profit organizations or associations, in addition to ambulance transport services;

gj) rail or metro transport services;

h) political campaign services when provided by political parties in the framework of election campaigns;

i) procurement of goods, works and services for the needs of diplomatic mission's consular posts of the Republic of Albania abroad;

j) the cases provided in articles 65, 67, 68, 69 and 70 of this law.

2. The services provided in letters "ë", "g" and "h" shall be defined in the public procurement rules.

3. Exempted cases, provided in point 1, shall be regulated by other laws or bylaws.

#### Article 8

#### **International obligations**

1. This law shall not apply to public contracts and design contests, which the authority or contracting entity is obliged to award or organize in accordance with procurement procedures other than those specified in this law, which are specified in one of the following instruments:

a) in an international agreement, covering works, supplies or services, which are created for the implementation or joint use of a project;

b) an international organization.

2. This law does not apply to public contracts and design contests, which are awarded by the contracting authority or entity in accordance with the procurement rules, provided by an international organization or an international financial institution, when the public contracts in question are fully funded by this organization or institution.

In the case of public contracts and design contests, most of which are co-financed by an international organization or an international financial institution, the parties agree on applicable procurement procedures.

3. This law does not apply to public contracts and design contests relating to aspects of defence or security, which are awarded or organized in accordance with international rules as follows:

a) international agreements for works, supplies or services, for the purpose of implementation or joint use of a project by the parties;

b) international agreements or arrangements related to the deployment of troops, according to commitments of the Republic of Albania in a third country;

c) international organizations.

4. The above provisions may not be used in order to circumvent the selectin principles.

## Article 9

### **Service contracts awarded on the basis of an exclusive right**

This law shall not apply to public service contracts concluded by a contracting authority for another contracting authority or joint of contracting authorities on the basis of an exclusive right which they enjoy under the legislation in force.

## Article 10

### **Secret contracts and contracts requiring special security measures**

This law does not apply to public contracts and design competitions, if their procurement or execution is classified as a state secret or requires special security measures under the legislation in force, or if this is dictated by the essential interests of the state, provided that it has been determined that the essential interests in question cannot be guaranteed by the establishment of criteria aimed at protecting the classified nature of the information made available by the contracting authority or entity in the procurement procedure.

## Article 11

### **Contract between subjects within the public sector**

1. The contracting authority or entity may award a public contract to a legal person governed by private or public law, by not applying the provisions of this law, when all the following conditions are met:

a) the contracting authority or entity exercises control over the legal entity, that is similar to the one exercised over its departments, where more than 80% of the activities of the controlled legal entity are performed to execute the tasks entrusted to it by the controlling contracting authority or other legal entities, controlled by that contracting authority;

b) There is no direct participation with private capital in the controlled legal entity, but, even if there is, then this participation should not have representative, decision-making or controlling powers within it, and should not exercise a decisive influence over the controlled legal entity according to the legislation in force on entrepreneurs and companies. A contracting authority or entity is considered to exercise over a legal entity a control, similar to the one over its own departments, within the meaning of subparagraph "a" of this paragraph, in cases where it exercises a decisive influence on both strategic objectives and important decisions of the controlled legal entity. This control can also be exercised by another legal entity, which in itself is controlled in the same way by this contracting authority or entity.

2. Paragraph 1 of this article shall also apply to cases when a controlled legal entity, which is a contracting authority or entity, awards a contract to the controlling contracting authority, or to another legal entity controlled by the same contracting authority or entity, if there is no direct participation with private capital in the legal entity to which the public contract is awarded, with the exception of uncontrolled and non-blocking forms of participation with private capital required by the provisions of the legislation in force, which do not exert a decisive influence on the controlled legal entity.

3. A contracting authority or entity, which does not exercise control within the meaning of paragraph 1 of this article over a legal entity governed by private or public law, may, however, award a public contract to this legal entity without applying this law, when all the following conditions are met:

- a) the contracting authority or entity, together with other contracting authorities or entities, exercises over that legal entity a control similar to that over their own departments;
- b) where more than 80% of the activities of the legal entity are performed for the execution of tasks entrusted to it by the controlling contracting authorities or entities or by other legal entities controlled by the same contracting authorities or entities; and
- c) there is no direct participation with private capital in the controlled legal person, but even if there is, then this participation should not have representative, decision-making or controlling powers within it, and should not exercise a decisive influence on the controlled legal person.

For the purposes of sub-paragraph "a" of this paragraph, the contracting authorities or entities exercise joint control over a legal entity, in cases where all the following conditions are met:

- i. decision-making bodies of the controlled legal entity are composed of representatives from all participating contracting authorities or entities. Individual representatives may represent some or all of the participating contracting authorities or entities;
- ii. these contracting authorities or entities are able to jointly exert a decisive influence on the strategic objectives and important decisions of the controlled legal person; and
- iii. the controlled legal entity does not seek to fulfil any interest that conflicts with the interests of the controlling authorities

4. A contract concluded exclusively between two or more contracting authorities or entities is not included in the scope of application of this law, when all the following conditions are met:

- a) the contract establishes or implements a cooperation between the participating contracting authorities or entities, in order to ensure that the public services they are required to provide are provided to achieve their common objectives;
- b) the implementation of this cooperation is regulated only through factors related to public interest; and
- c) the participating contracting authorities or entities perform less than 20% of the activities related to cooperation in the open market.

5. In determining the percentage of activities referred to in letter "a" of paragraph 1, letter "b" of paragraph 3 and letter "c" of paragraph 4, the average total turnover or an appropriate alternative activity, is taken into account, based on measures such as: costs covered by the legal entity or contracting authority for services, supplies and works for the three years preceding the award of the contract.

6. If due to the date of establishment of the contracting authority or entity, the date of commencement of the activity or due to the reorganization of its activity, the average total turnover or an alternative activity referred to in point 5 of this Article, are not available or are not valid any more for the three years prior to the award of the contract, it is sufficient to

prove that the measurement of the activity is reliable, especially through business plans / projections.

7. The contracting authorities or entities, even though they are in the conditions provided for in this article, may decide to procure the goods, services or works and enter into a public contract with an economic operator, operating in the market according to the provisions of this law.

### CHAPTER III SPECIFIC SITUATION

#### Article 12

##### **Procurements in the field of defence and security**

1. This law does not apply to public contracts and design contests that are included in the scope of application of the law on procurement in the field of defence and security.
2. This law does not apply to public contracts and design contests, which although not excluded from the application of paragraph 1, if the essential interests of the state cannot be guaranteed by less intrusive ways such as setting criteria, aimed at protecting the classified nature of the information made available by the contracting authority or entity in the procurement procedure.
3. In the case of mixed contracts, with the scope of procurement covered by this law and the procurement covered by the legislation in the field of defence and security, the legislation in the field of defence and security shall be applied.

#### Article 13

##### **Contracts subsidized by contracting authorities**

1. This law applies to the award of the following contracts:
  - a) employment contracts where more than 50% of the fund is covered by the budget of the contracting authorities and the estimated value of which, without VAT, is equal to or greater than the lower monetary threshold, when these contracts include one of the following activities:
    - i. construction engineering activities, according to the provisions in the public procurement rules;
    - ii. construction work for hospitals, sports facilities, leisure and leisure facilities, school and university buildings and buildings used for administrative purposes;
  - b) service contracts where more than 50% of the fund is covered by the budget of the contracting authorities and the estimated value of which, without VAT, is equal to or greater than the lower monetary threshold, which are linked to a contract for work, as mentioned in letter "a" of this article.

The contracting authorities referred to in sub-paragraph "a" and "b" of this article, guarantee compliance with this law, when they themselves do not award the subsidized contract or when they award this contract for and on behalf of other entities.

2. In the case when the employment contract is covered by the budget of the contracting authorities for less than 50% of the fund, the estimated value of which, without VAT, is equal to or less than the lower monetary threshold, the contracting authorities shall, in awarding such contracts, comply with the selection principles provided for in article 3 of this law.

## CHAPTER IV GENERAL PROCUREMENT RULES

### Article 14 **Economic operators**

1. Candidates or bidders may be natural persons or legal entities.
2. Groups of economic operators may submit bids or appear as a single candidate as provided in the public procurement rules. The contracting authority or entity shall not require a special legal form of grouping of the companies for the purpose of submitting a tender or request to participate.  
Contracting authorities or entities may require groups of economic operators to take a specific legal form, after being awarded, if deemed necessary for the performance of the contract. In any case, this condition must be disclosed to the economic operators in the tender documents for the satisfactory execution of the contract.
3. The rules on the manner of meeting the criteria by the groups of economic operators in a procurement procedure shall be defined in the public procurement rules.

### Article 15 **Reserved contracts**

1. Contracting authorities or entities may reserve the right to participate in public procurement procedures to economic operators whose primary purpose is the social and professional integration of persons with disabilities or persons in need or to provide for such contracts to be implemented in the context of programs for the employment of persons with disabilities, provided that at least 30% of the employees of these economic operators or programs are workers with disabilities or employees in need, under the legislation in force.
2. The contracting authority or entity, which will carry out a procedure according to the provisions of this article, must disclose it in the contract notice and in the tender documents.

### Article 16 **Confidentiality**

1. An economic operator, in accordance with the legislation on entrepreneurs and companies, may not disclose or disseminate certain information, including technical or trade secrets and confidential features of bids and requests to participate.

2. If the economic operator has classified the information as confidential, it is obliged to specify the legal basis on which this information is classified as such.
3. The economic operator may not classify as confidential: the bidding price, the price list, the catalogue, the information related to the bid selection criteria, public documents, fragments from public registers and other information that should be made public or not confidential in accordance with legislation in force.
4. Unless otherwise provided for by this law or in domestic legislation, in particular the legislation in force on the right to information, and without prejudice to the obligations related to the publication of awarded contracts and informing candidates and bidders as provided in this law, the contracting authority or entity shall not disclose information submitted by economic operators, which the latter has designated as confidential, including but not limited to technical or commercial secrets and confidential aspects of the bids.
5. The contracting authority or entity shall not disclose confidential information, provided by the candidate or tenderer participating in the negotiations or dialogue, in a competitive negotiated procedure, negotiated procedure with prior publication of a contract notice, competitive dialogue or partnership for innovation, without the consent of the latter, by means of a written statement. This statement cannot be used as a barrier to accessing all information, but should only relate to the information in question.
6. The contracting authority or entity may require economic operators to maintain the confidential nature of the information made available by the contracting authority or entity during the procurement procedure.

#### Article 17

#### **Form of communication**

1. All communication and exchange of information pursuant to this law shall be performed using electronic means of communication.  
Exceptionally, the communication and exchange of information may be carried out in writing, as provided in the public procurement rules. The cases when written communication can be used shall be determined by a decision of the Council of Ministers.
2. Without prejudice to the general principle of non-discrimination and the provisions of this law, the following rules are applicable to acceptance of bids and requests to participate through electronic means of transmission as follows:
  - a) information relating to the specifications required for the electronic submission of bids and requests to participate, including encryption, shall be made available to interested parties;
  - b) the means for electronic receipt of bids and requests to participate must be in accordance with the requirements set out in the public procurement rules and relevant legislation.
3. In cases where the authority or contracting entity communicates in electronic form, the means of electronic communication and their technical characteristics must be non-discriminatory, available and interoperable with information and communication technology

products, which are widely used. The rules and procedures for this form of communication shall be determined by Decision of the Council of Ministers.

4. Communication, exchange and storage of information shall be carried out in such a way as to ensure the preservation of data integrity, confidentiality of bids and requests to participate. The form used for communication, exchange and storage of information must ensure that the contracting authority or entity can review the content of bids and requests to participate, only after the legal deadline for their submission, set by this law, has expired.

#### Article 18

##### **Protection of integrity of the procedure and general measures to prevent corruption**

1. Public procurement must be conducted in a transparent manner with impartiality and without any preferential treatment. Procurement procedures should require the highest standards of ethics and public trust. In any case, any conflict of interest or even the occurrence of a conflict of interest, in the relationship between the head of the contracting authority, the employee engaged in the procurement process and the economic operator, under the legislation in force on the prevention of conflicts of interest in exercising public functions, should be strictly avoided.

2. Employees of the contracting authority or entity, involved in the preparation of tender documents may not be bidders or members of a group of bidders in the procurement procedure.

3. The contracting authority or entity shall take all necessary measures in the planning process, in the public procurement procedure and in the implementation of the contract, in order to detect corruption in time and eliminate the harmful consequences of corruption.

4. Every official engaged in the procurement process by the contracting authority or entity and any interested party who has information on corruption is obliged to inform the competent bodies.

5. Economic operators with their actions should not violate the principles of competition, according to the provisions of applicable law.

#### Article 19

##### **Conflict of interest**

1. Contracting authorities or entities shall take appropriate measures to prevent, identify and resolve in accordance with applicable law cases of conflict of interest arising in the course of procurement procedures in order to avoid distortions of competition and guarantee the equal treatment of all economic operators.

Persons engaged in the procurement process and contract execution should not be in a state of conflict of interest, according to the provisions of legislation in force.

A conflict of interest situation is assessed according to the provisions of the legislation in force on the prevention of conflict of interest and within the meaning of this law covers any situation where the head or employee of the contracting authority or entity or of the procurement service provider, acting on behalf of the authority or contracting entity, which

are involved in the conduct of the procurement procedure, or may affect the outcome of this procedure, have a direct or indirect financial, economic or any other personal interest, which may affect their impartiality and independence in the decision-making of the procurement procedure.

2. The contracting authority or entity shall reject a bid or a request to participate in a tender if:

- a) a candidate or bidder gives or promises to give, directly or indirectly, to an official or employee a reward in any form, employment opportunity or good, service or value, as an incentive for an action, decision or procedure undertaken by the contracting authority or entity for procurement procedures;
- b) a candidate or bidder is in a state of conflict of interest according to the provisions of legislation in force on the prevention of conflicts of interest;
- c) a candidate or bidder in the same procedure are in a circle of related persons according to legislation on the prevention of conflicts of interest.

Refusal and grounds for such action must be recorded and communicated immediately and formally to the candidate or bidder in question.

3. Decisions taken by the contracting authority or entity in accordance with paragraph 2 of this article, do not prevent a criminal referral to the relevant bodies, when the acts or actions in question constitute a criminal offense.

4. If during the stages of preliminary market survey, preparation of tender documents or at the moment of bid opening it is found that one or some of the candidates / bidders are in conditions of conflict of interest with one or some of the designated officials for market survey / preparation of tender documents or evaluation of requests / bids and this conflict situation could not be discovered before this moment, the head of the contracting authority, depending on the damage that may have been caused, decides whether to replace the members of the commissions found in the conditions of conflict of interest and continue the process, or cancel the procurement procedure.

## Article 20

### **Common Procurement Glossary**

The Common Procurement Glossary, which shall be adopted by Decision of the Council of Ministers, shall be used in public procurement procedures.

## CHAPTER V

### INSTITUTIONAL FRAMEWORK OF PUBLIC PROCUREMENT

## Article 21

### **Contracting authority or entity**

1. The contracting authority or entity shall be responsible for procurement in accordance with the provisions of this law and its implementing bylaws, ensuring compliance with the principles of equal treatment, transparency, competition and non-discrimination, provided in this law.



In the meaning of this paragraph, the contracting authority or entity shall be tasked to properly plan in time and quality its public funds and needs and to procure and execute the contract in accordance with the legislation in force.

2. The contracting authority or entity shall administer all documentation concerning the procurement procedure, starting from the planning to the contract execution, in order to control the implementation of the law.

3. When one or more contracting authorities or entities need the same goods, works or services, if they so decide, they may delegate the right to carry out the procurement procedure to another contracting authority or entity.

4. A person responsible for procurement shall be appointed in the contracting authority or entity, to continuously administer the procurement process, as well as a procurement unit shall be set up for each scope to be procured. The responsible person must have at least one qualification as defined in the public procurement rules.

5. All processes provided for in this article shall take place under the supervision of the head of the contracting authority or a person authorized by him.

The head of the contracting authority or the person authorized by him, in the meaning of this law, is the person responsible for the management of public funds.

6. More detailed rules for the implementation of paragraph 2, 3, 4 and 5 of this article shall be defined in the public procurement rules.

## Article 22

### **Public Procurement Agency**

1. The Public Procurement Agency oversees the public procurement system, in order to ensure efficiency and transparency in the public procurement process. The Public Procurement Agency is a legal entity, a central institution under the Prime Minister, based in Tirana, funded by the state budget.

2. Employees of the Public Procurement Agency enjoy the status of civil servant. The support staff is appointed by the director of the Agency and their labour relations are regulated by the Labour Code of the Republic of Albania.

3. The Public Procurement Agency shall draft the internal regulations for its organization and functioning.

## Article 23

### **Competencies of the Public Procurement Agency**

The Public Procurement Agency for the fulfilment of its duties performs the following functions:

- a) submits to the Prime Minister legal and sub-legal proposals for public procurement;

- b) issues decisions, guidelines and recommendations for the proper implementation of the legal framework on public procurement;
- c) adopts, by a decision, the standard tender documents, to be used in the procurement procedures according to public procurement rules;
- ç) provides advice and assistance in the field of public procurement, for the purpose of proper implementation legal framework for public procurement;
- d) verifies the implementation of the legality of public procurement procedures, after the phase of signing the procurement contract or cancellation of the procedure, in accordance with the requirements set out in this law and bylaws;
- dh) monitors whether the contracts execution is made in accordance with the procured conditions based on the periodic reports of the contracting authorities or entities. In any case, if so deemed, to exercise this function, on-site verifications are performed;
- e) in case of violations of this law and its implementing bylaws, imposes fines according to the provisions of this law or proposes to the head of the contracting authority or body or higher bodies disciplinary measures for persons of contracting authorities or entities, who have committed these violations;
- ë) excludes an economic operator from the right to be awarded public contracts, in accordance with the provisions of this law;
- f) manages the database of procurement procedures in the electronic procurement system;
- g) analyses public procurement data and prepares statistical reports;
- gj) compiles and publishes the Public Notices Bulletin, as described in the rules of public procurement and other bylaws;
- h) cooperates with international institutions and other foreign entities on issues that relate to the public procurement system;
- i) plans and coordinates foreign technical assistance to Albania in the field of public procurement;
- j) cooperates with the institutions responsible for providing training for public institutions, in order to build institutional capacities and professionalize the public procurement system in general;
- k) submits an annual report to the Prime Minister on the overall functioning of the public procurement system. The annual report of the Public Procurement Agency is published on the website of this institution;
- l) cooperates with the contracting authorities, the Public Procurement Commission, other institutions, as well as the auditing bodies, through various information, on issues related to the public procurement system, in view of the efficiency of this system;
- ll) performs any other tasks specified by this law and other legal acts within the scope of its competencies.

#### Article 24

#### **Public Procurement Commission**

1. The Public Procurement Commission is the highest administrative body in the field of procurement, which reviews complaints about procurement procedures and performs any other task assigned to it by this law and other legal acts within its scope of competence.

2. The Public Procurement Commission is a public legal entity, independent, financed from the state budget and reporting to the Assembly.

3. The Public Procurement Commission takes decisions on the complaints submitted before it and issues interpretations on the rules or legal principles that should be applied to the scope of the complaint, which shall be applicable, insofar they are valid, to future decision - making. In making decisions, it shall, in addition to the general principles mentioned in Article 3 of this law, take into account also the following principles: impartiality in reviewing complaints, consistency in decision-making, legality, speed and efficiency, accessibility, public character, as well as the principle of adversarial process.

## **Article 25**

### **Composition, election and mandate of the Public Procurement Commission**

1. The Public Procurement Commission consists of the chairperson and 4 members. One of the members is elected deputy chairperson.

2. The chairperson and members of the Public Procurement Commission are appointed by the Assembly, upon the proposal of the Council of Ministers.

2. The Council of Ministers publishes the application notice at least six months before the end of the mandate of the chairperson or members of the Public Procurement Commission and/or no later than 30 days from the day of early termination of the mandate, according to article 28, paragraph 1 of this law.

The Council of Ministers, after reviewing the submitted applications and verifying whether the candidates meet the criteria for appointment, sends to the Assembly the list of ranked qualified candidates, as well as a list of candidates who do not meet the appointment criteria.

4. During the selection of the chairperson and/or members of the Public Procurement Commission, the Assembly is not obliged to follow the ranking presented by the Council of Ministers. If deemed necessary, the Assembly has the right to invite candidates who meet the appointment criteria for an interview.

5. The deputy chairperson of the Public Procurement Commission must have a degree in law and be elected by a majority vote of all members at the first meeting of this commission. In case the deputy chairperson leaves the position, for any of the grounds provided for in this law, the Commission, upon completing the number of its members, meets to select the new deputy chairperson.

6. The chairperson and members of the Public Procurement Commission have a 5-year term mandate, with the right to be re-elected only once.

7. Members of the Public Procurement Commission shall receive a monthly salary and / or other financial remunerations to the same extent as judges of the Administrative Court of First Instance.

8. The chairperson and deputy chairperson of the Public Procurement Commission shall receive a monthly salary, respectively 10 % and 5 % higher than the other members.

9. The chairperson and/or, in his absence, the deputy chairperson, represents the Public Procurement Commission in relations with third parties, as well as in relations with other institutions and bodies, domestic or foreign.

10. Detailed rules for the selection procedure, according to paragraph 3 of this article, shall be adopted by the Council of Ministers.

#### Article 26

##### **Election criteria of members of the Public Procurement Commission**

1. An Albanian citizen who meets the following criteria can be elected Chairman of the Public Procurement Commission:

- a) has full capacity to act;
- b) has higher education in law;
- c) has over 8 years of work experience, of which at least 3 years in the field of procurement and at least 2 years in a management position.

2. An Albanian citizen who meets the following criteria can be elected a member of the Public Procurement Commission:

- a) has full capacity to act;
- b) has higher education in law. This criterion must be met by at least 3 of the members. Only one of the members can be elected with higher education in economics or engineering sciences;
- c) has over 8 years of work experience, of which at least 3 years in the field of procurement.

3. A person cannot be elected a member or chairperson of the Public Procurement Commission if he/she:

- a) has been convicted by a final court decision for committing a criminal offense;
- b) has been removed from office or civil service with a disciplinary measure or for whom there is a disciplinary measure in force;
- c) is subject to a criminal proceeding for committing a criminal offense.

#### Article 27

##### **Incompatibilities of the function of the member of the Public Procurement Commission**

The function of the chairperson and member of the Public Procurement Commission is incompatible with:

- a) membership in political parties and participation in their activities;
- b) administration or management of companies, in person or through representation;
- c) any other profitable activity, with the exception of teaching and / or scientific research activities.

#### Article 28

##### **Termination of the function of the chairperson or member of the Public Procurement Commission**

1. The function of the Chairperson and member of the Public Procurement Commission shall terminate with the end of the mandate or prematurely when he/she:

- a) resigns;
- b) is sentenced by a court with a final decision for committing a criminal offense;
- c) is for a period of 6 months physically unable to exercise the duty and/or finally loses the ability to exercise his/ her duty;
- ç) does not perform the duties assigned by law without any convincing reason, according to a final administrative act of the Assembly that ascertains the non-performance of duties.

2. The Chairperson or the member of the Public Procurement Commission shall be dismissed by the Assembly when there is a final court decision as follows:

- a) for violation of the provisions of this law or other legal acts;
- b) for carrying out an activity that creates a conflict of interest, under the legislation governing conflicts of interest;
- c) if cases of incompatibility of its function are found.

3. In case of finding of one of the violations according to paragraph 2 of this article, the Assembly, upon the proposal of the responsible parliamentary committee, shall suspend the chairperson or member from duty for whom the violation has been found, until a final decision is taken.

4. In case the Council of Ministers, according to the provisions of paragraph 1 and 2 of this article, finds reasons for the dismissal of the chairperson or member of the Public Procurement Commission, it shall propose to the Assembly his/her dismissal.

#### Article 29

##### **Structure and organizational chart of the Public Procurement Commission**

1. The structure and organizational chart of the Public Procurement Commission shall be adopted by the Assembly, referring to the legislation in force on salaries, bonuses and structures of independent constitutional institutions and other independent institutions established by law.

2. The number of employees and the budget of the Public Procurement Commission shall be adopted by the Assembly, referring to the provisions of the legislation in force on the management of the budget system in the Republic of Albania.

3. The employees of the Public Procurement Commission enjoy the status of civil servant, while the support staff is appointed by the chairperson and their labour relations are regulated by the Labour Code of the Republic of Albania

#### Article 30

##### **Activity of the Public Procurement Commission**

1. The Public Procurement Commission reviews the complaints submitted to it when at the meeting are present at least 3 of its 5 members, including the chairperson or deputy chairperson. At the end of the review of the complaints, the Commission decides by a majority vote.

The declaratory decision given according to the provisions of article 115, paragraph 2 and 3 of this law, shall be made by 3 members for procurement procedures below the lower monetary threshold and by 5 members for other procedures.

The review of complaints for procurement procedures below the lower monetary threshold shall be made by 3 members of the Public Procurement Commission.

2. Decisions taken by the Commission are administratively final. These decisions can be appealed against before the Administrative Court of Appeal, in accordance with Article 121 of this law.

3. At the end of the review, the decision taken by the Commission, in addition to the parties in the process, is made known also to other entities affected by this decision, and shall be published on the website of this institution within 2 days of its issuance.

4. No one should influence the members of the commission in decision-making. Any direct or indirect attempt to influence shall be punishable to a fine under this law, regardless of whether civil or criminal proceedings may have been instituted.

5. Detailed rules of organization and functioning of the Public Procurement Commission shall be adopted by the Commission itself by a majority vote of all its members.

#### Article 31

##### **Exempt of the chairperson, members or employees from the review of a complaint**

1. The chairperson, members or employees of the Public Procurement Commission may not take a decision or participate in the decision-making process regarding a complaint in cases where they have any connection or relationship with the complainant or economic operator, legal representative or authorized by him, or with legal representatives, any of the members of the administrative or supervisory structures of the complainant, or with the responsible staff of the contracting authority, including business relations or direct family or kin relations up to the second degree, marital relationship, even in case of divorce or in laws relationship up to the second degree, as well as in case of verification of other reasons for exclusion, according to the provisions of the Code of Administrative Procedures.

2. The chairperson, members or employees of the Public Procurement Commission may not take a decision or participate in the decision-making process for a complaint in cases where they have previously been employed by the contracting authority or economic operator, **party to the process**, before at least 2 years have passed from the termination of the employment relationship.

3. The interested parties have the right to request the exempt of the chairperson, members or employees of the Public Procurement Commission from the decision-making or decision-making process regarding a submitted complaint, when they find one of the cases provided in paragraph 1 and 2 of this article. In this case, the decision to exempt a member or an employee of the Public Procurement Commission shall be taken by the chairperson, while the decision to exempt the chairperson shall be taken by the Public Procurement Commission, chaired by the deputy chairperson, by a majority vote.

Article 32  
**Reporting**

1. The Public Procurement Commission shall prepare the annual report, which is presented to the Assembly by the chairperson at the end of the first quarter of the following year.
2. The detailed content of the annual report shall be determined in the rules of organization and functioning of the Public Procurement Commission. The annual report must contain at least the following data:
  - a) the total number of complaints and their value for each contracting authority or entity, type of the procurement procedure, as well as the stage of the process for which the complaint was submitted;
  - b) the total number of rejected complaints and their value for each contracting authority or entity, the type of procurement procedure, as well as the stage of the process for which the complaint was submitted;
  - c) the total number of complaints received and their value for each contracting authority or entity, the type of procurement procedure, as well as the stage of the process for which the complaint was submitted;
  - ç) the number of decisions of the Public Procurement Commission appealed to the Administrative Court of Appeal;
  - d) conditions for accepting complaints and the most common reasons for filing complaints;
  - dh) information on the problems identified in the functioning of the public procurement system and proposals for their improvement.
3. At the request of the Assembly, the Public Procurement Commission may report for shorter periods of time or for certain matters.
4. The annual report of the Public Procurement Commission shall be published on the website of this institution.
5. The Public Procurement Commission and the Public Procurement Agency shall cooperate on issues related to the public procurement system.

CHAPTER VI

GENERAL RULES AND PREPARATION OF THE PROCUREMENT PROCESS

Article 33  
**Monetary thresholds**

1. For the purposes of this law, the following monetary thresholds shall apply:
  - a) high monetary threshold;
  - b) low monetary threshold;
  - c) monetary threshold for small value procurements.

2. Monetary thresholds are defined in public procurement rules, taking into account the provisions of European legislation in the field of public procurement.

### **Article 34**

#### **Calculation of the estimated value of the procurement**

1. Calculation of the estimated value of a procurement is based on the total amount to be paid without VAT, as provided by the contracting authority or entity, including each and every payment as clearly defined in the tender documents. When the contracting authority or entity gives prices or payments to candidates or bidders, it must take them into account when calculating the value of the procurement.

2. The selection of the method used for calculating the value of the procurement is not done in order to exclude it from the scope of application of this law. Procurement should not be separated in order to deviate from the scope of application of this law, unless this is justified by objective reasons.

Methods for calculating the value of procurement are provided in the public procurement rules.

3. The contracting authority or entity at the stage of drafting their needs for goods, works, services shall take into account the methods of calculating the procurement value. The estimated value of the procurement must be the real value before sending the contract notice for publication.

4. Regarding framework agreements and dynamic purchasing systems, the value to be considered is the maximum estimated value, excluding VAT, of all contracts foreseen for the entire time period of the Framework Agreement or of the dynamic purchasing system.

5. In the case of innovation partnerships, the value to be considered is the maximum value, excluding VAT, of research and development activities to be carried out during all foreseen phases of the partnership, as well as of the supplies, services or works that will be performed or procured at the conclusion of the envisaged partnerships.

6. In relation to public works contracts, the calculation of the estimated value shall take into account the cost of the works and the total estimated value of the supplies and services made available to the contractor by the contracting authority or entity, if they are necessary for the performance of the works.

7. When a work, good or service may result in the award of several contracts in the form of separate lots, the total value of all such lots must be taken into account.

8. In the case of public supply or service contracts, which are continuous in nature or with the possibility of renewal within a certain period of time, the calculation of the contract value is based on the following:

- a) in the total real value of subsequent contracts of the same type, awarded during the fiscal year or during the preceding 12 months, an adjusted value, if possible, to



take account changes in quantity or value, which may occur during the 12 months following the initial contract; or

b) in the total value of subsequent contracts awarded during the 12 months following the first submission or during the current year, if it is longer than 12 months.

9. For multi-year or renewable contracts, the contracting authority or entity should provide for value review clauses in line with the published inflation.

In the case of good supply contracts, through lease with or without the possibility of purchasing goods, the limit fund shall be calculated including the rent or the monthly instalment, multiplied by the number of months of the contract duration.

10. For public service contracts, the basis for calculating the contract value is as follows, as appropriate:

a) insurance services: premium to be paid and any other form of payment;

b) banking services or other financial services: fees, commissions to paid, interest and other forms of payment;

c) design contracts: fees, commissions to be paid and other forms of payment.

#### Article 35

##### **Preliminary market survey**

1. Before launching the procurement procedure, the contracting authority or entity may survey the market in order to prepare the procurement and inform the economic operators of their procurement plans and requirements.

For this purpose, the contracting authority or entity may consult with experts, independent authorities or market economic operators. These pieces of advice can be used in planning and conducting the procurement procedure, unless they result in distortion of competition and violation of non-discrimination and transparency principles.

2. In any case, any conflict of interest or even the emergence of a conflict of interest in the relationship between the employee engaged in the procurement process and the economic operator must be strictly avoided.

3. Detailed provisions for this process shall be provided in the public procurement rules.

#### Article 36

##### **Technical specifications**

1. Technical specifications, as defined in Article 4 of this law, must be described in the tender documents. The technical specifications shall clearly define the characteristics of the works, service or supply to be procured.

These characteristics may also be related to the specific process or method of production or delivery of the required works, supplies or services or to a specific process for another stage of the life cycle even when these factors do not constitute its essential content if they are related with the scope of the contract and are proportionate to its value and objectives.

The technical specifications may also specify whether the transfer of intellectual property rights will be necessary.

The technical specifications, except in fully justified cases, shall be drafted in such a way as to take into account the accessibility criteria for persons with disabilities or the design for all users, as required by legislation in force.

2. The technical specifications should enable equal treatment for all candidates and bidders and should not serve as a barrier to open competition in public procurement.

3. The technical specifications must clearly describe the requirements of the contracting authority or entity, with reference to:

a) functional or performance requirements, including environmental characteristics, provided that the parameters are accurate in order to enable the bidders to determine the scope of the contract and the contracting authorities or entities to award the contract;

b) national standards, based on international ones, international technical adoptions, general technical specifications, international standards or other technical reference systems, defined by international standardization bodies. Where these do not exist, they refer to national standards, national technical adoptions or national technical specifications relating to the design, estimation and execution of works or the use of products;

c) requirements in functional terms according to letter "a", referring to the technical specifications according to letter "b" of this paragraph, as a way that implies compliance with functional requirements;

ç) both methods defined in letters "a" and "b" of paragraph 3 of this article, for various goods, services or works, included in the same contract scope. Each reference must be accompanied by the words "or its equivalent".

4. The technical specifications, unless justified by the scope of the contract, shall not refer to any specific production mark or source or special process characterizing the products or services offered by a specific economic operator, or any trademark, patent, type or specific origin or production, for the purpose of favouring or eliminating certain undertakings or products. Such a thing is allowed only in exceptional cases when there is no sufficient, accurate or understandable way of describing the scope of the contract, according to paragraph 3 of this article. Such references should be accompanied by the phrase "or equivalent".

5. In case the contracting authority or entity determines the technical specifications based on sub-paragraph "b" of paragraph 3 of this article, it may not reject a bid on reasoning that the works, supplies or services for which the bid has been submitted do not meet the technical specifications they refer to, as long as the bidder proves in his bid by any appropriate means that the proposed solutions meet the requirements set out in the technical specifications equivalently.

6. In case the contracting authority or entity determines the technical specifications based on sub-paragraph "a" of paragraph 3 of this article, it may not reject a bid for work, goods or services, which is in accordance with national standards, that rely on international ones, international technical adoptions, general technical specifications, international standards or

other technical reference systems, defined by international standardization bodies when these technical specifications meet the functional criteria set by the contracting authority / entity.

## Article 37

### **Labels**

1. When contracting authorities or entities procure works, supplies or services with specific environmental, social or other characteristics, they may require, either in the technical specifications in the award criteria, or in the conditions for the contract execution, a specific label as a way to verify that the works, services or supplies match with the required characteristics, if all the following conditions are met:

a) the label requirements include only criteria related to the scope of the contract and are appropriate to determine the characteristics of the works, supplies or services that are the scope of the contract;

b) the label requirements are based on objectively verifiable and not discriminating criteria;

c) labels are defined in an open and transparent procedure where all relevant actors can participate, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organizations;

ç) the labels are accessible to all interested parties;

d) the label requirements are determined by a third party, on which the economic operator applying for the label cannot exert a decisive influence.

When contracting authorities or entities do not require works, supplies or services to meet all label requirements, they indicate the label requirements to which they refer.

Authorities or contracting entities that require a specific label shall accept all labels confirming that the works, supplies or services meet all equivalent label requirements.

When it is apparent that an economic operator is unable to obtain the specific label specified by the contracting authority or entity or an equivalent label, within the relevant time limits, for reasons unrelated to that economic operator, the contracting authority or entity shall accept other appropriate certification methods, which may include a technical dossier from the manufacturer, if the economic operator in question certifies that the works, supplies or services to be provided by it meet the requirements of the specific label or specific requirements specified by the contracting authority or entity.

2. When a label meets the conditions set out in sub-paragraphs "b", "c", "ç" and "d" of paragraph 1, but also determines the requirements that are not related to the scope of the contract, the contracting authority or entity shall not require the label as such, but may define a technical specification by reference to the detailed specifications of that label or, where necessary, parts thereof, which relate to the scope of the contract and are appropriate to define the characteristics of that scope.

## Article 38

### **Alternatives**

1. The contracting authority or entity may authorize or require bidders to submit alternatives. They shall specify it in the contract notice or when a preliminary or periodic notice of

information is used as a means of inviting them to the competition, in the invitation to express interest, if they authorize or require alternatives, otherwise alternatives will not be allowed. In any case, the alternatives shall relate to the scope of the contract.

2. The authority or contracting entity authorizing or requesting the alternatives shall disclose in the tender documents the minimum requirements that the alternatives must meet and any specific requirements for their submission, in particular if the alternatives can only be submitted after the bid has been submitted, which is not an alternative. They also shall guarantee that the criteria selected for the award of the contract can be applied to alternatives that meet these minimum requirements, as well as to compliant bids that are not alternatives.

3. In any case, only those alternatives that meet the minimum requirements set by the contracting authority or entity shall be considered.

In the procurement procedures of public contracts for supplies or services, the contracting authority or entity, which has authorized or requested the alternatives, may not reject an alternative for the sole reason that, if successful, it will lead to a service contract instead of a public supply contract or a supply contract instead of a public service contract.

## Article 39

### **Division of contracts into lots**

1. The contracting authority or entity may decide to award a contract in the form of separate lots, specifying the size and scope of these lots.

The contracting authority, in the procurement procedures above the upper monetary threshold, in case it decides to conduct the procurement procedure without dividing it into lots, must make a specification of the main reasons for this decision, which becomes part of the tender dossier. This obligation does not apply in the case of sectoral contracts.

2. The contracting authority or entity shall specify whether tenders may be submitted for one, for some, or all of the lots, either in the contract notice, in the invitation to express an interest, or when the invitation to tender is made through a notice on the existence of a qualification system, in the invitation to tender or to negotiate.

Even when bids may be submitted for some or all of the lots, the contracting authority or entity may limit the number of lots that may be awarded to a bidder if the maximum number of lots per bidder is disclosed in the contract notice, in the invitation to express interest, in the invitation to bid or in the invitation to negotiate.

When the application of the award criteria would cause a bidder to be awarded more lots than the maximum number, the contracting authority or entity shall specify in the tender documents objective and non-discriminatory criteria or rules they intend to apply to determine the lots that will be awarded.

3. Where more than one lot may be awarded to the same bidder, the contracting authority or entity may award contracts combining some or all of the lots, once they have described in the contract notice or in the invitation to express an interest, the possibility to do so, and lots or groups of lots that may be combined.

Article 40  
**Setting time limits**

1. In determining the time limits for accepting bids and requests to participate, the contracting authority or entity shall, in particular, take into account the complexity of the contract and the time required to draft the bids, without prejudice to the minimum time limits set out in this law.
2. Where the contracting authority or entity provides for the possibility of an on-site visit or on-site inspection of the documents supporting the tender documents, they shall take into consideration to set longer time limits for accepting of bids than the minimum time limits set out in this law, so that all interested economic operators receive the complete needed information to prepare the bids.

CHAPTER VII

PROCUREMENT PROCEDURES

Article 41  
**Standard procurement procedures**

1. The contracting authority or entity in awarding the public contracts shall apply the procedures provided for in this law.

The types of public procurement procedures are:

- a) open procedure;
  - b) restricted procedure;
  - c) competitive negotiated procedure, which is used only in the case of contracts of classical sector;
  - ç) partnership for innovation;
  - d) competitive dialogue;
  - dh) negotiated procedure with prior contract notice, which is used only in the case of sectoral contracts;
  - e) negotiated procedure without prior contract notice;
  - ë) simplified open procedure;
  - f) consultancy service.
2. For procurements with value below the lower monetary threshold of goods, services or works, the contracting authority may use simplified procedures, defined in the public procurement rules.
  3. Regardless of whether the estimated value of the contract is at the limit of low value procurements, the contracting authorities or entities may choose to conduct one of the procurement procedures set out in paragraph 1, in accordance with the provisions of this law.

Article 42  
**Open procedure**

1. Open procedure is a one-staged procedure, where any interested economic operator can participate.

In the open procedure, the contracting authority or entity publishes a notice, as per Article 56 of this law, which contains a description of the scope to be procured, in accordance with the provisions in the public procurement rules.

2. For procurement procedures above the upper monetary threshold, the minimum deadline for accepting of bids shall be not less than 35 days from the date on which the contract notice was published.

3. In the procurement procedures above the upper monetary threshold, when the authority has published a prior notice or in the case of sectoral contracts when the contracting entity has issued a periodic notice of information, which in itself has not been used as a means of making the invitation to tender, the minimum time limit for accepting the bids, as defined in paragraph 2 of this article, can be reduced to 15 days if all the following conditions are met:

a) prior or periodic information notice includes all information required as per the provisions of the public procurement rules, if that information is available at the time of publication of the prior notice;

b) prior or periodic information notice is published from 35 days to 12 months before the contract notice publication date.

4. The time limit for submission of bids, defined in paragraph 2 of this article, can be shortened by 5 days when bids are submitted electronically.

In case the tender documents are not available through electronic means according to the provisions of article 17 of this law, the time limit for submission of bids, defined in paragraph 2 of this article, shall be extended by 5 days.

5. For procurement procedures between the lower and upper monetary threshold, the time limit for accepting bids shall be not less than 20 days from the contract notice publication and, in case the bids are submitted by electronic means, this time limit may be shortened by 5 days.

6. Exceptionally, for the procurement procedures above the upper monetary threshold, in cases where the contracting authority or entity argues that due to a state of urgency it is impossible to respect the time limit defined in paragraph 2 of this article, the deadline for acceptance of bids may be shortened up to 15 days from the date of the contract notice publication. In any case, the argumentation on the reasons for shortening this time limit will be given by the contracting authority or entity in the contract notice.

Article 43  
**Restricted procedure**

1. The restricted procedure is a two-stage procedure, in which any interested economic operator can participate, submitting a request for participation in response to a notice, which contains the information specified in the public procurement rules.

2. In restricted procedures above the upper monetary threshold, the minimum time limit for accepting requests to participate shall be not less than 30 days from the date the contract notice or invitation for expression of interest are published.

In the case of sectoral contracts, when the contracting entities have published a periodic information notice, which has been used as a means of making the invitation to tender, this time limit shall be not less than 15 days.

3. In the second phase of the restricted procedure, bids may be submitted only by candidates selected by the contracting authority or entity, in accordance with Article 58 of this law. The contracting authority or entity may limit the number of suitable candidates to be invited to participate in the procedure, in accordance with the provisions of this law.

In restricted procedures above the upper monetary threshold, the minimum time limit set by the contracting authority for the receipt of bids shall be 30 days from the date on which the invitation to tender was published.

In restricted procedures above the upper monetary threshold, in the case of the procurement of sectoral contracts, the time limit for accepting bids may be determined by a joint agreement between the contracting entity and the selected candidates, provided that all selected candidates be given equal time to prepare and submit their bids. In the absence of an agreement on the time limit for accepting the bids, the time limit shall be at least 10 days from the date on which the invitation to tender was published.

4. In restricted procedures above the upper monetary threshold, when the contracting authorities have published a prior information notice, which has not been used as a means of making the invitation to participate, the minimum time limit for accepting tenders or requests to participate, determined in paragraph 2 of this article, shall become 10 days if all the following conditions are met:

- a) prior information notice includes all information required under the provisions of the public procurement rules, if that information is available at the time when the prior information notice is published;
- b) prior information notice has been published from 35 days to 12 months before the contract notice publication date.

5. For restricted procedures between the upper and lower monetary thresholds, the minimum time limits set by the contracting authority are:

- a) for accepting requests for participation, the time limit shall be not less than 20 days from contract notice publication;
- b) for accepting bids, the time limit shall be not less than 20 days from the invitation to tender publication.

In restricted procedures between the upper and lower monetary threshold, in the case of procurement of sectoral contracts, the minimum time limits set by the contracting entity are:

- i. for accepting requests for participation, the time limit shall be not less than 20 days from the contract notice publication.
- ii. the deadline for accepting bids may be determined by a joint agreement between the contracting entity and the selected candidates, provided that all selected candidates are given equal time to prepare and submit their bids.

In the absence of an agreement on the time limits for accepting the bids, the time limit is not less than 10 days from the date of invitation to tender publication.

6. In case the bids are submitted by electronic means the contracting authority may shorten the time limit for accepting the bids by 5 days. In case tender documents are not available through electronic means as per the provisions of Article 17 of this law, the time limit for the submission of bids shall be extended with 5 days.

#### Article 44

### **Competitive negotiated procedure**

1. Competitive negotiated procedure is a phased procedure, where any interested economic operator can participate, submitting a request for participation in response to a notice containing the information specified in the public procurement rules.

Cases of using the competitive negotiated procedure are defined in Article 51 of this law.

2. In the tender documents, the contracting authorities shall identify the scope of the procurement, by providing a description of their needs and characteristics required for the goods, works or services to be procured, and specify the award criteria.

In any case, the contracting authority must specify in the tender documents all the requirements that the bids must meet.

The information provided should enable economic operators to identify the nature and object scope of the procurement and decide whether to submit a request to participate in the procedure.

3. In competitive negotiated procedures above the upper monetary threshold, the minimum time limit for accepting requests to participate shall be 30 days from the date contract notice or invitation to express interest were published.

Only economic operators invited by the contracting authority can submit an initial bid which serves as a basis for further negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure, in accordance with the provisions of this law.

4. For competitive negotiated procedures between the upper and lower monetary threshold, the time limit for accepting requests to participate shall be not less than 20 days from the contract notice publication.

5. Unless otherwise provided in paragraph 7 of this Article, the contracting authorities shall negotiate with the bidders the initial and all subsequent bids they have submitted, in order to improve their content, except for the final bids. The minimum requirements and award criteria shall not be subject to negotiation.

6. Contracting authorities may award contracts on the basis of initial bids without negotiation when the contract notice or invitation to express an interest have disclosed their authority to do so.

7. The contracting authorities shall ensure equal treatment for all bidders during the negotiation and shall in no case provide information in a discriminatory manner, which may favour some of the participants. They shall inform all bidders, whose bids move on to the next stage, of any changes to the technical specifications or other tender documents, in



writing, except those which specify the minimum requirements. Following these changes, the contracting authorities shall provide a time limit of no less than 5 days for bidders to modify and resubmit the amended bids as appropriate.

The contracting authorities shall not disclose to other participants the confidential information communicated by a candidate or bidder participating in the negotiations without the consent of the latter.

8. Competitive negotiated procedures can be developed in successive stages, to reduce the number of bids to be negotiated.

The contracting authority shall disclose in the contract notice or in the invitation to express an interest whether it will use this option.

9. When the contracting authority intends to close the negotiations, it shall inform the remaining bidders and set a common time limit for the submission of any new or revised bids. The contracting authority shall evaluate the final bids and verify in case they are in compliance with the minimum requirements and the general principles of selection and shall award the contract according to the provisions of this law.

10. The contracting authority may shorten the time limit for accepting the bids by 5 days, in case the bids are submitted electronically.

In case the tender documents are not available through electronic means according to the provisions of article 17 of this law, the time limit for submission of bids shall be extended by 5 days.

#### Article 45

### **Competitive dialogue**

1. Competitive dialogue is a procedure that takes place in three phases: the pre-qualification phase, the dialogue phase, and the final bid submission phase, where each economic operator can submit a request to participate in response to a contract notice or even a notice on the existence of a qualification system in the case of sectoral contracts, providing the information required by the contracting authority or entity.

The conditions for the use of competitive dialogue by contracting authorities are set out in Article 51 of this law.

2. The contracting authority or entity shall determine its needs and requirements in the contract notice and/or in the invitation to tender. At the same time, in these documents it determines the selected award criteria, and sets a time period within which this process must be completed.

3. In the competitive dialogue procedure above the upper monetary threshold, the minimum time limit for accepting requests to participate shall be 30 days from the date on which the contract notice or invitation for expression of interest is published.

For sectoral contracts, when a periodic information notice is used as a way to make the invitation to tender, this time limit shall in any case be no less than 15 days.

4. In the competitive dialogue procedure, between the lower and upper monetary threshold, the minimum time limit for accepting requests to participate shall be 20 days from the date the contract notice or invitation for expression of interest were published.

5. Only economic operators invited by the contracting authority or entity can participate in the dialogue phase, after the latter has qualified them in the first phase. Authorities or contracting entities may limit the number of suitable candidates to be invited to participate in the procedure, in accordance with the provisions of this law.

The contract shall be awarded only on the basis of the price-quality ratio criterion, according to the provisions of this law.

6. The contracting authority or entity shall start the dialogue with the selected participants according to the provisions in this law, in order to identify and determine the means that best suit their needs. They can discuss all aspects of procurement with selected participants during this dialogue.

During the dialogue, the contracting authority or entity shall ensure equal treatment for all participants and in no case it shall provide information in a discriminatory manner, which may favour some of the participants.

The contracting authority or entity shall not disclose to other participants the proposed solutions or the confidential information communicated by a candidate or bidder participating in the dialogue without the latter's consent.

7. The dialogue can take place in successive stages, to reduce the number of solutions to be discussed during the dialogue phase based on the selection criteria. The contracting authority or entity shall specify whether it will use this option in the contract notice or in the invitation to tender.

8. The contracting authority or entity shall continue the dialogue until the identification of the solution or solutions that may meet its needs.

9. After declaring the closure of the dialogue and having informed the remaining participants, the contracting authority or entity shall request each of them to submit final bids based on the solution or solutions presented and specified during the dialogue. These offers contain all the elements required and necessary for the realization of the project.

These bids may be clarified, specified and adjusted at the request of the contracting authority or entity. However, this clarification, specification, adaptation or additional information may not include changes to key aspects of the bid, including the needs and requirements set out in the contract notice or invitation to tender, which may distort competition or have a discriminatory effect.

10. The contracting authority or entity shall review and evaluate the received bids on the basis of the selection criteria set in the contract notice or invitation to tender.

At the request of the contracting authority or entity, the bidder who has submitted the bid with the best price-quality ratio, according to the provisions of this law, may be required, through negotiations, to confirm the financial commitments or other conditions contained in the bid, by finalizing the contract terms, unless this affects the change of essential aspects of

the bid, the needs and requirements set out in the contract notice or the invitation to tender, which may distort competition or have a discriminatory effect.

11. The contracting authority or entity may foresee for payments to participants in the dialogue, depending on the nature and cost of the procurement scope.

12. The contracting authority may shorten the time limit for accepting bids by 5 days, in case the bids are submitted electronically.

In case the tender documents are not available through electronic means according to the provisions of article 17 of this law, the time limit for submission of bids shall be extended by 5 days.

## Article 46

### **Innovation Partnership**

1. Innovation partnership is a phased procedure where any economic operator may submit a request to participate in response to a contract notice, providing the information required by the contracting authority or entity.

The contracting authority or entity shall identify in the tender documents the need for an innovative product, service or work, which cannot be met by purchasing products, services or works found in the market. The tender documents shall include the minimum requirements that must be met by all bids. The information provided should enable economic operators to identify the nature and scope of the requested solution and decide whether to apply for participation in the procedure.

The contracting authority or entity may decide to establish an innovation partnership with one or more partners who carry out specific research and development activities.

2. In the innovation partnership procedure, above the upper monetary threshold, the minimum time limit for accepting requests to participate shall be 30 days from the date on which the contract notice or invitation to express interest were published.

For sectoral contracts, when a periodic information notice is used as a way to make the invitation to tender, this deadline shall in any case be no less than 15 days.

3. In the innovation partnership procedure, between the upper and lower monetary threshold, the minimum time limit for accepting requests to participate is 20 days from the date on which the contract notice or invitation for expressions of interest were published.

4. An initial bid can be submitted only by the economic operators who are invited by the contracting authority or entity, after the latter has qualified them in the first phase. The contracting authority or entity may limit the number of suitable candidates to be invited to participate in the procedure, in accordance with the provisions of this law.

Contracts shall be awarded only on the basis of price-quality ratio criterion, according to the provisions of this law.

5. The innovation partnership aims at developing an innovative product, service or work and subsequently purchasing the resulting goods, services or works if they match the performance

levels and minimum costs agreed between the contracting authority or entity and the participants.

6. The innovation partnership shall be carried out in successive stages based on the steps of the research and development process, which may include the production of products, the provision of services or the completion of works. Innovation partnerships shall set intermediate objectives to be achieved by the partners/contractors and provide that payments will be made according to a certain schedule.

Based on these objectives, the contracting authority or entity may decide to conclude the innovation partnership after each phase or, in the case of an innovation partnership with several partners, reduce their number by terminating individual contracts. In any case, such a possibility and the conditions for its use must be clearly disclosed in the tender documents.

7. Except as otherwise provided in this Article, the contracting authority or entity shall negotiate with the bidders the initial bids and all subsequent bids they have submitted to improve their content, except for the final bid.

Minimum requirements and selection criteria shall not be subject to negotiation.

8. The contracting authority or entity shall ensure equal treatment for all bidders during the negotiation and in no case provide information in a discriminatory manner, which may favour some of the participants. The contracting authority or entity shall notify all bidders who pass to the next stage of any changes to the technical specifications or other tender documents other than those specifying the minimum requirements. After these changes, the contracting authority or entity shall provide a sufficient time for bidders to modify and resubmit the amended bids as appropriate.

Based on the principles of confidentiality set forth in this law, the contracting authority or entity shall not disclose to other participant's confidential information communicated by a candidate or bidder participating in the negotiations without the latter's consent.

9. Negotiations during the innovation partnership procedures can take place in successive stages, to reduce the number of bids to be negotiated based on the selection criteria. The contracting authority or entity shall disclose in the contract notice or in the invitation to express an interest notice whether it will use this possibility.

10. For the selection of candidates, the contracting authority or entity shall use criteria related to their capacity in the field of research and development and in the creation and implementation of innovative solutions. Only those economic operators who are invited by the contracting authority or entity, after the latter has evaluated the required information, may submit research and innovation projects, which aim to meet the needs of a contracting authority or entity, which cannot be met through existing solutions.

The contracting authority or entity shall lay down the applicable rules on intellectual property rights in the tender documents. In the case of an innovation partnership with several partners, based on the principles of confidentiality set forth in this law, the contracting authority or entity shall not disclose to other partners the proposed solutions or other confidential information communicated by a partner in the framework of the partnership, without its consent.

11. The contracting authority or entity shall ensure that the structure of the partnership and, in particular, the duration and value of the various phases, reflect the degree of innovation of the proposed solution and the order of research and innovation activities required to develop an innovative solution yet unavailable in the market. The estimated value of the goods, services or works must be in proportion to the investment required for their realization.

12. The contracting authority may shorten by 5 days the time limit for accepting the bids, in case the bids are submitted electronically.

In case the tender documents are not available through electronic means according to the provisions of article 17 of this law, the time limit for submission of bids shall be extended by 5 days.

#### Article 47

##### **Negotiated procedure, without prior contract notice publication**

1. The negotiated procedure without prior contract notice publication may be used for public contracts of works, good or services in any of the following cases:

a) when in response to two consecutive open or simplified open procedures, consultancy service or restricted procedure, or in response to published procedure for tendering related to sector activities under Chapter X of this law, no bid or request to participate is submitted, or when the bids or requests to participate submitted were irrelevant. In any case, the initial terms of the contract must not have undergone substantial changes.

In the case of sectoral contracts, the contracting entity may use the negotiated procedure without prior notice publication, when in response to the prior notice publication procedure, no bid or request to participate has been submitted or those submitted have been irrelevant, bearing in mind that the initial terms of the contract have not undergone substantial changes.

A tender shall be considered irrelevant when it is not related to the contract and it is clear that it cannot meet, without undergoing substantial changes, the needs and requirements of the contracting authority or entity, specified in the tender documents.

The request for participation shall be considered irrelevant when the economic operator in question is in the conditions of disqualification, according to article 76 of this law, or does not meet the selection criteria set by the contracting authority or entity according to article 77 of this law.

b) when works, goods or services can be provided only by a certain economic operator for one of the following reasons:

i. the purpose of procurement is to create or purchase a work of art or unique artistic performance;

ii. for technical reasons, there is no competition;

iii. to protect exclusive rights, including intellectual property rights.

The exceptions set out in sub-paragraph "ii" and "iii" shall apply only when there is no reasonable alternative or replacement and the lack of competition is not result of the requirement restriction that the contracting authority or entity sets for the scope of the procurement.

c) when due to extreme necessity, caused by events unforeseeable by the contracting authority or entity, time limits for open procedures, simplified open procedures, restricted procedures, consultancy services, competitive negotiated procedures or negotiated procedures, with prior contract notice publication, may not be observed. The circumstances mentioned to justify the extreme need should not be caused in any case by the contracting authority or entity.

For contracts signed at the end of a procurement procedure according to this “letter”, the negotiated procedure without prior notice publication, for goods, services or additional work, as provided in this article, may not be used.

2. The negotiated procedure, without prior notice publication, can be used for public contracts of goods:

a) when the products involved are produced solely for the purpose of research, experimentation, study or development. Contracts awarded pursuant to this paragraph do not involve mass production to achieve commercial viability sustainability or to cover research and development costs;

b) for additional deliveries from the original supplier, which are either a partial replacement of the goods or installations or an addition to the existing goods or installations, when a change of supplier would force the contracting authority or entity to accept goods with different technical characteristics, resulting in incompatibility or disproportionate technical difficulties in use and maintenance.

The contract in this case must be signed by the contracting authority within three years from the conclusion of the initial contract and the value of these supplies should not exceed 20% of the initial contract value. This rule does not apply in the case of sectoral contracts.

The situation provided for in this paragraph shall not apply to those types of goods and services which contracting authority or entity has ongoing needs for.

c) for goods quoted and purchased on the stock exchange;

ç) for the purchase of goods at particularly favourable terms, by a supplier which finally closes its commercial activity, is undergoing bankruptcy process, by an agreement with creditors or by a similar procedure, in accordance with applicable law.

3. The negotiated procedure, without prior notice, may be used for public service contracts when the contract in question follows a design contest organized in accordance with this law and, according to the rules provided in the design contest, must be awarded to the winner or one of the winners of the design contest; in the second case all winners should be invited to participate in the negotiations.

4. The negotiated procedure, without prior notice, may be used for new works or services related to the repetition of similar works or services entrusted to an economic operator to whom the contracting authority or entity has awarded the initial contract, provided that these works or services comply with the basic design for which the initial contract was concluded on the basis of a competitive procedure. The basic design should specify the level of additional works or services and the conditions under which they will be provided.

The situation provided for in this point does not apply to those types of services for which the contracting authority has ongoing needs.

The possible use of this procedure should be made known at the time of the publication of the first procedure and the contracting authority or entity when calculating the limit fund should also take into account a general cost of additional works or services.

This procedure can be used only within three years from the date of concluding the initial contract and the value should not exceed 20% of the initial contract value. This rule shall not apply in the case of sectoral contracts.

#### Article 48

##### **Negotiated procedure, with prior notice publication**

1. For the procurement of sectoral contracts, contracting entities may use the negotiated procedure, with prior notice publication, where any economic operator may submit a request to participate in response to an invitation to tender, providing information on the quality selection required by the contracting entity.

2. In the procurement procedures above the upper threshold, the minimum time limit for accepting requests to participate shall be no less than 30 days from the date of publication of the contract notice or invitation to express interest or in cases when a periodic information notice is used as a way to make an invitation to tender, this deadline shall be no less than 15 days.

3. In procurement procedures, between the lower and upper monetary threshold, the minimum time limit for accepting of requests to participate shall be 20 days from the publication of the contract notice or invitation for expressions of interest.

4. Only those economic operators that are invited by the contracting entity can participate in the negotiation, after the latter has evaluated the submitted information. Contracting entities may limit the number of candidates to be invited to participate in the procedure, in accordance with Article 85 of this law.

The time limit for accepting bids may be determined by mutual agreement between the contracting entity and the selected candidates, provided that all of them are given equal time to prepare and submit their bids.

In the absence of agreement on the time limit for accepting bids, the time limit shall be no less than 10 days from the date of sending the invitation to tender.

#### Article 49

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

1. The contracting authority may use the simplified open procedure for contracts below the lower monetary threshold.

2. The simplified open procedure is a one-stage procedure, in which any interested economic operator can participate.

3. The time limit for accepting bids in this procurement procedure shall be no less than 10 days from the contract notice publication.

#### Article 50

#### **Consultancy service**

1. Consultancy service is a phased procurement procedure, which serves for the procurement of public contracts for services of an intellectual and / or advisory nature.

2. In proceedings over the upper monetary threshold, any economic operator may submit a request for participation in response to notice containing the information specified in the public procurement rules.

The minimum time limit for accepting requests to participate shall be not less than 30 days from the date of publication of the contract notice or invitation to express interest.

3. In the second stage, a bid can be submitted only by the candidates selected by the contracting authority.

The minimum deadline for receipt of bids shall be not less than 30 days from the date of publication of the invitation to tender.

4. In the procedures above the upper monetary threshold, the contracting authority may shorten by 5 days the time limit for accepting requests or tenders, defined in paragraph 2 and 3 of this article, in case the procurement procedure is conducted by electronic means.

5. For procurement procedures between the upper and lower monetary threshold, the deadline for accepting requests to participate or bids shall be not less than 20 days from the publication of the contract notice or invitation to tender and in case the procurement procedure is conducted with electronic means, this time limit can be shortened by 5 days.

6. For procurement procedures below the lower monetary threshold, the deadline for accepting requests to participate or tenders shall be not less than 10 days from the publication of the contract notice or invitation to tender.

7. Detailed procedures for the conduct of this procurement procedure are provided in the public procurement rules.

#### Article 51

#### **Cases of using the competitive negotiated procedure and competitive dialogue**

Contracting authorities may use a competitive negotiated procedure or competitive dialogue in the following cases:

1. For works, goods or services contracts that meet one or more of the following criteria:

- a) where to meet the needs of the contracting authority it is necessary to adjust existing solutions available to contracting authorities;
- b) when they involve innovative design or solutions;



- c) the contract may not be awarded without prior negotiation due to specific circumstances related to the nature, complexity, legal and financial framework or due to the risks associated with them;
- ç) technical specifications cannot be determined with due accuracy by the contracting authority based on approved standards or by referring to certain specifications, in accordance with the provisions of this law.

2. For works, goods or services contracts when during an open or restricted procedure only irregular or inadmissible bids have been submitted. In these circumstances, contracting authorities are not obliged to issue a contract notice as long as they include in the procedure all bidders who meet the eligibility criteria set out in this law and who during a previous open or restricted procedure have submitted bids in accordance with the formal requirements of the procurement procedure.

Irregular bids shall be considered, those bids that are not in accordance with the tender documents, as well as do not comply with the legal obligations arising from the special legislation depending on the scope of the procurement.

Inadmissible shall be considered those bids, which:

- a) were submitted late;
- b) are abnormally low and unsubstantiated;
- c) exceed the budget of the contracting authority, defined and documented prior to the commencement of the procurement procedure.

## CHAPTER VIII

### PROCUREMENT TOOLS

#### Article 52

#### **Framework agreements**

1. A framework agreement is an agreement between one or more contracting authorities or entities and one or more economic operators, with the purpose of setting out the terms of the contracts to be awarded over a given period of time, in particular those relating to price and, where appropriate, in the quantities foreseen.

The duration of the Framework Agreement shall be no longer than 4 years.

In the case of a Framework Agreement for sectoral contracts, this term shall be no longer than 8 years.

2. Contracts based on a Framework Agreement shall be concluded in accordance with the procedures provided in this law.

These contracts may be applied only between those contracting authorities or entities which are clearly identified for this purpose in the contract notice or in the invitation for expression of interest and those economic operators which are parties to the concluded Framework Agreement.

Contracts based on a framework agreement may in no circumstance introduce substantial changes to the terms set out in the Framework Agreement, in particular in the case referred to in paragraph 3 of this Article.

3. When a framework agreement is concluded with a single economic operator, contracts based on this agreement are concluded within the limits of the conditions set out in the framework agreement.

For the award of these contracts, the contracting authorities or entities shall ask the economic operator party to the Framework Agreement to provide its bid as needed.

4. When the Framework Agreement is concluded with more than one economic operator, it shall be implemented in one of the following ways:

a) through the implementation of the conditions set out in the framework agreement, without reopening competition;

b) when the framework agreement sets out all the conditions governing the provision of the works, services and supplies in question, partly without reopening the competition in accordance with sub-paragraph "a" of this paragraph, and partly with the reopening the competition between economic operators parties to the Framework Agreement, in accordance with sub-paragraph "c" of this paragraph, when this possibility is provided by the contracting authorities or entities in the tender documents for the framework agreement. The choice of whether specific works, supplies or services are purchased after the reopening of the competition or directly under the conditions set out in the framework agreement shall be made in accordance with objective criteria, which are set out in the tender documents for the Framework Agreement. These documents must also specify which conditions may be subject to reopening of the competition.

The options provided in the first paragraph of this sub-paragraph shall also apply to each lot of the Framework agreement, for which all the conditions governing the provision of the works, services and supplies in question are set out in the Framework Agreement, regardless of whether all conditions governing the provision of such works, services and supplies are provided or not for other lots.

c) when in the Framework Agreement, through the reopening of the competition between the economic operators, parties to the Framework Agreement, not all conditions that regulate the provision of works, services and supplies are defined.

5. The competitions referred to in sub-paragraphs (b) and (c) of paragraph 4 shall be based on the same conditions as for the award of the Framework Agreement and, if necessary, on the basis of the conditions formulated more precisely and, where appropriate, on other conditions set out in the tender documents, in accordance with the following procedure:

a) for each contract to be procured, the contracting authorities or entities shall communicate in writing or by electronic means with the parties to the Framework Agreement;

b) the contracting authorities or entities must set a time limit of not less than 2 days for the submission of bids for each specific contract, taking into account the complexity of the scope to be procured and the time required to submit the bids;

c) bids will be submitted in writing or by electronic means and their content must remain confidential until the set time limit to respond has expired;

ç) the contracting authorities or entities shall award the contract to the bidder, who has submitted the best bid, based on the award criteria defined in the tender documents of the Framework Agreement.

#### Article 53

##### **Concentrated purchase**

1. When one or more contracting authorities or entities need the same goods, works or services, they may, if so decide, entrust one of them the task of procuring such goods, works or services on behalf of others.
2. The Council of Ministers, at the request of a contracting authority or entity or on its own initiative, may charge for special procurement procedures another contracting authority or entity as the central purchasing body.
3. The contracting authority or entity may require the central purchasing body to carry out a certain procedure for contract award or a series of such procedures on its behalf, where the concentrated purchase would be more advantageous due to the increase in the quantity required for supplies of similar goods and similar market conditions.

In carrying out the procedures for the selection of the winner, the central purchasing body shall apply the provisions of this law.

#### Article 54

##### **Dynamic purchasing system and electronic auction**

1. The contracting authority or entity may use the dynamic purchasing system to purchase ordinary works, goods or services in the market, having regard to the following:
  - a) for the dynamic purchasing system the rules of the restricted procedure shall be used, by including all candidates that meet the selection criteria in the system. The limitation of the number of candidates according to article 85 of this law, cannot be applied in the case of dynamic purchasing system;
  - b) the contracting authority or entity shall publish the call for tender where the use of the dynamic procurement system is disclosed, while all the necessary information regarding the dynamic system is included in the tender documents, including the technical data for the functioning of the dynamic system;
  - c) the contracting authority or entity may divide goods, works or services into categories, specifying the characteristics and selection criteria for each of them;
  - ç) the contracting authority or entity shall grant full and unrestricted access to the tender documents to all economic operators throughout the validity period of the dynamic system;
  - d) the authority or contracting entity shall enable any economic operator to become part of the dynamic system during its validity period.

Detailed rules on how to operate, evaluate and time limits and award decisions for the dynamic purchasing system shall be defined in the public procurement rules.

2. The contracting authority or entity may use the electronic auction, through which revised, lower prices and / or new values for any of the other elements of the tender are submitted.

Electronic auction cannot be used for public contracts with the work or services of an intellectual nature scope, which cannot be classified through the use of automatic evaluation methods.

The contracting authority or entity that intends to conduct an electronic auction must disclose this contract notice or in the invitation for expression of interest.

Prior to carrying out the auction, the contracting authority or entity must make a preliminary evaluation of the procedure in accordance with the evaluation criteria and their specific value.

The rules for the functioning of the electronic auction shall be determined by a decision of the Council of Ministers.

3. The dynamic purchasing system and electronic auction must be conducted in accordance with the principles mentioned in Article 3 of this law and with European and international standards.

## CHAPTER IX

### NOTIFICATIONS AND TRANSPARENCY

#### Article 55

#### **Types of notifications**

Notices used in public procurement procedures are as follows:

- a) prior information notice;
- b) periodic information notice;
- c) notification of the existence of a qualification system;
- ç) contract and design contest notice;
- d) voluntary notification of transparency for the negotiated procedure, without prior contract notice publication;
- dh) notification of changes and additional information in a procedure;
- e) award notice;
- ë) notification of the cancelled procedure;
- f) contract conclusion award;
- g) notification of the change of the contract during its duration.

#### Article 56

#### **Form and manner of notice publication**

1. Procurement procedures notices according to this law shall be published in accordance with the time limits set out in this law, in the electronic procurement system and in abbreviated form in the Public Notices Bulletin, which is prepared and published periodically.

2. For procurement procedures above the upper monetary threshold, notices shall also be published in the Official Journal of the European Union, with the exception of the award notice and notification of the cancelled procedure.
3. Notices published under this law shall include all information that allows economic operators to decide whether or not to participate in procurement procedures.
4. The content of the notices shall be defined in the public procurement rules.
5. Time limits in this law are given in calendar days, unless otherwise specified.

#### Article 57

##### **Prior information notice**

1. Contracting authorities may provide information on planned procurements by prior notice publication. These notices contain the information, which is defined in the public procurement rules and are published in the electronic procurement system, according to the provisions of this law.
2. For restricted and competitively negotiated procedures, contracting authorities may use prior notice as a call for tenders in accordance with the provisions of this law, if this notice meets all of the following conditions:
  - a) specifically refers to the supplies, works or services that will be the scope of the contract;
  - b) discloses that the contract shall be awarded through restricted procedure or competitive negotiated procedure, without further publication of a call for tenders and invites interested economic operators to express their interest;
  - c) contains the information defined in the public procurement rules;
  - ç) is published from 35 days to 12 months before the date the invitation was sent.

The period covered by the prior information notice is a maximum of 12 months from the date of notice publication. However, in the case of contracts for social services and other specific services, prior information notice may cover a period longer than 12 months.

#### Article 58

##### **Invitation to tender**

1. In phased procurement procedures, the contracting authority or entity shall invite through a communication by electronic means or in writing at once all the selected candidates to proceed to the second phase, to submit bids or to negotiate and dialogue.
2. The content of the invitation to tender shall be determined in the public procurement rules.

## CHAPTER X

### PROCUREMENT OF SECTORAL CONTRACTS

#### Article 59

##### **Object and scope of application**

1. This chapter defines the rules for procurement procedures, which are implemented by the contracting entities for public contracts and design contests, which are the same as those applied in classical sector contracts.
2. Procurement, within the meaning of this chapter, is the purchase of works, supplies or services through a public contract by one or more contracting entities from economic operators selected by these contracting entities, provided that the works, supplies or services are used to perform one of the activities mentioned in the provisions of Chapter X of this law.
3. The scope of application of this chapter does not include non-economic services of general interest.

#### Article 60

##### **Gas and heating**

1. This Chapter applies to the following activities in the gas and heating sector:
  - a) the provision or use of networks intended to provide services to the public for production, transport or distribution of gas or heat;
  - b) supply of such networks with gas or heating.
2. The supply of gas or heating to fixed networks providing services to the public by a contracting entity other than a contracting authority shall not be considered as one of the activities referred to in paragraph 1, when all of the following conditions are met:
  - a) the production of gas or heat by that contracting entity is an inevitable consequence of the performance of another activity, which is not mentioned in paragraph 1 of this article, or in articles 61 to 63 of this law;
  - b) the purpose of supplying the public network is only to use the production for economic purposes and when it does not exceed 20% of the average turnover of the contracting entity for the last three years, including the current year.

#### Article 61

##### **Electrical power**

1. This chapter applies to the following activities in the electricity sector:
  - a) provision or use of networks intended to provide to the public services for the production, transport or distribution of electricity;
  - b) supply of these networks with electricity.

2. Electrical power supply of fixed networks, which provide service to the public by a contracting entity, other than a contracting authority, is not considered as one of the activities mentioned in paragraph 1, when all the following conditions are met:

- a) the production of electrical power by the contracting entity is performed, because its consumption is necessary to perform another activity, which is not mentioned in paragraph 1 of this article, or in articles 60, 62 and 63 of this law;
- b) the supply of the public network depends only on the own consumption of this contracting entity and does not exceed 30% of the total energy production by the contracting entity, on the basis of the average for the last three years, including the current year.

#### Article 62

### **Water supply**

1. This chapter applies to the following activities in the water sector:

- a) the provision or use of networks intended to provide services to the public for production, transport or distribution of drinking water;
- b) drinking water supply of these networks.

2. This chapter also applies to design contracts or contests awarded or organized by contracting entities that perform an activity mentioned in paragraph 1 of this article and that are related to one of the following activities:

- a) projects of hydraulic engineering, irrigation or soil drainage, provided that the volume of water to be used for drinking water supply is more than 20% of the total volume of water made available by these projects or from irrigation or drainage infrastructure;
- b) disposal or treatment of wastewater.

3. Drinking water supply of fixed networks, which provide service to the public by a contracting entity, other than a contracting authority, shall not be considered as one of the activities mentioned in paragraph 1 of this article, when all the following conditions are met:

- a) the production of drinking water by the contracting entity is necessary for the performance of activities other than those mentioned in articles 60 to 63 of this law;
- b) the supply of the public network depends only on the personal consumption of this contracting entity and does not exceeds 30% of the total production of drinking water by the contracting entity, on the basis of the average for the last three years including the current year.

#### Article 63

### **Transportation services**

This chapter applies to activities related to the provision or use of networks, which provide to the public services in the field of transport through railways, automatic systems, trams, trolleybuses, buses or cable cars.

In relation to transport services, a network is considered to exist when the service is provided under operating conditions determined by a competent authority, such as the conditions for transport lines and the capacity provided or the frequency of service.

Article 64  
**Ports and airports**

This chapter applies to activities related to the use of a geographical area for the purpose of making available an airport, seaport or inland port or other terminal premises for air, sea or inland waterway means of transport.

Article 65  
**Postal services**

1. This chapter applies to activities related to the provision of:
  - a) postal services;
  - b) other services, other than postal ones, provided by an entity that provides also the postal services mentioned in sub-paragraph "b" of paragraph 2 of this article.
  
2. For the purposes of this article:
  - a) "A postal object" is an object addressed in its final form, sent by the postal service provider where, in addition to the objects of letter correspondence, also books, catalogues, newspapers, magazines and postal packages, which contain goods with or without commercial value are included.
  - b) "Postal services" are services that include the receipt, processing, transport and delivery of postal items in the national and international / cross-border postal network. This includes services that are classified and services that are not classified as objects of universal service, defined by applicable law.
  - c) "Other services, other than postal services" are the services provided in the following areas:
    - i. postal service management services (pre- and post-delivery services, including post office management services);
    - ii. services related to postal items not included in letter "a" of this point, such as: direct mail that has no address.
  
3. Notwithstanding the provisions of paragraph 1 and 2 of this Article, this law does not apply to public contracts concluded by the public postal operator in relation to the production, issuance and circulation of postage stamps, in accordance with the provisions of the legislation of the field in force.

Article 66  
**Extraction of oil and gas and exploration or extraction of coal or other solid fuels**

This chapter applies to activities related to the use of a geographical area for the purpose of:

- a) extraction of oil or gas;
- b) exploration or extraction of coal and solid fuels.



## Article 67

### **Exceptions that apply to all contracting entities**

1. This chapter shall not apply to contracts awarded for the purpose of resale or lease to third parties, unless the contracting entity enjoys a special or exclusive right to sell or lease the scope of these contracts and the other entities are free to sell or lease it out on the same terms as the contracting entity.
2. The exceptions provided in articles 7, 8 and 9 of this law shall also apply to sectoral contracts.

## Article 68

### **Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or fuel for energy production**

This chapter does not apply to:

- a) contracts for the purchase of water, if they are awarded by contracting entities that exercise one or both of the activities related to drinking water, referred to in Article 62, paragraph 1;
- b) contracts awarded by contracting entities that are themselves active in the energy sector, exercising one of the activities mentioned in article 60, paragraph 1, article 61, paragraph 1, or in article 66 of this law for the supply of:
  - i. power;
  - ii. fuels for energy production.

## Article 69

### **Contracts awarded to an affiliated enterprise**

1. This chapter does not apply to contracts awarded:
  - a) by a contracting entity for an affiliated enterprise; or
  - b) by a joint venture, established exclusively by several contracting entities, for the purpose of carrying out the activities referred to in Articles 60 to 66 of this Law, for an enterprise which is affiliated with one of these contracting entities, provided that the conditions set out in paragraph 3 of this article are met.
2. For the purposes of this article "affiliated enterprise" means any enterprise:
  - a) which annual accounts are consolidated with those of the contracting entity, in accordance with the accounting rules;
  - b) over which the contracting entity may exercise, directly or indirectly, a dominant influence, or the enterprise may exert a dominant influence over the contracting entity, or the enterprise which, in cooperation with the contracting entity, is subject to the dominant influence of another enterprise as a result of ownership, financial participation or the rules governing it.

In the sense of this article, the term "dominant influence" shall have the same meaning as given in point 36 of Article 4 of this law.

3. Paragraph 1 of this article applies to:

- a) service contracts, if at least 80% of the average turnover of the affiliated enterprise during the last three years, taking into account all the services provided by this undertaking, come as a result of the provision of services for the contracting entity or other enterprises to which it is affiliated;
- b) supply contracts, if at least 80% of the average turnover of the affiliated enterprise, taking into account all the supplies provided by that enterprise during the last three years, comes as a result of the provision of supplies for the contracting entity or other enterprises it is related to;
- c) employment contracts, if at least 80% of the average turnover of the affiliated enterprise into account all the work performed by that enterprise during the last three years, results from the performance of works for the contracting entity or other enterprises it is affiliated to.

4. When due to the date on which a affiliated enterprise is established or has started its activity, the turnover is not available for the last three years, it is sufficient for this enterprise to show that the turnover mentioned in sub-paragraphs "a", "b" or "c" of paragraph 3 is reliable, especially through the forecasts made for the business plan.

5. In the event that more than one affiliated enterprise of the contracting entity, with which they form an economic group, provide the same or similar services, supplies or works, the percentages shall be calculated taking into account the total turnover created respectively by the provision of services, supplies or works from these affiliated enterprises.

#### Article 70

##### **Contracts awarded to a joint venture or to a contracting entity that is part of the joint venture**

If the joint venture is established for the purpose of carrying on the activity for a period of at least three years and if the instrument by which the joint venture is established provides that the contracting entities which are part of it, shall continue to be so for least the same period, the provisions of this chapter shall not apply to contracts awarded:

- a) by a joint venture, created exclusively by several contracting entities for the purpose of carrying out activities within the meaning of Articles 60 to 66 of this Law, for one of these contracting entities; or
- b) by a contracting entity for a joint venture of which it is a part of.

#### Article 71

##### **Periodic information notice**

1. Contracting entities may provide information on planned procurement through the publication of a periodic information notice. These notices shall disclose the information specified in the public procurement rules and shall be published in the electronic procurement system, according to the provisions of this law.

2. In restricted and negotiated procedures with prior publication of a notice, contracting entities may use the periodic information notice as an invitation to tender if such notice meets all of the following requirements:

- a) specifically mentions the supplies, works or services, which will be the scope of the contract to be awarded;
- b) indicates that the contract will be awarded through a restricted or negotiated procedure without further publication of an invitation to tender and invites interested economic operators to express their interest;
- c) contains the information defined in the public procurement rules;
- ç) was published 35 days to 12 months before the date the invitation for expression of interest was sent.

The period covered by the periodic information notice shall be a maximum of 12 months from the date the notice is sent for publication.

However, in the case of contracts for social services and other specific services, the periodic information notice may cover a period longer than 12 months.

## Article 72

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

1. When the contracting entities choose to establish a qualification system in accordance with Article 73 of this Law, this fact shall be subject of the notice, according to the provisions in the public procurement rules. The notice shall specify the purpose of the qualification system and the rules for its use.

2. In the notice on the existence of the qualification system, contracting entities shall also disclose the qualification system validity period. They shall notify any changes during the validity period in one of the following standard formats:

- a) according to the form for notification for the existence of qualification systems, when the period of validity is changed before the system has ended;
- b) by notifying the winner when the system has ended.

## Article 73

### **Qualification systems**

1. Contracting entities may establish and use a qualification system for economic operators. In this case, contracting entities must ensure that these operators are at all times qualified.

2. The system according to paragraph 1 of this article may include different qualification stages. Contracting entities shall establish objective rules and criteria for the exclusion and selection of economic operators seeking qualification, as well as objective criteria and rules for the use of the qualification system, such as: registration in the system, periodic updating of qualifications, if any, and duration of the system. Criteria and rules can be updated as required.

3. Criteria and rules shall be made available to economic operators at their request. Updates to these criteria and rules shall be communicated to all interested economic operators.

When a contracting entity considers that the qualification system of certain entities or other bodies meets its requirements, it shall communicate to the interested economic operators the names of those entities or other bodies.

Where the criteria and rules for qualification include requirements concerning the economic and financial capacity or the technical and/or professional capacity of the economic operator, the latter may, as appropriate, rely on the capacity of other entities, as provided in Article 84 of this law.

4. The contracting entity shall record the data of qualified economic operators. They can be divided into categories according to the type of contract for which the qualification is valid.

5. When an invitation to tender is made through a notice on the existence of a qualification system, specific contracts for work, supplies or services covered by the qualification system shall be procured through restricted or negotiated procedures, where all tenderers and participants are selected from qualified candidates in accordance with this system.

## CHAPTER XI RUNNING THE PROCEDURE

### **Article 74 Tender documents**

1. The contracting authority or entity, in drafting the tender documents, shall use the standard documents, as defined in the public procurement rules, and make them available electronically free of charge.

2. The contracting authorities or entities, through electronic means, shall provide unlimited, full and direct free of charge access to the tender documents, starting from the date of publication of the contract notice or invitation for expression of interest. When the invitation to tender is a notice of the existence of a qualification system, such access shall be provided no later than the moment of sending the invitation to tender or to negotiate. The content of the notice or invitation for expression of interest shall indicate the web address where the procurement documents can be found.

3. When they cannot provide unrestricted, full and direct free access, by electronic means, to some of the tender documents, the contracting authorities or entities may specify in the contract notice or in the invitation for expression of interest that these tender documents will be made available to them through different means from the electronic ones. In such a case, the deadline for submission of bids shall be extended by 5 days.

4. In cases when the procurement procedure is not carried out by electronic means, the contracting authority or entity, at the request of the economic operators, must make available to the interested parties the tender documents, against payment, at a price which should not exceed their copying costs. In any case, the names and number of economic operators who

have expressed interest in purchasing or reviewing the tender documentation must be kept secret.

#### Article 75

### **Clarifications and changes in the tender documents**

1. The potential bidder may request clarifications regarding tender documents from the contracting authority or entity, which must respond to any request for clarification of the tender documents made by any economic operator, provided that the request has been received no later than 6 days before the final deadline for submission of bids.

The contracting authority or entity must respond within 3 days from the submission of the request, in order to enable the timely submission of the bid by the economic operator and, without identifying the source of the request, must communicate the relevant explanation to all economic operators, who have received the tender documents.

In any case, the clarification of the tender documents shall not be considered as an increase, decrease or change of the requirements set by the contracting authority or entity in the tender documents.

2. The contracting authority or entity, from the moment of contract notice publication until before the expiration of the deadline for submission of bids and for any reason, on its own initiative or at the request of interested parties, may decide to make changes in the tender documents through the drafting of an appendix.

If the change of the tender documents is done in the first half of the bid acceptance time limit period, the contracting authority or entity may extend the time limit for the receipt of bids.

If the tender documents are changed in the second half of the bid submission time limit period, the contracting authority or entity shall extend the deadline for submission of bids by at least 10 days for procedures above the upper monetary threshold and by at least 7 days for procedures under high monetary threshold.

3. Any appendix changing the tender documents shall be communicated in the same way as the publication of the procedure notice.

#### Article 76

### **Mandatory criteria for disqualification**

1. Any economic operator that is or has been convicted by a final court decision for any of the criminal offenses mentioned in this paragraph, shall be disqualified from public procurement procedures for a period of 5 years from the date of execution of the sentence, if no other period has been set by the court. This disqualification shall be done for the following criminal offenses:

- a) participation in a structured criminal group, criminal organization, armed gang, terrorist organization, as defined by applicable law;
- b) corruption, according to the provisions of the legislation in force;
- c) fraud, according to the provisions of the legislation in force;
- ç) money laundering or terrorist financing according to the provisions of the legislation in force;

- d) acts with terrorist intentions or criminal offenses related to terrorist activities, according to provisions of the legislation in force;
- dh) forgery;
- e) child labour and other forms of trafficking in human beings, as defined by the legislation in force.

The requirement to disqualify an economic operator shall also apply when the person convicted by a final court decision is a member of a its governing, management or supervisory body, shareholder or partner, economic operator, or has representative, decision- making or controlling powers within it.

2. An economic operator is disqualified from participating in a procurement procedure when it has violated its obligations regarding the payment of taxes or social security contributions, unless:

- a) the economic operator is in a court litigation and there is no final court or administrative decision according to the legislation in force;
- b) the economic operator has fulfilled its obligations, by paying or concluding a binding agreement with the scope of payment of its due tax liabilities, including, where applicable, any late interest or fines. In any case, the binding agreement for the purpose of payment of tax liabilities must be signed before the date of procurement procedure publication;
- c) the economic operator has not paid small amounts of taxes or contributions in social insurance up to the value of ALL 10,000;
- ç) the economic operator has been informed about the exact amount he has to pay after the violation of his obligation to pay taxes or social security contributions, at such a time when he has not been able to take the necessary measures for their payment, before the deadline for submission of the request for participation.

3. Every economic operator shall be disqualified from participating in the procurement procedure if it is in one of the following situations:

- a) the contracting authority or entity proves that there are violations of applicable obligations related to anti-discrimination legislation, environmental, social, labour legislation, in force or to collective agreements and acts of international law in these areas, where The Republic of Albania is a party;
- b) the economic operator has gone bankrupt or is subject to bankruptcy proceedings, when its assets are administered by a bankruptcy administrator or by the court, when there is an agreement with creditors, when its business activities are suspended or it is in a similar situation which has arisen from a similar procedure in implementation of the legislation in force, with the exception of the case provided in article 47, paragraph 2, sub-paragraph "ç", of this law;
- c) the economic operator has been found guilty by a final court decision for a serious professional violation, as long as it is not prescribed, according to the legislation in force;
- ç) the contracting authority or entity proves that the economic operator has entered into an agreement with other economic operators intended to distort competition;
- d) the economic operator is in a state of conflict of interest, under provisions of the legislation in force;

- dh) the economic operator has withdrawn from the signing of the contract in a procurement procedure conducted by the contracting authority or entity itself. This condition applies within one calendar year of withdrawal;
- e) the economic operator has shown significant or persistent deficiencies in meeting an essential criterion of a previous contract with a contracting authority or entity or a concession contract which has caused the termination of this contract, for which it has been excluded as provided in sub-paragraph "b" of paragraph 1 of article 78 of this law.
- ë) the economic operator has submitted false statements in providing the required information to prove the lack of reasons for disqualification or fulfilment of the selection criteria, has hidden such information or is not able to submit proof documents according to the defined requirements in the tender documents;
- f) the contracting authority has verified information that the economic operator has undertaken to erroneously influence the decision-making process of the contracting authority or entity to obtain confidential information, which may give it an unfair advantage in the procurement procedure, or negligently provide misinformation that could have a significant impact on decisions relating to exclusion, selection or procurement.
- g) the economic operator has in the capacity of a member of the management body, its manager or supervisor, shareholder or partner, or with representative, decision-making or controlling powers within it, persons who are / have been in this capacity in an excluded economic operator from the right to receive public funds, by decision of the Public Procurement Agency, during the time this decision is in force.

4. In extraordinary circumstances, related to substantial reasons of public interest, such as public health or environmental protection, confirmed by the competent authorities, the contracting authority or entity may decide not to disqualify the economic operator, notwithstanding the provisions of paragraph 3 of this article.

5. The contracting authority or entity shall disqualify any candidate or bidder who submits false data for qualification purposes, at any time, until the moment of concluding the contract and report to the Public Procurement Agency, for the purposes provided in Article 78 of this the law.

6. An economic operator who is in one of the conditions of disqualification provided for in this Article may submit evidence in order to prove that the measures taken by it are sufficient to show its credibility, despite the existence of conditions for disqualification.

To this end, the economic operator must prove that it has paid or undertaken to pay compensation for any damage caused as a result of the commission of a criminal offense or legal violation, which has comprehensively clarified the facts and circumstances in cooperation with the investigating authorities and that it has taken concrete appropriate organizational measures and for the personnel to prevent other criminal offenses or violations.

The measures taken by the economic operator should be assessed taking into account the importance and special circumstances of the criminal offense or violation. If the measures taken are considered insufficient, the economic operator shall be provided with the reasons for such a decision.

7. The economic operator, excluded by a final decision from participating in the procurement or concession procedures, has no right to use the opportunity provided by paragraph 6 of this article during the exemption period defined in this decision.

#### Article 77

### **Qualification requirements**

1. Contracting authorities or entities shall designate qualification requirements for economic operators based on:

- a) suitability to perform professional activity;
- b) economic and financial situation;
- c) technical and professional capacities.

The requirements are limited to those that are appropriate to ensure that a candidate or bidder has the legal, financial and technical and professional capacities to execute the contract to be awarded. All requirements must be relevant and proportionate to the scope of the contract.

2. With regard to suitability to carry out a professional activity, contracting authorities or entities may require economic operators to be registered in one of the professional or commercial registers.

In service procurement procedures, where it is necessary for economic operators to have a special authorization or to be members of a particular organization to perform the service in question in their country of origin, the contracting authority or entity may ask them to prove that they have this authorization or membership.

3. In relation to the economic and financial situation, the contracting authorities or entities may impose requirements guaranteeing that economic operators have the necessary economic and financial capacity to execute the contract.

To this end, the contracting authorities or entities may in particular require economic operators to have a certain minimum annual turnover. Authorities or contracting entities may also require economic operators to provide information in their annual balance sheets to indicate the ratio between asset and a liability.

The minimum annual turnover required from economic operators may not exceed twice the estimated value of the contract.

When a contract is divided into lots, this article applies to each individual lot. However, the contracting authority or entity may set the minimum annual turnover required from operators, referring to the group of lots, in case the successful bidder is awarded several lots to be executed at the same time.

In the case of contracts based on a Framework Agreement, the minimum turnover requirement shall be calculated on the basis of the maximum size of the specific contracts to be executed at the same time or, where the dimensions are not known, on the basis of the estimated value of the Framework Agreement.

4. With regard to technical and professional capacities, contracting authorities or entities may establish requirements guaranteeing that economic operators possess the necessary human and technical resources, as well as the experience necessary to implement the contract according to an appropriate quality standard.



Contracting authorities or entities, in particular, may require economic operators to have a sufficient level of experience which is proven by appropriate references from past executed contracts.

The professional capacity of economic operators to provide service, work, goods shall be assessed in relation to organizational skills, reputation and reliability, appropriate experience, as well as the necessary staff to execute the contract, as described by the contracting authority or entity in the contract scope notice.

5. The contracting authorities or entities shall disclose in the contract notice or in the invitation for expression of interest the selection criteria, as well as the concrete documents that must be submitted by the economic operators for the fulfilment of these criteria.

#### Article 78

##### **Exclusion for a certain period of time by the Public Procurement Agency**

1. The Public Procurement Agency shall exclude an economic operator from the right to be awarded public contracts for a period of 3 months to 3 years for:
  - a) misinformation and submission of documents that contain false information for qualification purposes;
  - b) failure to fulfil contractual obligations in public contracts, which have occurred due to fault of the economic operator;
  - c) if it has been withdrawn more than five times from the signing of the contract in various procurement procedures, conducted by one or several different contracting authorities or entities within a calendar year;
  - ç) when there is a final decision of the Competition Authority Commission for bid rigging.
2. The Public Procurement Agency shall take decisions for the exclusion of economic operators, taking into account the principles of impartiality, legality and proportionality.
3. The rules and time limits followed in the exclusion process shall be defined in the public procurement rules.

#### Article 79

##### **Quality assurance standards and environmental management standards**

1. The contracting authority or entity, in order to verify that the works, goods or services, subject of the procurement, meet the quality requirements, may request the bidders to submit certificates issued by a conformity assessment body, accredited by the national accreditation body or international accreditation bodies, recognized by the Republic of Albania. This provision also applies when the technical requirements refer to the qualifications of the candidate or bidder.
2. The contracting authority or entity may require bidders to submit certificates or similar documents, issued by independent bodies, certifying their compliance with the required quality standards, in particular as regards:
  - a) guaranteeing accessibility of persons with disabilities;

- b) energy efficiency;
- c) environmental management systems.

3. In cases when the economic operator proves that it cannot be provided with such a certificate within a reasonable time for reasons that do not depend on it, the contracting authority or entity may accept other documents, through which the guaranteeing of the required standards can be verified.

4. In any case, the required certificates must be relevant and proportional to the contract scope, compliant to the non-discrimination principle.

#### Article 80

##### **Principles of the selection process**

1. Contracts shall be awarded on the basis of established criteria, after the contracting authority or entity has verified that all the following conditions have been met:

- a) the bid meets the requirements, conditions and criteria set out in the contract notice or in the invitation to tender and in the tender documents, taking into account, as appropriate, the variants submitted;
- b) the economic operator, which has submitted the bid, meets the eligibility and selection criteria and is not in any of the situations that constitute ground for disqualification.

2. The contracting authorities or entities may decide to reject the bid, regardless of its value, if it is considered that the submitted bid is not in accordance with the obligations arising from the implementation of domestic legislation, international agreements or domestic legislation in the field of environment, social protection and labour.

3. Contracting authorities or entities shall review the submitted bids based on the documentation submitted by the economic operators and the relevant legislation in force.

4. In any case, if the contracting authority or entity becomes aware of a fact which constitutes a ground for disqualification of the awarded economic operator, until the moment of conclusion of the contract, shall take a decision for its disqualification according to the provisions of this law.

#### Article 81

##### **The right to information**

1. Information and documentation administered according to article 99 of this law, shall be made available to any interested person, party in the process, at his request, after the classification of bids has been completed.

The contracting authority or entity is obliged to make the information available within 5 days from the date of receipt of the request.

2. The contracting authority or entity shall notify no later than 5 days from the taking of the decision:

- a) any unsuccessful candidate on the grounds for refusing its participation in the tender;
- b) any candidate who is not listed for the second stage, when the contracting authority or entity has opted for the reduction of the number of candidates;
- c) any unsuccessful bidder on the grounds for its bid rejection;
- ç) any successful bidder, who has submitted a valid bid, for the classification of the selected bid.

3. Without prejudice to the obligations arising from this Article, the contracting authorities or entities may not make public some of the information provided for in paragraphs 1 and 2 of this Article, if such a thing is contrary to the data protection legislation or violates the public interest or the legal and economic interests of the parties, or impedes fair competition. If certain parts of the offer of economic operators are declared confidential, then these documents will not be made available to applicants.

## Article 82

### **Summary Self-Declaration Form**

1. Together with the submission of requests to participate or bids, the contracting authorities or entities shall accept as preliminary evidence instead of some certificates issued by public authorities or third parties, a Summary Self-Declaration Form, according to the provisions of this law. The content of this form shall be defined in the public procurement rules.

When the contracting authority or entity can obtain supporting documents by entering directly into an accessible state database, the Summary Self-Declaration Form shall also disclose the information required for this purpose, such as the internet address of the database, any identification data and, as the case may be, any required consent statement.

Economic operators may use a Self-Declaration Form that has been used during a previous procurement procedure if the information it contains continues to be accurate and valid.

2. At any time during the procedure, the contracting authority or entity may request clarifications and supporting documents from bidders and candidates for such clarifications, where necessary to ensure the correct application of the procedure.

3. Notwithstanding paragraph 2 of this article, economic operators shall not be required to submit supporting documents when the authority or contracting entity that has awarded the contract or entered into the Framework Agreement already has these documents.

4. In the case of foreign economic operators, the documents must be submitted in the form required by the legislation in force on documentation recognition. In the case of documents which are not issued in the country of origin, this fact must be proved by the economic operators.

5. In any case, before awarding the contract, the contracting authority or entity must ask the winning bidder to submit:

- a) documents submitted as part of the electronic bid, which at the time of submission to the contracting authority must be in original or notarized copies thereof;
- b) supporting documents in original or a notarized copy of them for the self-declarations provide.

Special rules regarding this paragraph shall be provided in the public procurement rules.

### Article 83 **Bid security**

1. The contracting authority must require the submission of a bid security by the bidders in all types of procurement procedures, except for the low value procurement procedures.

In the case of sectoral contracts, the contracting entity must require the submission of bid security in all types of procurement procedures above the upper monetary threshold, while it may require the submission of this security also in procedures below the upper monetary threshold, with the exception of low value procurement procedures.

2. The contracting authority or entity must specify in the tender documents:

- a) the required value of the bid security, which must be 2% of the estimated contract value;
- b) any requirement on the nature and form of bid security.

In any case, the contracting authority or entity shall accept the possibility of payment by the bidder, in monetary value to the account of the contracting authority or entity. In addition to this form of submitting the bid security, the contracting authority or entity, based on its evaluation, must specify in the tender documents the possibility of submitting a bid security:

- i. in the form of a bank guarantee; or
- ii. by insurance companies licensed by the competent authorities.

3. The contracting authority or entity shall confiscate the bid security in case of:

- a) withdrawal of the bid after the deadline for submission of bids;
- b) refusal to sign the procurement contract.
- c) non-submission of the contract security, when the bid is declared the winner, or non-fulfilment of any other condition defined in the tender documents before signing the contract.

4. The contracting authority or entity shall not claim the value of the bid security and immediately return the bid security document, if:

- a) the time limit for securing the bid has expired;
- b) the contract is concluded and the contract security is submitted, when such a thing is required from tender documents;
- c) the tender procedures have been cancelled without an award decision.

5. The contracting authority or entity reports to the Public Procurement Agency the cases of withdrawal of the economic operator according to the provisions of this article.

6. When the winning bidder fails to make the contract security or fails to sign the contract the contracting authority shall confiscate the bid security.

In cases where the award criterion used is "the price-based most favourable tender" and when the awarded bidder fails to make the contract security or fails to sign the contract, the contracting authority shall select the second ranked bidder in the list of remaining selected bids, only if the difference between the qualified bid in the first and second place is not greater than the bid security value of the withdrawn bidder.

#### Article 84

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

1. The economic operator, in order to meet the requirements, set by the contracting authority or entity in the tender documents, may rely on the economic, financial, technical or professional capacities of other entities, regardless of the legal nature of its relations to them.

2. The economic operator may use the capacity of another entity to prove the fulfilment of the conditions related to educational and professional qualifications only if the other entity performs the work or will provide the services for which such capacity is required.

3. When an economic operator wishes to rely on the capacities of other entities, it shall prove before the contracting authority or entity that it will have the necessary resources available, by submitting a written commitment of these entities for this purpose.

4. The contracting authority or entity shall ensure that for the entity whose capacity is used by the economic operator, there are no grounds for its disqualification or exclusion. The contracting authority or entity shall require the economic operator to replace an entity which is in a situation of disqualification or exclusion.

5. If the economic operator utilizes skills from the other entity in relation to the conditions relating to the economic and financial situation, the contracting authority or entity may require the economic operator and the entity to assume joint and several liability for the implementation of the agreement.

6. Meanwhile, in case the economic operators rely on the capacities of other entities, after the latter will perform the supplies, works or services, for which these capacities are required, then the group of economic operators may submit bids or present themselves as a single candidate.

7. In the case of works, services and placement or installation contracts under a supply contract, the contracting authority or entity may require that tasks / work / critical aspects of the contract be fulfilled by the economic operator itself or by any of the members of the bidding operators' union.

## Article 85

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

1. In phased procurement procedures, the contracting authorities or entities may limit the number of candidates who meet the selection criteria, which they will invite to bid or conduct a dialogue, if the minimum number of capable candidates has been set in accordance with the provisions of this article.

2. The contracting authorities or entities shall specify in the contract notice or in the invitation for expression of interest objective and non-discriminatory criteria or rules to be applied, the minimum number of candidates intended to be invited and, where appropriate, the maximum number.

3. In the restricted procedure, the minimum number of candidates shall be five.

In the competitive negotiated procedure, the competitive dialogue procedure and the innovation partnership, the minimum number of candidates shall be three.

In the case of sectoral contracts, it is the right of the contracting entity to determine the minimum allowed number of candidates.

In any case, the number of candidates invited must be sufficient to ensure fair competition.

The contracting authority or entity shall invite a number of candidates that is at least equal to the minimum number.

However, if the number of candidates who meet the selection criteria and the minimum capacity levels is below the minimum number, the contracting authority or entity may continue the procedure by inviting candidates with the required capacities.

The contracting authority or entity shall not include economic operators who have not requested to participate or candidates who do not have the required capacities.

## Article 86

### **Reducing the number of bids and solutions**

1. The contracting authorities or entities shall specify in the contract notice or in the invitation for expression of interest objective and non-discriminatory criteria or rules that they will apply to reduce the number of bids and solutions.

2. If the contracting authorities or entities determine the possibility of reducing the number of bids to be negotiated, or the possibility of reducing the number of solutions to be negotiated, they must apply the contract award criteria, which are set out in the tender documents.

3. The reduced number of bids or solutions must ensure fair competition in the final stage of negotiations or dialogue.

## Article 87

### **Award criteria**

1. The contracting authorities or entities shall determine the award of public contracts on the basis of the most economically advantageous tender.

2. The most economically advantageous tender is identified on the basis of price or cost, using the cost-effectiveness method, such as life -cycle costs, in accordance with Article 88 of this law, and may be based on the best price-quality ratio, which is assessed on the basis of criteria related to the scope of the contract in question, including quality, environmental and / or social aspects. Such criteria may include:

- a) quality, including technical merits, aesthetic and functional characteristics, accessibility, design for all users, environmental and innovative characteristics, as well as its marketing and conditions;
- b) the organization, qualification and experience of the staff appointed to execute the contract, where the quality of the staff appointed can have a significant impact on the contract execution level; or
- c) after-sales service and technical assistance, delivery terms, such as date of delivery, delivery process and delivery period or completion period.

The cost element can also take the form of a fixed price or cost, on the basis of which economic operators will compete only for quality criteria.

3. The contract award criteria are considered to be related to the contract scope, when they are related to the works, supplies or services that will be provided in implementation of that contract in every direction and at every stage of their life cycle, including factors that are part of:

- a) the specific process of production, supply or marketing of those works, supplies or services; or
- b) a specific process, for another stage of their life -cycle, even when these factors are not part of their essential substance.

4. The contract award criteria do not confer the contracting authority or entity an unlimited freedom of choice. They guarantee the possibility of effective competition and are accompanied by specifications, which allow the information provided by bidders to be verified to assess whether the bids meet the contract award criteria. In case of doubt, the contracting authorities or entities shall verify the accuracy of the information and evidence presented by the bidders.

5. The contracting authority or entity shall specify in the tender documents the degree of relative weight allocated to each set criterion selected to determine the most economically advantageous tender, unless this is identified only on the basis of price.

If the determination of the degree of weight is not possible for objective reasons, the contracting authority or entity shall present the criteria ranked by their weight in descending order.

## Article 88

### **Calculation of the life -cycle costs**

1. Calculation of life cycle costs covers, if possible, all or part of the following costs over the life cycle of a product, service or works:

- a) costs covered by the contracting authority or entity or other users, such as:
  - i. costs associated with the purchase;
  - ii. usage costs, such as energy consumption and other sources;
  - iii. maintenance costs;
  - iv. end-of-life costs, such as collection and recycling costs.
- b) costs on secondary environmental impacts related to the product, service or works during their life cycle, provided that their monetary value can be determined and verified. These costs may include the cost of emitting greenhouse gases and other pollutant emissions and other costs of mitigating climate change.

2. When contracting authorities or entities estimate costs using the method for calculating life-cycle costs, they shall specify in the tender documents the data to be provided by the bidders and the method to be used by the contracting authority or entity to determine the life-cycle costs on the basis of these data.

The method used to calculate costs on environmental side effects must meet the following conditions:

- a) is based on objectively verifiable and non-discriminatory criteria.
- b) if it is not designed to be applied repeatedly or continuously, the method does not favour or unfairly discriminate against certain economic operators;
- c) is accessible to all interested parties;
- ç) the required data can be provided by economic operators without difficulty.

## Article 89

### **Submission and acceptance of bids**

1. The contracting authority or entity shall determine the place, date and time of submission of bids.
2. The submission of bids shall be made in one of the following ways:
  - a) the bids are submitted electronically, as defined in the bylaws; or
  - b) the bids are submitted in writing, if such a thing is foreseen in the bylaws, in person, or by mail in signed and sealed envelope.
3. In cases when the time limit for acceptance of bids is postponed in accordance with the provisions of this law, such time limit extension notice shall be published in the same way as the publication of the procedure notice.

## Article 90

### **Opening of the bids**

1. The contracting authority or entity shall open all bids on the date, place and time specified in the tender documents, after the expiration of the deadline for submission of bids and after the expiring of the final deadline set after the extension of this deadline, in accordance with procedures specified in the tender documents.



2. If for objective reasons, caused by situation that was not foreseen by the contracting authority at the time of the commencement of the procedure, it is impossible to respect the deadline for the opening of tenders by the contracting authority or entity, the reason must be documented and a new date for opening of the tenders shall be set.
3. The bidders or their authorized representatives, who have submitted bids, are invited to participate in the opening of bids, if they are interested. Their failure to appear shall not prevent the opening of bids.
4. In the case of procurement by electronic means, the opening of bids shall be done as follows:
  - a) the contracting authority or entity shall open all bids on the date, place and time specified in the tender documents, after the expiration of the deadline for submission of bids or after the expiration of the final deadline, set after the extension of such deadline, in accordance with the procedures specified in the tender documents, according to the rules of procurement by electronic means;
  - b) the documentation submitted by the bidders shall be automatically registered in the system and the opening process does not need to be documented in writing.
5. In cases when the procurement procedure is conducted in writing, the contracting authority or entity shall document the process by keeping a minutes, which should reflect the name, address of the bidder, whose bid is opened, legal documentation and any document required by the contracting authority or entity, as well as the price of each bid, which are read aloud to those persons who are present and shall be recorded in this minutes.  
The minutes should be immediately made available to any candidate or bidder.

#### Article 91

##### **Prohibition of bid modification**

1. After the final deadline for opening the bid, no negotiations should be conducted between the contracting authority or entity and the bidder on the value of the bid, in accordance with the provisions of this law.
2. A bidder, as a condition to be awarded the contract, should not be required to undertake responsibilities not specified in the tender documents, to change the value of its bid or to modify the bid in any way.
3. The provisions of this article do not affect the application of articles 44, 45, 46 and 47 of this law.

#### Article 92

##### **Review of bids**

1. The contracting authority or entity, when it deems reasonable, shall ask the bidders to provide explanations about their bids, for the review, evaluation and comparison as fairly as possible of these bids. Without prejudice to the provisions of this law, no change in the

content of the bid, including changes in value or changes intended to turn the invalid tender into a valid one, shall be sought, offered or permitted.

2. The contracting authority or entity, regardless of the provision in paragraph 1 of this article, must correct only arithmetical errors, which are discovered during the review of the bids. The contracting authority or entity shall immediately notify the tenderer who has submitted the bid about such corrections. When the bidder does not accept the correction of an arithmetic error, his bid shall be disqualified.

3. The contracting authority or entity, pursuant to paragraph 4 of this article, shall consider a tender as valid only if it complies with all the requirements and specifications set out in the contract notice and tender documents, without prejudice to the provisions of article 38 of this law.

The bid shall be considered valid even if it contains small deviations, which do not fundamentally alter the characteristics, conditions and other requirements set out in the tender documents, typing errors, which can be corrected without affecting its content, as well as those related to information that is easily obtained from factual documents, which show the condition of the economic operator at the time of bidding.

#### Article 93

#### **Abnormally low tenders**

1. When the contracting authorities or entities notice that the bid for works, supplies or services is abnormally low, they shall require the economic operator to submit in writing and within three working days, explanations about the price or costs proposed in the bid.

2. The explanations referred in paragraph 1 shall specifically be given for:

- a) the economic side of the production process, of the services provided or of the method of construction;
- b) selected technical solutions and / or any exceptional favourable conditions that the bidder has for the supply of products or services or for the performance of work;
- c) the authenticity of the work, supplies or services proposed by the bidder;
- ç) compliance with the obligations deriving from the legislation in the environmental, social and labour areas;
- d) the possibility of the bidder to receive state aid.

3. The contracting authority or entity shall evaluate the information provided, in consultation with the bidder. It may reject the bid when, even after reviewing the evidence provided by the bidder, it is not convinced that it is correct in all its elements, taking into account the elements referred to in paragraph 2 of this article.

The contracting authorities or entities shall reject the bid when they find that the tender is abnormally low, because it does not comply with the obligations applicable by the legislation in the environmental, social and labour areas and other acts.

4. If a contracting authority finds that a bid is abnormally low because the bidder has received state aid, the bid may be rejected only on that ground, only after consultation with the bidder,

if the latter cannot prove, within a time limit set by the contracting authority or entity, which must be at least 3 working days, that such aid was received in accordance with the legislation in force.

#### Article 94

##### **Validity of tenders**

1. Tenders shall be valid during the time period specified in the tender documents.
2. The contracting authority or entity may require the bidders to extend this period for a specified time period and the extension shall be made only with the consent of the party. In this case:
  - a) the bidder may reject the request, without losing the bid security and the validity of his bid / tender shall end with the end of the initial validity period;
  - b) when the bidder accepts the extension of the validity period, the bid security shall be extended also with it or a new bid security shall be submitted covering the extended validity period. The bidder, who fails to extend the bid security period or who fails to submit a new bid security, shall be deemed to have rejected the requirement for extension of the bid validity period and his bid shall be rejected.

#### Article 95

##### **Information management during the process**

1. From the opening of the bids until the contract award, no bidder should make any unjustified communication with the contracting authority or try, in any way, to influence the review and evaluation of the bids, in accordance with the provisions of this law.
2. After the opening of the bids, information on the review, clarification, evaluation of the bids and the recommendations on the award shall not be disclosed to other persons, who are not officially engaged in this process, until the contract is signed.
3. If some parts of the offer of economic operators are legally declared as confidential, then these documents should not be made available to the public.

#### Article 96

##### **Waiting period**

1. The contracting authority or entity may not sign the contract with the winner of the procurement procedure, before a certain period of time from the day of the award notice publication, has elapsed, as follows:
  - a) at least 10 calendar days, in the case of procurement procedures above the upper monetary threshold;
  - b) at least 7 calendar days, in the case of procurement procedures below the upper monetary threshold;
  - c) at least 2 calendar days in the case of small value procurements.

2. The waiting period, provided in paragraph 1 of this article, shall not apply:
  - a) in case of negotiated procedures without prior contract notice publication;
  - b) in case of procedures with a single bidder, who has been qualified and awarded the contract;
  - c) in the case of contracts concluded on the basis of a Framework Agreement or a purchase in the dynamic system.

#### Article 97

##### **Award notice**

1. Immediately, but not later than 5 days after the completion of the bid evaluation procedure, the contracting authority shall publish the award notice on the electronic procurement system. With the publication of the award notice in the electronic procurement system, the economic operators shall have the right to appeal according to the provisions of Article 109 of this law.
2. In the case of written procurement procedures, the contracting authority shall publish the award notice in the Public Notices Bulletin. With the publication of the award notice in the Public Notices Bulletin, economic operators shall have the right to appeal according to the provisions of Article 109 of this law.
3. In case the contract is not signed by the awarded bidder due to any *force majeure* situation, the contracting authority shall not withhold the bid security.
4. A "*force majeure*" shall mean an event or a natural or social act occurring in the country under the legislation in force.

#### Article 98

##### **Cancellation of a procurement procedure**

1. The contracting authority or entity shall cancel the procurement procedure in cases where:
  - a) no relevant request has been submitted in the phased proceedings;
  - b) no suitable bid has been submitted in one-phase procedures;
  - c) finds that the tender documents contain significant errors or deficiencies;
  - ç) due to unpredictable and objective circumstances, the needs or solvency of the contracting authority or entity have changed;
  - d) the Public Procurement Commission decides the cancellation according to the provisions in this law.
2. When the public procurement procedure is cancelled in accordance with letter "ç" of paragraph 1 of this article, the contracting authority or entity must not announce a new procedure for the same procurement scope and with the same data.
3. The contracting authority or entity does not bear any responsibility towards the bidders who have submitted bids for the decision taken on the basis of paragraph 1 of this article.

4. The contracting authority or entity shall communicate to all candidates or bidders the decision and the reasons for not continuing the procurement procedure immediately, but not later than 3 days from the decision.

5. The contracting authority or entity shall publish the cancellation decision only after the expiration of the appeal deadlines according to the provisions of article 110 of this law.

#### Article 99

#### **Summary report on the procurement procedure**

For each contract or Framework Agreement covered by this law and whenever a dynamic purchasing system is established, the contracting authority or entity shall prepare a written report, which shall include at least the following:

- a) the name and address of the contracting authority or entity, the scope and the estimated value of the contract, of the Framework Agreement or of the dynamic purchasing system, as appropriate;
- b) the results of the selection of candidates, bidders and / or the reduction of their number, according to the provisions in this law, namely:
  - i. the names of the selected candidates or bidders and the grounds for their selection;
  - ii. the names of the rejected candidates or bidders and the grounds for their rejection;
- c) the grounds for the rejection of abnormally low tenders;
- ç) the name of the successful bidder and the reasons why his bid was selected and, if known, the percentage of the contract or framework agreement that the successful bidder plans to subcontract to third parties, the names of the subcontractors of the main contractor, if any;
- d) as the case may be, the circumstances justifying the use of the selected procedure of procurement;
- dh) as the case may be, the reasons why the contracting authority or entity has decided not to award a contract or framework agreements or not to establish a dynamic purchasing system;
- e) as the case may be, the reasons why other means of communication were used for the submission of bids, other than electronic means;
- ë) as the case may be, conflicts of interest that have been discovered and the measures that have been taken;
- f) where appropriate, bids of equal economic value and the steps followed for the lottery process.

## CHAPTER XII

### SOCIAL SERVICES AND OTHER SPECIAL SERVICES

#### Article 100

##### **Procurement of social services and other specific services**

1. Public contracts for social services and other specific services shall be awarded in accordance with this chapter.
2. The types of social services and other specific services, in the meaning of this law, as well as detailed rules for their procurement shall be defined by Decision of the Council of Ministers.

#### Article 101

##### **Publication of notices**

1. The contracting authorities or entities, which intend to award a public contract for these types of services, shall disclose their purpose through one of the following ways:
  - a) through contract notice;
  - b) through prior or periodical information notification, which refers specifically to the types of services that will be the subject of the contracts to be awarded. The notice states that the contracts will be awarded without further publication and interested economic operators are invited to express their interest;
  - c) through a notice of the existence of a qualification system, which is published constantly.

This paragraph does not apply when a negotiated procedure could have been used for the award of a public service contract, without prior publication.

2. The contracting authorities or entities that have awarded a public contract for the services referred to in Article 100 of this Law, shall publish the results of the procurement procedure through a contract award notice.

#### Article 102

##### **Principles for awards notices**

1. For the award of the contracts, which are the subject of this chapter, the contracting authorities or entities shall act in accordance with the principles of transparency and equal treatment of economic operators.

The procedural rules that apply are set out in such a way as to allow the contracting authorities or entities to take into account the specifics of the services in question.

2. Contracting authorities or entities should consider the need to ensure quality, continuity, accessibility, cost, effectiveness, availability and all-inclusion in services, the specific needs of different categories of users, including people in need and vulnerable groups, user involvement and empowerment and innovation.

The contracting authorities or entities may provide for the selection of the service provider on the basis of the tender that represents the best price-quality ratio, taking into account the quality and sustainability criteria for social services.

### **Article 103** **Contracts reserved for certain services**

1. Contracting authorities or entities shall reserve the right to participate in public procurement procedures to certain organizations for the award of public contracts for special services, in particular for health, social and cultural services. The types of special services, for which the right of organizations to participate in public procurement procedures can be reserved, as well as the detailed rules for their procurement shall be determined by a decision of the Council of Ministers.
2. An organization, according to paragraph 1 of this article, must meet the following conditions:
  - a) its purpose is to fulfil a public service mission, related to the provision of services mentioned in paragraph 1 of this article;
  - b) profits are reinvested again to meet the objectives of the organization, in accordance with legislation in force;
  - c) the governance or ownership structures of the organization are based on the principles of employee ownership and participation or require the active participation of employees, users or stakeholders; and
  - ç) during the last three years, the organization has not been awarded a contract for the services defined in this article by the contracting authority or entity that procures the contract.
3. The duration of the contract concluded according to this article cannot be more than three years.
4. The contracting authority or entity shall determine the possibility for the reserved contract in the notice performed according to article 101 of this law.

## CHAPTER XIII

### DESIGN CONTEST

#### Article 104

#### **Scope of application**

1. The provisions of this chapter shall apply to:
  - a) design contests, with prizes or payments of participants;
  - b) design contests, organized as part of a procedure, which leads to the award of a public service contract.

2. In the cases mentioned in letter "a" of paragraph 1 of this article, the determined value of the design contest shall be based on the value determined, without VAT, of the service contract, including all possible prices or payments for participants.

In the cases mentioned in letter "b" of paragraph 1 of this article, the value of the design contest shall be defined as a total amount of prices and payments, including the estimated value without VAT of the public service contract that can be concluded in accordance with Article 47 of this law, if the contracting authority or entity has disclosed its intention to award this contract in the contest notice.

#### Article 105

##### **Notifications**

1. The contracting authority or entity, which intends to conduct a design contest shall disclose its intent through the contest notice. In the event that in the following is intended to enter into a service contract under Article 47 of this law, this information shall be included in the competition notice.

2. The minimum time limit for accepting applications for participation shall not be less than 30 days from the date of the contest notice publication for procedures above the upper monetary threshold, and not less than 20 days for procedures below the upper monetary threshold.

The contracting authority or entity may shorten by 5 days the time limit for accepting of requests to participate, if bids are submitted electronically.

In case the tender documents are not available through electronic means according to the provisions of article 17 of this law, the deadline for submission of bids, defined in paragraph 2 of this article shall be extended by 5 days.

3. The contracting authority or entity, which has carried out a design contest shall publish the results of the contest within 10 days from the day of its completion.

4. Exceptionally, the contracting authority or entity shall not be obliged to publish information on the result of the contest, if their publication hinders the implementation of the law, is contrary to the public interest, violates the legitimate commercial interests of economic operators or may undermine fair competition between service providers.

#### Article 106

##### **Rules for organizing a design contest**

1. The contracting authority or entity during the organization and execution of the design contest shall apply the procedures in accordance with the general provisions of this law and the provisions of this chapter.

2. Admission of participants in design competitions may not be restricted:

a) due to citizenship, territory or residence;



b) due to being a natural person or legal entity.

3. In cases where the number of participants in the design contest is limited, the contracting authority or entity shall establish clear and non-discriminatory selection criteria. In any case, the number of candidates selected must be sufficient to ensure fair competition.

#### Article 107

##### **Jury**

1. For the evaluation of the projects submitted in the design contest, the contracting authority or entity shall appoint a jury composed of at least three members, who have no conflict of interest with the participants in the contest.

2. Jury members are persons with appropriate professional qualifications and experience in that field. If participants in the competition are required to have a special professional qualification, at least one third of the members of the jury must have the same or equivalent professional qualifications as the participants.

#### Article 108

##### **Jury decisions**

1. The jury shall review the projects submitted by the candidates anonymously and only on the basis of the criteria set out in the contest notice. The anonymity of projects must be respected until the jury makes its decision.

2. The jury shall be independent in its decisions and opinions.

3. The jury shall record in a report, signed by all its members, the ranking according to the quality of a plan or project, together with concrete comments or remarks and, if necessary, the list of questions that may need clarification.

4. If necessary, candidates may be invited to answer questions that the jury has recorded in the minutes, to clarify any aspect of the plans or projects submitted.

5. The jury shall keep minutes for the discussions held in accordance with paragraph 4 of this article.

## CHAPTER XIV

### ADMINISTRATIVE COMPLAINT

#### Article 109

#### **The right to appeal**

After the administrative review, economic operators shall have the right to appeal to the Administrative Court of Appeal in accordance with Article 121 of this law, as well as in accordance with the rules provided by the legislation in force on administrative courts and adjudication of administrative disputes.

#### Article 110

#### **Time limits for appeal**

1. For the procurement procedures above the upper monetary threshold, in case of complaints about tender documents, economic operators shall have the right to complain within 10 days from the publication of the contract notice or the publication of the change of requirements in the tender documents. In procurement procedures below the upper monetary threshold this deadline shall be 7 days.

2. For the procurement procedures above the upper monetary threshold, in case of appeals for the decision of final evaluation/classification, economic operators shall have the right to appeal within 10 days from the publication of the award notice or the publication of the cancellation notice. For procurement procedures below the upper monetary threshold this deadline shall be 7 days.

3. For phased procurement procedures above the upper monetary threshold, in case of appeals about the decision of selection of candidates after the pre-qualification phase, economic operators shall have the right to appeal within 10 days from receiving notice about this decision. For phased procurement procedures below the upper monetary threshold this deadline shall be 7 days.

4. In the case of procedures for reopening the competition for concluding a contract, based on a framework agreement with several economic operators, with a procurement procedure above the upper monetary limit, the deadline for filing complaints shall be 10 days from the contract award notice publication.

In the case of contracts concluded on the basis of a Framework Agreement, with a value below the upper monetary threshold, this deadline shall be 7 days.

5. In the case of negotiated procedures without prior contract notice publication, economic operators shall have the right to file their complaint within 30 days from the award notice publication date.

If a voluntary notice has been published for transparency, economic operators shall have the right to submit their complaint within 10 days from the day of publication of this notice, regarding the fulfilment of the conditions for the use of this procurement procedure, as well as the content of the tender documents.

6. In case it is found that at public contract concluded without conducting any of the procurement procedures provided in this law and / or in case when the award notice or signed contract notice were not published, the deadline for submitting a complaint related to this contract is 60 days from the day it is found, but not later than 6 months from the date of signing the contract.

7. If the economic operator does not submit a complaint within the deadlines provided in this article, then it is no longer the possibility to exercise the right to appeal to the contracting authority or entity and the Public Procurement Commission.

8. Saturdays, Sundays and public holidays shall not prevent the commencement and duration of time limits. When the last day of a deadline falls on a Saturday, Sunday or an official holiday, the deadline shall expire on the following business day. The complaint is considered received on the day of its submission with the contracting authority and the Public Procurement Commission.

#### Article 111

#### **Filing a complaint**

1. The complaining economic operator shall simultaneously submit the complaint to the contracting authority or entity and the Public Procurement Commission.

Special rules on how to file a complaint shall be provided in the public procurement rules.

2. The complaint shall be made according to the relevant form, where the name and address of the complainant, the reference to the specific procedure and the legal basis, where the complainant claims for violations, payment of the complaint fee, accompanying it with relevant documentation and evidence, which it considers to support his appeal. The above elements are necessary for the review of the complaint. The complainant shall be obliged to attach to the appeal the bank document proving the payment of the relevant fee for the appeal.

3. If any of the above elements are missing or the form is not properly completed, then the contracting authority or entity must notify the complainant to complete the form. Notification can be made by any means possible, including e-mail, and in any case documented. If the complaint is not corrected within 2 days of notification, it shall be deemed not submitted.

4. In any case, the submission of the complaint shall be accompanied by the proof of payment made to the Public Procurement Commission.

#### Article 112

#### **Preliminary actions**

Upon receipt of the complaint, the contracting authority or entity shall confirm in the database published by the Public Procurement Commission that the complaint has been submitted to this institution.

If the contracting authority or entity finds that the complaint has not been submitted to the Public Procurement Commission, it shall reject it as invalid.

2. After confirming that the complaint has been submitted to the Public Procurement Commission, the contracting authority or entity shall suspend the continuation of the procurement procedure until the complaint is fully reviewed, including the issuance of a decision by the Public Procurement Commission.

3. The Public Procurement Commission, upon receiving the complaint in accordance with this law, shall publish it in its database, which contains at least information on:

- a) the complainant, address and NUIS;
- b) complete data on the procurement procedure (scope, reference number, limit fund the date of the conduct of the procedure).

4. In order for the complaint to be accessible not only by the contracting authority or entity, but also by the interested economic operators, the PPC shall publish:

- a) the full complaint in the case of complaints about tender documents;
- b) the reasons for disqualification in the case of appeals against the assessment / final classification decision;
- c) claims on the qualification / disqualification of other bidders referring only to the criteria for which claims are raised.

#### Article 113

##### **Rights of interested economic operators**

1. In cases of appeals against the decisions of the contracting authority or entity on the selection of candidates after the pre-qualification phase or on the bid evaluation process, the economic operators, who have participated in the procurement procedure and may be affected by the appeal, have the right to present their arguments in relation to the latter, simultaneously, before the contracting authority or entity and the Public Procurement Commission.

In the procurement procedures above the upper monetary threshold, the time limit for submitting these arguments is 7 days from the publication of the complaint by the Public Procurement Commission.

In procurement procedures below the upper monetary threshold this deadline shall be 5 days.

2. If the interested economic operators have not presented arguments that oppose the appeal, according to the provisions of paragraph of this article, they cannot afterwards exercise the right to appeal the decision given in relation to the appeal for this procurement procedure.

## Article 114

### **Handling of the complaint by the contracting authority or entity**

1. In cases of complaints about tender documents, the contracting authority or entity must express itself regarding the complaint submitted within 5 days from the moment of confirmation of its registration by the Public Procurement Commission.

In cases of appeals against the decision on selection of candidates after the pre-qualification phase or concerning the bid evaluation process, the contracting authority or entity must rule on the filed complain, within 5 days from the expiry of the deadline for interested economic operators, according to provisions of Article 113 of this law, for the presentation of their arguments.

2. In the cases where to review a complaint the contracting authority or entity needs to perform verifications with other bodies, the deadline defined in paragraph 1 of this article shall be halted and resumed once the required information is obtained. In any case, the deadline for receiving the requested information should not exceed 30 days.

In any case, the contracting authority or entity shall be obliged to immediately notify the Public Procurement Commission, the complainant and the economic operators interested in extending the deadline.

3. At the end of the review of the complaint according to the provisions of this article, the contracting authority or entity may decide to:

- a) fully accept the complaint;
- b) partially accept the complaint;
- c) reject the complaint.

4. In any case, the contracting authority or entity shall notify on the decision taken by the Public Procurement Commission, the complainant, interested economic operators within the next working day from the taking of this decision, accompanied by explanations and relevant documentation.

5. Interested economic operators, who have presented their arguments regarding the complaint, shall have the right to appeal the decision of the contracting authority or entity to the Public Procurement Commission, within 5 days from receiving the notification from the contracting authority or entity, according to paragraph 4 of this article.

6. If the interested economic operators have not filed a complaint according to point 5 of this article, they shall not have the right to submit a complaint afterwards about the actions of the contracting authority or entity, carried out in execution of the Public Procurement Commission decision.

## Article 115

### **Handling of the complaint by the Public Procurement Commission**

1. The Public Procurement Commission shall review the submitted complaint, as well as the decision of the contracting authority or entity, together with the accompanying documents and explanations, supporting this decision as follows:

a) in cases where the contracting authority or entity has decided to partially accept the complaint, the Public Procurement Commission shall continue the review:

- i. for the part of the complaint / claims which were not accepted;
- ii. of the complaint / claims for the part which was accepted, if there are complaints from the interested economic operators, who have presented their arguments for this part, in accordance with Article 113 of this law;

b) in cases where the contracting authority or entity has decided to accept the complaint in full, the Public Procurement Commission shall continue to review the complaint, if there is a complaint from the interested economic operators, who have submitted their arguments regarding the complaint, in accordance with article 113 of this law;

c) in cases where the contracting authority or entity has decided not to accept the complaint.

2. In the case where the contracting authority or entity partially accepts the complaint and there are no complaints from the interested economic operators, who have presented their arguments according to paragraph 1 of article 113 of this law, the Public Procurement Commission, shall within 3 days from the end of the time limit specified in paragraph 5 of article 114 of this law, issue a declarative decision to close the case for the accepted part and shall continue the procedure for the other part.

3. In the event that the contracting authority or entity fully accepts the complaint, the Public Procurement Commission shall:

- a) issue a declaratory decision to close the case within 3 days from receiving the decision given by the contracting authority or entity for this complaint, if the interested economic operators have not submitted their arguments according to paragraph 1 of article 113 of this law;
- b) issue a declaratory decision to close the case within 3 days from the end of the time limit specified in paragraph 5 of article 114 of this law, if the interested economic operators, who have submitted arguments under paragraph 1 of article 113 of this law, have not appealed the decision given by the contracting authority or entity.

4. In case the contracting authority or entity has not taken a decision according to the provisions of article 114 of this law, the Public Procurement Commission shall immediately, but in any case, no later than 3 days from the end of the above deadline, request the delivery of relevant information or documentation. In this case, the contracting authority or entity, within 3 days of receiving notice, shall submit to the Public Procurement Commission the required information and documentation.

For procurement procedures above the monetary upper threshold, the Public Procurement Commission shall take a decision no later than 30 days after receiving information or documentation from the contracting authority or entity.

For procurement procedures below the upper monetary threshold this deadline shall be no later than 20 days.

5. In the case when for the review of the complaint the Public Procurement Commission needs to request expertise from third parties or to carry out verifications with other bodies, the deadline defined in paragraph 4 of this article shall be interrupted and resume after having

obtained the required information. The deadline for making a decision should not exceed 30 days.

In any case, the Public Procurement Commission has the obligation to inform the parties.

#### Article 116

##### **Complaints about low value procurement**

1. For the low value procurement procedure, economic operators have the right to complain only to the contracting authority or entity within 2 days from the award notice publication in the electronic procurement system.
2. Upon receiving notice of the submitted complaint, the contracting authority or entity shall suspend the continuation of the procurement procedure until the full review of the complaint. Within 2 days from the receipt of the complaint, the contracting authority or entity must issue a decision accepting or rejecting it.
3. Against the decision of the contracting authority or entity, economic operators shall have the right to appeal to the relevant court for administrative disputes. An appeal to the court shall not suspend the procedure, the conclusion of the contract or the execution of obligations between the parties.
4. Detailed rules for reviewing a complaint on low value procurement procedures shall be provided in the public procurement rules.

#### Article 117

##### **Withdrawal of the complaint**

1. The complainant has the right to withdraw the complaint filed, any time before the expiry of the deadline for the Public Procurement Commission review. Withdrawal of the complaint shall be considered as non-admission of the complaint and the complainant shall not be refunded the complaint fee.
2. In case of withdrawal of the complaint, the Public Procurement Commission shall terminate its review immediately and makes a decision to close the case.

#### Article 118

##### **Decisions of the Public Procurement Commission**

1. The Public Procurement Commission, at any time after receiving the complaint and before the contract is concluded, when it does not decide to suspend, may allow the contracting authority or entity, through an intermediate decision, until a final decision, to continue the procurement procedure if the suspension indirectly harms the public interest, the contracting authority or entity or the bidder.
2. Before the contract is concluded, the Public Procurement Commission has the right to:

- a) reject the complaint, due to non-fulfilment of the necessary elements for its review, according to the provisions of article 111 of this law;
- b) accept the complaint and order the contracting authority or entity to completely or partially cancel an action or decision, issued in violation of the law;
- c) reject the complaint and allow the contracting authority or entity to continue the procurement proceedings, when it deems that there is no violation of legal provisions;
- ç) to issue a declarative decision on closing the case, according to the provisions of paragraph 2 and 3 of article 115 of this law;
- d) to reject the complaint on challenging of a decision given by the Public Procurement Commission, in case of another complaint belonging to the same procedure submitted by the same economic operator.

3. After the conclusion of the contract, the Public Procurement Commission, when it deems that a decision or action of the contracting authority or entity is contrary to any of the provisions of this law, shall have the right to:

- a) declare the concluded contract as absolutely invalid, in accordance with the provisions of this law;
- b) order the contracting authority to shorten the duration of the contract and request its early termination;
- c) take a declaratory decision, on the basis of which the judicial power may compensate the complainant, who has suffered loss or damage as a result of violation of this law.

#### Article 119

#### **Invalidity of contracts**

1. A contract shall be considered absolutely invalid in the following cases:

- a) if a contracting authority or entity has signed a contract without prior contract notice publication, contrary to the provisions of this law;
- b) when the provisions of this law regarding the implementation of complaint procedures have not been observed, thus depriving interested persons in exercising their right to appeal;
- c) when the rules on reopening the competition for contracts concluded on the basis of a Framework Agreement, with several economic operators, where not all terms are defined, have not been observed, as well as in the dynamic purchase system, divided into categories;
- ç) when the contract is signed in the conditions of conflict of interest;
- d) if a contracting authority or entity has signed a contract without complying with the decision issued by the Public Procurement Commission.

2. The contract may not be declared absolutely invalid even if it is concluded not according to the provisions of paragraph 1 of this article, if the Public Procurement Commission, after reviewing all relevant aspects, deems that the declaration of invalidity of this contract may violate essential matters of general interest.

Economic interests directly related to the contract in question, such as costs due to delays in the implementation of the contract, costs due to the publication of a new procurement procedure, costs due to the change of the economic operator that will execute the contract, as



well as costs due to legal obligations as a consequence of invalidity, shall not be considered essential matters of general interest.

3. In case a situation as per paragraph 2 of this article is found, the Public Procurement Commission has the right to apply the application of other administrative measures, such as:
    - a) sanctioning with the fine the contracting authority or entity for the violations found;
    - b) ordering the contracting authority to shorten the term of contract execution to minimize the damage caused.
  4. The fine must be set in relation to the value of the signed contract, but, in any case, not more than 10% of this value.
- Special rules for this process shall be determined by a decision of the Council of Ministers.

#### Article 120

##### **Payment for the complaint**

1. Upon filing the complaint, the complaining economic operator shall be obliged to pay a fee for the complaint to the Public Procurement Commission.
2. Upon filing a complaint, the interested economic operator, which does not agree with the decision given by the contracting authority or entity, shall be obliged to pay a complaint fee to the Public Procurement Commission.
3. In any case, the payment of the fee shall be returned to the complaining economic operator or the interested economic operator, who has challenged the decision of the contracting authority or entity if their complaint has been fully or partially accepted within 5 days from the decision of the Public Procurement Commission.
4. Payment rules and tariffs shall be determined by a decision of the Council of Ministers.

#### Article 121

##### **Appeal to the court**

1. The interested parties shall have the right to appeal the decision of the Public Procurement Commission to the Administrative Court of Appeals, which reviews administrative disputes, according to the deadlines provided by the legislation in force.
2. The appeal to the court shall not suspend the competitive procedures, the conclusion of the contract, or the execution of the obligations between the parties.

## CHAPTER XV

### CONTRACT EXECUTION

#### Article 122

##### **Rules applicable to the contract**

1. The terms of the contract concluded according to this law shall not differ from those described in the tender documents and in the awarded bid, unless the contractor, for objective reasons and independent from him at the bidding time, provides for the same price, better conditions than the tendered ones.
2. The terms of the contract concluded according to this law must be fulfilled in good faith by the parties. The contracting authority or entity and economic operators must maintain the highest standards of ethics and not engage in fraud, corruption and other conduct during the contract execution.
3. Without prejudice to the provisions of this law and any other provision applicable by the contracting authority or entity, procurement contracts shall be governed by the provisions of the Civil Code.

#### Article 123

##### **Conditions for the contract execution**

1. The contracting authority or entity, during the drafting of the contract, may set special conditions for the contract execution, as long as they are lawful and do not conflict with the tender documents. These conditions may include economic, innovation-related, environmental, social or employment-related factors.
2. The conditions governing the contract execution must be non-discriminatory in nature and in accordance with the contract scope.

#### Article 124

##### **Obligations of the contracting authority or entity during the contract execution**

1. The contracting authority or entity shall be required to follow –up the contract execution according to the conditions under which it was signed, to ensure that it is executed in the set time, quality and value, in accordance with the conditions set out in the tender documents and applicable legislation.
2. To monitor the contract execution, the contracting authority or entity, based on the nature of the contract scope and the duration of its execution, shall draft a contract execution plan, including in particular organizational issues, deadlines, economic and technical issues of the signed contract, in accordance with any other legal act.

3. The contract execution plan must be signed by the contracting authority or entity and the economic operator within 7 days from the signing of the contract and in any case before the start of the execution.
4. Any modification of the contract in accordance with article 127 of this law, shall be reflected in the execution plan.
5. The contracting authority or entity, shall, in accordance with the plan, follow-up the contract execution, administer the monitoring documentation, and compile monitoring reports.
6. Detailed rules for monitoring the contract execution, according to their typologies, shall be determined by public procurement rules. The contracting authority must make payments in favour of economic operators, in accordance with the provisions of applicable law.

#### Article 125

#### **Obligations of the contracting authority to the Public Procurement Agency**

1. The contracting authority or entity shall notify the Public Procurement Agency on the signing of the execution plan within 5 days from its signing.
2. From the commencement of the contract execution until its completion, the contracting authority or entity shall report to the Public Procurement Agency on issues encountered during the contract execution and measures taken to resolve them.
3. At the end of a contract execution, the contracting authority or entity shall send to the Public Procurement Agency the reporting form on the contract execution, no later than 30 days from the date of the contract completion.

#### Article 126

#### **Subcontracting**

1. The contracting authority or entity shall either in the contract notice or in the tender documents requires the bidders to indicate in their bids the percentage of the contract, which they intend to subcontract to third parties, as well as the proposed subcontractor.
2. This percentage set for subcontracting must be in proportion to the value of the contract and must not exceed 50 % of the total contract value.
3. The contracting authority or entity shall approve the possible subcontractors before concluding the subcontract with the economic operator which is awarded a public contract, in accordance with the provisions of this law, without violating the principles set out in paragraph 4 of this article.

4. The provisions of this article shall not affect the main responsibilities of the economic operator to the contracting authority or entity, for which the subcontractors remain third parties, against the contractual relationship between the economic operator and its subcontractors, and leaving the main economic operator responsible for the execution of the whole contract, despite the fact that a part of it is executed by subcontractors.

5. The contracting authority or entity shall be allowed to make direct payments to the subcontractor for supplies, services or works provided by it to the main contractor. In any case, the main contractor must be notified and give written approval for these payments. The rules related to this method of payment shall be defined in the tender documents.

#### Article 127

#### **Modification of contracts during their term**

1. A public contract or Framework Agreement may be modified without conducting a new procurement procedure in the following cases:

a) when the modifications, regardless of their monetary value, are accurately and clearly reflected in the initial contract, such as the price review clauses, under the provisions of the legislation in force. Such clauses shall state the purpose and nature of the modifications or possible options, as well as the conditions under which they may be used, provided that they do not alter the nature of the contract or Framework Agreement.

b) for the supply of goods, services or performance of works under a contract which is still under execution by the initial contractor, not covered by the original contract, which have become necessary due to unforeseen circumstances and when the replacement of the initial contractor:

i. is not possible for economic or technical reasons, such as requirements for replacement or interaction with equipment, existing services or installations, procured during the initial procedure;

ii. would cause great difficulty or significant increase in costs for the contracting authority.

c) when the modification has become necessary due to unforeseeable circumstances by contracting authority and which do not substantially alter the nature of the public contract or Framework Agreement.

ç) when the initial contractor has been replaced by a new economic operator, which meets all the initial requirements set out in the standard tender documents of the conducted procedure and which is the legal successor of the initial contractor as a result of the company restructuring, including acquisition of ownership, division or grouping of the company or bankruptcy, provided that it does not bring other substantial changes to the contract and is not intended to circumvent this law.

d) when the modification, regardless of its value, is not essential within the meaning of paragraph 4 of this article.

2. In the cases referred to in paragraph 1, sub-paragraph "a", "b" and "c", of this article, the total value of modifications to the contract or Framework Agreement should not exceed 20% of the value of the initial contract or Framework Agreement. When performing several

consecutive modifications, this limitation should apply to the total value of all modifications. When the public contract contains a price review clause, the basis for calculating the maximum allowed value for modifications shall be the contract value at the updated price.

3. The contracting authority or entity, after modifying the contract or Framework Agreement, in accordance with paragraph 1, sub-paragraph "b" and "c", of this article, must publish a contract change notice during its duration, within ten days from the modification of the initial contract.

4. Modification of a public contract or Framework Agreement shall be considered essential when the public contract or Framework Agreement is drafted substantially differently from the initial signed public contract or Framework Agreement, and in particular when:

a) the modification introduces conditions which, if they had been part of the initial procurement procedure, would have allowed the participation of candidates other than those invited, or the acceptance of any other bid, as economically more favourable from the one initially selected, or would have allowed additional candidates to participate in the relevant public procurement procedure;

b) the economic balance of the public contract or Framework Agreement is modified, favouring the economic operator in a way that was not provided for in the initial contract or Framework Agreement;

c) the modification alters the scope of the public contract or Framework Agreement;

ç) the initial contractor is replaced by another economic operator, with the exception of

cases provided in sub-paragraph "ç" of paragraph 1 of this article.

5. For the modification of the public contract or Framework Agreement provisions during their duration, which are not covered by paragraph 1 of this article, the contracting authority or entity shall conduct a new procurement procedure in accordance with this law.

6. Reasons and arguments for modification of the contract or Framework Agreement must be recorded by the contracting authority or entity.

7. In the cases referred to in sub-paragraph "b" of paragraph 1 of this article, the recording of modifications must contain an argument of all the reasons why supplies, services or works are needed, the reasons why they are not covered by the initial contract or the Framework Agreement, as well as the economic and technical reasons due to which the original contractor cannot be replaced.

8. In the cases referred to in sub-paragraph "c" of paragraph 1 of this Article, the documentation of modifications must contain a description of the changes, reasons and circumstances which the contracting authority or entity could not have foreseen during the award of the initial contract or of the Framework Agreement, as well as an explanation of why these modifications do not change the nature of the contract or Framework Agreement.

Article 128  
**Termination of contracts**

The contracting authority or entity shall terminate public contract or Framework Agreement during its duration in cases where:

- a) the contract must be substantially modified, which gives rise to the obligation to conduct a new public procurement procedure;
- b) the contract or Framework Agreement should not have been awarded to the contractor, due to serious violations of this law, according to final court decision, issued by a competent court.

CHAPTER XVI

ADMINISTRATIVE INVESTIGATION

Article 129  
**Administrative investigation procedure**

1. The Public Procurement Agency shall conduct an administrative investigation:
  - a) to verify the implementation of the legality of public procurement procedures, after the procedure has been completed, with the signing of the procurement contract, but, in any case, no later than 3 years from its signing;
  - b) to verify the legality of the cancelled procedures, but, in any case, no later than 3 years from their cancellation;
  - c) regarding the exclusion of an economic operator from being awarded public contracts, in any case, no later than 3 years from the occurrence of the fact for which the exclusion is requested;
  - ç) for monitoring the implementation of the contract signed by the contracting authority or entity, from the moment of signing the contract and not later than 3 years from its execution.
  
2. During the administrative investigation, the Public Procurement Agency shall have the right to:
  - a) conduct administrative investigations through the electronic procurement system; and / or
  - b) to request information and explanations from any central, local administration body, as well as to collect any file or material related to the administrative investigation; and / or
  - c) to conduct administrative investigations on the spot, including the entry into any office of public institutions and the on-site inspection of acts or documents related to the matter under investigation; and / or
  - ç) to interrogate any person who, according to it, is related to the case under investigation and to summon all persons without immunity; and / or
  - d) to request relevant expertise from experts of third parties.

3. In order to perform its functions, the Public Procurement Agency shall have access to all offices of public administration institutions, which are recognized as contracting authorities or entities under to this law.

4. The Public Procurement Agency has the right to set a deadline for having its information requests replied, and for the submission of relevant documents, under the administrative procedure legislation.

5. The contracting authority shall notify the responsible persons involved in the administrative investigation initiated by the Public Procurement Agency and to record the notification.

6. For any other situation, which is not regulated by this article, administrative procedure legislation shall apply.

#### Article 130

##### **Actions after the completion of the administrative investigation**

1. Upon completion of the administrative investigation, the Public Procurement Agency may take the following decisions:

a) close the investigation, if the actions or omissions of the contracting authority or entity

under investigation do not constitute a violation of this law;

b) instruct the contracting authority or entity to correct the violations found during the monitoring of the contracts execution or forward them to the competent bodies;

c) to exclude an economic operator from being awarded public funds, according to the provisions of article 78 of this law;

ç) to propose a disciplinary measure or to impose a fine in accordance with article 132 of this law.

2. In any case, the parties shall be notified in writing of the decision taken.

3. The contracting authority or entity shall notify the decision given by the Public Procurement Agency to the responsible persons involved in the administrative investigation and to record the notification.

4. Decisions issued by the Public Procurement Agency are administratively final and the interested persons have the right to appeal against them in accordance with the legislation in force on administrative courts and adjudication of administrative disputes.

#### Article 131

##### **Sanctions for non-cooperation**

1. Refusal of the contracting authority or entity to cooperate with the Public Procurement Commission and the Public Procurement Agency shall make the head of the contracting authority responsible and shall be punishable by these institutions with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL.

2. The amount of the fine shall be decided in relation to the estimated contract value and according to the specification in the public procurement rules.
3. Against the fine decision according to paragraph 1 of this article, interested persons can file an appeal before the competent court.

## Article 132

### **Administrative misdemeanours**

1. Failure to comply the procurement rules, in accordance with the provisions of this law, when it constitutes an administrative misdemeanour, shall be punishable by a fine as follows:
  - a) failure to comply with the provisions of this law on the conduct of the public procurement procedure for the purchase of goods, performance of services or public works, with the exception of the cases provided in articles 7-12 of the law, shall be punishable to a fine of 20 000 (twenty thousand) up to 500 000 (five hundred thousand) ALL;
  - b) failure to comply with the obligation for the administration of all documentation for the procurement procedure, according to article 21, paragraph 2, of this law, shall be punishable with a fine of 15 000 (fifteen thousand) to 500 000 (five hundred thousand) ALL;
  - c) failure to comply with the obligation to select the method to be used for estimating the procurement value, according to article 34, paragraph point 2 of this law, shall be punishable with a fine of 20 000 (twenty thousand) to 500 000 (five hundred thousand) ALL;
  - ç) failure to comply with the obligation not to mention in the technical specifications of the contract scope, the production mark, specific source or special process, trademark, patent, type or origin or specific product, according to article 36, paragraph 4, of this law, shall be punishable with a fine of 50,000 (fifty thousand) to 200,000 (two hundred thousand) ALL;
  - d) failure to comply with the conditions for the use of the negotiated procurement procedure, without prior contract notice publication, for public contracts for works, goods or services, according to article 47 of this law, shall be punishable with a fine of 20 000 (twenty thousand) up to 500,000 (five hundred thousand) ALL;
  - dh) failure to comply with the conditions for the use of the competitive negotiated procedure or competitive dialogue for contracts for works, goods or services, according to article 51 of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL;
  - e) failure to comply with the obligation on the form and manner of publication of notices, which are used in public procurement procedures according to the provisions of Article 56 of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL;
  - ë) failure to comply with the obligation for drafting and communicating the appendix in case of amending the tender documents, as well as the extension of the deadline for submission of bids according to article 75, paragraph 2 and 3, of this law, shall be punishable with a fine of 50 000 (fifty thousand) up to 300 000 (three hundred thousand) ALL;



f) failure to comply with the with the obligation to disqualify an economic operator from the right to be awarded a public contract or from participating in a procurement procedure, in case of occurrence in one of the situations provided under Article 76 of this law, and the measures taken by the economic operator regarding these situations are considered insufficient to show its reliability, shall be punishable with a fine of 30 000 (thirty thousand) to 500 000 (five hundred thousand) ALL;

g) failure to comply with the obligation to determine the qualification requirements, which must be related and proportional to the scope of the contract according to article 77, paragraph 1, of this law, shall be punishable with a fine of 30 000 (thirty thousand) up to 500 000 (five hundred thousand) ALL;

gj) failure to comply with the obligation to evaluate bids according to article 92, paragraphs 3 and 4, of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL;

h) non-compliance with the obligation to request explanations for the abnormally low tender from the economic operator according to article 93, paragraph 1 and 2, of this law, shall be punishable with a fine of 50 000 (fifty thousand) up to 100,000 (one hundred thousand) ALL;

i) failure to comply with the conditions for cancellation of the procurement procedure according to article 98, paragraph 1, of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL;

j) failure to comply with the deadlines for the waiting period, the deadlines for administrative appeal, as well as of the duty to suspend the procurement procedure according to articles 96, paragraph 1; 110, 112, paragraph 2; 116, paragraph 2, of this law, shall be punishable with a fine of 50 000 (fifty thousand) up to 500 000 (five hundred thousand) ALL;

k) failure to comply with the rules applicable to the contract, as well as of the obligations during the contract execution according to articles 122 and 124 of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL;

l) failure to comply with the conditions for modification of the public contract or Framework Agreement according to article 127 of this law, shall be punishable with a fine of 50 000 (fifty thousand) to 500 000 (five hundred thousand) ALL.

2. The amount of the fine shall be decided in relation to the estimated contract value and according to the definitions in the public procurement rules.

3. In all the above cases, when the responsible persons are not punished with a fine, and in any other case of violation of the provisions of this law, disciplinary measures are required to be imposed against them.

4. Against the fine decision, interested persons may make an appeal to the relevant competent court, which examines administrative disputes in accordance with the legislation in force on administrative courts and adjudication of administrative disputes.

5. The responsibility for collecting fines, imposed according to paragraph 1 of this article, lies with the contracting authority.

## CHAPTER XVII

### TRANSITIONAL AND FINAL PROVISIONS

#### Article 133

##### **Bylaws**

Within 1 month from the entry into force of this law, the Council of Ministers shall adopt its implementing bylaws.

#### Article 134

##### **Transitional provisions**

1. The procedures initiated before the entry into force of this law shall continue to be carried out in accordance with the provisions of Law no. 9643, dated 20.11.2006, "On Public Procurement", as amended.
2. Bylaws issued pursuant to Law no. 9643, dated 20.11.2006, "On Public Procurement", as amended, which do not conflict with this law, shall be applicable until the issuance of implementing bylaws of this law. Any other bylaw which is in conflict with this law shall be repealed.
3. The Chairperson and members of the Public Procurement Commission, elected according to the provisions of Law no. 9643, dated 20.11.2006, shall, during their first term, exercise the respective functions as follows: chairperson and deputy chairperson for a 5-year period and the other three members for a 3-year period.

#### Article 135

##### **Repeals**

Law no. 9643, dated 20.11.2006, "On Public Procurement", as amended, shall be repealed.

#### Article 136

##### **Entry into force**

This law enters into force 15 days after its publication in the Official Gazette and takes effect on March 31, 2021.

Chairperson

Gramoz RUÇI

Adopted on 23.12.2020

