

PUBLIC PROCUREMENT LAW

I. BASIC PROVISIONS

1. The Scope of the Law and Definitions

The Scope of the Law

Article 1

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

Annexes 1 through 3 are integral parts of this Law.

Contracting authority

Article 2

Contracting authority in terms of this Law shall mean:

- 1) budget beneficiary, and organization for compulsory social insurance and its users, within the meaning of the law governing the budget system;
- 2) legal entity established for performing activities of common interest, where any of the following conditions are met: (1) over 50% is financed from the contracting authority's funds;
(2) contracting authority supervises the operation of that legal entity;
- (3) more than a half of members of that legal entity's managing body are representatives of the contracting authority.
- 3) public company.

At the beginning of a budget year, upon proposal made by line ministry in charge of finance and the Public Procurement Office, the Government determines the list of contracting authorities.

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

Entities not on the list under Paragraph 2 of this Article, which meet the conditions under Paragraph 1 of this Article, are obliged to apply this Law.

Meaning of Terms

Article 3

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

- 1) public procurement shall mean the procurement of goods, services or works, in the manner and under the conditions prescribed by this Law;
- 2) public procurement contract shall mean onerous contract concluded in written or electronic format between contracting authority and bidder, pursuant to the conducted public procurement procedure, whose subject is procurement of goods, provision of services, or performance of works;
- 3) bidder shall mean person who in public procurement procedure offers to deliver goods, to provide services. or to perform works;
- 4) applicant shall mean person who submitted application in the first phase of restrictive procedure, in competitive dialogue, or in qualification procedure;
- 5) interested person shall mean any persons having interest to conclude specific public procurement contract;
- 6) candidate shall mean person whose qualification was recognized in the first phase of the restricted or qualification procedure, or in competitive dialogue;
- 7) supplier is bidder with whom was concluded framework agreement or public procurement contract;
- 8) public procurement tasks are public procurement planning; conducting public procurement procedures, including but not limiting to participation in public procurement commission;

drafting tender documents; drafting documents in public procurement procedure; drafting public procurement contracts; monitoring implementation of public procurement; any other task related to public procurement procedure;

9) person engaged in public procurement shall mean person tasked with performing the planning, conducting, and implementing public procurement, hired or employed in compliance with the law governing labor relations;

10) representative of contracting authority shall mean member of managing or oversight board of contracting authority, contracting authority's manager, and person engaged in public procurement;

11) related persons shall mean spouses, extramarital partners, lineal kin, collateral kin up to the third cousin, in-laws up to the second degree, adopter and adoptee, transferor and transferee of management rights, and persons related pursuant to the law that governs income taxes for legal entities;

12) goods of the same kind shall mean goods that have the same purpose and properties and belong to the same group of goods in the Common Procurement Vocabulary;

13) services of the same kind shall mean services that have the same purpose and properties and belong to the same category within Annex 1;

14) works of the same kind shall mean works that have the same purpose and properties and belong to the same group of works in the Common Procurement Vocabulary, that is, the same group of activities within Sector F, in the Regulation on Classification of Activities, ("Official Gazette of the Republic of Serbia" No. 54/2010), and also the works performed on the same immovable property or on the single project;

15) open procedure shall mean the procedure whereby all interested persons may submit bids;

16) restricted procedure shall mean procedure that is conducted in two phases and where in the second phase bids may be submitted only by candidates;

17) qualification procedure shall mean procedure that is conducted in two phases so that all interested persons may apply during the period of validity of the candidates' list, to whom contracting authority, pursuant to the requirements under tender documentation, recognizes qualification every six

months and invites them to submit bids in the second phase of the procedure;

18) negotiated procedure shall mean procedure whereby contracting authority directly negotiates elements of public procurement contract with one or more bidders;

19) competitive dialogue shall mean procedure where all interested persons may apply, after which contracting authority conducts dialogue with persons to whom it has acknowledged qualification (candidates) in order to find solution that will satisfy its needs, and invites candidates to submit bids based on the adopted solution(s);

20) framework agreement shall mean agreement between one or more contracting authorities and one or more bidders, which determines important terms of public procurement contract such as price, quantity, deadline, etc., as well as vital requirements and criteria pursuant to which will be chosen the most advantageous bid and signed the public procurement contracts;

21) dynamic procurement system shall mean procedure of electronic procurement of standardized goods and services that are readily available on the market and that satisfy contracting authority's needs, which is open to all interested parties whose initial bids meet technical specifications, and which is limited to a specific period of time;

22) design contest shall mean procedure that contracting authority applies to acquire design or project typically in the areas of architecture and construction, engineering, or data processing, in which designs are being selected by a previously appointed jury, following the conducted contest;

23) low-value public procurement shall mean public procurement of goods, services and works of the same kind whose total estimated annual value is lower than the value set by this Law;

24) exclusive right shall mean the right pursuant to which only a specific person may perform certain economic activity within a specified geographical area, and which was granted by, or derived from, a law, a specific regulation, or an individual legal act, or a contract or agreement, awarded or concluded by the Republic of Serbia, by a territorial autonomy or by a local self-government;

25) special right shall mean the right pursuant to which specific persons may perform specified economic activity in a specified geographical area, and which was granted by, or derived from, a law, a specific regulation, or an individual legal act, or a contract or agreement, awarded or concluded by the Republic of Serbia, by a territorial autonomy or by a local self-government;

26) network shall mean an aggregate of immovable mutually connected assets designed for the transfer of matter, electronic signals and energy in order to distribute those to and from consumers, as well as an aggregate of assets designed for the movement of means of transportation for providing services to consumers;

27) offered price shall mean the price set by bidder in the bid, expressed in dinars, covering all expenses that are related with the subject of public procurement and set as such in tender documents;

28) comparable market price shall mean price in the relevant market taking into consideration the subject-matter of public procurement, development of the market, requirements under tender documentation such as mode of payment, quantities, delivery deadlines, period of validity of contract, collateral, warranty period, etc.;

29) criterion shall mean a norm used for evaluating, comparing and assessing bids;

30) application shall mean request of interested person to participate in the first phase of restricted procedure, qualification procedure, or competitive dialogue;

31) timely bid shall mean bid received by contracting authority within deadline specified in the invitation to bid;

32) adequate bid shall mean bid which is timely and determined to fully comply with all technical specifications;

33) acceptable bid shall mean bid which is timely, one that contracting authority did not reject due to essential deficiencies, which is adequate, one that does not restrict or condition either the rights of contracting authority or the obligations of bidder, and which does not exceed the amount of estimated value of concrete public procurement;

34) discount of tendered price shall mean method of determining the price that bidder may offer in its bid

only when public procurement subject is subdivided into several lots, and contracting authority cannot stipulate such a method in the tender documents as element of the criterion;

35) public procurement by lots shall mean procurement whose subject is subdivided into several separate units of the same kind, and which is designated as such in the call for competition and tender documents;

36) electronic bid shall mean bid or part of bid submitted by bidder to the contracting authority in electronic format and, as such, it has to be foreseen by tender documents, to meet the principles of electronic business according to special regulations, and to constitute a clear entirety with other parts of the same bidder's bid;

37) electronic auction shall mean contest between bidders in public procurement procedure, by way of electronically offering new, more advantageous bids, which the contracting authority will rank by an automatic evaluation method;

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

2. Subject of Public Procurement Contract

Procurement of Goods

Article 4

The subject of public procurement contract may be:

- 1) purchase of goods;
- 2) renting of goods;
- 3) leasing of goods (with or without option to buy).

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

The subject of public procurement may also be procurement of goods under Paragraph 1 of this Article that contracting authority finances in the amount exceeding 50%.

In case under Paragraph 3 of this Article, the party responsible for application of provisions of this Law shall be contracting authority that finances the procurement of goods.

Procurement of Works

Article 5

The subject of contract on public procurement of works shall be:

- 1) execution of works, or design and execution of works, described in the Regulation on Classification of Economic Activities, Sector F – Construction (“Official Gazette of the Republic of Serbia” No. 54/2010).
- 2) construction works on construction facility taken as an entirety, which meet all economic and technical requirements of contracting authority;

The subject of public procurement of works is also performance of works described in the Regulation on Classification of Economic Activities, Sector F – Construction (“Official Gazette of the Republic of Serbia” No. 54/2010), which are directly or indirectly financed by contracting authority in the amount exceeding 50% of procurement value.

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

Procurement of Services

Article 6

The subject of public procurement contract of services shall be services listed in Annex 1.

Contract on public procurement of services shall also be any public procurement contract whose subjects are:

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

The provisions of this Law shall also apply to procurement of services directly or indirectly

financed by contracting authority in the amount exceeding 50% of procurement value.

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

Procurements Exempt from the Law

Article 7

Contracting authorities shall not apply the provisions of this Law:

- 1) to procurements by entities or organizations defined for the purposes of this Law as contracting authorities and holders of exclusive right to economic activities that are the subject of public procurement;
- 2) to procurements conducted or financed:
 - (1) pursuant to international treaty pertaining to goods, services, or works intended for the common use or application by the signatory countries;
 - (2) from foreign credits (loans), granted by international organizations and international financial institutions, pursuant to the terms of such international treaty or to special procedures of such international organizations and financial institutions,
- 3) for the purpose of ensuring the basic living conditions in cases of natural disasters or technical/ technological accidents whose consequences imperil lives or health of people or the environment, in compliance with legislation governing protection from such disasters;
- 4) to procurements whose only and direct purpose is the performing of economic activities in electronic communications and the selling of electronic communication services in terms of the law governing electronic communication, on the condition that other economic operators are providing those services in the relevant market;
- 5) to procurements of goods procured, with prior approval from the Government, from the Republic Commodity Reserves Directorate;
- 6) to procurements of goods and services that contracting authority purchases for resale, or for processing and sale, or for providing services or performing works in the market, on the condition

that contracting authority does not hold exclusive or special rights for resale or rent of such goods, and/or for providing services or for performing works for which will be used such goods and services;

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

8) to procurements of notary services;

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

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

11) to procurements of arbitration and amicable dispute resolution services;

12) relating to conclusion of employment contracts and service contracts on temporary and part-time jobs.

The Government compiles the list of contracting authorities under Paragraph 1, item 1) of this Article, and the list of contracting authorities exempted pursuant to the provisions of Paragraph 1, items 6) and 7) of this Article, which is published in the "Official Gazette of the Republic of Serbia" and on the Public Procurement Portal.

In the case of procurements under Paragraph 1 of this Article, contracting authority is obliged to act in line with the principles set forth in this Law.

The list of international organizations and financial institutions under Paragraph 1, item 2), sub-item (2) of this Article, whose special public procurement procedures may be applied instead of the provisions

of this Law, shall be determined by the ministry in charge of financial affairs.

On the basis of the received procurement plans pursuant to Article 51 of this Law, the Public Procurement Office shall notify relevant contracting authority where it establishes that a specific procurement does not meet requirements for exemption from the application of this Law on the grounds of Paragraph 1 of this Article, and thereafter this contracting authority has to submit to the Public Procurement Office special report on the conducted procedure for that particular public procurement.

Reserved public procurements

Article 8

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

In case of procurement under Paragraph 1 of this Article, contracting authority has to state in the invitation to bid it is a reserved public procurement.

3. Public Procurement Principles

Principle of Efficiency and Cost-Effectiveness

Article 9

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

Contracting authority shall ensure that public procurement procedure is conducted and awarding of contracts are made within time limits and as prescribed by this Law, with minimum costs spent in conducting public procurement.

Principle of Ensuring Competition

Article 10

Contracting authority is obliged to facilitate as much competition as possible in a public procurement procedure.

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

Principle of Transparency in Public Procurement Procedure

Article 11

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

Principle of Equality of Bidders

Article 12

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

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

Principle of Environmental Protection and Ensuring

Energy Efficiency

Article 13

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

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

Data Protection

Article 14

Contracting authority shall:

1) keep confidential all data on bidders contained in bids that the bidder designated as confidential in its bid in compliance with the law;

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

3) keep as business secret the names of interested parties, bidders and applicants, and information on submitted bids and applications, until the expiry of deadline set for opening of bids or applications.

The price and other information from the bid relevant for applying elements of the criterion and for the ranking of bids shall not be deemed confidential.

Determination of Confidentiality

Article 15

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

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

Person who receives data designated as confidential shall observe their confidentiality irrespective of the degree of this confidentiality.

Documentation and Keeping Records of the Procedure

Article 16

Contracting authority shall:

1) keep records of all actions and legal acts during the planning, conducting the procedure and implementing public procurement;

2) keep all the documentation pertaining to public procurement in line with regulations governing documentation and archives, for at least ten years from the expiry of contracted deadline for implementation of individual public procurement contracts, or for at least five years from making decision on cancelling procedure;

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

5. Language in Public Procurement Procedure

Article 17

Contracting authority shall prepare tender documents and conduct the procedure in Serbian language.

Contracting authority may prepare documents in a foreign language commonly used in international trade in the area of the subject of public procurement.

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

Article 18

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

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

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

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

6. Currency

Article 19

The values in tender documents and bids shall be stated in dinars.

Contracting authority may allow the bidder to also state the value in foreign currency, in which case it has to provide in tender documents that values shall be converted into dinars using the corresponding medium exchange rate of the National Bank of Serbia valid on the day of bid opening.

Where bidder was allowed to state the price in bid in a foreign currency, contracting authority shall

specify in tender documents the currency which can be used to state the prices in the bid.

Where the stated value includes import taxes and other dues, bidder has to cite that part separately in dinars.

7. Communication

Article 20

Communication in public procurement procedure and in relation with execution of public procurement tasks shall be in writing, or by means of mail, e-mail or fax.

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

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

Communication must take place so to enable protection of confidential data and information about interested parties, information in bids and about bidders, until the bid opening, in order to ensure keeping records of actions made in the procedure and keeping records of documents in accordance with the regulations that govern documentation and archives.

Tools used in electronic communication and their technical characteristics must be widely available and interoperable, so that they use IT products in general usage.

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

II. PREVENTION OF CORRUPTION AND CONFLICT OF INTEREST

1. Prevention of corruption

Common measures for prevention of corruption

Article 21

Contracting authority is obliged to take any necessary measure to prevent corruption in the

course of public procurement planning, public procurement procedure, or implementation of public procurement contract, in order to reveal corruption on time, to remedy or mitigate adverse consequences of the corruption, and in order to sanction the actors of corruption in compliance with the law.

Where under the circumstances of a specific case it is not appropriate to effect communication as set forth under Article 20, Paragraph 1 of this Law, person performing public procurement tasks and other persons have to draft the minutes or to note down the action they undertook in some other way.

Contracting authority's manager and the responsible person are obliged to provide all instructions and work orders to employees engaged in public procurement, either in writing or via electronic mail.

Employee engaged in public procurement is obliged to refuse to act pursuant to an order of responsible person where such instruction or order contravenes legislation.

In case that employee under Paragraph 4 of this Article refuses to act pursuant to an order, he or she may not be transferred to other job or get his or her labor contract rescinded within the period of twelve months from the day of refusal of an order, provided that he or she performs the job in compliance with the law.

The Public Procurement Office is obliged to draft plan for combatting corruption in public procurement procedures, in cooperation with governmental body in charge of fighting corruption, and to send it to the Government for adoption.

Contracting authority having total estimated annual value of public procurement that exceeds one billion dinars is obliged, in accordance with the plan under Paragraph 6 of this Article, to adopt internal plan for preventing corruption in public procurement.

Contracting authority shall adopt this internal plan within three months from the date of adopting the plan under Paragraph 6 of this Article.

Internal Act and Procurement Control

Article 22

Contracting authority is obliged to adopt a bylaw to regulate the process of public procurement procedure in detail, and in particular the manner of planning procurement (criteria, rules, and the way

for determining public procurement subject and estimated values, method of market analysis and research), responsibility for planning, public procurement procedure targets, the manner of executing obligations in the procedure, the manner of ensuring competition, conducting and controlling public procurements, the mode for monitoring implementation of public procurement contracts.

The Public Procurement Office will determine in detail the contents of the act under Paragraph 1 of this Article.

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

Where contracting authority fails to act in the manner and within the deadline under Paragraph 3 of this Article, the Public Procurement Office will notify thereon the body in charge of supervising that contracting authority's operation and the State Audit Institution, and will initiate the proceedings before the Constitutional Court.

Contracting authority having total annual public procurement value that exceeds one billion dinars is obliged to establish special department which will perform the control over public procurement planning, conducting and implementing.

Department under Paragraph 5 of this Article will control the appropriateness of planning public procurements from the aspect of needs and operation of contracting authority, the criteria for drafting technical specifications, the manner of market research, the justifiability of award criteria, the contract implementation, and in particular the quality of delivered goods and services or performed works, the state of stocks, and the mode of using goods and services.

In addition to tasks enumerated in Paragraph 6 of this Article, the department shall also perform other actions and take measures for the sake of identifying the facts related with a specific public procurement procedure or a specific public procurement contract.

The department shall submit report on the performed control together with recommendations to the contracting authority's manager and the body

in charge of supervising the operations of that contracting authority.

The work and organization of this department will be determined in detail by internal act under Paragraph 1 of this Article.

Contracting authority shall adopt this internal act within three months from the day of adopting act under paragraph 2 of this Article.

Obligations under Article 21, Paragraph 7, and from Paragraph 5 of this Article apply to all contracting authorities which in any given year following the entry into force of this Law plan or conduct public procurements whose aggregate values exceed the limit of one billion dinars.

Protection of Integrity of the Procedure

Article 23

Person, who participated in planning of public procurement and in preparing its tender documents or separate parts thereof, and person related to him or her, cannot act as bidder or bidder's subcontractor, nor can he or she cooperate with bidders or subcontractors in preparation of their offers.

Contracting authority shall refuse the bid in case under Paragraph 1 of this Article in cases where bidder or applicant directly or indirectly gave, offered or promised some benefit, or tried to find out any confidential information or to exert in any way influence against actions of contracting authority during public procurement procedure.

The manner of establishing circumstances under Paragraph 2 of this Article shall be set by internal act under Article 21 of this Law.

In cases under Paragraphs 1 and 2 of this Article, contracting authority is obliged to take immediate measures set by its internal plan and to notify thereon the competent government bodies.

Duty to Report Corruption

Article 24

Person engaged in public procurement or any other person employed by contracting authority, as well as any interested person who possesses information on occurrence of corruption in public procurement, shall immediately notify thereon the Public

Procurement Office, the governmental body authorized for combatting corruption, and the competent prosecutorial office.

Person under Paragraph 1 of this Article cannot get employment or other type of contract rescinded, nor be transferred to another position just because he or she, acting conscientiously and in good faith, has reported corruption in public procurement, whereas contracting authority is obliged to grant full protection to him or her.

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

1) He or she reported corruption to the authorized person of contracting authority or the competent body, but no follow-up activity further to the report has been done within an appropriate period of time;

2) Governmental body authorized to fight corruption or competent prosecutorial office failed to respond whatsoever within a month from the day of the report;

3) He or she filed complaint to civil supervisor, and civil supervisor failed to provide feedback to him or her about the measures taken.

Person under Paragraph 1 of this Article may also address the public where the conditions under Paragraph 3 of this Article were not fulfilled, if the estimated value of public procurement exceeds the limit under Article 57 of this Law, or if the subject of public procurement is particularly important for operation of contracting authority or for the interests of the Republic of Serbia.

In the case of violation of labor or other basic rights of person under Paragraph 1 of this Article due to his or her reporting corruption, that person shall have the right to indemnification from contracting authority.

Contracting authority shall, in compliance with its internal plan under Article 21 of this Law, separately regulate the manner of reporting corruption in public procurement procedure and separately regulate the protection of persons under Paragraph 1 of this Article.

Prohibition of working engagement with supplier

Article 25

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

- 1) sign employment contract, service contract, or in any other way be professionally engaged with this supplier or persons related with this supplier;
- 2) receive from this supplier or persons related with this supplier, directly or indirectly, any pecuniary remuneration or any other benefit;
- 3) acquire a share or stocks of this supplier or persons related with this supplier.

In case of breach of prohibition under Paragraph 1 of this Article, contracting authority is obliged to notify thereon the governmental body authorized to fight corruption and the competent prosecutorial office.

Declaration of Independent Bid

Article 26

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

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

Declaration under Paragraph 2 of this Article has to be made separately for each individual public procurement procedure.

Duty to report Competition Foul

Article 27

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

Each interested person or person employed or in any other way working with an interested person, is

obliged to notify the organization for the protection of competition, if they are aware of any information on violation of competition in public procurement procedure.

Person under Paragraph 2 of this Article cannot get employment or other type of contract rescinded, nor be transferred to another position just because he or she, acting conscientiously and in good faith, has reported violation of competition in public procurement.

Civil Supervisor

Article 28

Where contracting authority conducts public procurement with estimated value exceeding RSD 1 billion, the procedure shall be monitored by civil supervisor.

Persons eligible to be appointed for civil supervisors are prominent experts in the domain of public procurement or in areas related to subject of public procurement.

Also eligible for civil supervisors are associations dealing with public procurements, prevention of corruption, or prevention of conflicts of interests.

Persons not eligible to be appointed for civil supervisors are persons employed or otherwise commissioned to work for contracting authority, or persons related with contracting authority, or persons who are members of a political organization

Requirements and criteria for appointment and the manner of work of civil supervisor shall be regulated in detail by the Public Procurement Office.

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

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

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

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

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

Civil supervisor has no right to remuneration for his or her work.

2. Prevention of Conflict of Interest

Conflict of Interest

Article 29

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

- 1) if contracting authority's representative or with him or her related person is involved in bidders' management;
- 2) if contracting authority's representative or with him or her related person owns more than 1% of bidder's share or stocks;
- 3) if contracting authority's representative or with him or her related person is employed or working with bidder or has business relationship with the bidder;

Prohibition on Awarding Contract

Article 30

Contracting authority cannot award public procurement contract to bidder in case of existing conflict of interest.

Person involved in conflict of interest cannot be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom was awarded contract.

The Republic Commission for the Protection of Rights in Public Procurement Procedures at the request of contracting authority will approve the

concluding of contract under Paragraph 1 of this Article, provided that contracting authority demonstrates that prohibition to conclude contract would cause great difficulties in work or business of contracting authority disproportionate to the value of public procurement, or that it would substantially undermine the interests of the Republic of Serbia, that it has taken all measures to prevent adverse impacts, that other bidders do not meet requirements of the procedure, or that, after the ranking of their bids, the difference in prices is 10% higher or that the number of weights is higher by ten in favor of the selected bidder.

Decision under Paragraph 3 of this Article shall be published on websites of contracting authority and the Republic Commission for the Protection of Rights in Public Procurement Procedures, and also posted on Public Procurement Portal.

III. CONDITIONS AND MANNER OF CONDUCTING PUBLIC PROCUREMENT PROCEDURE

1. Public Procurement Procedure

Types of procedure

Article 31

Public procurement procedures are as follows:

- 1) open procedure;
- 2) restricted procedure;
- 3) qualification procedure;
- 4) negotiated procedure with invitation to bid;
- 5) negotiated procedure without invitation to bid;
- 6) competitive dialogue;
- 7) design contest;
- 8) low-value public procurement procedure.

Contract is awarded in open procedure or in restrictive procedure.

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

Open Procedure

Article 32

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

Restricted Procedure

Article 33

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

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

After having recognized qualifications, contracting authority publishes notice from Annex DJ of this Law.

In the second phase of restricted procedure, contracting authority invites all applicants with recognized qualifications (candidates) to submit bids.

Contracting authority may initiate second phase of restricted procedure provided it has at least three candidates.

Contracting authority shall initiate second phase of restricted procedure within no more than six months of the final decision on recognizing qualifications.

Qualification procedure

Article 34

Contracting authority may conduct qualification procedure where it is not possible to foresee public procurement beforehand from the aspect of volume, quantity and time, and the subjects of such procurement are occasional services or consumables, or occasional repairs or works in regular maintenance, to be delivered or performed according to the standard and usual specifications rather than according to some specific specifications of contracting authority.

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

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

Contracting authority shall deliver decision referred to in Paragraph 3 of this Article to all applicants within three days from the day of decision.

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

Contracting authority shall publish invitation to apply in qualification procedure including requirements for recognizing qualifications and tender documents on the Public Procurement Portal and on its website, so that they are available to all interested parties during the entire period of validity of the list of candidates.

Contracting authority will exclude candidate from the list of candidates where a candidate ceases to meet requirement for qualification recognition, or where a candidate acquires negative reference, and will make a decision thereon which will contain in its reasoning the reasons for exclusion of candidate, and has to deliver it to all candidates within three days from the day of making that decision.

During the period of validity of the list of candidates, contracting authority invites all candidates from the list to submit the bids, and at the same time it publishes its invitation at the Public Procurement Portal.

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

Negotiated procedure with invitation to bid

Article 35

Contracting authority may conduct negotiated procedure with invitation to bid:

1) where in open procedure, restricted procedure, or qualification procedure, or in competitive dialogue, all bids received were unacceptable, provided that the originally defined requirements for participation

in the procedure, technical specifications and criteria are not altered. If contracting authority decides to invite to negotiated procedure only and all bidders that participated in open procedure, restricted procedure or qualification procedure, or in competitive dialogue, to supplement their bids so to make them acceptable, it does not have to publish invitation to bid. The price offered in this negotiated procedure may not be higher than the price offered in open or restricted or qualification procedure, or in the competitive dialogue;

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

3) in the cases of public procurement of services, if the nature of these services is such that their specifications cannot be sufficiently precisely determined so to facilitate conducting of open or restricted procedure and there are no conditions to conduct competitive dialogue;

Contracting authority may conduct negotiated procedure in several phases, so to reduce the number of bids which require negotiating by means of applying requirements, specifications and criteria determined in the call for competition and tender documents.

Contracting authority shall in its tender documents define the contractual elements to be negotiated, the manner of negotiation and information that the minutes in negotiations will be taken.

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

Negotiated procedure without invitation to bid

Article 36

Contracting authority may conduct negotiated procedure without invitation to bid:

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

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

3) if, for reasons of extreme urgency brought about by extraordinary circumstances or unforeseen events, whose appearance in no case depends on its will, contracting authority was not able to observe time limits laid down for open or restricted procedure. The circumstances which justify such urgency cannot be in any relation with contracting authority;

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

5) in case of additional works or services not included in the original project or the first public procurement contract, which, due to unforeseeable circumstances, have become necessary for implementing public procurement contract, on conditions: that the contract is concluded with the original service provider, that the total value of all additional services or works (unforeseen works) does not exceed 15% of total value of the originally awarded contract in open or restricted procedure, that there lapsed no more than two years since the originally awarded contract, as well as that:

(1) such additional services or works cannot be technically or economically separated from the first public procurement contract without causing disproportionate technical difficulties or disproportionately high costs to the contracting authority, or

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

6) for purchases of goods under particularly advantageous conditions from a supplier going through liquidation, apart from involuntary liquidation or bankruptcy, with consent of other creditors, in accordance with regulations governing company liquidation (where the reorganization plan was adopted);

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

8) in case of public procurement of services that are part of the follow-up to a design contest organized in accordance with this Law, if the contract was awarded to the winner or the winners of that contest, and if contracting authority invites each of the winners to participate in negotiations;

Prior to initiating negotiated procedure under Paragraph 1, points 2) through 6) of this Article, contracting authority shall request opinion of the Public Procurement Office on the justifiability of applying the negotiated procedure.

The Public Procurement Office shall set forth the form and the contents of request under Paragraph 2 of this Article.

Within ten days from the reception of completed request under Paragraph 4 of this Article, the Public Procurement Office is obliged to scrutinize the basis for applying negotiation procedure and, in the course of scrutiny, it can demand from contracting authority additional information and data necessary for establishing facts relevant for making the opinion.

The Public Procurement Office shall publish its opinion under Paragraph 4 of this Article on the Public Procurement Portal.

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

Where contracting authority, upon receiving requested opinion, makes decision on initiating negotiated procedure, it has to publish on the same day the notice on initiating this procedure which will contain data from Annex 3E and tender documents.

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

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

The Public Procurement Office shall draft instruction on types and manner of negotiations.

Within two days from making its decision on awarding contract that contains data from Annex 3Ž, contracting authority shall publish this decision on the Public Procurement Portal, except in cases under Paragraph 1, Point 7) of this Article.

Where certain data from this decision are business secret within the meaning of the law that governs protection of business secrets, or where such data are confidential within the meaning of the law that governs confidentiality of data, such data from decision will not be published.

In cases under Paragraph 12 of this Article decision will be submitted to the Public Procurement Office and the State Audit Institution in its original wording.

Competitive dialogue

Article 37

Contracting authority may conduct competitive dialogue in cases where public procurement subject is particularly complex, so that public procurement contract cannot be awarded through open or restricted procedures.

Subject of public procurement shall be considered particularly complex if contracting authority is objectively not able to determine:

- 1) technical specifications of public procurement subject;
- 2) legal or economic structure of public procurement;

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

The decision on recognizing qualification shall contain explanation which states the reasons for rejecting other applications, and contracting authority shall deliver it to all applicants.

In order to preserve competition, contracting authority may decide to keep data on candidates as business secret, and in that case, instead of decision under Paragraph 4 of this Article, it delivers separate notifications to applicants.

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

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

Contracting authority conducts dialogue until it identifies the solution(s) capable of meeting its needs.

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

Contracting authority cannot disclose to candidates solutions offered by other candidates, or any other information concerning solutions offered by other candidates.

Contracting authorities can stipulate in the call for competition and tender documents that the procedure will be conducted in several phases in order to decrease the number of solutions to be discussed through dialogues.

In the case under Paragraph 11 of this Article, the number of candidates in the dialogue phase cannot be less than three, unless a lower number of interested parties apply.

Contracting authority is obliged to deliver a reasoned decision to candidates excluded from the dialogue.

After contracting authority identifies the solution(s) capable of meeting its needs, it will invite all candidates not excluded from dialogue to submit their final bids based on one or more adopted solutions presented during the dialogue.

Decision on awarding contract in competitive dialogue shall be made by applying criterion of the economically most advantageous bid.

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

Contracting authority is obliged to obtain consent to initiate competitive dialogue from the Public Procurement Office prior to making decision to initiate the procedure.

In the request for consent under Paragraph 17 of this Article, contracting authority states all circumstances which justify application of competitive dialogue and attaches necessary evidence.

The Public Procurement Office is obliged to reply to the request of contracting authority under Paragraph 17 of this Article within 15 days from the day of reception.

Design Contest

Article 38

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

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

Contracting authority publishes call for competition in design contest, as prescribed for publishing contract notice and in accordance with Annex 3D.

The right to participate in tender cannot be limited:

1) to a specific geographic area or a part of it; 2) on the grounds of requirement that participants may only be legal or physical persons.

Design contest may be organized:

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

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

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

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

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

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

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

The jury compiles report on its evaluation of design, plan or project, and all members of jury sign it.

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

After the report is compiled, participants may be invited to clarify some parts of designs, plans or projects. In that case, minutes are taken on the conversation between the members of the jury and participants.

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

Low-Value Public Procurement Procedure

Article 39

Low-value public procurement, for the purposes of this Law, is procurement of goods, services or works of the same kind, whose estimated value, at the annual level, is lower than 3.000.000 dinars.

For procurement of goods, services and works of the same kind, whose estimated value, at the annual

level, is lower than 400.000 dinars, contracting authorities are not obliged to apply the provisions of this Law.

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

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

Contracting authority in a low-value public procurement procedure invites at least three persons performing activities which is the procurement subject who, according to information obtained by contracting authority, are capable to implement the procurement, to submit their bids and, at the same time, contracting authority publishes call for competition on the Public Procurement Portal and on its own website.

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

2. Special Forms of Public Procurement Procedure

Framework Agreement

Article 40

Contracting authority may conclude framework agreement after having conducted open or restricted procedure.

Contracting authority may not conclude framework agreement if subject of public procurement are services from Annex 1 to this Law, categories 6 and 27, or works which require building permit within the meaning of the law governing the planning and construction.

Framework agreement is concluded with one or with at least three bidders, and contracting authority has to state the number of bidders for concluding framework agreement in its invitation to submit bids or applications.

Framework agreement cannot last more than three years, and where it is awarded to only one bidder it cannot last more than two years.

Based on framework agreement, contracting authority may award public procurement contract to the most advantageous bidder, or issue purchase order to the most advantageous bidder, if the order contains essential elements of the contract:

1) by applying criterion or requirements stated in the framework agreement;

2) by submitted bids from bidders, in accordance to the specifically defined criteria or requirements, unless these were not specifically designed in the framework agreement however which are not contrary to the framework agreement;

In the cases under Paragraph 5, item 2) of this Article, contracting authority is obliged to act as in the second phase of restricted procedure, and it can also use electronic auction.

Where framework agreement was concluded with one supplier, contracting authority shall conclude contract to that supplier according to the requirements and within the limits stipulated by framework agreement and, if necessary, it will invite the supplier to supplement its bid based on which was concluded framework agreement, in accordance with the requirements set in more detail.

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

Dynamic Procurement System

Article 41

Contracting authority shall establish dynamic procurement system using only electronic means and applying the rules for open procedure, unless specified otherwise in this Article.

Electronic means and information system or information technology used to establish and run a dynamic procurement system, must be widely accessible to interested parties and cannot result in the limiting of competition.

Contracting authority shall publish invitation to bid, thereby inviting all interested parties to submit their initial bids.

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

Invitation to bid shall be valid during the entire period of dynamic procurement system and an interested party can, at any moment, submit initial bid thus requesting to be admitted into the system.

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

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

During the existence of dynamic procurement system, bidders admitted into the system can improve or amend their initial bids, providing that they observe all technical specifications set by contracting authority.

Prior to awarding each separate public procurement contract, contracting authority shall publish, on the Public Procurement Portal and on its website, a notice of dynamic procurement system's existence, thereby also inviting all interested parties to submit initial bid and involve into dynamic procurement system.

Where, after publishing notice under Paragraph 9 of this Article, contracting authority receives initial bid, it is obliged to evaluate initial bid before inviting members of dynamic procurement system to submit final bids.

The most advantageous bid shall be chosen by applying criteria set in the invitation to bid under Paragraph 3 of this Article, but these need to be such to enable automatic evaluation and ranking of bids by electronic means.

Dynamic procurement system cannot last longer than four years, and during the validity period of this system, contracting authority cannot change terms for admission into the system.

Contracting authority cannot condition the submission of initial bids or the admission into the dynamic procurement system by paying fees, deposits, etc.

3. Electronic Auction

Requirements for applying electronic auction

Article 42

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

Electronic means and information system and technology used to apply electronic auction have to be widely accessible to interested parties and cannot result in restriction of competition.

Contracting authority can conduct electronic auction in open, restricted or negotiated procedure under Article 35, Paragraph 1, item 1) of this Law.

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

Electronic auction may only be conducted concerning the criterion or elements of the criterion which can be quantified in a clear and comprehensible manner, so that it is possible to present them in numbers or percent, namely, so to make them suitable for automatic evaluation by electronic means, without any type of intervention from contracting authority.

Manner of Application of Electronic Auction

Article 44

Contracting authority explicitly states in its call for competition that electronic auction will be conducted.

Contracting authority is obliged to specify in tender documents:

- 1) criterion or elements of the criterion which are the subject of electronic auction;
- 2) limits within which may or must be altered values of bids concerning the criterion or elements of the criterion;
- 3) requirements under which bidders can alter bids;
- 4) data available to bidders during electronic auction, or the time when these will be available;
- 5) manner of conducting electronic auction;

6) equipment used to conduct electronic auction and technical specifications necessary to connect to the IT system of contracting authority.

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

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

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

Invitation to bid shall contain:

- 1) relevant data for using the IT system of contracting authority;
- 2) date and hour of the beginning of electronic auction;
- 3) results of the previous expert evaluation of bids;
- 4) mathematical formula to be applied in electronic auction, which enables automatic setting of changes in the process of ranking the bids according to newly offered prices, and to other elements of the criterion (hereinafter: mathematical formula).

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

Where bid variants are allowed, for each variant a special mathematical formula will be determined.

Electronic auction may be conducted in several consecutive phases and may start not earlier than two days after sending invitation to bid under Paragraph 5 of this Article.

Electronic Auction in Case of Submission of Electronic Bid

Article 44

If bids in public procurement procedure are submitted in electronic format, contracting authority can conduct electronic auction without any special invitation to bidders, immediately after the bids were opened and automatically ranked, on condition that it enables each bidder to access information on their current ranking and on the offered values in other bidders' bids.

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

Transparency of Electronic Auction

Article 45

During the procedure of electronic auction, contracting authority is obliged to enable bidders' insight into data on the basis of which they can at all times determine the order of submitted bids and number of bidders, but in such way so not to reveal identities of bidders.

Conclusion of Electronic Auction

Article 46

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

- 1) by determining the exact date and hour of conclusion of electronic auction;
- 2) by ceasing to receive new prices or elements of the criterion, which satisfy requirements regarding minimal differences. Contracting authority clearly states in invitation to bid the time allowed to lapse between the submission of the last bid amendment and before the conclusion of electronic auction;
- 3) by conclusion of number of electronic auction phases set in invitation to bid.

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

Mandatory Application of Electronic Auction

Article 47

Contracting authority having total value of public procurements that fulfill requirements from this Law for application of electronic auction exceeding the

amount of 700,000,000 dinars at the annual level is obliged to establish IT system and electronic auction.

4. Centralized Public Procurements

Centralized Public Procurement Body

Article 48

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

The Centralized Public Procurement Body is obliged to formulate public procurement procedure so to facilitate participation of small and medium-sized companies.

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

Several local governments may establish a joint body for centralized public procurement.

The establishment and operation of bodies under Paragraphs 3 and 4 of this Article shall be regulated by law, governmental act, decision of contracting authority, or agreement between contracting authorities.

The Public Procurement Office gives approval on the decision of contracting authority or agreement between contracting authorities under Paragraph 5 of this Article. If the Public Procurement Office does not give its consent, it will point out to illegal aspects or irregularities in the decision or agreements and will suggest how to eliminate them.

Administration for Joint Services

Article 49

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

Public procurement subject under Paragraph 1 of this Article can be goods and services from Annex 2 of this Law, as well as works which do not require

building permit within the meaning of the law governing construction.

The Administration for Joint Services as the body for centralized public procurement shall conduct only open and restricted procedures and is obliged to formulate procurements in lots whenever possible.

The Administration for Joint Services may also conduct negotiated procedure where requirements under Article 35, Paragraph 1, item 1) of this Law are met.

The Administration for Joint Services is obliged to set up IT system and apply dynamic procurement system as well as electronic auction, when possible.

Contracting authorities under Paragraph 1 of this Article are obliged to submit their procurement plans or their needs together with the specifications for subjects of public procurements to the Administration for Joint Services, by 31 January.

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

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

Where contracting authority which procures goods and services pursuant to Paragraph 1 of this Article has any objections to the concluded contract or framework agreements, it is obliged to notify thereon the State Audit Institution.

Based on the proposal from the ministry in charge of finance and the Public Procurement Office, the Government sets the list of contracting authorities under Paragraph 1 of this Article.

The list of contracting authorities under Paragraph 1 of this Article shall be published in the "Official Gazette of the Republic of Serbia" and on the Public Procurement Portal.

The list of subjects of procurement under Paragraph 2 of this Article, requirements and manner of conducting public procurement procedures by the Administration for Joint Services shall be determined in detail by the Government.

Conducting Public Procurement Procedure by Several Contracting authorities

Article 50

Contracting authorities may jointly conduct specific public procurement procedure.

Contracting authorities will submit decision on joint conducting specific public procurement procedure for obtaining opinion to the Public Procurement Office.

The contents of decision under Paragraph 2 of this Article will be determined by the Public Procurement Office.

Contracting authorities conducting public procurement shall be jointly and severally liable for the legality and regularity of that procedure.

5. Public Procurement Plan

Article 51

Contracting authority is obliged to adopt public procurement plan for the current year, by 31 January, consisting of public procurement plan and plan for procurements exempt from the Law, containing the following information:

- 1) registry number of (public) procurement;
- 2) subject of (public) procurement;
- 3) amount of planned funds for (public) procurement;
- 4) data on allocation from the budget or financial plan for disbursement;
- 5) estimated value of (public) procurement, at the annual level and total;
- 6) type of public procurement procedure, i.e. provision of this Law pursuant to which the Law does not apply to that procurement;
- 7) tentative date for initiating procedure;
- 8) tentative date for concluding contract;
- 9) tentative date for implementing contract;

Contracting authority shall enter a separate line in the plan together with due explanation for procurements that will be conducted by the body for centralized public procurement, or jointly with another contracting authority.

In its procurement plan, contracting authority shall separately state the reasons and justifications for each procurement and the manner of determining estimated value of public procurement.

The originally planned funds for a specific public procurement cannot be increased for more than 10%, except in cases of natural disasters, accidents or major breakdowns or events whose occurrence is beyond control of contracting authority.

Contracting authority may change its procurement plan in the case of revised budget or amended financial plans however in such a way to make visible all changes relative to the original plan and with the accompanying justifications.

Contracting authority shall deliver electronic version of its procurement plan to the Public Procurement Office and the State Audit Institution within ten days from the day of its adoption.

Contracting authority is obliged to compile report on execution of procurement plan for the previous year and send it to the Public Procurement Office and the State Audit Institution before 31 March of the following year.

The format and the contents of procurement plan and report on its execution will be determined in detail by the Public Procurement Office

6. Initiation of a Procedure

Conditions to Initiate a Procedure

Article 52

Contracting authority may initiate a public procurement procedure if this procurement was envisaged by the annual procurement plan and if funds for this procurement were set aside in the budget of the Republic of Serbia, or of territorial autonomy, or of local self-government or in the financial plan of the contracting authority.

Where public procurement contract lasts for several years, the liabilities becoming due in the following years must be stipulated in compliance with the law governing the budgetary system.

Where the Budget of the Republic of Serbia, budget of territorial autonomy, budget of local self-government or the financial plan of another contracting authority were not endorsed, contracting authority may only initiate public procurement

procedure up to the amount of the funds planned pursuant to the regulation on temporary financing.

Decision to Initiate a Procedure

Article 53

Contracting authority initiates public procurement procedure by making decision to initiate it, which contains:

- 1) name and address of contracting authority, or business name;
- 2) ordinal number of public procurement for the current year;
- 3) public procurement subject, name and designation from the common procurement vocabulary;
- 4) type of public procurement procedure;
- 5) estimated value of public procurement;
- 6) tentative dates for conducting individual phases of public procurement procedure;
- 7) data on budget appropriation or financial plan allocation.

In case of applying negotiated procedure or competitive dialogue, decision has to contain the reasons for applying such procedure.

In case of applying negotiated procedure without invitation to bid, decision has to contain basic particulars of persons who will be invited to submit their bids by contracting authority, as well as the reasons for inviting these persons.

Decision may also contain other elements that contracting authority considers necessary for conducting public procurement procedure.

The Public Procurement Committee

Article 55

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

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

The decision shall contain:

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

The decision shall appoint deputy members of the Committee.

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

In public procurement procedures whose estimated value is three times higher than amount in Article 39, Paragraph 1 of this Law, president of the Committee shall be public procurement officer.

For members of the Committee shall be appointed persons with adequate professional education in the area involving the subject of public procurement.

Where contracting authority does not have an employee with adequate education in the field involving the subject of public procurement, it may appoint a non-employee person as a member of the Committee.

Persons employed or working for the contracting authority and tasked with drafting tender documents cannot be appointed to the Committee.

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

After making decision, members of the Committee shall sign a statement confirming that they are not involved in any conflict of interest in given public procurement.

The Committee is obliged to conduct public procurement procedure set in the decision on initiating procedure and is responsible for observing legality while conducting the procedure.

The Committee:

- 1) prepares tender document, contract notices, amendments to tender documents, additional information or clarifications related with preparation of bids or applications;
- 2) opens, reviews, evaluates, and ranks bids or applications;
- 3) conducts negotiated procedure;
- 4) drafts written report on expert evaluation of bids;
- 5) prepares draft decision on awarding contract, draft decision on concluding framework agreement, draft decision on cancelling public procurement procedure, and draft decision on recognizing qualifications;
- 6) decided upon submitted request for the protection of rights;
- 7) takes other actions in the procedure, depending on the type of procedure and the subject of procurement.

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

7. Public Procurement Notices

Types of Notices

Article 55

Public procurement notices are:

- 1) prior notice;
- 2) invitation to submit bids and applications;
- 3) notice on dynamic procurement system;
- 4) invitation to design contest;
- 5) notice on recognizing qualification;
- 6) notice on concluded framework agreement;
- 7) notice on initiation of negotiated procedure without invitation to bid;

8) notice on awarded public procurement contract;

9) notice on the results of tender;

10) notice on cancelling of public procurement procedure.

Contents of notices in public procurement are determined in Annex 3.

The Public Procurement Office shall determine standard forms for public procurement notices in compliance with Annex 3 to this Law.

Common Procurement Vocabulary

Article 56

Contracting authority is obliged to use names and designations from the common procurement vocabulary when defining public procurement subjects in public procurement notices.

The Government determines common procurement vocabulary in accordance with the corresponding vocabulary in the EU - the CPV (the Common Procurement Vocabulary).

Method of Publishing Notices

Article 57

Public procurement notices are published on the Public Procurement Portal as well as on the contracting authority's website.

Public procurement notices under Article 55, Paragraph 1, items 2), 4) through 6), 9) and 10) in public procurement procedures having estimated value exceeding 5,000,000 dinars for goods and services, and 10,000,000 dinars for works, respectively, shall also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases.

The fee for publishing public procurement notices on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases is subject to the Government's approval.

Where the estimated value of public procurement exceeds 250,000.000 dinars for goods and services, or 500,000.000 dinars for works, respectively, contracting authority is obliged to also publish public procurement notice under Article 55, Paragraph 1, items 2) through 4) of this Law in a foreign language commonly used in international

trade in the field of the subject of public procurement.

Contracting authority which has no website will not be obliged to create own website for the sake of publishing public procurement notices.

Article 58

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

When deciding to publish tender as stated in Paragraph 1 of this Article, contracting authority shall pay special attention to the estimated value of public procurement, cost of publishing, type, complexity and specifics of public procurement subject, development of domestic market and number of domestic bidders capable to carry out the procurement.

Prior Notice

Article 59

Contracting authority shall, at least once a year at the beginning of the year, publish prior notice on its intention to conduct public procurement procedure of:

1) goods, where total estimated value of goods of the same kind at the annual level is fifteen times higher than the value stated in Article 39, Paragraph 1 of this Law;

2) services, where total estimated value of services of the same kind at the annual level is fifteen times higher than the value stated in Article 39, Paragraph 1 of this Law;

3) works, where total estimated value of works of the same kind at the annual level is twenty times higher than the value stated in Article 39, Paragraph 1 of this Law.

The content of prior notice is determined in Annex 3A.

Publishing Invitation to Submit Bids and

Invitation to Submit Applications

Article 60

Contracting authority is obliged to publish invitation to bid in:

- 1) open procedure;
- 2) low-value public procurement procedure;
- 3) negotiated procedure with invitation to bid;

Contracting authority is obliged to publish invitation to submit applications in:

- 1) restricted procedure;
- 2) qualification procedure;
- 3) competitive dialogue.

The content of invitation to bid is determined in Annex 3B, and the content of invitation to submit applications is determined in Annex 3V.

8. Tender Documents

Preparation and Contents of Tender Documents

Article 61

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

Contracting authority is not obliged to publish estimated value of public procurement.

Data contained in the tender documents must be identical with data contained in the invitation to bid.

Tender documents, according to type of procedure and the subject of public procurement, contain:

- 1) instruction to bidders how to prepare a bid;
- 2) bid template;
- 3) requirements and instruction how to prove fulfillment of requirements;
- 4) a model contract;
- 5) type, technical characteristics (specifications), quality, quantity and description of goods, services or works, manner of executing control and ensuring quality assurance, time limits for contract execution, place of execution or delivery of goods, any additional services and the like (except in the case of procuring loan as a financial service where loan request has to be drafted);

6) technical documentation and plans, or documents of creditworthiness of contracting authority in the case of public procurement of loan as a financial service;

7) price structure template, with instruction how to complete it;

8) template for expenses incurred in preparation of bid;

9) declaration of independent bid;

In case of public procurements where invitation to bid was published in foreign language, contracting authority in its tender documents must refer to a governmental body or organization, or organization or service of the territorial autonomy or local self-government where bidders can in time get exact data on tax liabilities, environment protection, employment protection, employment conditions etc., which are related to the execution of public procurement contract.

The ministry in charge of finance shall regulate in detail the template and contents of loan application under Paragraph 4, item 5) of this Article, and template and contents of documents on contracting authority's creditworthiness referred to in Paragraph 4, item 6) of this Article.

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

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

In case of public procurement procedure of estimated value exceeding the amount under Article 57 of this Law, contracting authority is obliged to request a bank guarantee as collateral to ensure fulfillment of contractual obligations.

Tender documents may also contain other elements that, according to the subject of public procurement and type of procedure, are necessary for preparation of bids.

Contracting authority has to insert ordinal numbering on each page of tender documents and state the total number of pages of tender documents.

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

Publication and Submission of Tender Documents

Article 62

Simultaneously with publishing the invitation to bid, contracting authority has to post tender documents on the Public Procurement Portal as well as on its website.

In case where a part of tender documents is confidential, contracting authority shall in the published part of tender documents indicate how and on which conditions interested parties can take the confidential parts of the tender documents.

Amendments to Tender Documents

Article 63

Where contracting authority amends tender documents within the deadline for submission of bids, it has to publish these amendments without delay on the Public Procurement Portal and on its website.

Interested persons may request from contracting authority, in writing, additional information or clarifications concerning the preparation of bid up to five days before the expiry of time limit for bid submission.

In case under Paragraph 2 of this Article, contracting authority shall send written reply to the interested person within three days from the day of reception of request and at the same time publish this information on the Public Procurement Portal and on its website.

Communication concerning additional information, clarifications and answers will be made as set forth by Article 20 of this Law.

If contracting authority amends tender documents eight or less days before the deadline for submission of bids, it has to extend the deadline for submission of bids and publish notice on extension of deadline for submission of bids.

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

9. Estimated Value of Public Procurement

Manner of Determining the Estimated Value of Public Procurement

Article 64

The estimated value of public procurement shall be in dinars, without value added tax.

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

The estimated value of public procurement must be based on completed inquiries, market research relevant for public procurement subject, including checking prices, quality, guarantee period, maintenance etc., and must be valid at the time of the initiation of procedure.

Public procurement value cannot be estimated so to avoid open or restricted procedures, that is, the application of this Law.

Determining Estimated Value of Public Procurement of Goods

Article 65

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

1) in case of contracts for sale, rental or lease and where the term of contract is 12 months or less, the total estimated contract value for its full duration shall be taken into account, whereas where the term of contract is longer than 12 months, the total contract value shall include the estimated value for the first 12 months and the estimated value for the residual period until time limit expiry;

2) in case of contract referred to in item 1 of this Paragraph being awarded for an indefinite period, and in the event of uncertainty regarding the term for which the contract is awarded, the monthly

estimated value of contract multiplied by 36 shall be used.

In the case of periodic contracts, and contracts to be extended after the lapse of a certain time limit, the estimated value shall be determined:

1) based on the value of similar periodic contracts awarded during the previous budget year or during the previous 12 months, adjusted with the expected changes in terms of quantity or value of goods whose procurement is the subject of contract in the period of 12 months, as of the day of the conclusion of the original contract;

2) based on the total estimated value of similar periodic contracts during 12 months after the first delivery or during the duration of the contract, if its duration is more than 12 months.

Determining the Value of the Public Procurement of Services

Article 66

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

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

1) for insurance services – the premium amount, and other types of payments charged in connection with the service;

2) for banking and other financial services – fees, commissions, and other types of payments charged in connection with the service;

3) for loan-related services – total value of interest for the payment period, fees and expenses concerning the loan approval and execution of the loan contract, including the costs of evaluation of immovable and movable assets, insurance premium or other related costs, costs of provision of necessary documents and other related costs;

4) for design services, architectural services, spatial planning and the like – the fee or commission.

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

1) where the period of duration of contract is definite, and that time frame is 36 months or less, the total value of contract for the entire contracted period;

2) where the period of duration of contract is indefinite, the monthly estimated value multiplied by 36.

Determining the Value of Public Procurement of Works

Article 67

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

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

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

Determining the Public Procurement Value in Lots

Article 68

Where the subject of public procurement is subdivided into separate lots, contracting authority shall determine the estimated value of each lot separately.

The estimated value of public procurement subdivided into lots shall include the value of all lots over the contract period.

Contracting authorities cannot apply the low-value public procurement procedure, that is, avoid the application of this Law, for one separate lot, if the total value of all lots is higher than the amount in Article 39, Paragraph 1 of this Law.

Determining the Estimated Value in Individual Procedures

Article 69

In cases of qualification procedure, framework agreement, and dynamic procurement system, the estimated public procurement value shall be

determined as the value of all contracts foreseen during the validity of the list of candidates, of the framework agreement, or of the dynamic procurement system.

10. Technical Specifications

Common Rules on Technical Specifications

Article 70

Technical specifications and design documents, for the purpose of this Law, are technical requirements which are mandatory and integral part of tender documents; they determine and describe characteristics of goods, services or works. They must ensure that the goods, services or works to be procured, are described objectively and in the way that meets the needs of contracting authority.

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

In case of procurement of works, besides characteristics determined in Paragraph 2 of this Article, technical specifications may contain regulations on projects and calculation of expenses, testing, inspection and conditions for transfer, and the techniques and method of construction.

Contracting authority in its tender documents has to state technical specifications that refer to each individual public procurement.

Determining Technical Specifications

Article 71

Contracting authority shall define technical specifications by applying one of the following ways:

1) with reference to technical specifications under Article 70 of this Law and reference to Serbian, European, international or other standards and

related documents, and each reference must be accompanied by the words "or equivalent";

2) in the form of characteristics or functional requirements, which can include environmental characteristics and requirements concerning energy efficiency and which must be sufficiently specified and clear so that the bidders could prepare adequate bids and so that the contracting authorities could procure goods, services or works adequate to their objective needs;

3) in the form of characteristics or functional requirements, as described under item 2 of this Paragraph, with reference to specifications and standards or to related documents under item 1) of this Paragraph; these are considered rebuttable presumptions of fulfillment of such characteristic or functional requirements;

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

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

In the case of defining technical specification as defined in Paragraph 1, item 1) of this Article, contracting authority may not reject a bid on the grounds of fact that the offered goods, services or works do not fulfill the determined requirements regarding the defined specification and the required standards, if the bidder supplies adequate evidence that the solutions it offers fulfill the requirements from specification and the required standard in the substantially equal way.

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

As adequate evidence under Paragraphs 3 and 4 of this Article can be used confirmation, manufacturer's

technical file, or testing report issued by authorized organization.

Notwithstanding the provisions of Paragraph 1, item 1) of this Article, if technical regulation refers to Serbian standard, such standard shall be mandatory and applicable as the technical regulation, without mentioning the words “or equivalent”.

The competent ministry shall establish whether there are in place technical regulations and standards referred to in Paragraph 6 of this Article.

In the case referred to in Paragraph 6 of this Article, contracting authority shall also accept any other standard which fulfills the requirements under the Serbian standard as well as evidence substantiating it.

Using Technical Specifications

Article 72

Contracting authority may not use, or refer to, technical specifications or standards which specify goods, services or works of a specific make, source, or of a particular construction.

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

Contracting authority may not include in tender documents any provision that would result in favoring or eliminating certain bidders, as referred to under Paragraphs 1 or 2 of this

Article, unless contracting authority is unable to describe the subject contract in a way that would make specifications clear enough to bidders.

The indication of elements such as trademarks, patents, type or manufacturer must be accompanied by the words “or equivalent”.

Use of Environmental and Energy Specifications and Markings

Article 73

Where contracting authority sets environmental characteristics or requirements on energy efficiency as characteristics under Article 71, Paragraph 1 item 2) of this Law, it may use specifications or their segments from international, European or national

environmental markings, providing that those specifications are:

- 1) suitable to define characteristics of the public procurement subject;
- 2) defined on the grounds of recognized scientific knowledge;
- 3) defined in the procedure involving all stakeholders, such as government bodies, service users, consumers, producers, distributors, environmental organizations and the like;
- 4) available to all interested persons.

Contracting authority may set in tender documents the assumption that offered goods, services or works with certain environmental marking or energy efficiency marking match the defined technical specifications; however, it must also allow the bidders to prove fulfillment of requirements in another way, by submitting adequate evidence such as confirmation, manufacturer’s technical file, or testing report made by authorized organization.

Statement of Essential Requirements and Fees for Patents

Article 74

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

Contracting authority must state in tender documents that the patent fee, and liability for any breach of protected intellectual property rights or third persons, shall be borne by bidder.

11. Requirements for Participation in Public Procurement Procedures

Mandatory Eligibility Requirements

Article 75

Bidder in public procurement procedure must prove that:

- 1) It is registered with the competent body, or entered in the appropriate register;
- 2) It or its legal representative have not been convicted for any criminal act as members of an

organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;

3) It has not been prohibited from performing economic activity by any measure in force at the time of publishing tender notice and/or call for competition;

4) It has paid due taxes and other public charges in accordance with laws of the Republic of Serbia or a foreign country if its registered address is in its territory;

5) It has valid permit issued by competent body to carry out economic activity which is the subject of public procurement, if such permit is stipulated by special regulation;

Contracting authority shall require the bidder to explicitly state in its offer that it fulfilled obligations under applicable legislation concerning safety at work, employment and working conditions, protection of environment, and that it guarantees that it holds the rights to intellectual property.

Additional Requirements

Article 76

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

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

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

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

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

Contracting authority sets requirements for participation in the procedure in such way so not to discriminate bidders and to be logically related to the subject of public procurement.

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

Proof of Eligibility

Article 77

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

- 1) excerpt from register of the competent authority;
- 2) certificate of the competent court;
- 3) certificate of the competent court or the competent authority for registration of economic operators;
- 4) certificate of the competent tax authority and organization for compulsory social insurance, or of the competent authority, that bidder is undergoing privatization process;
- 5) valid license for the performance of relevant activity, issued by the competent authority.

Bidder may prove fulfillment of requirements under Article 76 Paragraph 2 of this Law by supplying the following evidence with the bid:

- 1) report on solvency or scoring issued by the competent body; balance sheet with opinion of authorized auditor, or excerpt from such balance sheet; statement of bidder's overall income from sale and earnings from products, works or services to which the public procurement contract relates – for no longer than the previous three financial years; opinion or statement of banks or other specialized institutions. Contracting authority shall specify in tender documents which proof under this item it has chosen and/or which other proofs evidencing the financial and economic capacity the bidder has to submit; 2) one or more proofs pertinent to the subject of contract, the quantity and the intended purpose, such as:

- (1) list of most important works performed, goods delivered or services provided, over a period not

longer than eight years for works, or five years for goods and services, together with the amounts, dates and lists of purchasers or contracting authorities;

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

(3) description of bidder's technical equipment, quality assurance measures, and research and development capacity;

(4) statement on key technical staff and other experts working for the bidder, who will be responsible to implement contract, and on persons responsible for quality control;

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

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

The proof under Paragraph 1, items 2) to 4) may not be older than two months prior to opening of bids, or, in the case of qualification procedure, prior to updating the list.

In low-value public procurement procedure, negotiated procedure under Article 36, Paragraph 1, Items 2) and 3) of this Law, with estimated value less than the amount set under Article 39, Paragraph 1 of this Law, contracting authority may set in tender documents that fulfillment of all or of some individual requirements, other than requirements under Article 75 Paragraph 1 item 5) of this Law, is to be proved by bidder's statement given subject to full criminal and material liability, whereby the bidder confirms that it fulfills requirements.

In case of procedure under Article 36, Paragraph 1, Items 4) through 7) of this Law, contracting authority determines the manner of proving the fulfillment of requirements under Article 75, Paragraph 1, of this Law, which has to be adequate to the circumstances of given procurement, except requirements under Article 75, Paragraph 1, Item 4), of this Law.

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

Bidder, candidate, or supplier, shall inform contracting authority, in writing and without delay, of any change concerning fulfillment of requirements for participation in public procurement procedure, which occurs before the decision is made or the contract awarded, during the list of candidates validity period, or during the public procurement contract validity period, and shall document such change in the prescribed manner.

When determining evidence which prove fulfillment of requirements, contracting authority shall pay attention to the costs of obtaining such evidence, making sure that such costs are not disproportionate with the evaluated value of public procurement.

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

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

Register of Bidders

Article 78

Organization competent for registration of economic operators shall keep public register of bidders – entrepreneurs and legal persons (hereinafter: register of bidders) who fulfill mandatory requirements under Article 75, Paragraph 1, Items 1) through 4), of this Law.

Register of bidders shall be available on a website.

Any person registered with the organization body for registration may submit request to be registered in register of bidders, by submitting documents which prove fulfillment of mandatory requirements.

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

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

Register of bidder shall register following data on bidders and their changes:

1) identification or registration number; 2) tax identification number; 3) business name and the address of the seat; 4) personal name and Single Citizen Identification Number, or number of passport and the issuing state, of bidder's legal representative, where this legal representative is natural person, and business name and identification number of bidder's legal representative, where this legal representative is legal person.

Register of bidder shall also register the date of bidder's registration, or date of change of any data on bidder that are the subject of registration.

Bidder will be deleted from registry of bidders pursuant to bidder's request to be deleted, or ex officio if it ceases to fulfill any of legally prescribes requirements.

Decision of registrar in charge of registry of bidders may be challenged by appeal addressed to the minister in charge of economy.

Minister in charge of economy will determine the contents of the registry of bidders and the documentation to be attached to the application to register a bidder.

Manner of Supplying Proofs

Article 79

Proofs on fulfillment of requirements may be supplied as uncertified copies, and contracting authority may, before decision on awarding contract, demand from the bidder, whose bid was evaluated as most advantageous on the grounds of the report of public procurement committee, to present the original documents or certified copies of all or of only some of proofs.

Where bidder supplied declaration under Article 77, Paragraph 4 of this Law, contracting authority may, prior to making decision on awarding contract, request the bidder whose bid was evaluated as most advantageous, to present original or certified copies of all or of only some of proofs substantiating the fulfillment of requirements.

Where bidder fails to present original or certified copies of requested evidence within the given adequate deadline, which may not be less than five days, contracting authority shall refuse its bid as unacceptable.

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

Contracting authority cannot refuse a bid as unacceptable just because it does not contain evidence defined by this Law or by tender documents, where bidder in its bid inserted website which contains requested data and which is publicly available.

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

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

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

Where state of bidder's registration does not issue evidence under Article 77 of this Law, instead of evidence bidder shall submit its written statement, given subject to criminal and material liability and certified by the court, administrative body, public notary, or another competent body of that state.

12. Bid with Subcontractor and Joint Bid

Bid with Subcontractor

Article 80

In tender documents, contracting authority shall request the bidders to state in bids whether they

intend to entrust partial execution of public procurement to subcontractor, and percentage of total procurement value to be entrusted to subcontractor, which cannot be greater than 50%, and share of the procurement subject they intend to deliver through subcontractor.

Where contracting authority initiates public procurement procedure aiming to conclude framework contract or individual public procurement, whose estimated value exceeds the amount under Article 59 of this Law, it may require bidder to implement certain share of public procurement, by value or by subject, through subcontractor who is entrepreneur or small legal person within the meaning of regulations governing accounting and auditing.

Where bidder states in bid its intention to subcontract part of procurement to subcontractor, it has to state this subcontractor's name, and if contracting authority and bidder conclude the contract, that subcontractor will be named in the contract.

At contracting authority's request, bidder shall provide access at the subcontractor's in order to determine fulfillment of requirements.

Bidder shall supply evidence on its subcontractors' fulfillment of mandatory requirements under Article 75, Paragraph 1, items 1) through 4) of this Law, and evidence on fulfillment of requirements under Article 75, Paragraph 1, item 5) of this Law for the share of procurement to be implemented through subcontractor.

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

In addition to mandatory requirements, contracting authority in tender documents defines other requirements that subcontractor has to fulfill and the manner of proving it, however those requirements may not be set in a way which limits the submission of bids with subcontractor.

Bidder or supplier shall be fully responsible to contracting authority for execution of obligations

under public procurement procedure, i.e., for performance of contractual obligations, irrespective of number of subcontractors.

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

In the case under Paragraph 9 of this Article, contracting authority shall allow supplier to make objections if the claim has not become due.

Contracting authority sets the rules of procedure pursuant to Paragraphs 9) and 10) of this Article in tender documents, which do not prejudice the responsibility of supplier.

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

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

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

The provisions of this Article shall accordingly apply to applicants in restricted procedure, qualifications procedure, and in competitive dialogue.

Joint Bid

Article 81

Bid may be submitted by a group of bidders.

Each bidder from the group of bidders must individually fulfill mandatory requirements under Article 75, Paragraph 1, items 1) through 4) of this Law, whereas additional requirements have to be fulfilled jointly, unless contracting authority decides otherwise for justified reasons.

Requirement under Article 75, Paragraph 1, Item 5) of this Law has to be fulfilled by the bidder from

group of bidders entrusted with the part of procurement which requires fulfillment of that requirement.

Integral part of any joint bid is agreement whereby bidders from the group commit, between themselves and towards contracting authority, to execute public procurement, which has to contain information on:

- 1) leading member of the group, or one who will make the bid and represent the group of bidders before contracting authority;
- 2) bidder who will sign the contract on behalf of the group of bidders;
- 3) bidder who will provide collateral on behalf of the group of bidders;
- 4) bidder who will issue invoice;
- 5) account for the execution of payment;
- 6) liabilities of each bidder from the group of bidders for implementing contract.

Agreement under Paragraph 4 of this Article shall govern all other matters that contracting authority determines in tender documentation.

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

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

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

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

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

Contracting authority may request the members of group of bidders to state in their bid the names and

adequate professional qualifications of persons who will be responsible to implement the contract.

The provisions of this Article shall accordingly apply to applicants in restricted procedure, qualification procedure and in competitive dialogue.

13. Negative References

Article 82

Contracting authority will reject a bid if it possesses evidence that, over the previous three years, in a public procurement procedure the bidder has:

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

Contracting authority will reject a bid where it possesses evidence that the bidder did not fulfill its obligations under the previously awarded public procurement contracts that related to the same subject of procurement, over a period of previous three years.

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

- 1) final court decision or final decision of another competent body;
- 2) document on executed collateral for securing the fulfillment of obligations in public procurement procedure or contractual obligations;
- 3) document on the paid contractual penalty;
- 4) complaint from consumers, or users, where these were not rectified within the contracted deadline;
- 5) report by supervisory body on works that were not executed in accordance with the project or contract;
- 6) statement on termination of contract due to failure to observe essential contractual elements, given in the manner and under conditions prescribed by the law governing contracts and torts;

7) evidence on having commissioned the persons not named in bid, to implement public procurement contract as subcontractors or members of the group of bidders;

8) other appropriate evidence relevant to the subject of procurement, which is defined in the tender documents and refers to fulfillment of obligations in earlier public procurement procedures or in other previously awarded public procurement contracts.

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

List of Negative References

Article 83

Contracting authority shall immediately and without delay submit evidence of any negative reference to the Public Procurement Office.

The Public Procurement Office shall determine the existence of negative reference by conclusion within ten days from the day of receiving evidence of negative reference if:

- 1) it receives from contracting authority evidence referred to in Article 82, Paragraph 3, Item 1) of this Law and, after review, determines it to be adequate evidence of negative reference;
- 2) it receives evidence of negative reference referred to in Article 82, Paragraph 3, Items 2) through 8) of this Law, from at least three unrelated contracting authorities over the period of maximum one year, irrespective whether they relate to the same subject of procurement, and, after review, determines it to be adequate evidence of negative reference.

Bidder or supplier may challenge the conclusion under Paragraph 2 of this Article by filing complaint to the Republic Commission for the Protection of Rights in Public Procurement Procedures, within eight days after the reception of the conclusion.

The complaint delays entering into the list of negative references.

Pursuant to each individual proof of negative reference under Article 82, Paragraph 3, item 1) of this Law, negative reference is valid for a period of

nine months from the day the conclusion becomes final.

Pursuant to each individual proof of negative reference under Article 82, Paragraph 3, item 2) of this Law, negative reference is valid for six months from the day the conclusion becomes final.

Pursuant to each individual proof of negative reference under Article 82, Paragraph 3, items 3) through 8) of this Law, negative reference is valid for three months from the day the conclusion becomes final.

In the case under Paragraph 2, Item 2) of this Article, aggregate time of validity of negative references is the total of the latest two received references. A same person may remain in the list of negative references no longer than 15 months in a row.

On the grounds of conclusions made under Paragraph 2 of this Article, the Public Procurement Office maintains the list of negative references and publishes it on the Public Procurement Portal.

In addition to names of bidders or suppliers, the list of negative references also includes proofs of negative references, contracting authorities that submitted the proofs, subjects of public procurements for which were given negative references with designation from the Common Procurement Vocabulary, and dates on which negative references were determined and their respective duration.

Contracting authority shall reject a bid from bidder from the list of negative references as unacceptable if the subject of public procurement is of the same kind as the subject for which the bidder was given negative reference.

Where the subject of public procurement is not of the same kind as the subject for which the bidder was given negative reference, contracting authority shall demand additional collateral for fulfillment of contractual obligations.

Contracting authority must define this additional collateral in tender documents, and its value cannot exceed 15% of the offered price.

14. Criteria for Awarding Contract

Determining the Criterion

Article 84

Contracting authority shall publish in call for competition and tender documents the same criterion and elements of the criterion for awarding contract.

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

In tender documents, contracting authority shall state, describe and weight the criterion and all elements of the criterion it intends to apply, and in particular methodology for allocation weights for each element of the criterion, which will enable subsequent objective verification of bid evaluation.

Contracting authority defines in tender documents the elements of the criterion based on which it will award contract in situation with two or more bids having equal number of weighted points, or the same offered price.

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

Types of Criteria

Article 85

The criteria for evaluating bids are:

- 1) economically most advantageous bid, or
- 2) lowest price offered.

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

- 1) offered price;
- 2) discount to the pricelist of contracting authority;
- 3) date of delivery or performance of services or works within the minimum acceptable deadline that does not compromise the quality, and the maximum acceptable deadline;
- 4) current costs;
- 5) cost effectiveness;

- 6) quality;
- 7) technical and technological advantages;
- 8) environmental advantages and environment protection;
- 9) energy efficiency;
- 10) after-sale service and technical assistance;
- 11) warranty period and type of warranties;
- 12) obligations concerning spare parts;
- 13) post-warranty maintenance;
- 14) number and quality of engaged staff;
- 15) functional characteristics, etc.

The elements of economically most advantageous bid criterion can be further divided into sub-criteria.

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

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

Contracting authority selects the bid by applying economically most advantageous bid criterion, by ranking the bids on the basis of weighted points assigned to the elements of the criterion.

Advantage for Domestic Bidders and Goods

Article 86

Where applying the criterion of economically most advantageous bid, and in situation with bids submitted by domestic and foreign bidders which provide services or perform works, contracting authority must select the bid of most advantageous domestic bidder, provided that the difference in the final sum of weighted points between most advantageous bid of the foreign bidder and most advantageous bid of the domestic bidder is not higher than 10 in favor of the bid of foreign bidder.

Where applying the criterion of economically most advantageous bid, and in situation with bids of bidders offering goods of domestic origin, and bids of bidders offering goods of foreign origin, as most

advantageous bid contracting authority must select the bid of bidder offering goods of domestic origin, provided that the difference in the final sum of weighted points between most advantageous bid of the bidder offering goods of foreign origin and most advantageous bid of the bidder offering goods of domestic origin is not higher than 10 in favor of bid of the bidder offering goods of foreign origin.

Where applying the criterion of lowest offered price, and in situation with bids of domestic and foreign bidders providing services or performing works, contracting authority must select the bid of domestic bidder, provided that its price offered is not more than 15% higher compared to the lowest price offered by foreign bidder.

Where applying the criterion of lowest offered price, and in situation with bids of bidders providing goods of domestic origin and bids of bidders providing goods of foreign origin, contracting authority must select the bid of bidder providing goods of domestic origin, provided that its price offered is not more than 20% higher compared to the lowest price offered by bidder providing goods of foreign origin.

Customs duties shall be calculated into foreign bidder's price.

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

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

In case of bid with subcontractor, bidder shall be considered as domestic bidder, if bidder and its subcontractor are persons referred to in Paragraph 6 of this Article.

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

Advantage under Paragraphs 1 through 4 of this Article, granted in public procurement procedures in which take part bidders from signatory states of the

Central Europe Free Trade Agreement (CEFTA 2006) shall be applied in accordance with the provisions of that agreement.

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

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

15. Bid in Public Procurement Procedure

Submission of Bid

Article 87

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

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

A bidder may submit only one bid.

Bidder which submitted independent bid may not participate at the same time in joint bid, or act as subcontractor, nor can the same person participate in several joint bids.

Contracting authority is obliged to refuse all bids submitted in contravention with prohibition under Paragraph 4 of this Article.

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

Costs for Preparing Bid

Article 88

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

Costs for preparation and submission of bid are borne exclusively by the bidder and cannot be reimbursed by contracting authority.

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

Submitting Electronic Bid

Article 89

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

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

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

Information system of contracting authority must facilitate technologically independent reception of bids and must be available to all interested parties free of charge.

Devices (means) for reception of electronic bids must, assisted by technological devices and suitable procedures, enable that:

- 1) electronic bids are signed in accordance with legislation governing the manner of their protection;
- 2) electronic signature is authorized by qualification confirmation;
- 3) electronic bid has timestamp, meaning that the date, hour and minute of the reception of bid can be specified;
- 4) before the previously defined moment for bid opening, no one has access to data from bids;
- 5) it can be easily revealed if there has been a violation of prohibition of access to data from bids;
- 6) only persons authorized by contracting authority can set and change the date and hour of bid opening;

7) only authorized persons have access to data from bids, and only so through their simultaneous action if there are several of them.

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

Provisions of this Article shall apply accordingly to the submission of electronic bids.

Period of Validity of Bids

Article 90

Contracting authority sets the period of validity of bids, and this period has to be stated in the bid, but cannot be shorter than 30 days from the date set for the opening of bids.

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

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

Bids with Variants

Article 91

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

Contracting authority will explicitly state in its call for competition and tender documents whether it is allowed to submit bids with variants, because otherwise it will be presumed that submission of bids with variants is not allowed.

Where bids with variants are allowed, contracting authority shall define in tender documents which requirements any variant must fulfill in order to be applicable.

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

Abnormally Low Price

Article 92

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

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

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

In the case under Paragraph 3 of this Article, contracting authority shall set a reasonable deadline for bidder's response.

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

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

Additional Explanations, Control, and Permitted Corrections

Article 93

Contracting authority may request from bidders to supply additional explanations that will be useful in the course of examining, evaluating and comparing bids, and it may also conduct control (inspection) of bidder or its subcontractor.

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

Contracting authority may not demand, allow, or offer, any alterations to the elements of bid relevant for applying the criterion for awarding contract, or any change that would turn an inappropriate or

unacceptable bid into an appropriate or acceptable one, unless otherwise follows from the nature of public procurement procedure.

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

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

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

16. Time Limits in Public Procurement Procedure

Setting Deadline for Submission of Bids

Article 94

Deadline for submission of bids must be adequate to the time needed for preparation of acceptable bid.

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

Time Limits for Submission of Bids in Open Procedure, and of Application in Restricted and Qualification Procedures, and in Competitive Dialogue

Article 95

Time limit for submission of bids in open procedure, or for submission of applications in restricted and qualification procedures and in competitive dialogue cannot be shorter than:

- 1) 40 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law;
- 2) 30 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law;

Time limits for submission of bids in open procedure or applications in the restricted and qualification procedures and in competitive dialogue cannot be shorter than:

1) 30 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.

2) 22 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.

Time Limits for Submission of Bids in Restricted and Qualification Procedures

Article 96

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

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

Time Limit for Submission of Bids in Negotiated Procedure with Invitation to Bid

Article 97

Time limit for submission of bids in negotiated procedure with invitation to bid shall not be shorter than 25 days from the day of publishing the call for competition.

Time Limit for Submission of Final Bids in Competitive Dialogue

Article 98

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

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

Article 99

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

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

Article 100

Time limit for submission of initial bids during existence of dynamic procurement system shall be 15 days from the day of publishing the invitation to bid.

Calculation of Time Limits

Article 191

Time limit for submission of bids shall be calculated from the day of publishing invitation to bid on the Public Procurement Portal, or from the day of sending invitation to bid.

17. Receiving and Opening Bids

Receiving Bids

Article 102

When receiving bid, contracting authority shall note down on envelope or box containing the bid the time and date of receipt and register ordinal number of bid in order of reception. For hand delivered bid, contracting authority shall issue confirmation of reception to the bidder.

For electronically submitted bid, contracting authority shall ensure that its IT system sends confirmation of reception immediately after receiving the bid.

It is prohibited to provide information on received bids, and contracting authority is obliged keep the bids so to protect them against possession by unauthorized persons.

Opening Bids

Article 103

Opening bids is performed immediately after the end of deadline for submission of bids, on the same day.

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

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

Contracting authority may decide to exclude the public when opening bids, if necessary to protecting data which are trade secret in terms of the law governing the protection of trade secrets, or data which are secret in terms of the law governing data secrecy and protection.

In the case referred to in Paragraph 4 of this Article, contracting authority makes decision to determine the reasons for exclusion of the public and to decide whether that exclusion of the public refers to representatives of bidders, as well.

Minutes on Opening Bids

Article 104

Contracting authority shall take the minutes on the procedure of bid opening, whereby recording the following data and in the following sequence:

- 1) date and time of the beginning of opening bids;
- 2) subject-matter and estimated value of public procurement;
- 3) names of the public procurement committee members participating in the procedure of bid opening;
- 4) names of bidders' representatives present at the bid opening;
- 5) names of other present persons;
- 6) registry numbers under which were registered bids;
- 7) names of bidders, or codes of bidders;
- 8) offered prices and any discounts offered by bidders;
- 9) data from bids which are defined as elements of the criterion and which can be presented numerically;
- 10) identified shortcomings in bids;
- 11) any objections of bidders' representatives concerning the bid opening procedure.

Bidder's representative participating in the bid opening procedure, during this procedure has the

right to examine data from the bid which is entered in the minutes on the bid opening.

Contracting authority cannot make expert evaluation of bids during the bid opening procedure.

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

The minutes on bid opening will be signed by members of the committee and representatives of bidders, and they will take a copy of the minutes.

Contracting authority shall deliver the minutes on bid opening to bidders who did not participate in the bid opening procedure within three days from the day of bid opening.

Provisions of this Article accordingly apply to the procedure of opening applications.

18. Awarding the Contract

Report on Expert Evaluation of Bids

Article 105

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

The report under Paragraph 1 of this Article must specifically contain the following data:

- 1) subject of public procurement;
- 2) data from procurement plan relating to the public procurement at hand;
- 3) estimated value of the public procurement;
- 4) possible deviations from the procurement plan with explanations;
- 5) where the conducted procedure was neither open nor restricted, the reasons and circumstances justifying the application of such procedure;
- 6) where the public procurement procedure is conducted together with another contracting authority in accordance with Article 50 of this Law, the basic data on that contracting authority;
- 7) basic data on bidders;
- 8) rejected bids, reasons for their rejection and prices offered in those bids;

9) where only one bid was submitted, the opinion of the committee on the reasons which caused only one bid to be submitted and proposal of measures which should be made so that competition is provided in the following procedures;

10) where all the bids are inadequate or unacceptable, the opinion of the committee on the reasons which caused submission of such bids and description of way in which was estimated the value;

11) where a bid was rejected due to its abnormally low price, explanation in details – the way of determining such price;

12) manner of applying the methodology for weighting points allocation;

13) name of the bidder to whom was awarded contract, and where the bidder stated that the procurement would be implemented with subcontractors, each part of the contract that will be implemented by a subcontractor.

Provisions of this Article shall accordingly apply to the report on expert evaluation of applications.

Essential Deficiencies in Bid

Article 106

Contracting authority shall refuse a bid if:

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

Conditions for Awarding the Contract

Article 107

Contracting authority shall reject all unacceptable bids after analyzing and evaluating all bids in public procurement procedure.

Contracting authority shall rank acceptable bids by applying the criterion for awarding the contract defined in the call for competition and the tender documents.

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

In open procedure, contracting authority may award the contract to bidder whose bid offers price higher than the estimated value of public procurement, where it is not higher than comparable market price and where offered prices in all acceptable bids are higher than the estimated value of the public procurement.

In the case referred to under Paragraph 4 of this Article, after having made its decision, contracting authority shall submit a reasoned report to the Public Procurement Office and the State Audit Institution.

Contracting authority makes decision on recognizing qualification, or on concluding framework agreement, pursuant to requirements set forth by this Law.

Decision on Awarding the Contract

Article 108

Based on the report of expert evaluation of bids, contracting authority makes decision on awarding contract within time limit defined in the call for competition.

Time limit under Paragraph 1 of this Article cannot be longer than 25 days from the day of bid opening, except in justified cases, such as are volume or complexity of bids, or complexity of methodology of weighting points allocation, in which cases time limit can be 40 days from the day of bid opening.

In low-value public procurement procedure, time limit under Paragraph 1 of this Article cannot be longer than ten days.

Decision on awarding contract must be reasoned and must specifically contain data from the report on expert evaluation of bids, except for information under Article 105, paragraph 2, points 9) and 10) of this Law.

Contracting authority shall send the decision on awarding contract to all bidders within three days from the day of making such a decision.

Contracting authority shall send the decision on awarding contract so that bidders receive it in the shortest notice possible.

Where decision is delivered personally, by email, or by fax, contracting authority must obtain confirmation of reception of decision from bidder, and where decision is delivered by mail it must be sent as registered mail with confirmation of delivery.

Where a bidder refuses to receive the decision, it shall be deemed that decision is delivered on the day of refused delivery.

Provisions of this Article shall apply accordingly to decision on concluding framework contract, decision on recognizing qualification and the decision on cancelling the procedure.

Decision on Cancelling Public Procurement Procedure

Article 109

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

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

Contracting authority shall explain in writing its decision to cancel the public procurement procedure, particularly stating the reasons for cancelling the procedure, and deliver it to the bidders within three days from the day of making such a decision.

Within five days from the day on which decision on cancelling public procurement procedure becomes final, contracting authority shall publish notice thereon with data as defined in Annex 3K.

Contracting authority shall decide on expenses for preparing bids under Article 88, Paragraph 3 of this Law in the decision on cancelling public procurement procedure.

Final decision on cancelling the procedure is enforceable document in terms of expenses for preparing the bid under Article 88, Paragraph 3 of this Law.

Insight into Documents

Article 110

Bidder, candidate, and/or applicant shall have the right to insight into documents on conducted public procurement procedure after the decision is made to recognize qualification, to conclude framework agreement, or to award contract, and may request in writing such insight from the contracting authority.

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

Notification to Bidders

Article 111

Within five days since making decision, contracting authority may hold separate meetings with each bidder, where members of public procurement committee will explain the manners of conducting the procedure, of defining requirements for participation, of determining specification for public procurement subject, of determining elements of the criterion, and the methodology for weighting points allocation, reasons to reject a bid, ranking of bids, etc.

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

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

Notification of bidders and conversation with bidders shall be recorded in the minutes.

During notification of bidders, contracting authority is obliged to protect data in accordance with Article 14 of this Law.

19. Public Procurement Contract

Conditions for Conclusion of Public Procurement Contract

Article 112

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

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

- 1) based on a framework agreement;
- 2) in the case of applying negotiated procedure under Article 36, Paragraph 1 item 3) of this Law;
- 3) in the case of applying dynamic procurement system;
- 4) in the case of low-value public procurement procedure under Article 39, Paragraph 6, of this Law;
- 5) where only one bid was submitted, except in negotiated procedure without invitation to bid.

Time Limit for Concluding Contracts

Article 113

Contracting authority concludes public procurement contract with the bidder to whom was awarded contract, within eight days from the day of expiry of time limit for filing requests for the protection of rights.

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

Where bidder to whom was awarded contract refuses to sign public procurement contract,

contracting authority may conclude the contract with the second most advantageous bidder.

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

Contract in Electronic Format

Article 114

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

Amendments to Public Procurement Contract

Article 115

After conclusion of public procurement contract, contracting authority may allow change in price or other essential contractual elements for objective reasons only, which must be clearly and precisely defined in tender documents and contract, or set forth by special regulations.

Where contracting authority intends to amend public procurement contract, it has to make decision on amending contract which has to contain data in accordance with Annex 3L.

Contracting authority shall publish its decision on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of making the decision.

Notice on a Concluded Public Procurement Contract

Article 116

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

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

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

Contracting authority

Article 117

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

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

At the beginning of budget year and upon proposal of the ministry in charge of finance, the ministry in charge of water management, energy and transport, and the Public Procurement Office, the Government defines the list of contracting authorities which will be published in the "Official Gazette of the Republic of Serbia" and posted on the Public Procurement Portal.

Persons outside the list referred to in Paragraph 2 of this Article and who fulfill requirements under Paragraph 1 of this Article, shall also apply this Law.

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

Economic activities in Water Management

Article 118

For the purpose of this Law, economic activities in water management shall be:

- 1) construction or operation of facilities and networks in order to provide services to consumers related to production, transport or distribution of potable water;
- 2) supplying these networks with potable water;
- 3) hydraulic engineering projects, irrigation and land drainage, provided that more than 20% of the

total quantity of water generated by these projects, irrigation or land drainage is to be used as potable water;

- 4) filtration and drainage of waste water.

Providing potable water to networks which provide services to consumers through contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law shall not be considered economic activity in water management in terms of this Law, if:

- 1) contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law produces potable water for performing economic activities other than economic activities in water management, energy, transport or postal services;
- 2) supplying of public network depends solely on own production of contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law, and if that supply does not exceed 30% of the total production of potable water by that contracting authority, taking into account the average for the last three years including the current year.

Economic activities in Energy Sector

Article 119

For the purpose of this Law, economic activities in energy sector shall be:

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

Supplying electricity to networks which provide services to consumers by contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law shall not be considered economic activity in energy sector for in terms of this Law, if:

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

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

Supplying gas or heat to networks which provide services to consumers through contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law shall not be considered economic activity in energy sector in terms of this Law if:

- 1) production of gas or heat by contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law is an inevitable consequence of performance other than performing economic activities in water management, energy, transport or postal services;
- 2) supplying of public network is intended solely for economic exploitation of that production and does not exceed 20% of total annual income of contracting authority referred to in Article 117, Paragraph 1, item 2) of this Law, taking into consideration the last three years including the current year.

Economic activities in Transport Sector

Article 120

For the purpose of this Law, economic activities in transport sector shall be:

- 1) construction, maintenance and management of airports and river ports used in air or river transport;
- 2) construction, maintenance and management of networks, as well as providing services to consumers in the areas of railway transport, urban and suburban passenger transport in road transport, conducted by trams, trolley-buses and buses.

It is considered that there is a transport network in place, if services are provided under conditions defined by competent body, such as conditions for lines where services are provided, capacities of transport vehicles, frequency, and the like.

Providing services of bus transport is not an activity in transport sector in terms of this Law, if other economic operators are free to do the same activities in the relevant market.

Economic activities in Postal Services Sector

Article 121

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Economic activities in postal service sector shall be providing services of reserved and unreserved postal services in terms of the law governing postal services.

Economic activities in postal services sector in terms of this Law is also providing other services which do not include postal services under requirements defined by this Article.

Other services shall be:

- 1) services of managing postal services (services prior to and after delivery);
- 2) services related to packages with no specific address which are not postal packages in terms of the law governing postal services;
- 3) philatelist services;
- 4) logistics services which represent combination of physical delivery and/or storage and other non-postal services.

Public Procurements in the Water Management, Energy, Transport and Postal Services exempt from this Law

Article 122

The provisions of this Law shall not apply to the following cases:

- 1) for procurements exempt by Article 7 of this Law;
- 2) for procurements which contracting authorities conduct for economic activities in water management, energy, transport and postal services abroad, provided that it does not include the use of facilities and networks within the Republic of Serbia;
- 3) when contracting authority involved in activities referred to in Article 118, Paragraph 1, item 1) or 2) of this Law purchases potable water;
- 4) when contracting authority involved in activities referred to in Article 119, Paragraph 1, of this Law procures energy or fuel for electricity production;
- 5) when contracting authority performs procurement from related entities, or when an entity founded by contracting authorities exclusively for performing

activities in water management, energy, transport or postal services performs procurements from entities related to one of contracting authorities, provided that at least 80% of average revenue of the related entity in the last three years originates from persons which it is related to;

6) when entity founded by several contracting authorities performs procurement from its founders for the purposes of performing activities in water management, energy, transport or postal services;

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

8) when contracting authority performs procurement from a group of companies whose integral part it is, provided that the group of companies was founded to perform activities in water management, energy, transport and postal services, that it was founded for at least a three year period, and that its founding act stipulates that contracting parties remain within it for at least three years.

Based on submitted procurement plan in accordance with Article 51 of this Law, the Public Procurement Office shall notify contracting authority where it finds that some of procurements do not fulfill requirements for exclusion from this Law based on Paragraph 1 of this Article, and contracting authority is obliged to deliver to the Public Procurement Office a special report on conducted procedure for these public procurements.

Procedures

Article 123

The awarding of contract is performed in open, restricted or qualification procedure, or in negotiated procedure with invitation to bid.

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

Special Rules for Qualification Procedure

Article 124

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

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

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

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

In the case under Paragraph 4 of this Article, the candidates' qualifications will be recognized for so long as the list of candidates remains valid.

Condition of Reciprocity

Article 125

Where bidders offer products originating from a country with which the Republic of Serbia has not concluded agreement that would enable domestic bidders equal access to the market of that country, such a bid may be rejected if more than 50% of the products offered in the bid originate from such country.

For the purposes of this Article, software used in electronic communications network shall be considered as product.

Equal Bids

Article 126

Where two or more bids are equal, according to the criterion set under Article 85 of this Law, contracting authority shall give advantage to bids that cannot be refused on the basis of Article 125 of this Law.

Equal bids regarding the price, in terms of Paragraph 1 of this Article, are bids whose prices do not differ for more than 3%.

Contracting authority shall not afford advantage to a bid in accordance with Paragraph 1 of this Article, if selection of such bid would obligate the contracting authority to procure a product with technical characteristics different from the existing products.

V. PUBLIC PROCUREMENTS IN DEFENSE AND SECURITY SECTOR

Public Procurements in Defense and Security

Article 127

Public Procurements in Defense and Security are procurements of:

- 1) weapons and military equipment including any of its integral parts, components and sets;
- 2) security sensitive equipment including any of its integral parts, components and sets;
- 3) goods, services or works directly related to military or security sensitive equipment, or facilities under Items 1) and 2) of this Paragraph within any given period or the entire life cycle;
- 4) services and works solely for defense purposes;
- 5) security sensitive works and security sensitive services.

Military equipment is equipment specially made or adjusted for military purposes, intended for use as weapons, ammunition or military material.

Security sensitive equipment, services and works are goods, services and works for security purposes, which include, request, and contain, secret information.

When conducting procurements under Paragraph 1 of this Article, contracting authority is obliged to prevent any conflict of interests, to ensure competition whenever it is possible, and to ensure that contracted price is no higher than comparable market price.

On the basis of delivered procurement plan, the Government makes decision on conducting the procedures and notifies thereon the competent committee of the National Assembly.

The Government governs the procedure of public procurements in the areas of defense and security

and defines the list of goods, services and works referred to in Paragraph 1 of this Article.

Public Procurements in Defense and Security Sector exempt from this Law

Article 128

Provisions of this Law and bylaw referred to in Article 127, Paragraph 6 of this Law shall not apply to procurements:

- 1) under Article 127 of this Law, where contracts were awarded in compliance with international agreements of the Republic of Serbia concluded with another state or international organization;
- 2) which are necessary and exclusively aimed to the needs of intelligence activities;
- 3) performed abroad, when military or police forces are deployed outside of the territory of the Republic of Serbia, if operative needs demand that the contracts are concluded with legal entities or state subjects in the area of operations;
- 4) within cooperation programs based on research and development of a new product implemented jointly by the Republic of Serbia and one or more states or international organizations, if it is applicable to the subsequent phases of the entire or partial life cycle of such product;
- 5) where application of a public procurement procedure would result in disclosure of information marked as vital security-wise pursuant to a Government's decision.

In the case under Paragraph 1, item 4) of this Article, the ministry in charge or competent state body shall submit report to the Government on implementation of the cooperation program.

Special Rules of Procedure in Public Procurements in the

Areas of Defense and Security

Article 129

Public procurement contract is awarded in restricted or negotiated procedure with invitation to bid, and in other public procurement procedures provided that the requirements set forth by this Law or by the bylaw referred to in Article 127, Paragraph 6 of this Law are met.

In case of restricted procedure, Article 33, Paragraph 5 of this Law shall not apply.

Negotiated procedure referred to in Article 36, Paragraph 1, items 4) and 5) of this Law may be conducted, where no more than three years lapsed since the originally concluded contract, except in special cases, which are determined depending on the lifetime of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.

Framework agreement whose subject is public procurement in defense and security sector cannot last longer than five years, except in special cases, which are determined depending on the lifetime of equipment, installations or systems and technical difficulties which would be caused by a change of supplier.

The subject of framework agreement may also be the works exclusively for defensive purposes and security sensitive works.

Applying the Law by Subcontractors

Article 130

Bidder may in its bid include subcontractors who will be hired for implementation of public procurement, or may state that the subcontractors will be selected after the public procurement contract is concluded.

Suppliers apply the provisions of this Law when choosing third parties as subcontractors, after conclusion of public procurement contract or framework agreement, if contracting authority requested that supplier performs certain share of procurement through subcontractor.

Subcontractors included in the bid, or subcontractors that are part of a group of bidders which submitted a joint bid, and persons related to them, shall not be considered as third parties in terms of Paragraph 1 of this Article.

When submitting bid, there has to be attached a list of persons not considered third parties in terms of Paragraph 2 of this Article, as well as any subsequent changes.

Reports on Conducted Procurements in Areas of Defense and Security

Article 131

For conducted procurements under Articles 127 and 128 of this Law, contracting authority submits annual report to the Government and the competent committee of the National Assembly before 31 March of the current year, for the preceding year.

Report under Paragraph 1 of this Article in particular contains data on the subject of procurement, the way of conducting the procedure, submitted bids, the criterion for selection of most advantageous bid, concluded contract, and the supplier.

The Government shall regulate in more detail the format and contents of the report under Paragraph 1 of this Article.

VI. PUBLIC PROCUREMENT RECORDS AND REPORTS

Keeping Records and Reports on Public Procurements

Article 132

Contracting authority shall collect and keep records of data concerning public procurement procedures and awarded public procurement contracts.

Contracting authority shall deliver to the Public Procurement Office quarterly reports on:

- 1) conducted public procurement procedures;
- 2) conducted public procurement procedures to which contracting authority did not apply the provisions of this Law;
- 3) conducted negotiated procedures without invitation to bid;
- 4) costs for preparation of bids in public procurement procedures;
- 5) awarded public procurement contracts;
- 6) unit prices for goods, services and works;
- 7) amended public procurement contracts;
- 8) canceled public procurement procedures;
- 9) public procurement procedures with filed request for the protection of rights and canceled procedures;
- 10) execution of public procurement contract.

The Public Procurement Office shall define in detail the contents of reports on public procurements and

the manner of keeping records in public procurements.

Contracting authority shall deliver reports referred to in Paragraph 1 of this Article no later than on the 10th day of the month following the relevant quarter.

The Public Procurement Office shall prepare aggregate quarterly reports on conducted procedures and concluded public procurement contracts on the basis of the delivered quarterly reports of contracting authorities, and to post it on the Public Procurement Portal and its website within a month after the expiration of time limit referred to in Paragraph 4 of this Article.

Reports in Public Procurements

Article 133

The Public Procurement Office may request contracting authority to submit report with additional information on each individual public procurement contract or public procurement procedure.

Contracting authority shall submit requested information to the Public Procurement Office without undue delay, and no later than eight days from the request of the Public Procurement Office.

The Public Procurement Office shall prepare semi-annual and annual reports on public procurements on the basis of individual quarterly reports sent by contracting authorities.

The Public Procurement Office shall publish semi-annual report on public procurement on the Public Procurement Portal and its website by 30th September, and the annual report by 31st March of the current year, for the previous year.

The reports under Paragraph 4 of this Article have to be submitted to the Government prior to their publishing.

Together with the report referred to in Paragraph 4 of this Article, the Public Procurement Office shall submit proposal for common and individual measures for improvement of the public procurement system.

VII. PUBLIC PROCUREMENT OFFICER AND THE PUBLIC PROCUREMENT OFFICE

Public Procurement Officer

Article 134

Contracting authority shall define, in its bylaw on job classification, the position within which will be performed tasks in public procurement activities.

Contracting authority whose overall annual value of planned public procurements exceeds the sevenfold amount referred to in Article 39, Paragraph 1 of this Law, must have at least one public procurement officer.

A public procurement officer is person trained to perform public procurement tasks.

The Public Procurement Office determines the manner and the program for professional training and examination for public procurement officers.

Contracting authority shall make it possible for person performing public procurement tasks to pass the exam for public procurement officer within three months from the day of employment, or the day when the conditions are met.

Public Procurement Office

Article 135

The Public Procurement Office is a special organization which monitors the application of this Law, adopts bylaws and performs professional activities in the area of public procurement, monitors the conducting of public procurement procedures, controls the use of certain procedures, runs the Public Procurement Portal, prepares reports on public procurements, proposes measures for improvement of public procurement system, provides professional assistance to contracting authorities and bidders, contributes to the creation of conditions for economic, efficient and transparent use of public funds in public procurement procedures.

Functioning and organization of the Public Procurement Office are governed by legislation on civil service, unless this Law provides otherwise.

Activities of the Public Procurement Office

Article 136

The Public Procurement Office performs the following activities:

- 1) monitors the application of this Law;

- 2) adopts bylaws in the area of public procurement;
- 3) participates in drafting regulations in the area of public procurement;
- 4) issues opinions on interpretation and application of provisions under this Law;
- 5) examines the fulfillment of requirements for conducting negotiated procedure under Article 36 of this Law and for competitive dialogue;
- 6) proposes a list of contracting authorities to the Government, according to data from reports and records on public procurements it possesses;
- 7) participates in drafting the plan for combatting corruption;
- 8) appoints civil supervisor;
- 9) prepares framework agreement models;
- 10) gives approval to decision or agreement referred to in Articles 48 and 50 of this Law;
- 11) defines standard forms of public procurement notices;
- 12) maintains the list of negative references;
- 13) defines the manner of keeping records and drafting public procurement reports;
- 14) compiles quarterly, semi-annual and annual reports on public procurements;
- 15) determines the manner and program of professional training and the manner of expert examination for public procurement officers, and keeps the register of public procurement officers;
- 16) manages the Public Procurement Portal;
- 17) takes measures aimed at development and upgrading of the public procurement system;
- 18) files requests for the protection of rights;
- 19) informs the State Audit Institution and Budgetary Inspection on identified irregularities in conducting public procurement procedures and delivering public procurement reports;
- 20) initiates misdemeanor procedure when learns in any way of a violation of this Law which can be the grounds for minor offence liability;

- 21) initiates the procedure for annulment of a public procurement contract;
- 22) prepares model decisions and other acts that contracting authorities make in public procurement procedures;
- 23) collects statistical and other data on conducted procedures, concluded public procurement contracts and the overall efficiency of the public procurement system;
- 24) publishes and disseminates relevant expert literature;
- 25) collects information on public procurement in other states;
- 26) prepares plans and normative acts and, with consent of the Government, performs other activities related with negotiations on accession to the European Union in the domain of public procurement;
- 27) cooperates with foreign institutions and experts in the field of public procurement;
- 28) cooperates with other governmental bodies and organizations, as well as bodies of a territorial autonomy and local government;
- 29) performs other activities according to the law.

In performing the Public Procurement Office's monitoring role in the application of this Law, all governmental bodies and organizations, offices and bodies of territorial autonomy and local government, contracting authorities and bidders or applicants, are obliged to provide necessary information and documents in their possession or under their control to the Public Procurement Office, within the given deadline.

The Public Procurement Office submits a special annual report on the monitoring of the application of this Law to the Government and the committee of the National Assembly in charge of the finance, by April 30 of the current year, for the previous year.

Director of the Public Procurement Office

Article 137

The Public Procurement Office shall have director appointed by the Government from among the ranks

of public procurement experts, after having conducted public competition.

As director of the Public Procurement Office may be appointed person having higher education in the areas of law, economy or technical sciences from the second level studies (master academic studies, specialist academic studies, specialist professional master studies), or higher education which the law equates with the academic title of master at the basic studies in the duration of at least four years, and having at least five years of working experience in public procurements and who fulfills other requirements prescribed for the work in civil service.

Director of the Public Procurement Office adopts an act which governs the job classification.

VIII. PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURE

1. Republic Commission for the Protection of Rights in Public Procurement Procedures

Article 138

The Republic Commission for the Protection of Rights in Public Procurement Procedures (hereinafter: the Republic Commission) is an autonomous and independent body of the Republic of Serbia, which ensures the protection of rights in public procurement procedures.

The Republic Commission has status of legal entity.

The seat of the Republic Commission is in Belgrade.

The Republic Commission has a seal, in accordance with the law.

The funds for the operation of the Republic Commission shall be provided from the budget of the Republic of Serbia.

Competences

Article 139

Within its competences, the Republic Commission:

- 1) decides on requests for the protection of rights;
- 2) decides on concluding of contract in the case referred to under Article 30, paragraph 3, of this Law;

3) decides on appeals filed against the conclusion of contracting authority and the Public Procurement Office;

4) decides on contracting authority's proposal that submitted request for the protection of rights does not suspend making decision or concluding contract or framework agreement;

5) decides on proposal of person who filed request for the protection of rights to prohibit the conclusion or performance of a public procurement contract;

6) decides on expenses in the procedure for the protection of rights and expenses for the preparation of bid;

7) monitors and controls implementation of its decisions;

8) imposes fines to contracting authority and the responsible person therein;

9) annuls public procurement contract;

10) conducts minor offence proceedings in the first instance;

11) initiates procedure for annulment of public procurement contract;

12) cooperates with foreign institutions and experts in the field of public procurement;

13) performs other tasks in accordance with the law.

Composition and Appointment of the Republic Commission

Article 140

The Republic Commission shall have president and six members.

The National Assembly appoints and removes from office president and members of the Republic Commission upon proposal of the committee of the National Assembly in charge of finances (hereinafter: the competent Committee) after the conducted public competition.

President and members of the Republic Commission are appointed to a five-year period.

The same person may be appointed as president of the Republic Commission twice.

The same person may be appointed as member of the Republic Commission no more than twice, provided that this person was not appointed as President of the Republic Commission.

The competent Committee shall initiate the procedure for determining proposal for the appointment of President and members of the Republic Commission no later than six months prior to the expiry of their term of office, and the appointment procedure shall be completed no later than a month prior to the expiry of their mandate.

President of the Republic Commission represents the Republic Commission, manages its work and performs other activities in accordance with the law.

In the absence of President of the Republic Commission, the Republic Commission shall be represented by Deputy President of the Republic Commission, who is appointed by President of the Republic Commission from among the members.

Conditions for appointment

Article 141

As President of the Republic Commission may be appointed person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has five years of work experience in the area of public procurement.

President of the Republic Commission shall have salary equal to the salary of President of the Higher Court.

As member of the Republic Commission may be appointed person who meets requirements for the appointment of judge in basic court, except the condition concerning the Judiciary Academy, and has three years of work experience in the area of public procurement.

As member of the Republic Commission may also be appointed person having higher education in the areas of legal, economic or technical – technological sciences from the second level studies (master academic studies, specialist academic studies, specialist professional master studies), or higher education which the law equates with the academic title of master at the basic studies in the duration of at least four years, and having at least five years of

working experience in public procurements, acquired certificate for public procurement officer, and who fulfills other requirements prescribed for the work in civil service.

At least four members of the Republic Commission shall be appointed from among persons fulfilling conditions referred to in Paragraph 3 of this Article.

Member of the Republic Commission shall have salary equal to the salary of a judge in the Higher Court.

Service of the Republic Commission

Article 142

The Republic Commission has its Service that performs professional, general, legal, financial-material and administrative-technical activities necessary for the operation of the Republic Commission. The Service shall be managed by the Secretary, who is appointed and removed from office by the President of the Republic Commission.

As Secretary may be appointed person having higher education in scientific area of law sciences, from the second level studies or higher education which the law equates with the academic title of master at the basic studies, in the duration of at least four years, and having at least five years of working experience in law-related jobs.

Secretary and employees in the Service are subject to legislation governing employment in civil service.

The Republic Commission shall regulate internal organization and systematization of jobs in the Service.

List of Experts in Public Procurement

Article 143

The Republic Commission establishes and maintains the list of experts who, in accordance with requirements of this Law, participate in the work of the Republic Commission.

Eligible persons for the list of experts are persons registered into the registry of the standing court experts and who successfully pass the professional exam for public procurement officer.

Prevention of Conflict of Interest and Exclusion

Article 144

President or member of the Republic Commission cannot perform any other public duty, have any function in a political party, or perform any other function, service, work, duty or activity that might impact his/her independence in work and performance, or that might decrease his/her reputation or the reputation of the function of President or member of the Republic Commission.

President or member of the Republic Commission cannot decide in the procedure for the protection of rights if there are any reasons to doubt his/her impartiality.

President or member of the Republic Commission cannot decide in the procedure for the protection of rights if he/she has relationship with a party to the procedure corresponding to the relationship between representative of contracting authority and a bidder referred to in Article 29 of this Law.

A party in the procedure shall have the right to demand exclusion of a member of the Republic Commission due to reasons referred to in Paragraphs 2 and 3 of this Article.

President of the Republic Commission decides upon request for exclusion.

President or member of the Republic Commission cannot be employed by a bidder who has been a party to a procedure in which he/she has decided the case, over the period of two years following the termination of his/her office, where the estimated value of procurement in such case exceeded the amount under Article 57 of this Law.

Removal from office of members of Republic Commission

Article 145

President or member of the Republic Commission shall be removed from his/her office before expiry of the term of office, if:

- 1) he/she is convicted for a criminal offence to an unconditional sentence of at least six months of imprisonment and if the offence for which he/she was convicted makes him/her unfit to hold office
- 2) he/she has permanently lost work capacity;
- 3) it is established that he/she holds office in contravention of Article 144 of this Law;

4) it is established that he/she performs duties unprofessionally and negligently;

5) it is established that he/she does not meet eligibility criteria under Article 141 of this Law.

Any person may raise initiative for removal from office of President or member of the Republic Commission to the competent Committee.

The competent Committee submits to the National Assembly reasoned proposal for removal from office of President or member of the Republic Commission together with evidence for removal from office.

President or member of the Republic Commission must be given an opportunity to present statement in the National Assembly regarding the reasons for dismissal.

Manner of Operation of the Republic Commission

Article 146

The Republic Commission works and makes decisions in panels of three members.

Each panel comprises at least two members appointed in accordance with Article 141, Paragraph 3 of this Law.

All members of the panel need to be present in the panel meeting for valid decisions.

In case of absence of a member of panel, he/she will be replaced by President of the Republic Commission or member of the Republic Commission from another panel designated by President of the Republic Commission.

Where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law, and upon request of contracting authority or claimant who filed request for the protection of rights, and pursuant to the according decision of the panel, in the work of the panel may also participate two experts from the list, nominated by the contracting authority and the claimant.

Members of the panel may, at their own initiative, decide to include an expert in the work of the panel, where they find it necessary for the proper establishing of facts and making proper decision.

Not eligible for expert is person who has a relationship with a party to the procedure that

corresponds to relationship between representative of contracting authority and the bidder, as referred to in Article 29 of this Law.

Reimbursement of expenses and remuneration for the expert shall be paid by the party that hired him/her according to the tariff set by the Republic Commission.

Expert has no vote in making decision.

The Republic Commission endorses the general legal opinions concerning the application of legislation falling under its competences, in the general session in which participate President and all members of the Republic Commission.

The general session is convened by President of the Republic Commission, as necessary, upon request submitted by four members, or when contradiction arises regarding the application of legislation.

The manner of operation of the Republic Commission shall be regulated by the Rules of Procedure of the Republic Commission.

The Republic Commission endorses its Rules of Procedure by a two-third majority of votes of members and President of the Republic Commission.

Accountability

Article 147

The Republic Commission is accountable for its work to the National Assembly.

The Republic Commission delivers semi-annual reports of its performance to the National Assembly by 30th September or 31st March, in which it specifically states:

- 1) partially or completely annulled procedures;
- 2) procedures in which it made decision that the filed request for the protection of rights does, or does not, suspend further activities in public procurement procedure;
- 3) contracting authorities which failed to deliver requested documents and reports;
- 4) controls performed within contracting authorities, the results of such controls and the measures taken to remedy the identified irregularities;

5) contracting authorities who failed to observe the instructions of the Republic Commission and have not remedied irregularities;

6) common irregularities that frequently occur in public procurement procedures and activities for remedying such irregularities;

7) the annulled contracts;

8) the fined contracting authorities and responsible persons therein;

9) initiated misdemeanor procedure;

10) decisions it made in the misdemeanor procedure;

11) decisions of the Administrative Court and the High Misdemeanor Court on decisions of the Republic Commission;

12) other activities performed in order to protect the rights;

13) procedures that have not been processed within time limit defined by this Law, and the reasons for the delay;

14) statistics relevant for monitoring the trends in the protection of rights;

15) difficulties it faces in its daily performance.

Where the competent Committee receives petition by either contracting authority or bidder, or by another interested person who deem their rights were violated in a procedure before the Republic Commission, or if it in another way learns information that indicate unprofessional or negligent performance of duty by members of this body, the competent Committee may request the Republic Commission to submit report, within a specified deadline, on each individual case which it has decided.

In the case under Paragraph 3 of this Article, the Republic Commission has to deliver to the competent Committee, within the specified deadline, the entire documentation on particular case, whereas the member of the Republic Commission panel who decided in that case may be invited to address the competent Committee and present orally the position of the Republic Commission regarding the case and the decision made.

2. Procedure of the Protection of Rights

Capacity to File Request in the Procedure

Article 148

Request for the protection of rights may be submitted by bidder, applicant, candidate, or interested person (hereinafter: the claimant).

Business association may also submit request for the protection of rights on behalf of the person referred to in Paragraph 1 of this Article.

Request for the protection of rights may be submitted by the Public Procurement Office, the State Audit Institution, public attorney and civil supervisor.

Bodies and organizations under Paragraph 3 of this Article are not obliged to file request for the protection of rights at the request of person under Paragraphs 1 and 2 of this Article, if this person did not exercise own right to file this request.

In case of filing request for the protection of rights referred to in Paragraph 3 of this Article, there accordingly apply the same provisions of this Law that apply in case of request filed by claimant referred to in Paragraph 1 of this Article, except for provisions of Article 156, Paragraph 1 of this Law.

The provisions of the law governing administrative proceedings shall apply to the issues of the protection of rights not defined by this Law.

Time Limits and Manner of Submission of Request for the Protection of Rights

Article 149

Request for the protection of rights is filed to the Republic Commission, and submitted to the contracting authority.

Request for the protection of rights may be filed during the entire public procurement procedure against any action of contracting authority, unless otherwise specified by this Law.

Request for the protection of rights challenging the type of procedure, the contents of the call for competition or tender documents, shall be considered timely if received by contracting authority at latest seven days before the expiry of time limit for the submission of bids, and in low-value public procurement procedure and in qualification procedure, if received by contracting

authority at latest three days before the expiry of time limit for the submission of bids, regardless of the manner of delivery.

In the case of filed request for the protection of rights under Paragraph 3 of this Article, there ensues the delay of deadline for submission of bids.

Provision of Paragraph 3 of this Article does not apply in case of negotiated procedure without invitation to bid, if the claimant or related person did not participate in that procedure.

After contracting authority makes decision on awarding contract, decision on concluding framework agreement, decision on recognizing qualification, or decision on cancelling the procedure, time limit for filing request for the protection of rights shall be ten days from the day of the decision, and in the case of low-value public procurement it shall be five days from the day of the decision.

In the case of negotiated procedure without invitation to bid, time limit for filing request for the protection of rights shall be ten days from the day of publishing decision on awarding contract on the Public Procurement Portal.

The provisions of Article 108, Paragraphs 6 through 9 of this Law, apply to the filing request for the protection of rights.

The claimant shall simultaneously submit a copy of the request for the protection of rights to the Republic Commission.

Request for the protection of rights cannot challenge activities of contracting authority performed in public procurement procedure if the claimant knew or could know the reasons for its submission before the expiry of time limit for submission of request under Paragraph 3 of this Article, and the claimant did not submit it before the expiry of that time limit.

Where in the same public procurement procedure was filed another request for the protection of rights by the same claimant, the second request cannot challenge the activities of contracting authority which the claimant knew or could know during the submission of the previous request.

Contracting authority shall inform all participants in public procurement procedure of the filed request for the protection of rights, namely, post notice on the filed request at the public Procurement Portal, no

later than two days from the day of receiving request for the protection of rights.

Consequences of Submitted Request for the Protection of Rights and Provisional Measures

Article 150

Request for the protection of rights stays further activities of contracting authority in public procurement procedure, until decision is made upon filed request for the protection of rights, except in case of negotiated procedure referred to in Article 36, Paragraph 1, item 3) of this Law, or where the Republic Commission upon proposal of contracting authority decides otherwise.

Where request for the protection of rights was submitted after the contract is concluded in accordance with Article 112, Paragraph 2 of this Law, contracting authority cannot implement public procurement contract until decision is made upon filed request for the protection of rights, unless the Republic Commission upon proposal of contracting authority decides otherwise.

The Republic Commission makes decision under Paragraphs 1 and 2 of this Article in case where delaying the activities of contracting authority in public procurement procedure, or in execution of public procurement contract, would cause great difficulties in the work and business of contracting authority, disproportionate to the public procurement value, or where the interest of the Republic of Serbia would be significantly endangered.

Where contracting authority believes that the conditions referred to in Paragraph 3 of this Article exist, it shall immediately after the reception, without prior checking, deliver the request for the protection of rights as well as all documents from public procurement procedure to the Republic Commission with a reasoned proposal for making decision referred to in Paragraphs 1 or 2 of this Article.

Where the Republic Commission determines that the conditions are fulfilled, it will issue decision on adopting contracting authority's proposal, within five days from the day of the reception of proposal.

Where request for protection of rights was filed in the case of conducting negotiated procedure referred to in Article 36, Paragraph 1, item 3) of this Law, the

claimant may propose to the Republic Commission to issue decision which would prohibit contracting authority to award or perform a public procurement contract.

The Republic Commission shall, within five days, adopt the claimant's proposal if it determines that the awarding or performance of public procurement contract without prior checking of procedure regularity could cause substantial damage to public funds.

Where the Republic Commission issues decision referred to in Paragraph 7 of this Article, contracting authority cannot award or perform the public procurement contract.

After decision referred to in Paragraphs 5 and 7 of this Article is made, the procedure shall continue before the Republic Commission.

Content of Request for the Protection of Rights

Article 151

Request for the protection of rights contains:

- 1) name and address of claimant and contact person;
- 2) name and address of contracting authority;
- 3) information on public procurement that is the subject of the request, or on decision of the contracting authority;
- 4) violations of legislation regulating public procurement procedure;
- 5) facts and evidence substantiating the violations;
- 6) proof of paid tax referred to in Article 156 of this Law;
- 7) claimant's signature.

Where filed request for the protection of rights does not contain all information referred to in Paragraph 1 of this Article, contracting authority shall without delay invite the claimant to supplement request within two days.

Where claimant fails to act within time limit referred to in Paragraph 2 of this Article, or fails to supplement the request in accordance with the request for supplementation, contracting authority shall reject such request by conclusion.

Claimant may file an appeal to the Republic Commission against conclusion of contracting authority referred to in Paragraph 3 of this Article within three days from the day of conclusion receipt to the Republic Commission and simultaneously deliver a copy of the appeal to the contracting authority.

Prior Verification of Request for the Protection of Rights

Article 152

Upon receipt of request for the protection of rights, contracting authority shall verify whether request was filed within time limit and whether it was lodged by person with capacity to file it.

Where request for the protection of rights is untimely or submitted by person not having capacity to file it, contracting authority shall reject such request by conclusion.

Claimant may lodge appeal to the Republic Commission against the conclusion referred to in Paragraph 2 of this Article, within three days from the day of receiving conclusion, and simultaneously deliver a copy of the appeal to the contracting authority.

Further Actions of Contracting Authority after Preliminary Examination of Request for the Protection of Rights

Article 153

After preliminary examination, within five days from the day of the receipt of correct request for the protection of rights, contracting authority will:

1) accept request for the protection of rights by a decision; 2) deliver the response to request for protection of rights and all documents from the public procurement procedure to the Republic Commission, to decide on request for the protection of rights.

Contracting authority shall deliver decision referred to in Paragraph 1 item 1) of this Article to claimant, bidders and the Republic Commission, within three days from the day of decision.

In the case under Paragraph 1, item 2) of this Article, contracting authority shall inform the claimant thereon in writing, within three days from the day of sending request to the Republic Commission.

After receiving written notice on withdrawal of request for the protection of rights, contracting authority or the Republic Commission shall terminate procedure for the rights protection by conclusion.

Continuation of Procedure before the Republic Commission

Article 154

Upon receipt of request for the protection of rights from contracting authority, within three days the Republic Commission shall determine whether:

- 1) request was filed within time limit;
- 2) claimant has legal capacity to file request;
- 3) request contains all necessary information referred to in Article 151 of this Law.

Where the Republic Commission determines that request for the protection of rights does not contain all required data under Article 151 of this Law, it shall invite the claimant to supplement request within two days.

The Republic Commission shall reject by conclusion request for the protection of rights where it determines that some of requirements referred to in Paragraph 1 items 1) to 2) of this Article were not fulfilled, or where claimant fails to supplement request for the protection of rights within given deadline.

Prior to its decisions, the Republic Commission may demand additional documents, data, explanation and opinion from contracting authority, claimant or other participants in the procedure, the Public Procurement Office and other persons, and have insight into other documents of the parties involved in public procurement procedure, as well as to collect other data for the purpose of decision making.

All persons and bodies referred to in Paragraph 4 of this Article shall act within time line set by the Republic Commission in its call to supply documentation, data, clarifications and opinion.

In case that bidder or contracting authority fail to submit requested documentation, data, clarifications and opinion within deadline under Paragraph 5 of this Article, the Republic Commission will make decision according to the state of available evidence in the case, or rather, the suspicion resulting from the

lack of cited evidence will be taken against the defaulting party.

Holding Oral Hearing

Article 155

Parties to the procedure may propose the holding of oral hearing, where the complexity of factual and legal situation calls for such action.

Claimant may propose the holding of oral hearing in request for the protection of rights, and contracting authority may do so in its reply to the request.

The Republic Commission shall decide on proposal for oral hearing.

Oral hearing is public and shall be held in the premises of the Republic Commission.

The public shall be excluded from the process, if necessary to protect business secret in terms of the law governing protection of business secret, or to protect data in terms of the law governing data secrecy.

Minutes shall be kept during oral hearing.

Fees and Procedure Expenses

Article 156

Claimant shall pay a fee to a specified account of the Budget of the Republic of Serbia, in the amount of:

- 1) RSD 15,000 in the procedure of complaint against the conclusion of the Public Procurement Office under Article 83 of this Law;
- 2) RSD 40,000 in a low-value public procurement procedure and in negotiated procedure without prior call for competition;
- 3) RSD 80,000 where request for the protection of rights is filed before opening of bids, or where the estimated value of public procurement or price offered by the bidder to whom was awarded contract, do not exceed RSD 80,000.000;
- 4) 0,1% of the estimated value of public procurement or price offered by the bidder to whom was awarded contract, where that value exceeds RSD 80,000.00.

Each party to the procedure shall bear expenses incurred through its actions.

Where request for the protection of rights is well-founded, contracting authority must compensate the expenses incurred in the process of protection of rights to the claimant, upon its written request.

Where request for the protection of rights is not well-founded, claimant must compensate the expenses incurred in the process of protection of rights to contracting authority, upon its written request.

Where request for the protection of rights is partially adopted, the Republic Commission shall decide whether each party shall bear own expenses, or whether the expenses shall be divided proportionate to the adopted request for the protection of rights.

The parties must precisely state in their requests the expenses whose compensation they request.

Compensation of expenses may be requested up to the making of decision by contracting authority or by the Republic Commission upon the filed request for the protection of rights.

The expenses shall be decided by the Republic Commission. Decision of the Republic Commission shall be enforceable.

Decision of the Republic Commission

Article 157

The Republic Commission decides within the limits of filed request for the protection of rights, and is obliged to respond to all allegations of claimant and to violations which the claimant was unaware of, and which have influenced contracting authority's decision in public procurement procedure.

The Republic Commission shall determine ex officio whether legal requirements for application of certain public procurement procedure were met, whether there was a violation of legal provisions due to which public procurement contract may be annulled, or whether the contract is considered null and void.

In the case under Paragraph 2 of this Article, the Republic Commission may continue the procedure even if the claimant withdraws its request for the protection of rights.

The Republic Commission shall determine evidence which it determines relevant for regular and lawful decision on the filed request for the protection of rights.

By its conclusion, the Republic Commission:

- 1) refuses request for the protection of rights;
- 2) terminates the procedure on the grounds of written notice on withdrawal of request for the protection of rights, received before the decision was made;
- 3) refuses the appeal as inadmissible, untimely, or lodged by an unauthorized person;
- 4) refuses request for initiation of misdemeanor procedure.

By its resolution, the Republic Commission:

- 1) accepts request for the protection of rights and cancels public procurement procedure, wholly or partially, where request for the protection of rights is well-founded;
- 2) refuses request for the protection of rights as unfounded;
- 3) confirms or cancels conclusion of contracting authority;
- 4) confirms or cancels conclusion of the Public Procurement Office;
- 5) adopts or refuses proposal of contracting authority under Article 30, Paragraph 3 of this Law;
- 6) adopts or refuses proposal under Article 150, Paragraph 4, and Article 150, Paragraph 6 of this Law;
- 7) imposes fines;
- 8) cancels the contract;
- 9) decides in the misdemeanor procedure.

The Republic Commission shall explain its decision and order the contracting authority to take certain actions within no later than 25 days, for the sake of correct and lawful completion of relevant public procurement procedure.

Time Limit for making and Delivering Decision

Article 158

The Republic Commission shall decide upon request for the protection of rights by resolution within 20 days from the day of receiving proper request for the protection of rights and no later than 30 days after

submission of correct request for the protection of rights.

The Republic Commission shall decide upon appeal against the conclusion of contracting authority within eight days from the day of receiving the appeal.

The Republic Commission shall decide upon appeal against conclusion of the Public Procurement Office within eight days from the day of receiving the documentation concerning the negative reference.

Time limit under Paragraph 1 of this Article may be extended for a maximum of 15 days, exceptionally and in particularly justifiable cases, of which the claimant and contracting authority are informed, together with explanation for such extension.

The Republic Commission shall deliver resolution under Paragraphs 2 and 3 of this Article to contracting authority, claimant, the selected bidder and the Public Procurement Office, within five days from the day of decision.

Immediately after having it delivered to parties in the procedure, the decision of the Republic Commission shall be published on its website and posted on the Public Procurement Portal.

Contracting authority shall notify all participants in the procedure about decision made by the Republic Commission.

Right to Administrative Dispute

Article 159

No appeal can be lodged against decision of the Republic Commission.

Administrative dispute can be initiated against decision of the Republic Commission within 30 days from the day of receiving decision.

Administrative dispute may be initiated in the case when the Republic Commission has not reached and delivered decision within time limits set forth by Article 158 of this Law.

Initiation of administrative dispute shall not delay the execution of decision of the Republic Commission.

3. Special Competences of the Republic Commission

Delivering Reports and Documentation

Article 160

Contracting authority shall act pursuant to orders of the Republic Commission contained in its decision, within the time limit defined by that decision.

The Republic Commission may demand from contracting authority to submit report, documentation and statements from contracting authorities' representatives on execution of decision of the Republic Commission.

Contracting authority shall submit report, documentation and statements referred to in the previous Paragraph within time limit defined by the Republic Commission.

Control of Contracting Authority

Article 161

Members of the Republic Commission may conduct control of execution of the Republic Commission's decision.

The Republic Commission shall notify contracting authority on intended control, no later than three days before it begins the control.

In case of reasonable doubt of the risk of removal or changing evidence located at contracting authority, an unannounced control may take place at the contracting authority.

Control of contracting authority is performed by at least two members of the Republic Commission panel which was deciding in the procedure in relation with which is to be conducted control.

Minutes shall be kept on the conducted control of contracting authority.

Member of the Republic Commission who conducts the control is authorized to:

- 1) perform inquiry and copying of documents related to the concerned public procurement;
- 2) seal the premises and documents during control;
- 3) take statements from representatives of contracting authority and other employees working with contracting authority, and where special written statement is necessary, also to define time limit for submission of statement to the Republic Commission.

Contracting authority's representatives have the right to be present during the control and give objections, which shall be recorded in the minutes of the control.

Fines

Article 162

The Republic Commission shall impose by its decision the fine to contracting authority in the amount from RSD 80,000 to 1,000,000 and to the responsible person within contracting authority in the amount of RSD 20,000 to 80,000, if contracting authority:

- 1) following the filed request for the protection of rights, fails to act in the manner and within deadline set by Article 153, paragraph 1 of this Law;
- 2) fails to supply additional documentation, data, clarification and opinion pursuant to request of the Republic Commission and within the deadline set by the Republic Commission;
- 3) fails to send report and statement of contracting authority's representative about the executed decision of the Republic Commission;
- 4) fails to facilitate control in accordance with Article 161 of this Law;
- 5) did not act pursuant to the decision of the Republic Commission.

The fine under paragraph 1 of this Article is imposed by the panel of the Republic Commission which decides upon request for the protection of rights.

The Republic Commission shall publish decision under Paragraph 1 of this Article on its website.

Annulment of Contracts

Article 163

The Republic Commission may, on its own initiative, or upon request by claimant or an interested party, annul a public procurement contract where it determines that contracting authority:

- 1) concluded public procurement contract in negotiated procedure without prior call for competition, in absence of requirements set for applying such procedure by this Law and without publishing notice on initiating the procedure and decision on awarding contract;

2) concluded public procurement contract before expiry of time limit for filing request for the protection of rights;

3) concluded public procurement contract after the filing of request for the protection of rights and before the decision of the Republic Commission;

4) concluded public procurement contract acting in contravention with decision of the Republic Commission under Article 150 of this Law;

5) concluded public procurement contract by violating provisions and conditions of framework agreement.

Request for annulment of contract is filed together with request for the protection of rights and within 30 days from the day of learning the reason for annulment, but no later than a year after the contract was concluded.

Annulment means that public procurement contract is terminated, and contracting parties are obliged to return what they had received on the basis of that contract.

If whatever that was received on the basis of the annulled public procurement contract cannot be returned, or if its nature is contrary to it being returned, contracting authority shall pay to bona fide supplier for the supplied goods, provided services or performed works.

If the contract annulment would have disproportionate impact on the work or business of contracting authority or the interest of the Republic of Serbia, the Republic Commission will not annul the public procurement contract, but may reduce the duration of contract, or impose a fine referred to in Article 162 of this Law.

The Republic Commission will file lawsuit for determining nullity the public procurement contract if it learns in any way that the concluded public procurement contract is null and void.

Prohibition of Abusing Request for the Protection of Rights

Article 164

It is prohibited to file request for the protection of rights for purposes other than those for which that right has been recognized.

The Republic Commission shall ex officio pay attention to any abuse of the request for the protection of rights.

It shall be assumed that the claimant, whose three requests for the protection of rights have been refused within six consecutive months, has abused the request for the protection of rights, unless proved otherwise in a procedure before the Republic Commission.

The Republic Commission will impose a fine under Article 162 of this Law to claimant whom it finds to have abused the request for the protection of rights.

Minor Offence Proceedings

Article 165

The Republic Commission conducts minor offence proceedings in the first instance for offences provided for by this Law.

Offence proceedings is conducted by the panel of the Republic Commission in whose work may not participate those members of the Republic Commission who participated in the work of the panel which decided in the procedure for the protection of rights in the same procurement procedure.

Offence proceedings before the Republic Commission are initiated upon request of the Public Procurement Office, the State Audit Institution, another authorized body, or ex officio, immediately after learning of the offence.

First instance decision may be challenged by an appeal lodged to the Higher Misdemeanor Court.

Proposal to Remove Responsible Person from Office

Article 166

The Republic Commission may submit proposal for removal from office the manager or responsible person within contracting authority for whom it establishes that, in spite of imposed fines in the procedure for the protection of rights or in the misdemeanor procedure, they failed to act pursuant to decisions of the Republic Commission, or continued to negligently violate the provisions of this Law.

The proposal for removal from office is to be sent to the body in charge of supervision of work or business of the contracting authority.

4. Special Authorization of Organization for Protection of Competition

Article 167

Organization authorized for protection of competition may ban a bidder or an interested party from participating in public procurement procedure, where it determines that the bidder or the interested party violated competition rules in public procurement procedure within the meaning of the law governing competition protection.

The measure under Paragraph 1 of this Article may last up to two years.

Decision under Paragraph 1 of this Article may be challenged by administrative dispute within 30 days from the day of receiving of decision.

IX. ANNULMENT OF CONTRACTS

Null and Void Public Procurement Contracts

Article 168

Public procurement contracts are null and void:

- 1) if concluded without conducted prior public procurement procedure which contracting authority was obliged to conduct according to the provisions of this Law;
- 2) if concluded in contravention of the provisions of this Law governing prevention of corruption and conflict of interest;
- 3) if contracting authority authorizes a third party, other than contracting authority, to conclude contract in order to avoid the application of this Law;
- 4) if are amendments to the original contract concluded in contravention with the provisions of this Law;
- 5) if concluded contrary to the decision of the Republic Commission.

X. PENAL PROVISIONS

Minor offenses of the Contracting authority

Article 169

Contracting authority shall be fined by RSD 100,000 up to 1,000,000 for an offense, if:

- 1) it fails to protect data on bids and bidders (Article 14);
- 2) it fails to keep records of all phases in public procurement procedure, fails to keep records on concluded public procurement contracts, or fails to keep documentation from public procurement procedure (Article 16);
- 3) it fails to perform communication as prescribed by this Law (Articles 20 and 21);
- 4) it fails to publish or supply tender documents, amendments and supplements to tender documents or response to the request for clarification of tender documents (Articles 62 and 63);
- 5) it fails to observe the provisions on setting and using technical specifications and standards (Articles 70-74);
- 6) it makes decision on awarding contract and the requirements for applying exemption were not fulfilled (Article 107, Paragraph 4);
- 7) it fails to make decision within the deadline under Article 108, Paragraph 2 of this Law;
- 8) after having canceled public procurement procedure due to reasons foreseen in Article 109, Paragraph 2 of this Law, it initiates again a public procurement procedure in the same budget year or within the subsequent six months;
- 9) it fails to enable bidder or applicant to have insight into documentation on conducted public procurement procedure (Article 110);
- 10) it fails to deliver report to the Public Procurement Office (Articles 132 and 133);
- 11) it does not have a public procurement officer, or if it fails to enable employee to acquire certificate for public procurement officer (Article 134).

For committed offense under Paragraph 1 of this Article shall be also fined responsible person within contracting authority by a fine from RSD 30,000 up to 80,000.

Contracting authority shall be fined by RSD 200,000 up to 1,500,000 for an offense, if:

- 1) it conducts procurement without applying this Law when there were no reasons for exemption (Articles 7, 122 and 128);
- 2) it fails to reject bid offered by persons involved in planning of public procurement, tender documents or its parts, or persons who have collaborated with a bidder (Article 23);
- 3) it concludes public procurement contract under existence of conflict of interest (Articles 29 and 30);
- 4) it conducts public procurement procedure which is not open or restricted, without meeting necessary requirements for such procedure (Articles 34-39);
- 5) it fails to adopt procurement plan, does not submit the plan or report on execution of public procurement plan, and if it does not observe the rules on drafting public procurement plan (Article 51);
- 6) it commences public procurement procedure before the conditions for its initiation were met (Article 52);
- 7) it does not publish prior indicative notice or call for competition (Articles 59 and 60);
- 8) it concludes public procurement contract without fulfilling requirements (Article 112);
- 9) it amends public procurement contract where reason for amendment was not an objective circumstance, or where the reason for amendment was not foreseen in tender documents, or where it fails to publish decision, or fails to supply report to the competent state bodies (Article 115);
- 10) after filed request for the protection of rights, it makes decision or concludes contract or, contrary to the decision of the Republic Commission, it concludes or executes public procurement contract (Article 150);
- 11) it does not reimburse expenses of the procedure for the protection of rights to the claimant pursuant to decision of the Republic Commission (Article 156, Paragraph 3);
- 12) it fails to act according to instructions contained in the decision of the Republic Commission within time limit set in that decision (Article 157).

For committed offense under Paragraph 3 of this Article shall be also fined responsible person within

contracting authority by a fine from RSD 80,000 up to 150,000.

Offenses of Bidders

Article 170

Bidder or applicant shall be fined by RSD 100,000 up to 1,000,000 for an offense, if:

- 1) it does not protect secret data on bidder (Article 15);
- 2) it acts contrary to the provisions of Article 25 of this Law;
- 3) it fails to notify contracting authority of alterations to data, or if it supplies inaccurate data on fulfillment of eligibility requirements in the procedure, or gives false information concerning the expert reference (Article 77);
- 4) it hires as subcontractor a person not stated in the bid or in public procurement contract in contravention to the provisions of this Law (Article 80);
- 5) if, based on the decision by the Republic Commission, it does not reimburse expenses of the procedure for protection of rights to contracting authority (Article 156, Paragraph 4).

For committed offense under Paragraph 1 of this Article shall be fined responsible person within bidder or applicant by a fine from RSD 30,000 up to 80,000.

For committed offense under Paragraph 1 of this Article shall be fined entrepreneur as bidder or applicant, by a fine from RSD 30,000 up to 200,000.

For committed offense under Paragraph 1 of this Article shall be fined physical person as bidder or applicant, by a fine from RSD 30,000 up to 80,000.

For committed offense under Paragraph 1, Item 2 of this Article shall be fined person commissioned to work, by a fine from RSD 50,000 up to 150,000.

Statute of Limitations

Article 171

Statute of limitations for offences occurs upon expiry of three years from the day of committed offence under Articles 169 and 170 of this Law.

XI. TRANSITORY AND FINAL PROVISIONS

Initiated Public Procurement Procedures

Article 172

Public procurement procedures initiated before this Law enters into force shall be governed by legislation in force at the time they were commenced.

Decision on recognizing qualification made in restricted and qualification procedure in compliance with legislation applicable by the day of entering into force of this Law, shall cease to apply no later than six months from the day this Law enters into force.

Initiated Procedures for Protection of Rights

Article 173

The procedures of the protection of rights initiated before this Law enters into force shall be governed by the regulations that were in effect when they were commenced.

Harmonization of Activities of the Administration for Joint Services

Article 174

Within six months after this Law enters into force, the Government shall provide adequate working conditions for the Administration for Joint Services in accordance with its competences set forth by this Law, and especially concerning staff and technical capacities.

The Administration for Joint Services shall commence activities of the body for centralized public procurements within eight months after this Law enters into force.

Harmonizing the work of the Public Procurement Office and the work of the Republic Commission

Article 175

Within six months from the date of entry into force of this Law, the Government shall provide adequate conditions for harmonization of work of the Public Procurement Office and the Republic Commission in accordance with their competences under this Law.

The Government shall ensure smooth running of the Public Procurement Portal within two months after this Law enters into force.

On the day of this Law entering into force, the Republic Commission shall continue its work in compliance with the provisions of the Public Procurement Law ("Official Gazette of the RS", No. 116/08) until the day of commencement of application of this Law.

Mandates of President and members of the Republic Commission appointed pursuant to the Public Procurement Law ("Official Gazette of the RS", No. 116/08) shall cease on the day of commencement of application of this Law.

President and members of the Republic Commission will be appointed in accordance with the provisions of this Law within 90 days from the day this Law enters into force.

President and members of the Republic Commission appointed pursuant to the provisions of this Law shall commence their office on the day of commencement of application of this Law.

Adoption of Bylaws

Article 176

Bylaws which are adopted pursuant to authorizations under this Law shall be adopted within three months after this Law enters into force.

Bylaws referred to in Article 21, Paragraph 6, and Article 22, Paragraph 2 of this Law shall be adopted within nine months after this Law enters into force.

Termination of Force of the Previous Law and its Bylaws

Article 177

As of the day of commencement of application of this Law, the Public Procurement Law ("Official Gazette of the Republic of Serbia", No. 116/08) and bylaws adopted pursuant to that Law shall cease to be in force.

As of the day of commencement of application of this Law, Article 5, paragraphs 1 and 5 of the Law on Stimulating the Construction Industry under the Economic Crisis ("Official Gazette of the Republic of Serbia", Nos. 45/2010, 99/2011, and 121/2012) shall cease to be in force

Entry into Force and Commencement of Application

Article 178 This Law shall come into force on the 8th day from the day of its publication in the “Official Gazette of the Republic of Serbia”, and shall be applied beginning with 1 April 2013, with exception of the provisions of Article 78 of this Law, which will be applied from 1 September 2013.