

# **LAW ON PUBLIC PROCUREMENT**

## **Chapter I**

### **General Provisions**

#### **Section 1**

##### **Scope of the Law**

###### **Article 1**

(1) This Law shall regulate the manner and the procedure for awarding public contracts, set the competences of the Public Procurement Bureau (hereinafter: the Bureau), establish and set the competences of the State Appeals Commission and review procedures.

###### **Article 2**

This Law shall ensure the following:

- competition among economic operators;
- equal treatment and non-discrimination of economic operators;
- transparency and integrity in awarding public contracts; and
- rational and efficient utilisation of funds in the contract award procedures.

#### **Section 2**

##### **Definitions**

###### **Article 3**

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

- 1 "Public contract" shall mean a written contract of financial interest, including utilities contracts, concluded between one or more contracting authorities on one hand, and one or more economic operators on the other, the subject of which is the execution of works, delivery of supplies or provision of services pursuant to this Law;
- 2 "Utilities contract" shall mean a public contract awarded for the purpose of carrying out one or more of the activities referred to in Article 176 paragraph (1) of this Law;
- 3 "Contract award procedure" shall mean a procedure carried out by one or more contracting authorities for the purpose of purchasing or acquiring supplies, services or works;
- 4 "Open procedure" shall mean a procedure where any economic operator may submit a tender;
- 5 "Restricted procedure" shall mean a procedure where any economic operator may submit a request to participate, and only those candidates selected by the contracting authority are invited to submit a tender;
- 6 "Competitive dialogue" shall mean a procedure where any economic operator may submit a request to participate and where the contracting authority conducts a dialogue with selected candidates so as to develop one or more suitable alternatives capable of meeting its requirements on the basis of which the selected candidates shall prepare their tenders;
- 7 "Negotiated procedure" shall mean a procedure where the contracting authority consults the selected candidates and negotiates on the terms of contract with one or more of them;
- 8 "Simplified competitive procedure" shall mean a simplified contract award procedure, which is carried out pursuant to Chapter V Section 6 of this Law;
- 9 "Framework agreement" shall mean a written agreement between one or more contracting authorities and one or more economic operators, with the purpose of establishing the essential terms that will govern the public contracts to be awarded in a certain period, in particular regarding the price and, where appropriate, the quantities envisaged;

- 10 "Electronic auction" shall mean a reverse auction realised after an initial full evaluation of tenders, where tenderers have a possibility, exclusively by electronic means, to revise presented prices downwards or to improve certain elements of the tenders, whereby ranking shall be made automatically by electronic means;
- 11 "Tender documentation" shall mean a set of documents, information and conditions that serve as basis for elaborating, submitting and evaluating the requests to participate or the tenders;
- 12 "Technical specification" shall mean a set of technical requirements, regulations, recommendations and standards for the purpose of defining the minimum requirements from a technical point of view to be met by the supplies, services or works which are subject-matter of the public contract;
- 13 "Economic operator" shall mean any natural or legal person or a group of such persons, which offer supplies, services or works on the market;
- 14 "Candidate" shall mean any economic operator who submitted a request to participate in a restricted procedure, negotiated procedure or competitive dialogue;
- 15 "Request to participate" shall mean a proposal by the candidate in order to demonstrate its personal situation, technical and professional qualifications and economic and financial standing, as a condition to obtain an invitation to submit a tender under a restricted procedure, negotiated procedure or a competitive dialogue;
- 16 "Tenderer" shall mean any economic operator that submitted a bid;
- 17 "Participant in design contests" shall mean any economic operator that presented a project within the design contest;
- 18 "Tender" shall mean a proposal given by the tenderer elaborated in the tender documentation, which is basis for concluding a public contract;
- 19 "Technical proposal" shall mean a part of the tender which proves the fulfillment of the technical requirements and the conditions set in the tender documentation;
- 20 "Financial proposal" shall mean a part of the tender containing the price according to the conditions set out in the tender documentation;
- 21 "Alternative tender" shall mean a tender offering other features of the subject to the public contract than those set out in the tender documentation;
- 22 "Contractor" shall mean tenderer or group of tenderers that concluded the public contract;
- 23 "Evaluation of tender" shall mean the evaluation of the tender submitted in the contract award procedure;
- 24 "Acceptable tender" shall mean a timely tender that fully meets all requirements in the tender documentation and technical specifications and technical specifications and matches all criteria, conditions and possible qualification requirements;
- 25 "Head person" shall mean an official heading a state authority, mayor of local authority and manager of a legal entity;
- 26 "Special or exclusive right" shall mean a right granted by a competent authority on a basis of a law or regulations based on a law, the effect of which is to limit the exercise of activities in certain public services field only to one or to a limited number of legal entities;
- 27 "Electronic means" shall mean usage of electronic equipment for the processing (including digital compression) and storage of data, which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- 28 "Electronic system for public procurement - ESPP" shall mean a single computerised system available on the Internet, which is used in order to enable greater efficiency and cost-effectiveness in the award of public contracts;
- 29 "Written" or "in writing" shall mean any expression consisting of words or figures, which can be read, reproduced and subsequently conveyed, as well as information that is conveyed and stored by electronic means, provided that the security of the contents is secured and the signature is identifiable;

30 "Central purchasing body" shall mean a contracting authority pursuant to Article 4 paragraph (1) items a), b) or c) which:

- acquires on its own behalf and for its own account supplies or services intended for one or more contracting authorities; or
- awards public contracts and concludes framework agreements on behalf and for the account of one or more contracting authorities; and

31 "Common Procurement Vocabulary - CPV" shall mean the reference nomenclature applicable to public contracts.

### **Section 3**

#### **Contracting authorities**

##### **Article 4**

(1) Contracting authorities shall be:

- a) state and local government authorities and the City of Skopje;
- b) legal entities established for specific purpose for meeting public interest needs, which are of non-industrial or non-commercial nature, and which are mainly financed by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities, or which are subject to control of their operations by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities, or have more than half of their managing or supervisory board members appointed by the contracting authorities referred to in paragraph (1) item a) of this Article or by other such legal entities;
- b) legal persons established by one or several contracting authorities referred to in paragraph (1) items a) and b) of this Article;
- d) public enterprises, joint stock companies and limited liability companies in which the contracting authorities referred to in paragraph (1) items a), b) and c) of this Article have dominant direct or indirect influence through ownership, i.e. if they hold major equity share in the company, have majority vote of shareholders and appoint more than half of the managing or supervisory board members of the enterprise or the company, and which carry out one or more activities referred to in Chapter IX Section 1 of this Law, in the cases when they award public contracts or conclude framework agreements for the purpose of carrying out such activities; and
- e) any legal entity, other than those referred to in paragraph (1) items a), b) c) and d) of this Article, which carries out one or more activities referred to in Chapter IX Section 1 of this Law on the basis of special or exclusive right pursuant to Article 3 item 24 of this Law, in the cases when it awards public contracts or concludes framework agreements for the purpose of carrying out such activities.

(2) The Government of the Republic of Macedonia (hereinafter: the Government) shall prescribe the indicative list of contracting authorities referred to in paragraph (1) of this Article.

### **Section 4**

#### **Application and exclusions**

##### **Article 5**

(1) This Law shall apply when:

- awarding public contracts, including the utilities contracts;
- concluding framework agreements;
- awarding contracts by other entities, in cases when the contract is directly financed or subsidised by more than 50% by a contracting authority;
- awarding contracts by a contracting authority on behalf and for the account of other natural or legal person, in the cases when the contract is directly financed or subsidised by more than 50% by the contracting authority; and
- organizing design contests.

(2) In the cases referred to in paragraph (1) indent 3 of this Article, the contracting authority, when awarding public contracts, shall mandatory impose an obligation for application of the provisions under this Law.

#### **Article 6**

(1) The contracting authority in the field of defence shall apply this Law, unless:

- it may lead to disclosure of information that threatens the essential security interest of the country, or
- it threatens the essential security interest of the country, which is related to the manufacture or trade in weapons, ammunition and military materials and systems pursuant to a law.

(2) For procurement in the field of defense, the contracting authority shall be obliged to inform the Government, by end-January of the current year at the latest, about its annual procurement plans in the current year.

(3) The Government shall prescribe the procurements referred to in paragraph (2) of this Article.

#### **Article 7**

(1) This Law shall not apply to public contracts when:

- they are classified as top secret by a competent authority pursuant to regulations governing classified information; or
- their execution must be accompanied by special security measures in accordance with the applicable regulations.

(2) The contracting authority shall inform the Government about any contract awarded pursuant to paragraph (1) of this Law.

#### **Article 8**

This Law shall not apply to public service contracts that:

- include acquisition or rental of land, buildings or other immovable property or the rights thereon; except for contracts for procurement of financial services related to the purchasing or renting contract;
- refer to purchase, development, production or co-production of program materials by radio or TV broadcasters and for broadcasting time of TV and radio programs;
- refer to arbitration and conciliation services;
- are financial services related to the issue, trading or transfer of securities or other financial instruments, brokerage services and services rendered by the National Bank of the Republic of Macedonia;
- refer to employment contracts; and
- refer to R&D services, other than those where the benefits are used exclusively for carrying out functions and competences of contracting authorities, provided the service provided is fully paid by the contracting authority.

#### **Article 9**

(1) This Law shall not apply to:

- public contracts for which funds have been provided by international organisations (donors and lenders) or from third countries, provided that special terms and conditions for awarding public contracts are prescribed by them,
- public contracts awarded for the needs of the Army of the Republic of Macedonia sent to military exercises, training or humanitarian missions or peacekeeping operations and collective defense operations outside the territory of the Republic of Macedonia, according to a ratified international agreement; and

- public supply or works contracts awarded pursuant to an international agreement concluded between the Republic of Macedonia and one or more countries and intended for joint implementation or exploitation of a work by the signatory states or public service contracts intended for joint implementation or exploitation of projects by the signatory states, provided the international agreement stipulates procedural rules for awarding the contracts.

(2) Before carrying out the procurements referred to in paragraph (1) indent 2 of this Article, the contracting authority is obliged to obtain an approval from the Government.

#### **Article 10**

This Law shall not apply to public service contracts awarded by a contracting authority to another contracting authority or legal persons established by one or more contracting authorities, in case they have exclusive rights to provide such services published in an official publication.

#### **Article 11**

This Law shall not apply to purchases the total amount of which does not exceed EUR 500 in Denar equivalent on monthly basis, without value added tax (hereinafter: VAT).

### **Chapter II**

#### **Public Procurement Bureau**

#### **Article 12**

The tasks related to the development of the public procurement system, as well as the provision of rationality, efficiency and transparency in the procurement processes shall be carried out by the Public Procurement Bureau as a government administration body within the Ministry of Finance.

#### **Article 13**

(1) The Bureau shall be managed by a Director who represents the Bureau, organises and provides legal and efficient execution of duties and tasks and undertakes measures within the competencies of the Bureau pursuant to the Law.

(2) The Government of the Republic of Macedonia shall appoint and dismiss the Director upon the proposal by the Minister of Finance for a period of four years.

(3) The Director of the Bureau should have university education in the area of law or economics and at least 5 years of working experience.

(4) The Director may be dismissed before the period referred to in paragraph (2) of this Article expires if he/she fails to work pursuant to this Law and other laws, if he/she resigns or if his/her performance is unsatisfactory.

#### **Article 14**

(1) The Bureau shall:

- give proposals to the Minister of Finance for adopting legal and other acts in the field of public procurement;
- monitor and analyze the enforcement of the laws and other public procurement regulations, the functioning of the public procurement system, and shall initiate modifications for improving the public procurement system;
- provide opinions regarding the provisions and the enforcement of this Law;
- advise and assist contracting authorities and economic operators;
- prepare standard tender documentation and standard model forms for the contract award procedures laid down in this Law;
- keep and update records of the public contracts awarded, and make them available on its website;
- collect, process and analyze public procurement data and draft statistical reports;

- immediately inform the contracting authorities, and if necessary, the competent authorities concerned upon detecting irregularities from the notices received;
- determine minimum requirements for professional qualifications for the persons performing professional activities in the field of public procurement;
- organise and conduct training for civil servants and other competent persons with respect to public procurement;
- manage and operate its website and the ESPP;
- cooperate with international institutions and other foreign entities with respect to the activities related to development of the public procurement system;
- realise international cooperation regarding the public procurement system and plan and coordinate foreign technical assistance in this field;
- submit annual report to the Government regarding the functioning of the public procurement system;
- give guidelines and prepare manuals and comments on the public contract award rules and publish a bulletin; and
- other tasks pursuant to this Law.

(2) The statistical reports referred to in paragraph (1) indent 7 of this Law shall contain data relating to:

- number and value of concluded public contracts;
- categories of contracts by types of used procedures, by subject-matter of the contract and by countries of establishment of contractors; and
- number and value of concluded contracts and the conditions stipulated in this Law justifying the use of negotiated procedure with or without prior publication of a contract notice.

(3) The Bureau shall cooperate with the contracting authorities referred to in Article 4 of this Law and with companies, professional research institutions, associations or experts in certain areas regarding the public procurement.

### **Chapter III**

#### **Types of public contracts**

##### **Article 15**

Public contracts may be: public supply contracts, public service contracts or public works contracts.

##### **Article 16**

(1) Subject to public supply contracts is the procurement of one or more products through purchase, hire purchase, or lease, with or without option to buy the products.

(2) Public contract having the main subject of which is the procurement of goods, and which also covers setting and installation operations shall be considered as a public supply contract.

##### **Article 17**

(1) Subject to public service contracts is the delivery of one or more services, as follows:

- maintenance and repair services, land or air transport services, research and development services, market research and public opinion survey, cleaning services, property management services, insurance, banking and investment, telecommunications, IT, accounting, auditing, bookkeeping, consultant, architectural, engineering, advertising, publishing, printing and sanitation services; or
- railway and water transport services, temporary employment services, hotel, catering, legal, investigative, education, health, social, recreational, cultural, sport and other services not mentioned in paragraph (1) indent 1 of this Article.

(2) When awarding public service contracts referred to in paragraph (1) indent 2 of this Article with estimated value exceeding EUR 20,000 in Denar equivalent, excluding VAT, only Articles 33, 34, 35, 36 and 55 of this Law shall apply.

(3) In the cases of awarding public service contracts referred to in paragraph (1) indent 2 of this Article with estimated value below EUR 20,000 in Denar equivalent, excluding VAT, only Article 103 of this Law shall apply.

(4) Services referred to in paragraph (1) of this Article shall be regulated in more detail by the Government.

(5) Public contract the main subject of which is the provision of services, and which also includes works activities shall be considered as public service contract.

#### **Article 18**

(1) Subject to public works contracts shall be:

- execution of construction activities or execution of a work;
- design and execution of construction activities or design and execution of a work; or
- realisation, by any means, of a work corresponding to the requirements specified by the contracting authority and which, per se, fulfils certain technical and economic function.

(2) The Government shall prescribe the construction activities subject to the public works contracts.

#### **Article 19**

(1) Should the subject of a public service contract be services referred to in Article 17 paragraph (1) indents 1 and 2 of this Law, the provisions of Article 17 paragraph (2) of this Law shall apply only if the estimated value of the services referred to in Article 17 paragraph (1) line 2 of this Law is higher than the estimated value of the services referred to in Article 17 paragraph (1) indent 1 of this Law.

(2) The contracting authority shall not combine services referred to in Article 17 paragraph (1) indents 1 and 2 of this Law in the same public service contract for the purpose of applying Article 17 paragraph (2) of this Law when awarding the public contract.

#### **Article 20**

If the subject of the public contract includes purchase of supplies and services shall be considered as:

- public supply contract, if the estimated value of the supplies is higher than the estimated value of the services concerned; or
- public service contract, if the estimated value of the services is higher than the estimated value of the supplies concerned.

### **Chapter IV**

#### **Common provisions applicable to contract award procedures**

##### **Section 1**

##### **General rules**

##### **Article 21**

(1) The contracting authority shall award public contracts by applying open or restricted procedure.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may award public contracts by applying other procedures only in the cases laid down in this Law.

(3) The contracting authority shall organise design contest when it acquires a plan or a project, mainly in the area of spatial or urban planning, architecture and civil engineering or data processing, selected by a jury after being put out to competition.

##### **Article 22**

(1) The contracting authority may carry out open and restricted procedures by electronic means using the ESPP.

(2) The manner of utilizing the ESPP shall be prescribed by the Minister of Finance.

#### **Article 23**

(1) The Government may decide to set up a central purchasing body for awarding certain public supply, service or works contracts.

(2) The contracting authorities may purchase supplies, services or works from or through the central purchasing body, in which case it shall be deemed to have awarded a public contract in compliance with this Law.

#### **Article 24**

(1) Joint contract award procedure shall be carried out through coordination, through one contracting authority on behalf of a group of contracting authorities that need the same type of contract, upon prior concluded agreement for carrying out joint contract award procedure.

(2) The agreement for carrying out joint contract award procedure shall define all rights and obligations of the contracting authorities with regard to the economic operator who will be awarded the public contract.

#### **Article 25**

The contracting authority shall ensure protection of the information which the economic operator has designated as confidential, in particular where commercial secrecy and intellectual property is concerned.

#### **Article 26**

(1) On the basis of determined financing sources, the contracting authority shall adopt a procurement plan covering its procurement needs for the current year by types of supplies, services and works according to the CPV, setting the time it expects to initiate the procedure, the estimated value of the contracts and the type of procedure to be used for each contract.

(2) The contracting authority shall adopt the plan referred to in paragraph (1) of this Article by the end of January of the current year.

(3) If necessary, the contracting authority may amend or modify the annual procurement plan during the year, in accordance with the planned funds allocated for public contracts.

(4) The Minister of Finance shall prescribe the format and the contents of the annual procurement plan.

### **Section 2**

#### **Estimating the value of public contracts**

#### **Article 27**

(1) The contracting authority shall not divide the public contract in multiple separate contracts with lower value, nor apply methods for calculating the estimated value of the contracts for obtaining undervalued estimation of the contract, so as to avoid certain procedure under this Law.

(2) The manner of estimation of the value of public contracts shall be prescribed by the Minister of Finance.

### **Section 3**

#### **Public procurement decision**

### **Article 28**

- (1) The contracting authority shall decide on the need for awarding a public contract.
- (2) The decision shall set the subject (type) and quantities required, the amount and source of funds required to execute the contract, the manner and the procedure for awarding the public contract and appoint the chairman and members of the procurement commission (hereinafter: the commission), their number and deputies, as well as possible external experts to be hired, if necessary.
- (3) The decision shall also state the reasons and justification for carrying out negotiated procedure or competitive dialogue, if such procedures are used by the contracting authority, as well as the reasons of urgency or reducing the time limits laid down in this Law.

### **Article 29**

(1) The commission, depending on the contract award procedure used, shall perform the following tasks:

- opening of bids;
- keeping minutes;
- evaluating the qualifications of economic operators;
- determining the selected candidates;
- checking the technical proposals of tenderers regarding the conditions and requirements set in the technical specifications or the descriptive documentation;
- checking the financial proposals of tenderers regarding the price, financial and other conditions set in the tender documentation;
- determining unacceptable tenders, as well as the reasons why they are unacceptable;
- determining acceptable tenders;
- proposing the winning tender;
- preparing a procedure outcome report;
- notifying participating economic operators about the outcome of the procedure; and
- other tasks pursuant to this Law.

(2) The person in charge at the contracting authority shall appoint persons or an organisational unit to perform the tasks related to the preparation and implementation of the contract award procedures, as well as the contract execution and management.

### **Article 30**

(1) External experts may be hired to help the commission to check and evaluate technical, financial and other aspects related to tenders. They shall not have the right to decide for the commission.

(2) External experts shall prepare a report about the technical, financial and other aspects related to the tender for the purpose of facilitating the decision making process of the commission during evaluation. The reports of the external experts shall be part of the procedure outcome report.

### **Article 31**

During evaluation, the commission and the external experts shall be obliged to keep secret the contents of tenders and any other information sent by the tenderers or the candidates.

## **Section 4**

### **Rules for preparation of the tender documentation**

### **Article 32**

(1) The contracting authority shall state within the tender documentation any request, rules, criteria, and other necessary information, so as to ensure that the economic operator complete, just and precise information regarding the way of conducting the contract award procedure.

(2) The tender documentation shall contain the following as a minimum:

- general information regarding the contracting authority, particularly the address, telephone number, fax number, e-mail, contact persons, communication means, etc;

- instructions regarding the mandatory time limits and the conditions required for participating in the contract award procedure;
- if required, the minimum qualification requirements and documents for determining the compliance with the criteria and the documentation that should be submitted by the tenderers or candidates so as to prove that they meet the selection criteria;
- technical specifications or, in case of competitive dialogue and negotiated procedure, descriptive documentation;
- instructions regarding the elaboration and submission of the technical and financial proposal;
- detailed and complete information regarding the contract award criteria applicable for establishing the winning tender in line with Chapter VII Section 3 of this Law;
- instructions regarding the review procedures; and
- information regarding the compulsory clauses of the contract.

(3) The contents of the tender documentation shall be stipulated in detail by the Minister of Finance.

### **Article 33**

(1) Technical specifications shall define the following characteristics: quality levels, technical and performance levels, requirements regarding the impact on the environment and the safety for use as well as dimensions, terminology, symbols, tests and testing methods, packaging, marking and labelling, and instructions for the use of the product, quality assurance systems, conditions and procedures for evaluation of conformity with the relevant standards and other such requirements.

In case of works contracts, the technical specifications can also refer to design and evaluation, examination, inspection and reception conditions of the works or techniques, procedures and methods of execution as well as to other conditions with technical character that the contracting authority is able to describe, pursuant to the applicable law and general or specific regulations, related to the delivered works, materials or other elements of those works.

(2) The contracting authority shall define the technical specifications:

- by reference, as a rule, in the following order of preference: application of Macedonian standards being in accordance with the European standards, European technical approvals, common technical specifications used in the European Union, international standards or other technical references established by the European standardisation bodies. When the abovementioned are not stipulated, the technical specifications shall be defined by reference to Macedonian standards, national technical approvals or national technical specifications relating the use of the products or the design or the execution of the works. Each reference shall be accompanied by the words 'or equivalent';
  - in terms of performance or functional features of the subject to the contract described sufficiently accurate in order to ensure that the tenderers exactly understand the subject-matter of the contract, and that the contracting authority selects the best tender;
  - in terms of performance or functional requirements referred to in indent 2 of this paragraph, by referring to standards, technical approvals, common technical specifications referred to in indent 1 of this paragraph as a possible manner of compliance with the features or functionality requirements; or
  - by reference to the specifications referred to in indent 1 of this paragraph for certain features, and by reference to the performance or functional characteristics referred to in indent 2 of this paragraph for the remaining features.

### **Article 34**

(1) In the cases referred to in Article 33 paragraph (2) indent 1 of this Law, the contracting authority shall not reject a tender if the products, services or works do not comply with the specifications to which the contract refers, if the tenderer proves that the tender adequately meets the requirements of the contracting authority.

(2) When the contracting authority defines the technical specifications by specifying the performance or functional characteristics, no tender shall be rejected if the tenderer demonstrates that the products, services or works offered ensure the accomplishment of the performance or functional characteristics and they comply with the following:

- a Macedonian standard being compliant with European standard;
- European technical approval;
- a common technical specification used in the European Union;
- an international standard; and
- other technical reference systems established by European standardisation bodies.

(3) An adequate mean to prove the conformity with the technical specifications required, may be the technical dossier of the manufacturer or a test or calibration report issued by an accredited testing or calibration laboratory or a product and service certification body or an inspection body that ensures the application of generally accepted standards.

#### **Article 35**

(1) The performance and functional characteristics referred to in Article 33 paragraph (2) indent 2 of this Law defining the technical specifications may also include environmental characteristics.

(2) When the contracting authority lays down environmental characteristics in the performance and functional characteristics, it may use detailed specifications, or, if necessary, parts thereof, as defined by the European or (multi-)national „eco-labels“, or by any other eco-label, provided that the following conditions are met:

- those specifications are appropriate to define the characteristics of the supplies or services that represent the subject-matter of the public contract;
- the supplies or services to meet the criteria for acquiring the „eco-labels“ pursuant to the Environmental Law;
- the „eco-labels“ are obtained in a manner and procedure pursuant to the Environmental Law; and
- „eco-labels“ are available to all interested parties.

(5) The contracting authority may indicate that the products and services bearing “eco-label” would be considered fully compliant with the technical specifications in the tender documentation. The contracting authority shall not consider a technical proposal as non-compliant with the technical specifications solely for the reason that the products or services do not bear an "eco-label", provided the tenderer proves, by any appropriate means, that the products or services correspond to the requested technical specifications. The contracting authority shall be obliged to accept the certificates of recognised bodies established in any EU Member State.

(4) An adequate manner to prove the conformity with the technical specifications required may be the technical dossier of the manufacturer or a test or calibration report issued by an accredited testing or calibration laboratory or a product and service certification body or an inspection body that ensures the application of generally accepted standards.

#### **Article 36**

(1) The contracting authority shall not define the technical specifications indicating to a specific manufacture, production, a particular process, or trademarks, patents, types or a specific origin with the effect of favouring or disqualifying certain economic operators or certain products.

(2) Notwithstanding paragraph (1) of this Article, such reference shall be allowed only in an exceptional situation where a sufficiently precise description of the subject-matter of the contract for all interested parties is not possible by applying the provisions of Article 33 and 34 of this Law and it should be accompanied by the words „or equivalent“.

#### **Article 37**

(1) The contracting authority shall make the tender documentation available to any interested economic operator:

- by using electronic means for the purpose of providing direct and full access to the tender documentation; or
- in hard copy or by using magnetic medium to all economic operators who requested so, or who are invited to submit a tender.

(2) In the cases referred to in paragraph (1) indent 2 of this Article, the contracting authority shall send the tender documentation within 3 days from the date of receiving the request, and if it established a fee for obtaining the tender documentation, it shall deliver the tender documentation immediately after the economic operator pays the fee.

(3) The fee for obtaining the tender documentation shall only cover the costs for copying and/or sending the tender documentation.

#### **Article 38**

(1) The contracting authority may amend or modify the tender documentation on its own initiative or on the basis of questions asked by economic operators within the period referred to in paragraph (3) of this Article.

(2) The contracting authority may extend the time limit for submitting tenders or requests to participate according to the amendments and modifications made to the tender documentation.

(3) The contracting authority shall send free of charge the amendments and modifications to the tender documentation to all economic operators that obtained tender documentation within no latter than 6 days before the time limit for submitting tenders or requests to participate; or, in case the contracting authority made available the tender documentation by using electronic means for the purpose of direct and full access, it shall make available the amendments and modifications in the same manner as the tender documentation.

(4) If the contracting authority finds that the tender documentation has major shortcomings or faults, it shall cancel and/or repeat the contract award procedure.

#### **Article 39**

(1) The contracting authority shall reply to all additional questions asked by the economic operators, provided that such questions were submitted within at least 6 days before the time limit for submitting tenders or requests to participate.

(2) The contracting authority shall reply to the questions asked as soon as possible in writing, and shall send it to all economic operators that obtained the tender documentation free of charge, without stating the name of the economic operator that asked the question; or in case the contracting authority made available the tender documentation by using electronic means for the purpose of direct and full access, it shall make available the reply in the same manner as the tender documentation.

### **Section 5**

#### **Participation in the contract award procedures**

#### **Article 40**

Any economic operator shall have the right to participate in the contract award procedure, individually or as a member in a group of economic operators.

#### **Article 41**

Economic operators may join together and form a group with the purpose of presenting a joint request to participate or a joint tender, not having the obligation to assume a specific legal form of their association.

#### **Article 42**

The contracting authority may require the group of economic operators to assume a specific legal form of their association if the joint tender is selected as winner, for the purpose of executing the contract.

#### **Article 43**

Persons who participated in the preparation of the tender documentation cannot participate as tenderers or members of a joint group in the contract award procedure.

#### **Article 44**

Persons who take part or assist in the evaluation of requests to participate or tenders, as well as the head person at the contracting authority, cannot act as candidates, tenderers, subcontractors or members in a group of tenderers in the respective contract award procedure. In such case, the request to participate or the tender of the candidate or the tenderer shall be rejected from the contract award procedure.

#### **Article 45**

(1) In the tender documentation, the contracting authority may require that tenderers state in their tenders the part of the contract to be executed by subcontractors.

(2) The tenderer shall be fully liable to the contracting authority for execution of the public contract regardless of the number of subcontractors hired.

#### **Article 46**

(1) The candidate or tenderer may participate in the contract award procedure only with one request to participate or tender.

- (2) All requests to participate or tenders shall be rejected if the candidate or the tenderer:
- participates in more than one individual and/or joint request to participate or tender; or
  - participates as subcontractor in another individual and/or joint request to participate or tender.

(3) The economic operator may participate as subcontractor in more than one request to participate or tender.

### **Section 6**

#### **Guarantees**

#### **Article 47**

(1) The contracting authority may require the tenderers to provide tender guarantee in the form of a bank guarantee or deposited funds and shall mandatorily state this in the tender documentation.

(2) The tender guarantee value shall not exceed 3% of the tender value.

(3) The tender guarantee shall be submitted together with the tender in original form.

(4) The contracting authority may collect the tender guarantee if the tenderer:

- withdraws its tender before the expiry of the validity period of the tender guarantee;
- fails to accept correction of arithmetical errors made by the commission;
- fails to sign the public contract after being selected as winner; or
- fails to provide the performance guarantee, if required by the contracting authority in the tender documentation.

- (5) The tender guarantee should be valid at least 14 days after the tender validity period.
- (6) In exceptional cases, the contracting authority may ask the tenderers to extend the guarantee validity period.
- (7) The tender guarantee shall be returned to the unsuccessful tenderer within its validity period.
- (8) The tender guarantee shall be returned to the winning tenderer after it signs the public contract and submits the performance guarantee, if required.

#### **Article 48**

- (1) The contracting authority may require the winning tenderer to provide performance guarantee in the form of a bank guarantee, stating this in the tender documentation.
- (2) The performance guarantee may range from 5% to 15% of the public contract value.
- (3) Notwithstanding paragraph (1) of this Article, the contracting authority shall not require performance guarantee when organizing design contests or awarding public contract for consultant services.
- (4) The performance guarantee should be valid until the public contract is fully executed.
- (5) The performance guarantee shall be returned to the contractor within 14 days after the public contract is fully executed.
- (6) If the public contract execution has been extended or its value has increased, the contractor should respectively extend the validity period of the performance guarantee or increase its value.

#### **Article 49**

- (1) The contracting authority, pursuant to the provisions of the public contract, may provide for an advance payment.
- (2) The advance payment cannot exceed 20% of the public contract value for the contracting authorities referred to in Article 4 paragraph (1) items a) and b) of this Law.
- (3) Prior to the advance payment referred to in paragraph (2) of this Article, the contracting authority shall require a bank guarantee from the contractor in the amount of the agreed advance payment.

#### **Article 50**

The contracting authority is obliged to require in the tender documentation all bank guarantees to be issued by banks which are acceptable to it.

### **Section 7**

#### **Publication rules**

##### **Subsection 1**

#### **Publication of notices**

##### **Article 51**

- (1) The contracting authority shall provide transparency when awarding public contracts, organizing design contests or concluding framework agreements, by publishing prior information notice, contract notice, contract award notice and/or notice on cancellation of the contract award procedure pursuant to this Law.
- (2) For the purpose of precisely determining the subject-matter of the contract or the framework agreement, the contracting authority shall use the CPV, by entering the respective code in the notices pursuant to this Law.
- (3) The Government shall adopt the CPV.
- (4) The Minister of Finance shall prescribe the format and the contents of the notices referred to in paragraph (1) of this Article.

##### **Subsection 2**

### **Prior information notice**

#### **Article 52**

(1) The contracting authority may publish prior information notice if it applies the provisions of Article 65 paragraph (2) or Article 75 paragraph (2) of this Law.

(2) Publication of a prior information notice shall not oblige the contracting authority to carry out the respective contract award procedure.

(3) The prior information notice shall be published on the website of the Bureau.

#### **Subsection 3**

### **Contract notice**

#### **Article 53**

The contracting authority shall publish a contract notice when:

- it launches an open procedure, a restricted procedure, a competitive dialogue or a negotiated procedure with prior publication of a contract notice; or
- it organises design contest.

#### **Article 54**

(1) The contract notice for open procedure, restricted procedure, competitive dialogue, negotiated procedure with prior publication of a contract notice and design contest shall be simultaneously sent for posting on the website of the Bureau and for publication in the Official Gazette of the Republic of Macedonia. In case the contract notice is not sent at the same time, time limits shall start running from the day the contract notice was sent to the Official Gazette of the Republic of Macedonia.

(2) If the estimated value of the public contract, excluding VAT, exceeds EUR 500,000 Denar equivalent for supplies and services, and EUR 2,000,000 for works, the contract notice shall also be published in the Official Journal of the European Union or in a respective business publication or technical or specialised magazine available to the broad international expert and other public.

(3) The contracting authority may also publish the contract notice pursuant to this paragraph if the estimated value of the public contract is below the thresholds set therein.

(4) The Official Gazette of the Republic of Macedonia and Bureau shall be obliged to publish the contract notice within 5 working days from receipt of the notice.

#### **Subsection 4**

### **Contract award notice**

#### **Article 55**

The contracting authority shall submit a contract award notice to the Bureau for posting on its website within 30 days after:

- awarding public contract or concluding framework agreement after completing an open procedure, restricted procedure, competitive dialogue, or negotiated procedure with or without prior publication of a contract notice;
- realizing design contest by selecting the best competitor; and
- procurement of services referred to in Article 17 paragraph (1) indent 2 of this Law, if the estimated the value of which, excluding VAT, exceeds EUR 20,000 in Denar equivalent.

### **Section 8**

#### **Communication**

#### **Article 56**

(1) Any request, information, notice and other documents set by this Law shall be communicated in writing.

(2) Any document shall be registered at the moment of sending, or at the moment of receipt.

#### **Article 57**

(1) Documents shall be communicated by:

- post;
- fax; or
- electronically.

(2) The contracting authority shall set out the communication manners it intends to use when implementing the contract award procedure in the tender documentation.

(3) The sender shall be obliged to send the document sent by fax also by post or electronically within two days after it was sent by fax.

#### **Article 58**

(1) Instruments used for electronic communication, as well as their technical characteristics, shall be non-discriminatory, generally available to any economic operator and interoperable with information and communication technologies in general use.

(2) In case the documents are delivered electronically, the regulations regarding electronic signature shall apply.

#### **Article 59**

(1) The economic operator shall submit its tender or request to participate by post or directly to the address pointed out by the contracting authority, or, if the contracting authority provides such possibility, electronically.

(2) If the contracting authority has established that tenders or requests to participate should be submitted only by post or directly, they shall be submitted in a sealed envelope bearing the words „Do not open“ in the upper left corner, as well as the reference number of the contract notice, name of the contracting authority and its address.

(4) The request to participate or the tender shall be submitted in one original form, every page of which signed by the head person at the tenderer or by an authorised signatory. In the tender documentation, the contracting authority may require the economic operators to send certain number of copies of the tender in addition to the original.

#### **Article 60**

(1) The contracting authority may establish that requests to participate or tenders be transmitted electronically only if:

- the information regarding electronic transmission of data, including encryption, are available for any interested economic operator; and
- the electronic devices for receipt of data guarantee the integrity and confidentiality of the received documents.

(2) Economic operators may submit certificates, statements and other documents for establishing their qualifications in hard copy before the expiry of the time limit for submitting tenders or requests to participate expires, if they are not available in electronic format.

#### **Article 61**

Electronic devices shall be deemed as guaranteeing the integrity and confidentiality of the received documents if their technical characteristics or specifically used procedure meet the following conditions:

- the moment of receiving the tenders or requests to participate can be precisely determined;

- no one can access the received data before the expiry of the time limit for submitting tenders;
- in the case of breach of the access restriction to the received data referred to in paragraph (1) indent 2 of this Article, the unauthorised access is easily detectable;
- the access to the received data in all phases of the process is possible only after the opening time established according to this Law; and
- after the date of opening of the received data, the access to the data is possible only for authorised persons.

## **Section 9**

### **Preventing conflict of interest**

#### **Article 62**

The Law on Prevention of Conflicts of Interest shall accordingly apply to the contract award procedures for the purpose of preventing conflict of interests.

#### **Article 63**

When executing the public contract, the contractor shall not hire persons involved in the evaluation of tenders submitted in the respective contract award procedure during the period of the validity of the contract. If such case occurs, the public contract shall be null and void.

## **Chapter V**

### **Types of contract award procedures**

#### **Section 1**

#### **Open procedure**

#### **Article 64**

- (1) Open procedure shall be carried out in one phase.
- (2) Notwithstanding paragraph (1) of this Article, the contracting authority may use electronic auction as an additional phase, publishing it in the contract notice and the tender documentation.

#### **Article 65**

(1) The time limit for submitting the tenders cannot be less than 52 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia or for posting it on the website of the Bureau, if the estimated value of the contract, excluding VAT, exceeds:

EUR 130,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items a), b) and c) of this Law; or

EUR 200,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items d) and e) of this Law.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may reduce the time limit for submitting the tenders to no less than 36 days if it has published prior information notice.

(3) In case of a prior information notice, the reduction of the period referred to in paragraph (2) of this Article shall be allowed only when the prior information notice includes all information stipulated for the contract notice to the extent that this information is available at the time the prior information notice was published; and if the prior information notice was sent for publishing up to 12 months and at least 52 days before sending the contract notice for publication.

(4) Notwithstanding paragraphs (1) and (2) of this Article, when the contracting authority publishes the entire tender documentation electronically and allows direct access without restrictions for all economic operators, it may reduce the time limit referred to in paragraphs (1) and (2) of this Article by 5 days. The tender documentation shall be published at the same time when sending the contract notice for publication.

(5) The reduction referred to in paragraph (4) of this Article shall be allowed only when the contract notice indicates the Internet address where the tender documentation is available online.

#### **Article 66**

(1) If the estimated value of the public contract is below the thresholds referred to in Article 65 paragraph (1) of this Law, the time limit for submitting the tenders cannot be less than 26 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau.

(2) Notwithstanding paragraph (1) of this Article, when the contracting authority publishes the entire tender documentation electronically and allows direct access without restrictions for all economic operators, it may reduce the time limit referred to in paragraph (1) of this Article by 5 days. The tender documentation shall be published at the same time when sending the contract notice for publication.

(3) The reduction referred to in paragraph 2 of this Article is allowed only when the contract notice indicates the Internet address where the tender documentation is available online.

#### **Article 67**

Any economic operator has the right to request and receive tender documentation.

### **Section 2**

#### **Restricted procedure**

#### **Article 68**

(1) Restricted procedure shall be carried out in two phases:

- first phase (pre-selection phase), where the contracting authority selects qualified candidates on the bases of the selection criteria; and
- second phase, where the contracting authority evaluates tenders of selected candidates, on the basis of the contract award criteria.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may use electronic auction as an additional phase, publishing it in the contract notice and the tender documentation.

#### **Article 69**

(1) The time limit for submitting the requests to participate cannot be less than 37 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau, if the estimated value of the contract, excluding VAT, exceeds:

- EUR 130,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items a), b) and c) of this Law; or
- EUR 200,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items d) and e) of this Law.

(2) Notwithstanding paragraph (1) of this Article, due to reasons of urgency requiring execution of contracts within periods less than the ones set under paragraph (1) of this Article, the contracting authority may reduce the time limit by no more than 15 days.

#### **Article 70**

If the estimated value of the public contract is below the thresholds referred to in Article 69 paragraph (1) of this Law, the time limit for submitting the requests to participate cannot be less than 16 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau.

#### **Article 71**

(1) Any interested economic operator may submit a request to participate for the first phase of restricted procedure.

(2) The contracting authority shall also state in the contract notice the selection criteria and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(3) The minimum number indicated in the contract notice cannot be less than 5.

#### **Article 72**

(1) The number of selected candidates after the first phase of the restricted procedure shall be at least equal with the minimum number of candidates indicated in the contract notice.

(2) Notwithstanding paragraph (1) of this Article, when the number of candidates that comply with the selection criteria is less than the minimum number indicated in the contract notice, the contracting authority may either:

- cancel the restricted procedure; or
- carry on the restricted procedure only with those candidates that meet the selection criteria, if their number is still sufficient to ensure a genuine competition.

#### **Article 73**

(1) After completing the first phase, the commission shall prepare a first phase selection report and a list of qualified candidates.

(2) On the basis of the report by the commission, the contracting authority shall make a decision for selected candidates to be invited to submit their tenders.

(3) The contracting authority shall send the invitation to tender in the second phase of the restricted procedure to all selected candidates simultaneously.

(4) The contracting authority shall not invite to tender in the second phase of restricted procedure an economic operator that did not submit a request to participate or failed to meet the selection criteria.

#### **Article 74**

(1) The invitation to tender in the second phase of restricted procedure shall contain at a minimum:

- the reference number of the contract notice;
- time limit for submitting the tenders;
- address where selected candidates should submit their tenders;
- date when tenders will be opened; and
- if necessary, any additional documents which the economic operators shall present with the purpose of verifying the statements or completing the documents submitted in the first phase in order to demonstrate their qualifications.

(2) The contracting authority shall send the tender documentation together with the invitation to tender in the second phase of restricted procedure.

(3) When the tender documentation is directly available by using electronic means, the contracting authority shall state in the invitation to tender information regarding the manner to access the respective documentation.

#### **Article 75**

(1) If the estimated value of the public contract is above the thresholds referred to in Article 69 paragraph (1) of this Law, the time limit for submitting the tenders in the second phase of restricted procedure cannot be less than 40 days.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may reduce the time limit for submitting the tenders to no less than 36 days if it has published prior information notice.

(3) In case of a prior information notice, the reduction of the time limit referred to in paragraph (2) of this Article shall be allowed only when the prior information notice includes all the information stipulated in the contract notice to the extent to which this information is available at the time the prior information notice was published and when the prior information notice was sent for publishing up to 12 months and at least 52 days before sending the contract notice for publication.

(4) Notwithstanding paragraphs (1) and (2) of this Article, when the contracting authority publishes the entire tender documentation electronically and allows direct access without restrictions for all selected candidates, it may reduce the time limits referred to in paragraphs (1) and (2) of this Article by 5 days. The tender documentation shall be published at the same time when sending the invitation to tender.

(5) The reduction of the time limits referred to in paragraph (4) of this Article shall be allowed only when the invitation to tender indicates the Internet address where the tender documentation is available online.

#### **Article 76**

(1) If the estimated value of the public contract is below the thresholds referred to in Article 69 paragraph (1) of this Law, the time limit for submitting the tenders in the second phase of the restricted procedure cannot be less than 22 days from the day of sending the invitation to tender.

(2) Notwithstanding paragraph (1) of this Article, when the contracting authority publishes the entire tender documentation electronically and allows direct access without restrictions for all selected candidates, it may reduce the time limits referred to in paragraph (1) of this Article by 5 days. The tender documentation shall be published at the same time when sending the invitation to tender.

(3) The reduction referred to in paragraph (2) of this Article is allowed only when the invitation to tender indicates the Internet address where the tender documentation is available online.

### **Section 3**

#### **Competitive dialogue**

##### **Article 77**

The contracting authority may apply competitive dialogue procedure if:

- the respective public contract is considered to be particularly complex; and
- the application of the open or restricted procedure would not allow awarding the public contract.

##### **Article 78**

Particularly complex contract within the meaning of Article 77 paragraph (1) indent 1 of this Law shall be considered the public contract for which the contracting authority is objectively unable to:

- define technical specifications and the technical means that can satisfy its needs; or
- establish the legal or financial framework for the implementation of the public contract.

##### **Article 79**

The competitive dialogue shall be carried out in three phases:

- phase of pre-selection of the candidates;
- dialogue phase with the selected candidates after the pre-selection phase, in order to identify the solution that could correspond to the needs of the contracting authority based on which the candidates will submit their tender; and
- phase of submitting tenders.

##### **Article 80**

The time limit for submitting the requests to participate cannot be less than 37 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau, if the estimated value of the contract, excluding VAT, exceeds EUR 130,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items a), b) and c) of this Law.

#### **Article 81**

If the estimated value of the public contract is below the thresholds referred to in Article 80 of this Law, the time limit for submitting the requests to participate cannot be less than 30 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau.

#### **Article 82**

(1) Any interested economic operator may submit a request to participate for the competitive dialogue.

(2) When selecting the candidates, the contracting authority shall evaluate their qualifications on the basis of objective and non-discriminatory criteria.

(3) The contracting authority shall also state in the contract notice the selection criteria and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(4) The minimum number indicated in the contract notice cannot be less than 3.

#### **Article 83**

(1) After completing the pre-selection phase, the number of selected candidates shall be at least equal to the minimum number indicated in the contract notice.

(2) Notwithstanding paragraph (1) of this Article, when the number of candidates that comply with the selection criteria is less than the minimum number indicated in the contract notice, the contracting authority may either:

- cancel the competitive dialogue; or
- carry on the competitive dialogue only with those candidates that meet the selection criteria, insofar as that number is still sufficient to ensure a genuine competition.

#### **Article 84**

(1) After completing the first phase, the commission shall prepare a first phase selection report and list of qualified candidates.

(2) On the basis of the report by the commission, the contracting authority shall make a decision for selected candidates to be invited to participate in the dialogue phase.

(3) The contracting authority shall send the invitation to participate in the dialogue phase to all selected candidates simultaneously.

(4) The contracting authority shall not invite to participate in the dialogue phase an economic operator that did not submit a request to participate or failed to meet the selection criteria.

#### **Article 85**

(1) The invitation to participate in the dialogue phase shall contain at a minimum:

- the reference number of the contract notice;
- date and place for the dialogue; and
- if necessary, any additional documents which the economic operators must present with the purpose of verifying the statements or completing the documents submitted in the first phase in order to demonstrate their qualifications.

(2) The contracting authority shall send the tender documentation, which also contains the descriptive documentation, together with the invitation to participate in the dialogue phase.

(3) When the tender documentation is directly available by using electronic means, the contracting authority shall state in the invitation to tender information regarding the way to access the respective documentation.

#### **Article 86**

(1) The contracting authority shall include in the descriptive documentation at a minimum: description of the needs, objectives, constraints of the contracting authority, on the basis of which the consultations will take place in order to identify the suitable solution or solutions, as well as, if envisaged, reimbursements to the participants in the dialogue.

(2) In the tender documentation, the contracting authority may provide for the procedure to take place in successive stages so as to reduce the number of possible solutions. The successive reduction of the solutions shall be made only by applying the award criteria provided for in the tender documentation.

#### **Article 87**

(1) The contracting authority shall launch a dialogue with each selected candidate separately. Subject to discussions shall be the options referring to technical, financial arrangements, methods to resolve problems related to the legal framework, as well as any other elements of the future contract, so that the identified solutions correspond to objective needs of the contracting authority. For each meeting held, the contracting authority shall keep minutes of the issues that were subject to dialogue. The minutes shall be also signed by the selected candidate that participated in the dialogue.

(2) The contracting authority shall ensure equal treatment of all candidates during the dialogue. The contracting authority shall not provide information in a discriminatory manner, which could create a supplementary advantage for any candidate.

(3) The contracting authority shall not disclose to other candidates the proposed solutions or other confidential information communicated by a candidate during the dialogue, without its consent.

(4) The contracting authority shall carry out the dialogue until it identifies the suitable solution.

(5) Having declared that the dialogue phase is concluded and having so informed the selected candidates, the contracting authority shall invite the selected candidates to submit their tenders in due time on the basis of the solution selected in the dialogue phase.

(6) The contracting authority shall send the invitation to tender together with the tender documentation, which should contain all necessary elements describing the manner of executing the public contract.

(7) The time limit for submitting the tenders shall be no less than the minimum period established in the dialogue phase agreed with the selected candidates.

#### **Article 88**

The invitation to tender shall contain at a minimum:

- the reference number of the contract notice;
- time limit for submitting the tenders;
- address where tenders should be submitted; and
- date and place of opening of the tenders.

### **Section 4**

#### **Negotiated procedure with prior publication of a contract notice**

### **Article 89**

(1) The contracting authority shall apply negotiated procedure with prior publication of a contract notice in the following cases:

- when, after applying the open procedure, the restricted procedure or the competitive dialogue, no acceptable tender was received, the procedure was cancelled and the initial requirements provided by the tender documentation are not substantially modified;
- in exceptional cases, when the nature of the works, products or services, or the risks attached thereto, do not allow a prior overall pricing of the contract;
- for public service contract, where the service to be purchased is of such nature, that the technical specifications cannot be elaborated with sufficient precision to permit the awarding of the contract by applying rules governing open or restricted procedures; and
- for public works contracts, when the works that will be executed are needed exclusively for purpose of research, testing or technological development, and only if these are not carried out in order to obtain profit and do not aim at recovering the research and development costs.

(2) In the cases referred to in paragraph (1) indent 1 of this Article, the contracting authority shall not be obliged to publish a contract notice if it invites to the negotiations all economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure have proven their qualifications and submitted tenders accordingly. In such case, the contracting authority cannot invite tenderers or candidates that did not participated in the previous procedure.

(3) The commission shall provide, in the procedure outcome report, detailed justification for applying the negotiated procedure with prior publication of a contract notice, as well as details about the manner of carrying out the procedure.

### **Article 90**

(1) The time limit for submitting the requests to participate cannot be less than 37 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau, if the estimated value of the contract, excluding VAT, exceeds:

- EUR 130,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items a), b) and c) of this Law; or
- EUR 200,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contract awarded by contracting authorities referred to in Article 4 paragraph (1) items d) and e) of this Law.

(2) Notwithstanding paragraph (1) of this Article, due to reasons of urgency requiring execution of contracts within periods less than the ones set under paragraph (1) of this Article, the contracting authority may reduce the time limit by no more than 15 days.

### **Article 91**

If the estimated value of the public contract is below the thresholds referred to in Article 90 paragraph (1) of this Law, the time limit for submitting the requests to participate cannot be less than 12 days from the day of sending the contract notice for publication in the Official Gazette of the Republic of Macedonia and for posting on the website of the Bureau.

### **Article 92**

Any interested economic operator has the right to submit request to participate in the negotiated procedure with prior publication of a contract notice, except in the cases referred to in Article 89 paragraph (2) of this Law.

#### **Article 93**

(1) Before starting the negotiations, the contracting authority shall carry out a preliminary selection of the candidates that will participate to the negotiations, only by using the selection criteria.

(2) After evaluating the qualifications of the candidates, the commission shall prepare a selection report and list of qualified candidates.

(3) On the basis of the report by the commission, the contracting authority shall make a decision for selected candidates to be invited to submit their initial tenders.

(4) The contracting authority shall also state in the contract notice the selection criteria and other applicable rules, the minimum number of candidates it intends to select, and, if required, the maximum number of candidates.

(5) The minimum number indicated in the contract notice cannot be less than 3.

#### **Article 94**

(1) The number of selected candidates shall be at least equal with the minimum number indicated in the contract notice.

(2) Notwithstanding paragraph (1) of this Article, when the number of candidates that comply with the selection criteria is less than the minimum number indicated in the contract notice, the contracting authority may either:

- cancel the negotiated procedure with prior publication of a contract notice; or
- carry on the negotiated procedure with prior publication of a contract notice only with those candidates that meet the selection criteria, insofar as that number is still sufficient to ensure a genuine competition.

#### **Article 95**

(1) The contracting authority shall send the invitation to submit an initial tender to all selected candidates simultaneously.

(2) The contracting authority shall not invite to submit an initial tender an economic operator that did not submit a request to participate or failed to meet the selection criteria.

#### **Article 96**

(1) The invitation to submit an initial tender shall contain at a minimum:

- the reference number of the contract notice;
- date and place where negotiations will be held;
- time limit for submitting the initial tenders;
- if necessary, any additional documents which the economic operators must present with the purpose of verifying the statements or completing the documents submitted in the first phase in order to demonstrate their qualifications; and
- the contract award criteria according to the provision of Chapter VII, Section 3 of this Law.

(2) The contracting authority shall send the tender documentation, which also contains the descriptive documentation, together with the invitation to submit an initial tender.

(3) The descriptive documentation, which is part of the tender documentation, shall contain: description of the needs, objectives and constraints of the contracting authority, on the basis of which the negotiated procedure with prior publication of a contract notice is initiated.

#### **Article 97**

(1) The contracting authority shall launch negotiations with each selected candidate separately. During the negotiations, all technical, financial and legal aspects of the contract shall be determined. For each meeting held, the contracting authority shall keep minutes of the issues that were subject to negotiations and agreed. The minutes shall be also signed by the selected candidate that participated in the negotiations.

(2) Each selected candidate shall present its initial tender on the negotiations meeting, which will be the starting position for the negotiations, according to the needs, objectives and constraints of the contracting authority set in the descriptive documentation.

(3) During the negotiations, the contracting authority shall ensure equal treatment of all selected candidates. The contracting authority shall not provide information in a discriminatory manner, which could create a supplementary advantage for any candidate.

(4) The contracting authority shall not disclose to other candidates the proposed solutions or other confidential information, communicated during the negotiations by a candidate, without its consent.

#### **Article 98**

(1) In the tender documentation, the contracting authority may provide for the procedure to take place in successive stages so as to reduce the number of initial tenders to be negotiated. The reduction of the number of initial tenders shall be made only by applying the previously determined contract award criteria.

(2) The contracting authority shall carry on the negotiations until it determines technically and economically the best tender on the basis of the contract award criteria. The negotiations shall continue until each selected candidate states that it cannot improve the previous proposal.

(3) The contracting authority shall request the candidate that provided the best conditions to confirm the negotiations outcome by submitting a final tender.

(4) The winning tenderer cannot change the terms and conditions agreed with the negotiations in its final tender.

### **Section 5**

#### **Negotiated procedure without prior publication of a contract notice**

#### **Article 99**

(1) The contracting authority shall apply negotiated procedure without prior publication of a contract notice in the following cases:

- 1) For public supply, service and works contracts:
  - a. when no tender in an open procedure or no request to participate in the first phase of a restricted procedure has been submitted, provided that the initial conditions of contract are not significantly altered;
  - b. when due to technical or artistic reasons, or for reasons connected with protection of exclusive rights (patents etc), the contract may be executed only by a particular economic operator;
  - c. for reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission, as a result of which the time limit for open procedure, restricted procedure, negotiated procedure with prior publication of contract notice or request for quotations cannot be complied with.
- 2) For public supply contracts:
  - when the products involved are manufactured purely for the purpose of research, experimentation, study or development; but not for assembly-line production to establish commercial viability or to recover research and development costs;

- in the case of supply contracts, for additional deliveries from the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of the supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; The length of additional procurements must not exceed three years from the date of concluding the original contract and their value must not exceed 30% of the amount of the original contract, and
  - for the purchase of supplies under particularly favorable terms, from either a supplier which winds-up its business activities (liquidation or bankruptcy), from a receiver or liquidator upon prior agreement with the creditors;
- 3) For public service contract, when the contract concerned follows a design contest and shall be awarded to the winning candidate or to one of the winning candidates. In the latter case, the contracting authority shall invite all winning candidates to participate in the negotiations; and
- 4) For additional works or services not included in the original contract, but which have, through unforeseen circumstances, become necessary, provided that the award is made to the economic operator performing such works or services, in the case when:
- such additional works or services cannot be technically or economically separated from the original contract without major inconvenience for the contracting authority; or
  - such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

(2) The aggregate value of the contracts awarded for additional deliveries and services referred to in paragraph (1) item 4 of this Article shall not exceed 30% of the amount of the original contract, and the length of the additional works or services shall not exceed three years from the date of concluding the original contract.

(3) The contracting authority may apply a negotiated procedure without prior publication of a contract notice if no tender was received in the simplified competitive procedure.

(4) In the procedure outcome report, the commission shall provide detailed justification for applying the negotiated procedure without prior publication of a contract notice, as well as details about the manner of carrying out the procedure.

## **Section 6**

### **Simplified competitive procedure**

#### **Article 100**

- (1) The contracting authority shall carry out simplified competitive procedure:
- without publishing a notice, if the estimated value of the public contract, excluding VAT, is below EUR 5,000 in Denar equivalent; or
  - by publishing a notice, if the estimated value of the public contract is below EUR 20,000 in Denar equivalent for public supply and service contracts and EUR 50,000 in Denar equivalent for public works contract, excluding VAT.

(2) The provisions of this Law shall accordingly apply to the simplified competitive procedure, unless otherwise provided for in this Section.

(3) In the cases referred to in paragraph (1) indent 1 of this Article, the contracting authority shall simultaneously send the request for tender to at least three economic operators.

(4) In the cases referred to in paragraph (1) indent 2 of this Article, the contracting authority shall send the notice for the simplified competitive procedure so as to be posted on the website of the Bureau, for which it shall pay a fee in the amount of EUR 15 in denar equivalent, to be used for maintenance of ESPN.

(5) The time limit for submitting tenders when applying the simplified competitive procedure cannot be less than 14 days from the day the notice was posted on the website of the Bureau, i.e. 8 days from the sending of the request to tender to the economic operators.

#### **Article 101**

(1) When carrying out the simplified competitive procedure, the contracting authority shall prepare simplified tender documentation, which shall mandatory contain technical specifications of the subject-matter of the public contract and information on the manner of elaborating the tenders and the time limit for their submission and shall not charge any fee therefor.

(2) If the simplified tender documentation is directly available online, the contracting authority shall include in the notice the manner to access the documentation.

#### **Article 102**

(1) Public tender opening shall not be carried out when carrying out simplified competitive procedure without publication of a notice.

(2) The contracting authority shall only establish the suitability to pursue the professional activity of the economic operators when carrying out simplified competitive procedure without publication of a notice.

(3) When carrying out simplified competitive procedure with publication of a notice, public tender opening shall be carried out, while applying the provisions of Chapter VII Section 1, subsections 2, 3 and 4 of this Law.

(3) In the simplified competitive procedure with publication of a notice, economic operators shall prove their qualifications by submitting a statement.

(4) The contracting authority shall require the winning economic operator to submit the documents for determining its qualifications, as defined in the simplified tender documentation.

(5) The documents for determining the qualifications may not be older than 6 months on the day of carrying out the public tender opening.

(7) Should the winning economic operator fail to submit the documents referred to in paragraph (5) of this Article within 5 days after receipt of the notice, or should they be invalid or inappropriate for proving its qualifications, the contracting authority shall invite the next ranking economic operator or dismiss the procedure.

(8) Alternative tenders shall not be allowed in the simplified competitive procedure.

(9) Electronic auctions shall not be carried out in the simplified competitive procedure.

(10) The simplified competitive procedure cannot be carried out via the central procurement body.

#### **Article 103**

(1) The contracting authority shall be obliged to keep records of the simplified competitive procedures.

(2) The contracting authority shall send copy of the records of the simplified competitive procedure in electronic format to the Bureau by 31<sup>st</sup> July and 31<sup>st</sup> January at the latest for the awarded contracts concluded in the previous 6 months.

#### **Article 104**

The Minister of Finance shall prescribe the format and the contents of the notice, the notice on cancellation of the procedure and the form of the records of the simplified competitive procedures.

### **Section 7**

#### **Design contest**

#### **Article 105**

The contracting authority shall organise design contest pursuant to Article 21 paragraph 3 of this Law, as an independent procedure, as a separate procedure with prizes to participants, or as a part of the procedure for awarding a public service contract.

#### **Article 106**

The contracting authority shall state in the contest documentation any information, requirement, rule or criteria so as to provide the potential participants with correct and complete information regarding the design contest.

#### **Article 107**

The contest documentation shall contain at a minimum:

- information about the contracting authority;
- instructions regarding the time limit and the formalities to be met for participation in the contest;
- minimum qualification requirements required by the contracting authority, as well as the documents to be presented by the potential participants in order to prove the respective qualifications, if the contest is part of another procedure that leads to awarding of a public service contract;
- all requirements necessary for the competitors to elaborate and present the plans and projects;
- amount of the prizes to be awarded, if the design contest is organised as an independent procedure;
- the commitment of the contracting authority to conclude a public service contract with the winner or one of the winners of the contest, when the contest is organised as part of a procedure for awarding public service contract; and
- detailed and complete information regarding the criteria for establishing the winning project or projects.

#### **Article 108**

(1) The time limit for presenting the plans or the projects shall not be shorter than 52 days from the date of dispatching the contract notice for publication in the Official Gazette and the website of the Bureau.

(2) The contents of presented plans and projects shall remain confidential, until the time limit for their submission.

#### **Article 109**

If the contracting authority requires that the economic operators send the plans or projects by electronic means, Articles 60 and 61 of this Law shall apply respectively.

#### **Article 110**

(1) If the contest is part of another procedure that leads to awarding of a public service contract, the contracting authority may set in the contest documentation minimum selection criteria to be met by the participants in order to prove their qualifications for carrying out the public contract.

(2) The number of selected participants shall be sufficient so that genuine competition is ensured.

#### **Article 111**

(1) Assessment of the plans or projects submitted at the design contest shall be carried out by a jury appointed by the contracting authority. The jury shall comprise at least 3 members that shall be independent from the participants, natural persons with relevant professional qualification and relevant experience in that field.

(2) When the participants in the design contest are required to possess special qualifications, at least one third of the members of the jury shall possess the same or equivalent expert qualifications as the participants.

#### **Article 112**

(1) Anonymity of the participants shall be kept until the moment the jury adopts a decision or issues an opinion.

(2) The jury shall be autonomous in the decision-making process.

#### **Article 113**

(1) The jury shall assess the submitted plans and projects using the evaluation criteria indicated in contract notice.

(2) The jury shall submit a report signed by all its members to the contracting authority and the participants, that shall comprise the ranking of the plans and projects based on their qualitative evaluation, any specific observation, as well as, if necessary, list of issues that are to be clarified.

#### **Article 114**

(1) The jury may invite the participants in the contest to provide answers to the issues referred to in Article 113, paragraph (2) of this Law, for the purpose of clarification of any aspects referring to the proposed plan or project.

(2) The jury shall keep minutes of the discussions conducted pursuant to paragraph (1) of this Article.

### **Chapter VI**

#### **Special modalities for awarding public contracts**

##### **Section 1**

##### **Framework agreement**

#### **Article 115**

(1) The contracting authority shall conclude framework agreement by carrying out open or restricted procedure.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may conclude a framework agreement by carrying out other contract award procedures only in the cases provided for in this Law.

(3) The contracting authority shall not use the framework agreements for the purpose of preventing, restricting or distorting competition.

#### **Article 116**

(1) The contracting authority may conclude framework agreement with duration appropriate to the nature of the subject-matter of the contract, but it shall not exceed 3 years.

(2) Public contracts awarded on the basis of a framework agreement shall be concluded between the contracting authority and the economic operator that is party to the respective agreement.

(3) The contracting authority shall not award public contracts the subject-matter of which is purchase of services, supplies or works not provided for in the framework agreement.

(4) The contracting authority shall stipulate the minimum selection criteria for the candidates or the tenderers according to the estimated value of the largest public contract to be awarded on the basis of the respective framework agreement.

#### **Article 117**

(1) When the contracting authority concludes the framework agreement with only one economic operator, the respective agreement shall, in particular, include the following:

- the obligations assumed by the economic operator in its technical proposal;
- the unit price that the economic operator tendered in its financial proposal, on the basis of the price of every subsequently awarded contract shall be calculated; and
- if necessary, special provisions and formulas for price adjustments.

(2) The contracting authority shall award public contracts on the basis of the framework agreement only by applying the technical and financial conditions, as well as the maximum quantities foreseen in the respective framework agreement.

(3) When awarding public contract on the basis of the framework agreement, the contracting authority shall consult the economic operator in writing.

#### **Article 118**

(1) When the contracting authority concludes the framework agreement with more economic operators, their number shall not be lower than 3.

(2) Notwithstanding paragraph (1) of this Article, the number of economic operators in the framework agreement may be lower than 3, insofar there is insufficient number of economic operators that have met the selection criteria and have presented acceptable tenders.

#### **Article 119**

(1) When the contracting authority concludes the framework agreement with more than one economic operator, the respective agreement shall, in particular, include the following:

- the obligations assumed by each economic operator in the technical proposal;
- the unit price each economic operator has tendered in the financial proposal;
- if necessary, special provisions and formulas for price adjustments; and
- other elements deemed as necessary by the contracting authority.

(2) The contracting authority shall award public contracts on the basis of a framework agreement concluded with more than one economic operator:

- without reopening competition; or
- by reopening competition between all economic operators, party in the framework agreement.

(3) In the cases referred to in paragraph (2), indent 2 of this Article, the framework agreement shall also include:

- terms and conditions that remain fixed for the entire duration of the agreement; and
- terms and conditions that will be subject to reopening of competition.

(4) The contracting authority shall award public contracts pursuant to paragraph (2), indent 1 of this Article only if all the terms and conditions governing the respective contracts were established in the framework agreement.

(5) The contracting authority shall award public contracts pursuant to paragraph (2), indent 2 of this Article in cases when all the terms and conditions for awarding public contract are not laid down in the framework agreement, by reopening competition on the basis of the same terms and conditions, and, if necessary, more precisely determined conditions in the framework agreement.

#### **Article 120**

(1) When the contracting authority awards public contracts pursuant to Article 119, paragraph (2), indent 2 of this Law, it shall reopen competition according to the following procedure:

- for every contract to be awarded, the contracting authorities shall submit written request to all tenderers that are party to the framework agreement;
- the contracting authority shall set sufficient time limit to enable the submission of tenders for each contract to be awarded, taking into account the complexity of the subject-matter of the contract and the time needed for preparing and submitting the tenders;
- the tenders shall be submitted in writing and the contracting authority shall open them within the set time limit. Contents of the tenders shall remain confidential by the time the contracting authority informs the tenderers on the selection made, and
- the contracting authority shall award each contract to the tenderer who has submitted the winning tender on the basis of the award criteria set out in the framework agreement.

(2) The invitation to tender when reopening competition shall contain in particular:

- information on the quantities required and the special conditions applicable to the subject-matter of the contract to be awarded;

- information on the elements subject to reopening of competition, as well as the contract award criteria to be applied on the selection of economic operator to whom the contract will be awarded; and
- information on the time limit for submitting the tenders and the way of submitting them.

## **Section 2**

### **Electronic auction**

#### **Article 121**

- (1) The contracting authority may use electronic auction:
- as the final phase of the open procedure, restricted procedure or the negotiated procedure with prior publication of a contract notice in the cases referred to in Article 89, paragraph (1), indent 1 of this Law, before awarding the public contract and only if the technical specifications have been precisely defined; or
  - on the reopening of competition among the economic operators, party to the framework agreement pursuant to Article 119, paragraph (5) and Article 120 of this Law.
- (2) The contracting authority shall state the decision for using the electronic auction in the contract notice and the tender documentation.

#### **Article 122**

The contracting authority shall not use the electronic auction for the purpose of preventing, restricting or distorting competition, or to change the subject-matter of the contract set in the contract notice and the tender documentation.

#### **Article 123**

Electronic auction shall not be used for awarding public service or works contracts that imply intellectual services, design and other similar activities.

#### **Article 124**

If the contracting authority uses electronic auctions, it shall be obliged to include the following in the tender documentation:

- the features of the tender which will be subject to electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- any limits on the values by which the features referred to in paragraph (1), indent 1 of this Article can be improved, in accordance with the technical specifications of the subject-matter of the contract;
- the information which will be made available to tenderers in the course of the electronic auction and the moment when this information will be made available;
- the relevant information concerning the electronic auction process; and
- the terms and conditions under which the tenderers will be able to auction and, in particular, the minimum differences allowed in the reverse auctioning.

#### **Article 125**

(1) Before commencing with an electronic auction, the contracting authority shall make a full evaluation of the qualifications of tenderers and their initial tenders in accordance with the requirements and the criteria set in the tender documentation.

(2) The contracting authority shall invite all tenderers that have submitted acceptable tenders to submit new prices or new values of the tender's features subject to electronic auction. The invitation shall be simultaneously submitted by electronic means to all those tenderers.

(3) The invitation shall specify the starting date and time of the electronic auction, the manner of carrying out the auction and any relevant information concerning individual connection to the electronic devices used.

(4) When the public contract is to be awarded on the basis of the economically most advantageous tender, the invitation shall be accompanied by the outcome of the full evaluation of the relevant initial tender of the tenderer to which the invitation is sent.

(5) The electronic reverse auction shall not start sooner than two working days after the date on which invitations for participation in the electronic auction are sent out.

#### **Article 126**

(1) Subject to electronic auction may be the following:

- only the price, when the contract award criterion is the lowest price only; or
- the price or the new values of the features of the tender subject to electronic auction indicated in the tender documentation, if the contract award criterion is the economically most advantageous tender.

(2) The electronic auction shall be carried out in several successive rounds.

#### **Article 127**

(1) During every round of the electronic auction, the contracting authority shall communicate to all the tenderers the information needed to determine, at any time, their ranking. The contracting authority may also communicate other information regarding:

- the number of the participants in the respective round of the electronic auction; and
- the new prices or values submitted within the respective round of the electronic auction round by other tenderers, provided that the tender documentation envisages such an option.

(2) When carrying out the rounds of an electronic auction, the contracting authority shall not disclose the identity of the tenderers.

#### **Article 128**

(1) The electronic auction shall be closed by one, or by a combination of the following modalities:

- at time determined in advance communicated to the tenderers within the invitation referred to in Article 125, paragraph (2) of this Law;
- when the number of auction rounds, set in the invitation referred to in Article 125, paragraph (2) of this Law, has been met. The invitation shall also indicate the timetable for each round; or
- when the contracting authority no longer receives new prices or new values that meet the requirements concerning the minimum differences. In such case, the contracting authority shall state in the invitation the time which it will allow to elapse after receiving the last submission before it closes the electronic auction.

(2) The contracting authority shall award the public contract in accordance with Article 162 of this Law, on the basis of the results obtained after closing the electronic auction.

### **Chapter VII**

#### **Awarding the public contract**

##### **Section 1**

##### **Tenders and variants**

##### **Subsection 1**

##### **Preparing and submitting tenders and variants**

#### **Article 129**

(1) The tenderer shall prepare its tender in accordance with the tender documentation.

(2) The tender shall be binding for the entire validity period established by the contracting authority.

(3) In exceptional cases, the contracting authority may ask the tenderers to extend the validity period of their tenders.

#### **Article 130**

(1) The contracting authority may extend the time limit for submission of tenders when they cannot be prepared without a site visit, as well as when the contracting authority cannot dispatch the tender documentation or the answers to tenderers' requests for clarifications within the time limits prescribed by this Law, even though they were requested in a timely manner. In that case, the contracting authority shall extend the time limit for submitting the tenders by a period of time long enough to enable all interested tenderers to obtain complete and relevant information for the preparation of the tender, informing them in writing.

(2) The risks associated with tender submission, including the force majeure, shall be the borne by the tenderer.

(3) The tender submitted after the specified time limit for submitting the tender shall be rejected as late and returned to the tenderer unopened.

(4) The contents of the tenders shall remain confidential until the date of their opening.

#### **Article 131**

(1) The contracting authority may allow the tenderers to submit variants only when the contract award criterion is the economically most advantageous tender.

(2) The contracting authority shall mandatory indicate in the contract notice whether variants are allowed. If such indication is missing, variants shall not be considered.

#### **Article 132**

(1) The contracting authority that allows variants shall specify the minimum mandatory requirements in the technical specifications that shall be met by these tenders, as well as all other specific requirements for their submission.

(2) The contracting authority shall not consider variants that fail to meet the minimum requirements referred to in paragraph (1) of this Article.

#### **Article 133**

(1) When the contracting authority announced the possibility to submit variants, it shall not reject a variant, if declared winner, having as only reason the fact that:

- the public supply contract that was to be awarded on the basis of most advantageous tender is transformed into a public service contract; or
- the public service contract that was to be awarded on the basis of most advantageous tender is transformed into a public supply contract.

#### **Article 134**

(1) The tenderer shall submit its tender with price including all costs and discounts to the total price of the tender, without VAT which is shown separately, in Denar or in currency as specified in the tender documentation. The tender price shall be expressed both in figures and words.

(2) In the case of public service contract having as its subject-matter the purchase of consultant services, technical and financial proposals shall be submitted in separate envelopes, or in separate electronic documents in the case the procedure is carried out by using electronic means.

(3) The tender price shall be expressed for the total subject-matter of the public contract. If the subject-matter of the contract is divided into lots, the price shall be expressed separately for the respective lot tendered, according to the tender documentation.

(4) The contracting authority shall set the currency or currencies allowed in the tender documentation, as well as the base currency to be used in the evaluation of tenders. The exchange rate list to be used shall be the exchange rate list of the National Bank of the Republic of Macedonia, and the contracting authority shall use exchange rates applied 114 days prior to the time limit for submitting the tenders.

#### **Article 135**

(1) The tenderer may amend, replace or withdraw its tender before the time limit for submission of tenders expires.

(2) The envelopes for amending, replacing or withdrawing the tender shall be submitted sealed and appropriately marked as „amendment“, „replacement“ or „withdrawal“, in the same manner as tenders are submitted.

## **Subsection 2**

### **Public opening of tenders**

#### **Article 136**

(1) Opening of tenders in the open procedure, the second phase of restricted procedure and when submitting tenders in competitive dialogue shall be public, except when carrying out electronic auction.

(2) The public opening of tenders shall commence on the place and at the time specified in the tender documentation as the time limit for submitting the tenders.

(3) No tender shall be rejected on the public opening of tenders, except late tenders.

(4) Before the public opening starts, the commission shall establish the number of received tenders, check the authorisations of the present representatives, establish any modifications, replacements or withdrawals of tenders, whether they were submitted in due time, as well as the prescribed formalities for the submission of tenders.

(5) On the public opening of tenders, the following tender elements shall be read as a minimum:

- reference number of the contract notice;
- name of tenderer;
- tender price and currency;
- possible discounts; and
- guarantee included.

(5) The contracting authority may also establish other elements in the tender documentation to be read on the public opening of tenders.

#### **Article 137**

(1) The commission shall commence the public opening even if only one tender was received.

(2) When the subject-matter of the contract is purchase of consultant services, the commission shall evaluate the technical proposal first, and after evaluating the technical proposals according to the requirements in the tender documentation, it shall schedule public opening of the financial proposals of the acceptable tenderers, whereby all tenderers shall be informed about the date, time and the place of the public opening of the financial proposals.

#### **Article 138**

(1) Representatives of the tenderers should provide written authorisation from the tenderer for their participation in the public opening of tenders.

(2) The commission shall keep records of the authorised representatives of tenderers who participated in the public opening of tenders.

#### **Article 139**

(1) The commission shall take minutes of the public opening of tenders, which shall contain the following information:

- the contracting authority;
- the place and time of public opening of tenders;
- the reference number of the contract notice;
- the names of the commission members;
- the number of tenders received (including withdrawals, replacements and amendments of tenders);
- the number of late tenders;

- the name of the tenderers;
- the tender guarantees submitted, if required;
- the tendered prices and discounts;
- any comments by the tenderers, and
- other information deemed as useful.

(2) The minutes shall be signed by all commission members.

(3) Copy of the minutes of the public opening of tenders shall be sent to all tenderers which requested so and the tenders of which have been opened on the public opening, within 5 days from receiving the request for the minutes.

(4) Minister of Finance shall prescribe the procedure of the public opening of tenders and the form of minutes of the public opening of tenders.

### **Subsection 3**

#### **Evaluation of tenders**

##### **Article 140**

(1) Tenders which were not opened on the public opening of tenders shall not be subject to evaluation.

(2) Regarding the open procedure, the commission shall, before evaluating the tenders, check the completeness and the validity of the tenderer's qualification documents within the tender.

(3) When checking completeness and validity of the tenderer's qualification documents and evaluating the tenders, the commission may ask the tenderers to clarify or complete their documents, should there be minor deficiencies from documentation required. The contracting authority shall not create advantages in favour of certain economic operator by using the requested clarifications or additions to the documentation.

(4) The tenderer shall submit the requested clarifications in writing within the time limit set forth by the contracting authority.

(5) The commission or the tenderer shall require, offer or allow no changes to the tender, except correction of arithmetical errors.

(6) The commission may directly ask the tenderer, for the purpose of clarification of the tender, to translate elements of tender related to the technical documentation for which it allowed, in the tender documentation, to be submitted in a foreign language, and to set a reasonable time limit for completion of such requirement.

(7) The commission shall not evaluate unacceptable tenders.

(8) Tenders shall be evaluated only by applying the criteria set in the tender documentation and published in the contract notice.

(9) The commission, after evaluation, shall rank the tenders and propose the selection of the winning tender.

(10) Commission members who do not agree with the proposal for selection of the winning tender shall state their opinion in writing attached to the procedure outcome report.

##### **Article 141**

When evaluating tenders in restricted procedure, negotiated procedure and competitive dialogue, the commission shall apply Article 140 of this Law to the extent applicable.

### **Subsection 4**

#### **Procedure outcome report**

##### **Article 142**

(1) In open procedure, restricted procedure, negotiated procedure and competitive dialogue, the commission shall draw up written procedure outcome report.

(2) Depending on the contract award procedure referred to in paragraph (1), the procedure outcome report shall contain in particular:

- the name and address of the contracting authority, subject-matter and estimated value of the public contract or the framework agreement;
- the names of selected candidates or tenderers and the reasons for their selection;
- the names of candidates or tenderers the request to participate or tenders of which are rejected and the reasons for their rejection;
- the reasons for the rejection of tenders found to be abnormally low; and
- the name of the tenderer or the tenderers with the winning tender and the reasons and the manner of selection.

(3) The selection report in the restricted procedure, competitive dialogue and negotiated procedure with prior publication of a contract notice shall be an integral part of the procedure outcome report.

(4) The contracting authority shall be obliged to undertake all measures necessary to document the contract award procedures by using electronic means.

(5) When deciding for the winning tender, the responsible person shall be obliged to accept the procedure outcome report prepared by the commission, containing the proposal for selection of the winning tender, unless he/she finds that the proposal was made contrary to the provisions stipulated in this Law.

(6) The responsible person at the contracting authority shall reach decision on the selection of the winning tender.

(7) Minister of Finance shall prescribe the format and the contents of procedure outcome report referred to in paragraph (1) of this Article.

## **Section 2**

### **Determining qualifications**

#### **Subsection 1**

#### **Selection criteria**

##### **Article 143**

Selection criteria for the economic operators shall be:

- personal situation;
- ability to pursue the professional activity;
- economic and financial standing;
- technical or professional ability;
- quality assurance standards; and
- environmental management standards.

##### **Article 144**

(1) For the purpose of applying the selection criteria referred to in Article 143, paragraph (1), indents 3 and 4 of this Law, the contracting authority shall state in the tender documentation the minimum requirements to be met by the economic operators in order to qualify pursuant to Subsections 4 and 5 of this Section.

(2) The contracting authority shall not require fulfillment of certain minimum qualification requirements pertaining to the economic and financial standing and the technical or professional ability of the economic operators, which are unproportional to the subject-matter of the public contract.

(3) When evaluating the tenders with respect to the qualifications of economic operators, the economic and financial standing, and technical or professional ability of subcontractors shall not be taken into consideration.

#### **Subsection 2**

#### **Personal situation of the economic operator**

#### **Article 145**

(1) As evidence of meeting the selection criteria regarding the personal situation of the economic operator, the contracting authority shall be obliged to accept all equivalent documents from the country where the economic operator is registered, issued by competent authorities of that country.

(2) If the country of registration of the economic operator does not issue the documents referred to in Article 147, paragraph (2) of this Law, or if these documents do not cover all the cases referred to in Article 147 of this Law, the contracting authority shall accept statement of the economic operator certified by a competent authority.

#### **Article 146**

The contracting authority shall exclude any economic operator from the contract award procedure, if it has any information that the economic operator was announced, in the last 5 years, effective court decision for participation in criminal organisation, corruption, fraud or money laundering.

#### **Article 147**

(1) The contracting authority shall exclude any economic operator from the contract award procedure if that economic operator:

- is bankrupt or is under liquidation procedure;
- has not fulfilled its obligations related to the payment of taxes, contributions and other public duties;
- is being announced sanction for misdemeanour resulting in prohibition for pursuing professional activity or duty, i.e. temporary prohibition for performing professional activity; or
- presents false information or does not present the information required by the contracting authority.

(2) The economic operator shall submit the following documents for the purpose of proving its personal situation:

- statement by the economic operator that it has not been announced, in the last 5 years, effective court decision for participation in criminal organisation, corruption, fraud or money laundering;
- certificate that it is not subject to bankruptcy procedure issued by competent authority;
- certificate that it is not subject to liquidation procedure issued by competent authority;
- certificate for paid taxes, contributions and other public duties by the competent authority in the country where that economic operator is established; and
- certificate that it is being announced sanction for misdemeanour with an effective court decision, resulting in prohibition for pursuing professional activity or duty, i.e. temporary prohibition for performing professional activity.

(3) The documents referred to in paragraph (2) of this Article shall not be older than 6 months, and shall be submitted in original or copies verified by the economic operator.

(4) If the contracting authority has doubts about the documents for establishing the personal situation of the economic operator, it may require information directly from the competent authorities that issued such documents.

### **Subsection 3**

#### **Ability of the economic operator to pursue the professional activity**

#### **Article 148**

The contracting authority shall require any economic operator to present relevant document for registered activity in order to prove it is registered as natural or legal person to carry out the activity related to the subject-matter of the public contract or evidence that the economic operator is affiliated in professional association in accordance with the regulations of the country where it is established.

### **Subsection 4**

## **Economic and financial standing of the economic operator**

### **Article 149**

The contracting authority may ask the economic operator to prove its economic and financial standing, thus stating the documents in the tender documentation required as evidence.

### **Article 150**

(1) The contracting authority, as evidence of the economic and financial standing, may require from the economic operators to provide the following documents:

- appropriate bank statements;
- evidence of relevant professional risk indemnity insurance;
- balance sheets certified by a competent authority, i.e. audited balance sheets or extracts from the balance sheets, where publication of the balance sheet is required under the law of the country in which the economic operator is established; and
- statements regarding the overall turnover of the undertaking (information from the profit and loss account issued by a competent authority, i.e. audited profit and loss account) and, where applicable, regarding the turnover in the field of activity covered by the public contract, for the last three years at the most for which such information is available, depending on the date on which the undertaking was established or started operating, and depending on the availability of such information.

(2) If for any valid reason, the economic operator is unable to provide the documents required by the contracting authority, it may prove its economic and financial standing by any other documents that contracting authority considers appropriate, insofar as these documents realistically reflect the economic and financial standing of the economic operator.

### **Article 151**

(1) The economic and financial capacity of the economic operator may be supported by another entity, irrespective of the legal relation between the economic operator and that respective entity.

(2) When the economic operator proves its economic and financial capacity referring to the support of another entity pursuant to paragraph (1) of this Article, it shall be obliged to demonstrate that support by presenting a valid evidence that the respective entity will make available the respective financial resources to the economic operator. No effective court decision for participation in criminal organisation, corruption, fraud or money laundering shall be announced against the entity that provides the financial support.

(3) When economic operators submit a joint tender or request to participate, the economic and financial standing shall be proven by taking into consideration the resources of all the group members. When the group of tenderers or candidates appear with a financial support by a third entity, the economic and financial standing shall be determined pursuant to paragraph (2) of this Article.

## **Subsection 5**

### **Technical or professional ability**

#### **Article 152**

(1) The contracting authority may ask the economic operator participating in the contract award procedure to prove its technical or professional ability.

(2) When the contracting authority asks for the demonstration of the technical and professional ability, it shall indicate in the tender documentation the documents by which the economic operator is to prove its technical or professional ability.

#### **Article 153**

(1) In the case of contract award procedure for public supply contract, the technical and professional ability of the economic operators may be proven by one or more of the following ways:

- list of the principal deliveries by the tenderers or the candidates effected in the past three years containing sums, dates and beneficiaries (both contracting authorities or economic operators), by providing statement for the deliveries made issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, by statement for deliveries made issued by the economic operator;
- description of the technical equipment and ability of the economic operator, measures used to ensure quality and study resources and research facilities;
- statement on the engaged technical staff and technical bodies of the economic operator, regardless of whether they belong directly to the economic operator;
- samples, descriptions and/or photos of the products subject to delivery, the authenticity of which the economic operator shall be obliged to demonstrate if the contracting authority requires so;
- certificates issued by competent bodies, with recognised competence, in charge of quality control, attesting the conformity of products clearly identified by reference to the relevant specifications and standards;
- in the case when complex products are purchased, or in exceptional cases for special purposes, inspection of the production facilities at the economic operator is carried out, or if necessary, of its study and research facilities, as well as of the quality assurance measures, conducted by the contracting authority or by competent authority on its behalf in the country where the economic operators is registered; and
- information about the elements of the contract that the economic operator intends to subcontract to third parties.

(2) In the case of contract award procedure for public service contract, the technical and professional ability of the economic operators may be proven by one or more of the following ways:

- a list of the principal services provided by the tenderers or the candidates effected in the past three years containing sums, dates and beneficiaries (both contracting authorities or economic operators), by providing statement for the services provided issued by the recipients, or if such statements cannot be provided due to reasons beyond the control of the economic operator, by statement for services provided issued by the economic operator;
- educational and professional qualifications of the economic operator or of its expert staff, and especially of the persons in charge of providing the respective service;
- statement on the engaged technical staff and technical bodies, regardless of whether they belong directly to the economic operator;
- statement by the economic operator on the average annual number of employees and the number of the managing staff in the past three years;
- statement on the technical equipment and ability of the economic operator and on other resources available to provide the respective services and to assure quality;
- in the case when complex services are purchased, or in exceptional cases for special purposes, inspection of the production facilities of the economic operator is carried out, or if necessary, of its study and research facilities, as well as of the quality assurance measures, conducted by the contracting authority or by competent authority on its behalf in the country where the economic operators is registered; and
- information about the elements of the contract that the economic operator intends to subcontract to third parties.

(3) In the case of contract award procedure for public works contract, the technical and professional ability of the economic operators may be proven by one or more of the following ways:

- list of works executed in the past 5 years by enclosing statement for good performance of the main works, statements containing sums, dates and location of the works and indications whether the works have been executed according to the business operations rules and whether they have been duly finished;
- educational and professional qualifications of the economic operator or of its managing staff, and especially of the persons in charge of executing the respective works;

- statement on the technical staff and technical bodies, especially those in charge of quality control, regardless of whether they belong directly to the economic operator;
- statement by the economic operator for the average annual number of employees and the number of the technical staff in the past three years;
- statement on the technical equipment available to the economic operator for the execution of the respective works; and
- information about the elements of the contract that the economic operator intends to subcontract to third parties.

#### **Article 154**

(1) The technical and professional ability of the economic operator can be supported by another entity, irrespective of the legal relation between the economic operator and the respective entity.

(2) When the economic operator proves its technical or professional ability referring to the support of another entity pursuant to paragraph (1) of this Article, it shall be obliged to demonstrate that support by presenting a valid evidence that the respective entity will make available the respective technical and professional resources to the economic operator. No effective court decision for participation in criminal organisation, corruption, fraud or money laundering shall be announced against the entity that provides the financial support.

(3) When economic operators submit a joint tender or request to participate, the technical and professional ability shall be proven by taking into consideration the resources of all the group members. When the group of tenderers or candidates appear with a technical or professional support by a third entity, or third entities, the technical or professional ability shall be determined pursuant to paragraph (2) of this Article.

#### **Subsection 6**

#### **Quality assurance standards**

#### **Article 155**

When the presentation of certificates issued by independent bodies, attesting the compliance of the economic operator with certain quality assurance standards, is required, the contracting authority shall refer to quality assurance systems based on the relevant European standards series or other international standards series.

#### **Article 156**

According to the mutual recognition principle, the contracting authority shall accept equivalent certificates issued by institutions established in the Member States of the European Union.

#### **Subsection 7**

#### **Environmental management standards**

#### **Article 157**

When the contracting authority requires observance of certain environmental management standards, it shall refer to:

- the Community Eco-Management and Audit Scheme (EMAS); or
- the environmental protection standards based on the relevant European or international standards certified by accreditation or attestation bodies or by the relevant European or international bodies accredited for certification.

#### **Article 158**

According to the mutual recognition principle, the contracting authority shall accept equivalent certificates issued by institutions established in the Member States of the European Union.

#### **Section 3**

## **Contract award criteria**

### **Article 159**

The contracting authority shall be obliged to specify in the contract notice the contract award criterion, which once established, shall not be changed during the contract award procedure.

### **Article 160**

- (1) Contract award criterion may be:
- economically most advantageous tender; or
  - the lowest price only.

(2) Notwithstanding paragraph (1) of this Article, when the public contract is awarded using the competitive dialogue, contract award criterion shall be the economically most advantageous tender.

### **Article 161**

(1) When the contract award criterion is the economically most advantageous tender, the winning tender shall be the one that receives the highest score from different elements having maximum relative weights.

(2) Elements of the criterion economically most advantageous tender referred to in paragraph (1) of this Article may be price, characteristics of the quality level, technical level and functional level, environmental characteristics, running costs, cost-effectiveness, post-sale services and technical assistance, delivery date or execution date or other significant elements for the evaluation of the tenders.

(3) The elements of the criterion economically most advantageous tender, as well as their maximum relative weights shall be clearly defined in the contract notice, shall be specifically related to the subject-matter of the public contract and, after being established, they shall not be changed for the entire period of the contract award procedure.

(4) The contracting authority shall be obliged to provide explanation in the tender documentation how it intends to score and apply the elements of the criterion economically most advantageous tender.

(5) The methodology for expressing the contract award criteria into points shall be prescribed by the Minister of Finance.

## **Section 4**

### **Awarding the public contract**

### **Article 162**

The contracting authority shall select the winning tender by making a formal decision, on the basis of the contract award criteria set in the contract notice and in the tender documentation, provided that the tenderer the winning tenderer of which meets the stipulated selection criteria.

### **Article 163**

(1) When a tender has a price which appears to be abnormally low in relation with the estimated value of the supplies, works or services to be provided, the contracting authority shall request the tenderer, in writing and before taking a decision regarding the rejection of the tender, to provide details of the tender which it considers relevant, and it shall check the evidence supplied in order to justify the respective price in the tender.

(2) The contracting authority shall take into account the evidence the tenderer submitted pursuant to paragraph (1) of this Article, especially those referring to:

- the economic basis of the price setting reflecting the production process or the provided services;
- the technical solutions chosen or any other exceptionally favourable conditions available to the tenderer when executing the works, delivering the supplies or providing the services;
- the originality of the supplies, services or works tendered;

- the compliance with the regulations regarding the safety at work and the working conditions applicable for the execution of works, for the provision of services, or for the delivery of supplies; and
- the possibility for the tenderer to use a state aid.

#### **Article 164**

(1) When the contracting authority establishes that the price of a tender is abnormally low because the tenderer has obtained a state aid, the tender may be rejected on that ground alone, only if, after requiring additional clarifications, the tenderer cannot prove, within three days from the day of receiving the request, that the state aid was legally granted.

(2) The contracting authority shall be obliged to notify the Bureau when it rejects a tender on the basis of paragraph (1) of this Article.

#### **Article 165**

(1) The contracting authority shall conclude the public contract with the winning tenderer on the basis of its technical and financial proposal.

(2) If the winning tenderer withdraws from concluding or executing the public contract, the contracting authority may conclude the contract with the next ranking tenderer.

(3) The contracting authority shall be obliged keep the documents on the basis of which the decision was made for selecting the winning tender.

#### **Article 166**

Any person having legal interest in the contract award procedure, including the Attorney General, may request initiation of a legal procedure for proclaiming the public contract void.

### **Section 5**

#### **Notifying candidates or tenders**

#### **Article 167**

(1) The contracting authority, depending on the type of contract award procedure applied, shall notify the candidates, i.e. the tenderers, in writing, about the decisions made regarding the pre-selection, contract award, conclusion of the framework agreement or cancellation of the contract award procedure. The notice shall be sent within 3 days from the day the respective decision was made.

(2) Copy of the decision shall be attached to the notice.

(3) Notice referred to in paragraph (1) of this Article shall be sent in written form.

#### **Article 168**

Depending on the type of contract award procedure applied, the contracting authority shall be obliged, in the notice referred to in Article 167, paragraph (1) of this Law, to inform the winning tenderer or tenderers, as well as the candidates or tenderers rejected or candidates or tenderers that were not selected as winners, on the reasons for reaching the decision as follows:

- every candidate that was not qualified, about the reasons for rejecting its request to participate;
- tenderer whose tender was rejected, about the reasons for rejecting its tender with detailed explanation why the tender is considered unacceptable; and
- tenderer who submitted an acceptable tender that was not selected as winner, about the name of the winning tenderer or tenderers and the reasons for making the selection.

### **Section 6**

#### **Cancellation of the contract award procedure**

#### **Article 169**

(1) The contracting authority may cancel the contract award procedure if:

- the number of candidates is less than the minimum number set for the contract award procedures pursuant to this Law;
- no acceptable tenders were received;
- acceptable tenders were submitted, but they cannot be compared due to different approaches in the financial or technical proposals;
- unforeseeable changes occurred in the budget of the contracting authority;
- tenderers offered prices and conditions for execution of the public contract which are less favourable than the real prices and conditions on the market;
- the needs of the contracting authority have changed due to unpredictable and objective circumstances; or
- the contracting authority cannot select the winning tender due to major infringements to the Law pursuant to Article 210 of this Law.

(2) The Responsible person at the contracting authority shall reach decision on canceling the contract award procedure.

#### **Article 170**

(1) The contracting authority shall notify in writing all participants in the contract award procedure within 3 days at the latest after cancelling the procedure, both on the ceasing of the obligations of the participants arising from the submission of their tenders, as well as on the reasons for cancelling the procedure.

(2) The contracting authority shall notify the Bureau on the cancellation of the contract award procedure within 30 days from the day of canceling the procedure, for the purpose of publication on the Bureau's website.

### **Chapter VIII**

#### **Dossier of the contract award procedure**

##### **Article 171**

The contracting authority shall be obliged to keep a dossier for each public contract awarded or framework agreement concluded.

##### **Article 174**

The contracting authority shall keep the dossier of the contract award procedure for at least 5 years from the day the respective public contract is executed.

##### **Article 173**

Depending on the contract award procedure applied, the dossier shall contain in particular:

- initial procurement decision;
- prior information notice and evidence that it was sent for publication;
- contract notice and evidence that it was sent for publication;
- tender documentation;
- requests to participate received;
- communication between the contracting authority and the economic operators;
- first phase selection report;
- decision for selected candidates;
- received tenders;
- minutes of the public opening of tenders;
- statements on the existence/non-existence of conflict of interest;
- reports by the external experts;
- procedure outcome report;
- decision for selecting the winning tender;

- signed public contract or framework agreement; and
- contract award notice and evidence that it was sent for publication.

#### **Article 174**

Provisions referred to in Article 173 of this Law shall apply accordingly to awarding of utilities contract referred to in Chapter IX of this Law.

#### **Article 175**

When the contracting authority applies a contract award procedure by electronic means, or uses electronic auctions, it shall be obliged to ensure complete traceability of the actions it carries out during the award procedure, for the purpose of keeping the dossier referred to in Article 173 of this Law.

### **Chapter IX**

#### **Utilities contracts**

##### **Section 1**

##### **Activities applicable to utilities contracts**

##### **Subsection 1**

##### **Scope**

#### **Article 176**

(1) The activities applicable to utilities contracts (hereinafter: covered activity) shall be the following:

- water;
- energy;
- transport;
- postal services; and
- other covered activities.

(2) Provisions of this Law shall apply to utilities contracts, unless otherwise stipulated in this Chapter.

#### **Article 177**

When the contracting authority awards a utilities contract including several covered activities, it shall apply the rules governing the main covered activity which the contract is mainly intended for.

#### **Article 178**

(1) When the contracting authority referred to in Article 4, paragraph (1), items a), b) and c) of this Law awards public contract for several activities, among which at least one is a covered activity and another is regulated by the provisions under Chapter III of this Law, and objectively, it is impossible to determine for which activity the contract is mainly intended, such contract shall not be considered as utilities contract and the contracting authority shall apply this Law as for the public contracts referred to in Chapter III of this Law.

(2) When the contracting authority referred to in Article 4, paragraph (1), items a), b) and c) of this Law awards public contract for several activities, among which at least one is a covered activity and another is not subject to this Law, and objectively, it is impossible to determine for which activity the contract is mainly intended, such contract shall be considered as utilities contract.

(3) When the contracting authority referred to in Article 4, paragraph 1, items d) and e) of this Law awards public contract for several activities, among which at least one is a covered activity, and objectively, it is impossible to determine for which activity the contract is mainly intended, such contract shall be considered as utilities contract.

##### **Subsection 2**

## **Water**

### **Article 179**

Covered activities with the meaning of Article 176, paragraph (1), indent 1 of this Law, shall be the installation and operation of fixed networks intended to provide a public service in connection with the production, transport or distribution of drinking water, as well as the supply of drinking water to such networks.

### **Article 180**

Contracting authority performing some of the activities referred to in Article 179 of this Law shall apply the provisions of this Chapter when it awards public contracts or organises design contests in connection with:

- installation, operation and supply of drinking water to the networks, connected to the hydraulic engineering projects, irrigation or land drainage, out of which more than 20 % of the total volume of water is used for drinking; or
- installation, operation and supply to the networks for disposal or treatment of waste waters.

### **Article 181**

Supply of drinking water to public networks carried out by a contracting authority referred to in Article 4, paragraph (1), items d) and e) of this Law shall not be considered as covered activity with the meaning of Article 179 of this Law if:

- the production of drinking water is necessary for carrying out activities which are not covered activities; and
- supply to the network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water, taking into consideration the preceding 36 months.

## **Subsection 3**

### **Energy**

#### **Article 182**

Covered activities with the meaning of Article 176, paragraph (1), indent 2 of this Law shall be the installation and operation of fixed networks intended to provide a public service in connection with the production, transport or distribution of gas, heat or electricity, or the supply of gas, heat or electricity to such networks.

#### **Article 183**

The supply of gas or heat to networks which provide a public service by a contracting authority referred to in Article 4, paragraph (1), items d) and e) of this Law shall not be considered as covered activity within the meaning of Article 182 of this Law if:

- the production of gas or heat is consequence of carrying out an activity which is not a covered activity; and
- the supply of gas or heat to the public network is aimed only at the economic exploitation of such production and does not exceed more than 20 % of the contracting authority's turnover, taking into consideration the average for the preceding 36 months, including the current year.

#### **Article 184**

The supply of electricity to networks which provide a public service by a contracting authority referred to in Article 4, paragraph (1), items d) and e) of this Law shall not be considered as covered activity within the meaning of Article 182 of this Law if:

- the production of electricity takes place because the consumption is necessary for carrying out an activity which is not covered activity; and

- supply of electricity to the public network depends only on the entity's own consumption and does not exceed 30% of the entity's total production of energy, taking into consideration the average for the preceding 36 months, including the current year.

#### **Subsection 4**

##### **Transport**

##### **Article 185**

Covered activities within the meaning of Article 176, paragraph (1), indent 3 of this Law shall be the provision of transport services on regular rail and land traffic lines.

##### **Article 186**

Provision of transport services by bus shall not be considered as covered activity in the cases when other entities can provide the same services in the same geographical area under the same conditions as the contracting authorities.

#### **Subsection 5**

##### **Postal services**

##### **Article 187**

(1) Covered activities within the meaning of Article 176, paragraph (1), indent 4 of this Law shall be:

- universal postal services;
- reserved postal services;
- exchange of documents, bills and invoices;
- services concerning mail bearing no address;
- added-value services including transmission of data by electronic means (including the transmission of coded documents, creation of database of users and transmission and delivery of registered electronic mail);
- financial services, including banking services, postal giro transfers, payment cards, payment of public duties, money transfer from current and giro accounts, services related to insurance payment, etc;
- philatelic services; or
- logistics services, including physical delivery and warehousing of postal packages related to other non-postal services.

(2) services referred to in paragraph (1), indents 3, 4, 5, 6, 7 and 8 of this Article shall be considered as covered activities if the entity concerned also provides universal or reserved postal services.

#### **Subsection 6**

##### **Other covered activities**

##### **Article 188**

Other covered activities shall be activities related to the exploration of land for the purpose of extracting oil, gas or coal or construction and operation of airports or ports (river or lake ports) or other terminal facilities to carriers by air or inland waterway.

#### **Section 2**

##### **Specific exclusions**

##### **Article 189**

This Law shall not apply to utilities contracts awarded for the purchase of:

- supplies for the purpose of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or lease such supplies, and other entities are free to sell or lease them under the same conditions as the contracting authority; or
- supplies, services or works intended for carrying out covered activities abroad.

#### **Article 190**

(1) This Law shall not apply to contracts awarded by a contracting authority referred to in Article 4, paragraph (1), lines d) and e) of this Law, the subject-matter of which is the purchase of supplies, services or works which are intended for the pursuit of activities that are not covered activities according to this Chapter.

(2) This Law shall not apply to contracts awarded by a contracting authority referred to in Article 4, paragraph (1), item e) of this Law, if the estimated value is below EUR 200,000 in Denar equivalent for public supply and service contracts and EUR 4,000,000 in Denar equivalent for public works contracts.

#### **Article 191**

This Law shall not apply to contracts, the subject-matter of which is the purchase of water, if awarded by a contracting authority performing a covered activity according to Article 179 of this Law.

#### **Article 192**

This Law shall not apply to contracts, the subject-matter of which is the purchase of electricity or fuels for production of electricity, if awarded by a contracting authority performing a covered activity according to Articles 182 or 188 of this Law.

#### **Article 193**

(1) This Law shall not apply to utilities contracts awarded:

- by a contracting authority to an affiliated undertaking; or
- by a joint venture established exclusively by a number of contracting authorities for the purpose of carrying out covered activity, to an undertaking which is affiliated with one or more of these contracting authorities part of that legal person.

(2) Provisions referred to in paragraph (1) of this Article shall apply only in cases where at least 80 % of the average turnover of the affiliated undertaking for the preceding three years derives from the provision of such supplies, services or works to undertakings with which it is affiliated.

(3) Affiliated undertaking shall be any undertaking:

- over which the contracting authority exerts, directly or indirectly, a dominant influence;
- exerting, directly or indirectly, a dominant influence over the contracting authority; or
- which, together with the contracting authority, is subject to dominant influence of another undertaking.

(4) Dominant influence shall be considered to exist if one entity, directly or indirectly:

- holds the majority of the other undertaking's capital;
- controls the majority of the votes attaching to shares or stakes issued by the other undertaking,
- or
- can appoint more than half of the undertaking's management or supervisory body.

#### **Article 194**

(1) This Law shall not apply to utilities contracts awarded:

- by a joint venture established exclusively by a number of contracting authorities for the purpose of carrying out a covered activity to one of these contracting authorities; or
- by a contracting authority with the legal person established exclusively by a number of contracting authorities for the purpose of carrying out a covered activity to one of these contracting authorities.

(2) Provisions referred to in paragraph 1 of this Article shall apply only if the legal person was established for carrying out the covered activity for a period of at least three years.

### **Article 195**

The Bureau may request notification from the contracting authority about any contract awarded pursuant to the provisions referred to in Section 2 of this Chapter, and the contracting authority shall be obliged to respond to such request.

### **Section 3**

#### **Procedures for awarding utilities contracts**

### **Article 196**

(1) The following contract award procedures shall be used for awarding utilities contracts:

- open procedure;
- restricted procedure;
- negotiated procedure with prior publication of a contract notice;
- negotiated procedure without prior publication of a contract notice; and
- simplified competitive procedure.

(2) When awarding utilities contracts, the contracting authority shall accordingly apply the provisions referred to in Article 21, paragraph (3) of this Law.

### **Article 197**

(1) The contracting authority shall award utilities contracts by applying open procedure, restricted procedure or negotiated procedure with prior publication of a contract notice.

(2) Notwithstanding paragraph (1) of this Article, the contracting authority may award utilities contracts by using the other procedures referred to in Article 196, paragraph (1) of this Law, only in the cases set out in Article 100, paragraph (1) and Article 198 of this Law.

### **Article 198**

(1) The contracting authority may apply negotiated procedure without prior publication of a contract notice when awarding utilities contract in the following cases:

- when no tender or acceptable tender or no request to participate has been submitted in response to contract notice, provided that the initial requirements in the tender documentation are not significantly altered;
- when the contract is only intended for the purpose of research, experimentation, study or development, but not for securing a profit or recovering research and development costs, and insofar as that award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
- when for technical or artistic reasons, i.e. for reasons connected with protection of exclusive rights (patents, etc), the contract may be executed only by a particular economic operator;
- for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, as a result of which the time limit for open or restricted invitation, request for quotations, or negotiated procedure with prior publication of contract notice cannot be complied with.
- for additional deliveries from the original supplier which are intended either as a partial replacement of normal supplies or installations or as extension of existing supplies or installations, where a change of the supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitely closing up its business activities (winding-up or bankruptcy), the receiver or liquidator upon prior agreement with the creditors;
- for public contracts to be awarded on the basis of a framework agreement,

- for public service contract, when the contract concerned follows a design contest and must be awarded to the winning participant or to one of the winning participants. In the latter case, the contracting authority shall invite all winning participants to participate in the negotiations; and  
 - for additional works or services not included in the original contract, but which have, through unforeseen circumstances, become necessary, provided that the contract is concluded with the contractor, in the case when:

- a) such additional works or services cannot be technically or economically separated from the original contract without major inconvenience for the contracting authority; or
- b) such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

(2) The aggregate value of the contracts awarded for additional works or services referred to in paragraph (1), indent 10 of this Article shall not exceed 50% of the amount of the original contract.

#### **Article 199**

When two or more tenders are less than 3 points in range from each other by applying the contract award criteria, the contracting authority may select as winner the one where over 50% of the supplies tendered origin from the Republic of Macedonia, EU Member States and from countries having concluded an international agreement with the Republic of Macedonia which provides equal treatment of the economic operators from the Republic of Macedonia on the market of that country.

### **Chapter X**

#### **Review procedures**

##### **Section 1**

#### **State Appeals Commission**

##### **Article 200**

(1) State Appeals Commission (hereinafter: Appeals Commission) shall be competent to resolve appeals in the contract award procedures prescribed by this Law.

(2) The Appeals Commission shall decide on the legality of procedures, actions and failures to undertake actions, as well as the formal decisions made in the procedures referred to in paragraph (1) of this Article, and on other issues pursuant to this Law.

##### **Article 201**

(1) The Appeals Commission shall be a state authority, which shall be independent in its operations and shall have status of a legal entity.

(2) The Appeals Commission shall have a professional service. (2) The Law on Civil Servants shall apply to the persons employed in the professional service.

(3) The Appeals Commission shall be financed from the Budget of the Republic of Macedonia.

##### **Article 202**

(1) The Appeals Commission shall be composed of chairman and four members, who professionally carry out their function.

(2) The Parliament of the Republic of Macedonia shall appoint, by using public call for competition, and dismiss the chairman and the members of the Appeals Commission upon proposal by the Election and Appointments Commission within the Parliament of the Republic of Macedonia.

(3) The chairman and members of the Appeals Commission shall be appointed for a period of 5 years and shall have the right to reappointment.

(4) A person may be appointed as member of the Appeals Commission if he/she is a citizen of the Republic of Macedonia, holds university degree in law and has at least three years of experience in the field of public procurement.

(5) A person may be appointed as chairman of the Appeals Commission if he/she holds university degree in law, has passed the bar exam, and has at least 6 years of experience as a judge, attorney general, deputy attorney general, notary public or lawyer, or 10 years of experience in other legal affairs after passing the bar exam.

(6) The members of the Appeals Commission shall elect the deputy chairman from its own ranks.

(7) The chairman and the members of the Appeals Commission shall not, at the same time, be appointed in other bodies elected or appointed by the Parliament of the Republic of Macedonia or the Government.

#### **Article 203**

(1) The Parliament of the Republic of Macedonia shall dismiss the chairman or a member of the Appeals Commission before his/her term of office expires if he/she:

- asks to be dismissed;
- permanently loses his/her ability to perform the duty, which is established by the Parliament of the Republic of Macedonia;
- has been convicted with effective court decision for criminal act to unconditional imprisonment of at least 6 months;
- meets retirement conditions;
- performs other activities incompatible with his/her duty as chairman or member of the Appeals Commission; or
- passes away.

(2) The Government may also give proposal to dismiss the chairman or a member of the Appeals Commission.

(3) The chairman of the Appeals Commission (or the deputy if it is the case of dismissal of the chairman) shall inform the Parliament of the Republic of Macedonia about the existence of reasons for dismissing the chairman or a member of the Appeals Commission.

(4) The Parliament of the Republic of Macedonia shall initiate the procedure for appointment of chairman and members of the Appeals Commission at least three months before the term of office of the present chairman and members expires. The procedure for appointment shall be completed at least 30 days before the term of office of present chairman and members of the Commission expires.

#### **Article 204**

The Rules of Procedure shall regulate the manner of operations and the decision-making process of the Appeals Commission.

#### **Article 205**

(1) The Appeals Commission shall submit an annual report about its activities to the Parliament of the Republic of Macedonia by the end of March in the current year for the previous year.

(2) Upon request by the Parliament of the Republic of Macedonia, the Appeals Commission shall be obliged to submit a report for a period shorter than one year.

(3) The annual report shall contain in particular:

- number of cases received;
- number of cases resolved (rejected and accepted appeals);
- number of annulled contract award procedures;
- number of unresolved cases;
- number of cases disputed to the Administrative Court (rejected and accepted cases);
- statistical analysis of the appeals procedures and
- evaluation of the legal remedies system and the public procurement system as a whole.

#### **Article 206**

Any form of influence on the decision-making process of the Appeals Commission shall be forbidden, and in particular, any misuse of public authorisations, in order to influence the procedure and its outcome.

#### **Article 207**

(1) Any economic operator having legal interest in the contract award procedure, and which has suffered or could suffer damage by an alleged infringement of the provisions of this Law, may initiate an appeals procedure against the decisions, actions and failures to undertake actions by the contracting authority during the contract award procedure.

(2) Attorney general may also initiate an appeals procedure in the contract award procedures, when he/she protects the interests of the Republic of Macedonia or the public interest.

#### **Article 208**

The contracting authority shall not sign the public contract and ask for its execution within 12 days after the day of receipt of the formal decision for an individual right in the contract award procedure, except in the cases referred to in Article 99, paragraph (1), item 1, indent 3 and Article 198, paragraph (1), indent 4 of this Law.

#### **Article 209**

(1) In the course of the appeals procedure, the parties shall be obliged to present all facts used as grounds for their requests, as well as the actions or failures to undertake actions by the contracting authority in the contract award procedure, and to provide respective evidence thereof.

(2) In the course of the appeals procedure, the contracting authority shall be obliged to prove the facts and circumstances on the basis of which it made the decision, acted or failed to act in the realisation of the contract award procedure subject to the appeals procedure.

(3) In the course of the appeals procedure, the appellant shall be obliged to prove or to make possible the existence of facts and reasons for lodging the appeal, the infringements of the procedure or the infringements of this Law stated in the appeal.

#### **Article 210**

The following shall be considered as major infringements of this Law in the contract award procedures:

- the contract award procedure was carried out without making an initial procurement decision containing the elements laid down in Article 28, paragraphs (2) and (3) of this Law;
- the tender documentation for the contract award procedure was not prepared pursuant to this Law, which led or might have led to discrimination of economic operators or limitation of competition;
- major infringements were made with reference to the public opening of tenders;
- major infringements were made with reference to the evaluation of tenders;
- the winning tender is not the most favourable one; or
- the winning tender is not acceptable.

#### **Article 211**

In the course of the appeals procedure, the Appeals Commission shall act within the alleged infringements reported in the appeal, and ex-officio with reference to the major infringements of the Law referred to in Article 210 of this Law.

### **Section 2**

#### **Appeal**

#### **Article 212**

(1) The appeal shall contain the following elements:

- information on the appellant (name, address, name of the economic operator, residence and seat);
- information of its representative or legal proxy;
- name and address of the contracting authority;
- number and date of the contract award procedure and information on the contract notice;
- number and date of the decision for contract award, decision for cancelling the procedure or other decisions made by the contracting authority;
- other information about actions or failures to undertake actions by the contracting authority;
- description of the actual situation;
- description of the irregularities and explanation therefore;
- proposal for evidence;
- appeals request and/or request for compensation of the procedural costs; and
- signature of the authorised person and seal.

(2) The appellant shall be obliged to provide evidence it has paid the appeals fee for carrying out the appeals procedure.

(3) The appellant not seated in the Republic of Macedonia shall be obliged to appoint its proxy for receipt of paper-form documents.

#### **Article 213**

(1) If the appeal does not contain some of the information referred to in Article 212, paragraph (1) indents 1, 3, 4, 5 and 9 of this Law, the Appeals Commission shall request the appellant to supplement its appeal in a period not longer than 5 days.

(2) If the appellant fails to act upon the request referred to in paragraph (1) of this Article, the appeal shall be rejected as incomplete, unless its contents allows for the procedure to carry on, and it contains appeals request.

### **Section 3**

#### **Manner of lodging the appeal**

#### **Article 214**

(1) The appeal shall be lodged to the Appeals Commission.

(2) The appeal shall be submitted in person or via registered mail simultaneously to the contracting authority and to the Appeals Commission.

(3) The day of submitting the appeal via registered mail shall be deemed as the day of submission.

(4) In case the appeal is submitted in person, the contracting authority shall be obliged to issue certificate of the time of receipt to the appellant.

#### **Article 215**

The contracting authority shall, within 5 days from the day of receipt at the latest, submit the following to the Appeals Commission:

- the appeal with all attachments, information and evidence of the date of receipt;
- reply to the appeal with an explanation of the facts and the alleged infringements, as well as the appeals requests, chronology of the contract award procedure, with indications of the major elements of the procedure (estimated value, information on the contract notice, opening and evaluation of tenders, contract award decision, etc.);
- entire documentation from the contract award procedure with list of the written documents attached;
- tenders, and at least the tender of the appellant, the winning tender, and the tenders of those tenderers that can be selected as winning; and
- other evidence for justifying the decisions made, actions or failures to undertake actions in the contract award procedure.

#### **Article 216**

(1) The appeals procedure shall be initiated by submitting the appeal, i.e. by submitting the request to the Appeals Commission for annulling the contract award procedure because the contracting authority failed to submit the required documentation pursuant to Article 222 of this Law.

(2) The appeal shall be lodged within 8 days from the day of:

- publication of the contract notice, regarding the information, actions or failures to undertake actions under the contract notice;
- opening of tenders, regarding the actions or failures to undertake actions related to the tender documentation, i.e. the public opening of tenders;
- receipt of the formal decision for an individual right in the contract award procedure, regarding the establishment of the qualifications from the requests to participate or the evaluation of tenders, as well as the decision; or
- acknowledging illegal implementation of the contract award procedure, within one year after the day of completing the contract award procedure.

(3) In case of electronic auctions, the appeal regarding the actions or failures to undertake actions related to the tender documentation shall be lodged within 8 days from the of receipt of the formal decision for an individual right in the contract award procedure.

(4) The economic operator failing to lodge an appeal pursuant to the provisions in paragraph (2) of this Article shall not have the right to lodge an appeal for the same legal basis in the latter stage of the procedure.

#### **Section 4**

##### **Effect of the appeal and continuing the contract award procedure**

#### **Article 217**

(1) The lodged appeal shall suspend the signing of the public contract and its execution, until the decision on the appeal by the Appeals Commission becomes final.

(2) Notwithstanding paragraph (1) of this Article, the Appeals Commission may approve the continuation of the contract award procedure upon request by the contracting authority.

(3) If the public contract is signed contrary to the provisions referred to in paragraphs (1) and (2) of this Article, it shall be deemed void.

#### **Article 218**

(1) The contracting authority may submit request for continuation of the contract award procedure. The request shall be submitted simultaneously with the reply to the appeal.

(2) The request for continuation of the contract award procedure submitted contrary to paragraph (1) of this Article shall be rejected.

(3) The request for continuation of the contract award procedure shall refer to the signing of the public contract subject to appeals procedure.

(4) The request for continuation of the contract award procedure may be submitted for reasons that may cause damages if the procedure is suspended, which are unproportionate to its value.

#### **Article 219**

The Appeals Commission shall decide for the request for continuing the contract award procedure within 3 days after the day such request was submitted.

#### **Section 5**

##### **Deciding on the appeal**

#### **Article 220**

(1) In the appeals procedure, the Appeals Commission may:

- stop the procedure due to withdrawal of the appeal;

- reject the appeal because the Appeals Commission is not competent, the appeal is not allowed, complete, timely or is lodged by unauthorised persons, or if the requirement laid down in Article 212, paragraph (2) of this Law is not fulfilled;
- reject the appeal because it is unfounded;
- revoke the decision, procedures or the actions found to be illegal;
- annul the decision in case when the irregularity made in the contract award procedure is considered a reason for annulment according to the provisions of this Law and the laws regulating the administrative procedure;
- decide on the requests for compensation of procedural costs; or
- decide on the proposals for continuation of the contract award procedure.

(2) The Appeals Commission shall make a decision on the main subject-matter in the appeals procedure, and reach conclusions on the other issues arising in the appeals procedure.

(3) The decision of the Appeals Commission shall be final.

#### **Article 221**

(1) If the contracting authority finds that the appeal is fully or partially grounded after its receipt, it may cancel the existing decision, i.e. make a new decision, cancel the contract award procedure, correct its action, undertake the action it failed to undertake, or carry out new contract award procedure, by notifying the participants in the contract award procedure in the manner stipulated in this Law, within 5 days after receipt of the appeal.

(2) The appellant may lodge an appeal against the new decision, the action or failure to undertake action, under the conditions laid down in this Law.

(3) The contracting authority which uses the competences stipulated in this Article shall be obliged to inform the Appeals Commission thereof, by submitting the new decision, i.e. evidence that is has been submitted to the appellant.

#### **Article 222**

(1) If the contracting authority fails to act pursuant to Article 215 of this Law, the appellant shall have the right, within 30 days following the day it has lodged the appeal at the contracting authority, to request from the Appeals Commission to annul the contract award procedure.

(2) The request referred to in paragraph (1) of this Article shall be submitted to the Appeals Commission and shall contain the evidence for submitting the appeal to the contracting authority, information about the contracting authority, subject-matter of the public contract, reference number of the contract notice, if available.

(3) The Appeals Commission shall accept the request made by the appellant if the conditions laid down in paragraph (2) of this Article are met.

#### **Article 223**

(1) Parties in the appeals procedure shall be the appellant, the contracting authority and the winning tenderer.

(2) The Appeals Commission shall inform the winning tenderer about the initiated appeals procedure ex-officio.

(3) Each party shall have the right to present its opinion regarding the appeals requests and the indications by the other party, as well as to propose evidence. (3) The Appeals Commission shall submit the documents received in the appeals procedure on the main subject-matter of the appeal or the documents proposing new facts and evidence to each party in the procedure.

(4) Each party shall have the right to review all the documents in the appeals procedure, except those sections of the tender and the documents containing confidential information stipulated by law.

(5) Parties in the appeals procedure may be represented by proxies.

(6) The contracting authority shall be obliged to submit all documentation requested by the Appeals Commission within a time limit set by the Appeals Commission.

(7) For the purpose of making the decision on the procedural costs, the value of the case shall be calculated according to the estimated value of the respective public contract.

#### **Article 224**

(1) The Appeals Commission shall decide upon lodged appeals on a session with majority vote of all members.

(2) The Appeals Commission may operate only if there are at least three members present on its session. The chairman and/or his/her deputy shall mandatory attend the sessions of the Appeals Commission.

(3) A member of the Appeals Commission shall not sustain from voting.

(4) The sessions of the Appeals Commission shall not be public.

(5) Separate minutes shall be kept for the decision-making and voting. The minutes shall be signed by all present members of the Appeals Commission and the minutes taker.

(6) The Appeals Commission shall make a decision within 15 days after completing the documentation for the appeal.

(7) Decisions shall be published on the website of the Bureau, and may also be published in the Official Gazette of the Republic of Macedonia.

#### **Article 225**

(1) The Appeals Commission shall keep minutes when reviewing the appeals.

(2) The minutes shall contain important information on the actions taken, i.e. the decisions made during review.

(4) The minutes shall be signed by the chairman of the Appeals Commission, the members present, as well as the minutes taker, and it shall be an integral part of the appeals file.

#### **Article 226**

(1) The parties may propose a hearing in order to clarify the complex actual situation or certain legal issues, explaining the reasons for such proposal.

(2) The Appeals Commission shall decide on the proposal for holding a hearing.

(3) The Appeals Commission may also decide for holding a hearing when itself finds that the hearing is necessary to clarify the complex actual situation or certain legal issues.

(4) Minutes shall be kept during the public hearing.

(5) The hearing shall be public, but the public may be excluded for the purpose of protecting confidential information pursuant to law.

#### **Article 227**

The Law on Prevention of Conflict of Interest shall accordingly apply to the exemption of the chairman and the members of the Appeals Commission in the appeals procedure.

### **Section 6**

#### **Procedural costs**

#### **Article 228**

(1) Each party shall bare the costs resulting from its own actions in the appeals procedure before the Appeals Commission.

(2) The Appeals Commission shall decide on the costs in the appeals procedure, determine who shall bare the costs, the amount, to whom and at what time limit they should be paid.

(3) The request for compensation of procedural costs shall be fully determined, specified and submitted before the Appeals Commission makes the decision.

(4) The party that initiated and lost the procedure shall be obliged to compensate the justified costs incurred during the appeals procedure to the other party.

(5) In case the appeal is withdrawn or rejected, the appellant shall be obliged to compensate all costs incurred by submitting the appeal to the contracting authority.

(6) In case the appeal is partially accepted, the Appeals Commission may decide each party to cover its own costs, to split the procedural costs to equal portions or proportionally to the degree of acceptance of the appeal.

(7) In case the appeal is fully accepted, the contracting authority shall be obliged to compensate all incurred procedural costs to the appellant.

#### **Article 229**

(1) In addition to the administrative fee, the appellant shall pay an appeals fee in the appeals procedure depending on the value of the tender, as follows:

- for contracts with estimated value up to EUR 20,000 in Denar equivalent, the fee shall be in the amount of EUR 100 in Denar equivalent;
- for contracts with estimated value from EUR 20,000 to EUR 100,000 in Denar equivalent, the fee shall be in the amount of EUR 200 in Denar equivalent;
- for contracts with estimated value from EUR 100,000 to EUR 200,000 in Denar equivalent, the fee shall be in the amount of EUR 300 in Denar equivalent;
- for contracts with estimated value exceeding EUR 200,000 in Denar equivalent, the fee shall be in the amount of EUR 400 in Denar equivalent.

(2) In case there is no tender submitted by the appellant, the amount of the appeals fee shall be calculated on the basis of the estimated value of the public contract, whereby the Appeals Commission shall inform the appellant about the amount of the fee and the time limit in which the appellant shall have to submit evidence of the payment thereof.

(3) The appeals fee shall be revenue in the Budget of the Republic of Macedonia.

### **Section 7**

#### **Court protection and subsidiary application of regulations**

#### **Article 230**

(1) The decisions of the Appeals Commission may be subject to administrative dispute before the court competent for resolving administrative disputes.

(2) The court competent shall deem the administrative dispute procedure concerning public contracts as urgent.

#### **Article 231**

The Law on General Administrative Procedure shall apply on the procedures before the Appeals Commission that are not regulated by this Law.

### **Chapter XI**

#### **Audit**

#### **Article 232**

Audit over the utilisation and spending of procurement funds by the contracting authorities referred to in Article 4, paragraph (1), items a), b) and c) of this Law shall be performed by the State Audit Office.

### **Chapter XII**

#### **Final and transitional provisions**

#### **Article 233**

Bylaws prescribed by this Law shall be adopted within three months from the day this Law starts to apply, except for the CPV, which shall be adopted within 12 months from the day this Law starts to apply.

#### **Article 234**

Until the bylaws prescribed by this Law become effective, the existing bylaws shall apply, to the extent they are in line with this Law.

#### **Article 235**

(1) The Appeals Commission shall be established and shall start its operations by no later than 30<sup>th</sup> June 2008.

(2) Until the Appeals Commission is established and operational, the Complaints Commission within the Government of the Republic of Macedonia shall continue to perform its tasks related to review procedures pertaining to public procurement procedures referred to in Chapter IX of the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", nos. 19/2004 and 109/2005).

#### **Article 236**

Public procurement procedures initiated before this Law starts to apply shall be completed according to the regulations applying at the time when they were initiated.

#### **Article 237**

The day this Law starts to apply, the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", no. 19/2004 and 109/2005) shall cease to be valid.

#### **Article 238**

This Law shall enter into force on the eight day following the day of its publication in the Official Gazette of the Republic of Macedonia, and shall apply from 1<sup>st</sup> January 2008.