

## Full wording

of Act No 25/2006 Coll. of Laws  
on Public Procurement and on the Amendment of Certain Acts,  
as amended by Act 282/2006 Coll. of Laws,  
Act No 102/2007 Coll. of Laws, Act No 232/2008 Coll. of Laws, Act No 442/2008  
Coll. of Laws,  
Act No 213/2009 Coll. of Laws, Act No 289/2009 Coll. of Laws, Act No 402/2009  
Coll. of Laws, Act No 503/2009 Coll. of Laws, Act No 73/2010 Coll. of Laws and Act  
No 129/2010 Coll. of Laws

**This full wording of the Act is an unofficial document  
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### PART ONE

#### BASIC PROVISIONS

##### Article 1

##### Subject of Regulation

(1) This Act regulates the award of supply contracts, building works contracts and service contracts, design contest and administration in public procurement.

(2) This Act does not apply to

- a) contracts where the main purpose is to enable a contracting authority to provide or operate a public telecommunications network or to provide one or several public telecommunications services,
- b) contracts having as their object classified information or, where their performance must be accompanied by special security measures in accordance with law or, where the protection of the security interests of the Slovak Republic so requires,
- c) contracts awarded by contracting authorities in the defence sector in conformity with the Treaty establishing the European Community<sup>2</sup> where its object relates to the production of guns, ammunition and combat material<sup>3</sup> or to trade in them,
- d) contracts where their award is governed by rules based on an international agreement<sup>4</sup> relating to the deployment of troops, which concerns activities in the territory of a Member State of the European Union (hereinafter referred to as the “Member State”) or a third country,

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<sup>2</sup> Section 296 of the Treaty establishing the European Community (OJ EC C 325, 24 December 2002)

<sup>3</sup> Council Decision of 31 March 1958 establishing a list of products to which Section 223 (1) of the Treaty establishing the European Economic Community Section 296 (1) b of the Treaty establishing the European Community (OJ EC C 364, 20 December 2001)

<sup>4</sup> For instance, Agreement of the states which are parties to the North Atlantic Treaty as regards the status of their armed forces (Notification No 566/20004 Coll. of Laws)

- e) contracts where their award is governed by a special procedure or rules of an international organisation,
- f) contracts where their award is governed by rules based on an international agreement concluded between the Slovak Republic and third countries and the contract concerns supplies, building works or services intended for a joint performance or exploitation of a project by countries which are parties of this agreement, and that international agreement was notified to the European Commission,
- g) acquisition or rental of immovable property and the rights connected thereto except financial services which are connected thereto,
- h) contracts by which contracting authorities acquire, develop, produce or co-produce programme material intended for television broadcasting or radio broadcasting, and contracts concerning the broadcast time,
- i) arbitration proceedings<sup>5</sup> and conciliation proceedings,
- j) contracts having as their object financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments<sup>6</sup> or performance of other operations in financial markets, in particular operations to raise financial means or own funding resources,
- k) award of contracts linked directly with services of the National Bank of Slovakia performed in order to provide for its main objective and tasks set out by law in addition to the exercise of common general operating activities not linked with the provision of its main objective and tasks set by law,
- l) conclusion of employment contracts, contracts for works performed outside employment or similar work relationship,
- m) research and development services other than those where the benefits accrue exclusively to the contracting authority and contracting entity when taking advantage of those in the conduct of its own affairs, on condition that the service provided is wholly funded by the same,
- n) building works concessions and service concessions (hereinafter referred to as “concession”), which are awarded by contracting entities for the performance of activities referred to in Article 8 (3) to (9), except concessions awarded by contracting authorities pursuing some of those activities,
- o) contracts for services provided to other contracting authorities or associations of contracting authorities based on an exclusive right resulting from law or from a decision of an administration authority,
- p) contracts for supplies intended for re-sale or rental to third persons where the contracting entity does not possess a special or exclusive right to sell or rent the supplies and another person can sell or rent the same supplies under the same conditions as the contracting entity,
- q) contracts intended for other purpose than the pursuit of activities set out in Article 8 (3) to (9) except for contracts awarded by contracting authorities,
- r) contracts intended for the pursuit of activities set out in Article 8 (3) to Article (9) in a third country where the advantage of networks or geographical territory within the European Communities is not taken in the pursuit of such activities,

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<sup>5</sup> Act No 244/2002 Coll. of Laws on arbitration proceedings, as amended by Act No 521/2005 Coll. of Laws

<sup>6</sup> For instance, Article 8 of Act No 566/2001 Coll. of Laws on securities and investment services and on the amendment of certain acts (the Securities Act), as amended, Article 5 of Act No 483/2001 Coll. of Laws on banks and on the amendment of certain acts, as amended.

- s) awards by contracting entities of contracts whose value excluding the value-added tax is lower than the financial limit pursuant to Article 4 (2) (f) and (g), except the award of contracts pursuant to Article 7.

(3) This Act shall not apply to contracts below the limit, contracts below the threshold and small value contracts having as their object

- a) activities of experts, interpreters or translators for the purpose of civil court proceedings, criminal proceedings including preparatory proceedings, administrative proceedings, arbitration proceedings or other similar proceedings, expert activities of legal entities or natural persons for the purpose of criminal proceedings including preparatory proceedings and expert activities of persons invited for the purpose of auditing or for the purpose of administrative proceedings and expert activities of natural persons or legal entities for the purpose of state expert opinions in accordance with a special regulation<sup>6aa</sup>,
- b) acquisition of library stock,
- c) supplies, building works or services, awarded by a representation of the Slovak Republic abroad,
- d) supplies, building works or services where customer is the state and contractor the Corps of Penitentiary and Judicial Guard in the event that the supplies, building works or services are ensured by employing the convicted and accused.

(4) This Act shall not apply to healthcare contracts concluded by health insurance agencies with health care providers in accordance with a special regulation<sup>6a</sup>.

(5) This Act shall not apply to the procurement of vaccines by health insurance agencies in accordance with a special regulation<sup>6b</sup>.

## Article 2

### Public Procurement

Public procurement shall mean the rules and procedures pursuant to this Act governing the award of supply contracts, building works contracts, service contracts and design contests.

## Article 3

### Contract

(1) For the purpose of this Act, “contract” is a contract for pecuniary interest concluded between one or several contracting authorities or contracting entities on the one hand and one or several successful tenderers on the other having as its object the delivery of supplies, execution of building works or provision of services.

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<sup>6aa</sup> Article 10 (5) of Act No 254/1998 Coll. of Laws on public works, as amended by Act No 260/2007 Coll. of Laws

<sup>6a</sup> Article 7 (1) to (3) of Act No 581/2004 Coll. of Laws on health insurance agencies, supervision of health care and on the amendment of certain acts, as amended

<sup>6b</sup> Article 6 (12) (b) of Act No 581/2004 Coll. of Laws, as amended

(2) For the purpose of this Act, “supply contract” is a contract having as its object purchase, lease, hire-purchase or rental with or without an option to buy, of supplies; it may also include activities linked with siting and installation of the supplies.

(3) For the purpose of this Act, “building works contract” is a contract having as its object execution of building works, or design and execution of building works linked with some of the activities listed in Annex 1, or construction of a work. For the purpose of this Act, “work” is the outcome of building works taken as a whole which fulfils an economic or technical function, and execution of the work meets the requirements of the contracting authority or contracting entity.

(4) For the purpose of this Act, “service contract” is a contract having as its object provision of services listed in Annexes 2 or 3, except contracts set out in paragraphs 2 and 3. Contracts having as their object the provision of services listed in Annexes 2 or 3 and including as a secondary activity building works listed in Annex 1 are considered service contracts. Contracts having as their object both the delivery of supplies and provision of services listed in Annexes 2 and 3 are considered service contracts where the estimated value of services exceeds the estimated value of supplies.

(5) Contracts must be in writing except contracts concluded pursuant to Article 102.

#### Article 4

##### Financial Limits

(1) Contracts are above the limit, below the limit, below the threshold or of small value, depending on the estimated contract value.

(2) A contract is above the limit where the estimated contract value is equal to or exceeds

- a) EUR 133 000 where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (a); for a contracting authority in the defence sector in the event of a contract for the delivery of supplies listed in Annex 4,
- b) EUR 206 000 where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (a) to (e); for a contracting authority in the defence sector in the event of a contract for the delivery of supplies not listed in Annex 4,
- c) EUR 133 000 where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (a) except a service contract referred to in letter (e),
- d) EUR 206 000 where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (b) to (e),
- e) EUR 206 000 where a contract is awarded for a service referred to in category 8 of Annex 2, category 5 telecommunications services pursuant to the Common Procurement Vocabulary<sup>7</sup> (hereinafter referred to as the “Procurement Vocabulary”) corresponding to CPC 7524, 7525, 7526 codes and a service listed in Annex 3 awarded by a contracting authority,

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<sup>7</sup> Regulation (EC) of the European Parliament and of the Council No 2195/2002 of 5 November 2002 on Common Procurement Vocabulary (CPV) (OJ EC L 340, 16 December 2002, p. 1), as set out in Commission Regulation No 2151/2003 of 16 December 2003 (OJ EC L 329, 16 December 2003, p. 1)

- f) EUR 412 000 where a supply contract or a service contract is awarded by a contracting entity,
- g) EUR 5 923 000 in the event of a building works contract.

(3) A contract is below the limit where the estimated contract value is lower than the financial limit set out to in paragraph 2 and at the same time equals to or exceeds

- a) EUR 60 000 where a supply contract or a service contract is awarded by a contracting authority,
- b) EUR 360 000 where a building works contract is awarded by a contracting authority.

(4) A contract is below the threshold where the estimated contract value is lower than the financial limit set out in paragraph 3 and at the same time equals to or exceeds

- a) EUR 30 000 where a supply contract or a service contract is awarded by a contracting authority,
- b) EUR 120 000 where a building works contract is awarded by a contracting authority.

(5) A contract awarded by a contracting authority is of small value where the estimated contract value is lower than the financial limit set out in paragraph 4 (a) and (b) during a calendar year or during the term of contract where the contract is concluded for a period exceeding one calendar year.

## Article 5

### Rules for Calculating the Estimated Contract Value

(1) For the purpose of this Act, the estimated contract value is determined as the price excluding the value added tax. The estimated contract value must be based on the price at which a similar or comparable object of contract is usually sold at the time when the contract notice or notice used as a means of calling for competition is dispatched for publication. If publication of such notice is not required, the estimated contract value must be based on the price at which the same or comparable object of contract is usually sold at the time when the contract award procedure is commenced.

(2) The estimated contract value also includes

- a) the value of repetitive performances where there is an intention to ensure those,
- b) all forms of options and all contract prolongations, if any,
- c) prizes and awards to be awarded to candidates or participants of a design contest (hereinafter referred to as the “participant”),
- d) the estimated value of supplies or services, which the contracting authority and contracting entity is to provide in connection with a building works contract.

(3) The supplies or services which are not necessary for the performance of a building works contract must not be included in the estimated value of the building works contract when doing so would result in removing such supplies or such services from the scope of this Act.

(4) When building works or services are subdivided under a single contract award into several lots, each of which will be object of a separate contract, the estimated contract value shall be determined as a sum of the estimated values of all contract lots. Where the total estimated contract value is not lower than the financial limit pursuant to Article 4 (2), the

procedure of awarding contracts above the limit shall be used. The procedure of awarding contracts below the limit may be used where the estimated value of the lot of building works is less than EUR 1 000 000 or the estimated value of the lot of services is less than EUR 80 000 and where the value of those lots does not exceed 20 % of the total estimated value of all contract lots.

(5) Where the delivery of supplies is subdivided under a single contract award into several lots, each of which will be object of a separate contract, the estimated contract value is determined as a sum of the estimated values of all contract lots. When the total estimated value is not lower than the financial limit pursuant to Article 4 (2), the procedure of awarding contracts above the limit shall be used. Procedure for the award contracts under the limit may be used where the estimated value of the lot of supplies is lower than EUR 80 000 and the value of those lots does not exceed 20 % of the total estimated value of all contract lots.

(6) In the event of lease, hire-purchase or rental with or without an option to buy, of supplies, the basis for determining the estimated supply contract value shall be

- a) the total contract value where the contract is concluded for a closed-end period equal to or shorter than 12 months,
- b) the total contract value including the estimated residual value where the contract is concluded for a closed-end period exceeding 12 months,
- c) a 48-multiple of a monthly payment where the contract validity term is not fixed or cannot be fixed.

(7) In the event of supply contracts or service contracts regularly repeated or renewed within an agreed term, the estimated contract value shall be determined

- a) on the basis of total genuine costs of the same or comparable supplies or services awarded in the preceding calendar year or over the preceding 12 months, adjusted by the expected changes in the quantity or value over the subsequent 12 months, or
- b) on the basis of total estimated value of the supplies or services awarded in the course of 12 months after the first performance or during the contract validity term where it exceeds 12 months.

(8) The estimated value of a service contract shall include

- a) due insurance premium and other form of remunerations in the event of insurance services,
- b) fees, commission, interests and other expenditures relating to the services and other forms of remunerations in the event of banking services and other financial services,
- c) prizes awarded for designs and remunerations awarded to participants in the event of a design contest.

(9) The estimated value of a service contract which does not set out the total price in the event of a closed-end contract with a term

- a) equal to or shorter than 48 months, the total estimated contract value during the contract term is to be included,
- b) exceeding 48 months or in the event of an open-end contract, includes the 48-multiple of the monthly payment.

(10) The estimated value of a contract including both supplies and services is calculated as the total value of the supplies and the total value of the service irrespective of

their shares. The estimated contract value also includes the price of siting and installation operations.

(11) The estimated value of a framework agreement or a dynamic purchasing system is determined as the maximum estimated value of all contracts which are expected during the framework agreement term or during the dynamic purchasing system existence.

(12) A contract may neither be subdivided nor a method for determining its estimated value may be selected in order to avoid the use of the contract award procedures pursuant to this Act.

## Article 6

### Contracting Authority

(1) For the purpose of this Act, “contracting authority” is

- a) the Slovak Republic represented by its authorities,
- b) a municipality,
- c) a higher territorial unit,
- d) a legal entity which meets the requirements pursuant to paragraph 2,
- e) an association of legal entities whose membership includes is at least one of contracting authorities referred to in (a) to (d).

(2) “Legal entity” pursuant to paragraph 1 (d) is a person founded or established for a special purpose of meeting needs in general interest, not having exclusively industrial character or commercial character and

- a) fully or for the most part funded by a contracting authority pursuant to paragraph 1 (a) to (d),
- b) controlled by a contracting authority pursuant to paragraph 1 (a) to (d), or
- c) where a contracting authority pursuant to paragraph 1 (a) to (d) appoints or elects more than one half of the members in its management body or supervisory body.

## Article 7

(1) Where a contracting authority has provided a person who is neither a contracting authority nor a contracting entity performing some of the activities under Article 8 (3) to (9) over 50 % of funds for supplies, building works and services, that person shall be obliged to use award procedures

- a) above the limit pursuant to Part One and Part Two of Title I and Title II
  1. for the execution of building works where the estimated contract value equals to or exceeds EUR 5 150 000,
  2. for the delivery of supplies and provision of a service where the estimated contract value equals to or exceeds EUR 206 000,
- b) below the threshold pursuant to Article 99 to Article 101
  1. for the execution of building works where the estimated contract value equals to or exceeds EUR 120 000 and, at the same time, is lower than the financial limit referred to in letter a) of the first item,

2. for the delivery of supplies and provision of services where the estimated contract value equals to or exceeds EUR 30 000 and, at the same time, is lower than the financial limit referred to in letter a) of the second item.

(2) Where a contracting authority has provided another contracting authority or contracting entity over 50 % of funds

- a) for the execution of building works related to the pursuit of any of the activities pursuant to Article 8 (3) to (9), the other shall be obliged to use procedures for the award of contracts below the threshold pursuant to Articles 99 to 101 where the estimate contract value is lower than the financial limit set out in Article 4 (2) (g) and, at the same time, equals to or exceeds EUR 120 000,
- b) for the delivery of supplies and provision of services related to the pursuit of any of the activities pursuant to Article 8 (3) to (9), the other shall be obliged to use procedures for the award of contracts
  1. above the limit pursuant to Part One and Part Two of Title I and Title II where the estimated contract value is lower than the financial limit pursuant to Article 4 (2) (f) and, at the same time, equals to or exceeds EUR 206 000,
  2. below the threshold pursuant to Articles 99 to 101 where the estimated contract value is lower than EUR 206 000 and, at the same time, equals to or exceeds EUR 30 000.

## Article 8

### Contracting Entity

(1) For the purpose of this Act, “contracting entity” is

- a) a legal entity in which a contracting authority exercises, directly or indirectly, dominant influence based on ownership right, financial interest or rules which govern it, and performs at least one of the activities referred to in paragraphs 3 to 9; dominant influence shall mean that a contracting authority, either directly or indirectly,
  1. owns the majority of shares or a majority business interest,
  2. controls the majority share in voting rights, or
  3. appoints more than a half of members of the administration body or another executive body, or of the supervisory body,
- b) a legal entity pursuing at least one of the activities referred to in paragraphs 3 to 9 on the basis of special rights or exclusive rights.

(2) “Special right” or “exclusive right” means a right resulting from law, a law court decision or an administrative authority decision, the outcome of which is a restriction in the pursuit of activities referred to in paragraphs 3 to 9 to one person or several persons and which, in a substantial manner, affects the opportunity to pursue such activities by other persons.

(3) For the purpose of this Act, “activity in the energy sector and in thermal energy sector” is

- a) in power engineering
  1. operation of a transmission system intended for the provision of services to the public or operation of a distribution system intended for the provision of services to the public or provision of access to such systems, or
  2. electricity generation for the purpose of provision of services to the public,
- b) in the gas sector

1. operation of an extraction system intended for the provision of services to the public, operation of a transit system intended for the provision of services to the public or operation of a distribution system intended for the provision of services to the public or provision of access to such systems,
  2. operation of storages for the purpose of ensuring the extraction activity, ensuring the activity of operators of a transit system intended for the provision of services to the public or a distribution system intended for the provision of services to the public, or
  3. gas production for the purpose of provision of services to the public,
- c) in thermal energy sector
1. operation of public heat distribution intended to provide services to the public or provision of access to such distribution, or
  2. heat generation for the purpose of provision of services to the public.

(4) For the purpose of this Act, “activity in the water sector” is

- a) operation of public water conduits intended for the provision of services to the public relating to drinking water production, supply, transportation and distribution,
- b) the supply of drinking water to public water systems.

(5) When awarding contracts or in design contests, contracting entities shall be obliged to follow this Act in the event they pursue activities pursuant to paragraph 4 and, at the same time, activities linked with

- a) hydraulic structures, irrigation or land drainage provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by such structures, irrigation or land drainage,
- b) waste water treatment, draining or neutralisation.

(6) For the purpose of this Act, “activity in the transport sector” is the provision or operation of networks providing transport services to the public by rail, automated systems, tramway, trolleybus, scheduled public bus or cable.

(7) In the event of transport services, a network providing transport services is considered existent where the transport services provided comply with the conditions of operation laid down by the competent authority, like scheduled lines, capacity or timetables.

(8) For the purpose of this Act, “activity in the postal services sector” is the provision of postal services<sup>8</sup> or services other than postal services where such services are provided by a contracting entity also providing postal services and provided that the conditions relating to postal services pursuant to Article 152 are not met.

For the purpose of this Act, services other than postal services shall mean

- a) postal service management services; services preceding the dispatch or following the dispatch of a postal item,
- b) added-value services carried out exclusively by electronic means including the secure transmission of encrypted documents, services of directories management and transmission of registered electronic mail,
- c) services of items other than postal items, for instance, direct mailing items,
- d) financial services listed in category 6 of Annex 2 and in Article 1 (2) (j), including in particular postal giro transfers and transfers using postal orders,
- e) philatelic services,

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<sup>8</sup> Article 2 of Act No 507/2003 Coll. of Laws on postal services, as amended by Act No 15/2001 Coll. of Laws

- f) logistics services, in particular services combining the delivery of postal items or their storage with other activities, which do not have the nature of activities in the postal services sector.

(9) This Act shall also apply to activities relating to the exploitation of a geographically specified territory for the purpose of

- a) exploration for or extraction of oil, gas, coal or other solid fuels,
- b) operation of public airports, maritime ports, inland ports or other terminal facilities to air carriers, sea or inland waterway carriers.

(10) Activity pursuant to paragraph 3 where such activity is not pursued by a contracting authority, shall not be considered the production of

- a) electricity
  1. where electricity is generated for the purpose of performing activities other than those referred to in paragraphs 3 to 9, and
  2. the supply of electricity to a system intended for the provision of services to the public only depends on its own consumption and has not exceeded 30 % of the average total generation of electricity over the preceding three years,
- b) gas
  1. where gas is produced as an inevitable result of performing activities other than those referred to in paragraphs 3 to 9, and
  2. the supply of gas to a system intended for the provision of services to the public is aimed only at economic exploitation of this manufacture and has not exceeded 20 % of average turnover over the preceding three years,
- c) heat
  1. where heat is generated as an inevitable result of performing activities other than those referred to in paragraphs 3 to 9, and
  2. the supply of heat to a public heat distribution system intended for the provision of services to the public is aimed only at economic exploitation of that generation and has not exceeded 20 % of average turnover over the preceding three years.

(11) Activity pursuant to paragraph 4, where such activity is not carried out by a contracting authority, shall not be considered the supply of drinking water to public water systems where

- a) the production of drinking water is only used for the performance of activities other than the activities referred to in paragraphs 3 to 9,
- b) the supply of public water systems only depends on its own consumption and has not exceeded 30 % of the average total production of drinking water over the preceding three years.

(12) Activity pursuant to paragraph 6 shall not be considered the provision of services to the public in scheduled public bus transport where other carriers provide such services in a given geographical area under the same conditions as the contracting entity.

## Article 9

### Basic Obligations of Contracting Authorities and Contracting Entities

(1) In the award of contracts, contracting authorities and contracting entities shall be obliged to follow this Act.

(2) Where contracting authorities perform any of the activities pursuant to Article 8 (3) to (9), in the award of contracts related to the performance of that activity they shall follow the rules and procedures for the award of contracts set out for contracting entities unless set out otherwise by this Act.

(3) Contracting authorities and contracting entities shall not be allowed to conclude amendments to contracts concluded pursuant to Article 45 where the content of such amendments would

- a) in a substantial manner change the initial object of contract,
- b) in a substantial manner amend the conditions which, in the initial contract award procedure, would allow participation of other candidates or tenderers or would allow accepting other than the initially accepted tender,
- c) change the economic balance of the contract on behalf of the successful tenderer in a manner not foreseen in the initial contract.

(4) In the award of contracts, the principle of equal treatment, the principle of non-discrimination of tenderers or candidates, the principle of transparency and the principle of thrift and efficiency must be applied.

(5) Equally beneficial conditions shall be applied with regard to tenderers and candidates from Members States in the award of contracts as those to be applied with regard to tenderers and candidates from third countries in the implementation of the Agreement on Government Procurement.

(6) Where a contracting authority has awarded a special right or an exclusive right to provide services performed in the public interest to another person which is not a contracting authority pursuant to this Act, the former must reserve in a contract or another document that the latter would apply the principle of non-discrimination with regard to nationality when awarding supply contracts to third persons.

## Article 10

### Central Purchasing Organisation

(1) For the purpose of this Act, “central purchasing organisation” is a contracting authority pursuant to Article 6 (1) which provides for supplies or services intended for contracting authorities and contracting entities or awards contracts or concludes framework agreements intended for contracting authorities and contracting entities.

(2) Contracting authorities and contracting entities may acquire supplies, works or services through a central purchasing organisation or from a central purchasing organisation.

## Article 11

### Framework Agreement

For the purpose of this Act, “framework agreement” is an agreement in writing between one or several contracting authorities, or one or several contracting entities on the one hand and one or several tenderers on the other. A framework agreement specifies contract

award conditions during its term of validity, particularly as regards price and the estimated quantity of the object of contract.

## Article 12

### Tenderer

For the purpose of this Act, “tenderer” shall be a natural person, a legal entity or a group of such persons that delivers supplies, executes building works or provides services on the market and has submitted a tender.

## Article 13

### Candidate

For the purpose of this Act, “candidate” is a natural person, a legal entity or a group of such persons delivering suppliers, executing building works or providing services on the market that is interested to participate in a restricted procedure, in a negotiated procedure or in a competitive dialogue, or has taken over tender documents in an open procedure.

## Article 14

### Concessionaire

For the purpose of this Act, “concessionaire” is a natural person, a legal entity or a group of such persons with whom a contracting authority has concluded a building works concession contract (hereinafter referred to as the “works concession contract”) or a service concession contract pursuant to this Act. A contracting authority may be a concessionaire as well.

## Article 15

### Concession

(1) “Building works concession” is a contract of the same type as a building works contract, except for the fact that the consideration for the building works to be carried out consists either solely of the right to exploit the work for an agreed time or of that right together with payment; In a concession contract, the contracting authority and the concessionaire agree the scope of the right to exploit the work which may include the receiving of its benefits as well as the amount and terms of payment, if any.

(2) “Service concession” is a contract of the same type as a service contract, except for the fact that the consideration for the services to be provided consists either solely of the right to exploit the services provided for an agreed time or of that right together with payment. In a concession contract, the contracting authority and the concessionaire agree the scope of exploitation of the service provided, which may include the receiving of its benefits as well as the amount and terms of payment, if any.

### Communication

## Article 16

(1) Communication shall be carried out in a manner ensuring integrity and content of the data provided in a tender, in a design and in a request for participation, and guaranteeing the protection of confidential and personal data provided in such documents. No one shall be allowed to examine their content before the expiry of the time limit for their submission.

(2) Notices, submission of documents and communication between contracting authorities or contracting entities and tenderers or candidates may be done in writing by post, telefax, electronic means or telephone or in a combination of those means. Contracting authorities and contracting entities determine the means of communication so that they are generally available and that the opportunities of tenderers or candidates to participate in public procurement are not restricted.

(3) For the purpose of this Act, “by electronic means” is understood as using electronic equipment for processing including digital compression and storage of the data which is transmitted, conveyed and received by wire, radio waves, optical means or other electromagnetic means.

(4) For the purpose of this Act, “written” or “in writing” means any expression consisting of words or figures, which can be read, reproduced and subsequently forwarded. It may include information which is transmitted and stored by electronic means.

## Article 17

(1) For the purpose of this Act, “request to participate” is

- a) a request to provide tender documents in the event of an open procedure,
- b) a request of a candidate to be included in the process of public procurement in the event of a restricted procedure, negotiated procedure with a publication and competitive dialogue; a request to participate by a candidate also means the submission of documents by which the candidate proves his meeting of the conditions for participation in public procurement.

(2) A request to participate is submitted in writing. Where a request to participate is sent by telefax, contracting authorities and contracting entities may request its confirmation by post or by electronic means. That requirement along with the time limit for the delivery of a confirmation by post or by electronic means is to be set out in the contract notice or in the notice used as a means of calling for competition; the documents to prove the meeting of the conditions for participation in public procurement cannot be sent by fax.

(3) A request to participate may also be made by telephone. A request to participate made by telephone must be confirmed in writing before the time limit for its submission has expired.

## Article 18

(1) The tools used for electronic communication, as well as their technical characteristics, must not be discriminatory, they must be generally available and interoperable with the information and communication technology products in general use.

(2) In the event of electronic communication relating to a contract award procedure, the parties involved must have available all the necessary information of technical nature including encryption and encoding. Tenders must be provided with electronic signatures in accordance with a special regulation<sup>9</sup>.

(3) Where the documents demonstrating compliance with the conditions of participation in public procurement are not issued in the electronic form, tenderers or candidates shall submit them in the documentary form within the time limit for the submission of tenders or requests to participate.

(4) The devices for electronic communication, in particular electronic transmission and receipt of tenders and requests to participate, must through hardware and suitable procedures

- a) ensure compliance with requirements concerning electronic signatures which apply to tenders and to requests to participate,
- b) allow determining the exact time and date of receipt of tenders and requests to participate,
- c) allow reasonably ensuring that no one has access to the information transmitted in accordance with these requirements before the determined time limit,
- d) allow reasonably ensuring, in the event of breach of the access prohibition pursuant to (c), an exact identification of the breach,
- e) ensure that only authorised persons may determine or change the time limits for making available the information submitted,
- f) ensure that during the contract award procedure, access to all or to a part of the information submitted is possible only with a previous permission of authorised persons,
- g) ensure that a permission of authorised persons pursuant to (f) would allow access to the information submitted only after a pre-defined deadline,
- h) ensure that the information submitted and made available in accordance with these requirements remain available to persons only who are authorised to be informed.

## Article 19

(1) For the purpose of this Act, a time limit specified in days shall not include the day on which the event determining the beginning of the time limit occurred. Time limits specified in weeks, months or years shall come to an end upon the expiry of the day whose indication is identical with the date on which the event determining beginning of the time limit occurred; where there is not such a day in a month, the time limit shall end on the last day of the month. Where the end of a time limit is on Saturday or a public holiday, the last day of the time limit shall be the nearest future working day.

(2) Tenders and other certificates and documents in public procurement shall be submitted in the state language. In contract notices or in notices used as a means of calling for competition, contracting authorities and contracting entities may allow tender submission also in another language.

(3) Certificates which prove the meeting of participation conditions for tenderers or candidates established outside the Slovak Republic must be submitted in the original language

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<sup>9</sup> Act No 215/2002 Coll. of Laws on electronic signature and on the amendment of certain acts, as amended by Act No 679/2004 Coll. of Laws

and, at the same time, must be translated into the state language, except for certificates submitted in the Czech language. Where a difference is established in their content, the translation into the state language shall prevail.

(4) When determining the time limit for the submission of tenders and the time limit for the submission of requests to participate, contracting authorities and contracting entities take into consideration the complexity of the object of contract and the time necessary to prepare tenders.

## Article 20

Contracting authorities and contracting entities shall be obliged to keep confidential the information provided by tenderers or candidates indicated as confidential. Information indicated as confidential shall in particular be the trade secret and confidential aspects of tenders. This shall be without prejudice to the provisions concerning contract award notices, commissions, opening of tenders and jury.

## Article 21

### Documentation

(1) Contracting authorities and contracting entities register all certificates and documents from the contract award procedure used and store them five years from the expiry of the tender validity period. The documentation shall include a justification for using negotiated procedure, competitive dialogue or using accelerated restricted procedure or accelerated negotiated procedure with a publication.

(2) Contracting authorities and contracting entities shall draw up a report on every contract, on every framework agreement and on every establishment of a dynamic purchasing system, which makes part of the documentation.

(3) The report shall include in particular

- a) identification of the contracting authority or contracting entity, the object and value of the contract, framework agreement or dynamic purchasing system,
- b) the date of publication of the notice in the Official Journal of the European Union (hereinafter referred to as the “European Journal”) and in the Journal of Public Procurement (hereinafter referred to as the “Journal”) and the numbers of such notices,
- c) identification of the selected candidates and justification of their selection,
- d) identification of the excluded tenderers or candidates and the justification of their exclusion,
- e) justification of the exclusion of abnormally low tenders,
- f) identification of the successful tenderer and justification of his tender selection, the share of contract or framework agreement, which the successful tenderer intends to subcontract to third persons, if known,
- g) justification of the use of negotiated procedure or competitive dialogue,
- h) justification for cancellation of the used contract award procedure.

(4) Contracting authorities and contracting entities shall be obliged to document the contract award procedure carried out by electronic means.

(5) Upon request, contracting authorities and contracting entities shall submit complete documentation to the Office for Public Procurement (hereinafter referred to as the “Office”) and to the Antimonopoly Office of the Slovak Republic, law courts and prosecuting and adjudicating bodies, as well as other supervisory bodies if obliged to do so by law.

## **P A R T T W O**

### **AWARD PROCEDURES ABOVE THE LIMIT**

#### T I T L E I

#### COMMON PROVISIONS

##### Notices Used in Public Procurement

##### Article 22

(1) Notices used in public procurement are sent to the Office for Official Publications of the European Communities (hereinafter referred to as the “Publications Office”) and to the Office to be published. Prior notices and periodic indicative notices can be published on the internet, in the profile of a contracting authority or in the profile of a contracting entity pursuant to Article 23 (2).

(2) In the contracting authority’s profile or in the contracting entity’s profile, information may be published on calls for the submission of tenders, intended purchases, awarded contracts, grounds for cancellation of a used contract award procedure and other general information like contact persons, telephone numbers, telefax numbers, postal addresses and e-mail addresses. In order to improve the information rate, contracting authorities and contracting entities may publish full versions of tender documents, technical requirements and additional information on the internet.

(3) Contract award notices are sent pursuant to paragraph 1 after a conclusion of contract, framework agreement and every contract under a dynamic purchasing system

- a) within 48 days by contracting authorities,
- b) within two months by contracting entities.

(4) Contracting authorities and contracting entities are not obliged to send the Publications Office a contract award notice for contracts concluded under a framework agreement. The Office is to be sent contract award notices for contracts concluded under framework agreements in bulk for each quarter within 48 days of the quarter end.

(5) Contracting authorities and contracting entities may send contract award notices after the conclusion of each contract under a dynamic purchasing system in bulk for each quarter within 48 days of the quarter end.

(6) In the event of contracts for the provision of services listed in Annex 3, contracting authorities and contracting entities indicate in the contract award notice if they agree to their publication.

(7) Where contracting authorities or contracting entities consider a contract not implying the obligation to publish a contract notice, a notice used as a means of calling for competition, a building works concession notice or a design contest notice, they may send the Publications Office and the Office a notice for publication informing of the intention to conclude a contract. The notice shall include in particular

- a) name, address and contact data of the contracting authority or the contracting entity,
- b) a description of the object of contract,
- c) a justification of the intention to conclude a contract or a concession contract for works without a publication of a contract notice, notice used as a call for competition, notice of building works concession or design contest notice,
- d) name, address and contact data of the economic operator or candidate with whom the contract or works concession contract for works will be concluded,
- e) any other necessary information.

(8) Additional information of a contract award notice includes full names of the tender evaluation commission members.

## Article 23

(1) Contracting authorities and contracting entities prepare and send notices used in public procurement to the Publications Office and to the Office in the electronic format and by transmission procedures available at the web site of the Publications Office and of the Office.

(2) Before publication of a prior notice and a periodic indicative notice in the contracting authority's profile or in the contracting entity's profile, a notice is to be sent to the Publications Office and to the Office informing that this form of publication will be used.

(3) Contracting authorities and contracting entities shall send the Office the notice used in public procurement on the day following immediately the date on which the notice was sent to the Publications Office. Evidence of the date of the notice dispatch to the Publications Office and to the Office is to be provided by the contracting authorities and contracting entities.

(4) A notice sent to the Office must not include any other information than that referred to in the notice sent to the Publications Office or published in the contracting authority's profile or in the contracting entity's profile. The date of the notice dispatch to the Publications Office or of its publication in the contracting authority's profile or in the contracting entity's profile shall not be changed either.

(5) Where contracting authorities and contracting entities have fulfilled their obligation pursuant to paragraph 3, the Office shall publish the notice used in public procurement not later than six days from the notice dispatch to the Publications Office.

(6) In the same manner as notices used in public procurement, contracting authorities or contracting entities may publish notices whose publication is not obligatory.

## Article 24

### Procedures in Public Procurement

(1) Procedures in public procurement are the following:

- a) open procedure,
- b) restricted procedure,
- c) negotiated procedures,
- d) competitive dialogue.

(2) Open procedure is organised for an unrestricted number of candidates.

(3) Restricted procedure is organised for an unrestricted number of candidates. Contracting authorities and contracting entities may restrict the number of candidates invited to submit tenders.

(4) Negotiated procedure is a procedure under which contracting authorities and contracting entities negotiate the contract conditions with the selected candidate or selected candidates. Negotiated procedure may be with a publication or without a publication.

(5) Negotiated procedure with a publication is organised for an unrestricted number of candidates. Contracting authorities and contracting entities may restrict the number of candidates invited to submit tenders and to negotiate.

(6) Negotiated procedure without a publication may not lead to conclusion of a framework agreement.

(7) Competitive dialogue is organised for an unrestricted number of candidates. Contracting authorities may restrict the number of candidates to conduct dialogue to the end of developing one or several suitable solutions meeting the contracting authority's requirements, based on which the selected candidates are invited to submit tenders.

## Article 25

### Award of a Service Contract

(1) When awarding a service contract having as its object a service listed in Annex 2 and, simultaneously, a service listed in Annex 3, the estimated contract value for the provision of the service listed in Annexes 2 and 3 shall prevail in determining whether the contract is for the provision of a service listed in Annex 2 or in Annex 3.

(2) When awarding contracts for services listed in Annex 3 where

- a) the estimated contract value awarded by a contracting authority and contracting entity equals to or exceeds EUR 3 000 000, procedures for the award of contracts below the limit are applied; contracting authorities and the contracting entities send the contract award notice to the Publications Office and to the Office pursuant to Articles 22 and 23,

- b) the estimated value of contract awarded by a contracting authority is lower than the financial limit referred to in (a) and, at the same time, equals to or exceeds the financial limit referred to in Article 4 (2) (e), procedures for the award of contracts below the threshold are applied; contracting authorities sets out technical conditions pursuant to Article 34 and send the contract award notice to the Publications Office and the Office pursuant to Articles 22 and 23,
- c) the estimated value of a contract awarded by a contracting entity is lower than the financial limit referred to in (a) and, at the same time, equals to or exceeds the financial limit referred to in Article 4 (2) (f), procedures for the award of contracts below the threshold are applied; contracting entities set out technical conditions pursuant to Article 34 and send the contract award notice to the Publications Office and the Office pursuant to Articles 22 and 23.

(3) When awarding contracts having as their object non-priority services listed in Annex 3 pursuant to paragraph 2 (b) and (c), contracting authorities and contracting entities send the Office the contract notice at least two working days prior to the publication of the call for the submission of tenders pursuant to Article 99 (2) in a manner pursuant to Article 23 (1). A notice of publishing a call for the submission of tenders shall contain

- a) name, address, identification number of the organisation (ICO), contract officer, telephone No., telefax No., e-mail address, classification of the contracting authority and contracting entity,
- b) name of the object of contract,
- c) web site address of the contracting authority and contracting entity where the call for the submission of tenders will be published,
- d) the date of publication of the call for the submission of tenders on its web site.

(4) The Office shall publish a notice of publishing a call for the submission of tenders prepared and sent pursuant to paragraph 3 in the Journal not later than the publication date of the call for the submission of tenders referred to in that notice pursuant to paragraph 3 (d).

## Article 26

### Personal Status

(1) Only the one meeting the conditions of participation with regard to personal status may take part in the public award of contracts:

- a) neither himself nor his statutory body or a member of his statutory body was lawfully convicted for the offence of corruption, for the offence of damaging the financial interests of the European Communities, for the offence of making legal income from criminal activities, for the offence of establishing, plotting and supporting a criminal group or for the offence of establishing, plotting and supporting a terrorist group,
- b) neither himself nor his statutory body or a member of his statutory body was lawfully convicted for an offence concerning the professional conduct of business,
- c) he is not subject to proceedings for a declaration of bankruptcy, is not bankrupt or being wound up, nor a bankruptcy petition was rejected against him due to lack of estate,
- d) he does not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to seniors pension savings scheme to be collected by an execution of a decision,
- e) he does not have a history of tax arrears to be collected by an execution of a decision,
- f) he is authorised to deliver supplies, execute building works or provide services,

g) he has not been proven any grave professional misconduct over the preceding three years, which contracting authorities and contracting entities are able to prove.

(2) Tenderers or candidates prove their meeting of the conditions of participation pursuant to paragraph 1

- a) letters (a) and (b) by an extract from the judicial record not older than three months,
- b) letter (c) by a confirmation of the competent law court not older than three months,
- c) letter (d) by a confirmation of the Social Insurance Agency and health insurance agency not older than three months,
- d) letter (e) by a confirmation of the competent local tax authority not older than three months,
- e) letter (f) by a certificate authorising to deliver supplies, execute building works or provide services.

(3) Where a tenderer or candidate is not established in the Slovak Republic and the country of his establishment does not issue any of the documents referred to in paragraph 2 or does not issue any equivalent documents either, those may be replaced by a solemn declaration pursuant to the regulations in effect in the country of his establishment.

(4) In the event that a tenderer or candidate is established in a Member State other than the Slovak Republic and the law of that Member State does not regulate the concept of solemn declaration, it may be substituted by a statement made before a law court, administration authority, notary, any other professional institution or commercial institution pursuant to the regulations in effect in the country of origin or in the country of establishment of the tenderer or candidate.

(5) For the purpose of this Act, grave professional misconduct shall mean in particular participation in an agreement restricting competition<sup>9a</sup> in public procurement and any other a grave infringement of law or a grave infringement of obligations from contract, which can be proven by a final decision of the competent public authority. The period pursuant to paragraph 1(g) shall begin on the date when the decision has become final.

(6) For the purpose of this Act, final decision of a competent public authority shall mean

- a) a valid decision of a competent administration authority against which an action cannot be lodged,
- b) a valid decision of a competent administration authority against which no action has been lodged,
- c) a valid judicial decision, by which an action against a decision or a procedure by an administration authority has been dismissed or proceedings discontinued or,
- d) any other valid judicial judgement.

(7) The condition of participation with regard to personal status pursuant to paragraph 1 (g) shall also be met by the one who has not been imposed a fine or who has been imposed a reduced fine in accordance with a special regulation<sup>9b</sup>.

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<sup>9a</sup> Article 4 (3) (f) of Act No 136/2001 Coll. of Laws on the protection of competition and on the amendment of Act of the Slovak National Council No 347/1990 Coll. on the structure of ministries and other central state administration authorities of the Slovak Republic, as amended, as amended by Act No 465/2002 Coll. of Laws

<sup>9b</sup> Article 38 (11) and (12) of Act No. 136/2001 Coll. of Laws, as amended

## Article 27

### Financial and Economic Standing

- (1) As a rule, financial and economic standing may be proven by
- a) a bank or a foreign bank branch statement which may be a commitment of the bank or of the foreign bank branch to render a loan,
  - b) a blue card of professional liability insurance or a blue card of business liability insurance in the event such insurance is required by special law,
  - c) balance sheet or statement of assets and liabilities or data thereof, or
  - d) an overview of the total turnover or an overview of the turnover made in the field related to the contract award, over not more than the last three economic years, for which they are available, depending on the establishment or commencement of operation.

(2) To prove their financial and economic standing, tenderers or candidates may use financial resources of another person regardless of their legal relationship. In such event, tenderers or candidates must prove the contracting authority or contracting entity that, in their contract performance, they will be able to make a valid use of the resources of the person whose standing they are using to prove their financial and economic standing.

(3) In the event that, due to objective reasons, tenderers or candidates are not able to prove their financial and economic standing by a specified document, the contracting authority and contracting entity may recognise another document, by which financial and economic standing is proven.

## Article 28

### Technical Ability or Professional Suitability

(1) Depending on the type, quantity, importance or use of supplies, works or services, technical ability or professional suitability may be proven by one or by several of the following documents:

- a) a list of supplies delivered or services provided over the preceding three years with an indication of prices, delivery dates and customers, the customer being
  1. a contracting authority pursuant to this Act: the evidence of performance is to be confirmed by that contracting authority,
  2. a person other than a contracting authority: the evidence of performance is to be confirmed by the customer; where that is impossible, a statement of delivery by the tenderer or candidate,
- b) a list of building works executed over the preceding five years, accompanied by certificates of satisfactory execution of the building works with an indication of prices, sites and dates of the works completion and assessment of the works performed according to the business conditions, the customer being
  1. a contracting authority pursuant to this Act: the evidence of performance is to be confirmed by that contracting authority,
  2. a person other than a contracting authority, the evidence of performance is to be confirmed by the customer; where that is impossible, a statement of their execution by the tenderer or candidate,
- c) data regarding engineers or technical authorities responsible for quality control regardless of their contractual relationship with the tenderer or candidate; in the event of a building

- d) in the event of supplies or services, by a description of the hardware and measures applied by the tenderer or candidate to assure quality and of his study and research facilities,
- e) in the event of complex products to be supplied or special purpose products, by a check of production capacity of the tenderer or candidate carried out by the contracting authority or contracting entity or, on his behalf, by a competent authority in the country of establishment of the tenderer or candidate, subject to that authority's agreement; if necessary, by a check of the study and research means which are available and of the quality of the control measures applied,
- f) in the event of complex services or special purpose services, by a check of the technical ability of the tenderer or candidate providing services carried out by the contracting authority or contracting entity or, on his behalf, by a competent authority in the country of establishment of the tenderer or candidate, subject to that authority's agreement; if necessary, by a check of the study and research means which are available and of the quality of the control measures applied,
- g) data concerning the education and professional experience or professional qualifications of the managing staff, in particular of the persons responsible for the management of building works or for the provision of services,
- h) indicating environmental management measures which the tenderer or candidate will be applying in the performance of the contract having as its object building works or services, if applicable,
- i) in the event of building works or services, data concerning average annual staff numbers and the number of managing staff over the preceding three years,
- j) data concerning machinery and hardware which the tenderer or candidate has available for the execution building works or provision of services,
- k) indicating the share of contract performance which the tenderer or candidate providing service intends to subcontract,
- l) in the event of supplies which are products to be delivered,
  - 1. by samples, descriptions or photographs,
  - 2. by conformity statements and additional documents thereto, by certificates issued by persons authorised or persons notified by the European Communities which are authorised<sup>10</sup> to assess conformity of products or to establish conformity of building products with technical specifications.

(2) To prove their technical ability or professional suitability, tenderers or candidates may use technical and professional capacities of another person regardless of their legal relationship. In such event, tenderers or candidates must prove the contracting authority or the contracting entity that, in their contract performance, they will be able to make a valid use of the capacities of the person whose ability/suitability they are using to prove their technical ability or professional suitability.

(3) In the event of a supply contract which also includes activities linked with the siting and installation of supplies, technical ability or professional suitability of a tenderer or

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<sup>10</sup> Article 11 of Act No 264/1999 Coll. of Laws on technical requirements as regards products and on conformity assessment and on the amendment of certain acts, as amended

Article 4 (15) and Article 15 (1) of Act No 90/1998 Coll. of Laws on building products, as amended by Act No 134/2004 Coll. of Laws

candidate to carry out such activities is evaluated in particular with regard to his abilities, experience, efficiency and reliability.

## Article 29

### Quality Assurance

Where contracting authorities or contracting entities require submission of a quality certificate issued by an independent institution attesting the compliance of the tenderer or candidate with the quality assurance standards, the latter may take the advantage of quality assurance systems based on European standards. Contracting authorities and contracting entities shall recognise as equivalent certificates issued by competent authorities in Member States. Contracting authorities and contracting entities must accept also other evidence submitted by tenderers or candidates which are equivalent to quality assurance measures which are required for issuing the respective certificate.

## Article 30

### Environmental Management

Where contracting authorities or contracting entities require submission of a quality certificate issued by an independent institution by which the compliance with certain environmental management standards on the part of the tenderer or candidate is attested, advantage may be taken of the Environmental Management and Audit Scheme of the European Community or of the environmental management standards based on the respective European standards or international standards of certified authorities. Contracting authorities and contracting entities shall recognise as equivalent certificates issued by authorities in Member States. Contracting authorities and contracting entities must accept other evidence submitted by tenderers or candidates equivalent to environmental management measures which are required for issuing the respective certificate.

## Article 31

### Supplier Group

(1) A supplier group may participate in public procurement.

(2) Neither contracting authorities nor contracting entities shall be allowed to request that a supplier group establish a legal relationship prior to tender submission. Contracting authorities and contracting entities may however request that legal relationships be established where the tender of a supplier group has been accepted and establishing of legal relationships is necessary for proper contract performance.

(3) A supplier group shall prove the meeting of the conditions of participation in public procurement with regard to personal status for each group member separately, and the meeting of the conditions of participation in public procurement regarding financial and economic standing and technical abilities and professional suitability are proven jointly. Compliance with the conditions of participation pursuant to Article 26 (1) (f) is proven by a group member only with respect to that part of the object of contract which that group member is to provide for.

(4) A supplier group may use financial resources of the supplier group members or of other persons pursuant to Article 27 (2), and technical and professional capacities of the supplier group members or of other persons pursuant to Article 28 (2).

## Article 32

### Specification of the Conditions of Participation

(1) In contract notices, contracting authorities specify the conditions of participation concerning

- a) personal status pursuant to Article 26,
- b) financial and economic standing and the documents to prove those pursuant to Article 27,
- c) technical ability or professional suitability and the documents to prove those pursuant to Articles 28 to 30.

(2) Contracting entities may specify the conditions of participation in public procurement and the documents for demonstrating them; if such documents are specified, contracting entities list them in the notice used as a call for competition. The conditions of participation may relate to

- a) personal status pursuant to Article 26,
- b) financial and economic standing pursuant to Article 27,
- c) technical ability or professional suitability pursuant to Articles 28 to 30.

(3) In awarding contracts related to the pursuit of any of the activities pursuant to Article 8 (3) to (9), contracting authorities shall be obliged to specify the conditions of participation pursuant to Article 26 (1) (a) and documents pursuant to Article 26 (2) (a).

(4) Where a contracting entity has specified the conditions of participation pursuant to Article 26 (1), their meeting shall be proven pursuant to Article 26 (2).

(5) Where a contracting entity has specified the conditions of participation pursuant to paragraph 2 (b) or (c), the tenderer, candidate or supplier group may apply Article 27 (2) and (3) and Article 28 (2) and (3) to prove those.

(6) The conditions of participation which contracting authorities and contracting entities specify to prove financial and economic standing and technical ability or professional suitability must be reasonable and must relate to the object of the contract. Contracting authorities and contracting entities may request that the tenderers or candidates have achieved a minimum level of financial and economic standing or of technical ability.

(7) Contracting authorities and contracting entities may request that legal entities, when demonstrating their meeting of the conditions of participation in public procurement, indicate full names and the necessary professional qualifications of their employees to be responsible for the contract performance.

## Article 33

### Evaluation of Meeting of the Conditions of Participation

(1) Contracting authorities shall assess the meeting of the conditions of participation in public procurement in accordance with the contract notice and the tender documents. Where the conditions of participation are referred to in the tender documents as well, they may not be contrary to the contract notice.

(2) Contracting entities shall assess the meeting of the conditions of participation in accordance with the rules specified by the same. When specifying or updating the rules to evaluate the meeting of the conditions of participation pursuant to Article 32 (2) in a restricted procedure and in a negotiated procedure with a publication, such requirements must not be imposed on certain candidates which have not been imposed on others, or documents must not be repeatedly requested which have already been made available.

(3) When evaluating the meeting of the conditions of participation in public procurement, contracting authorities and contracting entities may request that the tenderers, candidates and members of supplier group, which make a commercial company, submit a list of all their partners and shareholders known.

(4) Contracting authorities and contracting entities may ask a tenderer or candidate to explain or complete the documents submitted.

(5) Contracting authorities and contracting entities shall exclude a tenderer or candidate from public procurement where the latter

- a) has failed to comply with the conditions of participation,
- b) has submitted invalid documents,
- c) has failed to submit the requested documents or information, or
- d) has provided untrue information or distorted information.

(6) Invalid documents shall be documents

- a) whose term of validity has expired,
- b) which are incomplete, or
- c) which are damaged, illegible or fraudulently altered.

(7) Where a tenderer or candidate from a Member State is authorised to pursue the required activity in the country of his establishment, he must not be excluded by a contracting authority and contracting entity on the grounds that a certain legal form is requested by law to perform the required activity.

(8) Having assessed the meeting of the conditions of participation, minutes are drawn up, which include in particular a list of

- a) all tenderers or candidates,
- b) the selected candidates and the grounds of their selection in a restricted procedure and in a negotiated procedure with a publication,
- c) the excluded tenderers or candidates indicating the grounds of their exclusion,
- d) the candidates who will not be invited to submit tenders or to negotiate indicating the grounds for doing so.

(9) Contracting authorities and contracting entities shall notify a tenderer or candidate in writing without any delay where the latter

- a) has been excluded, indicating the grounds for doing so and the time limit by which a request for remedy pursuant to Article 136 (1) (e) may be filed,
- b) will not be invited to submit a tender or to negotiate, indicating the grounds for doing so and the time limits, by which a request for remedy pursuant to Article 136 (1) (d) may be filed.

(10) Contracting authorities and contracting entities may establish a commission to evaluate the meeting of the conditions of participation by tenderers or candidates.

## Article 34

### Tender Documents

(1) Tender documents shall be written, graphic or other documents containing a detailed definition of the object of contract. They shall include all circumstances which will be of importance for the contract performance and for the preparation of a tender. The object of contract must be described clearly, exhaustively and impartially, on the basis of technical requirements pursuant to Annex 5. Technical specifications

- a) shall take into account the requirements of accessibility for handicapped persons and solutions suitable for all users, if possible,
- b) must be specified in a way ensuring equal access for all tenderers or candidates and ensuring fair competition.

(2) The description of the object of contract shall be drawn up

- a) by a reference to technical specifications in the following order: Slovak technical standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or – where these do not exist – national technical approvals or national technical specifications relating to the design, execution of building works and use of building products; such reference must be accompanied by the words “or equivalent”,
- b) on the basis of functional and performance requirements which may include environmental characteristics; technical requirements must be specified in a manner that all conditions and circumstances important for drawing up a tender are clear,
- c) on the basis of performance and functional requirements referred to in (b) with a reference to technical specifications set out in (a) which serve as a means for ensuring compliance with performance and functional requirements, or
- d) by referring to technical specifications set out in (a) for certain characteristics and by referring to performance or functional requirements set out to in (b) for other characteristics.

(3) Contracting authorities or contracting entities cannot exclude a tender on the grounds that

- a) the products or services offered fail to meet the technical specifications set out in paragraph 2 (a) to which they made reference, where the tenderer proves in his tender that the solutions proposed by him are equivalent and meet the technical requirements specified to satisfaction of the contracting authority and contracting entity,

b) the products, works or services offered by the tenderer fail to meet the technical specifications set out in paragraph 2 (b) to which they made reference, if in compliance with a Slovak technical standard transposing a European standard, with a European technical approval, with a common technical specification, with an international standard or technical reference system established by a European standardisation body; in his tender, the tenderer must prove that the products, building works or services meeting the relevant standards at the same time meet the performance or functional requirements to satisfaction of the contracting authority and contracting entity.

(4) An appropriate manner pursuant to paragraph 3 may be considered a submission of a technical dossier of the manufacturer or a test report issued by a testing and calibration laboratory, certification and inspection authority compliant with valid European standards. Contracting authorities and contracting entities must accept certificates issued by such institution established in another Member State.

(5) When contracting authorities and contracting entities specify environmental characteristics by means of performance or functional requirements pursuant to paragraph 2 (b), detailed technical requirements may be used which make reference to technical specifications or their part as defined in a European, multi-national or national eco-label or in another eco-label, provided that

- a) those technical specifications are appropriate to define the characteristics of the supplies or services which are the object of contract,
- b) the requirements for the label are drawn up on the basis of scientific information,
- c) the eco-labels have been adopted using a procedure in which all stakeholders, such as state authorities, consumers, manufacturers, distributors and environmental organisations can participate,
- d) are generally available.

(6) Contracting authorities and contracting entities may indicate in tender documents that the products and services marked with an eco-label are considered supplies and services compliant with the technical conditions specified in the tender documents. Contracting authorities and contracting entities must accept also other suitable evidence like, for instance, technical dossier of the manufacturer or a test report issued by an authority pursuant to paragraph 4. Contracting authorities and contracting entities must accept certificates issued by such institution established in another Member State.

(7) Technical requirements may not make reference to a particular manufacturer, manufacturing process, brand, patent, type, country, area or place of origin or manufacture with the effect of disadvantage or exclusion of certain candidates or products, unless so required by the object of contract. Such reference may only be made if the object of contract cannot be described pursuant to paragraph 2 and paragraph 3 (a) in a sufficiently clear and intelligible manner, and such reference must be accompanied by the words “or equivalent”.

(8) Tender documents shall further include documentation, plans, models, samples, photographs if they are necessary to draw up a tender, business conditions, criteria for the evaluation of tenders, rules of their application and instructions for drawing up tenders. A part of the contract content may be specified by a reference to general business conditions. Further it is to be stated which parts of the tender documents must make part of the contract. In tender documents, contracting authorities and contracting entities may request that the tenderers or candidates indicate in their tenders the contract share which they intend to subcontract to third

persons, as well as the subcontractors proposed; that shall be without prejudice to the responsibility of the successful tenderer or tenderers for the contract performance.

(9) The rules for the evaluation of the criteria specified by contracting authorities or contracting entities must be non-discriminatory and must support fair competition. The rules for the evaluation of criteria must not include quadratic, cubic or similar equations.

(10) Anyone participating in the drawing up and preparation of tender documents shall be obliged to keep content confidential until the day on which they are provided to tenderers or candidates. A statement of impartiality and confidentiality of the information processed is to be provided to the contracting authority and contracting entity with regard to the above circumstance.

(11) Contracting authorities and contracting entities shall provide tender documents to every candidate where the conditions set out by this Act are met. The payment for tender documents, if requested, may not exceed the genuine costs of their reproduction.

(12) If necessary, contracting authorities and contracting entities may extend the information set out in the tender documents which are to be provably communicated to all candidates at the same time, not later than six days prior to the expiry of the tender submission period. Such information must not be contradictory to the contract notice or to the notice used as a means of calling for competition.

(13) Record shall be kept about candidates to whom tender documents were provided, specifying the business name and seat or place of business and the date on which the tender documents were provided.

(14) Where the tender documents, indicative document, accompanying documentation and other additional documents are available to a person other than a contracting authority or contracting entity responsible for the public procurement, the tender notice, the notice used as a means of calling for competition or the call for the submission of tenders is to indicate the address at which such documents may be requested and, if applicable, also the time limit for requesting them, the payment for their provision and the method of payment. That person shall send the requested documents to the candidate without any undue delay upon the delivery of a request and shall keep record of candidates pursuant to paragraph 13. This shall be without prejudice to the responsibility of contracting authorities and contracting entities pursuant to this Act.

(15) Contracting authorities and contracting entities may specify special conditions of contract performance provided that such conditions are indicated in the tender notice or in the tender documents. Special conditions governing the contract performance may apply, in particular, to social and environmental aspects.

(16) Contracting authorities and contracting entities may indicate institutions in tender documents to inform candidates about obligations as regards taxes, environmental protection, labour protection and working conditions applicable in the place of building works or services during the contract performance. Where such information is provided, tender documents are to require that each of the candidates in their tenders include a declaration that obligations concerning labour safety and working conditions have been taken into account when drawing up the tender. That provision shall not have any effect on the application of Article 42 (3).

## Article 35

### Criteria for the Evaluation of Tenders

(1) Contracting authorities and contracting entities shall evaluate tenders on the basis of tender evaluation criteria. Tenders shall be evaluated on the basis of

- a) economically the most advantageous tender, or
- b) the lowest price.

(2) Tender evaluation criteria shall be specified

- a) by contracting authorities in contract notices,
- b) by contracting entities in notices used as a means of calling for competition, in invitations to confirm repeated interest pursuant to Article 78 (3), in calls for tender or in invitations to negotiate, or in tender documents.

(3) Where tenders are evaluated on the basis of economically the most advantageous tender, contracting authorities and contracting entities shall specify the individual criteria relating to the object of contract which are, for instance, quality, price, technical execution, aesthetical and functional characteristics, environmental characteristics, operating costs, cost effectiveness, post-warranty service and technical support, delivery date of the supplies, construction deadline, time of service provision. In addition to individual criteria, contracting authorities and contracting entities also specify the rules for the application of criteria which are to ensure a quality-based distinction of the meeting of individual criteria. The rules for the application of the criteria specified by contracting authorities and contracting entities must be non-discriminatory and must support fair competition.

(4) Contracting authorities and contracting entities shall determine a relative weight for each of the criteria pursuant to paragraph 3 which may be expressed by specifying a range with a respective maximum spread. The relative weight shall be indicated

- a) by contracting authorities in contract notices, in tender documents or in invitations to tender, or in indicative documents,
- b) by contracting entities in notices used as a means of calling for competition, in calls to confirm repeated interest pursuant to Article 78 (3), in calls for tender, in invitations to negotiate, or in tender documents.

(5) Where it is impossible for provable grounds to specify relative weights of the individual criteria, they shall be indicated in the descending order of importance.

(6) Warranty period, share of subcontracts and due time of invoices must not be criteria for the evaluation of tenders.

(7) The requirements intended to prove the financial and economic standing and the technical ability or professional suitability of tenderers or candidates must not be criterion for the evaluation of tenders either.

## Article 36

### Tender Bond

(1) A tender validity may be secured by a tender bond. The bond is a bank guarantee provided for the tenderer or payment of funds by the tenderer to the account of the contracting authority or contracting entity in a bank or in a foreign bank branch. The bond must not exceed 5 % of the estimated contract value and must not exceed EUR 300 000.

(2) Where a contracting authority and contracting entity requests a bond from tenderers, the conditions of its payment and the conditions of its release or return shall be specified in tender documents. The conditions of a bond payment need to be specified in a manner allowing the tenderer chose the method of its payment.

(3) Where a bond has been paid to an account in a bank or in a foreign bank branch, the contracting authority and contracting entity shall repay the bonds to tenderers including interest where interest is provided by that bank or foreign bank branch. The contracting authority and contracting entity releases the tenderers' bonds not later than seven days from the contract conclusion.

(4) The bond forfeits on behalf of the contracting authority and contracting entity where the tenderer has withdrawn from his tender during the tender validity period.

(5) The contracting authority and contracting entity releases a tenderer's bond within seven days prior to the expiry of the tender validity period where

- a) the tenderer failed to comply with the conditions of participation in public procurement and has been excluded by the contracting authority and contracting entity from the contract award and the tenderer has not lodged a protest against the conduct of the contracting authority or contracting entity within a period pursuant to Article 138 (5),
- b) the latter's tender has been excluded in the evaluation of tenders and the tenderer has not lodged a protest against the conduct of the contracting authority or contracting entity within the period pursuant to Article 138 (5).

(6) Where the contracting authority and contracting entity has cancelled the contract award procedure applied, the bond shall be returned to the tenderer without any delay.

## Article 37

### Variants

(1) Contracting authorities in the contract notice or, the contracting entities in the notice used as a means of calling for competition or in tender documents, shall specify whether it is allowed to submit variants. Unless allowed, variants shall not be considered.

(2) Contracting authorities and contracting entities may allow variants where tenders are evaluated in order to select economically the most advantageous tender. Minimum requirements which must be met by the variants and special requirements for their submission shall be specified in tender documents.

(3) Only variants are evaluated which meet the minimum criteria specified by contracting authorities and contracting entities. A variant must not be excluded for the reason

that a supply contract would become a service contract or a service contract would become a supply contract.

## Article 38

### Explanations

Contracting authorities and contracting entities shall immediately communicate explanations of the conditions of participation in public procurement, of tender documents or other supporting documentation to all candidates, however, not later than six days prior to the expiry of the tender submission period or of the period for the submission of documents proving the meeting of the conditions of participation provided that the explanations are requested in good time, or in a reasonable time determined by contracting authorities and contracting entities. Where accelerated procedure is applied due to time distress, contracting authorities shall provide explanations of the tender documents not later than four days prior to the expiry of the tender submission period.

## Article 39

### Submission of Tenders

(1) A tender shall be delivered in the tender submission period. Where a tender is delivered

- a) by mail or by hand, then in a closed envelope stating the business name and seat of the tenderer or place of business of the tenderer with an indication “competition” (“sút’áž”) and the competition slogan,
- b) by electronic means, then stating the business name and seat or place of business of the tenderer with an indication “competition” (sút’áž) and the competition slogan.

(2) Where a tender is delivered by hand, contracting authorities and contracting entities shall issue a receipt of its take-over stating the date, time and place of the tender take-over. Where a tender is delivered by electronic means, contracting authorities and contracting entities shall confirm its receipt to the tenderer by electronic means.

(3) An electronic tender must be submitted in the formats for document encryption and encoding and in communication formats notified. The content of a tender may be made available only upon the expiry of the tender submission period.

(4) A tender submitted after the expiry of the tender submission period shall

- a) be returned to the tenderer unopened if delivered in the documentary form,
- b) not be made available if submitted in the electronic form.

(5) A tenderer may submit one tender only. In the same contract award procedure, a tenderer must not be a member of a supplier group submitting a tender. Contracting authorities and contracting entities shall eliminate a tenderer who is at the same time a member of a group of suppliers.

## Article 40

### Commission

(1) To evaluate tenders, contracting authorities and contracting entities shall be obliged to establish a commission of at least three members. The commission members must have vocational education or professional experience relevant to the object of contract. The commission shall be capable of evaluating the submitted tenders where the majority of its members is present at the same time, however, not less than three.

(2) To ensure transparency, contracting authorities and contracting entities may appoint additional members of the commission without a right to evaluate the tenders.

(3) A commission member must be a person of integrity. A person shall be considered of integrity where he has not been lawfully convicted for an offence relating to public procurement or for some of the offences pursuant to Article 26 (1) (a) or (b).

(4) A commission member must not be a person who is or during one year prior to his appointment for a commission member was

- a) a tenderer who is a natural person,
- b) a statutory body, member of statutory body, member of supervisory body or other body of a tenderer which is a legal entity,
- c) a partner or a member of a legal entity which is a tenderer or a dormant partner of the tenderer,
- d) an employee of a tenderer, employee of an interest association of entrepreneurs whose member is a tenderer,
- e) an employee of the Office, except for contracts awarded exclusively for the own needs of the Office.

(5) A commission member must not be a person close<sup>11</sup> to persons referred to in paragraph 4 (a) to (d).

(6) On becoming familiar with the list of tenderers, the commission member confirms by solemn declaration to the contracting authority or contracting entity that no circumstances have occurred pursuant to this Act preventing him from being a commission member, or inform the contracting authority or contracting entity that circumstances have occurred pursuant to this Act preventing him from being a commission member.

(7) A commission member shall be obliged without any undue delay to inform the contracting authority or contracting entity that circumstances have occurred preventing him from being a commission member, anytime such circumstances occur in the conduct of public procurement.

(8) Where the number of the commission members has decreased to less than three in the conduct of public procurement, the contracting authority and contracting entity shall supplement the commission.

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<sup>11</sup> Article 116 of the Civil Code

## Article 41

### Opening of Tenders

(1) The commission shall open tenders in the place and at the time indicated in the contract notice or in the notice used as a means of calling for competition. Contracting authorities and contracting entities shall be obliged to enable all tenderers who have submitted tenders in the tender submission period to attend the opening of tenders. Before opening, the integrity of tenders shall be verified. The commission shall announce the business names, seats or places of business of all tenderers and their proposals for meeting the criteria, which can be expressed by a figure specified by the contracting authority and contracting entity for the evaluation of tenders. Other data indicated in the tender shall be withheld. The commission shall mark each opened tender with a serial number in the order of its submission.

(2) Where a tender has been submitted by electronic means, opening of tenders shall mean making the tenders available to the commission. Contracting authorities and contracting entities shall exclude tenderers failing to comply with the procedures pursuant to Article 39 (3) and the content of their tenders cannot be made available.

(3) Not later than five days from the date of the opening of tenders, contracting authorities and contracting entities shall send minutes from the opening of tenders to all tenderers who have submitted tenders in the tender submission period. The minutes shall include data published pursuant to paragraph 1.

## Article 42

### Evaluation of Tenders

(1) The tenders are evaluated by a commission in camera. The commission shall evaluate the tenders with regard to the meeting of requirements of the contracting authority or contracting entity concerning the object of contract and shall exclude tenders which fail to meet the requirements concerning the object of contract specified in the contract notice or in the notice used as a means of calling for competition and in the tender documents. Where contracting authorities or contracting entities have requested a tender bond by tenderers, the commission shall consider the payment of the tender bond and exclude the tender of a tenderer who has failed to deposit the tender bond pursuant to the conditions set out. When evaluating tenders with a variant, Article 37 (3) shall be applied.

(2) The commission may ask tenderers in writing to explain their tenders. An explanation of a tender cannot result to the tender changes. Elimination of obvious mistypings and miscalculations shall not be considered a change of tender.

(3) Where a tender contains an abnormally low price, the commission shall ask the tenderer in writing to explain his price proposal. The request is to be aimed at details of the basic characteristic parameters of the tender which the commission considers important and which apply in particular to

- a) the economics of construction methods, the economics of manufacturing processes or the economics of the services provided,
- b) the technical solution or particularly favourable conditions available to the tenderer for the delivery of supplies, execution of construction works, provision of service,

- c) the special nature of the supplies, the special nature of the building works or the special nature of the service proposed by the tenderer,
- d) compliance with the laws relating to the protection of employment and labour conditions in force in the place of the supplies, building works or services,
- e) the opportunity of the tenderer to be provided state aid.

(4) The commission shall take into consideration the explanations of a tender or of the unusually low price and the evidence provided by a tenderer . The commission shall exclude a tender where

- a) the tenderer has failed to submit a written explanation within three working days from the date of delivery of a request for explanation, unless the commission has determined a longer period or,
- b) the explanation submitted fails to comply with the requirement pursuant to paragraph 2 or paragraph 3.

(5) Where a tenderer has justified an abnormally low price by state aid, he must be able within an adequate time limit determined by the commission to prove that he has received state aid in accordance with the applicable legislation, or the commission shall exclude the tender.

(6) The commission shall communicate the list of excluded tenders to the contracting authority and contracting entity without any delay, indicating the grounds for their exclusion. Contracting authorities and contracting entities shall be obliged to inform the tenderers in writing of their exclusion, indicating the grounds and the time limit by which a request for remedy pursuant to Article 136 (1) (e) may be filed.

(7) The commission shall evaluate tenders which have not been excluded pursuant to the criteria specified in the contract notice or in the notice used as a means of calling for competition or in the tender documents and on the basis of the rules of their application specified in the tender documents which are non-discriminatory and support fair competition.

(8) The commission shall draw up minutes from the evaluation of tenders to be signed by the commission members present. The minutes shall contain in particular

- a) a list of the commission members,
- b) a list of all tenderers who have submitted tenders,
- c) a list excluded tenderers indicating the grounds for their exclusion,
- d) reasons for the exclusion of abnormally low tenders,
- e) identification of the successful tenderer or successful tenderers indicating the grounds of success of their tender or tenders; the share of subcontracting, if known,
- f) in the event of an open procedure, information about the evaluation of the meeting of conditions of participation,
- g) the grounds on which a commission member refused to sign the minutes or signed the minutes with a reservation.

(9) The minutes from the evaluation of tenders shall be submitted to the contracting authority or contracting entity.

(10) The commission members shall not be allowed to provide information about the content of tenders during the tender evaluation. To a commission member, the obligation pursuant to Article 20 shall apply.

## Article 43

### Electronic Auction

(1) For the purpose of this Act, electronic auction shall be a repetitive process involving electronic devices for the presentation of

- a) new prices revised downward,
- b) new prices revised downward and new values concerning certain items of tenders, or
- c) new values concerning certain items of tenders.

(2) The purpose of an electronic auction is to rank tenders using automatic evaluation which is performed after the initial full evaluation of the tenders. An electronic auction shall not be applied in the event of a service contract whose the characteristic parameters and values are not quantifiable and cannot be expressed pursuant to paragraph 5 (a).

(3) In an open procedure, in a restricted procedure or in a negotiated procedure with a publication, contracting authorities and contracting entities may use electronic auction when awarding contracts allowing exactly specify technical requirements as regards the object of contract. Contracting authorities and contracting entities may use electronic auction when awarding contracts under a dynamic purchasing system and when re-opening competition with all parties to a framework agreement. In the event of an electronic auction, Article 41 shall not be applied.

(4) Where the criterion for the evaluation of tenders is the lowest price, the electronic auction shall be based on prices. Where tenders are evaluated on the basis of economically the most advantageous tender, the electronic auction shall be based on

- a) the prices and new values of tender items specified in technical requirements, or
- b) the new values of tender items specified in technical requirements.

(5) Where contracting authorities and contracting entities use electronic auction, that circumstance shall be indicated in the contract notice or in the notice used as a means of calling for competition. Tender documents shall include in particular

- a) elements whose values will be the object of electronic auction, provided that such elements are quantifiable and can be expressed in figures or in terms of percentage,
- b) the limits of values which may be submitted, resulting from technical requirements concerning the object of contract,
- c) information to be made available to tenderers during the electronic auction and, where appropriate, the date for making the information available,
- d) important information concerning the conduct of the electronic auction,
- e) conditions under which tenderers may submit tenders, in particular the minimum differences to be requested in the submission of tenders, if applicable,
- f) relevant information concerning the electronic equipment used, conditions and specifications of technical connection.

(6) Before opening an electronic auction, contracting authorities and contracting entities shall evaluate tenders pursuant to the criteria for the evaluation of tenders and the relative weights attributed to the individual criteria.

(7) Contracting authorities and contracting entities shall invite by electronic means simultaneously all tenderers whose tenders have met the specified conditions to submit new prices or new values pursuant to paragraph 4. The invitation to participate in an electronic auction shall include in particular

- a) all relevant information concerning the individual connection to the electronic equipment used,
- b) the starting date and time of the electronic auction,
- c) the manner of closing the electronic auction,
- d) the formula to determine the automatic re-rankings on the basis of the new submitted prices or new values pursuant to paragraph 4; the formula must incorporate the relative weight of the individual criteria intended for the selection of economically the most advantageous tender which were indicated in the contract notice or in the notice used as a means of calling for competition or in the tender documents; for that purpose, the range, if any, shall however be reduced beforehand to a specified value,
- e) a separate formula for each variant, if allowed.

(8) Where tenders are evaluated on the basis of economically the most advantageous tender, the invitation to participate in an electronic auction shall be accompanied by the result of a full evaluation of the respective tender pursuant to paragraph 6.

(9) Electronic auction may take place in a number of successive phases. Electronic auction may not start earlier than two working days after the date on which the invitation to participate in the electronic auction has been sent out.

(10) Throughout each phase of an electronic auction, contracting authorities and contracting entities shall communicate sufficient information to all tenderers without any delay to enable them to ascertain their relative ratings at any moment. Contracting authorities and contracting entities may also communicate other information concerning other prices or parameter values submitted, provided that this has been specified in the tender documents. Anytime during an electronic auction, contracting authorities and contracting entities may disclose the number of tenderers at any stage of the electronic auction but not their identities.

(11) Contracting authorities and contracting entities shall close electronic auction in one or more of the following manners:

- a) in the invitation to take part in the electronic auction, a pre-determined date and time indicated,
- b) when no more new prices or new values are received which meet the requirements concerning the minimum differences; in that event, the invitation to take part in the electronic auction shall indicate the time allowed to elapse after receiving the last submission before the electronic auction is closed,
- c) when the number of phases in the electronic auction fixed in the invitation to take part in the electronic auction has been completed.

(12) Where contracting authorities and contracting entities have closed electronic auction pursuant to paragraph 11 (c), possibly in combination with the arrangements pursuant to paragraph 11 (b), the invitation to take part in the electronic auction shall indicate the timetable for each phase of the electronic auction. After closing of an electronic auction, contracting authorities and contracting entities shall conclude a contract based on its result.

(13) Contracting authorities and contracting entities shall be allowed neither to use electronic auction in a manner preventing fair competition, nor to change the object of contract which was defined in the tender notice or in the notice used as a means of calling for competition and in the tender documents.

## Article 44

### Information about the Tender Evaluation Result

(1) After evaluation of tenders, contracting authorities and contracting entities shall be obliged to inform in writing all tenderers whose tenders were evaluated of the tender evaluation result without any delay. The successful tenderer or tenderers are to be informed that his/their tender(s) has/have been accepted. Unsuccessful tenderers will be informed that they have not succeeded and the grounds on which their tenders were not accepted. In the notice, the successful tenderer or tenderers will be identified and information will be given on the characteristics and benefits of the accepted tender or tenders, and the time limit by which a request for remedy may be filed pursuant to Article 136 (1) (f). Evidence of the date of the notice dispatch to the Publications Office and to the Office is to be brought by contracting authorities and contracting entities.

(2) Contracting authorities and contracting entities shall not provide information concerning contract awards, conclusions of framework agreements or admissions to dynamic purchasing system where doing so would be contrary to law, to public interest or might damage legitimate interests of other persons, or prevent to fair competition.

(3) Where a contract award is subject to a recommendation and approval of the successful tenderer by the European Union institutions and authorities in accordance with a special regulation<sup>11a</sup>, the notice to the successful tenderer pursuant to paragraph 1 will indicate that the winning tender has been accepted under a condition precedent that the successful tenderer would be recommended and approved by the competent European Union institutions and authorities<sup>11a</sup>.

## Article 45

### Conclusion of Contract

(1) Contracting authorities and contracting entities shall conclude contracts or framework agreements during the tender validity period. A contract concluded must not be contrary to the tender documents and to the tender submitted by the successful tenderer or tenderers.

(2) Contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the sixteenth day from the date of dispatch of the tender evaluation result pursuant to Article 44 unless a request for remedy has been delivered or where a request for remedy has been delivered after the expiry of the period pursuant to Article 136 (3).

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<sup>11a</sup> Article 27 (27.1) of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (OJ EU C 321E, 29 December 2006)

(3) Where a request for remedy has been delivered within the time limit pursuant to Article 136 (3), contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the sixteenth day after the expiry of the time period for remedy pursuant to Article 136 (6) (a) unless protests have been lodged pursuant to Article 138 (5).

(4) Where a request for remedy was rejected, contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the sixteenth day from the date of dispatch of the dismissal of the request for remedy pursuant to Article 136 (6) (b) unless protests have been lodged pursuant to Article 138 (5).

(5) Where contracting authorities and contracting entities have not acted with regard to a request for remedy and where no protests have been lodged pursuant to Article 138 (5), a contract, concession contract or framework agreement may be concluded with the successful tenderer or tenderers not earlier than the sixteenth day from the expiry of the time period provided to settle a request for remedy pursuant to Article 136 (6).

(6) Where protests have been lodged pursuant to Article 138 (2) (a) to (f), contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the sixteenth day from the delivery of a decision of the Office on protests or on the day following the date of delivery of the result of the action by the Office. Where the Office in its decision pursuant to Article 138 (2) has withdrawn the suspensive effect of protests, contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the day following the delivery of the decision by the Office on the suspensive effect of protests. Hereby, provisions of paragraphs 2 to 5 shall not be affected.

(7) Where protests have been lodged pursuant to Article 138 (2) (g), contracting authorities and contracting entities may conclude contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the day following the delivery of a notice of the Office to contracting authorities or contracting entities that an interim measure has not been issued. Where the Office has issued a decision on an interim measure, contracting authorities and contracting entities may conclude a contract, concession contract or framework agreement with the successful tenderer or tenderers not earlier than the sixteenth day from the delivery of a decision of the Office on protests or on the day following the date of delivery of the result of the action by the Office. Hereby, provisions of paragraphs 2 to 6 shall not be affected.

(8) Where contracting authorities or contracting entities have published a notice pursuant to Article 22 (7), they may conclude a contract, concession contract or framework agreement not earlier than the eleventh day from publishing that notice in the European Journal. Hereby, provisions of paragraphs 2 to 7 shall not be affected.

(9) Neither contracting authorities nor contracting entities may use a tender or parts thereof without the tenderer's approval.

## Article 46

### Cancellation of the Used Contract Award Procedure

(1) Contracting authorities and contracting entities shall cancel a used contract award procedure where

- a) none of the tenderers or candidates has succeeded in meeting the conditions of participation in public procurement and no tenderer or candidate has put forward a request for remedy within the period pursuant to Article 136 (3) and protests within the period pursuant to Article 138 (5),
- b) no tender has been submitted,
- c) none of the tenders submitted meets the requirements specified pursuant to Article 34 and no tenderer has put forward a request for remedy within the period pursuant to Article 136 (3) and lodged complaints within the period pursuant to Article 138 (5),
- d) its cancellation has been imposed by the Office.

(2) Contracting authorities and contracting entities may cancel a used contract award procedure also where circumstances have changed under which the public procurement was called.

(3) Contracting authorities and contracting entities shall be obliged to immediately notify all tenderers or candidates of a cancellation of a used contract award procedure indicating the grounds and informing about the procedure to be used a contract award for the initial object of contract.

(4) Upon request, contracting authorities and contracting entities shall notify the European Commission about the grounds for cancellation of a used contract award procedure and dispatch the Office a notice of cancellation of a used contract award procedure to be published in the Journal.

## Article 47

### Dynamic Purchasing Systems

(1) For the purpose of this Act, “dynamic purchasing system” is a completely electronic process intended for the procurement of supplies, building works or services commonly available on the market whose characteristics meet the requirements of the contracting authority and contracting entity. A dynamic purchasing system shall be restricted in time and throughout its entire period, access must be enabled to any candidate satisfying the conditions of participation and having submitted an indicative tender which complies with the tender documents.

(2) Contracting authorities and contracting entities may use dynamic purchasing systems to award contracts. A dynamic purchasing system lay not last for more than four years. Contracting authorities and contracting entities may not resort to a dynamic purchasing system to prevent fair competition. The tenderers involved may not be billed any charges.

(3) In order to set up a dynamic purchasing system, the open procedure shall be followed in all its phases, up to the award of contracts to be concluded under the dynamic purchasing system. With a view to setting up a dynamic purchasing system and to the award

of contract under that system, contracting authorities and contracting entities shall use solely electronic means. All the tenderers satisfying the conditions of participation and having submitted an indicative tender which complies with the technical requirements and any possible additional documents must be admitted to the dynamic purchasing system. Indicative tenders may be improved at any time of the dynamic purchasing system existence provided that they continue to comply with the technical specification.

(4) For the purposes of setting up a dynamic purchasing system, contracting authorities and contracting entities shall

- a) publish a contract notice making it clear that a dynamic purchasing system is involved; indicate the web address on which information can be obtained pursuant to letter (c),
- b) indicate in the tender documents, amongst other matters, the nature of the purchases envisaged under the system, as well as all the necessary information concerning that system, the electronic equipment used, the arrangements and technical specifications for connection,
- c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct access to the tender documents and to any additional documents.

(5) Contracting authorities and contracting entities shall give any candidate, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 3. Contracting authorities and contracting entities shall complete evaluation within 15 days from the date of submission of the indicative tender. Contracting authorities and contracting entities may extend the evaluation period provided that no invitation to tender has been issued. Contracting authorities and contracting entities shall inform the tenderer without any delay of his admittance to the dynamic purchasing system or communicate the grounds of his non-admittance.

(6) Contracting authorities and contracting entities shall publish a simplified contract notice for each specific contract, inviting all interested tenderers to submit an indicative tender pursuant to paragraph 5 within a time limit that may not be less than 15 days on which the simplified notice was sent out. Contracting authorities and contracting entities shall evaluate all indicative tenders submitted by the specified time limit.

(7) Upon the evaluation of indicative tenders, contracting authorities and contracting entities shall invite all tenderers admitted to the system to submit tenders separately for each contract awarded under the system. A tender notice shall include

- a) the time limit for the submission of tenders,
- b) a detailed statement of the criteria for the evaluation of tenders, if necessary,
- c) any other necessary information.

(8) Tenders submitted by time limit for submission of tenders shall be evaluated according to the criteria set out in the contract notice. Contract shall be concluded with the tenderer who has submitted the best tender.

## Article 48

### Obligations of Contracting Authorities and Contracting Entities in Respect of the European Commission

(1) Contracting authorities and contracting entities shall be obliged to submit the European Commission a report or a part thereof pursuant to Article 21 (3) where an abnormally low bid pursuant to Article 42 (5) has been excluded.

(2) Upon request of the European Commission, contracting authorities shall be obliged to provide a report or a part thereof pursuant to Article 21 (3) concerning

- a) any contract, framework agreement and any setting-up of a dynamic purchasing system,
- b) the use of a negotiated procedure without a publication pursuant to Article 58 (a).

(3) Upon request of the European Commission, contracting entities shall be obliged to provide

- a) information regarding all categories of products or activities considered excluded pursuant to Article 1 (2) (p),
- b) information regarding activities considered excluded pursuant to Article 1 (2) (q) or (r),
- c) information regarding contracts pursuant to Article 73 (1), (2), (4) and (5); contracting entities shall give the names of the respective undertakings, the nature and value of contracts, evidence that the relationship between the contracting entity and the respective undertaking is in accordance with the requirements pursuant to Article 73,
- d) a report or a part thereof pursuant to Article 21 (3).

## Article 49

### Obligations of Contracting Authorities and Contracting Entities in Respect of the Office

(1) Upon request, contracting authorities and contracting entities shall be obliged to provide the Office a report or a part thereof pursuant to Article 21 (3).

(2) Contracting authorities and contracting entities shall be obliged to provide the Office information for publication in the Journal concerning the performance of a contract concluded by using a contract award procedure above the limit and concerning the conclusion of an amendment of such contract. The information shall be dispatched not later than 14 days upon the completion of contract performance and from the amendment conclusion.

(3) Upon request, contracting authorities and contracting entities shall be obliged to send the Office additional data or information concerning public procurement.

(4) Upon request, contracting entities shall be obliged to provide the Office data and information on contracts concluded pursuant to Article 1 (2) (s).

T I T L E  I I  
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B Y  C O N T R A C T I N G  A U T H O R I T I E S

Article 50

Publication of Notices

(1) Contracting authorities shall publish a prior notice as soon as possible after a calendar year beginning where the total estimated value of

- a) the supply contracts or supply framework agreements by product groups intended to award in the calendar year is at least EUR 750 000; the product group shall be specified by a reference to the Procurement Vocabulary,
- b) the service contracts or service framework agreements in each service category listed in Annex 2 intended to award in the calendar year is at least EUR 750 000.

(2) Contracting authorities shall publish a prior notice as soon as possible after the calendar year beginning or as soon as possible upon the approval of the planned building works contracts stating the basic characteristics of the object of contract or framework agreement they intend to award where the estimated value of the building works contract equals to or exceeds EUR 5 150 000.

(3) The provisions of paragraphs 1 and 2 shall not apply to negotiated procedures without a publication.

(4) Contracting authorities shall call for public procurement by publishing a contract notice where they intend to

- a) award a contract by open procedure, restricted procedure, negotiated procedure with a publication or competitive dialogue,
- b) award a framework agreement by open procedure, restricted procedure, negotiated procedure with a publication or competitive dialogue,
- c) set up a dynamic purchasing system; public procurement within a dynamic purchasing system shall be called for by publishing a simplified notice.

(5) Information regarding the result of public procurement whose publication might be contrary to law, to public interest, might harm legitimate interests of other persons or would prevent fair competition shall not be published.

Article 51

Open Procedures

(1) The tender submission period shall be at least

- a) 45 days from the date on which the contract notice was sent to the Publications Office, or
- b) 30 days from the date on which the contract notice to the Publications Office where the contracting authority published a prior notice not earlier than 12 months and not later than 52 days before the date on which the contract notice was sent; the tender submission period must not be less than 22 days.

(2) The tender submission period may be reduced by five days where the contracting authority has enabled unrestricted and direct access by electronic means to tender documents and to all additional documents.

(3) Where tender documents and additional information have not been provided within the time periods pursuant to Article 38 and paragraph 4 even though requested in good time, or where the drawing up of a tender requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, contracting authorities shall reasonably extend the tender submission period so that the candidates may be aware of all information needed for the preparation of a tender.

(4) Where contracting authorities have not offered unrestricted and direct access by electronic means to tender documents and additional documentation pursuant to paragraph 2, they will be obliged to dispatch those to candidates within six days of the presentation of their requests to participate provided that the requests were presented in good time prior to the expiry of the tender submission period.

(5) Contracting authorities or their commissions shall evaluate the meeting of the conditions of participation pursuant to Article 33. Tenders of those tenderers who have met the conditions of participation shall be evaluated pursuant to Article 42.

#### Restricted Procedures

##### Article 52

(1) Contracting authorities may restrict the number of candidates to be invited to submit tenders to not less than 5 and not more than 20, so as to allow competition.

(2) In contract notices, contracting authorities shall determine in particular

- a) the time limit for the submission of requests to participate,
- b) where appropriate, the restriction of the number of candidates,
- c) the rules to evaluate the meeting of the conditions of participation.

(3) The time limit for the submission of requests to participate may not be less than 30 days from the date on which the contract notice was sent to the Publications Office.

(4) In the event of urgency provably not caused by the contracting authority, the time limit for the submission of requests to participate must not be less than 10 days from the date on which the contract notice was sent to the Publications Office.

##### Article 53

(1) Contracting authorities may call for the submission of tenders a lower number of candidates who comply with the conditions of participation and the minimum levels of ability/suitability where the specified minimum number has not been reached.

(2) A call for the submission of tenders shall include

- a) the place and time limit determined to request the tender documents where those are not included, or a reference for access to the tender documents where the contracting authority has offered unrestricted and direct access by electronic means to the tender documents,
- b) where applicable, the amount and method of payment for the provision of the tender documents,
- c) information concerning the publication of the contract notice,
- d) the time limit for the submission of tenders, the place of the submission of tenders and the language or languages in which tenders may be submitted,
- e) specification of additional documents, where appropriate and intended to support the statements submitted by the candidate in accordance with the contract notice, or to provide additional information requested in the contract notice; other requirements relating to financial and economic standing and technical ability or professional suitability than those initially specified by the contracting authority must not be applied,
- f) relative weights of the specific criteria for the evaluation of tenders or a descending order of importance of the criteria unless set out in the contract notice,
- g) any other necessary information.

(3) Contracting authorities shall simultaneously send invitations to submit tenders only to the selected candidates who have met the conditions of participation. Under the same procedure, contracting authorities must not invite for the submission of tender any one who has not requested to participate. Where tender documents do not make part of the call for tenders, contracting authorities shall provide those to the candidates immediately upon their request. A tender may only be submitted by a tenderer invited by the contracting authority to do so.

#### Article 54

(1) The tender submission period shall be at least

- a) 40 days from the date of dispatch of the call for the submission of tenders,
- b) 36 days from the date of dispatch of the call for the submission of tenders where the contracting authority published a prior notice not earlier than 12 months and not later than 52 days before the day of dispatch of the contract notice; the tender submission period must not be less than 22 days from the dispatch of the call for the submission of tenders.

(2) The tender submission period may be reduced by five days where the contracting authority has enabled unrestricted and direct access by electronic means to tender documents and to any additional documents.

(3) In the event of urgency provably not caused by the contracting authority where the time limits pursuant to paragraph 1 cannot be applied, the time limit for the submission of tenders must not be less than ten days from the date on which the call for submission of tenders was sent out.

(4) Where tender documents and additional information are not provided within the time limits pursuant to Article 38 and Article 53 (3) even though requested in good time, or where the drawing up of tenders requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, contracting authorities shall reasonably extend the tender submission period so that the selected candidates may be aware of all information needed to prepare tenders.

## Negotiated Procedure with a Publication

### Article 55

(1) Contracting authorities may use negotiated procedure with a publication only where at least one of the following conditions is met:

- a) all tenders in a preceding open procedure, restricted procedure or competitive dialogue were irregular or otherwise unacceptable and provided that the initial conditions of contract have not substantially changed; contracting authorities shall not be obliged to publish contract notices where they negotiate with all tenderers who have met the conditions of participation in a preceding open procedure, restricted procedure or competitive dialogue and have submitted tenders pursuant to the requirements of the contracting authority,
- b) the nature of the supplies, building works or services provided or the risks related thereto exceptionally do not allow determine the requirements as regards the pricing method,
- c) the requirements for services, in particular financial services, cannot be determined sufficiently precisely to use open procedure or restricted procedure,
- d) the building works will only be executed for research, testing or development but not to generate profit or to cover research and development costs.

(2) Irregular or otherwise unacceptable tender shall be in particular a tender which

- a) fails to comply with the conditions determined by the contracting authority as regards an aspect other than the object of contract,
- b) is contradictory to law,
- c) includes obviously disadvantageous conditions.

### Article 56

(1) Contracting authorities may restrict the number of candidates to be invited to submit tenders to at least three so as to allow competition.

(2) In contract notices, contracting authorities shall determine in particular

- a) the time limit for the submission of the requests to participate,
- b) where appropriate, the restriction of the number of candidates,
- c) the rules for the evaluation of meeting of the conditions of participation.

(3) The time limit for the submission of the requests to participate may not be less than 30 days from the date on which the contract notice was sent to the Publications Office.

(4) In the event of urgency provably not caused by the contracting authority, the time limit for the submission of requests to participate may not be less than 10 days from the date on which the contract notice was sent to the Publications Office.

## Article 57

(1) Where the specified minimum number of candidates has not been reached, contracting authorities may invite to submit a tender a lower number of candidates who comply with the conditions of participation and the minimum level of ability/suitability.

(2) A call for the submission of tenders shall include items pursuant to Article 53 (2), the place and the assumed date of negotiation concerning the submitted tender.

(3) In the event of calls for the submission of tenders, contracting authorities shall follow Article 53 (3).

(4) The tender submission period must not be less than 22 days from the date on which the call for the submission of tenders was sent out.

(5) Contracting authorities shall negotiate with tenderers concerning their submitted tenders in order to adapt those to the requirements specified in the contract notice, in the tender documents and possibly in other additional documents and in order to select the best tender on the basis of economically the most advantageous tender or the lowest tender.

(6) In the conduct of negotiation, contracting authorities shall be obliged to provide equal treatment to all tenderers. It is prohibited to provide information in a manner which may give some tenderers an advantage over others.

(7) Contracting authorities may set out that a negotiated procedure will be held in several phases following one another in order to decrease the number of tenders to be negotiated, based on the criteria for the evaluation of tenders set out in the contract notice or in the tender documents. Contracting authorities shall indicate such option in the contract notice or in the tender documents. Where contracting authorities make use of the option to reduce the number of tenders, their number achieved in the last stage must allow competition if there are sufficient suitable tenderers.

(8) Contracting authorities shall draw up minutes of every negotiation.

## Negotiated Procedure without a Publication

### Article 58

Contracting authorities may use negotiated procedure without a publication only where at least one of the following conditions is met:

- a) no tender was submitted or none of the tenders submitted met the conditions determined by the contracting authority regarding the object of contract in a preceding open procedure or restricted procedure, or no request for participation was submitted in a preceding open procedure or restricted procedure and provided that the initial conditions of contract awarding have not substantially changed,

- b) for technical reasons, artistic reasons or for reasons resulting from exclusive rights<sup>12</sup>, the supplies, building works or services may only be provided by a specific economic operator,
- c) the supply, building works or service contract is awarded due to an extraordinary event not caused by the contracting authority who could not have foreseen the event and, with regard to the resulting urgency, an open procedure, restricted procedure or negotiated procedure with a publication cannot be organised; an extraordinary event shall mean in particular a natural disaster, accident or situation immediately threatening the lives or health of people or the environment; other related contracts shall be awarded by public procurement procedures using accelerated procedures, where appropriate,
- d) the products requested are manufactured exclusively for the purpose of research, experiment, study or development; that does not apply to large-scale production related to economic activities intended to make profit or cover the research and development costs,
- e) in the event of additional supplies from the initial supplier intended to partially substitute the usual supplies or equipment or to extend the supplies or equipment already supplied, where changing the supplier would force the contracting authority obtain material of different technical characteristics causing incompatibility or inadequate technical difficulties in operation or in maintenance; the validity of such contracts as well as of repetitive contracts must not exceed three years,
- f) in the event of supplies quoted in the commodity exchange,
- g) in the event of supplies offered at exceptionally beneficial conditions by a supplier closing his business, from a liquidator, from a trustee or from an executor,
- h) in the event of a candidate whose design was evaluated by the jury as winning or one of the winning in a design contest with several winning participants, the contracting authority must invite them all for negotiations,
- i) in the event of additional building works or services not included in the initial contract, the need of which has resulted additionally from unforeseeable circumstances, and the contract is awarded to the initial economic operator and the estimated value of building works or services does not exceed 50 % of the initial contract value where the additional building works or services
  1. cannot be technically or economically separated from the initial contract performance without causing inadequate difficulties to the contracting authority, or
  2. can be technically or economically separated from the initial contract performance but are necessary for further performance pursuant to the initial contract,
- j) in the event of new building works or services vested in the repetition of the same or comparable building works executed by the initial contractor or services provided by the initial provider provided that
  1. they are in accordance with the basic project and the initial contract was awarded by open procedure or restricted procedure,
  2. the estimated value of the initial contract was determined pursuant to Article 5 (2) (a),
  3. the information of the contract award by negotiated procedure without a publication was contained in the contract notice when awarding the initial contract and
  4. the repetitive contract is awarded within three years from conclusion of the initial contract.

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<sup>12</sup> For instance, Article 16 of Act No 618/2003 Coll. of Laws on copyright and on rights related to the copyright (the Copyright Act), Article 14 of Act No 435/2001 Coll. of Laws on patents, supplementary protection certificates and on the amendment of certain acts (the Patent Act), as amended by Act No 402/2002 Coll. of Laws

## Article 59

(1) Contracting authorities shall invite one or more selected candidates to negotiate depending on the condition set out in Article 58 with whom the conditions of contract, in particular technical, administrative and financial conditions are negotiated.

(2) Contracting authorities shall request the candidates to submit documents demonstrating their meeting of the conditions of participation depending on the object of contract.

(3) In the conduct of negotiation, contracting authorities shall be obliged to ensure equal treatment to all candidates. It is prohibited to provide information in a manner which may give some candidates an advantage over others. Minutes shall be drawn up of every negotiation.

(4) The provisions of paragraphs 1 to 3 shall not apply to the procurement of supplies in the commodity exchange.

## Competitive Dialogues

### Article 60

(1) Contracting authorities may use competitive dialogue in the event of particularly complex projects where open procedure or restricted procedure cannot be used. The aim of competitive dialogue is to find and define the most suitable manner to satisfy the needs of the contracting authority. Tenders must only be evaluated on the basis of economically the most advantageous tender.

(2) A particularly complex contract shall mean a contract in the award of which the contracting authority is objectively not able to

- a) define technical requirements pursuant to Article 34 (2) (b), (c) or (d), which would meet the contracting authority's needs and objectives, or
- b) specify the legal or financial conditions of the project.

(3) Contracting authorities may restrict the number of candidates to be invited to participate in the dialogue to at least three so as to allow competition. Contracting authorities may invite to participate in a dialogue a lower number of candidates who comply with the conditions of participation and the minimum levels of ability/suitability where the specified minimum number has not been reached. Contracting authorities shall invite to participate in a dialogue only selected candidates who have complied with the conditions of participation. Under the same procedure, contracting authorities must not invite to participate in a dialogue anyone who has not requested to participate.

(4) In the contract notice, contracting authorities shall set out in particular

- a) the project description and their requirements unless set out in an indicative document,
- b) the time limit for the submission of requests to participate,
- c) the rules for the evaluation of meeting of the conditions of participation,
- d) any other necessary information.

(5) The time limit for the submission of requests to participate must not be less than 30 days from the date on which the contract notice was sent to the Publications Office.

## Article 61

(1) An invitation to participate in a dialogue shall contain

- a) the place and time limit determined for requesting the indicative document where it is not included in the call, or a reference for accessing that document where the contracting authority has offered its unrestricted and direct access by electronic means,
- b) where applicable, the amount and method of payment for the indicative document,
- c) information concerning the publication of the contract notice,
- d) the place and date of the dialogue and the language or languages to be held in,
- e) specification of additional documents, where applicable, which and intended to support the statements submitted by the candidate in compliance with the contract notice, or to provide additional the information requested in the contract notice; other requirements as regards financial and economic standing and technical ability or professional suitability than those initially set out by the contracting authority must not be applied,
- f) relative weights of the individual criteria for the evaluation of tenders or a descending order of importance of the criteria unless set out in the contract notice or in the indicative document,
- g) any other necessary information.

(2) Where the indicative document is not a part of the call to participate in a dialogue, it will be provided to the selected candidates by the contracting authority immediately upon request.

(3) In the conduct of dialogue, contracting authorities may negotiate all the project aspects with the selected candidates. Contracting authorities may determine prizes or awards for candidates who have participated in a dialogue.

(4) In the conduct of dialogue, contracting authorities shall be obliged to ensure equal treatment to all tenderers. It is prohibited to provide information in a discriminatory manner which may give some tenderers an advantage over others.

(5) Contracting authorities must not provide other tenderers the proposed solutions or other confidential information obtained from a tenderer with whom a dialogue was conducted, without the latter's approval.

(6) Contracting authorities may determine that dialogue would be held in several phases following one another in order to decrease the number of solutions to be negotiated in a dialogue phase, on the basis of the criteria for the evaluation of tenders set out in the contract notice or in the indicative document. Contracting authorities shall indicate that option in the contract notice or in the indicative document.

(7) Where contracting authorities make use of the option to reduce the number of solutions to be negotiated, their number achieved in the last phase must allow competition where there are sufficient solutions. Contracting authorities shall continue in such dialogue until a solution or solutions meeting their needs are found. Where appropriate, such solutions

will be compared. Contracting authorities shall draw up minutes of every negotiation in a dialogue.

#### Article 62

(1) Contracting authorities shall inform tenderers about a dialogue closing and invite them to submit their final tenders on the basis of the solution or solutions submitted, which were specified in the dialogue. Those tenders must feature all the parameters requested and necessary for the project implementation.

(2) An invitation to submit a final tender shall include

- a) information concerning the publication of the contract notice,
- b) the time limit for the submission of tenders, place of the submission of tenders and the language or languages in which tenders may be submitted,
- c) the place and date/time of opening of the tenders,
- d) any other necessary information.

#### Article 63

(1) Tenders shall be opened in the place and at the date/time set out in the call for the submission of tenders pursuant to Article 62 (2). Tenders shall be evaluated pursuant to the criteria for the evaluation of tenders set out in the contract notice or in the indicative document in order to select the best tender on the basis of economically the most advantageous tender.

(2) The commission may ask a tenderer to explain or to provide more details of the tender submitted. The commission must not however ask for or accept an explanation or more details resulting in a change of the basic aspects of the tender or of the call for the submission of tenders, to discrimination or preventing fair competition.

(3) Contracting authorities may ask a tenderer whose tender has been evaluated as economically the most advantageous to explain the aspects of his tender or to confirm the commitments set out in the tender. Contracting authorities must not however ask for or accept an explanation resulting in a change of the basic aspects of the tender or of the call for the submission of tenders, to discrimination or preventing fair competition.

#### Article 64

##### Framework Agreements

(1) To conclude framework agreements, contract award procedures will be used, including the use of the criteria for the evaluation of tenders pursuant to Article 35.

(2) Framework agreements may be concluded for not more than four years, save in exceptional cases duly justified by the object of the framework agreement having as its party a contracting authority in the defence sector. Framework agreements shall end upon the expiry of the time or under the circumstances set out therein. Framework agreements may be

concluded for the supplies, building works or services not featuring any complex technical requirements. Conclusion of a framework agreement must not prevent fair competition.

(3) On the basis of framework agreements, contracts may be awarded only to persons who are a party to the framework agreement. When awarding contracts on the basis of framework agreements, no substantial changes and amendments may be made to the terms set out in the framework agreement.

(4) Where a framework agreement is concluded with a single party, contracts based on such agreement shall be awarded within the terms laid down in the framework agreement. Contract awarding may be preceded by a consultation in writing. If necessary, contracting authorities may request additions to tenders.

(5) Where framework agreements are concluded with several parties, their number must not be less than three. Framework agreements may be concluded with a lower number of tenderers only provided that the remaining tenders submitted are unacceptable. On the basis of framework agreements concluded with more tenderers, contracts may be awarded

- a) without re-opening competition within the limits of the terms set out in that agreement, or
- b) by re-opening competition unless all the terms are set out in the framework agreement.

(6) Where competition is re-opened, all parties to that agreement repetitively compete on the basis of the same and, where applicable, more precisely formulated terms set out in the framework agreement in the following manner:

- a) the award of each contract is preceded by a written consultation with the tenderers who are able to perform the contract,
- b) the contracting authority shall determine a sufficient time limit for the submission of tenders; when determining the time limit for the submission of tenders, the complexity of the object of contract, the time necessary for drawing up and sending the tenders shall be taken into consideration,
- c) tenders shall be submitted in writing and their content shall remain confidential until the time limit for the submission of tenders has expired,
- d) the contracting authority shall evaluate the tenders on the basis of the criteria set out in the framework agreement and conclude a contract with the successful tenderer.

## Article 65

### Housing Construction

(1) In the event of a contract the object of which is the design and construction of rental housing whose scope, complexity and estimated time of construction require close cooperation of a team comprising representatives of the contracting authority, designers and contractors, a special procedure may be adopted for the selection of partners to be incorporated in the team.

(2) In the contract notice, the contracting authority will set out as accurately as possible the description of the building works so as to enable to form a valid idea of the object of contract, and the conditions of participation pursuant to Articles 26 to 30.

## TITLE THREE

### CONCESSION

#### Article 66

(1) Where the estimated concession value equals to or exceeds EUR 5 150 000, contracting authorities shall be obliged to follow paragraphs 2 to 6 and Articles 67 and 68. The estimated concession value shall be determined pursuant to Article 5.

(2) A concession period is a period set out in a concession contract during which the concessionaire has the right to use the object of the concession contract or enjoy the benefits of the object of the concession contract. A concession period shall run from the first day of the month following the final inspection of work<sup>14</sup> or its permanent commissioning, or following another event pursuant to the concession contract where the concessionaire had or could have had revenues from operating the building structure or from the service provision. A concession period shall end upon the expiry of the last day of the month of the specified period. A concession period cannot be set out for indefinite time.

(3) The duration of a concession period depends on the object of the concession contract, the amount of payment for the building works to be performed or the service to be provided, and the estimated fair concessionaire's revenue resulting from the right to enjoy the object of the concession contract or enjoy benefits from the object of the concession contract during the concession period.

(4) The rules for concession shall not be applied in cases referred to in Article 1 (2) (a), (b), (e) and (f).

#### Article 67

(1) When awarding a concession, contracting authorities shall follow Part One and Title I and Title II of this part, unless provided otherwise in this Title; Article 25, Article 36, Article 43, Article 47, Article 52 (4), Article 54 (3), Article 56 (4), Article 58, Article 59, Article 64 and Article 65 shall not be applied.

(2) Contracting authorities shall call for a concession by publishing a concession notice. The concession notice

- a) concerning building works shall be sent to the Publications Office and the Office,
- b) concerning services shall be sent to the Office.

(3) Contracting authorities shall send the Office a contract award notice within 48 days from the conclusion of a concession contract.

(4) When drafting and sending notices pursuant to paragraphs 2 and 3, contracting authorities shall follow Article 23 (1).

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<sup>14</sup> Articles 76 and 77 of Act No 50/1976 Coll. on spatial planning and the Housing Code (the Building Act), as amended by Act No 479/2005 Coll. of Laws

(5) The time limit for the submission of concession requests may not be less than 45 days from the date on which the concession notice was sent out

- a) concerning building works to the Publications Office,
- b) concerning services to the Office.

#### Article 68

(1) Contracting authorities may

- a) request from concessionaires to conclude contracts, representing at least 30 % of the total value of building works or services for which a concession contract is to be concluded, with third persons and, at the same time, allow increasing of that share; the minimum percentage share shall be set out in the concession contract, or
- b) ask tenderers to determine the percentage share of the total price of the building works or services in their tenders to be provided for by third persons.

(2) Provisions of paragraph 1 and of Articles 66 and 67 shall not be applied in the event of additional building works or services not included in the initially envisaged concessionaire project or in the initial concession contract whose need resulted additionally from unforeseeable circumstances. Such building works or services shall be awarded to the concessionaire, provided that they would be awarded to the initial economic operator where

- a) they cannot be technically or economically separated from the initial concession contract performance without causing inadequate difficulties to the contracting authority, or
- b) they can be technically or economically separated from the initial concession contract performance but are necessary for further performance pursuant to the initial concession contract.

(3) The aggregate value of additional building works or services must not exceed 50 % of the value of the initial concession contract.

#### Article 69

In the award of building works contracts or service contracts to third persons, concessionaires who are contracting authorities shall be obliged to use public procurement procedures pursuant to this Act.

#### Rules for Concessionaires

#### Who Are Not Contracting Authorities

#### Article 70

(1) In the award of building works contracts to third persons, concessionaires other than contracting authorities shall follow the rules set out in Article 71 where the estimated value of such contracts equals to or exceeds EUR 5 150 000. The estimated value of a building works contract shall be determined pursuant to Article 5.

(2) Third persons shall not be considered groups of persons established with the aim of obtaining a concession or affiliated undertakings.

(3) For the purpose of awarding building works contracts to concessionaires other than contracting authorities, an affiliated undertaking shall mean a legal entity in which the concessionaire has direct or indirect dominant influence or which has a dominant influence on the concessionaire, or which along with the concessionaire is subject to a dominant influence of another legal entity on the basis of ownership, financial interest or rules which govern it.

(4) An affiliated undertaking shall also mean a legal entity in which a concessionaire's member has direct or indirect dominant influence or which has a dominant influence on a concessionaire's member, or which along with the concessionaire is subject to a dominant influence of another legal entity on the basis of ownership, financial interest or rules which govern it.

(5) Direct or indirect dominant influence shall mean a situation where a legal entity in relation to another legal entity

- a) owns the majority of shares or a majority business interest, or
- b) controls the majority share in voting rights, or
- c) appoints more than a half of members of the administration body or executive body or supervisory body.

(6) A complete list of economic operators pursuant to paragraph 2 shall be set out in the concession request. That list is to be updated in the event of any change.

## Article 71

(1) In the award of contracts pursuant to Article 70, concessionaires other than contracting authorities shall be obliged to publish contract notices. Building works contract notices shall be sent to the Publications Office and the Office pursuant to Article 23 (1), service contract notices shall be sent to the Office pursuant to Article 23 (1). Notices shall contain

- a) a description of the object of contract,
- b) the place and time limit determined for the submission of requests to participate or the place and time limit determined for the submission of tenders,
- c) the criteria for the evaluation of tenders.
- d) where applicable, the conditions of participation pursuant to Articles 27 and 28,
- e) any other necessary information.

(2) The time limit for the submission of requests to participate may not be less than 30 days from the date on which the contract notice was sent to the Publications Office.

(3) The tender submission period may not be less than 40 days from the date on which the contract notice was sent to the Publications Office or from the date on which the call for the submission of tenders was sent out. That period may be reduced by five days where the concessionaire has enabled unrestricted and direct access by electronic means to tender documents and to all additional documents.

(4) Where the tender documents for drawing up a tender or additional information are not provided within the specified time limits even though requested in good time or where the

drawing up of tenders requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, concessionaires shall reasonably extend the tender submission period so that the candidates may be aware of all information needed for the preparation of tenders.

(5) Concessionaires other than contracting authorities shall not be obliged to publish contract notices where the building works or the service contract awarded to third persons comply with one of the conditions set out in Article 58.

## TITLE IV

### AWARD OF CONTRACTS ABOVE THE LIMIT BY CONTRACTING ENTITIES

#### Article 72

To award contracts above the limit, contracting entities shall be obliged to use a procedure pursuant to Title Two, unless provided in this Title otherwise.

#### Article 73

- (1) Procedures for the award of contracts above the limit shall not be used
- a) to purchase water where awarded by a contracting entity pursuing at least one of the activities pursuant to Article 8 (4),
  - b) to supply energy or fuels for generation of energy where awarded by a contracting entity pursuing at least one of the activities pursuant to Article 8 (3) or Article 8 (9) (a).

(2) Procedures for the award of contracts above the limit shall neither be used to award supply, building works or service contracts provided that at least 80 % of the average annual turnover earned by an affiliated undertaking over the preceding three years is made by the provision of such supplies, building works or services to undertakings to which it is affiliated and which are awarded

- a) by a contracting entity to an affiliated undertaking,
- b) by a legal entity founded by several contracting entities to pursue any of the activities pursuant to Article 8 (3) to (9) for an undertaking affiliated to one of such contracting entities.

(3) For the purpose of contract awarding by contracting entities, “affiliated undertaking” is a legal entity whose financial statements are consolidated with the financial statements of the contracting entity in accordance with a special regulation<sup>15</sup>, or a legal entity in which the contracting entity has, directly or indirectly, dominant influence pursuant to Article 8 (1) (b), or which has a dominant influence in the contracting entity, or which along with the contracting entity is subject to dominant influence of another legal entity on the basis of ownership, financial interest or by rules which govern it.

(4) Where the average annual turnover of an affiliated undertaking over the preceding three years cannot be proven pursuant to paragraph 2 because of the date on which it was established or commenced its activities, it will be proven in particular by its turnover estimate.

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<sup>15</sup> Article 22 of Act No 431/2002 Coll. of Laws on accounting, as amended by Act No 561/2001 Coll. of Laws

(5) Where identical or comparable supplies are delivered, building works executed or services provided by more than one affiliated undertaking, the total turnover from the delivery of supplies, execution of building works or provision of services by such affiliated undertakings will be taken into consideration.

(6) Procedures for the award of contracts above the limit shall neither be used for the delivery of supplies, execution of building works or provision of services which

- a) are awarded by legal entities founded by several contracting entities to pursue any of the activities pursuant to Article 8 (3) to (9) for one of such contracting entities, or
- b) a contracting entity being one of the founders of the legal entity pursuant to (a) awards contracts to that legal entity provided that
  1. the legal entity was founded to pursue the activity concerned for a period of at least three years and
  2. the Memorandum of Association sets out that its founding contracting entities shall remain its members for a period of at least three years.

## Article 74

### Contracts Including Several Activities

(1) Contracts including several activities shall be governed by the rules in force for that activity which is intended to prevail; contracting entities must not subdivide contracts in order to avoid procedures for the award of contracts above the limit.

(2) Contracts shall be awarded by using procedure above the limit for contracting authorities where a part of the contract is to be governed by that procedure and another part is to be governed by award procedure above the limit used for contracting entities where it is impossible to objectively determine which activity in the contract prevails.

(3) Contracts shall be awarded by using procedure above the limit for contracting entities where a part of the contract is to be governed by that procedure and another part is to be governed neither by that procedure nor by the award procedure above the limit for contracting authorities and where it is impossible to objectively determine which activity in the contract prevails.

## Article 75

### Evaluation of Certain Supply Tenders

(1) Contracting entities may exclude supply tenders where the share of products originating in a third country in accordance with a special regulation<sup>16</sup> represents more than a half of the total value of the products tendered. For the purpose of assessing the share of products, software used in telecommunications network devices shall also be considered a product.

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<sup>16</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ EU L 302, 19 October 1992) in its valid version

(2) Where two or more tenders are equivalent in the evaluation of tenders pursuant to Article 35, the tender which cannot be excluded pursuant to paragraph 1 shall be given preference if the price difference is not more than three percent.

(3) The provision of paragraph 2 shall not be applied where, as a result of that, contracting entities would be obliged to purchase supplies with technical properties different from the supplies obtained earlier, which due to technical problems cannot be used in the contracting entity's operation or maintenance, or because it would result in unreasonably high costs.

(4) The provisions of Articles 1 to 3 shall also apply to tenders in which the share of products pursuant to paragraph 1 has its origin in a third country which has not a bilateral or multilateral agreement concluded with the European Communities ensuring comparable and effective access of Member States suppliers to the markets of that third country.

(5) The provisions of paragraphs 1 to 3 shall not apply where in accordance with a decision of the Council of the European Union a bilateral or multilateral agreement has been concluded with a third country ensuring comparable and effective access to the market of that country, unless arising otherwise from the commitments which the European Communities or their Member States have toward that country.

## Publication of Notices

### Article 76

(1) Contracting entities shall publish periodic indicative notices at least once a year where

- a) the total estimated value of supply contracts or framework supply contracts by product groups intended for award during the following 12 months is at least EUR 750 000; a product group shall be specified by a reference to Procurement Vocabulary,
- b) the total estimated value of service contracts or framework services agreements in each category of services listed in Annex 2 intended for award during the following 12 months is at least EUR 750 000,
- c) the estimated value of a building works contract or a framework agreement for building works indicating the main characteristics, intended to award during the following 12 months is at least equal to or exceeds EUR 5 150 000.

(2) Contracting entities shall publish periodic indicative notices pursuant to paragraph 1 in the event of

- a) supplies and services, if possible as soon as early after the calendar year beginning,
- b) building works, if possible as soon as possible after approval of the plan of building works contracts or framework agreements for building works intended for award.

(3) The provisions of paragraphs 1 and 2 shall not apply to negotiated procedures without a publication.

(4) Contracting entities may also publish or send for publication to the Publications Office periodic indicative notices concerning important projects whose publication is not obligatory. Where such notices has been published, the information contained therein does not

have to be repeated in the contract notice, it is sufficient to set out that the notice is a notice additional to the periodic indicative notice published.

(5) Upon request of a candidate expressing interest in the award of a contract, contracting entities shall make available technical requirements regularly set out in the contracts the object of which is the delivery of supplies, execution of building works or provision of services, or technical requirements intended to apply in the award of contract to which periodic indicative notice pursuant to paragraphs 1 and 2 applies. Where technical requirements are based on technical specifications which are available, inclusion of a reference to such technical specifications shall be sufficient.

#### Article 77

(1) Calls for competition shall be made by means of

- a) periodic indicatives notice with a call for competition,
- b) notices of a qualification system,
- c) contract notices.

(2) In the event of dynamic purchasing systems, calls for competition shall be contract notices pursuant to paragraph 1 (c) under that system. Calls for competition for the award of contracts on the basis of that system are simplified contract notices.

#### Article 78

(1) Where contracting entities call for competition by means of periodic indicative notices with a call for competition, those notice shall include in particular

- a) separately the data regarding supplies, building works or services which will be the object of contract,
- b) information on contract awarding on the basis of restricted procedure or negotiated procedure with a publication without any further publishing of those,
- c) the time limit by which the candidates have to apply in writing.

(2) Periodic indicative notices with a call for competition shall be published not earlier than 12 months prior to the date on which the call pursuant to paragraph 3 is sent out.

(3) Before evaluating the meeting of the conditions of participation, contracting entities shall invite all candidates to re-confirm their interest to participate on the basis of detailed information concerning the object of contract. Invitations shall contain in particular

- a) the type and quantity of the object of contract including the option of additional contracts and, where possible, the estimated time limit by which the additional contract may be performed; in the event of repetitive contracts, the type and quantity of the object of contract and, where possible, the estimated time limit in which supply, building works or service contract notices will be later published,
- b) an indication whether it is restricted procedure or negotiated procedure with a publication,
- c) the commencement date or closing date for the delivery of supplies, execution of building works or provision of services,
- d) address and time limit for the submission of requests to participate in the competition, as well as the language or languages, in which the requests must be submitted,

- e) address of the contracting entity and information needed to obtain the tender documents and other documents,
- f) economic and technical conditions, financial guarantees and other information requested from candidates,
- g) the amount and method of payment for the provision of tender documents, where applicable,
- h) an indication of the contract: purchase, lease, rental or hire-purchase with or without an option to buy, of supplies, or any combination thereof,
- i) criteria for the evaluation of tenders and their relative weights or ranking of importance of those criteria where such information is not set out in the periodic indicative notice, tender documents, in the call for submission of tenders or in the call to negotiate.

(4) The time limit for the submission of requests to participate and the time limit for the submission of tenders shall be determined by the contracting entity pursuant to Articles 82 and 84 or Articles 85 and 86.

#### Article 79

(1) In contract award notices, contracting entities may indicate information which is not intended for publication. Such information may concern the tenders received, successful tenderer or prices; it is provided in a simplified form for statistical purposes only.

(2) In the event of research and development service contracts pursuant to Article 88 (b), contracting entities may restrict information in the contract award notice intended for publication which concern the nature and quantity of the services, by including a reference to research and development services.

(3) In the event of research and development service contracts in the award of which the condition set out in Article 88 (b) cannot be applied, contracting entities may, on grounds of commercial confidentiality, restrict the information to be provided, which concerns the nature and quantity of such services.

(4) Information published pursuant to paragraphs 2 and 3 must be at least within the scope published in the notice used as a means of calling for competition. In the event of a qualification systems, at least within the scope as set out in the list of qualified providers of such services pursuant to Article 80 (6).

#### Article 80

##### Qualification System

(1) Contracting entities may establish and operate a qualification system of economic operators. Contracting entities which have established qualification systems shall enable candidates to apply anytime and qualify.

(2) Establishment of a qualification system must be object of a qualification system notice. The notice must make clear its purpose and availability of the rules of application. Where a qualification system is to last more than three years, a qualification system notice

shall be published by the contracting entity on an annual basis. Where the qualification system is of a shorter duration, its initial publication shall be sufficient.

(3) A qualification system which may include various qualification levels must be operated on the basis of objective criteria and rules set out by the contracting entity. Where the criteria and rules for operating a qualification system include technical requirements, those will be applied pursuant to Article 34. The criteria and rules may be updated as necessary.

(4) The contracting entity shall determine the conditions of participation pursuant to Article 32 (2); meeting of the conditions of participation shall be evaluated pursuant to Article 33 (2) and (8).

(5) Contracting entities shall make available the criteria and rules of the qualification system at a candidate's request. Updates of criteria and rules shall be communicated to the economic operators concerned. Where a contracting entity finds that the qualification system used by another person complies with its own requirements, the former shall communicate the name of that person to qualified economic operators and candidates of qualification.

(6) Contracting entities shall run a list of qualified economic operators. The list of qualified economic operators may be structured into categories by the type of contracts to which the qualification applies.

(7) When establishing or operating qualification systems, contracting entities shall follow paragraph 2. Contracting entities shall inform a candidate for qualification about its decision concerning the latter's admission to the qualification system not later than six months from the date of delivery of a request for admission in the qualification system. Where contracting entity has decided within a period exceeding four months from the date of delivery of a request for admission in the qualification system, the candidate for qualification must be informed within two months from his request delivery about the grounds authorising the contracting entity to prolong that period and about the time limit by which the candidate's request is to be admitted or refused.

(8) Where a contracting entity has refused a request for admission in the qualification system, the candidate of qualification must be informed of the decision not later than 15 days from the adoption of the decision to refuse his request stating the grounds for doing so pursuant to paragraph 3.

(9) A contracting entity which has established and operates a qualification system may bring the qualification of an economic operator to an end only on grounds resulting from the qualification system criteria pursuant to paragraph 3. The contracting entity shall inform the qualified economic operator of the intention to bring the latter's qualification to an end stating the ground or grounds allowing to do so at least 15 days prior to the termination of the latter's qualification.

(10) Where a contracting entity has used a qualification system notice as a means of calling for competition, candidates in restricted procedure or in negotiated procedure with a publication shall be selected out of the qualified economic operators.

## Article 81

### Open Procedures

(1) In open procedures, contracting entities shall follow Article 51 (1) (a) and Article 51 (2) to (4).

(2) Where a contracting entity published a periodic indicative notice not earlier than 12 months and not later than 52 days from the date on which the contract notice was sent out, the tender submission period shall not be less than 30 days from the date on which the contract notice was sent to the Publications Office, however, it must not be less than 22 days.

(3) As a result of the cumulative effect of reducing the tender submission period pursuant to paragraph 2 and Article 51 (2), the tender submission period must not be less than 15 days from the date on which the contract notice was sent to the Publications Office.

(4) Where a contracting entity has specified the conditions of participation, their meeting shall be assessed pursuant to Article 33. Tenders of those tenderers who have complied with the conditions of participation shall be evaluated pursuant to Article 42.

### Restricted Procedures

## Article 82

(1) Contracting entities may restrict the number of candidates to be invited to submit tenders while taking into account that competition is enabled. Candidates shall be selected in accordance with objective rules which are available to candidates interested. Those rules may be based on an objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the nature of the procurement with the resources required for its conduct.

(2) In periodic indicative notices used as a means of calling for competition or in tender notices, contracting entities shall set out the time limit for the submission of requests to participate and the conditions of participation, where applicable.

(3) The time limit for the submission of requests to participate may not be less than 30 days from the date on which the contract notice was sent to the Publications Office or the periodic indicative notice used as a means of calling for competition was sent to the Publications Office; the time limit for the submission of requests to participate may not be less than 15 days.

## Article 83

- (1) Calls for the submission of tenders shall include
- a) the place and time limit set out to request the tender documents where they are not included, or a reference for accessing the tender documents where the contracting entity has offered their unrestricted and direct access by electronic means,
  - b) the amount and method of payment for the provision of tender documents, where applicable,

- c) the time limit for requesting additional documents, where applicable, as well as the price and terms of payment,
- d) information on the publication of the notice used as a means of calling for competition,
- e) the time limit for the submission of tenders, the place of the submission of tenders and the language or languages in which tenders may be submitted,
- f) criteria for the evaluation of tenders, unless specified in the notice used as a means of calling for competition,
- g) relative weights of the specific criteria for the evaluation of tenders or the descending order of importance of the criteria unless stated in the notice used as a means of calling for competition or in the tender documents,
- h) an indication of any documents to be attached,
- i) any other necessary information.

(2) In the event of calls for the submission of tenders, contracting entities shall follow Article 53 (3).

#### Article 84

(1) Contracting entities may determine a time limit for the submission of tenders in agreement with the selected candidates only where all of them will be given the same time for drawing up and submission of their tenders.

(2) Where agreement cannot be reached regarding the period for the submission of tenders pursuant to paragraph 1, the contracting entity shall determine a period which should not be less than 24 days from the date on which the call for the submission of tenders is sent and must not be less than ten days.

(3) The time limit for the submission tenders pursuant to paragraph 2 may be reduced by five days where the contracting entity has enabled unrestricted and direct access by electronic means to the tender documents and to all additional documents from the date of publishing the notice used as a means of calling for competition, and must not be less than ten days.

(4) Where tender documents and additional information are not provided within the periods pursuant to Article 38 and Article 83 (2) even though requested in good time, or where drawing up of a tender requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, contracting entities shall reasonably prolong the tender submission period so that the selected candidates may be aware of all information needed to prepare a tender; that shall not apply where the tender submission period was determined pursuant to paragraph 1.

#### Negotiated Procedures with a Publication

#### Article 85

(1) Contracting entities may restrict the number of candidates to be invited to negotiate while taking into account that competition is enabled. Candidates shall be selected in accordance with objective rules which are available to candidates interested. Those rules may

be based on an objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the nature of the procurement with the resources required for its conduct.

(2) In a periodic indicative notice with a call for competition or in a tender notice, contracting entities shall set out the time limit for the submission of requests to participate and the conditions of participation, where applicable.

(3) The time limit for the submission of requests to participate may not be less than 30 days from the date on which the contract notice was sent to the Publications Office or of the periodic indicative notice with a call for competition to the Publications Office; the time limit for the submission of requests to participate may not be less than 15 days.

## Article 86

(1) A call for the submission of tenders shall include items pursuant to Article 83 (1), the place and the assumed date of negotiation concerning the submitted tender.

(2) In the event of a call for the submission of tenders, contracting entities shall follow Article 53 (3).

(3) Contracting entities may determine a time limit for the submission of tenders in agreement with the selected candidates only where all of them are given the same time for drawing up and submission of their tenders.

(4) Where agreement cannot be reached regarding the period for the submission of tenders pursuant to paragraph 3, contracting entities shall determine a period which should not be less than 24 days from the date on which the call for the submission of tenders was sent out and must not be less than ten days.

(5) The time limit for the submission tenders pursuant to paragraph 4 may be reduced by five days where the contracting entity has enabled unrestricted and direct access by electronic means to the tender documents and to all additional documents from the date of publishing the notice used as a means of calling for competition, and must not be less than ten days.

(6) Where tender documents and additional information are not provided within the time periods pursuant to Article 38 and pursuant to paragraph 2 even though requested in good time, or where the drawing up of a tender requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, contracting entities shall reasonably extend the tender submission period so that the selected candidates may be aware of all information needed to prepare a tender; that shall not apply to cases where the tender submission period was determined pursuant to paragraph 3.

## Article 87

Contracting entities shall negotiate the contract conditions with the tenderers and be obliged to follow Article 57 (6) and (8) in the conduct of negotiation. Contracting entities may follow Article 57 (7) where that option is set out in the notice used as a means of calling for competition or in the tender documents.

### Negotiated Procedures without a Publication

## Article 88

Contracting entities may use negotiated procedures without a publication only where at least one of the following conditions is met:

- a) no tender was submitted or none of the tenders submitted met the conditions determined by the contracting entity regarding the object of contract in a preceding open procedure, restricted procedure or negotiated procedure, or no request to participate was submitted and provided that the initial conditions of contract have not substantially changed,
- b) the contract is intended purely for the purpose of research, experiment, study or development, and not for the purpose of securing profit or of recovering research and development costs; the award of such contract must not prevent a competitive award of subsequent contracts which do seek, in particular, those ends;
- c) for technical reasons, artistic reasons or for reasons resulting from exclusive rights<sup>12</sup>, the supplies, building works or services may only be provided by a specific economic operator,
- d) supply, building works or service contracts are awarded due to an extraordinary event not caused by the contracting entity which could not have foreseen the event and, with regard to the resulting urgency, open procedure, restricted procedure or negotiated procedure with a publication cannot be organised; an extraordinary event shall mean in particular a natural disaster, accident or a situation immediately threatening the lives or health of people or the environment; other related contracts shall be awarded by public procurement procedures using accelerated procedures, where applicable,
- e) in the event of additional supplies from the initial supplier intended to partially substitute the usual supplies or equipment or to extend the supplies or equipment already delivered, where a change of supplier would force the contracting entity obtain material of different technical characteristics causing incompatibility or inadequate technical difficulties in operation or in maintenance,
- f) in the event of additional building works or services not included in the initial contract, the need of which has resulted additionally from unforeseeable circumstances, and the contract is awarded to the initial economic operator where the additional building works or services
  1. cannot be technically or economically separated from the initial contract performance without causing unreasonable difficulties to the contracting entity, or
  2. can be technically or economically separated from the initial contract performance but are necessary for further performance pursuant to the initial contract,

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<sup>12</sup> For instance, Article 16 of Act No 618/2003 Coll. of Laws on copyright and on rights related to the copyright (the Copyright Act), Article 14 of Act No 435/2001 Coll. of Laws on patents, supplementary protection certificates and on the amendment of certain acts (the Patent Act), as amended by Act No 402/2002 Coll. of Laws

- g) in the event of new building works vested in the repetition of the same or comparable building works executed by the initial contractor provided that
  1. they are in accordance with the basic project and the initial contract was awarded by open procedure, restricted procedure, or negotiated procedure with a publication,
  2. the information of contract award by negotiated procedure without a publication was contained in the notice used as a means of calling for competition to award the initial contract and
  3. the estimated value of repetitive building works shall be included in the total estimated value of the building works contract,
- h) in the event of supplies quoted in the commodity exchange,
- i) in the event of contracts awarded on the basis of a framework agreement,
- j) in the event of supplies at an extraordinarily favourable price which is less than the market price and is offered in a certain short time period only,
- k) in the event of supplies offered at exceptionally beneficial conditions by a supplier closing his business activities, from a liquidator, from a trustee or from an executor,
- l) in the event of a candidate whose design was evaluated by the jury as winning or one of the winning in a design contest with several winning participants, the contracting entity must invite them all for negotiations.

#### Article 89

Contracting entities shall invite one or more selected candidates to negotiate depending on the condition pursuant to Article 88 to negotiate the conditions of contract, in particular technical, administrative and financial conditions. Contracting entities shall follow Article 59 (2) to (4).

#### Article 90

##### Framework Agreements

(1) To conclude a framework agreement, contracting entities shall use award procedures pursuant to this part of the Act.

(2) Contracting entities may consider a framework agreement to be a supply, building works or service contract.

(3) Where a contracting entity has concluded a framework agreement pursuant to this part of the Act, contracts may be awarded on the basis of the framework agreement pursuant to Article 88 (i).

(4) Framework agreements must not prevent fair competition.

### P A R T T H R E E

#### AWARD PROCEDURES BELOW THE LIMIT, BELOW THE THRESHOLD AND SMALL VALUE CONTRACTS

##### Award of Contracts below the Limit

## Article 91

(1) In the award of contracts below the limit, contracting authorities shall follow Part One and Part Two of Title I and Title II, unless provided otherwise in this Part; Article 21 (2) and (3), Article 48, Article 49 (1) and (2), Article 50 (1) to (3), Articles 72 to 79 and Articles 81 to 90 shall not apply.

(2) Contracting authorities shall determine the estimated value of supply, building works or service contracts below the limit pursuant to Article 5 (1) to (3) and Article 5 (6) to (12). Where the supplies, building works or services are under a single contract award subdivided into several lots each of which will be object of a separate contract, the sum of estimated values of all parts will be taken into account to calculate the estimated contract value.

(3) Contracting authorities may reserve the right to participate to candidates only having the status of a sheltered workshop or sheltered workplace.

## Article 92

(1) Contracting authorities shall send the Office contract notices to be published in the Journal.

(2) Contracting authorities shall send the Office contract award notices within 14 days from the conclusion of

- a) a contract,
- b) a framework agreement,
- c) any contract under a dynamic purchasing system; such notices may be sent in bulk for each quarter within 14 days of the quarter end.

(3) Contracting authorities shall send the Office contract award notices for each contract awarded under a framework agreement in bulk for each quarter within 14 days of the quarter end.

(4) Information regarding the result of public procurement whose the publication could be contrary to law, to public interest, or may harm legitimate interests of other persons shall not be published.

(5) Contracting authorities may publish notices used in public procurement on the internet in their profiles after their publication in the Journal. In order to raise awareness, other information concerning public procurement may be published in such profiles, too.

## Article 93

Contracting authorities shall draft and dispatch notices used in public procurement to the Office in the manner pursuant to Article 23 (1). The Office shall publish such drafted and dispatched notices within seven days from the date on which they were sent out. The date on which a notice was sent out shall be proven by contracting authorities.

## Article 94

(1) Tenderers or candidates shall prove their meeting of the conditions of participation in public procurement pursuant to Article 26.

(2) In contract notices, contracting authorities shall specify the conditions of participation and the documents for their demonstration pursuant to paragraph 1 and pursuant to Articles 27 to 30.

(3) Contracting authorities may establish and operate qualification systems of economic operators pursuant to Article 80.

(4) Contracting authorities shall evaluate the meeting of the conditions of participation pursuant to Article 33.

## Article 95

(1) When awarding contracts below the limit for services listed in Annex 3, procedures for the award of contracts below the threshold shall be used. Contracting authorities shall send contract award notices to the Office pursuant to Articles 92 and 93 and indicate whether they agree to their publication.

(2) When awarding contracts for services listed in Annex 3 pursuant to paragraph 1, contracting authorities shall at least two working days prior to the publication of a call for the submission of tenders pursuant to Article 99 (2) send the Office a notice of its publication in a manner pursuant to Article 23 (1). Notices of publication of a call for the submission of tenders shall contain

- a) name, address, identification number of the organisation (IČO), contract officer, telephone No., fax No., e-mail address, classification of the contracting authority,
- b) name of the object of contract,
- c) the web site where the call for the submission of tenders will be published,
- d) the date of publication of the call for the submission of tenders on the web site.

(3) The Office shall publish notices of publishing a call for the submission of tenders prepared and dispatched pursuant to paragraph 2 in the Journal not later than on the day indicated in that notice pursuant to paragraph 2 (d).

## Article 96

(1) In open procedures, the tender submission period shall not be less than 30 days from the date on which the contract notice was sent to the Office.

(2) The period for the submission of the requests to participate in a restricted procedure or in a negotiated procedure with a publication must not be less than 22 days from the date on which the contract notice was sent to the Office.

(3) The period for the submission of tenders in a restricted procedure shall be at least 22 days from the date on which the call for the submission of tenders was sent out.

(4) Contracting authorities shall prepare and send notices of opening a negotiated procedure without a publication pursuant to Article 23 (1) to the Office immediately after an invitation to negotiate was sent out, however, not later than 14 days before the conclusion of contract. The notice shall include in particular

- a) name, address, identification number of the organisation (IČO), contract officer, telephone No., fax No., e-mail address and classification of the contracting authority,
- b) name and a brief description of the object of contract,
- c) the estimated value of contract,
- d) the condition of use pursuant to Article 58 and its justification,
- e) where appropriate, the previous notice used in public procurement concerning the contract,
- f) name, address, contact officer, telephone No., fax No., e-mail address of candidate or candidates invited to negotiate,
- g) full name, telephone No., fax No., e-mail address and registration No. of the person professionally suitable in public procurement; that data is not published.

(5) The provision of paragraph 4 shall not apply where negotiated procedure without a publication is used pursuant to Article 58 (c) in case of an extraordinary event in accordance with a special regulation<sup>16a</sup>, and pursuant to Article 58 (f).

Article 97

Repealed

Article 98

Repealed

## Award of Contracts below the Threshold

Article 99

(1) In the award of contracts below the threshold, contracting authorities shall follow Part One and

- a) determine the estimated contract value pursuant to the conditions in effect on the day of publication of the call for the submission of tenders,
- b) in order to prove compliance with the conditions of participation pursuant to Article 26, request in particular a document authorising to deliver supplies, perform building works or

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<sup>16a</sup> Article 3 of Act of the National Council of the Slovak Republic No 42/1994 Coll. of Laws on civil protection of the population, as amended

Article 4 (1) (d) and Article 6 (c) of Act No. 387/2002 Coll. on the governing of state in crises, outside the time of ware and in warfare

- provide service or, where appropriate, other documents to prove financial and economic standing and technical ability or professional suitability pursuant to Articles 27 to 30,
- c) assess the meeting of the conditions of participation pursuant to Article 33 and in accordance with the call for the submission of tenders,
  - d) in tender documents, set out the business conditions and a detailed description of the object of contract pursuant to Article 34 which must not discriminate any candidates,
  - e) provide explanations of the data specified in the call for the submission of tenders or in the tender documents without any delay, not later than three working days from the delivery of a request for explanation, to all candidates involved; a candidate may seek explanation not later than six working days prior to the expiry of the tender submission period,
  - f) open tenders in the place and at the time indicated in the call for the submission of tenders pursuant to Article 41,
  - g) may establish a commission for the evaluation of tenders; in doing so, Article 40 shall be followed,
  - h) in evaluating tenders, follow Article 42 and the criteria set out in the call for the submission of tenders pursuant to Article 35,
  - i) conclude a contract pursuant to Article 45 with the successful tenderer and inform the remaining tenderers that they have not succeeded while indicating the grounds and identifying the successful tenderer; where the used contract award procedure has been cancelled, all tenderers shall be informed with an indication of the grounds and the procedure shall be communicated for contract awarding with the initial object of contract,
  - j) determine a time limit for the submission of tenders by taking into account the time necessary to draw up tenders, to explain the tender documents and tenders and the specified manner of communication,
  - k) determine the tender validity period by taking into account the time necessary to evaluate tenders and to conclude a contract with the successful tenderer.

(2) Contracting authorities shall publish calls for the submission of tenders on their web sites. Upon such publication, a call for the submission of tenders may be sent to at least three selected candidates.

(3) When awarding contracts below the threshold, electronic auction may be used pursuant to Article 43.

(4) In the call for the submission of tenders, contracting authorities may reserve the right to participate only to candidates having the status of a sheltered workshop or sheltered workplace.

## Article 100

(1) Where contracting authorities meet at least one of the conditions set out in Article 58, one or more selected candidates shall be invited to negotiate contract conditions.

(2) Contracting authorities may request that the candidates submit documents proving their meeting of the conditions of participation depending on the object of contract.

(3) To negotiations, the obligation pursuant to Article 59 (3) shall apply.

## Article 101

(1) Contracting authorities shall send the Office information about contracts concluded in a manner pursuant to Article 23 (1) not later than 14 days upon their conclusion. The information shall include in particular

- a) identification of the contracting authority,
- b) the object of contract,
- c) the estimated contract value, contract price and date of the contract conclusion,
- d) the number of tenderers who have submitted tenders,
- e) the number of tenderers or candidates excluded,
- f) identification of the successful tenderer or tenderers,
- g) justification of meeting the condition for following Article 100.

(2) From the award of contracts below the threshold, all documents shall be registered and stored five years after the contract conclusion.

## Article 102

### Award of Small Value Contracts

(1) When awarding small value contracts, contracting authorities shall be governed by the effort to match the costs of a contract award with the quality and price of the contract object.

(2) Contracting authorities shall not be obliged to have the activities in the award of small value contracts performed by a professionally suitable person.

(3) When awarding small value contracts, the written form shall not be required, except cases in which the law so requires. The result of public procurement shall not be sent to the Office.

(4) Contracting authorities shall register all the documents and keep them five years after the conclusion of contracts.

## **PART FOUR**

### **DESIGN CONTEST**

## Article 103

### Introductory Provisions

(1) For the purpose of this Act, “design contests” are procedures enabling the caller of a design contest (hereinafter referred to as the “caller”) acquire a design mainly in the field of architecture, town and country planning, construction engineering and data processing which a jury has selected out of the designs submitted in a design contest with or without an award of prizes.

(2) For the purpose of this Act, the result of the participant's own intellectual activity in writing or graphics which is useful for the caller as a supporting document for the award of a contract for town and country planning documents, design documents or other services, shall in particular be a study, analysis, design.

(3) "Caller" is anyone who has used a design contest on a voluntary basis or if so set out by law.

(4) "Participant" is anyone who has taken over contest conditions and submitted a design in accordance with the conditions.

## Article 104

### Obligation of Design Contest

(1) Design contests shall be used

- a) where a design contest makes part of a procedure for the award a service contract, or
- b) in the event of a design contest with an award of prizes or remuneration to participants.

(2) Design contests shall be mandatory

- a) for contracting authorities pursuant to Article 6 (1) (a) where the estimated value equals to or exceeds EUR 133 000,
- b) for contracting authorities pursuant to Article 6 (1) (b) to (e) where the estimated value equals to or exceeds EUR 206 000,
- c) for contracting authorities where the estimated value equals to or exceeds EUR 206 000 and the design contest relates to
  - 1. telecommunications services pursuant to Annex 2, reference code category 5 pursuant to Procurement Vocabulary corresponding to the CPC 7524, 7525 and 7526 codes,
  - 2. research and development services pursuant to Annex 2 category 8, or
  - 3. services listed in Annex 3,
- d) for contracting entities where the estimated value equals to or exceeds EUR 412 000 and the design contest relates to activities pursuant to Article 8 (3) to (9).

(3) The estimated value in a design contest pursuant to

- a) paragraph 1 (a) includes the estimated value of the service contract including the prizes and payments to participants,
- b) paragraph 1 (b) includes the prizes and payments to participants including the estimated value of the service contract.

(4) To calculate the estimated service contract value, Article 5 shall be followed.

(5) In design contests, open procedure or restricted procedure shall be applied.

## Article 105

### Participation in Design Contests

(1) As a rule, design contests are organised for an unrestricted number of participants.

(2) Where design contests are organised for a restricted number of participants, the design contest notice must determine criteria for the selection of participants. The criteria for the selection of participants must be specified in a clear, intelligible and non-discriminatory way so as to allow participation of a sufficient number of participants allowing effective competition. Criteria for the selection of participants must not restrict participation by a requirement concerning the establishment of the participants in a certain territory or part of the territory of a state, or by a requirement concerning its legal form.

(3) In a specific design contest, the one who prepared the criteria for the selection of participants, prepared the criteria for the evaluation of designs submitted or verified the contest conditions pursuant to Article 106 (2) (1) or his near person must not participate.

(4) Bonds cannot be requested for participation in a design contest.

(5) Design contests shall be declared by publishing design contest notices.

(6) In the event of design contests pursuant to Article 104, design contest notices shall be delivered to the Publications Office and to the Office. The manner and form of publication of design contest notices shall be governed by Article 23.

## Article 106

### Contest Conditions

(1) Design contests shall be performed according to contest conditions. Contest conditions must be available from the date of publication of the design contest notice. The payment for contest conditions may not exceed the genuine costs of their reproduction.

(2) Contest conditions must contain

- a) identification of the caller,
- b) a description of the object of the design contest and requirements regarding the scope, content and form of the design,
- c) the type of the design contest,
- d) the circle of participants,
- e) the time limit for taking over the contest conditions, the design submission period and the estimated time limit for the evaluation of the design contest,
- f) the jury composition stating full names of the jury members and their deputies,
- g) the criteria for the evaluation of the designs submitted and relative weights of the specific criteria,
- h) an indication whether a jury decision shall be binding for the caller and the contract will be awarded to the participant whose design has been selected by the jury as the winning, or to some of the participants whose designs have been selected by the jury as the winning ones, according to the ranking set up by the jury,
- i) the number and value of prizes awarded to the winning design or winning designs,
- j) the value of remunerations, where applicable, to participants who have met the contest conditions but their designs were not selected by the jury as the winning one or as one of the winning ones,
- k) the manner and form of communication with participants,

- l) an indication whether the contest conditions have been verified in accordance with a special act<sup>17</sup> before publication in the event of a design contest in the field of architecture, town and country planning and civil engineering,
- m) any other data which the caller may consider meaningful.

(3) After a contest notice, the contest conditions must not be changed and until the minutes with the results of the design contest have been signed, they shall remain binding for the caller, the jury and the participants.

## Article 107

### Jury

(1) The caller shall be obliged to establish a jury of at least five members consisting of persons professionally suitable to assess the contest conditions and the designs submitted. Where a particular professional qualification is required from the participants, at least a third of the jury members must have an identical or equivalent professional qualification.

(2) A person who is a participant, his near person, his employee, partner or colleague must be neither a jury member nor a jury member's substitute in a specific design contest.

(3) The role of the jury shall be to

- a) assess the contest conditions before a contest notice is published,
- b) oversee the meeting of the contest conditions during the design contest,
- c) check the designs submitted on completeness according to the contest conditions,
- d) exclude the designs submitted after the time limit or submitted in a wrong place, and the designs whose anonymity has been infringed or which otherwise failed to meet the requirements contained in the contest conditions,
- e) evaluate the designs submitted according to the criteria set out in the contest conditions,
- f) rank the designs submitted according to the criteria set out in the contest conditions,
- g) decide on the award of prizes to designs and remunerations to participants according to the contest conditions,
- h) draw up minutes.

(4) The jury shall evaluate designs while maintaining their anonymity and exclusively according to the criteria set out in the contest conditions. Anonymity must be maintained until the ranking of designs has been decided upon.

(5) Minutes from the jury session in which the ranking of designs and the distribution of prizes and remunerations were decided shall be signed by all jury members. A copy of the minutes shall be delivered to the caller and to all participants whose designs were evaluated by the jury.

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<sup>17</sup> Article 24 (2) (j) and Article 31 (2) (i) of Act of the Slovak National Council No 138/1992 Coll. on authorised architects and authorised civil engineers, as amended

## Article 108

### Result of a Design Contest

(1) The result of a design contest shall be published in the same manner as the design contest notice. The result of a design contest shall be communicated to every participant whose design was evaluated by the jury.

(2) In the event of a design contest pursuant to Article 104, a notice of the result of a design contest shall be sent to the Publications Office and to the Office. The manner and form of publishing the result of a design contest shall be governed by Article 22 (3), Article 23 and Article 50 (5).

(3) The designs for which a prize or remuneration was awarded and paid shall be the caller's ownership. Other designs shall be returned to participants.

(4) The caller may use the designs which are subject to a copyright with their authors' permission only. The copyright shall not pass over to the caller along with the design ownership.

## **PART FIVE**

### **ADMINISTRATION IN PUBLIC PROCUREMENT**

#### TITLE I

#### OFFICE

#### Article 109

(1) The Office is the central state administration authority for public procurement. The Office has its seat in Bratislava.

(2) The Office may establish permanent or temporary workplaces outside its seat. Such workplaces shall not have any legal personality.

#### Article 110

(1) The Office is headed by its chairman who is appointed and removed by the Government of the Slovak Republic (hereinafter referred to as the "Government").

(2) The Office chairman is deputised for by the Office deputy chairman. The Office deputy chairman is appointed and removed by the Government following a proposal of the Office chairman.

(3) The term of office of the Office chairman and of the Office deputy chairman is five years. The same person may hold the office of the Office chairman or of the Office deputy chairman not more than two successive terms.

(4) The term of the office of the Office chairman pursuant to paragraph 3 shall end upon the appointment of a new Office chairman.

#### Article 111

(1) The execution of office of the Office chairman and of the Office deputy chairman shall end

- a) upon the expiry of the term of office (Article 110 (3) and (4)),
- b) by a resignation from the office,
- c) by a removal from the office,
- d) by death or in declaration of death.

(2) The Government shall remove the Office chairman and the Office deputy chairman where he

- a) has been lawfully convicted of a malicious offence,
- b) has been deprived of his legal capacity by a lawful decision of a court or his legal capacity has been restricted,
- c) holds an office or performs an activity incompatible with the office of chairman or deputy chairman<sup>18</sup>,
- d) has not discharged his office for a time exceeding six successive calendar months.

(3) The Government may suspend the discharge of office of the Office chairman and of the Office deputy chairman where criminal prosecution has been commenced against him in connection with the execution of his office.

#### Article 112

##### Responsibilities of the Office

The Office shall

- a) draw up public procurement policies and develop programmes of vocational training and re-training,
- b) exercise state administration in public procurement,
- c) oversee public procurement,
- d) cooperate with the European Commission and ensure the fulfilment of the duties to notify the European Commission within the scope of this Act,
- e) at least once a year submit a report on the results of public procurement and operation of public procurement to the Government and, upon request, also to a committee of the National Council of the Slovak Republic,
- f) issue non-periodical publications,
- g) run a list of entrepreneurs,
- h) issue certificates of professional suitability and run a list of professionally suitable persons,
- i) register persons pursuant to Article 116 (3) and run a list of registered persons,
- j) provide methodology guidance to participants in the process of public procurement,

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<sup>18</sup> Article 5 of Constitutional Act No 357/2004 on public interest protection in the execution of offices by public officers

- k) publish all its methodology guidance to participants in the process of public procurement and all its decisions on protests including their justifications,
- l) impose fines for administrative delicts,
- m) run and make available to contracting authorities and contracting entities on its web site samples of electronic documents, special software meeting the requirements set out in Article 18 (4) and other items needed to ensure electronic communication,
- n) publish notices pursuant to Article 96 (4) on its web site,
- o) publish on its web site information about entrepreneurs whose acting is held an agreement restricting competition in public procurement by a final decision, in cooperation with the Antimonopoly Office of the Slovak Republic,
- p) in proceedings pursuant to Article 148a, following a law court request, provide a position on legal issues or fact finding related to an infringement of this Act,
- q) perform other activities pursuant to this Act.

### Article 113

#### Journal

(1) The Office shall issue the Journal in the electronic format, in which notices used in public procurement and other information pursuant to this Act are published.

(2) The correct content and language of the documents to be published shall be the responsibility of the one who has sent such documents for publication.

### Article 114

#### Obligations of the Office with Regard to the European Commission

(1) The Office shall

- a) draw up and submit the European Commission statistical reports on the contracts awarded over the preceding calendar year by 31 October each year,
- b) periodically notify the European Commission of any changes in the list of contracting authorities and in the list of contracting entities,
- c) notify the European Commission which bodies and authorities in the Slovak Republic issue documents and certificates pursuant to Article 26 (2),
- d) notify the European Commission of the texts of generally binding legal regulations in public procurement in effect,
- e) based on notifications of legal entities or natural persons, inform the European Commission of general legal or practical difficulties which those persons encountered in third countries in the award of service contracts or which they faced due to non-observance of international labour law provisions in the award of a contract in third countries,
- f) annually notify the European Commission the wording of all decisions pursuant to Article 148a (8),
- g) upon request, provide the European Commission information on the application of review procedures pursuant to this Act.

(2) Statistical reports pursuant to paragraph 1 (a) shall include

- a) in the event of contracting authorities pursuant to paragraph 6 (1) (a), information on the number of contracts concluded and the values of contracts above the limit

1. structured by contract award procedures above the limit, separately for supplies, building works pursuant to Annex 1 and services pursuant to Annexes 2 and 3, by Procurement Vocabulary categories and nationality of the tenderer with whom the contract was concluded, where applicable; in the event of contracts awarded by negotiated procedure with a publication or by negotiated procedure without a publication, structured pursuant to Article 55 (1) or Article 58 indicating the number of contracts concluded with foreign tenderers for each Member State and for each third country and the contract prices,
2. by virtue of derogations pursuant to an international agreement<sup>19</sup>,
- b) in the event of contracting authorities pursuant to Article 6 (1) (b) to (e), information concerning the number of contracts concluded and contract prices above the limit structured according to letter (a) of the first item and according to letter (a) of the second item, for each category of contracting authorities,
- c) in the event of contracting entities, information
  1. concerning the total price of contracts below the limit structured by Member States and activities pursuant to Article 8 (3) to (9),
  2. necessary to monitor the performance of an international agreement<sup>20</sup> in the event of activities pursuant to Article 8 (3) to (7) and paragraph 9 (b), except for services listed in Annex 2 category 8, telecommunications services listed in Annex 2 category 5 pursuant to the Procurement Vocabulary corresponding to CPC 7524, 7525 and 7526 codes and services listed in Annex 3,
- d) information required pursuant to an international agreement<sup>20</sup>.

## Article 115

### Remedial Arrangements

(1) Where the European Commission has notified the Slovak Republic prior to a contract conclusion of the grounds leading the European Commission to a conclusion that legally binding acts of the European Communities and of the European Union in public procurement have been infringed and has requested remedy, paragraphs 2 to 4 shall be followed.

(2) The Office shall notify the European Commission within 21 days from the date of delivery of a notice pursuant to paragraph 1

- a) that the infringement pursuant to paragraph 1 has been corrected and attach evidence thereof,
- b) a justified explanation why the infringement has not been corrected, or
- c) that the contract award procedure has been suspended as a result of using review procedures.

(3) The justified explanation pursuant to paragraph 2 (b) may specify that the alleged infringement pursuant to paragraph 1 is subject to review procedures pursuant to this Act. The Office shall be obliged to inform the European Commission of the result of its acting without any delay.

(4) Following a notification of information pursuant to paragraph 2 (c), the Office shall be obliged to inform the European Commission without any delay of a continued

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<sup>19</sup> Article V and Article XXIII of the Government Procurement Agreement (OJ EC C 256, 3 September 1996)

<sup>20</sup> Article XIX of the Government Procurement Agreement

contract award procedure suspended as a consequence of review procedures or of opening a new contract award procedure relating to the initial object of contract or a part thereof. That new information shall indicate whether the infringement has been corrected or justify why the infringement has not been corrected.

## TITLE II PROFESSIONAL SUITABILITY IN PUBLIC PROCUREMENT

### Article 116

(1) Contracting authorities, contracting entities and persons pursuant to Article 7 shall be obliged to carry out activities in public procurement by means of natural persons who have become professionally suitable in public procurement pursuant to this Act (hereinafter referred to as “professional suitability”) and have been enrolled in the list of professionally suitable persons operated by the Office.

(2) Professional suitability means a set of professional knowledge and practical experience needed to provide for the tasks of contracting authorities, contracting entities and persons pursuant to Article 7 in public procurement.

(3) Contracting authorities, contracting entities and persons pursuant to Article 7 may carry out the activities in public procurement by means another person who is an entrepreneur<sup>21</sup> and who may seek registration by the Office; that shall be without prejudice to the responsibility of contracting authorities, contracting entities and persons pursuant to Article 7 pursuant to this Act.

(4) The criterion for registration pursuant to paragraph 3 is

- a) a certificate of attestation issued pursuant to paragraph 6 by a person accredited in accordance with a special regulation<sup>22</sup>,
- b) the fact that neither the representative responsible for public procurement and nor any persons carrying out activities in public procurement for that representative have been guilty of any grave professional misconduct in public procurement.

(5) A request for registration shall include

- a) business name and seat (legal entity) or place of business (natural person),
- b) legal form,
- c) identification number of the organisation (IČO),
- d) full names and titles of persons professionally suitable in public procurement and the registration number of their licences of professional suitability,
- e) certificate of attestation.

(6) Accredited person (attestor) shall assess and issue a certificate of attestation

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<sup>21</sup> Article 2 (2) of the Commercial Code

<sup>22</sup> Act No 264/1999 Coll. of Laws, as amended

- a) where the applicant has submitted a document proving his authorisation to pursue business in public procurement,
- b) where the applicant has proven to satisfy the condition pursuant to Article 26 (1) (c) by submitting a confirmation of the competent law court,
- c) where the applicant has proven the conformity of an established and document-supported public procurement system in the specified field with the requirements of this Act,
- d) where the representative responsible for public procurement and all persons carrying out activities in public procurement for that representative are professionally suitable in public procurement and are enrolled in the list of professionally suitable persons maintained by the Office.

(7) The Office shall register a person on the basis of that person's request where the person satisfied the conditions pursuant to paragraph 4, within 30 days from the date on which the request was delivered.

(8) Where the request for registration fails to include all the items required, the Office shall invite the applicant to supply the missing items within a specified time limit. Where the applicant fails to supply the items within a specified time limit, the Office shall discontinue the proceedings and return the request and its attachments to the applicant.

(9) The Office shall cancel registration where

- a) deficiencies have been established in the pursuit of activities in public procurement,
- b) the person registered ceased to satisfy the conditions of registration,
- c) the person registered has failed to fulfil its obligation to inform of changed data,
- d) the person registered has applied to do so.

(10) The person registered shall be obliged to inform the Office in writing within 30 days of changed data set out in the request for registration and support the change by a suitable document.

(11) The list of persons registered is a list available to the public which anyone may consult and make extracts of. The list of persons registered shall be published by the Office on its web site.

## Article 117

### Prerequisites for Recognition of Professional Suitability

(1) The prerequisites for recognition of professional suitability shall be

- a) integrity of the applicant,
- b) tertiary education and four years of professional experience in public procurement after graduation or completed secondary education and six years of professional experience in public procurement after graduation,
- c) participation in vocational training,
- d) passing of examination.

(2) Integrity shall be proven by an extract from the judicial record not older than three months.

(3) Professional experience of an applicant in public procurement shall be proven by documents allowing establish the requested duration and scope of professional experience in public procurement by the commencement date of his vocational training.

## Article 118

### Vocational Training

(1) Vocational training of applicants shall be performed by a training provider within the scope agreed with the Office and under the Office supervision. The Office shall not take into account vocational training other than performed by the training provider.

(2) Vocational training shall be enrolled by applicants who have submitted the following documents to the training provider by the date of the training commencement:

- a) extract from the judicial record not older than three months,
- b) document proving his completed education,
- c) document proving his professional experience pursuant to Article 117 (3),
- d) other documents to prove the scope and duration of practical experience pursuant to Article 117 (3).

## Article 119

### Examination Board of the Office

(1) Examinations are taken before an examination board of the Office consisting of at least three members. The members of the examination board of the Office and its chairman are appointed and removed by the Office chairman.

(2) The examination board of the Office shall be capable of examination and decision-making about an examination result where all its members are present concurrently; it shall meet its decisions by a majority of votes.

(3) Details of activities of the examination board of the Office are governed by the examination board statutes to be issued by the Office chairman.

## Examination

### Article 120

(1) Only applicants may sit for examination who have participated in vocational training and submitted the Office an application to sit for examination. Applicants shall submit certificates proving their vocational training before the examination beginning to the examination board of the Office. The examination is taken free of charge.

(2) The examination is to verify professional knowledge and familiarity with legal regulations relating to public procurement. The examination consists of a written part and an oral part. Before the examination beginning, the examination board of the Office shall verify the applicant's identity.

(3) The dates/times of examinations are notified by the Office. Applicants are invited by the Office to sit for examination not later than ten days in advance.

#### Article 121

(1) Each part of the examination shall be evaluated by the examination board of the Office separately, either “passed” or “failed”. The examination board of the Office shall draw up minutes regarding the conduct of examination and its evaluation, which shall be signed by all members of the examination board of the Office present. The conduct of examination shall be governed by the rules of examination to be issued by the Office chairman.

(2) An applicant has passed the examination by passing both its parts. An applicant who failed in one part of the examination may apply with the Office to repeatedly take the examination not more than twice.

(3) Passing of examination shall be a prerequisite for enrolling a professionally suitable person in the list of professionally suitable persons and for issuing a certificate of professional suitability.

#### Article 122

##### Request for Enrolment in the List of Professionally Suitable Persons

(1) A request for enrolment in the list of professionally suitable persons shall include

- a) full name, title and birth registration number,
- b) domicile,
- c) name or business name and seat or place of business of the employer in case of an employee, or business name and seat or place of business in case of an entrepreneur.

(2) The request for enrolment in the list of professionally suitable persons shall be appended by a payment slip of administrative fee.

##### List of Professionally Suitable Persons

#### Article 123

(1) The list of professional suitable persons is a list accessible by the public which anyone may consult and make excerpts of. The Office shall publish data from the list of professionally suitable persons pursuant to Article 124 (2) on its web site.

(2) The Office shall decide on the enrolment in the list of professionally suitable persons of anyone who has met the prerequisites for a recognition of his professional suitability and has requested to be enrolled in the list of professionally suitable persons.

#### Article 124

(1) The list of professionally suitable persons includes the following data:

- a) full name and title of the professionally suitable person,

- b) domicile,
- c) date of passing the examination,
- d) date of issuance of the certificate of professional suitability,
- e) registration number.

(2) The data referred to in paragraph (1) (a), (b) and (e) are published in the list of professionally suitable persons.

(3) Professionally suitable person shall be obliged to notify the Office within 30 days of any change in the data indicated in the request for enrolment in the list of professionally suitable persons.

## Article 125

(1) The Office shall delete from the list of professionally suitable persons the one who

- a) has died or has been declared dead,
- b) has been deprived of his legal capacity or whose legal capacity has been restricted,
- c) has requested the Office in writing to be deleted from the list of professionally capable persons.

(2) The Office shall decide about deletion from the list of professionally suitable persons of the one who has

- a) failed to participate in re-training without any justification,
- b) not pursued activities in public procurement for more than three successive years,
- c) failed to inform the Office of a change in the data indicated in the certificate of professional suitability,
- d) gravely infringed law in the pursuit of an activity relating to public procurement; grave infringement of law shall be considered an infringement of the principles contained in Article 9 (4),
- e) has been subsequently found by the Office as not meeting the prerequisites of professional suitability,
- f) has been lawfully convicted of a malicious offence relating to public procurement,
- g) has failed in re-examination pursuant to Article 127 (1) and (4).
- h) has failed to participate in re-examination upon a written call of the Office without any justification.

(3) Before a deletion from the list of professionally suitable persons pursuant to paragraph 2, the Office shall invite the person to be deleted to give his position on that issue within 15 days from the date on which the call was delivered. Where the person has failed to give his position within the time limit or where his position does not clearly mean an absence of grounds for deletion, the Office shall delete the professionally suitable person from the list of professionally suitable persons and invite the same to return the licence of professional suitability within a specified time limit.

## Article 126

### Licence of Professional Suitability

(1) The Office shall issue a licence of professional suitability to anyone who has been enrolled in the list of professionally suitable persons within 30 days from his enrolment, containing the following data:

- a) full name and title of the professionally suitable person,
- b) domicile,
- c) date of issuance of the certificate of professional suitability,
- d) name of the Office and impression of the official Office seal,
- e) registration number,
- f) signature of the Office chairman or of a person authorised by him.

(2) The licence of professional ability shall be evidence of its holder's ability to pursue activities in public procurement.

(3) The licence shall become invalid by loss, theft, destruction or deletion of the professionally suitable person from the list of professionally suitable persons.

(4) Professionally suitable persons shall be obliged to

- a) immediately inform the Office of loss, theft or destruction of the licence of professional suitability,
- b) return the licence of professional ability if invited by the Office to do so,
- c) provide information at the Office request concerning activities which the person pursued in public procurement.

(5) On the grounds of a loss, theft or destruction of a licence of professional ability, the professionally suitable person may apply for a duplicate licence to be issued by the Office, for which an administrative fee is to be paid.

## Article 127

### Re-Training, Re-Examination

(1) The Office shall rule the re-training of professionally suitable persons and may order their re-examination where major changes have occurred in legal regulations concerning public procurement. Professionally suitable persons shall be obliged to participate in re-training and re-examination if invited by the Office to do so.

(2) Re-training shall be performed by a training provider according to the training programmes approved by the Office.

(3) The Office shall invite professionally suitable persons for re-training and the invitation for re-training shall also be published on the Office web site.

(4) The Office may order re-examination of a professionally suitable person even where that person has not pursued activities in public procurement in accordance with this Act. Re-examination shall be governed by Article 119.

T I T L E   T H R E E  
L I S T   O F   E N T R E P R E N E U R S

Article 128

(1) The Office shall maintain a list of entrepreneurs who have proven their ability to conclude contracts or framework agreements in public procurement and who have applied for enrolment. Being enrolled in the list of entrepreneurs shall entitle the entrepreneur to prove in public procurement his meeting of the conditions of participation as regards personal status pursuant to Article 26 (2) by confirmation of the Office.

(2) The list of entrepreneurs is a list accessible by the public which anyone may consult and make excerpts of. The Office shall publish data from the list of entrepreneurs pursuant to Article 131 (a) to (d) on its web site.

(3) The data entered in the list shall be effective in respect to any contracting authority and contracting entity and there is no need of its verification in public procurement procedures.

(4) The entrepreneur whom the entry concerns cannot object against contracting authorities and contracting entities acting in good faith in the entries of the list claiming that the entry is not responsive of reality.

(5) The enrolment in the list shall be valid one year.

Request for Enrolment

Article 129

A request for enrolment in the list shall include

- a) business name and seat of the entrepreneur,
- b) scope of business,
- c) legal form of the entrepreneur,
- d) identification number of the organisation (IČO),
- e) list of members of the statutory body stating their full names and birth registration numbers,
- f) impression of the seal and signature of a member of the entrepreneur's statutory body in accordance with the document proving the authorisation to pursue business,
- g) documents pursuant to Article 26 (2).

Article 130

(1) Where the request fails to meet all the items required, the Office invites the entrepreneur to complete those within a specified time limit. Where the entrepreneur fails to

complete those within a specified time limit, the Office shall discontinue the proceedings and return the request including its attachments to the entrepreneur.

(2) The Office shall enrol an entrepreneur in the list within 15 days of the request delivery and where the request failed to meet the required items, from the date of its completion.

(3) The Office shall not enrol in the list an entrepreneur who has failed to comply with the conditions of participation in public procurement pursuant to Article 26 (1).

#### Article 131

##### Content of the List of Entrepreneurs

The list of entrepreneurs shall contain

- a) business name and seat of the entrepreneur,
- b) scope of business,
- c) identification number of the organisation (IČO),
- d) registration number,
- e) the list of documents pursuant to Article 26 (2) by which the entrepreneur proved the meeting of the conditions of participation regarding his personal status,
- f) a list of members of the statutory body stating their full names indicated in the request for enrolment.

#### Article 132

##### Change in Data

(1) Entrepreneurs shall be obliged to inform the Office in writing within 30 days of a change in the data set out in the request and attest the change by a recent document proving the change.

(2) The Office shall update the data in the list of entrepreneurs on the basis of the changes communicated and the documents delivered.

(3) The Office shall prolong the validity of enrolment in the list of entrepreneurs where the entrepreneur not later than 30 days before the expiry of the enrolment validity has filed a new request with documents pursuant to Article 26 (2) and has complied with the conditions of participation in public procurement pursuant to Article 26 (1).

#### Article 133

##### Confirmation of Enrolment in the List of Entrepreneurs

(1) The Office shall issue a confirmation to the entrepreneur within seven days from the date of his enrolment in the list of entrepreneurs.

(2) The Office confirmation shall include data contained in the list of entrepreneurs. The confirmation shall be issued on an official Office form.

(3) The entrepreneur enrolled in the list of entrepreneurs may seek issuance of a duplicate confirmation of his enrolment in the list of entrepreneurs on the grounds of loss, theft or destruction. For issuing a duplicate, an administrative fee is to be paid.

#### Article 134

##### Deletion from the List of Entrepreneurs

(1) The Office shall delete from the list of entrepreneurs

- a) a natural person who has died or has been declared dead,
- b) a legal entity which has ceased to exist,
- c) the one who applied for doing so in writing.

(2) The Office shall decide about deleting the one from the list of entrepreneurs who

- a) has ceased to comply with the conditions of participation in public procurement pursuant to Article 26 (1),
- b) has failed to fulfil his obligation to inform about a change in data,
- c) used documents for enrolment in the list of entrepreneurs which proved to be counterfeited or invalid.

(3) The Office shall inform entrepreneurs that grounds for deletion from the list of entrepreneurs pursuant to paragraph 2 has been identified and invite the same to give their position thereto within 15 days from the date on which the notice was delivered. Where entrepreneurs have failed to give their position within that time limit or their position does not make show clearly that there are not grounds for deletion, the Office shall decide to delete the entrepreneurs from the list.

(4) Where entrepreneurs have been deleted from the list on grounds referred to in paragraph 2 (b) or (c), they may be re-enrolled in the list of entrepreneurs upon the expiry of three years from their deletion from the list.

#### TITLE IV

##### REVIEW PROCEDURES

#### Article 135

The review procedures pursuant to this Act are:

- a) request for remedy filed with contracting authorities, contracting entities or persons pursuant to Article 7 prior to conclusion of a contract, framework agreement or in design contest,
- b) supervision of public procurement.

## Article 136

### Request for Remedy

(1) Tenderers, candidates, participants or persons whose rights or rightfully protected interest have been or may have been affected by the conduct of contracting authority, contracting entity or person pursuant to Article 7, may file a request for remedy against

- a) an intention to conclude a contract or a works concession contract published pursuant to Article 22 (7), against the conditions set out in a notice pursuant to Article 50 (4), Article 67 (2), Article 77 or Article 105 (5),
- b) the conditions set out in tender documents or other documents provided by contracting authorities, contracting entities or persons pursuant to Article 7 within the tender submission period or the conditions set out in contest conditions in a design contest provided within the design submission period,
- c) the conditions set out in a call for the submission of tenders or designs,
- d) the selection of candidates in a restricted procedure pursuant to Article 52 (1) and Article 82 (1), negotiated procedure with a publication pursuant to Article 56 (1) and Article 85 (1) or design contest pursuant to Article 105 (2),
- e) exclusion of a tenderer, candidate or participant,
- f) evaluation of tenders or designs.

(2) A request for remedy must include

- a) identification data of the claimant,
- b) identification data of the contracting authority, contracting entity or person pursuant to Article 7,
- c) indication of the public procurement at which the request for remedy is aimed,
- d) indication of the infringement of procedure pursuant to paragraph 1,
- e) description of decisive circumstances and indication of evidence,
- f) proposal of the claimant to settle the request for remedy,
- g) signature of the claimant or person authorised to act on the claimant's behalf.

(3) A written request for remedy must be delivered to the contracting authority, contracting entity or person pursuant to Article 7

- a) within ten days from the date of publishing the notice pursuant to
  1. Article 22 (7) in the European Journal where the request for remedy is aimed at an intention to conclude a works contract or works concession contract,
  2. Article 50 (4), Article 67 (2) (a), Article 77 or Article 105 (5) in the European Journal where a contract above the limit, building works concession and design contest is being awarded and where the request for remedy is aimed at the conditions set out in the notice,
  3. Article 50 (4), Article 67 (2) (b) in the Journal where a contract below the limit and a service concession is being awarded where the request for remedy is aimed at the conditions set out in the notice,
- b) within ten days from the date of taking over tender documents or other documents provided in the tender submission period or conditions set out in the contest conditions in a design contest provided in the design submission period where the request for remedy is aimed at the conditions set out in the tender documents or other documents provided in the tender submission period or in the contest conditions provided in the design submission period,

- c) within ten days from the date of taking over or publishing a call for the submission of tenders or designs where the request for remedy is aimed at the conditions set out in the call for the submission of tenders or designs,
- d) within ten days from the date of taking over the notice with the result of the selection of candidates in a restricted procedure pursuant to Article 52 (1) and Article 82 (1), in a negotiated procedure with a publication pursuant to Article 56 (1) and Article 85 (1) or in a design contest pursuant to Article 105 (2) where the request for remedy is aimed at the selection of candidates in a restricted procedure, in a negotiated procedure with a publication and at the selection of participants in a design contest,
- e) within ten days from the date of taking over the notice of exclusion of a tenderer, candidate or participant where the request for remedy is aimed at exclusion of the tenderer, candidate or participant,
- f) within ten days from the date of taking over the result of the evaluation of tenders or designs where the request for remedy is aimed at the result of the evaluation of tenders or designs.

(4) Where a request for remedy fails to include the prescribed items, the contracting authority, contracting entity or person pursuant to Article 7 shall invite the claimant not later than three working days from the delivery of the request for remedy to eliminate the deficiencies. The completed request for remedy must be delivered within three working days from the date of delivery of the invitation.

(5) Where the claimant has failed to deliver the request for remedy pursuant to paragraphs 3 and 4 or where the request for remedy has failed to include the prescribed items even after an invitation to eliminate deficiencies pursuant to paragraph 4, the request for remedy shall be rejected and the claimant shall be delivered a written rejection of his request for remedy within five days from taking over the request for remedy or upon the expiry of the time limit for the elimination of deficiencies pursuant to paragraph 4. The right to file protests pursuant to Article 138 shall be extinct where the request for remedy was not delivered to the contracting authority, contracting entity or person pursuant to Article 7 within the time limit set out in paragraph 3.

(6) Within seven days from the delivery of a complete request for remedy submitted within the time limit pursuant to paragraph 3, the contracting authority, contracting entity or person pursuant to Article 7 shall deliver

- a) a notice in writing concerning the result of settlement of the request for remedy with a justification and setting out the manner and time limits for remedy to the claimant and all known tenderers, candidates or participants, or
- b) a notice in writing to the claimant stating that the request for remedy has been rejected with a justification.

(7) Contracting authority, contracting entity or person pursuant to Article 7 will not settle a request for remedy in the same matter which has already been settled pursuant to paragraph 6. That circumstance shall be communicated to the claimant within the time period pursuant to paragraph 6 with an indication in which manner the matter has been settled. Such communication shall be considered notice about the result of settlement of a request for remedy.

(8) The delivery of a written notice about the result of settlement of a request for remedy, of a written notice that a request for remedy has been rejected or a failure to meet an

obligation pursuant to paragraphs 6 or 7 shall give the claimant the right to file protests in that matter.

## Article 137

### Supervision of Public Procurement

(1) The Office oversees the compliance of contracting authorities, contracting entities or persons pursuant to Article 7 (hereinafter referred to as the “supervised”) with their obligations.

(2) In carrying out supervision, the Office shall

- a) decide on protests of tenderers, candidates, participants or persons whose rights or rightfully protected interests have been or may have been affected by the conduct of the supervised,
- b) decide on protests of a state administration authority where the supervised has been provided funds for supplies, building works or services by the European Communities,
- c) audit contract award procedures and design contests organised by the supervised,
- d) impose fines for administrative delicts,
- e) perform other activities pursuant to this Title.

(3) In their exercise of supervision, supervisors shall be obliged to keep confidential information disclosed to them in the execution of their office, even after a decision has been issued on the matter, unless released from that obligation in public interest by the Office chairman in writing in order to inform the public. Infringement of the confidentiality obligation shall not mean

- a) making use of such information for the purpose of supervision; this shall be without prejudice to the obligation to maintain confidentiality of classified information<sup>22a</sup>,
- b) making available such information to the law court for the purpose of law court proceedings; this shall be without prejudice to the obligation to maintain confidentiality of classified information<sup>22a</sup>.

## Protest Proceedings

### Article 138

(1) The filing of protests must be preceded by the delivery of a request for remedy to the contracting authority, contracting entity or person pursuant to Article 7. That obligation shall not apply to the filing of protests pursuant to paragraph 2 (g) and to the filing of protests by state administration authorities pursuant to Article 137 (2) (b).

(2) A tenderer, candidate, participant or person whose rights or rightfully protected interests have been or may have been affected by the conduct of a supervised or of a state administration authority pursuant to Article 137 (2) (b) (hereinafter referred to as the “proponent”) may lodge protests prior to the conclusion of a contract, concession contract or framework agreement against

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<sup>22a</sup> Act No. 215/2004 Coll. of Laws on the protection of classified information and on the amendment of certain acts, as amended

- a) an intention to conclude a contract or a works concession contract published pursuant to Article 22 (7), against the conditions set out in a notice pursuant to Article 50 (4), Article 67 (2), Article 77 or Article 105 (5),
- b) conditions set out in tender documents or other documents provided within the tender submission period or conditions set out in contest conditions in a design contest provided in the design submission period,
- c) conditions set out in a call for the submission of tenders or designs,
- d) selection of candidates in a restricted procedure pursuant to Article 52 (1) and Article 82 (1), in a negotiated procedure with a publication pursuant to Article 56 (1) and Article 85 (1) or in a design contest pursuant to Article 105 (2),
- e) exclusion of a tenderer, candidate or participant,
- f) evaluation of tenders or designs.
- g) action of a supervised other than set out in (a) to (f).

(3) The parties of the proceedings shall be the proponent and the supervised.

(4) The protest proceedings shall be opened on the date of delivery of protests to the Office.

(5) The protests must be submitted in a documentary form to the Office and to the supervised

- a) not later than ten days from the date of delivery of a written notice the about result of settlement of the request for remedy or of a written notice that a request for remedy has been rejected where the supervised has fulfilled its obligation pursuant to Article 136 (6) or (7),
- b) not later than ten days from the expiry of the time limit for the delivery of a written notice about the result of settlement of a request for remedy or of a written notice that a request for remedy has been rejected where the supervised failed to fulfil its obligation pursuant to Article 136 (6) or (7),
- c) prior to the conclusion of contract, concession contract or framework agreement where the protests are aimed at an action of the supervised other that listed in paragraph 2 (a) to (f).

(6) The protests lodged with the Office must include

- a) identification data of the proponent,
- b) identification data of the supervised,
- c) indication of the public procurement at which the protests are aimed,
- d) indication of the circumstances at which the protests under paragraph 2 at aimed,
- e) description of the decisive circumstances and indication of evidence,
- f) proposal of decision regarding protests pursuant to Article 139 (2) or (3),
- g) signature of the proponent or person authorised to act on the proponent's behalf.

(7) Protests shall be appended by

- a) a written notice about the result of settlement of the request for remedy pursuant to Article 136 (6) (a), a written notice that the request for remedy has been rejected pursuant to Article 136 (6) (b) or a receipt of delivery of a request for remedy where the supervised failed to settle the request for remedy within the statutory time limit,
- b) a receipt proving that bail has been transferred to the account of the Office,
- c) a document demonstrating the authority to sign protests pursuant to paragraph 6 (g), unless submitted to the supervised.

(8) Where protests are filed by a person whose rights or rightfully protected interests have been or may have been affected by the conduct of the supervised, the protests must indicate which rights or rightfully protected interests of the former have been or may have been affected by the conduct of the supervised.

(9) The protests filed with the supervised must include items pursuant to paragraph 6.

(10) The supervised shall be obliged to deliver the Office a written statement concerning the protests lodged, indicating the estimated contract value and complete original documentation within four working days from the date of delivery of the protests. In case of electronic communication, the delivery of complete original documentation to the Office shall mean making available the electronic form of documentation by means of instruments and equipment used for electronic communication. Where the supervised fails to deliver the Office a written statement regarding the protests lodged, stating the estimated contract value and complete original documentation within the indicated time limit, the Office shall issue a decision suspending the protest action, in which the supervised is instructed to deliver the Office a written statement concerning the protests lodged, indicating the estimated contract value and complete original documentation within an additional time limit set out by the Office. Protest proceedings shall remain suspended until the obstacles are eliminated due to which the proceedings have been suspended. From the issuance of a decision to suspend protest proceedings till the delivery of a written statement and complete original documentation, the time limit pursuant to Article 139 (5) shall discontinue. The supervised may consult the complete original documentation delivered to the Office for the purpose of fulfilling his obligations while review procedures are applied. Where the supervised fails to deliver the Office a written statement on the protests filed indicating the estimated contract value and a complete original documentation within an additional time limit set out by the Office, the Office shall decide pursuant to Article 139 (2) (a).

(11) The Office may suspend the protest proceedings in order to obtain professional opinion or expert opinion. From the issuance of a decision to suspend protest proceedings till the delivery of a professional opinion or expert opinion, the time limit for the Office pursuant to Article 139 (5), however, not exceeding 30 days, shall discontinue.

(12) Protests shall have a suspensive effect on the action of the supervised, except protests pursuant to paragraph 2 (g). The Office may withdraw the suspensive effect of protests pursuant to paragraph 2 (a) to (f) where its negative consequences pose a threat to public interest. There is no remedy against a decision of the Office to withdraw the suspensive effect.

(13) Until its decision regarding protests pursuant to paragraph 2 (g), the Office may issue an interim measure to suspend the action of the supervised not longer than the delivery of the Office decision regarding protests. There is no remedy against a decision of the Office on an interim measure. Where the Office does not issue a decision of interim measure to suspend the action of the supervised, the former shall inform parties to the proceedings thereof.

(14) The suspensive effect of protests on the action of the supervised pursuant to paragraph 12 or paragraph 13 shall not have any impact on the obligations of the supervised while the review procedures pursuant to this Act are applied.

(15) The time periods available for the supervised, except for the time limit pursuant to paragraph 10, shall not continue

- a) where protests have been lodged pursuant to paragraph 2 (a) to (f), until the delivery of the Office decision concerning the protests,
- b) where the Office has issued a decision of an interim measure suspending the action of the supervised pursuant to paragraph 13, while such interim measure continued,
- c) during a suspension of protest action pursuant to paragraphs 10 or 11.

(16) Where protests have been lodged pursuant to paragraph 2 (b) against conditions other than those set out in the notice pursuant to Article 50 (4), Article 67 (2), Article 77 or Article 105 (5), the time limits set out by the supervised shall not continue for the candidates or participants that have requested tender documents or contest conditions until the delivery of the Office decision concerning the protests. The supervised shall be obliged without any delay to inform all candidates or participants that have requested tender documents or contest documents that such protests have been lodged.

(17) Where protests have been lodged pursuant to paragraph 2 (c) against conditions other than those set out in the notice pursuant to Article 50 (4), Article 67 (2), Article 77 or Article 105 (5), the time limits set out by the supervised shall not continue for the candidates or participants that have received a call for the submission of tenders or designs. The supervised shall be obliged without any delay to inform all candidates or participants that have received a call for the submission of tenders or designs that such protests have been lodged.

(18) Where protests have been lodged pursuant to paragraph 2 (d) or (e), the time limits set out by the supervised discontinue. The supervised shall be obliged without any delay to inform all candidates or participants that such protests have been lodged.

(19) Along with the lodging of protests, the proponent shall be obliged to pay a bail to the Office account; that obligation shall not apply to a state administration authority lodging protests pursuant to Article 137 (2) (b). The bail must be credited to the Office account not later than the last day of the time limit for lodging protests pursuant to paragraph 5 (a) and (b) and not later than the day of lodging the protests pursuant to paragraph 5 (c). The amount of bail for lodging protests

- a) pursuant to paragraph 2 (a) to (e) and (g) prior to opening of tenders is
  1. EUR 1 800 in the award of a supply contract above the limit and in the award of a service contract above the limit,
  2. EUR 7 500 in the award of a building works contract above the limit,
  3. EUR 600 in the award of a supply contract below the limit and in the award of a service contract below the limit,
  4. EUR 3 600 in the award of a building works contract below the limit,
- b) pursuant to paragraph 2 (f) and (g) after the opening of tenders is 1% of the tenderer's bid price but not exceeding EUR 600 000; bid price means the total price offered by the proponent for the object of contract; bid price also is considered the net present value of a one-off payment or repeated payment,
- c) is EUR 3 000 where the amount of bail cannot be determined pursuant to letters (a) or (b).

(20) The bail is a state budget revenue by the validity date of the Office decision, by which the proponent's protests were rejected, or the Office pays the bail back within 30 days from the decision validity date.

## Article 139

- (1) The Office shall suspend protest proceedings by a decision in the event that
- a) protests were not filed by a person competent pursuant to Article 138 (2),
  - b) they were lodged after expiry of the time limit pursuant to Article 138 (5),
  - c) fail to include all items pursuant to Article 138 (6) and Annex pursuant to Article 138 (7),
  - d) the proponent had withdrawn the protests before a decision was issued in the merit of the matter,
  - e) the supervised has cancelled the used contract award procedure, design contest, or where the Office has already issued a decision pursuant to paragraph 2 (a) in the matter of the same contract award procedure or in the same design contest,
  - f) the protests have not been lodged with the supervised,
  - g) a protest had already been lodged in the same matter set out in Article 138 (2) (a) to (c) or (g) and the Office has decided on the protest pursuant to paragraphs 2, 3 or 4,
  - h) the bail was not credited to the Office account by the time or in the amount set out in Article 138 (19),
  - i) the Office does not possess the subject-matter jurisdiction to decide on protests,
  - j) the request for remedy failed to be delivered to contracting authority, contracting entity or person pursuant to Article 7 within the time limits pursuant to Article 136 (3) and (4) or where, even after an invitation to eliminate deficiencies pursuant to Article 136 (4), the request for remedy fails to possess the prescribed items,
  - k) protests were lodged after the contract, concession contract or framework agreement had been concluded,
  - l) protests were lodged contrary to Article 140 (1).

- (2) Should the Office establish in protest proceedings that the Act has been violated by the conduct of the supervised and the infringement could have had major effect on the result of public procurement, a decision shall be issued to
- a) order a cancellation of the used contract award procedure or design contest,
  - b) order a cancellation of the discriminatory conditions or requirements of the supervised set out in a contract notice, in a notice used as a means of calling for competition or in a design contest notice, in tender documents, in contest conditions or in any other document concerning public procurement,
  - c) cancel a decision of the supervised to exclude a tenderer, candidate or participant and order that the excluded tenderer, candidate or participant be included in the public procurement process,
  - d) cancel the decision of the supervised concerning the selection of candidates or participants and order the selection to be repeated,
  - e) cancel the decision of the supervised concerning the result of the evaluation of tenders or designs and order that the tenders or designs be re-subject to evaluation,
  - f) cancel the decision concerning the evaluation result of meeting the conditions of participation and, if necessary, also the decision of the supervised to exclude a tenderer, candidate or participant, the decision of the supervised concerning the selection of candidates or participants or the decision of the supervised concerning the result of tender or design evaluation and, at the same time, order that the meeting of the conditions of participation be re-subject to evaluation,
  - g) order to eliminate unlawful condition.

(3) Where the infringement of this Act could not have affected the result of public procurement, the Office may order by its decision to eliminate unlawful condition.

(4) Where in protest proceedings the Office does not establish an infringement of this Act referred to by a proponent in the protests lodged which may have major effect on the public procurement result, the Office shall dismiss the protests.

(5) The Office shall decide on protests pursuant to

- a) paragraph 1 (a) to (c), (f) to (l) within 14 days from the delivery of complete documentation and a written statement concerning the protests lodged with an indication of the estimated contract value to the Office,
- b) paragraph 1 (d) and (e) without any delay,
- c) paragraphs (2) to (4) within 30 days from the delivery of complete documentation and a written statement on the protests lodged with an indication of the estimated contract value to the Office.

(6) The decision shall be delivered to the parties of the proceedings. The decision pursuant to paragraph 2 shall, at the same time, be delivered to all tenderers, candidates and participants known to the Office.

#### Article 140

(1) Protests cannot be lodged

- a) where a contract below the threshold is awarded, except protests pursuant to Article 137 (2) (b),
- b) where a small value contract is awarded,
- b) against the conduct of electronic auction and its automated evaluation of tenders.

(2) There is no remedy against a decision of the Office regarding protests.

(3) An Office decision regarding protests shall be valid as at the date of its delivery to parties to the proceedings and enforceable upon the expiry of the performance period.

(4) An Office decision regarding protests can be examined by the law court. The action must be lodged within ten days from the date of delivery of the Office decision regarding protests.

(5) In protest proceedings, the Office decides in commissions, except for decisions pursuant to Article 139 (1).

(6) In the event of a contract above the limit, the Office shall order an oral hearing in protest proceedings. The oral hearing is held in camera. The comments and proposals made after a closing of oral hearing shall be disregarded; the parties to the proceedings must be explicitly given notice of that circumstance. The Office draws up minutes from oral hearing.

(7) In the event of a contract above the limit, the commission shall consist of a commission chairman and four commission members. The commission chairman and at least two commission members shall be employees of the Office.

(8) In the event of a contract below the limit, the commission shall consist of a commission chairman and two commission members. The commission chairman and at least one commission member shall be employees of the Office.

(9) In the event of a decision pursuant to Article 138 (10) to (13), the commission shall consist of a commission chairman and two commission members. The commission chairman and at least one commission member shall be employees of the Office.

(10) The commission chairman and the commission members shall be appointed by the Office chairman.

(11) Details of the commission activities shall be governed by the statutes and rules of procedure to be issued by the Office chairman.

#### Article 141

Repealed

#### Delivery in Protest Proceedings

#### Article 142

(1) Important written documents, in particular decisions in protest proceedings, shall be delivered to the own hands of the addressee or the person who has produced the former's full power to take over postal items.

(2) Where the addressee of a written document to be delivered to his own hands has not been caught even though he lives in the place of delivery, the postman shall notify him by appropriate means that he would be coming and deliver the written document on a specified date and at a specified hour. Where another attempt to deliver remains ineffective, the postman shall deposit the written document at the post office and notify the addressee by appropriate means. Where the addressee fails to collect the written document within three days of its depositing, the last day of that period shall be considered the date of delivery, even though the addressee has not been informed about the deposit.

(3) Where the addressee has refused to receive the written document without any justification, it shall be delivered as at the day on which its receipt was refused; the postman must warn the addressee thereof.

(4) In the event that a party of the proceedings living or having its seat abroad has a resident guardian or deputy, the written document shall be delivered to that guardian or deputy.

#### Article 143

(1) Written documents intended for the delivery in the own hands addressed to authorities and legal entities shall be delivered to their employees authorised to receive written documents. Where no employee has been appointed to receive written documents, the

written document shall be delivered to the own hands of the person authorised to act on behalf of the authority or legal entity.

(2) Where it is impossible to deliver a written document to a legal entity to the address given by that legal entity or known, or to the address of its seat indicated in the Commercial Register or any other register in which it is enrolled, and the Office has no knowledge of any other address of the legal entity, the written document shall be considered delivered after three days from returning of the undelivered postal item to the Office, even if the one authorised to act on behalf of the legal entity fails to be informed thereof.

(3) In the event it is impossible to deliver a written document to an entrepreneur who is a natural person to the address given by that person or known, or to the address of the place of his business stated in the Register of Trades or any other register in which he is enrolled, and the Office has no knowledge of any other address of that person, the written document shall be considered delivered after three days from returning of the undelivered postal item to the Office, even if the entrepreneur – natural person fails to be informed thereof.

(4) Where the addressee has reserved a P.O. box for the delivery of postal items, the post office shall inform the addressee of the postal item arrival, the options of its take-over and the time limit for its receipt on a prescribed form to be placed in the P.O. box. Where the addressee takes over his postal items at the post office as agreed and has no P.O. box assigned, the post does not notify such postal items. In both cases, the date of the postal item arrival shall be considered the date of its depositing. Where the addressee fails to collect the written document within three days from its depositing, the last day of that period shall be considered the date of delivery, even though the addressee has not been informed about the deposit.

(5) Where a party to the proceedings has a deputy with a full power of attorney, the written document indicated to the own hands shall be delivered to that deputy only. To that delivery, provisions of paragraphs 1 to 3 shall apply. However, where a party to the proceedings is to carry out something in person in the proceedings, the written document shall be delivered not only to the deputy but to that party as well.

#### Article 144

#### Time Limits

(1) If necessary, the Office determines a reasonable time limit to perform an action in protest proceedings, unless set forth in this Act.

(2) The time limit for filing protests pursuant to Article 138 (5) shall be preserved where the filing is made on the last day of the time limit with the Office and the supervised or where submitted for postal transfer.

(3) The time limit for issuing a decision in protest proceedings shall commence from the day following the delivery of the protests to the Office.

(4) The time limit for issuing a decision in protest proceedings shall be preserved where the decision was issued on the last day of the time limit for issuing the decision.

(5) In the event of doubts, the time limit shall be considered preserved unless the opposite has been proven.

## Article 145

### Items of a Decision in Protest Proceedings

(1) A decision must include a statement, justification and instruction.

(2) The statement includes a decision in the matter, indicating the provisions of this Act, pursuant to which the decision has been made. Where the decision imposes an obligation on the supervised to perform an action, the Office shall determine a reasonable time limit.

(3) In the justification of a decision, the Office sets out which the circumstances have served as a basis for its decision, which were its considerations in the evaluation of evidence, including statements of the parties to the proceedings, in which manner the proper consideration was used in applying legal regulations which have served as a basis of its decision, and which documentary evidence has been the basis of its decision.

(4) The instruction contains information that the decision is final, there is no remedy against it and it may be examined by a law court if an action is lodged within ten days from the decision delivery.

(5) The written version of a decision includes the date on which the decision was issued and identification of the parties to the proceedings. The decision must bear an imprint of the official seal and a signature with an indication of full name and working position of the authorised person.

(6) Mistypings, miscalculations and other obvious errors in the written version of a decision are considered formal deficiencies which the Office corrects anytime without a request to do so and notifies the parties of the proceedings thereof. Formal deficiencies have no effect on the validity and enforceability of a decision.

## Audit of Contract Award Procedure

### Article 146

(1) Audit is to establish compliance of the action of the supervised with the provisions of the Act. When performing audit, the Office also examines the fulfilment of orders imposed by decisions of the Office. Audit commences on the day of delivery of a notice of its commencement to the supervised.

(2) The Office audits contract award procedures prior to the conclusion of contract, concession contract or framework agreement and prior to closing of design contests in its own initiative, in the initiative of the supervised to have audited a contract awarded by the same, or following an initiative of the Office of the Government of the Slovak Republic.

(3) The initiative of the supervised to have audited a contract awarded by the same must be delivered to the Office not later than seven working days prior to the conclusion of

contract, concession contract or framework agreement or prior to the closing of design contest.

(4) In auditing pursuant to paragraph 2, the Office shall reasonably apply Articles 138 to 145.

(5) Where the Office has issued an interim measure pursuant to Article 138 and does not apply Article 139, the Office shall repeal the decision of interim measure by its decision.

(6) The Office audits contract awarding procedures after the conclusion of contract, concession contract or framework agreement, after the closing of design contests and after the cancellation of a contract award procedure and design contest following initiatives of natural persons and legal entities not eligible to lodge protests, following initiatives of state administration authorities pursuant to Article 137 (2) (b) and in its own initiative. Audit is performed by the Office employees following a written authorisation by the Office chairman (hereinafter referred to as the "Office employee"). In auditing, the Office shall apply Articles 146a to 146d.

(7) To auditing of contract award procedure, no special act<sup>23aa</sup> shall apply.

#### Article 146a

##### Powers and Responsibilities of the Office Employees

(1) In respect to auditing, the Office employees shall be, within the scope necessary, authorised to

- a) enter buildings, facilities and plants, sites and other premises of the supervised,
- b) request, receive and move even outside the premises of the supervised complete original documentation of the supervised, documents, other written certificates, statements and information including technical data carriers necessary to perform audit; when documents and information containing classified information is requested, a special regulation<sup>22a</sup> shall apply,
- c) request collaboration of the supervised as well as of other state authorities, necessary for auditing; collaboration may be requested from legal entities and from natural persons within the scope necessary and with their consent, while such persons shall be obliged to provide collaboration if auditing relates to a public procurement process funded by the European Communities funds or by state budget funds.

(2) Receiving complete original documentation pursuant to paragraph 1 (b) in case of electronic communication shall mean making available the electronic form of documentation by means of instruments and equipments used for electronic communication.

(3) In respect to auditing, the Office employees shall be obliged to

- a) inform the supervised of the object and purpose of audit,
- b) submit the supervised a written authorisation to audit,

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<sup>23aa</sup> Act of the National Council of the Slovak Republic No 10/1996 Coll. of Laws on audit in state administration, as amended

<sup>22a</sup> Act No. 215/2004 Coll. of Laws on the protection of classified information and on the amendment of certain acts, as amended

- c) produce a service identity card where the audit is performed in the premises of the supervised,
- d) issue the supervised a receipt of documents received pursuant to paragraph 1 (b) and ensure their due protection against loss, destruction, damage and abuse,
- e) allow a chief executive of the supervised becoming familiar with the report prior to its discussion and allow commenting on the audit findings within an adequate time period determined by the Office employees (hereinafter referred to as the “opinion”); the date of the report delivery or receipt shall be considered the day of becoming familiar with the report; the opinion submitted after the determined time period shall be disregarded,
- f) verify the validity of the opinion concerning the audit findings,
- g) justify a chief executive of the supervised the groundless nature of the opinion in writing not later than the deadline for discussing the report,
- h) discuss the report and the report amendment, if any, with a chief executive of the supervised,
- i) submit the report, report amendment and minutes from the discussion of the report or audit account to a chief executive of the supervised.

#### Article 146b

##### Powers and Responsibilities of the Supervised

(1) A chief executive of the supervised is authorised to express in writing an opinion on the audit findings by a deadline determined by the Office employees.

(2) A chief executive of the supervised shall be obliged to

- a) provide the Office the requested collaboration corresponding to the powers of the Office employees pursuant to Article 146a (1),
- b) submit the Office employees, on their request, the results of audits performed by other authorities related to the object of the audit,
- c) issue the Office employees a confirmation that the documents returned have been received,
- d) attend the report discussion upon request of the Office employees.

#### Article 146c

##### Documents Resulting from Auditing

(1) The Office employees draft a report on the results of auditing by which deficiencies have been established, containing in particular

- a) identification data of the supervised,
- b) full name, number of service identity card of the Office employees who performed the audit,
- c) time of auditing,
- d) object of audit,
- e) audited period,
- f) established audit findings,
- g) date of report,
- h) signature of the Office employees,
- i) signature of the chief executive of the supervised.

(2) Where a justified opinion pursuant to Article 146a (3) (e) has been filed against audit findings or where additional control findings are established, the Office employees draw up a report amendment, which makes part of the report. In drawing up the report amendment, paragraph 1 shall be reasonably applied.

(3) The Office employees shall draw up minutes from the report discussion, which must indicate the date on which the chief executive of the supervised has become familiar with the report, the date of the report discussion, full names of the persons present in the discussion and their signatures.

(4) Where audit does not establish any infringement of the provisions of this Act, an audit account is drawn up. In drawing up an audit account, paragraph 1 shall be reasonably applied.

(5) Audit is closed by the report discussion. Report is deemed discussed even where the chief executive of the supervised has failed to attend the report discussion without any justification or has refused to sign the minutes from the report discussion. The Office employees indicate such circumstances in the minutes from the report discussion. An audit from which an account is prepared is closed by the account signing by the Office employees and by the chief executive of the supervised and by its submission to the latter.

#### Article 146d

#### Procedural Fine

(1) The Office may impose a fine up to EUR 1 000 to anyone failing to comply with the obligation resulting from Article 146a (1) (c) or Article 146b (2) and thus, disabling the conduct of audit. In determining the amount of fine, the Office shall take into account the degree of intrusion in the conduct of control.

(2) Procedural fine pursuant to paragraph 1 may be imposed repeatedly, up to a total amount not exceeding EUR 7 500.

(3) The proceedings to impose a procedural fine may be commenced within two months from the date on which the infringement of the obligation pursuant to paragraph 1 was established and not later than one year from the date of the infringement of the obligation pursuant to paragraph 1.

(4) Imposition of a procedural fine does not release the supervised from its obligations pursuant to paragraph 1.

(5) The revenues from procedural fines constitute state budget revenues.

#### Article 147

(1) The audit of contract award procedures below the threshold and the audit of small value contract award procedures are performed by internal audit function; hereby, the powers of the Office and of other audit authorities are not affected.

(2) The audit authorities are obliged to cooperate with the Office in its auditing activities, in particular to coordinate the execution of audits with the Office.

#### Article 148

Repealed

#### Article 148a

##### Motion of Authorised Person to Consider a Contract, Works Concession Contract or Framework Agreement Ineffective

(1) After a conclusion of contract, works concession contract or framework agreement, a tenderer, candidate, participant or person who may have been interested in the award of the specific contract above the limit and whose rights or rightfully protected interests have been or may have been affected by the conduct of the contracting authority or contracting entity (hereinafter referred to as the “authorised person”) may seek a judicial remedy and declare the contract, works concession contract or framework agreement invalid.

(2) The person who has filed a judicial action pursuant to paragraph 1 shall be obliged to inform the Office thereof.

(3) The parties to judicial proceedings to declare a contract, works concession contract or framework agreement pursuant to paragraph 1 invalid are the authorised person, contracting authority or contracting entity and tenderer or tenderers with whom the contract, works concession contract or framework agreement have been concluded.

(4) Contracting authority or contracting entity shall provide the law court complete documentation pursuant to Article 21 (5).

(5) The law court shall declare a contract, works concession contract or framework agreement invalid where the contracting authority or contracting entity

- a) failed to publish the contract notice, notice used as a means of calling for competition, works concession notice or design contest notice pursuant to this Act,
- b) in concluding the contract, works concession contract or framework agreement failed to comply with the time limits pursuant to Article 45 (2) to (8) and thus,
  1. has prevented the authorised person to apply review procedures prior to a conclusion of the contract, works concession contract or framework agreement or has prevented effective remedy by applying review procedures prior conclusion of the contract, works concession contract or framework agreement and
  2. has infringed this Act in a manner substantially affecting the opportunity of the authorised person to be awarded the contract or,
- c) has failed to submit complete documentation pursuant to paragraph 4 to the law court.

(6) A contract, works concession contract or framework agreement cannot be declared invalid

- a) where the contracting authority or contracting entity has published a notice informing of the intention to conclude contract pursuant to Article 22 (7) and concluded the contract,

- b) in the award of a contract below the limit, contract below the threshold, small value contract and service concession.

(7) Economic interest in the performance of a contract or works concession contract may be considered grounds of general interest requiring a continuation of the contract performance, works concession contract performance or framework agreement performance under exceptional circumstances only, where the invalidity of the contract, works concession contract or framework agreement would result in inadequate consequences. Economic interest may, however, not exceed general interest. Economic interest directly related to the contract concerned, in particular the costs resulting from a delay in the performance of contract or the performance based on a framework agreement, the costs related to opening of a new contract award procedure, the costs incurred as a result of a change in the economic operator and the costs related to legal commitments which occurring as a consequence of the contract, works concession contract or framework agreement invalidity, do not represent grounds of general interest requiring a continued contract performance, works concession contract performance or framework agreement performance.

(8) Where the judicial decision keeps a contract, works concession contract or framework agreement valid as there are overriding reasons regarding general interest requiring a continued contract performance, works concession contract performance or framework agreement performance, the Office shall impose a fine on the contracting authority or contracting entity

- a) pursuant to Article 149 (1) (a) where this Act has been infringed pursuant to paragraph 5 (a),
- b) pursuant to Article 149 (1) (e) where this Act has been infringed pursuant to paragraph 5 (b).

(9) The right to seek invalidity of a contract, works concession contract or framework agreement shall cease where not applied

- a) within 30 days from publication date of the contract award notice in the European Journal pursuant to this Act where that notice also contains a justification for the non-publication of contract notice, notice used as a means of calling for competition, building works concession notice or design contest notice,
- b) within a period of six months
  1. from the publication date of the contract award notice in the European Journal where such notice fails to contain a justification pursuant to letter (a) or,
  2. from the date of conclusion of contract, works concession contract or framework agreement, in other cases than those listed in letter (a) and in the first item.

(10) The right of authorised person to seek invalidity of an amendment to contract, works concession contract or framework agreement shall cease if not exercised at the law court within six months from publication in the Journal of information that an amendment to contract, works concession contract or framework agreement has been published.

(11) The judicial decision is delivered to the parties of the proceedings. A valid judicial decision is delivered to the Office.

(12) Proceedings to impose fine pursuant to paragraph 8 may be opened within one year from the date of delivery of a valid judicial decision to the Office.

## Article 149

### Administrative Delicts

(1) The Office shall impose a fine on a contracting authority or contracting entity amounting to

- a) 5 % of the contract price where the obligation to conclude the contract or concession contract pursuant to this Act has been avoided, in a manner or by a procedure stipulated by this Act, or where a contract has been concluded by negotiated procedure with a publication or by negotiated procedure without a publication failing to comply with the conditions for their use,
- b) 5 % of the contract price where the tender evaluation criteria or the rules for their application have not been met,
- c) 5 % of the sum of contract prices where the object of contract has been split up in order to avoid the award procedure above the limit or the award procedure below the limit,
- d) 5 % of the contract price in the event of failure to comply with the obligation pursuant to Article 96 (4),
- e) 5 % of the contract price where, at the conclusion of the contract, concession contract or framework agreement, the conditions set out in Article 45 (2) to (8) were not complied with,
- f) 5 % of the contract price where in breach with the prohibition stipulated in Article 9 (3),
- g) 5 % of the contract price where any of the obligations pursuant to Article 32 or Article 35 (2) failed to be met,
- h) 5 % of the contract price where the concluded contract or concession contract are contrary to the tender documents or the tender submitted by the successful tenderer or tenderers,
- i) EUR 20 000 where framework agreement has been concluded by negotiated procedure without a publication or contradictory to Article 64 (2).

(2) The Office shall impose a fine between EUR 300 and EUR 30 000 on a contracting authority or contracting entity where

- a) an obligation imposed by an Office decision has not been obeyed,
- b) an obligation pursuant to Article 21 (4) or (5) has been infringed,
- c) an obligation pursuant to Article 31 (2) has been infringed,
- d) compliance with the conditions of participation in public procurement pursuant to Article 33 has not been evaluated or where tenders have not been evaluated pursuant to Article 42 provided this has had effect on a public procurement result,
- e) an obligation pursuant to Article 44 (1) has not been fulfilled,
- f) a criterion referred to in Article 35 (6) or (7) has been used for the evaluation of tenders,
- g) a tenderer has not been eliminated pursuant to Article 39 (5),
- h) a procedure pursuant to Article 99 (1) or (2) has not been followed,
- i) an obligation pursuant to Article 116 (1) has not been fulfilled,
- j) the principle of transparency, the principle of equal treatment or the principle of non-discrimination has been infringed, except for administrative delicts pursuant to paragraph 1 and letters (a) to (i) and such infringement has had or may have had major effect on a public procurement result.

(3) When imposing a fine, the Office takes into account in particular the nature, gravity, manner and consequences of the breach of obligation. Where contracting authority or contracting entity has committed several administrative delicts in a single public procurement, the Office shall fine only that administrative delict for which the highest fine may be imposed; hereby, the imposition of fine pursuant to paragraph 1 (f) shall not be affected.

(4) For the purpose of calculating the amount of fine, contract price shall be considered the price set out in the contract or concession contract for the entire object of contract. Where a contract or concession contract does not set out the price for the entire object of contract, contract price shall mean the estimated quantity determined by contracting authority or contracting entity and multiplied by unit prices throughout the term of contract or concession contract. For the purpose of calculating the amount of fine pursuant to paragraph 1 (f), contract price shall mean the price by which the contract price set out in the initial contract or in the initial concession contract shall be increased. Where contract price cannot be determined in the above manner, contract price shall mean the estimated contract value.

(5) The proceedings to impose a fine may be opened within one year from the date on which the information of a law infringement became available to the Office, however, not later than three years from the date on which the infringement occurred. Where the Office has established a law infringement by auditing pursuant to Article 146 (6), the proceedings to impose a fine may be opened within one year from the date on which the audit report was discussed.

(6) The revenues from fines shall constitute state budget revenues.

## T I T L E V

### ACTIVITIES SUBJECT TO COMPETITION

Article 150

Repealed

Article 151

Repealed

Article 152

#### Procedure in Assessing Activity pursuant to Article 8 (3) to Article 9

(1) If there is a justified assumption that any of the activities set out in Article 8 (3) to Article (9) is directly exposed to competition on the market without restricted access, the state administration authority having the subject-matter jurisdiction may, by the way of the Office, or the contracting entity may file a request with the European Commission to decide on the matter.

(2) The request to decide must include the prescribed items<sup>26</sup> and indicate all substantial circumstances concerning in particular legal regulations, decisions of administration authorities or agreements concerning an assessment whether the activity concerned set out in Article 8 (3) to (9) is directly subject to competition on the market without restricted access.

(3) In the event of a request by a contracting entity pursuing any of the activities listed in Article 8 (3) to (9) or, in the event of a European Commission's request, the state administration authority having the subject-matter jurisdiction shall be obliged to assess if there is a reasoned assumption pursuant to paragraph 1 regarding such activity.

(4) Where the request to decide is filed by a contracting entity, a copy of the request shall be sent both to the Office and to the state administration authority having the subject-matter jurisdiction by the contracting entity.

(5) The contracting entity does not follow this Act when awarding a contract relating to an activity pursuant to Article 8 (3) to (9) from the date of efficiency of the decision of the European Commission, following which the activity pursuant to Article 8 (3) to (9) has been excluded from the scope of this Act, or from the date following the expiry of the time limit set out for issuing such decision where the European Commission failed to decide within the time limit.

## **P A R T   T H R E E**

### **F I N A L   P R O V I S I O N S**

#### Article 153

#### Proceedings

General regulations on administrative proceedings<sup>27</sup> shall not apply to the proceedings pursuant to this Act except proceedings pursuant to Article 116 (9) and (11), Article 123 (2), Article 125 (2), Article 130, Article 132 (3), Article 134 (2), Article 146d and Article 149.

#### Article 154

#### Authorising Provisions

(1) Details of notices used in public procurement and their content, details of notices used in design contest and their content, standard forms of notices used in the award of contracts below the limit, the content and standard forms for informing about the performance of contract pursuant to Article 49 (2), a standard form for informing about a contract

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<sup>26</sup> Commission Decision No 2005/15/EC of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Official Journal of the EU, 11 January 2005, p. 7)

<sup>27</sup> Act No 71/1967 Coll. on administrative proceedings (Rules of Administrative Procedure), as amended

conclusion pursuant to Article 101 shall be set out by a generally binding legal regulation, which is to be issued by the Office.

(2) Details concerning the types of design contests in architecture, town and country planning and civil engineering, concerning the content of contest conditions and concerning the jury activities shall be set out by a generally binding legal regulation, which is to be issued by the Office.

## Article 155

### Interim Provisions

(1) Open procedures, restricted procedures, negotiated procedures with a publication or design contests called for by 31 January 2006 shall be completed pursuant to previous regulations.

(2) Negotiated procedures without a publication which provably started by 31 January 2006 shall be completed pursuant to previous regulations.

(3) By negotiated procedure without a publication, partial contracts may be concluded, which are based on a valid framework agreement concluded pursuant to previous regulations not later than 31 December 2007.

(4) Proceedings opened by the Office by 31 January 2006 shall continue pursuant to previous regulations.

(5) Proceedings started by the Office after 1 February 2006, which relate to public procurement pursuant to paragraphs 1 and 3, shall continue pursuant to previous regulations.

(6) Professional suitability in public procurement obtained by a natural person pursuant to previous regulations shall remain preserved.

(7) The Office shall ensure re-training of professionally suitable persons by 31 July 2006.

(8) Entrepreneurs enrolled in the list of entrepreneurs pursuant to previous regulations shall be obliged

- a) in addition to a confirmation by the Office of being enrolled in the list of entrepreneurs, to submit contracting authority also the document pursuant to Article 26 (2) (f) in every contract award procedure to prove the meeting of the conditions of participation in public procurement pursuant to Article 26 (1),
- b) to submit documents pursuant to (a) to contracting entity if requested.

(9) The term of office of the Office chairman and the Office deputy chairman shall come to an end upon the expiry of the time for which he was appointed.

## Article 155a

### Interim Provisions in Effect from 1 July 2008

(1) Open procedures, restricted procedures, negotiated procedures with a publication, competitive dialogues, design contests or concessions called for by 30 June 2008 shall be completed pursuant to previous regulations.

(2) Negotiated procedures without a publication started provably by 30 June 2008 shall be completed pursuant to previous regulations.

(3) Proceedings opened by the Office by 30 June 2008 shall continue pursuant to previous regulations.

(4) Proceedings opened by the Office after 1 July 2008 which relate to public procurement pursuant to paragraphs 1 and 2 shall continue pursuant to previous regulations.

(5) Previous provisions concerning grave professional misconduct shall be applied in cases committed by tenderers before 1 July 2008.

## Article 155b

### Interim Provisions in Effect from 15 November 2008

(1) Requests for remedy delivered before 15 November 2008 shall be treated pursuant to previous regulations.

(2) Protest proceedings opened before 15 November 2008 shall be treated pursuant to previous regulations.

(3) Proceedings regarding an imposition of fine in public procurement procedures called for or provably opened before 15 November 2008 shall be treated pursuant to previous regulations.

## Article 155c

### Interim Provisions Effective from the Effectiveness of This Act Onwards

The Office may seek a judicial declaration of the invalidity of a concession contract or a concession contract amendment concluded within one year from this Act effectiveness solely by a motion delivered to the law court not later than 30 days from this Act effectiveness. Other authorised persons may seek a judicial declaration of the invalidity of a concession contract or a concession contract amendment concluded within one year from this Act effectiveness solely by a motion delivered to the law court not later than 30 days from this Act effectiveness.

## Article 155d

### Interim Provisions in Effect from 1 January 2010

(1) Open procedures, restricted procedures, negotiated procedures with a notice, competitive dialogues, design contests, building works concessions or contract award procedures below the threshold called for by 31 December 2009 shall be completed pursuant to regulations in effect by 31 December 2009.

(2) Negotiated procedures without a publication which provably started by 31 January 2009 shall be completed pursuant to regulations in effect by 31 December 2009.

(3) Proceedings and auditing opened by the Office by 31 December 2009 shall be performed pursuant to regulations in effect by 31 December 2009.

(4) Proceedings and auditing opened by the Office after 31 December 2009 relating to public procurement called for or provably started by 31 December 2009 shall be performed pursuant to regulations in effect by 31 December 2009.

(5) Confirmations of enrolment in the list of entrepreneurs issued by 31 December 2009 remain preserved.

(6) Confirmations of enrolment in the list of entrepreneurs issued after 31 December 2009 contain a list of documents pursuant to Article 26 (2) by which the entrepreneur proved his meeting of the participation conditions concerning his personal standing and a list of the members of statutory body indicating their full names referred to in the request for enrolment.

(7) Motions of authorised person to declare invalid a contract, works concession contract or framework agreement pursuant to Article 148a may be filed for contracts, works concession contracts or framework agreements resulting from the award of contracts above the limit called for or provably started after 31 December 2009.

(8) In the event of motions to declare invalid a concession contract concluded by contracting authority by 31 December 2009 whose contract award notice was published in the European Journal after 31 December 2009, the Office shall apply regulations in effect by 31 December 2009.

(9) In the event of motions to declare invalid a concession contract amendment concluded by contracting authority by 31 December 2009 where information that a concession contract amendment has been concluded was published in the European Journal after 31 December 2009, the Office shall apply regulations in effect by 31 December 2009.

## Article 155e

The performance of office by the Office Chairman appointed pursuant to previous regulations shall expire by the appointment of a new Office chairman.

## Article 155f

### Interim Provisions in Effect from 1 April 2010 Onwards

(1) The Office may seek judicial declaration of invalidity of a contract, concession contract or framework agreement concluded between 1 April 2009 and 1 April 2010 solely by a motion delivered to the law court not later than 30 days starting on 1 April 2010.

(2) Paragraph 1 shall also apply to amendments of contract, concession contract or framework agreement concluded between 1 April 2009 and 1 April 2010.

## Article 155g

### Interim Provision on the Regulation in Effect from 2 April 2010 Onwards

Authorised persons may seek declaration of invalidity of a contract, works concession contract or framework agreement amendment, information of whose conclusion was published in the Journal within six months from the effectiveness of this Act, by a motion delivered to the law court not later than 30 days starting on 2 April 2010.

## Article 156

By this Act, the legal acts of the European Communities and of the European Union listed in Annex 7 shall be transposed.

## Article 157

### Repealing Provisions

The following shall be repealed:

1. Article I of Act No 523/2003 Coll. of Laws on public procurement and on the amendment of Act No 575/2001 Coll. of Laws on the structure of activities of the Government and central state administration authorities, as amended, as amended by Act No 82/2005 Coll. of Laws.
2. Article 86c including the footnote to reference 99 of Act No 581/2004 Coll. of Laws on health insurance agencies, supervision of health care and on the amendment of certain acts, as amended by Act No 353/2005 Coll. of Laws,
3. Decree of the Office for Public Procurement No 575/2003 Coll. of Laws on the content and standard forms of notices used in public procurement.

### Effectiveness

This Act shall come into effect on 1 February 2006 except its Article 25 (3), Article 91 (3) and Article 99 (2) in Section I, which shall come into effect on 1 January 2007.

Act No 282/2006 Coll. of Laws came into effect on 1 June 2006, except its provision contained in Section II, item 8 which came into effect on 1 January 2007.

Act No 102/2007 Coll. of Laws came into effect on 1 April 2007 except its Section II which came into effect on the day of its publication.

Act No 232/2008 Coll. of Laws came into effect on 1 July 2008, except items 7, 8, 11, 31, 32, 45, 46 and 55, which came into effect on the day of adoption of the euro in the Slovak Republic, and items 63 to 65, which came into effect on 15 September 2008.

Act No 442/2008 Coll. of Laws came into effect on 15 November 2008, except items 29 and 30, which came into effect on 1 January 2009 and items 2 to 4 and 12 to 28, which came into effect on 1 July 2009.

Act No 213/2009 Coll. of Laws came into effect on 1 July 2009.

Act No 289/2009 Coll. of Laws came into effect on the day of its publication (16 July 2009).

Act No 402/2009 Coll. of Laws came into effect on 1 December 2009.

Act No 503/2009 Coll. of Laws came into effect on 1 January 2010.

Act No 73/2010 Coll. of Laws came into effect on 1 April 2010, except items 6 and 7 in Section I, Article 155e in item 9 in Section I and Section II, which came into effect on the day of their publication (9 March 2010).

Act No 129/2010 Coll. of Laws came into effect on the day of its publication (2 April 2010), except Section XI, which came into effect on 2 April 2010, except Section II, Section III items 1 and 3, except Section IV items 1 to 21 and 23 to 27, except Section V, except Section VII, except Section IX and except Section X, coming into effect on 1 June 2010 except Section I provisions of Articles 1 to 16, Article 17 paragraphs 1 and 2 and Articles 18 to 27, Section III items 2 and 4, Section VI and Section VIII coming into effect on 11 June 2010, and except Section I, provisions of Article 17, paragraphs 3 and 4 coming into effect on 1 January 2011.

**Annex 1  
of Act No 25/2006 Coll. of Laws**

**BUILDING WORKS (Section 45 of Procurement Vocabulary)**

NACE <sup>1)</sup>					
SECTION F			CONSTRUCTION WORK		CPV code
Division	Group	Class	Subject	Notes	
45			Construction	This division includes construction of new buildings and structures, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earthmoving work	<p>This class includes</p> <ul style="list-style-type: none"> <li>— Demolition of buildings and other structures</li> <li>— Clearing of building sites</li> <li>— Earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.</li> <li>— Site preparation for mining: <ul style="list-style-type: none"> <li>— overburden removal and other development and preparation of mineral properties and sites</li> </ul> </li> </ul> <p>This class also includes</p> <ul style="list-style-type: none"> <li>— Building site drainage</li> <li>— Drainage of agricultural or forestry land</li> </ul>	45110000
		45.12	Test drilling and boring	<p>This class includes</p> <ul style="list-style-type: none"> <li>— Test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— Drilling of production oil or gas well, see 11.20</li> <li>— Water well drilling, see 45.25</li> <li>— Shaft sinking, see 45.25</li> <li>— Oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20</li> </ul>	45120000
	45.2		Building of complete constructions of parts thereof, civil engineering		45200000

<sup>1)</sup>In the event of any difference of the interpretation between the CPV and the NACE, the NACE nomenclature shall prevail.

NACE <sup>1)</sup>					
SECTION F			CONSTRUCTION WORK		
Division	Group	Class	Subject	Notes	CPV code
		45.21	General construction of buildings and civil engineering works	<p>This class includes</p> <ul style="list-style-type: none"> <li>— Construction of all building types,</li> <li>— Bridges, including those for elevated highways, viaducts, tunnels and subways</li> <li>— Long-distance pipelines, communication and power lines</li> <li>— Urban pipelines, communication and power lines</li> <li>— Ancillary urban works</li> <li>— Assembly and erection of prefabricated constructions on the site</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— Service activities incidental to oil and gas extraction, see 11.20</li> <li>— Erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</li> <li>— Construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and sports installations, see 45.23</li> <li>— Building installation, see 45.3</li> <li>— Building completion, see 45.4</li> <li>— Architectural and engineering activities, see 74.20</li> <li>— Project management for construction, see 74.20</li> </ul>	45210000 except -45213316 45220000 45231000 45232000
		45.22	Erection of roof covering and frames	<p>This class includes</p> <ul style="list-style-type: none"> <li>— Erection of roofs</li> <li>— Roof covering</li> <li>— waterproofing</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes</p> <ul style="list-style-type: none"> <li>— Construction of highways, streets, roads, other vehicular and pedestrian ways</li> <li>— Construction of railways</li> <li>— Construction of airfield runways</li> <li>— Construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and sports installations</li> <li>— Painting of markings on road surfaces and car parks</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11</li> </ul>	45212212 a DA03 45230000 except -45231000 -45232000 -45234115

NACE <sup>1)</sup>					
SECTION F			CONSTRUCTION WORK		CPV code
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	<p>This class includes construction of:</p> <ul style="list-style-type: none"> <li>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.</li> <li>— dams and dykes</li> <li>— dredging</li> <li>— subsurface work</li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes</p> <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: <ul style="list-style-type: none"> <li>— construction of foundations, including pile driving</li> <li>— water well drilling and construction, shaft sinking</li> <li>— erection of non-self-manufactured steel elements</li> <li>— steel bending</li> <li>— bricklaying and stone setting</li> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</li> <li>— erection of chimneys and industrial ovens</li> </ul> </li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000 45262000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of: <ul style="list-style-type: none"> <li>— electrical wiring and fittings</li> <li>— telecommunications systems</li> <li>— electrical heating systems</li> <li>— residential antennas and aerials</li> <li>— fire alarms</li> <li>— burglar alarm systems</li> <li>— lifts and escalators</li> <li>— lightning conductor, etc.</li> </ul> </li> </ul>	45213316 45310000 except -45316000

SECTION F			CONSTRUCTION WORK		CPV code
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of: <ul style="list-style-type: none"> <li>— plumbing and sanitary equipment</li> <li>— gas fitting</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts</li> <li>— sprinkler systems</li> </ul> </li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— Installation of electrical heating systems, see 45.31</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor covering, see 45.43</li> </ul>	45420000

NACE <sup>1)</sup>					
SECTION F			CONSTRUCTION WORK		CPV code
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	<p>This class includes</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:</li> <li>— ceramic, concrete or cut stone wall or floor tiles</li> <li>— parquet or other floor coverings</li> <li>— Carpets and linoleum floor coverings, including of rubber or plastic</li> <li>— terrazzo, marble, granite or slate floor or wall coverings</li> <li>— wallpaper</li> </ul>	45430000
		45.44	Painting and glazing	<p>This class includes</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings</li> <li>— painting of civil engineering structures</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— installation of windows, see 45.42</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes</p> <ul style="list-style-type: none"> <li>— installation of private swimming pools</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors</li> <li>— other building completion and finishing works n.e.c.</li> </ul> <p>This class excludes</p> <ul style="list-style-type: none"> <li>— interior cleaning of buildings and other structures, see 74.70</li> </ul>	45212212 a DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes</p> <ul style="list-style-type: none"> <li>— renting of construction or demolition machinery and equipment without operators, see 71.32</li> </ul>	4550000

<sup>1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (Official Journal L 293, 24/10/1990, p. 1) Regulation recently amended by the Commission Regulation (EEC) No 761/93 of 24 March 1993 (Official Journal L 83, 03/04/1993, p. 1).

**Annex 2**  
**of Act No 25/2006 Coll. of Laws**

**Priority Services**

Category No	Object	CPC <sup>1)</sup> reference No	CPV reference No
1.	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2.	Land transport services <sup>2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6) and from 64120000-3 to 64121200-2
3.	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5) and 60500000-3 from 60440000-4 to 60445000-9
4.	Transport of mail <sup>2)</sup> by land and air	71235, 7321	60160000-7, 60161000-4, 60411000-2, 60421000-5
5.	Telecommunication services	752	From 64200000-8 to 64228200-2, 72318000-7 and from 72700000-7 to 72720000-3
6.	Financial services a) insurance services b) banking and investment services <sup>3)</sup>	ex 81, 812, 814	From 66100000-1 to 66720000-3 <sup>3)</sup>
7.	Computer and related services	84	From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8.	Research and development <sup>4)</sup>	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9.	Accounting, audit and bookkeeping services	862	From 79210000-9 to 79223000-3
10.	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6
11.	Management consultant services <sup>5)</sup> and related services	865, 866	From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7 98362000-8

12.	Architectural services; engineering services and integrated engineering services; town and country planning and landscape architectural services; related scientific and technical consulting services; technical testing and analytical services	867	From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8
13.	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14.	Building cleaning and property management	874, 82201 to 82206	From 70300000-4 to 70340000-6 and from 90900000-6 to 90924000-0
15.	Publishing and printing services on a fee of contract basis	88442	From 79800000-2 to 79824000-6 and from 79970000-6 to 79980000-7
16.	Sewage and refuse disposal services; sanitation and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3 from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0)

<sup>1)</sup> CPC nomenclature (provisional version) used to define the scope of Directive 92/50/EEC.

<sup>2)</sup> Except railway services falling in CPC prov. category 18.

<sup>3)</sup> Except financial services contracts in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services. Also except for land, existing buildings or other property purchase or lease contracts or rights thereto by any financial means; however, procedures pursuant to this Act shall be applied to financial service contracts concluded at the same time, prior to or after the purchase contract or lease contract conclusion in any form.

<sup>4)</sup> Research and development contracts other than those where the benefits accrue exclusively to the contracting authority and/or the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority and/or the contracting entity.

<sup>5)</sup> Except arbitration proceedings and conciliation proceedings.

In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature shall prevail.

**Annex 3  
of Act No 25/2006 Coll. of Laws**

**Non-priority Services**

Category No	Object of procurement	CPC <sup>1)</sup> reference No	CPV reference No
17.	Hotel and restaurant services	64	From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6
18.	Rail transport services	711	From 60200000-0 to 60220000-6
19.	Water transport services	72	From 60600000-4 to 60653000-0 and from 63727000-1 to 63727200-3
20.	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3 and from 63727000-1 to 63727200-3) and 98361000-1
21.	Legal services	861	From 79100000-5 to 79140000-7
22.	Personnel placement and supply <sup>2)</sup> services	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9
23.	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24.	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25.	Health and social services	93	79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26.	Recreational, cultural and sporting services <sup>3)</sup>	96	From 79995000-5 to 79995200-7 and from 92000000-1 to 92700000-8 (except 92230 000-2, 92231000-9, 92232000-6)
27.	Other services		

<sup>1)</sup> CPC nomenclature (provisional version) used to define the scope of Directive 92/50/EEC.  
<sup>2)</sup> Contracts of employment, works agreements other than those performed outside employment or similar work relationship.  
<sup>3)</sup> Contracts other than for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.

In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature shall prevail.

**Annex 4**  
**of Act No 25/2006 Coll. of Laws**

**List of Goods in the Defence Sector**

1. Chapter 25 Salt; sulphur; earth and stone; plastering materials, lime and cement
2. Chapter 26 Minerallic ores, slag and ash
3. Chapter 27 Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes  
    except 2710: special engine fuels
4. Chapter 28 Inorganic chemicals: organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes  
    except: 2809: explosives  
        2813: explosives  
        2814: tear gas  
        2828: explosives  
        2832: explosives  
        2839: explosives  
        2850: toxic products  
        2851: toxic products  
        2854: explosives
5. Chapter 29 Organic chemicals  
    except 2903: explosives  
        2904: explosives  
        2907: explosives  
        2908: explosives  
        2911: explosives  
        2912: explosives  
        2913: toxic products  
        2914: toxic products  
        2915: toxic products  
        2921: toxic products  
        2922: toxic products  
        2923: toxic products  
        2926: explosives  
        2927: toxic products  
        2929: explosives
6. Chapter 30: Pharmaceutical products
7. Chapter 31: Fertilizers
8. Chapter 32: Tanning and dyeing extracts; tannings and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks
9. Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations
10. Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and dental waxes
11. Chapter 35: Albuminoidal substances; glues; enzymes

12. Chapter 37: Photographic and cinematographic goods
13. Chapter 38: Miscellaneous chemical products
  - except 3819: toxic products
14. Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers; articles thereof
  - except 3903: explosives
15. Chapter 40 Rubber, synthetic rubber, factice, and articles thereof
  - except 4011: bullet-proof tyres
16. Chapter 41: Raw hides and skins (other than furskins) and leather
17. Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)
18. Chapter 43: Furskins and artificial fur; manufactures thereof
19. Chapter 44: Wood and articles of wood; wood charcoal
20. Chapter 45: Cork and articles of cork
  
21. Chapter 46: Manufactures of straw, of esparto and other plaiting materials; basketware and wickerwork
22. Chapter 47: Paper-making material
23. Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
24. Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
25. Chapter 65: Headgear and parts thereof
26. Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
27. Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
28. Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
29. Chapter 69: Ceramic products
30. Chapter 70: Glass and glassware
31. Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
32. Chapter 73: Iron and steel and articles thereof
33. Chapter 74: Copper and articles thereof
  
34. Chapter 75: Nickel and articles of thereof
  
35. Chapter 76: Aluminium and articles thereof
  
36. Chapter 77: Magnesium and beryllium and articles thereof
37. Chapter 78: Lead and articles thereof
38. Chapter 79: Zinc and articles thereof
39. Chapter 80: Tin and articles thereof
40. Chapter 81: Other base metals employed in metallurgy and articles thereof
41. Chapter 82: Tools, implements, cutlery; spoons and forks, of base metal; parts and components thereof
  - except 8205: tools
  - 8207: tools, parts
42. Chapter 83: Miscellaneous articles of base metals
43. Chapter 84: Boilers, machinery, apparatus and mechanical appliances; parts and components thereof

- except 8406: engines
  - 8408: other engines apparatus
  - 8445: machinery and appliances
  - 8453: automatic data-processing machines
  - 8455: parts of machines under heading No. 84.53
  - 8459: nuclear reactors
- 44. Chapter 85: Electrical machinery, apparatus and equipment, parts and components thereof
  - except 8513: telecommunication equipment
  - 8515: transmission apparatus
- 45. Chapter 86: Railway and tramway locomotives; rolling stock and parts and components thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)
  - except 8602: armoured locomotives, electric
    - 8603: other armoured locomotives
    - 8605: armoured wagons
    - 8606: repair wagons
    - 8607: wagons
- 46. Chapter 87: Vehicles, other than railway or tramway rolling stock, and parts and components thereof
  - except 8701: tractors
    - 8702: military vehicles
    - 8703: breakdown lorries
    - 8708: tanks and other armoured vehicles
    - 8709: motorcycles
    - 8714: trailers
- 47. Chapter 89: Ships, boats and floating structures
  - except 8901A: warships
- 48. Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts and components thereof
  - except 9005: binoculars
    - 9011: microscopes
    - 9013: miscellaneous instruments, lasers
    - 9014: telemeters
    - 9028: electrical and electronic measuring instruments
    - 9017: medical instruments
    - 9018: mechano-therapy appliances and equipment
    - 9019: orthopaedic appliances
    - 9020: X-ray apparatus
- 49. Chapter 91: Manufacture of clocks and watches
- 50. Chapter 92: Musical instruments, sound recorders or reproducers; television image and sound recorders or reproducers; parts and components and accessories of such articles
- 51. Chapter 94: Furniture and parts thereof; beddings, mattresses, mattress supports, cushions and similar stuffed furnishings;
  - except 9401A: aircraft seats
- 52. Chapter 95: Articles and manufactures of carving or moulding material
- 53. Chapter 96: Brooms, brushes, powder-puffs and sieves
- 54. Chapter 98: Miscellaneous manufactured articles

**Annex 5**  
**of Act No 25/2006 Coll. of Laws**

**TECHNICAL SPECIFICATIONS**

1. For the purpose of this Act, technical requirements, in the case of building works, shall be based on technical specifications, by which characteristic properties of the building works are specified, enabling the building works to be described in a manner, such that it fulfils the specified purpose. Technical requirements include in particular product and material characteristics in accordance with a special regulation<sup>1</sup>, levels of environmental performance and other requirements, like accessibility for handicapped persons. They also include rules relating to design, costing, the test, inspection and acceptance conditions for building works, as well as methods and techniques of construction and all other technical conditions which will be prescribed under generally binding legal regulations or technical standards, in relation to the finished building works and to the materials or parts which they involve.
2. For the purpose of this Act, technical requirements, in the case of supplies and services, shall be based on technical specifications, by which characteristic properties of the supplies and services are specified. These technical requirements include in particular product and material characteristics in accordance with a special regulation<sup>1</sup>.
3. For the purpose of this Act, standard shall be a technical standard in accordance with a special regulation<sup>2</sup>.
4. For the purpose of this Act, European standard shall be a technical standard in accordance with a special regulation<sup>2</sup>.
5. For the purpose of this Act, Slovak national standard shall be a technical standard in accordance with a special regulation<sup>2</sup>.
6. For the purpose of this Act, European technical approval shall be a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for construction, by means of the inherent characteristics of the product and the defined conditions of its application and use, issued by a relevant legal entity.
7. For the purpose of this Act, common technical specification shall be a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Union.
8. For the purpose of this Act, technical reference shall be any product produced by European standardisation bodies, other than European standards, adopted as a reaction to market needs.

**Annex 6**  
**of Act No 25/2006 Coll. of Laws**

Repealed

**Annex 7**  
**of Act No 25/2006 Coll. of Laws**

**List of Transposed Legal Acts of the European Communication and of the European Union**

1. Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ EU L 134, 30. 4. 2004, p. 1), as amended by the Commission Regulation (EC) No. 1874/2004 of 28 October 2004 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and the Council in respect of their application thresholds for the procedures for the award of contracts (OJ EU L 326, 29.19. 2004, p. 17)
2. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ EU L 134, 30. 4. 2004, p. 114), as amended by the Commission Regulation (EC) No. 1874/2004 of 28 October 2004 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and the Council in respect of their application thresholds for the procedures for the award of contracts (OJ EU L 326, 29.19. 2004, p. 17)
3. Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (Public Remedies Directive) (OJ EU L 395, 30.12.1989, p. 33)
4. Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (Public Utilities Remedy Directive) (OJ EU L 76, 23.3.1992, p. 14)
5. Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ EU L 257, 1.10.2005, p. 127)
6. Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Official Journal of the European Union L 335, 20/12/2007)

## **AN OVERVIEW OF ACT OF PUBLIC PROCUREMENT**

**PART ONE**  
**BASIC PROVISIONS** Articles 1 – 21

**PART TWO**  
**AWARD PROCEDURES ABOVE THE LIMIT**

**TITLE I**  
**COMMON PROVISIONS** Articles 22 – 49

**TITLE II**  
**AWARD OF CONTRACTS ABOVE THE LIMIT BY CONTRACTING AUTHORITIES**  
Articles 50 – 65

**TITLE THREE**  
**CONCESSION** Articles 66 – 71

**TITLE IV**  
**AWARD OF CONTRACTS ABOVE THE LIMIT BY CONTRACTING ENTITIES**  
Articles 72 – 90

**PART THREE**  
**AWARD PROCEDURES BELOW THE LIMIT,  
BELOW THE THRESHOLD AND SMALL VALUE CONTRACTS** Articles 91 – 102

**PART FOUR**  
**DESIGN CONTEST** Articles 103 – 108

**PART FIVE**  
**ADMINISTRATION IN PUBLIC PROCUREMENT**

**TITLE I**  
**OFFICE** Articles 109 – 115

**TITLE II**  
**PROFESSIONAL ABILITY IN PUBLIC PROCUREMENT** Articles 116 – 127

**TITLE THREE**  
**LIST OF ENTREPRENEURS** Articles 128 – 134

**TITLE IV**

REVIEW PROCEDURES

Articles 135 – 149

TITLE V

ACTIVITIES SUBJECT TO COMPETITION

Articles 150 – 152

**PART THREE**

**FINAL PROVISIONS**

Articles 153 – 157