

L A W ON PUBLIC PROCUREMENT

I. GENERAL PROVISIONS

1. Subject of the Law, Covered parties, Exemptions, Procedure types

Subject of the Law

Article 1

This Law shall govern: the conditions, manner and procedure of procurement of goods and services and awarding work assignments (hereinafter: public procurement), protection of rights in the public procurement procedures and other issues of relevance for public procurement.

Application

Article 2

This Law shall apply to:

- 1) state administration bodies, local self-government units, public services and other beneficiaries of the Budget of Montenegro, that is the Budget of the local self-government unit and other public funds performing tasks of public interest;
- 2) business organizations and legal entities performing tasks of public interest:
 - where the state, or a local self-government unit possesses over 50% of the shares or stake in that business organization or legal entity; or
 - where more than half the members of that business organization or legal entity's managing body are representatives of the state administration body or the local self-government body; or
 - where the representatives of the state administration body or the local self-government body authority have more than half the votes in the managing body of that business organization or legal entity;
 - where the body referred to in item 1 of this paragraph supervises the operation of that business organization, or legal entity.
- 3) business organizations, legal entities, entrepreneurs and natural persons for procurement of goods, services and awarding work assignments that are funded by more than 50% from the Budget of Montenegro, local self-government unit and other public funds or by the funds of the business organization or the legal entity referred to in item 2 of this paragraph;
- 4) business organizations, legal entities and entrepreneurs performing business activities in the fields of water management, energy, transport and postal traffic in accordance with the provisions in Articles 108 to 113 of this Law.

By the way of exception to paragraph 1 item 1 of this Article, for diplomatic and consular missions of Montenegro abroad, military-diplomatic representatives and units of the army of Montenegro in the international forces and peacekeeping missions as well as for other activities performed abroad, the types of public procurement procedures as well as the manner of their conducting shall be regulated by the regulations of the Government of Montenegro (hereinafter: the Government).

An administrative authority responsible for public procurement activities (hereinafter referred to as: competent public authority) shall prepare a list of covered parties referred to in paragraph 1 of this Article.

A contracting authority is a covered party referred to in paragraph 1 of this Article.

The newly established contracting authority is obliged to submit an application to the competent public authority in purpose of its inclusion into the List of contracting authorities, no later than 30 days from the date on which it acquired the status of a contracting authority.

The list of covered parties referred to in paragraph 4 of this Article shall be published at the public procurement portal of the competent state authority (hereinafter: public procurement portal).

The list of covered parties shall be updated within three days as of the day of submission of the application referred to in paragraph 4 of this Article.

The contracting authorities are obliged to implement this Law even in the cases when they are not included in the List referred to in paragraph 4 of this Article.

Exemptions from the Law

Article 3

Provisions of this Law shall not apply to:

- 1) procurement procedures conducted in accordance with special international organization's procedure, on basis of an international agreement or treaty concluded with that international organization;
- 2) procurement procedures conducted in accordance with special rules on basis of an international agreement or treaty concluded between Montenegro and one or more countries for a project that shall be conducted or used jointly by contractual parties;
- 3) procurement aimed at protection and recovery from catastrophes and major disasters – state of emergency;
- 4) confidential procurement, in accordance with the Law;
- 5) procurement aimed at the acquisition, development, production or co-production of program material, intended for radio or television broadcasting;
- 6) procurement of arbitration, amicable dispute resolution and notary services;
- 7) procurement of financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise funds, capital and services of the Central Bank of Montenegro;
- 8) procurement relating to the labor relations;

- 9) procurement of services related to employment;
- 10) services of advertising notifications on public procurement procedures in the media.
- 11) special public procurement prescribed by this Law.

This Law shall not apply to the process of granting concessions, and rendering services or hiring experts (financial, legal and/or technical) in the process of privatisation of the economy, sale and renting of land, buildings and other movable or immovable assets or rights.

Meaning of terms

Article 4

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

- 1) state administration bodies** are: Parliament of Montenegro, President of Montenegro, Government of Montenegro (hereinafter: Government), Constitutional Court of Montenegro, Protector of Human Rights and Freedoms, Public Prosecution Office, ministries and other administrative bodies, courts, Central Bank of Montenegro, State Audit Institution and other services founded by the State of Montenegro;
- 2) bodies of local-self government units are:** Municipal Assembly, Assembly of the Capital City and the Old Royal Capital, President of Municipality, Mayor of the Capital City and the Old Royal Capital, local administration and other bodies and services established by the local self-government unit;
- 3) public services** are: University of Montenegro, business organizations, that is, business organizations and other legal persons performing affairs of public interest, public and other institutions, state funds and other entities and organizations performing public competences established by the state of Montenegro, or a local self-government unit;
- 4) public procurement contract** is a contract concluded between a contracting authority and a bidder in accordance with the conducted public procurement procedure, whose subject is the procurement of goods, provision of services or performance of works, with a certain price;
- 5) bidder** shall mean a business organization, a legal entity or an entrepreneur submitting the offer in a public procurement procedure individually or as a group of bidders in a joint bid;
- 6) requirement** shall mean the contracting authority's request that has to be fully complied with in the bid;
- 7) contract notice** is an invitation for submission of bids in a public procurement procedure that is published on the Public procurement portal, and these are: invitation to public tender in an open procedure, invitation for pre-qualification, invitation to public tender by negotiation, a contest and a request for submission of bids in a shopping method;
- 8) invitation to tender** is an invitation not published on the Public procurement portal, submitted directly to the bidders by the contracting authority thereby requesting submission of their bids in a public procurement procedure, that is: request for submission of bids in second

phase of a restricted procedure, invitation to tender by negotiation, request for submission of bids for framework agreement and request for submission of bids for provision of consultant services;

- 9) **criterion** shall mean a measure used for evaluating bids;
- 10) **application for qualification** shall mean a request of an interested person to participate in the first phase of the restricted procedure - pre-qualification, and it shall be accompanied by the necessary documentation;
- 11) **electronic bid** shall mean any bid or part of a bid which a bidder delivers to the contracting authority in the electronic form;
- 12) **unforeseen events** are natural disasters, fires, technical-technological disasters, damage to equipment and machines, chemical, biological, nuclear or radiological contaminations, epidemic outbreaks, epizooties, epiphytotes and other accidents;
- 13) **public funds** are the funds of the Budget of Montenegro, and the budgets of local self-government units, and other funds generated by the parties covered by this Law;
- 14) **authorised person** is a legal representative, i.e. the head of the contracting authority, or of the bidder, or a person authorized by them to undertake on their behalf certain actions in the public procurement procedure;
- 15) **decision** is an act by which a contracting authority decides, in the form of a decision, on the selection of the most favourable bid, suspension of a public procurement procedure or the annulment of a public procurement procedure, as well as an act by which the contracting authority decides, in the form of a conclusion or a decision, upon appeal against actions and decisions of the contracting authority;
- 16) **equivalence** shall mean that the offered product or service has identical or better technical features compared to the products of another manufacturer listed in the technical specification of the subject of procurement;
- 17) **interested person** is a person who requested the clarification of tender documents, a person who has proved or made probable by means of an appeal that due to the contested act or action of the contracting authority they had suffered or could have suffered damage in the capacity of a bidder in the public procurement procedure or in the capacity of a contracting authority within legal protection procedures initiated upon appeal and complaint;
- 18) **military equipment** is equipment specially designed or adjusted for military purposes and intended to be used as weapons, ammunition, or war material;
- 19) **sensitive equipment, works and services** are the goods, works and services procured for security purposes, which include, require and/or contain confidential data;
- 20) **life cycle** means all possible successive phases of a product, i.e. research and development, industrial development, manufacturing, repair, modernisation, modification, maintenance, logistics, training, testing, withdrawal and disposal;

- 21) **classified information** shall mean any information or material, regardless of their form, nature or mode of transmission thereof, labelled as confidential in accordance with regulations governing data confidentiality, where the disclosure of such information to an unrelated party would or might result in harmful consequences to the security and defence, foreign, monetary and economic policies of Montenegro;
- 22) **candidate** is a person who filed an application for qualification in the first phase of a restricted or negotiated procedure with prior publication of contract notice.

2. Principles of public procurement

Principle of cost-effective and efficient use of public funds

Article 5

A contracting authority shall ensure that the public procurement procedure is conducted and the selection of bids made in a cost-effective manner with rational use of public funds.

Principle of Ensuring Competition among the Bidders

Article 6

The contracting authority shall undertake any necessary actions to ensure fair competition among potential bidders, in accordance with the law.

A contracting authority may not limit competition among the bidders; in particular, a contracting authority may not prevent any bidder from participating in public procurement by unjustified use of the negotiated procedure or by using discriminatory requirements or criteria, or measures favouring individual bidders.

Principle of Transparency of Public Procurement Procedure

Article 7

Transparency of the procedures shall be ensured by publishing public procurement plans, tender documents, decisions of candidates' qualifications, decisions on the selection of the best bid, decisions on suspension of a public procurement procedure, public procurement contracts, changes or addenda to the plan, tender documents, as well as by undertaking other actions and measures.

A bidder who participated in the public procurement procedure shall have the right to review the data concerning the conducted public procurement procedure, in manner prescribed by this law.

Principle of Equality of Bidders

Article 8

The contracting authority shall ensure an equal treatment of all bidders in all phases of the public procurement procedure.

3. Protection of Data, Keeping Records of the Procedure and Establishing Communication

Protection of Data

Article 9

A contracting authority shall:

1) keep as confidential all data contained in bids that are designated as confidential by a special regulation and designated as such in the bid by the bidder;

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

The price and other information from the bid that are of significance for applying the criteria elements and bid ranking shall not be deemed confidential.

Determination of Confidentiality

Article 10

A contracting authority may require in the tender documents the protection of confidentiality of the information it places at the bidders' disposal.

A person who has received data referred to in paragraph 1 of this Article shall observe their confidentiality irrespective of the degree of confidentiality stipulated.

Language in Public Procurement Procedure

Article 11

A contracting authority shall prepare tender documents and conduct the procedure in the Montenegrin language, as well as in other languages which are in official use in Montenegro, in accordance with the Constitution and the Law.

A contracting authority may also prepare tender documents or certain parts thereof in a foreign language commonly used in international trade.

A bidder shall prepare its bid in the language specified in tender documents.

A Bid in a Foreign Language

Article 12

A contracting authority may allow bids to be partly submitted in a foreign language, especially in the section regarding technical characteristics, quality and technical documentation.

In the case referred to in paragraph 1 of this Article, the contracting authority shall specify which part of a bid may be submitted in a foreign language and which foreign language is to be used.

In the event of dispute, the Montenegrin version of tender documents shall prevail.

Currency

Article 13

The estimated value of public procurement and the offered price shall be stated in euros.

Manner of Conducting a Public Procurement

Article 14

A public procurement may be conducted in written or electronic form.

Communication and exchange of information between contracting authorities, interested persons and a bidder, may be realized electronically, by fax or by other means of communication according to the contracting authority's choice.

The means of communication chosen shall be generally available and thus they shall not restrict bidders' access to information.

Communication referred to in paragraphs 2 and 3 of this Article shall be realized in a way that can prove that the information was sent or received.

A contracting authority may determine in the contract notice, that is, the invitation to tender that the written acts and information may be submitted via fax, provided that the receipt of the latter would be confirmed by mail or by electronic means by the established deadline.

The manner of submission of bids (in written or electronic form) shall be determined in the contract notice and in the invitation to tender.

4. Anti-corruption Rule and Prevention of Conflict of Interest

Anti-corruption Rule

Article 15

A contracting authority shall reject, or refuse, a bid if it finds that a bidder has given, offered or alluded to, directly or indirectly, a gift or some other benefit to a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of tender documents, a person participating in planning the public procurement or some other person in order to influence them in order to discover confidential information or influence the contracting authority's action.

A contracting authority shall also reject, or refuse a bid if it finds that a bidder has threatened, directly or indirectly, to a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of tender documents, a person participating in planning the public procurement or some other person in order to discover confidential information or influence the contracting authority's action.

A contracting authority shall record cases referred to in paragraphs 1 and 2 of this Article, make an official note thereof, submit a report to the competent state authorities which will take necessary measures in accordance with the law and immediately notify the competent body.

The manner of keeping the records referred to in paragraph 3 of this Article, and the risk analysis methodology in exercising control with the aim of proactive action-taking in the prevention and early detection of corruptive actions and other acts with elements of corruption as well as their contents shall be

determined by a regulation adopted by the state administration body in charge of financial affairs (hereinafter: the Ministry).

Public procurement contract awarded by violating of the anti-corruption rule shall be null and void.

Public procurement contract shall contain the provision on nullity of the contract in terms of paragraph 5 of this Article (anticorruption clause).

Rule of Prevention of Conflict of Interest

Article 16

Contracting authority shall take any necessary actions in order to prevent the conflict of interest of the persons participating in a public procurement procedure.

An authorised person, a public procurement officer, members of the Commission for the opening and evaluation of bids, persons participating in the preparation of the contract notice, invitation to tender and tender documents, persons participating in public procurement planning, and other persons participating, directly or indirectly, in the public procurement procedure shall notify without delay the contracting authority on real or potential existence of the conflict of interest. A public procurement officer, the Chair and a member of the Commission for the opening and evaluation of bids shall notify without delay, the contracting authority of the existence of conflict of interest as well as economic or other personal interest which could compromise their objectivity and impartiality in the public procurement procedure.

Person referred to in paragraph 2 of this Article may not enter into employment with nor be hired on any other grounds by the bidder to whom the public procurement contract was awarded in the procedure in which the person participated, by the bidder's legal successor, or a party related to them, for at least two years after the public procurement contract was concluded.

Conflict of interest of a contracting authority shall exist if the person referred to in paragraph 2 of this Article:

1) is a bidder, a bidder submitting the joint bid, subcontractor, legal representative, or attorney of the bidder, a bidder submitting the joint bid or subcontractor;

2) is a blood relative of the legal representative or attorney of the bidder or bidder submitting the joint bid or subcontractors in the straight line of kinship, or in the lateral line of kinship up to the fourth degree;

3) is a spouse or common-law partner of the legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor;

4) is an in-law up to the second degree of the legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor;

5) is an adopter or adoptee of the bidder, bidder submitting the joint bid, subcontractor, legal representative or attorney of the bidder, bidder submitting the joint bid or subcontractor;

6) is a shareholder or member of management bodies of the bidder, bidder submitting the joint bid or subcontractor.

Person referred to in paragraph 2 of this Article shall submit a written statement on the non-existence of conflict of interest before taking the first

action within a public procurement procedure, and if such conflict of interest emerges in the course of a public procurement procedure it shall submit without delay the request to be excluded.

In case the request to be excluded is submitted by the authorised person, the decision on such request shall be made by the body that appointed or elected the authorized person or the body in charge of supervising the operation of the contracting authority.

In the case referred to in paragraph 5 of this Article, the contracting authority shall decide with no delay on exclusion of the person referred to in paragraph 2 of this Article, not later than within 8 days from the day of submission of the request to be excluded.

Statement referred to in paragraph 5 of this Article, request for exclusion and decision upon the request for exclusion, shall form an integral part of the public procurement documentation.

Prevention of the Conflict of Interest on the Side of the Bidder

Article 17

Conflict of interest of bidders, bidder submitting the joint bid or subcontractors shall exist if their legal representative or attorney:

- 1) is a legal representative or an attorney of the contracting authority;
- 2) is a blood relative of the person referred to in Article 16 paragraph 2 of this Law in the straight line of kinship or in the lateral line of kinship up to the fourth degree or their spouse or common-law partner or in-law up to the second degree, irrespective of whether such marriage has been terminated;
- 3) is an adopter or adoptee of the person referred to in Article 16 paragraph 2 of this Law;
- 4) is a shareholder or a member of management bodies of the contracting authority;
- 5) has direct or indirect interest in the public procurement procedure, which enables personal acquisition of property or some other kind of benefit, by exerting influence on the decision-making process; and
- 6) is directly or indirectly involved in other circumstances causing a doubt about such person's impartiality.

Person who prepared or participated in the preparation of technical documentation or conducted expert control of the technical documentation and person whose authorised person or expert participated in the preparation or expert control of the technical documentation used for the development of technical specification or the bill of quantities of works in the tender documents or the documentation according to which public procurement contract is implemented, may not participate in that public procurement procedure in the capacity of a bidder, bidder submitting the joint bid or subcontractor, and may not cooperate with the bidder, bidder submitting the joint bid or subcontractor in preparing the bid, unless where the subject of such public procurement is the development of technical documentation and execution of works according to that technical documentation.

Depending on the manner of submission of bids, a bidder shall submit within their bid a statement of their responsible person, responsible persons of

the bidder submitting the joint bid and responsible person of the subcontractor on existence or non-existence of the conflict of interest referred to in paragraphs 1 and 2 of this Article.

If a bidder fails to submit within their bid the statements on non-existence of the conflict of interest referred to in paragraphs 1 and 2 of this Article, or if it is established that any of the conflicts of interest referred to in paragraphs 1 and 2 of this Article exists on the side of the bidder, their bid shall be rejected, pursuant to this Law.

Person interested in participating in a public procurement procedure in the capacity of a bidder may request from the contracting authority, within the time limit laid down for the appeal against tender documentation, to exclude the person referred to in Article 16 paragraph 2 of this Article, because of whom the conflict of interest arose, save for the responsible person of the contracting authority.

Contracting authority shall decide on the request referred to in paragraph 5 of this Article within three days from the day of submission of the request, and publish the decision thereon in the manner identical to that of publishing the tender documents.

Participation in technical consultations with the contracting authority and provision of technical advice to the contracting authority by candidates, bidders, bidder submitting the joint bid or subcontractors before the commencement of the public procurement procedure shall not be deemed a conflict of interest on the side of the bidder, unless this distorts the competition among other candidates or bidders and if the entire content of technical consultations and technical advice provided constitutes an integral part of the tender documentation or request for the submission of bids by shopping method. In the case referred to in paragraph 7 of this Article, the contracting authority and the person who participated in technical consultations or provided technical advice to the contracting authority pertaining to the subject of the public procurement, shall sign separate statements that the content of technical consultations and technical advice provided is fully presented in the tender documents or in the request for the submission of bids by shopping method.

Consequence of conflict of interest and recording of conflict of interest

Article 18

A public procurement contract which is awarded in the existence of conflict of interest on the side of the contracting authority or of the bidder shall be null and void.

Person with conflicting interests and person who failed to submit a statement on the non-existence of conflict of interest shall be excluded from the public procurement procedure.

If a contracting authority in the course of the public procurement procedure receives a bid which involves or may cause a conflict of interest, they shall reject such bid, pursuant to this Law.

Contracting authority shall keep records of cases involving conflict of interest referred to in Articles 16 and 17 of this Law and inform the competent body thereof without delay.

5. Tasks of a Competent State Authority

Competences

Article 19

A competent state authority shall perform the following administrative and associated technical tasks in the public procurement area and these are as follows:

- 1) to monitor implementation of the public procurement system;
- 2) to monitor the compliance of the legislation regulating the public procurement system with EU legislation, to prepare technical basis, to initiate and participate in preparation of the public procurement regulations;
- 3) to give approval to contracting authorities on fulfilment of conditions for conducting certain public procurement procedure in the cases envisaged by this Law;
- 4) to provide advisory assistance upon contracting authority's request;
- 5) to organize and conduct professional development and advanced training of the human resources in charge of performing public procurement tasks;
- 6) to organize professional exam for performing tasks in the area of public procurement;
- 7) to establish and maintain the Public Procurement Portal for the purpose of ensuring transparency of public procurement;
- 8) to publish public procurement plans, tender documents for the implementation of the procedure following the contract notice, decisions on candidates' qualifications, decisions on selection of the most favorable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, as well as of other acts in accordance with this Law;
- 9) to prepare and publish a List of contracting authorities on the Public Procurement Portal;
- 10) to encourage the conducting of public procurement in electronic form;
- 11) to pursue cooperation with international organizations, institutions and specialists in the field of public procurement;
- 12) to prepare and submit to the Government annual reports on the public procurement, carried out in the previous year;
- 13) to prepare and publish a list of bidders on the basis of decisions on selection of the most favourable bid;
- 14) to prepare and publish a common public procurement vocabulary on the Public Procurement Portal;
- 15) to perform inspection control;
- 16) to issue publications and other technical literature;
- 17) to perform other tasks, in accordance with the Law.

If a public procurement plan, contract notice, decision on qualification of candidates, decision on selection of the most favourable bid, decision on suspension of the public procurement procedure, decision on annulment of the public procurement procedure, public procurement contract or amendments

thereof, submitted to the competent authority for the purpose of their publishing, fail to comply with the law, the competent authority shall notify the contracting authority thereof immediately so as to eliminate the perceived irregularity within three days.

If the contracting authority fails to eliminate the irregularity within the time limit referred to in paragraph 2 of this Article, the competent authority shall publish the contracting authority's act in the submitted text and inform a public procurement inspector thereof.

II. CONDITIONS AND MANNER OF CONDUCTING PUBLIC PROCUREMENT PROCEDURE

1. Types of Procedures, Value Scales, Merge Procurement

Types of Procedures **Article 20**

Public procurement procedures for goods, services or works are as follows:

- 1) open procedure;
- 2) restricted procedure;
- 3) negotiated procedure with prior publication of a contract notice;
- 4) negotiated procedure without prior publication of a contract notice
- 5) contest;
- 6) shopping method;
- 7) direct agreement.

Value Scales **Article 21**

The public procurement procedure shall be determined according to the estimated value of the public procurement which is classified into the following value scales:

- I Value scale – in cases when the estimated value of the public procurement is up to EUR 5,000, the contracting authority shall perform the direct agreement;
- II Value scale – in cases when the estimated value of the public procurement exceeds EUR 5,000 up to EUR 25,000 for procurement of goods or services, or when the estimated contract value exceeds EUR 5,000 up to EUR 50,000 for procurement of works, the contracting authority shall perform the shopping method;
- III Value scale - in cases when the estimated value of the public procurement exceeds EUR 25,000 for procurement of goods or services, or when the estimated contract value exceeds EUR 50,000 for procurement of works, the contracting authority shall perform some of the procedures listed in Article 20 items 1 to 5 of this Law.

For public procurement with estimated value within Value scales I and II, the procedures listed in Article 20 items 1 to 7 of this Law may be applied.

Open Public Procurement Procedure

Article 22

The open public procurement procedure is a procedure wherein all interested persons may submit bids according to requirements specified in the contract notice for the open procedure and tender documents.

Restricted Public Procurement Procedure

Article 23

The restricted public procurement procedure shall be conducted in two phases. In the first phase a contracting authority recognizes applicants' qualifications on the basis of previously determined requirements in the invitation for pre-qualification.

In the second phase the contracting authority invites the qualified candidates to submit their bids.

In case that at least three applicants are not qualified in the first phase of the procedure, it shall be suspended.

The contracting authority shall make, within time limit specified in the invitation for pre-qualification, a decision on the qualification of the candidates, with a rationale.

The contracting authority shall publish the decision referred to in paragraph 5 on the Public Procurement Portal and submit it to the applicants within five days from the day of its adoption.

The bids may be submitted only by the qualified candidates in the second phase of the procedure referred to in paragraph 3 of this Article within the time limit determined in the request for submission of bids in accordance with tender documents.

Negotiated Procedure with Prior Publication of a Contract Notice

Article 24

The negotiated procedure with prior publication of invitation to tender by negotiation may be conducted in the following cases:

- 1) when in an open public procurement procedure or in the second phase of a restricted public procurement procedure no acceptable bids have been submitted, provided that the originally defined subject of public procurement and the contents of tender documents have not been altered;
- 2) when, due to the nature of goods, services or works or the risks relating to the specific public procurement, it is not possible to determine the estimated value of the public procurement;
- 3) for the purposes of research, testing or development, without making of any profit or compensation of the expenses incurred.

The contracting authority shall specify the subject and manner of negotiation in the invitation to tender by negotiation and tender documents.

In order to ensure the selection of the most favorable bid, the contracting authority shall negotiate with the bidders about the submitted bids and draw up a record on the negotiating process.

During the negotiations, the contracting authority shall ensure an equal treatment of the bidders and is not allowed to disclose the data and information which would provide advantage to certain bidders.

Negotiated Procedure without Prior Publication of a Contract Notice

Article 25

The negotiated procedure without prior publication of invitation to tender by negotiation may be conducted in the following cases:

- 1) for public works contracts, public supply contracts and public service contracts:
 - when, in at least two open, or restricted public procurement procedures, no acceptable bids have been submitted, provided that the originally defined subject of public procurement the contents of tender documents have not been altered, in which case the contracting authority is obliged to include in negotiated procedure all the bidders who submitted their bids in the open or restricted procedure;
 - when, for technical or artistic reasons related to the subject-matter of a contract, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular bidder;
 - when, for reasons of extreme urgency with an aim of removal and prevention of danger brought about by unforeseen events, the removal of consequences of these unforeseen events, as well as due to other unforeseen events on which the contracting authority cannot or was not able to influence, the contracting authority is not able to comply with the time limits stipulated by this Law.
- 2) for public supply contracts:
 - when the products involved are manufactured purely for the purpose of research, experimentation, study or development, provided that it is not a quantity (serial) production intended to make profits or to recover research and development costs;
 - for additional deliveries during performance of contractual obligations by the bidder to whom the contract has been already awarded in accordance with this Law, which are intended either as a partial replacement of normal products, materials or installations or as the extension of existing products, materials or installations where a change of supplier, or supplies would result in technical difficulties in operation and maintenance, provided that the total value of all additional deliveries may not exceed 15% of the total value of the contract originally concluded;
 - for the public procurement of goods offered and purchased on commodity exchanges;

- for purchases of goods under particularly advantageous conditions from a supplier undergoing bankruptcy or liquidation process, in accordance with the law;
- 3) for public service contracts which are parts of the follow-up to the service procured by a design contest, and the contract is concluded with the successful candidate or one of the successful candidates, provided that the contracting authority invites all successful candidates to participate in the negotiations;
- 4) for public works contracts and public service contracts:
- not included in the contract concluded after the public procurement procedure was conducted, but which, due to unforeseeable circumstances, have become necessary to the provision of the services or works described therein, when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, provided that the contract, whose aggregate value may not exceed 15% of the amount of the concluded contract, is concluded with the bidder whose contract is still in force; and
 - for works or services consisting in the repetition of similar services or works assigned to the original service provider or contractor, and when the possibility of procurement of these works or services in accordance with the subject-matter of the procurement for which the contract was concluded on basis of the conducted open or restricted procedure, is specified in the contract notice, provided that the aggregate value of the contract for additional services or works may not exceed 15% of the amount of the awarded contract and that there have not passed three years since the basic contract was concluded.

The contracting authority shall specify the subject and manner of negotiation in the invitation to tender by negotiation and tender documents.

In order to ensure the selection of the most favorable bid, the contracting authority shall negotiate with the bidders about the submitted bids and draw up a record on the negotiating process.

During the negotiations, the contracting authority shall ensure an equal treatment of the bidders and is not allowed to disclose the data and information which would provide advantage to certain bidders.

The form of the records referred to in Article 24 paragraph 3 and in paragraph 3 of this Law and paragraph 3 of this Article shall be determined by the Ministry.

Framework Agreement

Article 26

Contracting authority may conclude framework agreements and public procurement contracts on the basis of a framework agreement.

Contracting authority may conclude a framework agreement after a completed open, restricted or negotiated procedure in accordance with provisions of this Law.

If a contracting authority intends to award a framework agreement, it shall specify the following within the contract notice:

- 1) that it will conclude a framework agreement and the period of validity of the framework agreement;
- 2) the number of bidders with which it intends to conclude a framework agreement;
- 3) the elements of the framework agreement that cannot be altered;
- 4) the elements of the framework agreement that can be altered;
- 5) manner of concluding public procurement contract on the basis of the concluded framework agreement.

Contracting authority may conclude a framework agreement with one or more bidders.

Framework agreement with several bidders may be concluded with at least three bidders.

If in the public procurement procedure referred to in paragraph 2 of this Article, the acceptable bid is not submitted by the envisaged number of bidders with which the framework agreement is intended to be concluded, the contracting authority may conclude the framework agreement with the bidder or the bidders whose bids are acceptable or suspend the procedure.

Framework agreement with several bidders may be concluded for a period of up to four years, and framework agreement with one bidder may be concluded for a period of up to two years.

In case referred to in paragraph 6 of this Article, framework agreement with one bidder may be concluded by the contracting authority for the period envisaged for conclusion of a contract with several bidders.

The contracting authority may conclude a framework agreement for a period longer than the period referred to in paragraph 7 of this Article if there are justified reasons for that pertaining to the subject of procurement in the framework agreement, which must be explained in the contract notice.

Elements of the framework agreement that can be altered may be the following:

- 1) quantity of goods, services or scope of works that are subject of the procurement in the course of framework agreement on annual basis;
- 2) dynamics in the delivery of goods, provision of services or performance of works that are subject of the procurement;
- 3) place of delivery of goods, provision of services or performance of works that are subject of the procurement;
- 4) price of the goods, services or the works that are subject of the public procurement.

Framework agreement for the entire subject of procurement or one part thereof shall be awarded under the specific lot, with the elements referred to in paragraph 10 of this Article offered in the most favourable bid.

Contracting authority may not implement the framework agreement in a manner that prevents, limits or jeopardizes competition.

Public procurement contracts on basis of the framework agreement concluded for the entire subject of procurement or one part thereof shall be concluded in one of the manners referred to in Article 26a of this Law.

If, in a public procurement procedure for the conclusion of a framework agreement with several bidders, the contracting authority receives only one acceptable bid, it may conclude the framework agreement with one bidder provided that the contracting authority determined in the tender documents one

of the modes of conclusion of a contract on the basis of the framework agreement referred to in Article 26 a, paragraphs 1 or 2 of this Law.

Conclusion of a public procurement contract on the basis of a framework agreement

Article 26 a

If the framework agreement is concluded with only one bidder and if all requirements for the conclusion of the public procurement contract are laid down therein, the contract shall be concluded directly on the basis of such requirements and the bid submitted before conclusion of the framework agreement.

If the framework agreement is concluded with only one bidder and if all requirements for the conclusion of the public procurement contract are not laid down therein, the contract may be concluded on the basis of the written request from the contracting authority to the bidder to submit the addendum of the bid or a new bid.

Apart from the already determined requirements, the contracting authority may indicate other requirements in written request referred to in paragraph 2 of this Article, as well as the amendments to the requirements of the framework agreement specified by tender documents.

If the framework agreement is concluded with several bidders and if all requirements for the conclusion of public procurement contract are laid down therein, the contract may be directly concluded on the basis of such requirements and bids which are submitted before conclusion of the framework agreement without reiterated contract notice for submission of bids.

In case that the most favourable bidder is not in position to perform the subject, group or part of the subject of a public procurement , the public procurement contract for the subject, group or part of the subject thereof may be concluded with the second most favourable bidder with which the framework agreement is concluded.

If the framework agreement is concluded with several bidders and if all requirements for the conclusion of the public procurement contract are not laid down therein, the contract may be concluded after reiterated contract notice for submission of bids to the bidders from the framework agreement.

Reiterated contract notice for submission of bids referred to in paragraph 6 of this Article may include:

- 1) basic elements and more precise requirements for the conclusion of the public procurement contract, and
- 2) other requirements, if necessary, which the contracting authority indicated to be used in tender documents regarding the framework agreement.

Pursuant to paragraphs 6 and 7 of this Article, a contracting authority shall conduct the following procedure in which it shall:

- 1) invite bidders in writing to submit new bids in written form for each individual contract ,
- 2) fix a time limit long enough for preparation of new bids for each individual contract taking into account the complexity of the subject-matter of the public procurement and the time needed to deliver the bids.

- 3) keep confidential the content of the bids until the expiry of time limit determined for its submission,
- 4) conclude individual contracts on public procurement with the most favourable bidder upon review and evaluation of submitted bids on the basis of the criteria for selection of the bid determined in tender documents.

Pursuant to paragraphs 4, 5, 6 and 7 of this Article, the contracting authority shall submit the decision on selection of the most favourable bid for the award of public procurement contracts under framework agreements to all bidders which submitted the bid and publish it on the public procurement portal.

Public procurement contract on the basis of concluded framework agreement shall be concluded for the period laid down by tender documents.

In the bid submitted on the basis of the contract notice referred to in paragraphs 2,3, 6 and 7 of this Article, the bidder may offer in the second year of the duration of framework agreement the individual price for the subject of the public procurement in the amount higher than the price laid down by the framework agreement, with the maximum of 10% higher price than the one laid down by the framework agreement; For the following years of the duration of framework agreement the maximum amount shall be in 10% higher than the price for the subject of the public procurement laid down by the public procurement contract for the previous year.

Notwithstanding paragraph 11 of this Article, the bidder may offer an individual price for the subject matter of the public procurement which is subject to the regulatory price setting mechanism up to the amount of increase of the public procurement subject price in percentage for the previous year in relation to the price laid down by the framework agreement or by the public procurement contract for the previous year.

Consulting Services

Article 27

This Article shall be deleted.

Design Contest

Article 28

A public procurement procedure by design contest (hereinafter: contest) may be conducted for services in the field of urban planning, architecture, construction, engineering, science, culture, design and data processing.

The contest may be conducted individually or as an integral part of another public procurement procedure for procurement of services, where a contract shall be concluded with the winner of the contest, or with one of the winners of the contest.

The winner or the winners of the contest may be awarded a prize in accordance with the terms envisaged by the contest.

In a public procurement procedure conducted by a contest, a project, plan or design shall be selected by an independent jury.

The jury shall be composed exclusively of natural persons who are not related to the participants in the contest.

If the contracting authority demands from participants in a contest particular professional qualifications or experience, at least a third of the members of the jury must have at least the same qualifications or experience.

Plans, projects and designs shall be submitted to the contracting authority anonymously, in a manner stipulated by the contest.

The jury shall be autonomous in its decisions and consider anonymous plans, projects or designs.

The criteria for selection of the most advantageous bid shall be based upon the following:

- 1) qualifications, experience, professional abilities of bidders and other persons that will be included in provision of service;
- 2) effects of transfer of technology, knowledge and professional skills development;
- 3) other circumstances, depending on nature of the contest.

The form of the contest shall be determined by the Ministry.

Shopping method

Article 29

The public procurement procedure by shopping method may be conducted once a year at most for the same subject of public procurement.

Selection of the most favourable bid in the public procurement procedure by shopping method shall be conducted by applying the lowest offered price criterion.

Bidders meeting the requirements referred to in Articles 65 and 67 of this Law may participate in the public procurement procedure by shopping method, in accordance with the contract notice.

Time limit for submission of bids in the public procurement procedure by shopping method may not be shorter than 12 days from the day of publication of tender documents.

Direct Agreement

Article 30

Direct agreement represents an immediate arrangement between a contracting authority and a bidder regarding the terms of a public procurement.

The total annual value of public procurement of a contracting authority conducted by direct agreement may not exceed:

- 10% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority does not exceed EUR 200,000;
- 9% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 200,000 to EUR 500,000;

- 8% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 500,000 to 800,000;
- 7% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority exceeds EUR 800,000.

Notwithstanding paragraph 2 of this Article, the total annual value of public procurement conducted by direct agreement may amount up to 20% of the executed public procurement budget of a contracting authority for previous year, provided that the public procurement budget amounts up to EUR 25,000.

Public procurement procedure implemented by direct agreement shall be regulated by the contracting authority by a special act.

Prior Approval **Article 31**

The contracting authority shall, before commencing a public procurement procedure, obtain prior approval from the competent administrative authority on the fulfilment of conditions for carrying out the procedures referred to in Articles 24 and 25 of this Law.

The request for obtaining the approval referred to in paragraph 1 of this Article shall be submitted in writing and it shall contain: legal grounds, subject-matter of public procurement, estimated value of public procurement, position of that item in the public procurement plan, source or manner of provision the financial funds, reasons and rationale of the choice of that method of procurement as well as the evidence on fulfilment of the conditions for conducting the proposed procedure.

The contracting authority shall, upon request of the competent state authority, supplement the request referred to in paragraph 2 of this Article within a specified time that does not exceed eight days from the date of receipt of the request for supplement.

The competent state authority shall decide upon the contracting authority's request, without conducting an examination procedure, within eight days from the day of receipt of the acceptable request.

The approval referred to in paragraph 1 of this Article shall be valid until the end of a current budget or financial year.

In case that the competent state authority fails to decide upon the request within the time limit specified in paragraph 4 of this Article, the contracting authority may conduct the public procurement procedure without the approval of the competent state authority.

A complaint against the act of a competent state authority referred to in paragraph 4 of this Article, can be filed with the Ministry.

Performance of a Public Procurement Procedure by another Contracting Authority **Article 32**

A contracting authority may, simultaneously with making decision on commencing and conducting a public procurement procedure, authorize another contracting authority, with the consent of the latter, to conduct a public procurement procedure on its behalf and for his account, or to undertake certain actions in that procedure.

Consolidation of Public Procurement
Article 33

The Government may stipulate by its regulations that the specific public procurement procedures for the needs of the administrative bodies and public services shall be conducted by a specific contracting authority, while the local self-government unit, in the regulations of the competent local self-government unit may designate the contracting authority that will conduct the public procurement procedures for its needs.

2. Types of Subject of a Public Procurement Contract

Procurement of Goods
Article 34

The subject of a contract on public procurement of goods shall be:

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

Public procurement contract for goods may also include the provision of services if they are necessarily related to delivery of those goods (installation, transport, insurance or other services defined by the contracting authority).

Procurement of Works
Article 35

The subject of a public procurement of works shall be execution of works on the construction, adaptation, reconstruction and maintenance of facilities.

The subject of a public procurement of works may also involve the procurement of goods and services needed for the execution of works, provided that the estimated value of works exceeds the total estimated value of goods and services.

Procurement of Services
Article 36

The subject of a contract on public procurement of services shall be the following services: services in the area of transport, financial services, computer services, services in the area of education and science, research services, accounting and audit services, consulting services, architectural services, technical supervision, catering services, health services, social services, etc.

As contract of public procurement of services shall also be deemed any public procurement contract whose subjects are:

- 1) services and goods if the estimated value of the services exceeds the estimated value of the goods included in this contract;
- 2) the services and works that are necessary for the provision of the service that is the subject of the contract if the estimated value of the services exceeds the estimated value of the works included in this contract.

3. Initiation of Procedure and Subject of Public Procurement

Conditions for Initiation of a Procedure

Article 37

A contracting authority may initiate the public procurement procedure if funds for that particular procurement contract have been allocated by the budget or in some other manner in accordance with the law and if such procurement is envisaged by the annual procurement plan of the contracting authority.

Public Procurement Plan

Article 38

The contracting authority shall adopt and submit to the competent state authority a public procurement plan, so that it could be published on the Public Procurement Portal, by not later than 31 January of the current budget or financial year.

The public procurement plan referred to in paragraph 1 of this Article shall contain:

- 1) details on the contracting authority;
- 2) title and the subject of public procurement;
- 3) estimated value of public procurement for each individual subject of public procurement and
- 4) denotation of a budget position, or of the position in a financial plan at which the budget or plan marked the funds allocated for the public procurement.

The modifications or addenda of public procurement plan may be conducted no later than five days before commencing a public procurement procedure, except in case of the budget revision.

The Ministry shall give its approval to the public procurement plans of the Budget of Montenegro beneficiaries, with exception of the Parliament of Montenegro and the bodies of judicial power, and the competent authority of a local self-government unit shall give the approval to the public procurement plan of the local self-government bodies.

The public procurement plan shall be adopted by the authorised person or the management body of the contracting authority.

The form of the public procurement plan shall be determined by the Ministry's regulations.

Allocation of Funds for Public Procurement

Article 39

If a public procurement procedure lasts for several years, the liabilities that will become due in the following years must be stipulated in the amounts provided for by the regulations governing budget execution for each particular year.

By way of exception to paragraph 1 of this Article, a contracting authority may commence a public procurement procedure even when the funds in whole are not allocated for that procurement, in the following cases:

- 1) when the public procurement is used also to obtain funds for performance of a public procurement contract;
- 2) when, during the course of the public procurement procedure requiring payment in years to come, it is necessary to obtain a specific consent, that is, the approval by the competent authority in accordance with the regulations governing the budget;
- 3) when the public procurement procedure ends by conclusion of a framework agreement, that does not imply contractual obligation.

Decision on initiating the procedure

Article 40

The public procurement procedure is initiated by a decision on initiating the procurement procedure which shall include:

- 1) details of the contracting authority;
- 2) reference number of the public procurement in the records;
- 3) the subject, procedure type and time limit for carrying out the procurement procedure,
- 4) estimated value of the public contract,
- 5) source of funds allocated for the public contract and conditions and method of payment of the contracted obligations;
- 6) the position in the public procurement plan;
- 7) rationale;
- 8) other data of relevance for that public contract.

The decision referred to in paragraph 1 of this Article shall be made by the authorised person of the contracting authority.

Determining the Subject of Public Procurement

Article 41

The subject of public procurement shall be determined by the contracting authority in accordance with the Common Procurement Vocabulary.

The subject of public procurement determines type of goods, services or works in relation to their technological and functional characteristics, purpose and nature.

The subject of procurement must be described in a complete, clear and intelligible manner, in a way allowing submission of suitable bids according to the type, quality and prices, as well as other required qualities and conditions.

The description of the subject of procurement shall include the data on quantities, place of execution, time limits for execution or special requirements in terms of manner of execution of the subject of public procurement, relevant to for execution of the subject of public procurement, and thereby for the

preparation of a bid, including also the circumstances of relevance for the environmental protection, energetic efficiency or social requirements.

Determining the Subject of Public Procurement by Lots

Article 42

Subject of public procurement may be determined according to technology, type, quantity, place and time of delivery.

If the subject of a public procurement is determined by lots, all lots must be stated in the contract notice or invitation to tender.

Common Public Procurement Vocabulary

Article 43

The Common Procurement Vocabulary – CPV is a nomenclature of goods, services and works which is used in a public procurement procedure.

The subject of public procurement shall be determined by using terminology and phrases established by a unique vocabulary of public procurement.

The Common Procurement Vocabulary shall be published on the Public Procurement Portal.

4. Estimated Value of Public Procurement

Determining the Estimated Value of Public Procurement

Article 44

The contracting authority shall, in the public procurement plan, decision on commencing and conducting a public procurement procedure, contract notice and decision on selection of the most favourable bid, state the estimated value of public procurement.

The estimated value of public procurement shall be expressed in Euros, with VAT included.

Upon determining the estimated value of public procurement, the contracting authority shall include only the costs necessary for execution of the public supply contract, public service contract or public works contract.

The contracting authority shall comply with the conditions and methods of public procurement prescribed by this Law according to the established values and it may not, during the budget or financial year, divide the subject of public procurement which represents a whole, in purpose of avoiding application of this Law and the prescribed public procurement procedure.

Determining the Estimated Value of Public Procurement of Goods

Article 45

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

1) in the case of contracts for sale, rental or lease and when the contract term is a period of 12 months or less, the total estimated contract value for its full duration shall be taken into account, whereas when the contract term is

longer than 12 months, the total contract value shall include the estimated value for the first 12 months and the estimated value for the residual period until the time limit expiry;

2) in the case of the contract referred to in paragraph 1 item 1 of this Article being concluded for an indefinite period, as well as in the event of uncertainty regarding the term for which the contract is concluded, the monthly estimated value of the contract multiplied by 48 shall be used.

In the case of periodic contracts, as well as contracts that are to be extended after the expiry of a certain time limit, the estimated public procurement value shall be determined on the basis of the actual aggregate value of similar contracts concluded over the previous budget year or in the course of the previous 12 months, adjusted for anticipated changes in the quantity or value of the goods whose procurement is the subject of the contract.

Determining the Estimated Value of Public Procurement of Services

Article 46

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

The following amounts shall be taken into account by the contracting authority when calculating the estimated value:

1) for insurance services - the premium amount, as well as other types of payments charged in connection with the service;

2) for banking and other financial services (except for loan-related services) – fees, commissions, as well as other types of payments charged in connection with the service;

3) for loan-related services, amount of the loan with interest rate, fees and costs arisen from approval and implementation of a loan agreement, valuation of movable and immovable property, insurance premiums or other fees related to assets securing the loan, costs of registration with the competent authority, cost of obtaining extracts from the register of real estate and other costs related to the loan-related services;

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

If a contracting authority cannot determine the estimated service value due to the contract term length, the service value shall be determined in the manner prescribed by Article 45, paragraph 1 of this Law.

Determining the Estimated Value of Public Procurement of Works

Article 47

The estimated value of public procurement of works shall be determined on basis of an appropriate technical documentation that contains the bill of quantities or calculation of the works value.

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

Determining the Estimated Value of Public Procurement by Lots
Article 48

In cases when the subject of public procurement is divided into lots, the estimated value of that public procurement shall be stated separately for each lot, and the total estimated value of the public procurement by lots shall be the sum of the values of all the lots for the period for which the contract is concluded.

5. Determining Technical Elements of Public Procurement
Tender Documents
Article 49

Tender documents, depending on the type of procedure and the subject of public procurement shall contain:

- 1) contract notice, or invitation to tender;
- 2) technical characteristics or specifications of the subject of public procurement, or the bill of quantities of works, which include: quantity and description of goods, works and services and other important properties of the subject of public procurement, time limits and place of execution of the contracts, quality assurance, manner of execution of quality control, data pertaining to the technical documentation according to which the public procurement contract will be executed and data on the availability of such documentation;
- 3) contracting authority's statement that it will duly settle obligations in respect of the selected bidder;
- 4) statements of persons referred to in Article 16 paragraph 2 of this Law on the non-existence of conflict of interest;
- 5) methodology of evaluation of bids by criteria and subcriteria;
- 6) form for the financial part of the bid;
- 7) forms for proofs prepared by bidders (statement on the non-existence of conflict of interest referred to in Article 17 of this Law; lists, statements and certifications on the fulfilment of conditions pertaining to professional, technical and staffing capability, etc.);
- 8) draft framework agreement and draft public procurement contract, except in the case of procurement of loans where tender documents include the contracting authority's loan application based on which the bidders submit draft contracts;
- 9) instruction for bidders on the preparation and submission of bids.
- 10) content of a bid;
- 11) instruction on legal remedy.

Tender documents for the first phase of the restricted public procurement procedure shall contain:

- 1) invitation for pre-qualification;
- 2) instruction on how to prepare and submit applications;
- 3) methodology for determining the qualifications.

Invitation for pre-qualification shall contain the data on: contracting authority, subject of public procurement, estimated value of the public procurement, awarding of framework agreement, language used in bids, Internet page on which the tender documents will be published; conditions for the participation in public procurement procedure; evidence to prove the fulfilment of envisaged requirements and statements on the non-existence of conflict of interest given by persons referred to in Article 16 paragraph 2 of this Law.

In addition to the elements referred to in paragraph 1, items 2 to 11 of this Article, tender documents for the second phase of the restricted public procurement procedure shall contain the invitation for submission of bids.

Invitation referred to in paragraph 4 of this Article shall contain data on the following: possibility of submission of bids by lots, possibility of submission of alternative bids, criterion and sub-criteria for evaluation of bids, obligatory submission of contract performance guarantee and other guarantees, time limit for the submission of bids, time limit for the public opening of bids, time period of validity of bid;

Contracting authority shall mark by ordinal numbers all first pages of the sheets and the total number of sheets of the tender documents.

The form of tender documents shall be prescribed by the Ministry.

Technical Characteristics or Specifications

Article 50

Technical characteristics or specifications, in accordance with the subject of public procurement, constitute an obligatory part of the tender documents.

A contracting authority shall define the technical characteristics or specifications:

- 1) with reference to technical regulations;
- 2) with a reference to the standards applied in Montenegro which are in compliance with the EU standards, and in case that such technical regulations and standards do not exist, the contracting authority shall refer to the EU standards or internationally recognized standards, technical regulations or rules;
- 3) in the form of desired functional characteristics or requirements for the contract execution, which must be precise and clear so that the bidders could prepare their bids accordingly.

When defining technical characteristics or specifications in tender documentation, contracting authority shall, in accordance with the Law, prescribe mandatory compliance to technical standards of accessibility for disabled persons.

The technical characteristics or specifications, in accordance with the technical regulations, shall determine the form of technical-technological advantages or functional characteristics that include or may include a program or degree of environmental protection, requirements related to energetic efficiency and social requirements.

With reference to the requirements of the technical characteristics or specifications established in tender documents, the bidders may offer solutions equivalent to those prescribed by the standards by providing adequate proof of equivalence.

Use of Technical Characteristics or Specifications
Article 51

A contracting authority may not use or refer to technical characteristics or specifications, any particular trade mark, patent, type, nor specific origin or production, if such a designation could favor a certain bidder or might unjustifiably eliminate other bidders.

Where the contracting authority is unable to give a description of the subject of the contract in the tender documents using characteristics or specifications which are sufficiently intelligible to bidders, the indication of elements such as trademarks, patents, type or manufacturer must be accompanied by the words "or equivalent".

Content of Technical Characteristics or Specifications
Article 52

Technical characteristics or specifications shall determine conditions and requirements related to the quality, performance, safety or dimensions of the material, product, good, or service, for the purpose of providing quality assurance, terminology, designations, testing and test methods, packing, marking and labeling.

In the case of public procurement of civil works, technical specifications may also include regulations concerning designs and cost calculation, test, inspection and takeover requirements, as well as techniques or method of construction.

Essential Requirements and Compensations for Use of Patents
Article 53

The contracting authority shall specify in tender documents essential requirements which are not included in technical rules and standards that are in force, and which relate to security and other circumstances of public interest.

The contracting authority may state in tender documents that the bidder shall pay the compensation for use of patents, as well as the liability for violation of protected intellectual property rights.

Publishing and submission of tender documents
Article 54

Contracting authority shall publish on the Public Procurement Portal the tender documents for the implementation of open procedures, first phase of the restricted procedures, first phase of the negotiated procedure with prior publication of contract notice, contest and shopping.

In case that a part of tender documents includes confidential information, contracting authority shall specify in the published part of the documents the manner in which interested persons may obtain such part of the tender documents containing confidential data in accordance with regulations governing the confidentiality of data.

Tender documents for the implementation of the second phase of the restricted procedure, second phase of the negotiated procedure with prior publication of contract notice, negotiated procedure without prior publication of contract notice, and consulting services shall be delivered directly to those persons that the contracting authority deems interested in the submission of bids.

Changes and Amendments to Tender Documents

Article 55

Contracting authority may amend tender documents not later than eight days prior to expiry of the deadline for the submission of bids.

If the contracting authority amends the tender documents within the timeframe shorter than the deadline referred to in paragraph 1 of this Article, they shall extend the deadline for the submission of bids so that the timeframe from the day of publication of amendments of tender documents to the expiry of the deadline for the submission of bids is not shorter than eight days.

Amendments of tender documents shall be published in the manner prescribed in Article 54 paragraph 1 of this Law.

If one or more bids arrived prior to the amendments to tender documents referred to in paragraph 1 of this Article, they shall be returned unopened to the bidder, along with the amendment to the tender documents and a deadline will be determined for modification of the bid which may not be shorter than 7 days from the day of submission of the bid and amendments to tender documents.

Clarification of Tender Documents

Article 56

Interested person shall have the right to request from the contracting authority to clarify tender documents.

Clarification referred to in paragraph 1 of this Article, depending on the type of public procurement procedure, may be requested:

- 1) within 22 days from the day of publishing or submission of tender documents, if the deadline for submission of bids is at least 37 days from the day of publishing or submission of tender documents;
- 2) within eight days from the day of publishing or submission of tender documents, if the deadline for submission of bids is at least 22 days from the day of publishing or submission of tender documents;
- 3) within six days from the day of publishing or submission of tender documents, if the deadline for submission of bids is at least 12 days from the day of publishing or submission of tender documents;
- 4) within three days from the day of publishing or submission of tender documents, if the deadline for submission of bids is less than 12 days from the day of publishing or submission of tender documents.

Contracting authority shall, depending on the type of public procurement procedure, submit the clarification of tender documents to bidders and publish it on the Public Procurement Portal, within three days from the day of receipt of the request.

Clarification of tender documents may not result in amendments to the tender documents.

Clarification of tender documents shall represent an integral part of the tender documents.

Means of Financial Securing - Guarantees

Article 57

Contracting authority may establish in a contract notice, or invitation to tender the obligation to submit the performance guarantee, advance payment guarantee and other guarantees, for the purpose of protection from the breach of a public procurement contract.

For public procurements of estimated value over EUR 30 000, contracting authority shall establish in the contract notice or invitation to tender the obligation to submit the bid guarantee for the purpose of protection from trivial tenders, performance guarantee, advance payment guarantee and other guarantees, before such contract is concluded.

The bid guarantee shall not be for more than 2% of estimated public procurement value, and performance guarantee may not exceed 5% of the value of contract, and advance payment guarantee may not be lower than the contracted advance payment.

Contracting authority shall activate guarantees referred to in paragraph 1 of this Article in the event of breach of a contract by the selected bidder.

6. Performance of the Public Procurement Tasks, Training and Education

Public Procurement Officer

Article 58

A public procurement officer can only be a person with a university degree employed by the contracting authority and who passed the professional exam for performing the public procurement tasks (hereinafter: professional exam).

A public procurement officer shall have the following duties: to prepare public procurement plans, to prepare texts of decisions on the launch of public procurement procedures, to prepare tender documents for the implementation of public procurement procedures by shopping method and provide clarification of such procedures, to provide interested persons with parts of tender documents involving classified information which are subject to regulations governing data confidentiality, to conduct public procurement procedures by shopping method and direct agreement, to keep documents pertaining to public procurements, to keep records of public procurements, to prepare and submit

reports on the conducted public procurement procedures to the authorised person of the contracting authority, to perform technical and administrative tasks in the implementation of public procurement procedures and other tasks in accordance with this Law.

The contracting authority shall deliver to the competent state authority the act on appointment of the person for performance of tasks referred to in paragraph 2 of this Article.

The List of public procurement officers shall be published at the Public Procurement Portal by the competent state authority.

Commission for Opening and Evaluation of Bids

Article 59

Commission for the opening and evaluation of bids shall conduct public procurement procedures, except for the procedures conducted by shopping method and direct agreement.

The Commission referred to in paragraph 1 of this Article shall be established by the authorised person of a contracting authority simultaneously with the adoption of a decision to launch a public procurement procedure.

The Commission referred to in paragraph 1 of this Article shall be composed of an odd number of members, while at least one third of them shall have passed professional exam for the work in public procurement, one member must be an expert in the subject of the public procurement and one member must hold a university degree in law.

The contracting authority's public procurement officer may be a member of the Commission referred to in paragraph 1 of this Article.

The Commission referred to in paragraph 1 of this Article shall prepare tender documents, provide clarification of tender documents, conduct public opening of bids, and/or requests for qualification, draw up minutes on public opening of bids, review, assess, compare and evaluate bids, prepare minutes on the review, assessment and evaluation of bids, prepare proposals for decisions on the selection of the most favourable bid or decisions on the suspension or annulment of public procurement procedures, prepare responses to appeals, perform other tasks in accordance with this Law."

More detailed criteria for establishing the Commission for opening and evaluation of bids are prescribed by the Ministry depending on the type of the subject of public procurement.

Professional Examination

Article 60

Public procurement officers, the employees of the competent state authority or commission in charge of control of public procedure who perform the administrative tasks and other related professional tasks, shall pass the professional examination for performing the public procurement tasks.

The professional examination referred to in paragraph 1 of this Article may be taken by other persons, in accordance with this Law.

The right to take the professional examination referred to in paragraph 1 above, shall be acquired after conducting a program of professional training and education.

Program and manner of taking the professional examination referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Professional Training and Education

Article 61

The persons referred to in Article 60 paragraph 1 of this Law shall attend professional trainings and education.

The professional training and education in area of public procurement shall be conducted on basis of program for professional training and education.

The professional training and education shall be organized and conducted by the competent state authority.

The professional training and education in accordance with the program referred to in paragraph 2 of this Article may be organized and conducted by the competent state authority for persons employed with bidders as well as for other persons.

The program for professional training and education in the area of public procurement shall be determined by the competent state authority.

7. Transparency of Public Procurement

Advertising of notifications on public procurement

Article 62

“Contracting authority shall publish the notification on public procurement procedure referred to in Article 54 paragraph 1 of this Law in one daily print media which is issued and distributed in the entire territory of Montenegro and available on the Internet, within 3 days from the day of publishing the tender documents on the public procurement web portal.

Notification referred to in paragraph 1 of this Article shall contain the following data on: a contracting authority (name, registered office and address); subject and the estimated value of the public procurement; the address and date of publishing of the tender documents and the person in charge of providing the information (name, surname; contact phone number and e-mail address).

A public procurement procedure initiated or conducted without advertising of notifications referred to in paragraph 1 of this Article shall be null and void”.

The form of the notification referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Contract Notice Content
Article 63

Depending on the type of public procurement procedure, contract notice or invitation to tender shall contain the data on: contracting authority, type of procedure and subject of public procurement, estimated value of public procurement, possibility of submission of bids by lots, awarding of framework agreement, possibility of submission of alternative bids, language of bids, mandatory submission of performance and other guarantees; mandatory and optional conditions for participation in the public procurement procedure; evidence necessary to prove the fulfilment of envisaged conditions in accordance with law; deadline and place of execution of the contract; the period of validity of bid; criteria and subcriteria for evaluation of bids; time and place of the submission and public opening of bids, deadline for adoption of decision on the selection of the most favourable bid, names of persons in charge of providing information and their contact details, and other data important for the implementation of public procurement procedure.

Changes of the Contract Notice
Article 64

This Article shall be deleted.

8. Conditions for Participation in a Public Procurement Procedure

Mandatory Conditions
Article 65

Only the bidder who:

„1) is registered with the body in charge of registration of business entities;
2) has permit, licence, approval or other document necessary for the performance of the activity being subject of the public procurement, if it is prescribed by a special law;

3) timely settles all obligations in respect of taxes and contributions in accordance with law and regulations of the country of their registered office;

4) proves that himself and his legal representative are not convicted by a final court decision for any of the criminal offences of organized crime, corruption, money laundering and fraud
may participate in a public procurement procedure “.

Conditions referred to in paragraph 1 of this Article shall not apply to natural persons: artists, scientists and cultural workers.

Contracting authority shall specify in contract notice and invitation to tender the permits, licences, approvals and other documents which are required to

prove the fulfilment of conditions for participation in the public procurement procedure.

Contracting authority may request opinion from state administration body in charge of specific administrative areas on the proofs referred to in paragraph 1 item 2 of this Article which are required for the performance of activity which is the subject of a public procurement.

The state administration body referred to in paragraph 4 of this Article shall supply the contracting authority with requested opinion within five days from the day of receipt of such request.

Evidence on Fulfilment of the Mandatory Conditions

Article 66

The fulfilment of conditions referred to in Article 65 paragraph 1 of this Article shall be established on the basis of the following:

1) proof of registration with the body in charge of registration of business entities, along with data on the authorized persons of the bidders;

2) proof of possession of a valid permit, licence, approval or other document issued by the competent body;

3) proof issued by the body in charge of taxation affairs of timely reporting, calculation and execution of all obligations in respect of taxes and contributions up to 90 days before the day of the public opening of bids, in accordance with regulations of Montenegro, namely regulations of the country of bidder's registered office;

4) proof of competent body issued on the basis of criminal records which shall not be older than six months on the day of public opening of bids.

Optional Conditions

Article 67

Apart from mandatory conditions for the participation in a public procurement procedure, contracting authority may also specify in contract notices or invitations to tender the obligation of bidders to prove that they fulfil optional conditions relating to:

1) their economic and financial capacity, and/or

2) their professional, technical and staffing capabilities.

Contracting authority shall specify in contract notices or invitations to tender, depending on the type of subject of public procurement, the proofs referred to in Articles 68, 69, 70 and 71 of this Law that the bidders are obliged to submit in order to prove the fulfilment of conditions referred to in paragraph 1 of this Article.

Proofs of Economic-financial Capacity

Article 68

A bidder shall demonstrate the compliance with the conditions related to the economic-financial capacity by providing the following proofs:

- a report on accounting and financial statement - balance sheet and income statement with an opinion of an authorized auditor in accordance with the law governing accounting and auditing for not longer than the previous two financial years, or for the period since the registration;
- the appropriate excerpt obtained from bank, certificate or statement on financial capacity of the bidder or, if necessary, proof on insurance for damage caused by a relevant occupational risk.

*Proofs of Technical and/or Professional and Staffing Abilities in the Public
Procurement Procedure of Goods*
Article 69

In a public procurement procedure of goods, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important goods delivered, over a period of previous two or three years, together with the amounts, dates and lists of recipients, accompanied by documents in the form of a certificate of performed deliveries issued by the buyers or, if such certificates cannot be obtained for the reasons beyond the bidders' control, only the bidders' statement on the performed deliveries stating also the reasons why the certificates could not be provided;
- 2) a description of the technical equipment, measures for ensuring the quality control system, measures for ensuring environmental protection system, protection at work, if the subject of procurement is food – a certificate on the food safety, and if the subject of procurement is information technology – a system for information systems' security management;
- 3) statement on the technicians and other experts involved, and manner of their engagement and provision of adequate working conditions;
- 4) samples, descriptions and/or photographs of the products to be supplied, the authenticity of which must be certified by the bidder, if the contracting authority so requests;
- 5) other certificates or attestations issued by official quality control bodies or agencies of recognized competence, attesting the conformity of products clearly identified by references to specifications or standards;
- 6) a statement on any intention and subject of subcontracting.

*Proofs of Technical and/or Professional and Staffing Abilities in the Public
Procurement Procedure of Services*
Article 70

In a public procurement procedure of services, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important services provided over a period of previous two years, together with the amounts, dates and lists of recipients, accompanied by certificates of provided services issued by the recipients or, if such certificates cannot be obtained for the reasons beyond the bidders' control, only the bidders' statement on the provided services stating also the reasons why the certificates could not be provided;
- 2) statement on educational and professional qualifications of the bidder, that is, the qualifications of the management staff and in particular the qualifications of the persons responsible for providing the services in question;
- 3) statement on the technicians and other experts involved, and manner of their engagement and provision of adequate working conditions;
- 4) a statement of the bidder regarding the annual average number of staff and on the number of persons performing managerial functions in previous three years;
- 5) a statement on technical equipment and technical capacities at the bidder's disposal for provision of the services in question and established system for the quality control, environmental protection system, protection at work, if the services are in the area of food – a system of the food safety, or if the subject of procurement is information technology – a system for information systems' security management;
- 6) a statement on any intention and subject of subcontracting.

In case that the services to be provided are complex, or if, exceptionally, they are provided for special purposes, a proof shall be checking of the technical equipment and capacity of the bidder and, if necessary, its study and research capacities, as well as description of the measures for quality control conducted by the contracting authority or, on its behalf, by the competent authority of the state in which the bidder was registered.

*Proofs of Technical and/or Professional and Staffing Abilities in the Public
Procurement Procedure of Works*

Article 71

In a public procurement procedure of works, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important works performed over a period of previous two to five years, along with the time limits for performance of those works, together with the amounts, times and locations of performance, and, where necessary, on the request of the contracting authority, the appropriate certificates issued by a competent state authorities or competent local self-government bodies;
- 2) statement on educational and professional qualifications of bidders, the qualifications of the management staff and in particular the qualifications of the persons responsible for performing the works in question;
- 3) statement on the technicians and other experts involved, particularly those in charge of the quality control and manner of their engagement;

- 4) a statement regarding the annual average number of staff and on the number of persons performing managerial functions in previous three years;
- 5) a statement on technical equipment and technical capacities at the bidder's disposal for performance of the works in question;
- 6) a statement on any intention and subject of subcontracting or engagement of subcontractors.

Determining the Moment of Fulfilment of Conditions

Article 72

The bidder must fulfil the mandatory and optional conditions at the moment of opening of the bid, or the application.

Validity of Proofs from Foreign Countries

Article 73

In case that a contracting authority requires the proofs on fulfilment of quality standards (certificates, or licences and other acts on quality compliance) it shall, in accordance with the Law, accept as equivalents the certificates issued by authorized bodies of the European Union member states or other countries.

A contracting authority shall accept the proof on fulfilment of quality standards in other form, in case that the bidder provides a proof that it has no possibility or right to request the proofs referred to in paragraph 1 of this Article.

Form of Submission of Proofs

Article 74

Proofs of fulfilment of conditions for the participation in a public procurement procedure and other required proofs may be submitted in their original form, in the form of certified or non-certified copies, or in electronic form.

Bidder whose bid is selected as the most favourable shall submit, prior to the conclusion of their public procurement contract, originals or certified copies of proofs of fulfilment of conditions for the participation in public procurement procedure.

In the case of appeal procedure, the bidder whose proofs are contested on account of their authenticity shall provide originals or certified copies of such proofs.

In the course of the procedure of review and assessment of bids, contracting authority may verify the accuracy and legal validity of the proofs referred to in paragraph 1 of this Article with and through the competent body, as well as by insight into public registers and records."

In case that the bidder referred to in paragraphs 2 and 3 of this Article fails to submit originals or certified copies of the proofs, its bid shall be deemed invalid.

9. Bid

Content of the Bid

Article 75

In order to participate in a public procurement procedure, a bidder shall submit a bid in accordance with the tender documents.

During the time envisaged for submitting bids, a bidder may change and amend the bid or desist from the same in the form of a written statement.

Amendments to or desistance from the bid shall be submitted by the bidders in the same way as the bid.

In case of desistance from the bid, a contracting authority shall return it unopened to the bidder.

Manner of Preparation of the Bid

Article 76

A bidder shall prepare the bid as a whole, where each first page of every sheet and total number of sheets are marked by the ordinal number and the seal, stamp or by the similar mark of the bidder.

Documents made by the bidder, as the integral part of the bid shall be personally signed by the authorised person of the bidder.

Bids shall be bound with a red tape into one whole and sealed by sealing wax printing out the impression of stamp, seal or other mark of the bidder in such manner that prevents subsequent inserting, removing or replacing of sheets without damaging any of the sheets, the red tape or the sealing wax.

Bids shall be submitted in an appropriate closed wrapping (envelope, package, etc).

Title and seat of the contracting authority shall be indicated on one part of the wrapping, along with the number of contract notice or of invitation to tender and the following text: "Do not open before public opening of bids", while the title, seat, name and address of the bidder shall be indicated on the other part of the wrapping.

Provisions of paragraphs 2, 3, 4 and 5 of this Article shall not apply to bids submitted in electronic form.

Submission of a Bid by Lots

Article 77

A bidder may submit the bid for one or more lots provided that the bid refers to at least one lot.

The bidder shall indicate in the bid whether the bid refers to the procurement as a whole or to certain lots.

If a bidder submits a bid for several or all of the lots, the bid must be prepared in a such a manner that it can be evaluated for each lot separately, while the proofs that relate to all the lots are submitted jointly in one copy within the bid for the first lot applied for, while the proofs that relate only to a specific lot/s are submitted separately for each of the lots.

Timely Bid
Article 78

Timely bid shall be considered the one submitted within the time limit stated in the contract notice, invitation to tender and tender documents.

The bid may be delivered in person or in electronic form, or in some other appropriate manner.

Contracting authority shall indicate on the bid the date, hour and minute of its receipt and issue the certificate on receipt to the bidder.

The bid received after expiry of the time limit referred to in paragraph 1 of this Article shall be considered as an untimely one.

Contracting authority shall adopt a conclusion on rejection of the bid referred to in paragraph 4 of this Article and return it to the bidder unopened.

Submission of a Joint Bid
Article 79

A bid may be submitted by a group of bidders (joint bid) having an unlimited joint liability for the bid and the obligations derived from public procurement contract.

In the case referred to in paragraph 1 of this Article, a group of bidders shall submit along with their bid a certificate on joint application determining the leading bidder – the bearer of the bid, regulating mutual rights and duties of the bidders, percentage of their share in offering the goods, services or works according to their types.

The bidders shall state in their joint bid the names and adequate professional qualifications of the persons who will be responsible for contract execution

Conditions for Submission of a Joint Bid
Article 80

Each bidder from a group of bidders must individually fulfill the mandatory conditions referred to in Article 65 items 1, 3 and 4 of this Law.

The mandatory condition referred to in Article 65 item 2 of this Law must be fulfilled only by the bidder participating in a joint bid who was, by the agreement on joint application, designated to execute that part of the subject-matter of public procurement for which the Law stipulated a mandatory permit (license or some other act).

Conditions referred to in Article 67 of this Law for participation in a public procurement procedure as a member of a joint bid, the bidders shall fulfill jointly and they may use capacities of other bidders who are members of the joint bid.

A bidder who submitted its bid individually may not at the same time participate in a joint bid or as a subcontractor to another bidder.

Bidders may prove the fulfilment of conditions for the participation in public procurement procedure referred to in Article 65 paragraph 1 item 2 and Article 67 paragraph 1 item 2 of this Law through subcontractors.

Bidders may prove their technical, professional and staff capability by using capacities of other legal or natural person if such capacities have been made available to them, in accordance with a special law.

Participation of Sub providers and/or Subcontractors
Article 81

If the bidder states in the bid that he intends to entrust the partial execution of the procurement to a sub provider or a subcontractor, he shall list in the bid the names of the sub providers or subcontractors with their closer details (name, address, procentual participation etc.).

The participation of all sub providers and subcontractors in the execution of the public contract may not exceed 30% of the total value of the bid.

The bidder shall allow the contracting authority, upon the latter's request, access to the documents pertaining to sub provider or a subcontractor, for the purpose of establishing the compliance with the conditions for participation in a public procurement procedure.

The bidder shall be fully liable to the contracting authority for the procurement contract performance, irrespective of the number of sub providers or subcontractors.

Alternative Bid
Article 82

A contracting authority may prescribe in the contract notice, invitation to public tender and tender documents a possibility of submitting alternative bids, provided that the economically most advantageous bid criterion was determined as the criterion for evaluation of the bids.

Bid Validity Period
Article 83

Bid validity period shall be determined by a contracting authority in tender documents.

Bid validity period may not be shorter than 60 days from the date of public opening of the bids.

After expiry of the bid validity period a contracting authority may request in written form an extension of the bid validity period from the bidder until a certain time limit.

In case that the bidder rejects a request to extend the bid validity period, it will be considered to have desisted from the bid.

Any bidder, who accepts the request for extension of the bid validity period, may not alter the bid.

A Bid Price
Article 84

A bidder shall submit a bid with price in Euros and with separately expressed VAT.

The offered price shall include all expenses and discounts to the total offered price with separately expressed VAT, in accordance with the Law.

A bid price shall be written in figures and words, and in case of their discrepancies, the price expressed in words shall prevail.

A bid price shall be expressed for the whole subject matter of procurement or, when the subject of procurement is divided into lots, for each individual lot of public procurement.

Abnormally Low Price

Article 85

If the most favourable bid price is at least 30% lower than the average offered price of all acceptable bids, contracting authority shall request an explanation from the bidders. The explanation referred to in paragraph 1 of this Article may refer to, in particular:

- 1) austerity measures in construction method, technical solutions or production process;
- 2) exceptionally favourable conditions available to bidder for execution of the contract;
- 3) originality of the goods, works or services offered by the bidder;
- 4) compliance with the rules referring to protection upon employment and working conditions, applied at the place of performance of works, provision of services or delivery of goods;
- 5) possibility that the bidder receives state aid (subsidies).

The bidder shall provide the explanation referred to in paragraph 1 of this Article within a time limit no longer than eight days as of the day of submitting the request.

The contracting authority shall, upon receiving the explanation, check the relevant integral elements of the bid that could be relevant to the bid price referred to in paragraph 1 of this Article, and if it establishes that these elements are not justified, the bid shall be rejected.

Abnormally Short Period

Article 86

If the period for the execution of works, the provision of services or delivery of goods from the most favourable bid is considerably shorter than the minimum period stated in the contract notice, invitation to tender and tender documentation, the contracting authority shall reject such bid as incorrect one.

If the period for the execution of works, the provision of services or delivery of goods from the most favourable bid is considerably shorter than the average offered period stated in other bids, the contracting authority shall request a thorough explanation of all its integral parts which it considers as relevant to the offered period.

The bidder shall provide the explanation referred to in paragraph 2 of this Article within a time limit no longer than eight days as of the day of submitting the request.

The contracting authority shall, upon receiving the explanation, check the relevant integral elements of the bid referred to in paragraph 2 of this Article, and if it establishes that these elements are not justified, the bid shall be rejected

10. Time Limits in Public Procurement Procedure

Time Limit for Bid Submission

Article 87

A contracting authority shall set a deadline for bid submission in the contract notice, invitation to public tender and in the tender documents.
Setting the time limit referred to in paragraph 1 of this Article shall mean setting the date and hour by which bids may be submitted.

Calculation of Time Limits

Article 88

Deadline for the submission of bids shall start running on the day following the day of publication of tender documents, that is, the day of delivery of tender documents.

Sundays and public holidays do not obstruct the beginning and the course of the time limits.

In case that the last day of the time limit is Sunday or a public holiday or some other non- working day of the contracting authority, the time limit shall expire upon expiry of the following working day.

Appropriateness of Time Limits

Article 89

The time limit for submission of bids must be appropriate to the time necessary for preparation of the acceptable bid.

In case that the preparation of the bid requires review of comprehensive tender documents or comprehensive technical characteristics or specifications, site visits or the like, the contracting authority shall envisage the extension of the time limit.

Time Limit for Submission of Bids in Open Procedure

Article 90

Deadline for the submission of bids in an open public procurement procedure shall not be shorter than 37 days from the day of publishing of tender documents on the Public Procurement Portal.

Deadline for the submission of bids referred to in paragraph 1 of this Article may be reduced by the contracting authority when so required by urgent nature of public procurement, where such reduction is not provoked by fault on the part of the contracting authority, but, it may not be less than 22 days from the day of publishing of tender documents on the Public Procurement Portal.

The contracting authority shall provide in the contract notice or invitation to tender an explanation of the reasons of urgency because of which they have reduced the time limit for the submission of bids referred to in paragraph 1 of this Article.

*Time Limits for Submission of Bids in Restricted procedure and
Negotiated Procedure*
Article 91

Deadline for the submission of applications for prequalification in a restricted public procurement procedure shall not be shorter than 37 days from the day of publication of tender documents for the first phase of restricted procedure on the Public Procurement Portal.

Deadline for the submission of bids in a restricted public procurement procedure shall not be shorter than 22 days from the day of delivery of tender documents for the second phase of restricted procedure to the qualified applicants.

Deadline for the submission of bids in a negotiated procedure with or without prior publication of contract notice, except in cases referred to in Article 25 paragraph 1 item 1 indents 2 and 3 of this Law, shall not be shorter than 22 days from the day of publication of tender documents for invitation to tender by negotiations on the Public Procurement Portal, or the day of delivery of tender documents for invitation to tender by negotiations to the interested parties.

11.Criteria for Selection of the Most Favourable Bid

Establishing and Description of Criteria and Sub criteria
Article 92

A contracting authority shall establish criteria and sub criteria for the selection of the most favourable bid in the contract notice or the invitation to tender.

Criteria and sub-criteria referred to in paragraph 1 above shall be expressed in words and the maximum number of points that can be awarded on the basis of each individual criterion and sub-criterion.

Criteria and sub-criteria must not be discriminatory and they should be logically linked to the content of the subject of public procurement.

Criteria and sub-criteria must be described in a clear and intelligible manner.

Upon assessment and evaluation of bids, contracting authority shall apply only those criteria and sub-criteria contained within the contract notices referred to in paragraph 1 of this Article.

A contracting authority shall determine in tender documents the methodology for award of points for the sub-criteria referred to in Article 95 paragraph 1 items 2 to 12 of this Law.

Types of Criteria
Article 93

The criteria for selection of the most favourable bid shall be:

- 1) the lowest price offered or
- 2) the economically most favourable bid.

The contracting authority shall make the selection among the criteria referred to in paragraph 1 of this Article, depending on procedure type and subject public procurement.

The Lowest Offered Price Criterion

Article 94

The selection of the most favourable bid applying the lowest offered price criterion shall be based upon the lowest price as a sole criterion.

The Economically Most Favourable Bid Criterion

Article 95

The most favourable bid criterion is based upon the following sub-criteria depending on the subject-matter of public procurement, in particular:

- 1) the lowest price offered;
- 2) delivery period or period of completion of services or works;
- 3) quality;
- 4) current maintenance costs;
- 5) cost effectiveness;
- 6) technical and technological advantages;
- 7) program and degree of environmental protection, or energy efficiency;
- 8) after-sale service and technical assistance;
- 9) warranty period, the type and quality of warranties and guaranteed value;
- 10) obligations concerning spare parts;
- 11) post-warranty maintenance;
- 12) aesthetic and functional characteristics.

A contracting authority shall make the selection between submitted bids applying the most favourable bid criterion in a way that it shall rank them on basis of the sub criteria and number of points determined for these sub criteria.

A contracting authority shall determine the value of points for each sub-criterion respectively, on basis of which the most favourable bid shall be selected, so that the total number of points shall be 100.

A contracting authority shall make the selection between submitted bids applying the most favourable bid criterion in a way that it shall evaluate them on basis of the total number of awarded points, that is, the sum of the points determined for each individual sub criterion.

The conditions for participation of bidders in a public procurement procedure may not be established as the sub-criteria for selection of the most favourable bid.

Methodology of expressing criteria into an appropriate number of points, as well as a method of comparison and evaluation of bids, shall be prescribed by the Ministry.

The Lowest Offered Price Sub Criterion

Article 96

The lowest offered price sub criterion determined for a public procurement of goods or works shall be the prevailing sub criterion for ranking of bids, and it shall be established in proportion with the number of points determined by other selected sub criteria in such a way as to determine at least 50 points for this sub criterion.

Upon selection of the most favourable bid criterion for a public procurement of services, a contracting authority shall determine the proportion of the number of points amongst the selected sub-criteria in such way as to determine at least 40 points for this sub-criterion.

12.Public Opening of Bids

Receipt and Recording of Bids

Article 97

A contracting authority shall, on each received envelope containing a bid, mark the date and time and hour of receipt of the bid by the order of their receipt and issue a certificate on receipt of the bid.

Time of receipt of an electronically submitted bid shall be recorded by confirmation of receipt of electronic bid, without any delay, in accordance with regulations on electronic trade and electronic signature.

The information on received bids may not be disclosed.

A contracting authority shall ensure secrecy of the bids, until public opening of the bids.

A contracting authority shall preserve the bids in a manner that they may not be available to unauthorized persons.

Public Opening of Bids

Article 98

Bids shall be opened publicly, at the latest 1 hour after the expiry of time limit for submission of bids.

The opening of bids may be attended by authorized representatives of bidders after they have enclosed their authorizations signed by responsible persons.

The public opening of bids commences by establishing the number of submitted bids according to the order of reception, including changes or amendments, or withdrawal of the bids, timeliness of the bids and name or title of the bidder.

The bidder who revokes its bid, or withdraws its bid, shall not be entitled to attend the procedure of public opening of bids.

The Commission for opening and evaluation of the bids, i.e. the public procurement officer shall keep the record on opening and evaluation of the bids which shall contain in particular:

- 1) type and number of the public procurement procedure, place, day and hour of the beginning of opening of bids;
- 2) names of Chairman and members of the Commission for the opening and evaluation of bids;

- 3) names of the present bidders, or their authorized representatives, with reference numbers and dates of issuance of their authorization letters;
- 4) title or name of the bidder not attending the public opening of bids;
- 5) order of opening of the bids and data contained in the bids along with the enclosed documents;
- 6) data pertaining to the time of submission of bids and untimely bids;
- 7) objections, proposals and suggestions of bidders' authorised representatives; and
- 8) other data of relevance to the procedure of opening of bids.

The minutes must be signed by members of the Commission for the opening and evaluation of bids, or the public procurement officer and the present authorized representatives of bidders.

A copy of the minutes, after it is signed, shall be handed to all present bidders, or their authorized representatives.

If any of the bidder's authorized representatives refuse to sign the minutes, the reasons of the refusal shall be stated in the minutes.

Contracting authority shall send to bidders who did not attend the public opening of bids the minutes of opening of bids within 3 days as of the day of termination of the procedure for opening of bids.

The more detailed content and form of the minutes referred to in paragraph 5 of this Article shall be determined by the Ministry.

Valid Bid

Article 99

A valid bid shall be the bid which fully meets all conditions required by the text of the contract notice, invitation to public tender and tender documents.

Invalid Bid

Article 100

An invalid bid shall be a bid:

- 1) which is not prepared in compliance with the conditions specified in tender documents;
- 2) which is not accompanied by the documents specified in tender documents;
- 3) which does not include the proofs specified in tender documents;
- 4) submitted by bidders who have failed to submit evidence of their joint participation or appoint the bidder submitting the joint bid;
- 5) in which the price is not expressed, but the bidder offers a price which is lower by certain percentage than the lowest offered price;
- 6) in which the total price is not expressed in accordance with this Law;

7) in which a calculation error in the offered price in the amount higher than 3% of the value of bid has been established;

8) for which the bidder has failed or refused to provide the requested explanation of the bid;

9) in which the offered price exceeds the estimated value of the public procurement.

Methodology for the establishing of calculation error referred to in paragraph 1 item 7 of this Article shall be prescribed by the Ministry.

13.Review, Assessment and Evaluation of Bids

Review and Assessment of Validity of Bids

Article 101

Review, assessment and evaluation of bids, depending on the type of public procurement procedure, shall be conducted by the Commission for the opening and evaluation of bids, or the public procurement officer, without participation of the bidders.

Bids shall be assessed by checking whether their content complies with the conditions specified in the tender documents.

In the course of assessment of validity of bids, the Commission for the opening and evaluation of bids, or the public procurement officer may request from bidders to provide explanation of their bids in order to eliminate any doubts as regards the validity of their bids.

The explanation of the bid may not be a means of change or amendment of the bid.

If a bidder fails to provide the explanation referred to in paragraph 3 of this Article within eight days from the day of delivery of the request, their bid shall be rejected as invalid.

In the course of review and assessment of bids and subject to request of the Commission referred to in paragraph 1 of this Article or the public procurement officer, the contracting authority may engage experts to provide their professional assistance in the assessment and evaluation of bids. Any bid assessed as invalid shall be rejected.

Evaluation of Bids

Article 102

Commission for the opening and evaluation of bids, or the public procurement officer, shall commence the procedure of evaluation of bids once the assessment of validity of bids has been completed.

Each member of the Commission for the opening and evaluation of bids shall separately (individually) evaluate valid bids on basis of the criteria and subcriteria specified in tender documents.

The public procurement officer shall evaluate bids on the basis of the lowest offered price criterion.

On basis of evaluation referred to in paragraphs 2 and 3 of this Article, each bid shall be awarded the average number of points and a ranking list in descending order shall be established.

The Minutes of Review, Assessment and Evaluation of Bids

Article 103

With regard to the review, assessment, comparison and evaluation of bids, the Commission for the opening and evaluation of bids, or the public procurement officer, shall keep and prepare minutes of the review, assessment and evaluation of bids including the following:

- 1) data on the type and number of the public procurement procedure;
- 2) data on the subject and the manner of conducting the public procurement;
- 3) data on time of commencement of review, assessment and evaluation of bids;
- 4) envisaged requirements and evidence for participation in the public procurement procedure and the requirements for preparation and submission of bids;
- 5) data on submitted bids, listed in the order indicated in the minutes of public opening of bids, title and seat, or name and address of bidders having submitted the bid;
- 6) assessment of timeliness and untimeliness of bids, supported by reasons and evidence based on which such timeliness or untimeliness of bids has been established;
- 7) assessment of validity or invalidity of bids, supported by assessment of facts, evidence and reasons based on which validity or invalidity of bids has been established;
- 8) observation on the manner of evaluation of bids;
- 9) opinion of experts engaged to provide assistance in the assessment and evaluation of bids;
- 10) comparative overview, analysis and descending order of bids according to the number of points awarded;
- 11) proposal for the adoption of decision on the selection of the most favourable bid, or on the suspension of public procurement procedure, along with a rationale for such proposal.
- 12) date on which minutes have been prepared and signatures of all members of the Commission for the opening and evaluation of bids, or the public procurement officer.

The member of the Commission who disagrees with the conducted procedure of review, assessment, comparison and evaluation of bids or with the proposal for adoption of decision on the selection of the most favourable bid or on the suspension of the public procurement procedure, shall have the right to request that such opinion be entered in the minutes.

In the case referred to in paragraph 2 of this Article, the opinion of the member of the Commission must be entered in the minutes after the proposal for decision on the selection of the most favourable bid, or on the suspension of the public procurement procedure.

The form of the minutes on the review, assessment and evaluation of bids shall be prescribed by the Ministry.

Selection between Equal Bids

Article 104

If two or more bids have an equal number of points on basis of criteria and sub criteria for selection of the most favourable bid, the contracting authority shall summon the bidders whose bids have equal number of points and make a selection by drawing lots.

The drawing of the lots referred to in paragraph 1 of this Article shall be conducted by the Chairman of the Commission for the opening and evaluation of bids or the public procurement officer.

14. Decision Making and Public Contract

Decision on Suspension of Public Procurement Procedure

Article 105

A public procurement procedure shall be suspended in following cases:

- 1) when no bid and/or no acceptable bid has been submitted;
- 2) when, before the expiry of the time limit for submitting bids, a contracting authority finds it necessary to change substantially tender documents;
- 3) when the need ceases for public procurement subject matter and when public procurement is not going to be repeated during the budget or financial year.

Decision on suspension of public procurement procedure shall be made by the authorized person of the contracting authority, upon proposal of the Commission for opening and evaluation of bids, or the public procurement officer.

In the case referred to in paragraph 1 item 1 of this Article, untimeliness and invalidity of bids shall be decided upon by means of a decision on suspending the public procurement procedure.

Contracting authority shall deliver the decision on cancellation of public procurement procedure, with a rationale, to the bidders no later than three days from the day of making that decision, and publish it on the Public Procurement Portal.

Decision on Selection of the Most Favourable Bid
Article 106

Contracting authority shall adopt the decision on the selection of the most favourable bid within the time limit specified in the contract notice or invitation to tender.

The decision on selection of the most favourable tender shall be passed by the head, or a responsible person of the contracting authority, on proposal of the Commission for the opening and evaluation of bids.

The most favourable bid, valid bids, invalid and untimely bids shall be decided upon by the decision on the selection of the most favourable bid.

The decision on selection of the most favourable bid must have a rationale.

Contracting authority shall submit the decision from paragraph 1 above to all bidders within three days as of the day of making the decision and publish it on the Public Procurement Portal.

The decision on selection of the most favourable bid made without previously conducted public procurement procedure, since the contracting authority had the obligation to conduct the procedure pursuant to this Law, shall be declared null and void.

The form of the decision on selection of the most favourable bid shall be determined by the Ministry.

Public Procurement Contract
Article 107

Contracting authority concludes a public contract with the bidder whose bid has been selected as the most favourable one.

Public procurement contract shall comply with the requirements specified in tender documents and the decision on the selection of the most favourable bid.

The price determined in a public procurement contract may not exceed the price determined by the decision on selection of the most favourable bid.

The public procurement contract shall not be concluded before the expiry of the time limit for receiving objections (a standstill period), and adoption of a decision on the filed complaint, unless provided otherwise by this Law.

The contract concluded contrary to paragraph 4 of this Article shall be null and void

A bidder referred to in paragraph 1 of this Article shall sign a public procurement contract no later than eight days from the date of receipt of the contract, and return the signed contract to the contracting authority within the same period with a guarantee regarding a good contract performance.

Contracting authority shall request from the bidder whose bid has been selected as the most favourable and who has refused to enter into the public procurement contract a compensation of damages amounting to 10% of the offered amount of the bid, and the bidder shall compensate the damages to the contracting authority.

A contracting authority shall submit the concluded public procurement contract to the competent state authority, within three days from the date of conclusion, for the purpose of its publication on the Public Procurement Portal.

III. PUBLIC PROCUREMENT IN THE WATER MANAGEMENT, ENERGY, TRANSPORT AND POSTAL TRAFFIC SECTORS

1. Covered Parties

Article 108

For the purpose of carrying out activities referred to in Article 109 of this Law, contracting authorities in the sectors of water management, energy, transport and postal traffic shall apply the provisions referred to in Articles 108 to 113 of this Law, as follows:

1) contracting authorities referred to in Article 2 paragraph 1 items 1, 2 and 3 of this Law performing one or more relevant activities referred to in Article 109 of this Law;

2) economic operators performing one or more activities referred to in Article 109 of this Law over which one or more contracting authorities may directly or indirectly exercise dominant influence;

3) economic operators which under special or exclusive rights granted to them by a competent body perform one or more activities referred to in Article 109 of this Law, and which are not contracting authorities or economic operators as specified in items 1 and 2 of this paragraph.

Dominant influence exerted by the contracting authorities within the meaning of paragraph 1 item 2 of this Article shall exist in case when such contracting authorities, directly or indirectly:

- hold the majority of the subscribed capital of the business organization,
- control the majority of the votes attaching to shares issued by the business organization, or
- may appoint more than half of supervisory or managing body of that business organization.

Special or exclusive right within the meaning of paragraph 1 item 3 of this Article shall be any right granted by the competent body in accordance with the law, the effect of which is to restrict performance of activities referred to in Article 109 of this Law to one or more economic operators, which significantly reduces the capability of other economic operators to perform such activities.

As regards the procedures not regulated by the Articles 108 to 113 of this Law, the contracting authorities referred to in paragraph 1 of this Article shall apply the provisions contained in Chapter II of this Law.

Relevant Activities

Article 109

Relevant activities within the meaning of Article 108 paragraph 1 of this Law shall be:

- 1) Activities in the field of water management, as follows:

- provision or putting in operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of drinking water and supply of drinking water to such networks;

- hydraulic engineering projects, irrigation or water drainage, on condition that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such hydraulic engineering projects or irrigation or drainage, or

- the treatment and drainage of wastewater;

2) Activities in the field of energy, as follows:

- provision or putting in operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of electricity and supply of electricity to such networks;

3) Activities in the field of gas and heat, as follows:

- provision or putting in operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of gas and heat and supply of gas and heat to such networks;

4) Activities in the field of exploring or production of oil and gas (hydrocarbon), coal and other solid fuels in connection with exploitation of a geographic area for the purposes of:

- exploring or production of oil and gas (hydrocarbon);
- exploring or extracting of coal and other solid fuels.

5) Activities in the field of transport, as follows:

- Provision or putting in operation of networks intended to provide service to the public in connection with transport by railway, urban rail, automated systems, tramways, buses, trolley buses or cable.
- Exploitation of a geographic area for the purpose of provision of services of airport and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways.

6) Activities in the field of postal traffic, as follows:

- provision of postal services;
- provision of services other than postal, on condition that such services are provided by an entity which provides postal services and such services are not directly exposed to competition.

It shall be deemed that a network in the field of transport within the meaning of paragraph 1 item 5 of this Article exists if transport services are

provided under operating conditions prescribed by a competent body (such as the conditions related to the routes where transport services are provided, capacities made available or the frequency of the service).

Postal services within the meaning of paragraph 1 item 6 of this Article shall include the services of receiving, sorting, transport and distribution of postal items as follows:

- 1) reserved postal services,
- 2) unreserved postal services.

Postal services within the meaning of paragraph 3 of this Article shall be the following:

1) mail service management services (services both preceding and subsequent to despatch of the mail);

2) added-value services linked to and provided entirely by electronic means, including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;

3) services not included in paragraph 5 of this Article, such as direct mail bearing no address;

4) financial services, as defined in the Common Procurement Vocabulary by reference to numbers 66100000-1 to 66720000-3 of nomenclature and in Article 3 paragraph 1 item 7 of this Law, including in particular postal money orders and postal gyro transfers;

5) philatelic service and

6) logistics services (combining physical delivery and/or warehousing with other non-postal functions).

Postal item within the meaning of paragraphs 3 and 4 of this Article shall be an item addressed in the form in which it is to be delivered, such as letters and other postal items, including books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of their weight.

Activities other than relevant

Article 110

Within the meaning of Article 109 of this Law, the following shall not be considered as relevant activities:

1) supply of drinking water to the networks providing a service to the public by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:

- such entity produces drinking water for carrying out an activity which is not a relevant activity, and

- supply of drinking water to the network depends exclusively on such entity's own consumption and does not exceed 30% of entity's total average

production of drinking water over the previous three years, including the current year;

2) supply of gas or energy to the networks providing a service to the public by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:

- the production of gas or heat by such entity is the inevitable consequence of carrying out an activity other than relevant activity, and
- supply to the network is aimed exclusively the economic exploitation of such production, and it does not exceed 20% of the entity's average turnover for the previous three years, including the current year;

3) supply of electricity to the networks providing a service to the public by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:

- such entity produces electricity for carrying out an activity other than relevant activity, and
- supply to the network depends exclusively on such entity's own consumption and does not exceed 30% the entity's average energy production for the previous three years, including the current year;

4) The provision of public bus transport services, where other entities may provide such services in general or within the specific geographic area under the same conditions as the contracting entity.

Exemptions

Article 111

Provisions of this Law shall not apply to the following:

1) Contracts awarded by contracting authorities for:

- the services of research and development other than those where the benefits accrue exclusively to the contracting authority for its own use in the conduct of its own affairs on condition that the provided service is fully paid by such contracting authority;
- the sale or lease to third parties provided that the contracting authority enjoys no special or exclusive rights to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting authority.
- the purposes other than the pursuit of relevant activities of the contracting authority referred to in Article 109 of this Law or for the pursuit of such activities in a third country, in conditions not involving the physical use of system or geographic zones within Montenegro;
- the purchase of water procured by a contracting authority performing the activities referred to in Article 109 paragraph 1 item 1 of this Law;

- the purchase of electric energy or of fuels for the production of energy procured by a contracting authority performing the activities referred to in Article 109 paragraph 1 item 2 of this Law;

- the purchase of electric energy for further reselling;

2) Contracts awarded by contracting authorities to an affiliated undertaking;

3) Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law to a business organisation related to one of such contracting authorities;

4) Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law, to one of these contracting authorities;

5) contracts awarded by contracting authorities to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out a relevant activity over a period of at least three years and that the instrument (the contract) setting up the joint venture stipulates that the contracting authorities, which form such joint venture, will be part thereof for at least three years.

Notwithstanding paragraph 1 items 2 and 3 of this Article, the provisions of this Law shall apply to the following:

1) service contracts provided that at least 80% of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to business organizations with which it is affiliated;

2) to supplies contracts provided that at least 80% of the average turnover of the affiliated undertaking with respect to supplies delivered for the preceding three years derives from the provision of such supplies to business organizations with which it is affiliated;

3) to works contracts provided that at least 80% of the average turnover of the affiliate undertaking with respect to works for the preceding three years derives from the provision of such works to business organizations with which it is affiliated.

Where the turnover of the affiliated undertaking is not available for the preceding three years because of the date on which the said undertaking was created or commenced activities, it will be sufficient to make that turnover probable particularly by means of business projections.

Where two or more business organizations affiliated with the contracting authority provide the same or similar services, supplies or works, the percentages referred to in paragraph 2 of this Article shall be calculated taking

into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

Within the meaning of the paragraphs 1 to 3 of this Article, affiliated undertaking shall be any business organization the annual accounts of which are consolidated with those of the contracting authority in accordance with regulations governing accountancy and auditing, or, any business organization over which the contracting authority may exercise, directly or indirectly, a dominant influence within the meaning of Article 108 paragraph 2 of this Law, or which, in common with the contracting authority, is subject to the dominant influence of another business organization by virtue of ownership, financial participation or the rules.

Selection of public procurement procedures

Article 112

When awarding public procurement contracts in the field of water management, energy, transport and postal traffic, contracting authorities may use public procurement procedures referred to in Article 20 of this Law under the conditions, rules and value scales specified in Chapter II of this Law, while in the case of negotiated procedure with prior publication of contract notice may be used without adhering to the conditions referred to in Article 24 paragraph 1 and Article 31 of this Law.

When awarding public procurement contracts referred to in paragraph 1 of this Article, contracting authorities may set up and operate a system of qualification of the business organizations (hereinafter: qualification system), subject to provisions of Article 113 of this Law.

Qualification system

Article 113

Contracting authority in the field of water management, energy, transport or postal traffic intending to establish and operate a qualification system shall publish a notification thereof on the Public Procurement Portal.

Where a qualification system is of duration greater than three years, contracting authority shall publish the notification of establishment of such qualification system once a year; where a qualification system is of a duration lesser than three years, contracting authority shall only publish initial notification.

The notification referred to in paragraph 1 of this Article shall indicate the purpose of the qualification system and the manner in which interested persons may request rules and criteria for the qualification.

Qualification system shall be operated in accordance with objective criteria and rules determined by the contracting authority for the qualification of candidates who request the operation of a qualification system.

The criteria and rules for qualification may be updated if so needed.

The criteria and rules for qualification shall involve conditions for the participation in public procurement procedure, in accordance with Articles 65 to 74 of this Law.

Where criteria and rules for qualification involve technical characteristics or specifications, provisions of Articles 50 to 52 of this Law shall also apply.

Contracting authority shall ensure that the business organizations are able to request qualification in every moment.

Qualification system may consist of several different qualification stages.

Candidate for qualification may submit a request for qualification in every moment, and the contracting authority shall evaluate their request for qualification within the shortest possible time period, and not later than six months after the day of submission of such request, and notify the candidates of its decision.

Where the decision takes longer than four months from the submission of request for qualification, the contracting authority shall notify the candidate of the reasons for which such decision has not been made and of the date by which their request will be decided.

Contracting authority shall notify candidates whose request for qualification has been refused immediately, and not later than 15 days from the day of such decision.

Reasons for refusal of a request for qualification shall be based on the criteria for qualification referred to in paragraph 4 of this Article.

Contracting authority shall keep records of qualified business organizations included in the qualification system, which may be divided into categories according to the type of public procurement contracts to which the qualification refers.

Contracting authority shall publish the list of qualified bidders on its Internet page.

Contracting authority shall conduct public procurements based on established qualification systems in accordance with rules determined for the second phase of restricted public procurement procedure or the second phase of negotiated public procurement procedure with prior publication of invitation to tender, and supply all bidders included in the qualification system for the concerned subject of procurement with invitation for the submission of bids.

Contracting authority may bring the qualification of a previously qualified bidder to an end for reasons which are based on the criteria and rules for qualification, and it shall notify in writing the bidder thereof at least 15 days before the date on which the qualification is due to end, together with the reasons justifying such ending of qualification.

Contracting authority may use qualification systems established by other contracting entities.

Ministry shall prescribe the form of notification referred to in paragraph 1 of this Article.

IV. PUBLIC PROCUREMENT IN ELECTRONIC FORM

1. Conditions and Manner of Conducting

Manner of Conducting

Article 114

To conduct the electronic system of public procurement, the contracting authority must provide the following:

- 1) communication, exchange and storage of information, in such a manner as to ensure data integrity and bid confidentiality;
- 2) protection of the data contained in the bid before expiration of the time limit for their opening;
- 3) that information related to specific requirement regarding the electronic submission of bids be made available to all bidders and candidates.

Electronic Form of Writings

Article 115

When a public contract procedure is conducted in electronic form, the review of tender documents, modifications of and additions to tender documents, submission of suitability evidence, bidders' clarification, and other communication and information shared between the contracting authority and bidders, or candidates, shall be performed through the electronic system of public procurement.

Bid in Electronic Form

Article 116

Bidder may submit a bid in electronic form only if the possibility of submission of bids in electronic form is indicated in the contract notice or invitation to tender.

A bid in electronic form must be signed by an advanced electronic signature.

A bid in electronic form must have a time stamp in accordance with the law regulating the electronic signature.

The more detailed manner of conducting public contract procedure in electronic form shall be prescribed by the Ministry with consent of the state authority competent for the information society affairs.

IVa PROCUREMENTS IN THE FIELD OF DEFENCE AND SECURITY

Covered parties

Article 116 a

Provisions of Articles 116a to 116i of this Law shall be applied by contracting authorities for the procurement of:

- 1) military equipment, including all its parts, components and/or subassemblies thereof;
- 2) security sensitive equipment, including all parts, components and/or subassemblies thereof;
- 3) supplies, services and works directly connected to the equipment referred to in items 1 and 2 of this paragraph, for any and all elements of its lifecycle;

- 4) services and works exclusively for military purposes;
- 5) security sensitive services and security sensitive works.

Exemptions **Article 116 b**

This Law shall not apply to the following:

- 1) procurements governed by special procurement regulations in accordance with an international agreement or arrangement concluded between Montenegro and one or more countries;
- 2) procurements governed by special procurement regulations in accordance with an international agreement or arrangement relating to the stationing of troops and applying to business organizations in Montenegro, EU Member State or other country;
- 3) procurements which must be awarded by Montenegro under specific regulations of an international organisation;
- 4) procurements where the application of provisions of this Law would impose an obligation on Montenegro to provide information the disclosure of which is contrary to the vital interests of its security;
- 5) procurements for the purpose of intelligence activities;
- 6) procurements within cooperation programmes between Montenegro and at least one EU Member State which are based on research and development, for the purpose of development of a new product and, where applicable, for later stages of all or part of the lifecycle of such product;
- 7) procurements awarded in a third country, including those for civil purposes, carried out when forces are deployed outside the territory of the European Union where operational needs require such contracts to be concluded with the bidders located in the area of operations;

By way of derogation from paragraph 1 of this Article, this Law shall apply to the research and development services where the benefits accrue exclusively to the contracting authority in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.

Unless otherwise provided for by this Law, the provisions of Chapter II of this Law shall apply to the procurements referred to in paragraph 2 of this Article, and in the Articles: 116a and 116c to 116i of this Law respectively.

Selection of public procurement procedure

Article 116 c

For procurements in the fields of defence and security, contracting authority may use the restricted public procurement procedure and negotiated

procedure with prior publication of contract notice, as well as negotiated procedure without prior publication of contract notice.

Within the meaning of paragraph 1 of this Article, the provisions referred to in Article 24 paragraph 1 and Article 31 of this Law shall not apply for the restricted public procurement procedure as well the negotiated public procurement procedure with the prior publication of the contract notice.

The contracting authority may continue with the procedure within the restricted procurement procedure in case the number of the bidders qualified for the phase I thereof is less than three.

Contracting authority may enter into framework agreements or award contracts based on a framework agreement concluded in accordance with Article 26 and 26a of this Law.

The term of a framework agreement referred to in paragraph 3 of this Article may not exceed seven years, except in exceptional circumstances determined in accordance with the expected life cycle of any delivered items of public procurement, installations or systems and the technical difficulties which may be caused by a change of business organization.

Contracting authority shall in the contract notice or in the invitation to tender state the valid reasons regarding the circumstances of the paragraph 5 of this Article.

Protection of classified information in the procedures of public procurement and conclusion and execution of contracts

Article 116 d

Where a contracting authority communicates classified information to the bidders, within the procedure of a public procurement or in the course of conclusion and execution of a contract, these bidders shall comply with regulations governing the confidentiality of information.

Where a subcontractor who is familiar with classified information participates in a public procurement procedure or execution of a public procurement contract, such subcontractor, it shall comply with the requirements alike the bidder and contractor, in accordance with regulations governing confidentiality of information.

Special conditions for performance of contract

Article 116 e

Contracting authority may provide within tender documents the special conditions relating to the performance of a public procurement contract, provided that such conditions are connected with the subject of the said contract and are non-discriminatory.

The conditions referred to in paragraph 1 of this Article may in particular refer to:

- 1) protection of the security of classified information, in accordance with Article 116d of this Law;
- 2) protection of the security of supplies, in accordance with Article 116g of this Law,
- 3) subcontracting, in accordance with Article 116h of this Law,
- 4) social and environmental requirements.

Protection of classified information during execution of contract

Article 116 f

Where a public procurement contract involves, requires and/or contains classified information, contracting authority shall determine the measures and conditions necessary to ensure the security of such classified information at the requisite level.

For the purpose of protection of security of information referred to in paragraph 1 of this Article, contracting authority may require that the bids contain, in particular, the following:

- 1) a commitment from the bidders and subcontractors already identified to appropriately safeguard the confidentiality of classified information in their possession or coming to their notice throughout the conclusion and duration of the public procurement contract and after termination of the public procurement contract, in accordance with regulations governing the confidentiality of information;
- 2) a commitment from the bidders to ensure the safeguarding of confidentiality of classified information referred to in item 1 of this paragraph by other subcontractors which they will subcontract during the execution of the public procurement contract;
- 3) necessary information on the subcontractors already identified to enable the contracting authority to determine that each of them possesses the capabilities required to appropriately safeguard the confidentiality of the classified information to which they have access or which they are required to produce when carrying out their subcontracting activities;
- 4) a commitment from bidders to provide information referred to in item 3 of this paragraph for any new subcontractor before awarding a subcontract.

Measures and requirements referred to in paragraph 2 of this Article shall comply with the provisions of regulations governing the area of security clearance.

If the contracting authority assesses that the bidder does not meet the requirements and demands regarding the protection of confidentiality of data

referred to in paragraphs 1 and 2 of this Article, he is obliged to explain it in the decision on selection of the most favourable bid.

Security of supply

Article 116 g

For the purpose of ensuring the security of supply requirements, a contracting authority may request that submitted bids contain in particular the following:

- 1) certification or documentation demonstrating to the satisfaction of the contracting authority that the bidder will be able to honour its obligations regarding the export, transfer or transit of goods of the contract, including the other supporting documentation received from certain country or countries ;
- 2) the indication of any restriction on the contracting authority regarding disclosure, transfer or use of supplies or any result of export control or security arrangements;
- 3) certification or documentation demonstrating that the organisation and location of the supply chain will allow the bidder to comply with the requirements of the contracting authority concerning security of supply set out in the tender documents, and a commitment to ensure that possible changes in the supply chain during the execution of the contract must not affect adversely compliance with these requirements;
- 4) a commitment from the bidder to establish and/or maintain the capacity required to meet additional needs required by the contracting authority or contracting entity in case of a crisis, according to already agreed terms and conditions;
- 5) any other documentation received from the bidder's national authorities regarding the fulfilment of additional needs required by the contracting authority in case of a crisis;
- 6) a commitment from the bidder to carry out the maintenance, modernisation or adaptation of the supplies covered by the contract;
- 7) a commitment from the bidder to inform the contracting authority in due time of any change in its organisation, supply chain or industrial strategy which may affect its fulfilment of the obligations to that contracting authority;
- 8) a commitment from the bidder to provide the contracting authority, according to terms and conditions already agreed, with all the means necessary for the production of spare parts, components, assemblies and special testing equipment, including technical drawings, licenses and instructions for use, in the event that it is no longer able to provide these supplies.

Where according to the assessment of a contracting authority a bidder fails to comply with the measures and requirements referred to in paragraph 1 of this Article, the contracting authority should specify the reasons in their decision for the selection of the most favourable bid.

Subcontracting

Article 116 h

The most favourable bidder may select its subcontractors for all subcontracts it intends to award, except in case referred to in paragraph 3 of this Article.

Contracting authority must not require from the most favourable bidder to discriminate against potential subcontractors on grounds of nationality.

Contracting authority may require that bidders specify in their bids the following:

- 1) any part of the contract it may intend to subcontract to third parties, information pertaining to any proposed subcontractors, as well as any part or parts of the public procurement contract that will be subject of the subcontract, and/or
- 2) information on any change occurring at subcontractors during the execution of the public procurement contract.

Contracting authority may require from the most favourable bidder to subcontract to third parties a certain share (percentage) of the contract.

In the case referred to in paragraph 4 of this Article, the contracting authority shall specify the minimum of the subcontract in the form of a range of values, comprising a minimum and maximum percentage.

The maximum percentage of a subcontract shall not exceed 30% of the contract value.

The range of value of a subcontract should be proportionate to the subject of the contract, the estimated value of the contract and the nature of the industry sector involved, including the level of competition in the market and relevant technical capabilities of the industrial base.

Any percentage of subcontracting falling within the range of values indicated by the contracting authority shall fulfil the subcontracting requirements provided for in paragraph 4 of this Article.

Contracting authority shall require from bidders to specify in their bid which part or parts of their bid they intend to subcontract to fulfil the requirements referred to in paragraph 4 of this Article.

The most favourable bidder shall award subcontracts corresponding to the percentage which the contracting authority requires it to subcontract in accordance with paragraph 4 of this Article by way of carrying out the subcontracting procedure referred to in Article 116i of this Law.

Bidders may propose to subcontract a share of the total value which is above the range required by the contracting authority in accordance with paragraph 4 of this Article.

The participation of subcontractors shall be without prejudice to the liability of bidders for the execution of a public procurement contract.

Subcontracting procedure

Article 116 i

Within the meaning of Article 116h paragraph 4 of this Law, members of the groups of candidates or bidders which have been formed in order to win the contract, or the business organizations related to them, shall not be considered third parties.

Bidders shall include in their bids the exhaustive list of the business organizations related to them.

The list referred to in paragraph 2 hereof shall be updated by the bidder following any change in the relationship between these affiliated undertakings.

For the purpose of paragraph 1 of this Article, an affiliated undertaking shall be any business organization over which the most favourable bidder exercises or may exercise a dominant influence, whether directly or indirectly, or any business organization which exercises or may exercise a dominant influence over the most favourable bidder or which, as the most favourable bidder, is subject to a dominant influence of another business organization by virtue of ownership, financial participation or special regulations.

A dominant influence referred to in paragraph 4 of this Article shall exist where the business organization, directly or indirectly, in relation to another business organization:

- holds the majority of the business organization's subscribed capital;
- controls a majority of the votes attached to the shares issued by the business organization, or
- is entitled to appoint more than half of the business organization's administrative and supervisory structures.

The most favourable bidder shall act transparently and treat all potential subcontractors in an equal and non-discriminatory way.

When awarding subcontracts to third parties, the most favourable bidder shall publish subcontract notifications on the Public Procurement Portal, if the estimated value of the contract including VAT is above the value scale III defined in accordance with Article 21 of this Law.

When awarding subcontracts to third parties the estimated value of which, excluding VAT, is estimated as equal or below the value scale III defined in Article 21 of this Law, the most favourable bidder shall act according to the principles of transparency and competitiveness.

The bidder may, if necessary, state other information deemed significant in the subcontract notification with the prior consent of the contracting authority.

V. PUBLIC PROCUREMENT RECORDS AND REPORTING

1. Records, Reporting and Documentation Keeping

Record on Public Procurement Procedures

Article 117

Contracting authorities shall:

- 1) keep records on conducted public procurement procedures;
- 2) keep records on concluded public procurement contracts.

The records referred to in paragraph 1 of this Article shall contain in particular: reference number of public procurement, type of public procurement procedure, subject of public procurement, time limits for making decisions in the procedure, number of submitted, valid, refused or rejected bids, and date and reference number of decisions on selection of the most favourable bid.

The more detailed content, manner of keeping and form of records referred to in paragraph 2 of this Article shall be determined by the Ministry.

Reporting

Article 118

A contracting authority shall, by 28 February of the current year at the latest, submit to the competent state authority the report on conducted public procurement procedures and on public contracts concluded in the previous year. The report referred to in paragraph 1 of this Article shall be submitted both in written and in electronic form.

The competent state authority shall prepare an annual report on conducted public procurement procedures and on public contracts concluded in the previous year and submit it to the Government by 31 May of the current year at the latest.

The content and form of the report referred to in paragraph 1 of this Article shall be determined by the Ministry.

Preservation of Records

Article 119

A contracting authority shall preserve the documents regarding a public procurement procedure for at least five years, in accordance with the Law.

Exceptionally, a contracting authority shall preserve the documents regarding a public procurement procedure for contracts of contracted value not exceeding EUR 15 000 for three years, in accordance with the Law.

VI. PROTECTION OF RIGHTS IN THE PUBLIC PROCUREMENT PROCEDURE

1.Procedure for protection of the rights and responsibilities for decision making

Ensuring of legal protection

Article 120

Protection of rights of the participants in a public procurement procedure and public interest, at all stages of a public procurement procedure, shall be provided in the manner and under the conditions laid down in this Law.

Subsidiary application of the provisions of the Law on Administrative Procedure

Article 121

Unless otherwise prescribed by this Law, the provisions of the law governing the general administrative procedure shall apply accordingly to the submission of the minutes and decisions in the public procurement procedure, forms and integral parts of the decision, calculation of time limits and legal protection in appeal procedure.

Initiation of the procedure of legal protection

Article 122

A procedure for the protection of rights shall be initiated by lodging an appeal before the State Commission for the Control of Public Procurement Procedures (hereinafter referred to as: State Commission).

The appeal shall be lodged directly through the contracting authority, or by means of registered mail or by electronic mail containing the advanced electronic signature.

An appeal may be lodged against the following:

- 1) tender documents
- 2) decision on the selection of the most favourable bid;
- 3) decision on the suspension of the public procurement procedure;
- 4) decision on the annulment of the public procurement procedure.

The appeal referred to in paragraph 3 item 1 of this Article may contest the following:

- 1)content of the tender documents;
- 2) manner of publication or delivery of tender documents;
- 3) amendments and clarification of tender documents;
- 4) failure in providing clarification of tender documents;

The appeal referred to in paragraph 3 items 2 and 3 of this Article may be lodged against the following:

- 1) procedure of receipt of bids;
- 2) procedure of public opening of bids and the content and manner of despatch of the minutes of public opening of bids;

- 3) procedure of review, assessment, comparison and evaluation of bids;
- 4) lawfulness of the decision on the selection of the most favourable bid
- 5) lawfulness of the decision on the suspension of the public procurement procedure;

The appeal referred to in paragraph 3 item 4 of this Article may contest the lawfulness of the decision on the annulment of the public procurement procedure.

In the case referred to in paragraph 4 of this Article, appeals may be lodged by the interested person from the date of publication or submission of tender documents until the date required for opening the bids, whereas the appeal must to be delivered to the contracting authority no later than the expiry of the deadline prescribed for submission of bids.

In the case referred to in paragraph 5 of this Article, appeals may be lodged by the bidder within ten days from the day of delivery of the decision on the selection of the most favourable bid or the decision on the suspension of the public procurement procedure “.

In the case referred to in paragraph 6 of this Article, appeals may be lodged by the bidder within ten days from the day of delivery of the decision on the annulment of the public procurement procedure“.

Where an interested party has failed to lodge the appeal referred to in paragraph 3 item 1 of this Article within the time-limit referred to in paragraph 7 of this Article, they shall have no right as a bidder to present the reasons referred to in paragraph 4 of this Articles in the appeal against the decisions of the contracting authority referred to in paragraph 3 items 2, 3, and 4 of this Article.

Active legitimation in the procedure

Article 123

Appeals may be lodged both by bidders and interested parties.

Legal consequences of the submission of the complaint

Article 124

An appeal submitted in a good time shall terminate all further activities of the contracting authority in the procedure of public procurement, until the decision is made in respect of submitted appeal.

Exceptionally from paragraph 1 of this Article, State Commission may approve the continuation of the public procurement procedure, upon request of the contracting authority, in case that the contracting authority would suffer significant material damage caused by suspension of the procurement procedure that would be disproportionate to the value of the public contract or if the interest of Montenegro would be jeopardized and in the case referred to in Article 25 item 1 sub paragraph 3 of this Law.

The request referred to in paragraph 2 of this Article may be submitted within five days as of the day of receipt of the appeal.

The State Commission shall decide upon the submitted request referred to in paragraph 2 of this Article within three days as of the day of submission of request.

In case that the State Commission adopts the request referred to in paragraph 2 of this Article, the contracting authority shall notify all participants in the procedure within three days as of the day of submission of the decision.

Content of Appeal

Article 125

An appeal shall contain, in particular:

- 1) details of the appellant (title and head office, or name and address);
- 2) name and address of the contracting authority;
- 3) number and date of publication of the contract notice with subject of procurement;
- 4) number and date of delivery of the invitation to public tender with subject of procurement;
- 5) number and date of decision on selection of the most favorable bid, the annulment and other contracting authority's decisions;
- 6) reasons for lodging of the appeal with explanation;
- 7) proposal of evidence;
- 8) appeal application; and
- 9) signature of the authorized person.

An appellant shall, along with the appeal, enclose the evidence on payment of the reimbursement for the procedure costs.

The reimbursement referred to in paragraph 2 of this Article shall be paid by the appellant in amount of 1% of the estimated value of the public procurement, provided that that amount may not exceed EUR 8 000.

The reimbursement for the procedure costs shall be revenue of the Budget of Montenegro.

Where in an appeal procedure decision is made in favour of the appellant, the contracting authority shall reimburse such appellant for its costs referred to in paragraph 3 of this Article, within 15 days from the day on which the decision concerning the appeal becomes final.

The appellant, whose seat is outside the territory of Montenegro, shall appoint a commissioner for receipt of writings on the Montenegrin territory, or to determine another manner of submission of writings which shall not delay the submission procedure.

Treatment of Irregular Appeal

Article 126

In case that the appeal contains a formal deficiency that prevents acting upon the appeal or if the appeal is unintelligible or incomplete, the State Commission shall, within no longer than five days from the receipt of the appeal, request from the appellant to remove those deficiencies and determine a time limit for the correction.

If the appellant, within the prescribed time limit, does not correct its appeal, the State Commission shall dismiss the appeal by its decision.

Manner of Submitting an Appeal
Article 127

This Article shall be deleted.

Action of a Contracting Authority on Submitted Appeal
Article 128

A contracting authority shall, within eight days from the day of receipt of the appeal, submit to the State Commission the following:

- 1) appeal and response to appeal;
- 2) acts and documents relative to the public procurement with a list of appendixes;
- 3) original bids submitted;
- 4) other proofs relevant for decision making upon the appeal.

Powers of Contracting Authority Regarding the Submitted Appeal
Article 129

If a contracting authority establishes that the appeal is partly or in whole justified, it may annul the decision or substitute it with another decision; correct the performed actions in accordance with the request contained in the appeal or annul the public procurement procedure and inform all the participants of the procedure thereof.

An appeal may be lodged to the State Commission against the decision referred to in paragraph 1 of this Article.

A contracting authority, which used its powers referred to in paragraph 1 of this Article, shall immediately inform the State Commission thereof, and submit to the State Commission the original of the new decision with the proof that it has been distributed to all participants in the public procurement procedure.

Annulment of a Procedure due to Non-submission of Proofs
Article 130

In case that a contracting authority does not act in accordance with the Article 128 of this Law and does not submit acts and documents within 15 days from the day of submitting the appeal to the contracting authority, the State Commission may make a decision on annulment of the public procurement procedure.

Time Limits for Decision Making
Article 131

The State Commission must adopt a decision in respect of submitted appeal within 15 days from the day of receipt of the files and complete documentation on the public procurement procedure.

The time limit referred to in paragraph 1 above, may be extended for no more than 10 days in case there is a need for engagement of experts, obtaining opinions from the competent authorities and when the documents regarding the public procurement procedure are comprehensive, and the submitter of the complaint and contracting authority shall be informed thereof.

The State Commission shall submit the decision referred to in paragraph 1 of this Article, within three days as of the day of its adoption to the appellant and contracting authority and publish it on its internet page.

State Commission Decision-Making

Article 132

The State Commission shall decide on appeal by conclusion or decision.

The State Commission may, by means of a conclusion:

- 1) dismiss an appeal, if the appeal is unlawful, untimely and lodged by unauthorised person;
- 2) deter further procedure, by receiving a written notice from the appellant on abandonment of the lodged appeal.

The State Commission may, by means of a decision:

- 1) reject the appeal as groundless;
- 2) adopt the appeal as grounded and annul the public procurement procedure and the adopted decision, point to the contracting authority to the irregularities made and order conducting of a new procedure and making of a decision or undertaking of necessary measures aimed at elimination of such irregularities.

The State Commission shall explain its decision.

Contracting authority shall act in accordance with the State Commission's decision, and notify the State Commission thereof within the time limits determined by the State Commission.

If the State Commission determines that contracting authority has not implemented its decision within the determined time limit, it shall inform the Government of Montenegro or local self-government unit thereof, and propose initiation of a proceeding for determining liability.

Rules on providing evidence

Article 133

In the appeal procedure the parties shall present all the facts that their requests are based on and propose evidences which confirm the facts.

In the procedure of legal protection contracting authority shall prove the existence of facts and circumstances on the basis of which certain actions have been undertaken in the procedure and decisions, which are subject of the appeal, made.

In the procedure of legal protection the appellant shall prove or make the existence of facts probable, as well as the reasons for the violation of the public procurement procedure or substantive law, as indicated in the appeal.

Substantial Violations of the Law

Article 134

Substantial violations of the law in a public procurement procedure shall be the following:

- 1) carrying out a public procurement procedure without publishing or delivery of tender documents;
- 2) carrying out the public procurement procedure referred to in Articles 24 and 25 of this Law, without prior consent of the competent body referred to in Article 31 of this Law;
- 3) non-compliance of tender documents with the law, which might have led to the discrimination of the interested parties or the restriction of market competition or has led to the discrimination of bidders or to the restriction of tender documents.

In the case of substantial violation of the law referred to in paragraph 1 of this Article, the decision and/or part of the procedure or the entire public procurement procedure shall be annulled“.

“Contracting authority shall publish the decision on annulment of the public procurement procedure within three days of the day of its adoption on the public procurement portal and submit it to all bidders.

Limits of Action of the State Commission

Article 135

The State Commission shall make decisions within the limits of the filed appeal. The State Commission, ex officio, shall decide upon the relevant infringements referred to in Article 134 of this Law, regardless of the part of the public procurement procedure that has been the subject of the appeal.

Judicial Protection

Article 136

The decision made by the State Commission shall be final.
An administrative dispute may be launched against the decision of the State Commission.
The judicial protection procedure is of an urgent nature.

2. Organization and Status of State Commission

Independence of State Commission

Article 137

The State Commission shall be an autonomous and independent legal entity. Any form of influence over the work of the State Commission shall be forbidden. Any use of public authorities, media or public appearance for the purpose of influencing the course and the outcome of the procedure before State Commission shall be forbidden.
The State Commission has its stamp, in accordance with the Law.

The funds for the work of State Commission shall be allocated in the Budget of Montenegro.

Composition and Manner of Appointment of State Commission

Article 138

The State Commission shall have a president and four members performing their functions as a profession.

President and members of the State Commission may not perform any other public duty, nor perform any other activity professionally.

President and members of the State Commission shall be appointed by the Government, on basis of a public contest.

For the president of the State Commission appointment eligible may only be a law school graduate with bar examination passed and with no less than eight years of work experience, or at least five years of the experience in public procurement area.

For a member of the State Commission appointment eligible may only be a law school graduate who passed civil service exam, with no less than five years of work experience, or at least five years of the experience in public procurement area.

The president and members of the State Commission shall be appointed for a period of five years and may be reappointed.

Responsibilities and Authorizations of the State Commission

Article 139

The State Commission shall:

- 1) review complaints which have been made in public procurement procedures and make decisions in respect of them;
- 2) examine in the appeal proceedings the regularity of application of this Law and propose and undertake remedy measures for identified irregularities in public procurement procedures;
- 3) decide on requests of the contracting authorities whether to proceed with public procurement procedure when the appeal has been lodged in accordance with this Law;
- 4) decide on the requests in respect of the costs of the appeal proceedings;
- 5) monitor the execution of decisions in accordance with Article 132 paragraph 5 of this Law and undertake measures stipulated by the Law;
- 6) cooperate and exchange information in the area of public procurement with the competent authorities of other countries;
- 7) adopt rules of procedure;
- 8) perform other duties, in accordance with this Law.

Method of Work of the State Commission

Article 140

President of the State Commission shall represent the State Commission and shall manage its work.

The State Commission shall decide on appeals and other matters within its jurisdiction by majority vote of all its members.

Meetings of the State Commission shall not be public.

Method of work of the State Commission shall be in more details regulated by the Rules of Procedure.

Legal Department of the State Commission

Article 141

The State Commission has legal department that performs professional and administrative-technical tasks necessary for the work of the State Commission.

The head of the Legal department is the Secretary of the State Commission.

The Secretary of the State Commission shall be responsible to the President and Members of the State Commission for his/her work and the work of the Legal department.

The Secretary of the State Commission shall be appointed on the basis of the public contest by the State Commission, at proposal of the President of the State Commission in accordance with the regulations on the civil servants and state employees relating to the appointment of the senior management staff.

The Secretary of the State Commission may only be a law school graduate who passed civil service exam and the professional exam for performing the public procurement tasks with no less than three years of work experience.

The Secretary of the State Commission shall be appointed for a period of five years, and upon expiration of that period, he may be re-appointed.

The organization and job systematization of the Legal department of the State Commission shall be regulated by the act on internal organization and systematization which is passed by the State Commission, with the Government's consent.

The regulations on civil servants and state employees shall be applied to the staff of the Legal department of the State Commission.

Article 142

The State Commission shall submit to the Parliament for adoption an annual report for the previous year, no later than 30 June of the current year.

Term of Office and Release from Duty

Article 143

The term of office of the President and the Member of the State Commission shall cease in the following circumstances:

- 1) upon termination of office;
- 2) upon personal request;
- 3) upon removal from office.

The President and the Member of the State Commission shall be removed from office:

- 1) if convicted of a criminal act to effective prison term for the period of no less than six months or if convicted of a criminal act making them unworthy for performance of the function;
- 2) if, by a legally-binding decision, he/she has been deprived of the work capability;
- 3) if he/she performs other public duty or performs other activity professionally;
- 4) if the annual report referred to in Article 142 is not adopted;
- 5) if he/she is not capable of performing his/her duties in the course of a six months period;
- 6) if he/she does not perform his/her official duties, or if he/she performs these duties in a negligent, untimely or reckless manner.

Subject of Control
Article 144

This Article shall be deleted.

Omission of the Time Limit
Article 145

This Article shall be deleted.

Judicial Protection
Article 146

This Article shall be deleted.

VII. INSPECTION CONTROL

1. Authorized Persons and Subject of inspection Control
Public Procurement Inspector
Article 147

The inspection control over application of this Law and regulations passed upon basis of this Law shall be performed by the competent state authority.

The tasks of inspection control referred to in paragraph 1 of this Article shall be performed by public procurement inspectors, in accordance with this Law and the law governing the inspection control.

Subject of Inspection Control
Article 148

A public procurement inspector shall perform inspection control in particular over the following:

- 1) adoption, amendments and publishing of public procurement plans;
- 2) fulfilment of conditions for the performance of tasks of public procurement officers and of the Commission for the opening and evaluation of bids;
- 3) fulfilment of conditions for initiating public procurement procedures;
- 4) content, publishing, advertising and amendments and the submission of tender documents;
- 5) content, manner and timeliness of publishing and delivery of clarifications of tender documents;
- 6) establishment and extension of time limits for the submission and opening of bids;
- 7) implementation of anticorruption measures and measures for the prevention of conflict of interest in public procurement procedures;
- 8) keeping and storing records and documents on public procurements;
- 9) application of rules of reception of bids, and of issuance and provision of related proofs;
- 10) application of rules for the opening of bids, preparation, content and delivery i.e. submission of the minutes of public opening of bids;
- 11) application of rules for the procedure of review, assessment and evaluation of bids;
- 12) adherence on the part of contracting authorities to the time limits for the adoption of decisions on the completion of public procurement procedure;
- 13) content of decisions of contracting authorities
- 14) conclusion and implementation of the public procurement contracts“.

Public procurement inspector may perform the inspection control over actions and decisions referred to in paragraph 1 items 3 to 12 of this Article until the expiry of the time limit laid down for the lodging of appeals.

The inspector referred to in paragraph 1 of this Article shall not perform control over actions and decisions of the contracting authority against which an appeal has been lodged to the State Commission.

VIII. PENALTY PROVISIONS

1. Misdemeanour Liability

Offences

Article 149

A fine ranging from EUR 2 000 to EUR 20 000 shall be imposed on a legal person for if:

- 1) if it fails to record the violation of anti-corruption rules, to make an official note thereof or to submit a report to the competent state authorities for the purpose of undertaking measures in accordance with the Law and if it fails to notify the competent authority (Article 15 paragraph 3);
- 2) if it fails to take the necessary actions in order to prevent the conflict of interest of the persons participating in a public procurement procedure (Article 16 paragraph 1);
- 3) if it fails to record the cases of conflict of interest referred to in Articles 16 and 17 of this Law and if it fails to notify the competent authority without any delay (Article 18 paragraph 4);
- 4) if it fails to adopt, to publish on the Public Procurement Portal or to submit to the applicants the decision on selection of the qualified candidates with a rationale within five days as of the day of its adoption (Article 23 paragraphs 5 and 6);
- 5) if it fails to submit the decision on the selection of the most favourable bid for the award of public procurement contracts under framework agreement referred to in Article 26a, paragraph 4,5,6 and 7 of this Law to all bidders which submitted the bid and fails to publish it on the public procurement portal (Article 26a paragraph 9);
- 6) if it fails to adopt and submit to the competent state authority a public procurement plan, so that it could be published on the Public Procurement Portal, by not later than 31 January of the current fiscal i.e. financial year (Article 38 paragraph 1);
- 7) if it fails to observe the conditions and manner of conducting a public procurement procedure and, during a fiscal i.e. financial year, split the subject of procurement that is a whole, with an intention of avoiding the application of this Law and the prescribed public procurement procedure (Article 44 paragraph 4);
- 8) if it fails to publish on the Public Procurement Portal tender documents for the implementation of open procedures, restricted procedures phase I, negotiated procedure with prior publication of contract notice phase I, contest and shopping (Article 54 paragraph 1);
- 9) if it fails to supply bidders with the clarification of tender documents and fails to publish such clarification on the Public Procurement Portal, depending on the type of public procurement procedure, within three days from the day of receipt of the request (Article 56 paragraph 3);
- 10) if it fails to establish for public procurements of estimated value over EUR 30 000, in the contract notice or invitation to tender the obligation to submit the performance guarantee, advance payment guarantee or other guarantees, for the purpose of protection from the breach of a public procurement contract before such contract is concluded (Article 57 paragraph 2);

- 11) if it fails to activate guarantees referred to in Article 57 paragraph 1 of this Law in the event of breach of the contract by the selected bidder (Article 57 paragraph 4);
- 12) if it fails to submit to the competent state authority the decision on appointment of the person for the performance of tasks referred to in Article 58 paragraph 2 of this Law (Article 58 paragraph 3);
- 13) if it fails to publish the notification on public procurement procedure referred to in Article 54 paragraph 1 of this Law in one daily printed media which is issued and distributed in the entire territory of Montenegro and available on the Internet, no later than three days from the date of publishing the tender documents on the public procurement portal (Article 62 paragraph 1);
- 14) if it fails to accept the proof on fulfilment of quality standards in other form, in case that the bidder provides a proof that it has no possibility or right to request the proofs referred to in Article 73 paragraph 1 of this Law (Article 73 paragraph 2);
- 15) if it fails to deliver the decision on cancellation of public procurement procedure, with a rationale, to the bidders no later than three days from the day of adoption of that decision, and fails to publish it on the Public Procurement Portal (Article 105 paragraph 4);
- 16) if it fails to publish on the Public Procurement Portal or fails to submit the decision referred to in Article 106 paragraph 1 of the Law to the bidders (Article 106 paragraph 5);
- 17) if it adopts the decision on selection of the most favourable bid without previously conducted public procurement procedure, even though it had the obligation to conduct the procedure (Article 106 paragraph 6);
- 18) if it fails to request from the bidder whose bid has been selected as the most favourable and who has refused to enter into the public procurement contract a compensation of damages amounting to 10% of the offered amount of their bid; and the bidder shall compensate the contracting authority for the damages (Article 107 paragraph 7);
- 19) if it fails to submit the public procurement contract to the competent state authority, within three days from the date of conclusion, for the purpose of its publication on the Public Procurement Portal (Article 107 paragraph 8);
- 20) if it fails to notify candidates whose request for qualification has been refused immediately, and not later than 15 days from the day of such decision (Article 113 paragraph 12);
- 21) if it fails to keep records of qualified business organizations included in the qualification system in accordance with the type of public procurement contracts for which the qualification is valid (Article 113 paragraph 14);
- 22) if it fails to publish the list of qualified economic operators on its Internet page (Article 113 paragraph 15);

- 23) if it fails to keep records on conducted public procurement procedures (Article 117 paragraph 1 item 1);
- 24) if it fails to keep records on concluded public procurement contracts (Article 117 paragraph 1 item 2);
- 25) if it fails to submit to the competent state authority the report on conducted public procurement procedures and on concluded public contracts concluded in the previous year by 28 February of the current year at the latest (Article 118 paragraph 1);
- 26) if it fails to store the documents regarding a public procurement procedure for at least five years (Article 119 paragraph 1);
- 27) if it fails to store the documents regarding a public procurement procedure for contracts of contracted value not exceeding EUR 15 000 for three years (Article 119 paragraph 2);
- 28) if it fails to terminate all further activities in the procedure of public procurement, until the decision is made in respect of submitted appeal (Article 124 paragraph 1);
- 29) if it fails within eight days from the day of receipt of the appeal to submit to the State Commission the following: appeal and response to the appeal, files and documents related to the public procurement with a list of appendixes and the original bids (Article 128);
- 30) if it fails to act in accordance with the State Commission's decision, or fails to notify the State Commission thereof within the time limits defined (Article 132 paragraph 5);

For an infringement referred to in paragraph 1 of this Article a responsible person of the legal person, the state authority or the local self-government unit shall be fined by pecuniary fine ranging from EUR 250 to EUR 2 000.

An entrepreneur shall be fined by a fine ranging from EUR 500 to EUR 6000 for the misdemeanour referred to in paragraph 1 of this Article.

'Misdemeanours of the natural persons

Article 149a

A fine ranging from EUR 200 to EUR 2000 shall be imposed on a person referred to in Article 16, paragraph 2 if it enters into employment or is engaged on any other ground by the bidder awarded a public procurement contract in the procedure participated by the said person, bidder's legal successor, or a party related to them, for at least two years after the public procurement contract has been awarded (Article 16, paragraph 2).

IX. TRANSITIONAL AND FINAL PROVISIONS

Commenced Procedures

Article 150

A public procurement procedure commenced before this Law enters into force shall be conducted in accordance with the regulations based on which it has been initiated.

Continuance of the State Commission's Operation

Article 151

The Commission for control of public procurement procedures and the Secretary of the Commission for control of public procurement procedures, appointed in accordance with the effective Public Procurement Law ("Official Gazette of Montenegro", No: 46/06) shall continue their operations until appointment of the President and members, that is, the appointment of the Secretary of the State Commission, in accordance with this Law.

The appointment of the President and members, that is, the appointment of the Secretary of the State Commission shall be conducted within 90 days as of the day of entering into force of this Law.

'Appointment of the Secretary of the State Commission

Article 151a

The appointment of the Secretary of the State Commission shall be conducted in accordance with this Law within three months as of the day of entering into force of this Law.

Time Limit for Passing the Professional Exam

Article 152

The employees who have worked on the public procurement system tasks, as well as the public procurement officers shall be obliged to take a professional examination referred to in Article 60 of this Law within one year as of the day this Law enters into force.

Secondary Legislation

Article 153

The secondary regulations that based on the authorizations established by this Law shall be passed within six months from the day this Law enters into force.

The secondary regulations passed on basis of the Public Procurement Law ("Official Gazette of Montenegro", No: 46/06) shall be applied until the secondary regulations referred to in paragraph 1 of this Article enter into force.

Time-limit for Secondary legislation

Article 153a

Secondary legislation deriving from this Law shall be adopted within 120 days from the day of entering into force of this Law.

Initiated Procedures

Article 153b

Public procurement procedures initiated before the commencement of implementation of this Law shall be completed by the regulations under which they had been initiated'

Termination of Effect

Article 154

As of the day of start of implementation of this Law, the Public Procurement Law ("Official Gazette of Montenegro", No: 46/06), as well as the provisions of the Article 181 of the Law on Energy ("Official Gazette of Montenegro", No: 28/10) shall cease to apply.

Termination of Effect

154a

The Decree on Foreign Trade in Special-Purpose Funds (Official Gazette of the Republic of Montenegro 66/10) shall be repealed on the day of commencement of implementation of this Law.

Entry into force

Article 155

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro, and it shall be applicable upon expiry of 120 days from the day of its entry into force.