

# **PUBLIC PROCUREMENT LAW**

## **I. BASIC PROVISIONS**

### **1. The Subject of the Law**

#### *The Scope of Regulation*

##### **Article 1**

This Law lays down: the conditions, the manner and the procedure for procurement of goods, services, and works when the procuring entity is a state organ, organization, institution or some other legal person ascertained by this Law; the manner of keeping records of contracts and other data concerning public procurement, as well as the manner of protecting the tenderers' rights; the establishment of the Public Procurement Office as an organization authorized to deal professionally with tasks pertaining to public procurement and other public procurement issues of importance.

#### *Procurements Exempt from the Law*

##### **Article 2**

The provisions of this Law shall not apply to:

- 1) public service contracts awarded to an entity which is itself a procuring entity within the meaning of this Law and have been established for the purpose of providing services that are the subject of public procurement;
- 2) procurements in pursuance of an international agreement pertaining to supplying goods, performing work, providing services or public tenders for design, stipulating joint implementation or exploitation of a project on the part of the states or organizations having concluded the agreement;
- 3) procurements for ensuring fundamental life conditions in the case of natural disasters, other accidents or damages, according to the regulations on protection against such disasters, accidents or damages;
- 4) procurements of armaments and other procurements of confidential nature as prescribed by special regulations.

For procurements referred to in paragraph 1 item 4 of this Article, a procuring entity shall notify the Public Procurement Office of procurement plans for the current year by January 31st at the latest.

## **2. Terms**

#### *The Meaning of Terms as Used in this Law*

##### **Article 3**

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

1) *procuring entity* shall mean:

- (a) a state body, organization, institution or another direct or indirect budget user according to the law regulating the budget system, as well as an organization dealing with compulsory social insurance;
- (b) a legal entity established by a direct or an indirect budget user with a specific purpose of meeting needs in the general (public) interest, having a management board more than half of whose members are budget users

representatives or where more than half of the votes in the management board belong to budget users representatives;

(c) a public undertaking or an undertaking established by a public undertaking wherein a direct or an indirect budget user, that is, another procuring entity pursuant to this Law, owns more than 50% of the shares;

(d) another type of undertaking linked with the bodies, organizations or legal persons referred to in item 1, subitems (a)-(c) of this Article through the management or in some other way, so that on the basis of that link:

- they jointly shape the business policy and act harmoniously with the purpose of achieving business goals, or

- the body, organization or legal person referred to in item 1, subitems (a)-(c) of this Article exerts a significant influence on policy decisions, financing and business activity of this undertaking;

2) **public procurement** shall mean the provision of goods and services or awarding work assignments by a state body, organization, institution or some other legal person regarded as a procuring entity pursuant to this Law, in the manner and under the conditions prescribed by this Law;

3) **public procurement contract** shall mean the written contract concluded following the procedure prescribed by this Law between a procuring entity and a goods supplier, service provider or work contractor, concerning the procurement of goods, providing services or performing work assignments;

4) **tenderer** shall mean a domestic or foreign legal or natural person offering to supply goods, provide services, or perform work assignments;

5) **candidate** shall mean the person invited by a procuring entity to submit a tender after its qualifications have been established;

6) **open procedure** shall mean the procedure whereby all interested persons may submit tenders;

7) **restricted procedure** shall mean the procedure whereby only those tenderers, invited by a procuring entity after their qualifications have been established, may submit tenders (candidates);

8) **negotiated procedure** shall mean the procedure whereby a procuring entity consults suppliers or contractors of its choice and negotiates the terms of the contract with them;

9) **design contest** shall mean the procedure for the award of service contract, mainly in the fields of area planning, town planning, architecture and civil engineering, engineering, design or data processing, a plan or design shall be selected by a prior established jury

10) **price offered** shall mean the price ascertained by a tenderer pertaining to public procurement, expressed in Yugoslav dinars; when public procurement items are imported goods, the prices shall include the custom tax and other import taxes;

11) **abnormally low price** shall mean a tender price that is so low to make a procuring entity doubt that public procurement will be performed;

12) **criterion** shall mean an element used for evaluating, comparing or assessing tenders;

13) **requirement** shall mean an exclusive element that has to be fully complied with in tender, in the manner prescribed by tender documents;

14) **qualification requirement** shall mean a requirement contained in tender documents that is significant for effecting the contract notice, and that must be fully complied with in tender as it constitutes a prerequisite for ascertaining the tenderer's capability;

15) **qualification procedure** shall mean the manner of conducting the first stage of the restricted procedure applied in awarding public procurement contracts in water, energy, telecommunications and transport;

16) **request for participation** shall mean an application submitted to a procuring entity in the qualification procedure by any interested person;

17) **updating the criteria and requirements** shall mean occasional adjustment effected by a procuring entity in the course of the qualification procedure, with regard to the market conditions, development and other circumstances;

18) **timely tender** shall mean a tender submitted to a procuring entity meeting the deadline specified in the contract notice;

19) **correct tender** shall mean a tender submitted in a timely manner, for which it has been established, following the opening, examination and evaluation of the tenders, that it fully complies with the requirements contained in tender documents;

20) **adequate tender** shall mean a tender submitted in a timely manner, for which after opening of tenders, and based on the review and evaluation, has been ascertained, that it fully complies with all the technical specifications;

21) **acceptable tender** shall mean a tender submitted in a timely manner, for which after opening of tenders, and based on the review and evaluation, has been ascertained, that it fully complies with all criteria, requirements and eventual qualification requirements;

22) **discount on the tender price** shall mean the method of determining the price that a tenderer may offer only when a contract is awarded by lots and a procuring entity shall not consider it as an element of additional privilege;

23) **goods** shall mean movable and immovable objects, products and equipment, electricity, raw materials and reproductive materials in solid, liquid and gaseous state;

24) **public funds** shall mean funds controlled by and at the disposal of the Republic, an autonomous territorial unit, local authorities and compulsory social insurance organization.

### ***List of Procuring Entities***

#### **Article 4**

The Government of the Republic of Serbia (hereinafter referred to as: the Government), acting upon the proposal of the Minister of Finance and the Economy, shall establish the list of procuring entities every six months.

The list referred to in paragraph 1 of this Article shall be published in "The Official Gazette of the Republic of Serbia".

### **3. Public Procurement Principles**

#### ***The Principle of Economy and Efficiency in the Use of Public Funds***

#### **Article 5**

A procuring entity shall ensure that the public procurement procedure is conducted and the selection of tenderers made within the time limits and in the manner prescribed by this Law, incurring as little costs as possible in the effecting public procurement.

#### ***The Principle of Ensuring Competition among the Tenderers***

#### **Article 6**

A procuring entity may not limit competition among the tenderers; in particular, a procuring entity may not prevent any tenderer from participating by unjustified use of the restricted procedure or by using discriminatory criteria.

Persons who have been engaged in preparing tender documents or parts thereof may not appear as tenderers or subcontractors, nor may they cooperate with the tenderers in the course of preparing their tenders.

A procuring entity may not request that a tenderer should engage a particular subcontractor or engage in any other transaction, such as exporting certain goods or services unless otherwise stipulated by a special law or international agreement or unless it is specified in tender documents that a procuring entity has to engage a certain number of domestic subcontractors or to include a certain quantity or value of domestic goods and services.

### ***The Principle of Transparency in the Use of Public Funds***

#### **Article 7**

Public funds may be used only for the purposes determined by a contract concluded in the public procurement procedure.

A contract notice for public procurement shall be published in “the Official Gazette of the Republic of Serbia” and in one daily paper.

A person who has participated in contract award procedure shall have the right to access the data concerning the conducted public procurement procedure according to this Law.

### ***The Principle of Equality of Tenderers***

#### **Article 8**

A procuring entity may not impose conditions that would constitute territorial, subject or personal discrimination among tenderers, or discrimination arising out of the classification of the business performed by the tenderers.

Determination of the origin of goods or services is permitted in the cases and for the purposes stipulated by special regulations.

A procuring entity shall not exclude any tender merely because the tenderer’s seat is located in a state with whom Yugoslavia has not concluded an agreement on equal treatment of domestic and foreign tenderers.

## **4. Protection of Data and Documentation and Keeping Records of the Procedure**

### ***Data Protection***

#### **Article 9**

A procuring entity shall keep as confidential all data on tenderers contained in tender documents that are designated as confidential by a special act.

A procuring entity may refuse to disclose information that would entail a breach of confidentiality of data received in a tender.

A procuring entity shall keep the names of tenderers and their tenders as a trade secret until the expiry of the time limit determined for opening of tenders.

### ***Determination of Confidentiality***

#### **Article 10**

When disseminating technical specifications concerning the awarding of public procurement contracts to tenderers, a procuring entity may require the protection of confidentiality of the information placed at their disposal.

A person who has received data designated as confidential shall observe their confidentiality irrespective of the degree of confidentiality stipulated.

### ***Documentation and Keeping Records of the Procedure***

#### **Article 11**

A procuring entity shall keep records of all the phases of the contract award procedure.

A procuring entity shall keep all the documentation pertaining to public procurement according to the regulations concerning documentation and archives.

A procuring entity shall keep records of public procurement contracts awarded in negotiated procedures.

### ***Documentation Archive***

#### **Article 12**

If the period stipulated for keeping documentation pursuant to the provisions of Article 11 paragraph 2 of this Law expires before the deadline stipulated for the execution of a public procurement contract, a procuring entity shall keep the documentation for a period of three years following the expiry of the deadline for contract execution.

## **5. Language in Public Procurement Procedure**

#### **Article 13**

A procuring entity shall prepare tender documents and conduct the procedure in Serbian language.

Tender documents for public procurement of goods and services exceeding 6,000,000 Yugoslav dinars or for work assignments exceeding 120,000,000 Yugoslav dinars shall be prepared by a procuring entity also in a foreign language commonly used in international commerce.

A tenderer shall submit his tender in the language used in tender documents, that is, in the language specified by a procuring entity in tender documents.

#### **Article 14**

A procuring entity may allow that tenders, in their entirety or in part, are submitted in a foreign language, especially in the section pertaining to technical characteristics, quality and technical documentation.

In the case referred to in paragraph 1 of this Article, a procuring entity shall specify which part of a tender may be submitted in a foreign language and which foreign language it is to be used.

If, in the course of the revision and evaluation of tenders, a procuring entity finds that a part of a tender should be translated into Serbian language, it shall set a time limit to the tenderer for translating the part of the tender into Serbian.

In the case of dispute, the Serbian version of tender documents and tender shall be prevailing.

## **6. Currency**

### **Article 15**

The values in tender documents and tenders shall be stated in Yugoslav dinars.

A procuring entity may demand from tenderer to state the values also in a foreign currency, in which case it shall be stated that the values shall be converted into Yugoslav dinars using the medium exchange rate of the National Bank of Yugoslavia valid on the day of the opening of tenders.

### **Article 16**

If a tenderer has been allowed to submit a tender in a foreign currency, in the case pursuant to Article 15 paragraph 2 of this Law, a procuring entity shall specify in tender documents the currency which can be used to state the values in the tender.

## **7. Anticorruption Rules**

### **Article 17**

A procuring entity shall reject a tender if there is a verifiable evidence that a tenderer has given or promised to a current or former employee of a procuring entity a gift in money or in a non-monetary form, or that the tenderer offered employment or any other benefit, an object or a service that may be expressed in terms of money, in an attempt to influence an action, decision making or the further course of the public procurement procedure.

A procuring entity shall inform, in writing, the tenderer referred to in paragraph 1 of this Article, as well as the Public Procurement Office, that the tender in question has been rejected and of the reasons for rejection, and to keep a record of this in the documentation pertaining to the public procurement procedure.

## **II. PUBLIC PROCUREMENT OFFICE**

### ***Manner of Establishment***

### **Article 18**

Public Procurement Office (hereinafter referred to as: the Office) has been established as a special organization for performing expert work in the public procurement realm, in order to ensure in public procurement that proper conditions exist for economic, efficient and transparent use of public funds and to induce competition and equality of tenderers in public procurement procedure.

The regulations pertaining to the state administration shall apply to the activity and organization of the Office.

## ***The Mandate***

### **Article 19**

The mandate of the Office includes:

- 1) the participation in drafting the regulations pertaining to the sphere of public procurement;
- 2) providing consulting services to procuring entities and tenderers;
- 3) organizing staff training for work in the field of public procurement;
- 4) cooperation with foreign institutions and experts in the field of public procurement;
- 5) the publication and distribution of relevant professional literature;
- 6) preparing standard tender documents and standard contracts for public procurement;
- 7) collection of the information on public procurement in other states;
- 8) systematic collection of information from procuring entities and keeping records of data in the field of public procurement;
- 9) the preparation of and participation in determining the criteria for evaluating particular sorts of expenses incurred by public funds beneficiaries;
- 10) the preparation of a common database for keeping a record of tenderers and their creditworthiness, on the basis of concluded and effected public procurement contracts;
- 11) monitoring the public procurement procedure;
- 12) cooperation with other state bodies and organizations, compulsory social insurance organizations, as well as bodies of an autonomous territorial unit and local government;
- 13) other work according to the law.

Once a year the Office shall submit to the Government an annual report on public procurement, including a proposal for measures to be undertaken.

## **III. THE PROCEDURE AND METHOD FOR AWARDING PUBLIC PROCUREMENT CONTRACTS**

### **1. Public Procurement Procedure**

#### ***Types of Procedure***

### **Article 20**

Public procurement contracts shall be awarded in the open procedure.

Public procurement contracts may be awarded in the restricted procedure or in the negotiated procedure.

***Award of Contracts by Open Procedure***

**Article 21**

The open procedure is a procedure wherein all persons interested in obtaining public procurement contract may submit a tender according to previously defined requirements by a procuring entity specified in tender documents.

***Award of Contracts by Restricted Procedure***

**Article 22**

The restricted procedure is a procedure where in the first phase a procuring entity recognizes tenderers' qualifications on the basis of previously determined qualification requirements, whereas in the second phase a procuring entity invites all the tenderers whose qualifications have been established to submit a tender.

A procuring entity may apply restricted procedure only in the case when the subject of public procurement are such goods, services or construction work that, with regard to technical, staff and financial capacity, may be delivered, provided or performed only by a small number of tenderers.

Prior to the publication of the contract notice for the first phase of the restricted procedure, a procuring entity shall obtain the opinion of the Office, which shall issue its opinion within seven days of having received a procuring entity's request.

If the Office fails to submit its opinion within the deadline referred to in paragraph 3 of this Article, a procuring entity may proceed with the public procurement procedure.

A procuring entity may also apply the first phase of the restricted procedure in the case when it is not possible to plan public procurement in advance in terms of quantities and time and which can be carried out immediately, and is not to be effected according to special requests of a procuring entity, but according to the market conditions.

In the first phase of the restricted procedure a procuring entity shall compile tender documents, so that in the second phase the only criterion for tender selection is the lowest price.

***Award of Contracts by Negotiated Procedure without Prior Publication and after Prior Publication of the Contract Notice***

**Article 23**

A procuring entity may award a contract by negotiated procedure without prior publication of a contract notice if:

- 1) for objective reasons or for reasons connected with the protecting of exclusive rights, public procurement may be effected only by particular goods suppliers, service providers or contractors;
- 2) for reasons of irregular circumstances, that is, unforeseen events a procuring entity was unable to observe the time limit for the open and restricted procedure.

In the case referred to in paragraph 1 of this Article, a procuring entity shall request for the opinion of the Office.

The Office shall issue its opinion within seven days after the receipt of the request.



If the Office fails to forward its opinion within the deadline specified in paragraph 3 of this Article, a procuring entity may proceed with the public procurement procedure.

A procuring entity may award a contract by negotiated procedure if a contract notice for tenders in the open or restricted procedure has been previously published:

1) in the event of no tenders whatsoever or inadequate or unacceptable tenders have been received in the open or restricted procedure, in so far as the original terms of the contract are not substantially altered. A procuring entity shall publish a notice to the effect that the contract will be awarded by negotiated procedure, which will include all the tenderers whose tenders have been submitted in the open or restricted procedure and complied with the qualification requirements;

2) in exceptional cases when the nature of the procurement do not permit prior overall pricing.

A procuring entity shall ensure in the course of negotiations that the price does not exceed the comparable market price and to check the quality of the subject of public procurement with due diligence.

## **2. Institution of a Procedure**

### ***Conditions for Instituting a Procedure***

#### **Article 24**

A procuring entity may institute the public procurement procedure if the procurement in question is envisaged by the procurement plan and if funds for that particular procurement contract have been set aside in the budget of the Republic of Serbia (hereinafter referred to as: Republic Budget), of an autonomous territorial unit, local government or in the financial plan according to the Law on Budget System.

The funds set aside for a particular public procurement contract may not exceed the amount stipulated by the regulation pertaining to budget spending and public financing.

If a public procurement procedure lasts for several years, the liabilities that will fall due in the following years shall be agreed and stated in the amounts stipulated by the regulation on budget spending for each particular year.

If the public procurement in question concerns investments, a procuring entity shall prepare the investment program according to the common methodology for preparing investment programs, according to the development plan.

The program referred to in paragraph 4 of this Article shall be approved by the chief executive officer of a procuring entity with a decision in writing.

If the Republic Budget, the budget of an autonomous territorial unit, the budget of a local government or the financial plan of another procuring entity has not been passed, a procuring entity may institute the public procurement procedure up to the amount of the funds planned according to the regulations on temporary financing.

### ***Decision to Institute a Procedure***

#### **Article 25**

A procuring entity shall institute the public procurement procedure by a written decision which contains:

1) the registry number of the public procurement for the current year;

2) the subject of public procurement;

3) the value of public procurement according to a procuring entity's estimates and the expectations concerning the tenders;

- 4) the reference to the decision on approving public procurement of investments, pursuant to the uniform methodology, when necessary;
- 5) provisional dates for conducting the individual phases of the public procurement procedure and
- 6) the data on the budget position or the financial plan for payment.

The decision may also contain other elements if a procuring entity considers them necessary for conducting the public procurement procedure.

When passing the decision to institute a public procurement procedure, a procuring entity shall at the same time establish a Commission for professional evaluation of tenders (tender board), pursuant to prescribed criteria for the establishment of such Commissions.

Acting upon the proposal of the Minister of Finance and the Economy, the Government shall establish the criteria for establishing public procurement Commissions.

### ***Conducting a Public Procurement Procedure by another Legal Person***

#### **Article 26**

A procuring entity may authorize in writing another legal person to carry out the procurement procedure on its behalf and for its account.

In the procurement procedure for awarding public contracts in waterworks, energy production, telecommunications and traffic sectors, a procuring entity may decide to use the list of qualified tenderers of another procuring entity.

The decision on using the list of qualified tenderers of another procuring entity shall be made in writing and has to contain an explanation.

### **3. The Content of Tender Documents**

#### ***Preparation of Tender Documents***

#### **Article 27**

A procuring entity shall prepare tender documents so that the tenderers may prepare correct tenders on the basis of these documents.

The data contained in tender documents shall be identical to the data contained in the public invitation for tenders.

Tender documents for the open procedure and for the second phase of the restricted procedure contain:

- 1) an invitation to submit tenders;
- 2) instructions to tenderers on how to prepare a tender;
- 3) a tender form;
- 4) a form for establishing the tenderer's qualifications and instructions on how to prove the tenderer's qualifications (only in the case of the open procedure);
- 5) a form wherein the tenderer states that he accepts the conditions set forth in the public invitation for tenders;
- 6) a model contract;

7) the type, technical characteristics (specifications), quality, quantity and description of goods, services or work, the manner of executing control and ensuring a guarantee of quality, the deadline for executing the contract, the place of execution or of the delivery of goods, potential additional services and the like;

8) the technical documentation and plans;

9) the invoice form, including instructions on how to fill it in and

10) the type of financial guarantee whereby the tenderers ensure the fulfillment of their liabilities in the contract award procedure (various forms of pledging securities, movable property, mortgages, bills of exchange, guarantees given by other legal person possessing adequate creditworthiness, bank guarantees, insurance policies, etc.).

Tender documents may contain other elements that are, in view of the subject of public procurement, necessary for the preparation of tenders.

Tender documents in the first phase of the restricted procedure contain:

1) an invitation to submit tenders;

2) instructions to tenderers on how to prepare a tender;

3) a tender form and

4) a form for establishing the tenderer's qualifications and instructions on how to prove the tenderer's qualifications.

The Minister of Finance and the Economy shall regulate more closely the compulsory elements of tender documents.

The law regulating more closely the annual Budget of the Republic shall stipulate the amount of public procurement funds above which A procuring entity shall demand a bank guarantee in the public procurement procedure.

#### **4. Access to Tender Documents**

##### ***Time Limit for Submission of Tender Documents***

##### **Article 28**

As of the day of the publication of the invitation for tenders, a procuring entity shall enable interested tenderers to have a direct insight into tender documents or shall send the documents by post, telefax or e-mail within two days of having received a request from a tenderer.

In the case referred to in paragraph 1 of this Article, a procuring entity shall charge only the costs of copying and sending tender documents.

In the open procedure a procuring entity may confine the time limit during which the tenderers may request tender documents this shall not exceed a half of the time limit for tenders submission.

A tenderer may not set a higher price afterwards, claiming that tender documents are incomplete or inadequate concerning the segments of public procurement execution that were not specified in tender documents if these segments could have been predicted with regard to the subject of public procurement and the documentation in its entirety.

## *Alterations of and Supplements to Tender Documents*

### **Article 29**

If within the time limit for submission of tenders a procuring entity alters or supplements tender documents, it shall forward these alterations and supplements without delay and with no charge to the tenderers who have already taken tender documents.

A tenderer may request in writing additional information or clarifications concerning the preparation of a tender up to five days before the expiry of the time limit for tenders submission.

In the case referred to in paragraph 2 of this Article, a procuring entity shall send a written reply to the tenderer within the time period and in the manner stipulated in Article 28 paragraph 1 of this Law, and shall at the same time forward the information to all other tenderers who have received tender documents.

If tender documents or supplementary documents are too extensive, or if a tender can be prepared only after a direct inspection of the place where public procurement is to be effectuated, or if a procuring entity amends tender documents six or less days before the expiry of the deadline for submission of tenders, a procuring entity shall extend the time limit for submission of tenders.

A procuring entity shall inform in writing all tenderers who have received tender documents of the extension of the deadline for submission of tenders referred to in paragraph 4 of this Article.

The decision on the extension of the deadline for submission of tenders shall be published in the same way as the public invitation of tenders.

After the expiry of the deadline for submission of tenders, a procuring entity may not alter or supplement tender documents.

## **5. Determining the contract value**

### *Determining the Value of Public Supply Contracts*

### **Article 30**

The basis for calculating the estimated value of public supply contracts shall be determined in the following manner:

1) in the case of contracts for sale, rental or lease of goods and when the contract term is a period of 12 months or less, the total contract value for its duration shall be taken into account, when the contract term is longer than 12 months, the total contract value shall include the value for the first 12 months and the value for the residual period;

2) in the case of contract referred to in paragraph 1 item 1 of this Article is concluded for an indefinite period, the monthly value of the contract multiplied by 48 shall be used.

In the case of contract for an indefinite period or if it is to be renewed after the expiry of a certain time limit, the estimated public procurement value shall be determined on the basis of actual aggregate value of similar contracts concluded over the previous fiscal year or in the course of the previous 12 months, adjusted for anticipated changes in quantity or value of the goods whose procurement is the object of the contract over 12 months, following the conclusion of the initial contract.

### ***Determining the Value of Public Service Contracts***

#### **Article 31**

When calculating the estimated contract value of public service contracts, a procuring entity shall include all the expenses concerning the service in question incurred by the tenderer.

For the following type of services account shall be taken:

- 1) as regards insurance services - of the premium payable,
- 2) as regards banking and other financial services - of fees, commissions and interest as well as other types of remuneration,
- 3) as regards contracts which involve architectural services, industrial design, landscape planning and the like – of the fee or commission payable.

If a procuring entity cannot determine the estimated contract value due to the length of its duration, the contract value shall be determined in the manner prescribed by Article 30, paragraph 1 of this Law.

### ***Determining the Value of Public Works Contracts***

#### **Article 32**

The total value of public works contracts shall be determined by taking the total construction value as the basis for calculating the value of works contract.

When determining the value of construction works contracts, a procuring entity shall include the value of all the goods and services necessary to perform the contract.

The value of public procurement of construction works shall not include the value of goods and services not necessary to perform construction works contract.

### ***Determining Public Procurement Value per Lots***

#### **Article 33**

The subject of public procurement may be shaped in a number of separate wholes (lots), so that each lot may be subject of a separate contract.

When the procurement is subdivided in separate lots and each one the subject of a separate contract, for the purpose of calculating the procurement value, the value of all lots over a period of one year must be taken into account, counting from the day of the contract for the first lot.

A procuring entity shall award separate lots whose total value exceeds the amounts stipulated in Articles 69, 71, 90, 114, 123 and 126 of this Law, pursuant to the provisions of this Law.

The decision on shaping public procurement in lots and on determining the values of these lots shall be approved by the Public Procurement Office.

## ***The Method of Determining Public Procurement Value***

### **Article 34**

A procuring entity shall not select the procurement valuation method so that, due to a lower estimated value, the public invitation for tenders is avoided.

The estimated public procurement value shall be stated without including the turnover tax.

## **6. General Rules on Determining Technical Elements in Public Procurement**

### ***Technical Specifications***

#### **Article 35**

Technical specifications constitute an obligatory part of tender documents.

A procuring entity shall state technical specifications in tender documents pertaining to each single public procurement.

A procuring entity shall define the technical specifications referring to the laws, technical regulations and standards that are in effect in the Republic; in the case when such technical regulations or standards do not exist in the Republic, a procuring entity shall refer to the existing European standards, technical licenses or common technical specifications.

The authorized ministry shall establish whether the technical regulations and standards referred to in paragraph 3 of this Article exist.

### ***The Use of Technical Specifications***

#### **Article 36**

A procuring entity may not use or refer to technical specifications specifying goods, services or works of a specific make, source, or of a particular construction, if such a designation favours certain tenderer or might unwarrantedly eliminate other tenderers.

A procuring entity may not include in tender documents any provision that would result in favouring or eliminating certain tenderers, in the manner referred to in paragraph 1 of this Article, unless such a specification is justified by the subject of the contract.

A procuring entity may not indicate in tender documents any particular trade mark, patent, type, origin or production.

Where a procuring entity is unable to give a description of the subject of the contract in tender documents using specifications which are sufficiently precise and intelligible to tenderers, the indication of elements like trademarks, patents, type or manufacturer must be accompanied by the words “or equivalent”.

### ***The Issuance of Attestations***

#### **Article 37**

When a procuring entity awarding a service contract demands attestation to verify the conformity with the requirements concerning quality of management and services quality assurance issued by independent bodies or organizations, which should confirm that the services conform to specific standards, the authorized issuer of the attestation shall refer to the quality assurance system according to the Yugoslav JUS EN ISO 9000 series standard, conforming to the requirements of the Yugoslav standards JUS EN 45000 and JUS ISO/IEC 17025.

### ***The Content of Technical Specifications or Project Documentation***

#### **Article 38**

The terms technical specifications and project documentation, as used in this Law, denote the technical requirements that are an obligatory part of tender documents referring to the characteristics of lots of works, materials, products, goods or services. These specifications shall ensure that the works, materials, products, goods or services are described in a manner that is objective and appropriate to the procuring entity's needs.

Technical specifications may contain requirements of quality, performance, safety or dimensions relating to the material, product, good, or service, concerning quality assurance, terminology, designations, testing and the test methods, packing, marking and labeling.

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

### ***Exceptions***

#### **Article 39**

A procuring entity, subject to the prior approval of the Office, may depart from the provisions of Article 35 of this Law in the following cases:

- 1) if the standards, technical approval or the general technical specifications or project documentation do not contain a provision requiring conformity establishment, or if there are no technical means to establish satisfactorily the conformity of a good or a service with these standards, technical approvals or general technical specifications or project documentation;
- 2) if the adherence to the above-mentioned provisions would prejudice mutual recognition of standard-type approvals for telecommunications or computer equipment, or standardization in the field of information technology and telecommunications, or in other specific areas of goods or services;
- 3) if the adherence to the standards, technical approvals or general technical specifications would make a procuring entity to procure goods incompatible with the existing equipment, or would result in disproportionately higher expenses or would cause a procuring entity excessive technical difficulties;
- 4) if public procurement contract in question is of expressly innovative nature, so that adherence to standards, technical approvals or general technical specifications would be inappropriate.

A procuring entity shall state the reasons for acting in the manner referred to in paragraph 1 of this Article in the contract notice or in tender documents.

## ***Other Methods of Determining Technical Specifications***

### **Article 40**

In the absence of standards, technical approval or general technical specifications, the technical specifications may be defined in the following way:

- 1) according to the technical specifications applicable in FR Yugoslavia and that comply to the basic requirements applied for technical harmonization in the European Union (especially in the case of public procurement in the information technology, telecommunications and the like sectors);
- 2) according to the technical specifications applicable in FR Yugoslavia relating to design, method of calculation, execution of works and use of materials;
- 3) according to other documents, where a procuring entity shall adhere to the following order of preference:
  - (a) the Yugoslav standard JUS which is accepted international standard;
  - (b) other national standard;
  - (c) the technical approval and recommendation applicable in FR Yugoslavia.

### ***Standards***

#### **Article 41**

***Yugoslav standard*** is a standard recognized by the federal body authorized for standardization, accessible to the public.

***International standard*** is a standard recognized by the international organization for standards, or, the international standardization organization, accessible to the public.

***European standard*** is a standard recognized by the authorized body of the European Union, accessible to the public.

***Foreign national standard*** is a standard recognized by the authorized body of a foreign state, available to the public.

***Other standards*** are standards that may be accepted on a different basis (e.g. standards applying for a particular branch of industry, company standards and the like).

### ***Technical Attestation***

#### **Article 42**

Technical attestation is a positive technical assessment of suitability of a particular product for the intended use.

European technical approval is a positive technical assessment of suitability of a particular product for the intended use, based on the fulfillment of basic requirements of the intended construction work, issued by the body authorized to give technical attestation.

European technical attestation shall apply in the case of public procurement of civil works.



## ***Common Technical Specification***

### **Article 43**

A common technical specification is a technical specification passed according to the procedure accepted by the Government, which is uniformly applied by all member states of the European Union.

## ***Statement of Essential Requirements and Compensation Costs for the Use of Patents***

### **Article 44**

Essential requirements not included in positive technical norms and standards, and relating to safety and other factors of general interest, shall be applied and shall be expressly stated in tender documents.

A procuring entity may state in tender documents that compensation for the use of patents, as well as the responsibility for any breach of protected intellectual property rights of third persons, shall be borne by the tenderer.

## **7. Participation Conditions for the Public Contracts Award Procedure**

### ***Mandatory Participation Conditions***

### **Article 45**

A procuring entity shall publish in the contract notice the conditions that a tenderer has to fulfill in order to be able to participate in the procedure.

The right to participate in the procedure has a domestic or foreign legal or natural person:

- 1) registered for particular activities with the authorized body of the state where his seat is located;
- 2) against whom no enforced settlement, bankruptcy or liquidation proceedings have been initiated and that has not suspended business activities by virtue of a court decision or some other enforceable decision;
- 3) that has not been convicted of a criminal offence, commercial offence or an offence concerning his business activities by a decision having the force of res iudicata made by a judicial or administrative body over a period of five years prior to the publication of the contract notice, or if, over the same period of time, has not received an enforceable court or administrative order prohibiting him from carrying out the activity which is the subject of the public procurement;
- 4) that has fulfilled obligations related to the payment of due taxes, contributions and other forms of public taxation in accordance with the legal provisions of the state where his seat is located, or according to the legal provisions of the Republic of Montenegro if his seat is located on its territory;
- 5) that has a valid permit issued by the authorized body for carrying out the activity which is the subject of public procurement, and such a permit is stipulated by a special regulation;
- 6) possessing the necessary financial and economic standing;
- 7) possessing sufficient technical capacities.

A procuring entity may impose additional conditions concerning the fulfillment of the obligations of tenderer towards his subcontractors and suppliers.

## *Proofs of the Fulfillment of the Conditions*

### **Article 46**

Along with the tender, the tenderer shall submit the following proofs to evidence that he fulfils the conditions referred to in Article 45 of this Law:

- 1) a court register certificate or some other register certificate;
- 2) a certificate issued by the competent tax authority of the state of the tenderer's legal residence, or by the competent tax authority of the Republic of Montenegro, or by the Republic Office of Public Revenues;
- 3) a certificate issued by the competent authority keeping records of licenses issued for carrying out specific activities;
- 4) a balance sheet certified by an authorized auditor, or extracts therefrom, or a statement of the tenderer's overall turnover in respect of the products, works or services to which public procurement contract relates - for the previous three financial years, as well as the opinions or statements of banks or other specialized institution, or the proofs required in the contract notice or tender documents. A procuring entity shall specify in the contract notice or in tender documents which element from this item it has chosen and which other elements proving the financial and economic standing the tenderer shall submit;
- 5) one or more proofs according to the subject of the contract, the quantity and the intended purpose, such as:
  - (a) a list of the most important goods delivered, work assignments performed or services provided over a period of the last three years, together with the sums, dates, and lists of purchasers or procuring entities. If purchasers or procuring entities are entities considered to be the procuring entities according to this Law, the proof to be submitted has to be in the form of a certificate issued or countersigned by the competent authority; if purchasers or procuring entities are other entities or entrepreneurs, the certificate shall be issued or signed by the purchaser or the procuring entity;
  - (b) a description of the tenderer's technical equipment, measures for ensuring quality and research and development capacity;
  - (c) a statement on the key technical staff and other experts working for the tenderer who will be responsible for the execution of the contract and on the persons responsible for quality control;
  - (d) a sample description or a photograph of the product and a description of the works or services that the tenderer will perform or provide. In case of doubt, a procuring entity may demand proof of the authenticity of samples, descriptions or photographs;
  - (e) a certificate issued by the authorized bodies or organization authorized for quality control, attesting the conformity of the products or services in question to the technical specifications or the standards stipulated in tender documents;
  - (f) a report of examination, if the products to be delivered are complex and services or works are complex, or when the subject of public procurement in exceptional cases is intended for special purposes. The examination shall be carried out by procuring entity's representatives or, on behalf of a procuring entity, by the authorized body of the state of the tenderer's legal residence. The examination relates to the tenderer's production capabilities, and if need be, to his capacity for research and development, and the method of ensuring quality.

If the tenderer's legal residence is located in another state or in the Republic of Montenegro, the procuring entity shall verify whether the documents by which the tenderer is proving the fulfillment of the requested conditions have been issued by the competent authorities of the state in question or of the Republic of Montenegro.

The Minister of Finance and the Economy shall compile a list of the competent authorities of foreign states issuing the documents to be submitted by foreign tenderers, pursuant to the provision of paragraph 2 of this Article.

A tenderer shall notify a procuring entity with no delay of any changes concerning the information referred to in paragraph 1 of this Article no later than five days after such changes have occurred; the notification shall be in writing and shall be documented in the manner prescribed.

A tenderer shall ensure that his subcontractors, if they are stated in the tender, also fulfill the conditions referred to in Article 45 of this Law; the proof of this shall be documented in the manner referred to in paragraph 1 of this Article.

A tenderer shall confirm explicitly in the tender that he accepts the conditions referred to in Article 45, paragraph 1 item 4 of this Law, and to state whether the tender refers to the procurement in its entirety or only to particular lots thereof.

If a tenderer submits a tender referring to all lots, the tender must be submitted in such a way that it may be evaluated separately for each lot.

### ***Professional References and the Confidentiality of the Data Obtained***

#### **Article 47**

If a procuring entity requests the submission of professional references, it shall specify expressly in the contract notice or in the invitation to tender and in the tender documents which professional references the tenderers provide.

A procuring entity shall consistently respect the legitimate interests of tenderers, protecting their technical or trade secrets.

A procuring entity may use the information obtained only for the purpose of the particular public procurement.

The tenderer shall be responsible for the authenticity of the professional references referred to in paragraph 1 of this Article.

### ***Tenderer's Statement***

#### **Article 48**

If the authorized body of the state or the republic where tenderer's legal residence is located does not issue the certificate referred to in Article 46, paragraph 1 item 2 of this Law, the tenderer may submit a written statement instead, certified by the authorized body of the state or republic where his legal residence is located, given under the criminal and material liability.

## **8. Recognition of Qualifications**

### ***Qualification Establishment***

#### **Article 49**

Before entering into public procurement contract, a procuring entity shall check whether the tenderer fulfils the conditions concerning his business and financial capacity stipulated in Article 45, paragraph 2 item 6 of this Law.

A procuring entity shall enter into public procurement contract observing the criteria for establishing qualifications relating to financial, personnel and technical capacity of the tenderer to perform the contract.

A procuring entity may define additional criteria for establishing tenderer's qualifications, provided these do not discriminate against individual tenderers.

### ***Subcontractors' Qualification Establishment***

#### **Article 50**

When establishing the qualifications for contract performance, a procuring entity may request that the tenderer should state in the tender whether he will entrust the execution of the contract in question, in its entirety or partially, to a subcontractor.

If the tenderer intends to entrust the execution of the contract to a subcontractor, he shall state the name of the subcontractor; if the contract is concluded, the subcontractor shall be named in the contract between the procuring entity and the tenderer.

The tenderer shall be fully liable to the procuring entity for the contract performance irrespective of the number of subcontractors.

The tenderer shall allow a procuring entity, upon the latter's request, access to the subcontractor for the purpose of establishing the subcontractor's qualifications.

### ***Submission of a Joint Tender***

#### **Article 51**

A tender may be submitted by a group of tenderers.

In the case referred to in paragraph 1 of this Article, a procuring entity may not request a group of tenderers to associate themselves into a legal entity so that they may submit a joint tender.

A procuring entity may require a group of tenderers to submit a legal act binding them to jointly perform the contract in question if it is awarded to them, provided that such a request is necessary for successful contract performance.

The legal act referred to in paragraph 3 of this Article shall specify the responsibility of each tenderer for the contract performance.

The tenderers forming a group of tenderers shall bear unlimited joint liability towards the procuring entity.

A procuring entity may request legal entities to state in their tenders or requests for participation the names and adequate professional qualifications of the persons who will be responsible for contract performance.

### ***Selection of Candidates***

#### **Article 52**

In the first phase of the restricted procedure and the negotiated procedure, a procuring entity shall select the tenderers that will be invited as candidates in the second phase to submit their tenders or to participate in negotiations.

In the first phase of the procedures referred to in paragraph 1 of this Article, a procuring entity shall select the candidates on the basis of the information submitted by the tenderers proving the tenderers':

- 1) legal status;

- 2) economic standing;
- 3) financial standing;
- 4) technical qualifications and
- 5) personnel qualifications.

The tenderers shall prove the fulfillment of the conditions referred to in paragraph 2 of this Article in the manner prescribed in Article 46 of this Law.

### ***Compiling a list of candidates***

#### **Article 53**

A procuring entity shall compile a list of candidates and determine the period during which their qualifications will be recognized, the period may not exceed three years.

A procuring entity selecting a tenderer by negotiated procedure on account of not having received correct or acceptable tenders, shall include all the tenderers who have previously participated in the unsuccessful open or restricted procedure whose qualifications have been recognized on the basis of Article 52 of this Law and who have submitted correct tenders; a procuring entity shall publish a contract notice stating that it will award the contract by the negotiated procedure.

## **9. Criteria for Selecting the Best Tender**

### ***Determining the criteria***

#### **Article 54**

A procuring entity shall publish in the contract notice and tender documents identical criteria for selecting the best tender.

The criteria on the basis of which a procuring entity will select the best tender have to be described and evaluated in tender documents; criteria must not be discriminatory and have to be logically connected with the subject of public procurement.

In the tender documents the procuring entity shall state, describe and evaluate in advance all the criteria that it intends to apply.

A procuring entity may not alter the criteria after the publication of the contract notice or after awarding public procurement contract in the restricted procedure.

When evaluating the tenders, a procuring entity shall apply only the criteria contained in tender documents, in the manner in which they have been described and evaluated.

### ***Types of Criteria***

#### **Article 55**

The criteria for evaluating the tenders shall be:

- 1) the economically most advantageous tender and
- 2) the lowest price offered.

The economically most advantageous tender shall be the tender based on different criteria, depending on the subject of public procurement, especially including:

- 1) delivery period or period of completion of services or works;
- 2) running costs;
- 3) cost effectiveness;
- 4) quality and the application of adequate systems of quality analysis/control;
- 5) aesthetic and functional characteristics;
- 6) technical and technological advantages;
- 7) after-sale service and technical assistance;
- 8) guarantee period, the type and quality of guarantees and the guaranteed values;
- 9) liabilities concerning spare parts;
- 10) post-guarantee maintenance;
- 11) price offered;
- 12) the possibility of typification and unification;
- 13) the extent to which the subcontractors are engaged, etc.

To each of the elements referred to in paragraph 2 of this Article a procuring entity shall assign relative (weighted) significance in such a way that the sum total of weighted points amounts to 100.

Tender selection based on the economically most advantageous tender criterion, a procuring entity shall apply by ranking the tenders on the basis of the criteria and the points assigned to those criteria.

Tender selection based on the lowest price offered shall be based on the lowest price as the sole criterion if all the requirements contained in tender documents have been complied with.

If the lowest price offered criterion applies, a procuring entity may not accept any price increase following the conclusion of the contract.

### ***Variant Tenders***

#### **Article 56**

If the criterion for awarding public procurement contract is the economically most advantageous tender, a procuring entity may take into consideration variant tenders submitted by the tenderers fulfilling the minimum requirements concerning procuring entity's technical specifications.

A procuring entity shall state in tender documents the minimum technical requirements that have to be observed in variant tenders, as well as special requirements for presenting such tenders.

If variant tenders are not allowed, a procuring entity shall point this out in the contract notice and in tender documents.

A procuring entity may not reject the variants proposed solely on the ground that the variant tender in question was compiled on the basis of technical specifications drawn up according to the national technical specifications recognized as compliant to the essential requirements.

## *Abnormally Low Price*

### **Article 57**

If for a public procurement contract tender prices appear to be abnormally low, a procuring entity shall demand a detailed written explanation of all tender's constituent elements it considers relevant, in particular those concerning the economy of the construction method, production or the selected technical solutions and exceptionally favorable circumstances that are available to the tenderer for contract performance, or pertaining to the originality of the products and work proposed by the tenderer.

In the case referred to in paragraph 1 of this Article, a procuring entity shall give the tenderer a sufficient period of time to reply; this period may not exceed 20 days from the day of submission of such a request.

Having received the requested explanation, a procuring entity shall check the constituent elements of the tender referred to in paragraph 1 of this Article.

### *Additional Explanations, Control and Acceptable Corrections*

### **Article 58**

A procuring entity may request additional explanations from tenderers that will help him in the course of examining, evaluating and comparing tenders; he may also exert control of the tenderer or the latter's subcontractor.

A procuring entity may not demand, allow or offer any alterations to the content of a tender, including a change of price; in particular, a procuring entity may not demand, allow or offer such a change that would turn an inadequate tender into an adequate one.

A procuring entity may, subject to the tenderer's consent, correct only technical errors noticed in the course of examining the tender after the opening of tenders.

A procuring entity may demand from a tenderer to forward data on his business connections relevant to the public procurement contract in question.

If the value of the public procurement contract to be awarded exceeds 300.000.000 dinars, a tenderer shall submit to the procuring entity his tender along with a copy of the tender, in two separate envelopes.

The tenderer shall guarantee that the tender and its copy are identical.

A tender shall be opened according to the provisions of this Law, whereas its copy shall be forwarded simultaneously and directly to the Commission for the Protection of the Tenderers' Rights, unopened.

If no request for the protection of the tenderer's rights is lodged, the copy deposited with the Commission shall be returned to the tenderer immediately after the expiry of the period for lodging requests for the protection of the tenderers' rights.

If a tenderer lodges a request for the protection of his rights, the copy deposited with the Commission shall be returned to the tenderer immediately after the review procedure is terminated.

## 10. Time Limits in Public Procurement

## Contracts Award Procedure

### *Time Limit for Tenders Submission*

#### **Article 59**

A procuring entity shall set a deadline for tender submission in the contract notice and in tender documents.

The time limit for tenders submission set in the contract notice has to be identical to the time limit set in tender documents.

Setting the time limit referred to in paragraph 2 of this Article shall mean setting the date and the hour by which the tenders may be submitted.

After the expiry of the time limit for tenders submission, a tenderer may not withdraw his tender or make alterations to it; if he does so or if he does not sign a contract after his tender has been selected, the procuring entity shall be authorized to cash the guarantee submitted alongside the tender.

A tenderer shall submit his tender in person or by post.

### *Calculation of Time Limits*

#### **Article 60**

The time limit for tenders submission shall be calculated counting from the day of publishing of the contract notice in "The Official Gazette of the Republic of Serbia".

### *Timely Tender*

#### **Article 61**

A tender shall be considered as timely if it has been submitted before the date and the hour specified in the contract notice.

Upon the receipt of a tender, a procuring entity shall mark the date and the hour of the receipt and issue, on the tenderer's request, a certificate of receipt.

If a tender has been submitted after the date and the hour specified in the contract notice, it shall be considered untimely, and a procuring entity shall return it to the tenderer unopened after the procedure of opening the tenders is terminated, with a note stating that it has been submitted in an untimely manner.

### *Fixing the Time Limit for Tenders Submission*

#### **Article 62**

The time limit for tenders submission shall be adequate to the period needed for the preparation of a correct tender.

If tender documents or the technical specifications to be examined are voluminous, or if it is necessary to visit the location and the like, a procuring entity shall envisage the possibility of extending the deadline.



***The General Time Limit for Tenders Submission in the Open Procedure***

**Article 63**

The time limit for tenders submission in the open procedure shall not be less than 40 days from the day of the publication of the contract notice in “The Official Gazette of the Republic of Serbia”.

***Reduced Time Limit for Tenders Submission in the Open Procedure***

**Article 64**

The time limit for tenders submission may be less than the term referred to in Article 63 of this Law, but it shall not be less than 30 days.

The time limit for tenders submission in the open procedure may be less than the term referred to in paragraph 1 of this Article, but it shall not be less than 22 days from the day of publishing the contract notice if a procuring entity, according to the provisions of Article 69 of this Law:

- 1) has previously published a prior indicative notice on the prescribed form stating his intention to award a public procurement contract;
- 2) has issued the notice at least 52 days and no longer than 12 months before the publication of the contract notice;
- 3) has included in the previously issued notice at least as much information as he had at the moment of issuing the notice.

***The Time Limit for Submission of Applications to Participate in the Restricted Procedure and in the Negotiated Procedure***

**Article 65**

The time limit for submission of applications to participate in the restricted procedure and in the negotiated procedure with prior publication shall not exceed 25 days from the date of dispatch of the notice by the procuring entity.

***Setting the General Time Limit for Tenders Submission in the Restricted Procedure***

**Article 66**

The time limit for tenders submission in the restricted procedure shall not be less than 30 days from the date of dispatch of the written invitation by the procuring entity.

***Reduced Time Limit for Tenders Submission in the Restricted Procedure***

**Article 67**

The time limit for tenders submission in the restricted procedure may be less than the term referred to in Article 66 of this Law, but it shall not be less than 26 days from the day of dispatch of the written invitation if a procuring entity:

- 1) has previously issued a prior indicative notice on the prescribed form, stating his intention to award a public procurement contract;
- 2) has issued the notice at least 52 days and no longer than 12 months before the publication of the contract notice;
- 3) has included in the previously issued notice at least as much information as was available at the time of issuing the notice.

The application to participate in contract award procedure may be sent by letter, telegram, telex, telefax or electronic mail; it may also be announced by telephone.

If the application has been sent by telegram, telex, fax, electronic mail, or if it has been announced by telephone, it has to be confirmed by letter, which is to be submitted within the period of time set for tenders submission.

### ***Conditions for Additional Reducing of the Time Limits in the Restricted Procedure***

#### **Article 68**

If, in the restricted procedure for urgency reasons, it is not possible to observe the time limits referred to in Article 67 of this Law, a procuring entity may fix the following time limits:

- 1) the ultimate time limit for submitting the applications to participate in the procedure shall not be less than 15 days from the date of dispatch of the notice;
- 2) the ultimate time limit for tenders submission shall not be less than 10 days from the date of the invitation to participate in the tender.

If a candidate has requested additional information relating to the tender documents in a timely manner, a procuring entity shall forward the information not later than four days before the expiry of the period for tenders submission.

Applications and invitations to participate in the tender shall be forwarded in the fastest possible way.

If a tenderer sends his application by telegram, telex, telefax, or if he announces it by telephone, he shall confirm it by letter, which is to be sent before the expiry of the time limit referred to in paragraph 1 of this Article.

The provisions in paragraphs 1-4 of this Article shall not apply to public procurement contracts in the water, energy, telecommunications and transport sectors.

## **11. Publication of Public Procurement Notices**

### ***The Method of Public Procurement Publication***

#### **Article 69**

All public procurement notices shall be published in "The Official Gazette of the Republic of Serbia" and in at least one more daily paper distributed on the entire territory of the Republic.

If the value of the public procurement exceeds 6.000.000 Yugoslav dinars for goods and services, or if it exceeds 120.000.000 dinars for works, the notices referred to in paragraph 1 of this Article shall be published in a

language commonly used in the international commerce in a newspaper as well, or in a business publication, technical or professional magazine available to the general international professional and other public.

Public procurement notices shall also be published on the web site of the Office, according to the Office's decision.

Public procurement notices referred to in paragraph 3 of this Article shall be published in the Serbian language and in a language commonly used in the international commerce.

### ***Types of Notices***

#### **Article 70**

The types of notices used shall be:

- 1) prior indicative notice;
- 2) public invitation;
- 3) public invitation for establishing tenderers's qualifications;
- 4) notice on public procurement contracts awarded and
- 5) periodic information notice.

In the restricted procedure, a procuring entity shall publish the public invitation in the first phase of tenders submission, for the purpose of establishing the tenderers qualification, and in the second phase it shall invite candidates to submit their tenders.

A public invitation for establishing tenderers qualification and periodic information notice shall be published only in the cases of public procurement in the water, energy, telecommunications and transport sectors.

### ***Prior Indicative Notice***

#### **Article 71**

In the case of scheduled public procurement whose approximate value exceeds 50.000.000 dinars, a procuring entity shall publish, at least once a year, a prior notice indicating the intention to award a public procurement contract.

In the case of public procurement in the water, energy, telecommunications and transport sectors, the prior indicative notice shall be published, not later than 12 months before the date of dispatch of invitation to participate by a procuring entity in the restricted procedure or in the negotiated procedure; whereby a procuring entity shall observe the time limits fixed for tenders submission prescribed by this Law.

### ***Public Invitation***

#### **Article 72**

A procuring entity shall publish a public invitation:

- 1) in the case of public procurement contract to be awarded by open procedure;
- 2) in the first phase of the restricted procedure and
- 3) in the case of public procurement contract to be awarded by negotiated procedure with prior publication.

A public invitation shall contain information on the procuring entity, the subject of procurement, participation conditions, criteria, the time and the place of gaining insight into tender documents, the time and the place for tenders submission, the approximate date of passing the decision on awarding of public procurement contract, as well as the name of the contact person providing additional information.

A public invitation may contain other data necessary for providing information to the tenderers.

***A Public Invitation for Establishing Tenderers Qualification and the Content of the Invitation for Tenders Submission in the Restricted Procedure***

**Article 73**

In the restricted procedure, a procuring entity shall select the most favorable tender after the qualification procedure carried out in the first phase.

In the case of the qualification procedure, a procuring entity shall ensure that tenderers may request at any time for their qualifications for participation in the contract award procedure to be established.

If a public invitation has been issued in the qualification procedure, the tenderers from the procedure involving prior establishment of qualifications or participants in the negotiated procedure shall be selected from among the candidates according to this method of selection.

A public invitation for the purpose of establishing the tenderers qualification in the qualification procedure shall contain following information:

- 1) name and address of a procuring entity, including the telephone, telefax and telex number, as well as the e-mail address;
- 2) the purpose of the qualification procedure;
- 3) the address for obtaining information concerning participation in the qualification procedure;
- 4) the time limit for submission of the request to participate;
- 5) the duration of the qualification procedure if estimation possible.

If a procuring entity estimates that the process of decision making will last more than six months from the date of submission of requests to participate, he shall notify the applicants, within two months of the date of submission of the requests, of the reasons for extending the decision making period and of the date when the decision will be passed.

The qualification procedure may encompass several phases, and has to be based on non-discriminatory criteria and conditions, established by a procuring entity in advance.

A procuring entity may, if need be, update the criteria and conditions referred to in paragraph 6 of this Article.

Upon the request of any interested supplier and services provider, the criteria and conditions referred to in paragraph 6 of this Article shall be made accessible, and a procuring entity shall inform the interested parties of any update.

If a procuring entity thinks that its qualifications system meets the requirements of other procuring entities as well, it shall furnish the names of these procuring entities to the interested suppliers and services providers.

A procuring entity shall apply the qualification procedure for awarding public procurement contracts in the water, energy, telecommunications and transport sectors.

A procuring entity shall invite simultaneously and in writing the selected candidates to submit their tenders.

The invitation shall contain especially the following information:

- 1) address where the candidate may request tender documents and additional documentation, the time limit for making such a request, the amount and payment terms for tender documents;
- 2) the time limit for receipt of tenders, the address to which the tenders must be sent and the language in which tenders must be drawn up ;
- 3) tenderer's references in the field related to the public procurement in question;
- 4) the list of documents to be submitted to support the statements made by the candidates pertaining to the fulfillment of the participation conditions or supplying additional data to prove the candidates' financial and economic standing and the ability to perform the contract that is the subject of the invitation;
- 5) the date of opening the tenders.

### ***Notice on Public Procurement Contract Award***

#### **Article 74**

A procuring entity shall publish the notice on awarded public procurement contract in "The Official Gazette of the Republic of Serbia" not later than 14 days of having concluded the contract.

### ***Periodic Information Notice***

#### **Article 75**

Periodic information notice relates to the goods, works or services that are the subject of public procurement to be awarded by the restricted procedure or by the negotiated procedure by which all interested tenderers are invited to express their interest to participate in writing.

In the notice referred to in paragraph 1 of this Article, it shall be stated that the contract will be awarded by restricted procedure or by negotiated procedure, without any subsequent publication of a public invitation, and interested tenderers are invited to express their interest to participate in writing.

Before initiating the process of selecting the tenderers or participants in the negotiated procedure, a procuring entity shall invite all the candidates to confirm their interest to participate in the public procurement procedure.

## **12. The Opening of Tenders**

### ***Public Opening of Tenders***

#### **Article 76**

The opening of tenders in the open procedure and in the second phase of the restricted procedure shall be public.

Exceptionally, a procuring entity may for the purpose of protecting a trade, official, military or state secret decide not to open the tenders in public.

A procuring entity shall state the decision publishing the public procurement procedure.

referred to in paragraph 2 of this Article when

### ***Minutes of the Opening of Tenders***

#### **Article 77**

A procuring entity shall take minutes of the opening of tenders procedure, whereby the following data in particular shall be recorded:

- 1) tender registry number;
- 2) tenderer's name, or code name if the tender is anonymous;
- 3) tender price and any discounts offered by a tenderer.

A procuring entity shall ensure the safeguard of the tenderer's trade secrets.

The Minister of Finance and Economy shall determine more closely the procedure of opening of tenders in the open procedure, the restricted procedure and the negotiated procedure; he shall also prescribe the form for taking minutes of the opening of tenders.

### ***Forwarding the Minutes of the Opening of Tenders***

#### **Article 78**

A procuring entity shall forward the minutes of the opening of tenders to tenderers within three days of the termination of the opening of tenders procedure.

## **13. Public Procurement Contract Award**

### ***Correct Tender, Adequate Tender and Acceptable Tender***

#### **Article 79**

A procuring entity shall select the best tenderer if it has received at least two independent correct tenders from two different tenderers that are not associated entities, pursuant to the provisions of the law regulating the taxation of company profit, or the law regulating the taxation of citizens' income.

Having examined and evaluated the tenders in the procedure of awarding a public procurement contract, a procuring entity shall reject all the incorrect tenders, and he may also reject inadequate and unacceptable tenders.

If he has received only inadequate or only unacceptable tenders, a procuring entity may continue the procedure of awarding a public procurement contract according to the provisions of Article 23 of this Law.

A procuring entity may request tenderers or candidates to submit additional proofs of fulfilling the conditions, not later than 20 day, but only in the case when the tenderers or candidates have been unable to obtain the documents required on account of the fact that they are not issued under the regulations of the state where the tenderer's or the candidate's legal residence is located or according to the regulations of the Republic of Montenegro.

In the case referred to in paragraph 4 of this Article, a procuring entity shall state which documents or additional proofs have to be submitted.

### ***Rejection of all Tenders***

#### **Article 80**

A procuring entity shall provide a written explanation when deciding to reject all tenders, specifying the reasons for rejection.

A procuring entity shall publish the decision referred to in paragraph 1 of this Article in “The Official Gazette of the Republic of Serbia”.

### ***Report on Public Procurement Contract Award***

#### **Article 81**

A procuring entity shall draw up a written report on each public procurement contract that has been awarded.

The report referred to in paragraph 1 of this Article shall contain in particular the following information:

- 1) the name and address of the procuring entity;
- 2) the subject and value of the public procurement contract;
- 3) the names of the tenderers whose tenders have been rejected and the reasons for rejection;
- 4) the name of the successful tenderer and the reasons for selecting his tender; if the tenderer has stated that the contract will be carried out with the help of a subcontractor, each part of the contract to be executed by the subcontractor shall be specified;
- 5) if the negotiated procedure has been applied – the circumstances justifying the application of this procedure.

### ***Justified notification of awarding a public procurement contract***

#### **Article 82**

On the basis of the report referred to in Article 81 of this Law, a procuring entity shall immediately notify tenderers of the public procurement contract award.

A tenderer who has not been selected may request in writing a contract award notice with an explanation within eight days of having received the notification referred to in paragraph 1 of this Article.

A procuring entity shall forward the notice on contract award with an explanation referred to in paragraph 2 of this Article within 15 days of having received the request in writing.

The explanation referred to in paragraph 2 of this Article shall contain the following information:

- 1) the reasons for rejecting the tender of the applicant referred to in paragraph 2 of this Article;
- 2) the names of the tenderers meeting the required selection and award criteria;
- 3) the advantages of the selected tender from the point of view of meeting the criteria;
- 4) the name of the tenderer whose tender has been selected.

A procuring entity may refuse to provide a written explanation, in full or in part, if disclosing such information would be in collision with the regulations or if it would be contrary to the public interest in some other way, or if it would violate a trade secret of the selected tenderer, and also if the explanation would contain

information designated as classified on the basis of other regulations, or if the data thus imparted might adversely affect fair competition among the tenderers or other parties in the procedure.

### ***Refusal of the Request for Qualification***

#### **Article 83**

A procuring entity shall notify the candidates whose requests for qualification have been rejected of the reasons for rejection, which can be based solely on the qualification criteria.

A procuring entity shall keep the written reports on the qualified tenderers, classified according to the type of public procurement, according to the regulations relating to the documentary materials and archives.

### ***Exclusion of Candidates from the List of Qualified Tenderers***

#### **Article 84**

A procuring entity may exclude a candidate from the list of qualified tenderers only for reasons based on criteria determined in advance.

A procuring entity shall inform the tenderer of the reasons for exclusion from the list referred to in paragraph 1 of this Article.

## **IV. THE SUBJECT OF A PUBLIC PROCUREMENT CONTRACT AND SPECIAL CASES OF AWARDING A CONTRACT**

### **1. Procurement of Goods**

#### ***Definition of the Subject of a Public Supply Contract***

#### **Article 85**

The subject of a public supply contract may be:

- 1) the purchase of goods (to be paid in a lump sum or in installments);
- 2) the renting of goods;
- 3) the leasing of goods (with or without the right of purchase).

#### ***Attendant Services***

#### **Article 86**

A public procurement contract may include services if the services are necessarily linked to the supply of goods (assembly, transport, insurance or other services defined by the procuring entity).

#### ***Additional Deliveries***

#### **Article 87**

A procuring entity may award a public procurement contract by the negotiated procedure without a prior publication in the case of additional deliveries by the original supplier intended for:



- 1) partial replacement of products, materials or installations or,
- 2) the extension of the range of existing products, materials or installations, which would impose upon the procuring entity the obligation to procure materials of different technical characteristics if the supplier or the provider of services was changed, causing great technical difficulties in operations and maintenance.

The total value of additional deliveries referred to in paragraph 1 of this Article may not exceed 25% of the total value of the main public procurement contract.

### ***Other Deliveries***

#### **Article 88**

A procuring entity may award a public procurement contract by the negotiated procedure without a prior announcement in the case of procuring goods intended solely for the purpose of research, experimentation, study or development, and not for any commercial purposes or recover research and development costs.

## **2. Procurement of Works**

### ***Definition of the Subject of a Public Works Contract***

#### **Article 89**

The subject of a public works contract shall be:

- 1) the execution of work assignments;
- 2) the design and execution of work assignments linked to the specific activities listed in Annex II, forming an integral part of this Law;
- 3) civil work on an object taken as a whole which meets all the economic and technical requirements of the procuring entity.

### ***Prior Information Notice***

#### **Article 90**

If the estimated value of works exceeds 50.000.000 dinars, a procuring entity shall issue a prior information notice of the works immediately after the passing of the law regulating the annual Republic Budget.

### ***Subsidized Construction Work***

#### **Article 91**

The provisions of this Law shall also apply to awarding public works contracts for which the investor has received a subsidy from a direct or an indirect budget user, or from an organization of compulsory social insurance, if the subsidy exceeds 50% of the value of the public works contract.

The provisions of paragraph 1 of this Article shall apply to public procurement related to the construction of hospitals, sports and recreation facilities and holiday facilities, school and university buildings and buildings used by state bodies, as well as civil engineering construction work, according to Annex II of this Law.

### ***Additional Works***

#### **Article 92**

A procuring entity may award a public procurement contract of work by the negotiated procedure without prior publication in the following cases:

1) in the case of additional works or services that were not included in the project initially assigned or in the original public procurement contract, and which have, due to unforeseeable circumstances, become necessary for the execution of the public works contract, provided the contract is awarded to the initial contractor or provider of services, and if:

(a) such additional works or services cannot be separated, in technical or economic terms, from the principal public procurement contract without causing insurmountable difficulties to the procuring entity;

(b) or if such works or services, which a procuring entity could assign separately from the execution of the initial contract, are necessary for the further phases of the execution of the works in question, provided that the total value of all additional works or services cannot exceed 25% of the total value of the principal public procurement contract;

2) in the case of such new services or works representing a repetition of similar works or services, and are executed by the initial contractor, provided that such works or services comply with the initial project, for which the initial public procurement contract was awarded following the publication of a public invitation. A procuring entity shall mention such a possibility in the initial publication of the public invitation.

A procuring entity may award a public works contract by the negotiated procedure without prior publication referred to in paragraph 1 item 2 of this Article if less than three years have elapsed since the conclusion of the first contract.

### ***Other Works***

#### **Article 93**

A procuring entity may award a contract by the negotiated procedure with prior publication, involving a construction work solely for the purpose of research, development or experimentation, and not intended for any commercial purposes of a procuring entity or for the reimbursement of the research and development costs.

### ***Meeting Special Requirements for Contract Award***

#### **Article 94**

A procuring entity may name in tender documents, the body authorized to provide the necessary information concerning the obligations to be fulfilled in order to meet the requirements of the regulations dealing with safety measures at work, employment and working conditions currently in effect.

In the case referred to in paragraph 1 of this Article, a procuring entity shall request the tenderers or candidates to explicitly state in their tenders that they have observed the obligations resulting from the regulations dealing with safety measures at work, employment and working conditions currently in effect.

A procuring entity shall in particular verify the fulfillment of the obligations resulting from the regulations dealing with safety measures at work, employment and working conditions currently in effect if the abnormally low price offered results from a failure to observe these regulations.

## ***List of Interested Contractors***

### **Article 95**

Based on a public invitation, the Chamber of Commerce of the Republic of Serbia (hereinafter referred to as: the Chamber) shall compile a list of interested contractors in the field of construction work, adhering to the conditions referred to in Article 45, paragraph 2 items 1-3 and 5 of this Law and the regulations dealing with construction work in the Republic.

If FR Yugoslavia has concluded an agreement with another state, contractors whose legal residence is located in other states will be included in the list, provided that they meet the requirements referred to in paragraph 1 of this Article.

Contractors whose legal residence is located in the Republic of Montenegro will be included in the list, provided that they meet the requirements referred to in paragraph 1 of this Article.

If the Chamber receives information to the effect that a contractor included in the list of interested contractors does not fulfill the requirements referred to in paragraphs 1 and 2 of this Article, it shall send a written request to the contractor in question, demanding that he should prove again, within eight days of having received the request in writing, that he fulfils the said requirements.

If the contractor referred to in paragraph 4 of this Article fails to provide evidence of fulfilling the requirements referred to in paragraphs 1 and 2 of this Article, the Chamber shall erase his name from the list of interested contractors.

For each public procurement procedure they participate in, the contractors shall submit a certificate of being included in the list issued by the Chamber.

### ***Statement Given by a Tenderer or a Candidate on Meeting the Obligations towards Employees and Subcontractors***

### **Article 96**

For each public procurement contract a procuring entity shall demand a tenderer or a candidate to submit a statement to the effect that he meets the minimum requirements of the collective agreement or some other corresponding legal act in an orderly manner, and that he fulfils the obligations he has towards the subcontractors regularly and in a timely manner.

A procuring entity may impose special conditions concerning the fulfillment of obligations on the part of the contractor towards his subcontractors, and the tenderer shall expressly accept those conditions.

## **3. Procurement of Services**

### ***Definition of the Subject of a Public Services Contract***

### **Article 97**

The subject of a public services contract shall be the services listed in Annexes I A and I B, forming an integral part of this Law.

Public procurement of services directly subsidized from the budget where the amount of the subsidy exceeds 50% of the value of the contract and where a procuring entity is not a direct budget user shall be awarded according to the provisions of this Law.

### *Services not Subject to this Law*

#### **Article 98**

The provisions of this Law shall not apply to:

- 1) the services referred to in Article 2 of this Law;
- 2) financial services (credit, loan) related to acquisition or rental of land, existing buildings or other immovable property, or concerning rights thereon, in whatever form, whether it is concluded at the same time, before or after the contract of acquisition or rental of land;
- 3) contracts for the acquisition, development, production or co-production of radio or television programme material and contracts for broadcasting time;
- 4) services of voice telephony, telex, radio-telephony, paging and satellite services;
- 5) arbitration and conciliation services;
- 6) contacts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- 7) the services of the National Bank of Yugoslavia;
- 8) employment contracts, and
- 9) research and development service contracts other than those where the benefits accrue exclusively to A procuring entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by A procuring entity.

### *Award of Public Services Contract by a Design Contest*

#### **Article 99**

A procuring entity shall award a public service contract by means of a design contest in the field of urban planning, architecture, civil engineering, engineering, design and information technology.

A draft, plan or design shall be selected by an independent jury.

The jury referred to in paragraph 2 of this Article shall be composed exclusively of natural persons who are not in any way connected with the participants in the contest.

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

The jury shall be autonomous in its decisions, and the participants in the contest shall be anonymous.

The decision of the jury shall be based solely on the criteria referred to in Article 55 of this Law.

### *Additional Services*

#### **Article 100**

A procuring entity may award a public procurement contract of services by the negotiated procedure without prior publication:

1) in the case of additional services or work not included in the initially assigned project or in the initial public procurement contract, which, due to unforeseeable circumstances, have become necessary for the execution of the public procurement contract in question, provided that the contract be awarded to the initial services provider or contractor, and if:

(a) such additional services or works cannot be separated, in technical or economic terms, from the principal public procurement contract without causing insurmountable difficulties for the procuring entity, or

(b) if such services or works, although the procuring entity could award them separately from the execution of the initial contract, are necessary for the subsequent phases of the work in question; the total estimated value of these additional services or works may not exceed 25% of the total value of the principal public procurement contract;

2) in the case of new services and works that represent a repetition of similar services or work executed by the initial contractor, on the condition that such services or work fit into the principal project, for which the initial public procurement contract was awarded following the publication of a public invitation. A procuring entity shall mention this possibility in the initial publication of a public invitation. A procuring entity may award a public services contract by the negotiated procedure without the prior publication referred to above only if less than three years have elapsed since the conclusion of the first contract;

3) when a public services contract is to be awarded by design contest referred to in Article 99 of this Law, and if it is to be awarded to one successful candidate or one of several successful candidates. If there are several successful candidates, a procuring entity shall invite each one of them for negotiations.

### *Award of Consulting Services*

#### **Article 101**

A contract of consulting services (the services referred to in items 9-11 of Annex I A and the services referred to in items 21-22 of Annex I B) shall be awarded by the restricted procedure.

In the first phase, a procuring entity shall recognize the qualifications to a certain number of candidates on the basis of ability and professional experience in connection with the services that are the subject of public procurement.

Under exceptional circumstances, contrary to the provisions of paragraph 2 of this Article, with regard to the nature of the consulting services that are the subject of public procurement, a procuring entity may request in the public invitation potential tenderers to express their interest.

The public invitation referred to in paragraphs 2 and 3 of this Article shall contain information about:

- 1) the name and address of a procuring entity, including the telephone, telefax and telex number and the e-mail address;
- 2) the purpose of the qualification procedure;
- 3) the address where information concerning participation in the qualification procedure may be obtained;
- 4) the time limit for submission of a request for participation;
- 5) the duration of the qualification procedure, if it is possible to estimate it;
- 6) the consulting service that is the subject of public procurement;
- 7) the manner of obtaining the pre-qualification documentation;
- 8) the amount of the expenses incurred for the copying and forwarding the pre-qualification documents that should be covered.

In the second phase, a procuring entity shall invite all the candidates whose qualifications have been recognized or the tenderers who have expressed their interest in submitting a tender.

### Article 102

A procuring entity may, subject to the prior approval of the Office, forward an invitation for submission of tenders for consulting services directly to the tenderers if:

- 1) the consulting service that is the subject of public procurement may be obtained only from a limited number of tenderers, in which case the invitation for tenders submission may be forwarded to all such tenderers;
- 2) the time and the expenses necessary for evaluating a great number of proposals would not be commensurate with the value of the service that is the subject of public procurement, on the condition that the invitation for tenders submission has been forwarded to a sufficient number of tenderers to ensure effective competition.

In addition to the elements referred to in Article 52, paragraph 2 of this Law, an invitation for tenders submission for consulting services shall contain a statement concerning the relative (weighted) significance of the criteria that will be applied for the evaluation of the tenders.

A procuring entity shall base the criteria referred to in paragraph 2 of this Article on:

- 1) the qualifications, experience, reputation, reliability and professional and managerial ability of the tenderer and the staff to be involved in providing the service in question;
- 2) the extent the tender in question meets the needs of a procuring entity;
- 3) the price offered, including potential side expenses and attendant expenses;
- 4) the effects of the tender in question on the balance of payments and the foreign exchange reserves of FR Yugoslavia;
- 5) the scope of the participation of domestic participants and how this will boost employment;
- 6) the effects of the transfer of technology and knowledge, and of the development of managerial and professional skills;
- 7) other circumstances, depending on the nature of the consulting service in question.

To each of the elements from paragraph 3 of this Article a procuring entity shall assign a relative significance (weight), so that the total sum of weighted points amounts to 100.

A procuring entity shall evaluate the tenders submitted by establishing the minimum requirements that the tenders have to meet in terms of quality and technical aspects, which shall be obtained by applying the weighted criteria referred to in paragraph 3 items 1, 2 and 4-7 of this Article; after that it shall rank the tenders on the basis of these criteria and weighted points.

After completing the ranking procedure, a procuring entity shall compare the prices offered in the tenders ranked above the minimum requirements level.

A tender referred to in paragraph 5 of this Article may be selected:

- 1) on the basis of the lowest price offered, or
- 2) on the basis of having received the best mark, combining the criteria referred to in paragraph 2 items 1, 2, 4 and 7 of this Article and the price offered.

### **Article 103**

Consulting services contracts may be awarded by the negotiated procedure with prior publication.

The negotiations referred to in paragraph 1 of this Article may be conducted:

- 1) simultaneously or
- 2) consecutively.

Simultaneous negotiations are negotiations with the tenderers who have submitted acceptable tenders in the procedure referred to in Articles 101 and 102 of this Law; alterations of the tenders may be requested or allowed, provided that all the tenderers have been given the opportunity to participate in the negotiations.

Following the negotiations, a procuring entity shall request all the remaining tenderers to give their best and final tenders concerning all aspects of their proposals within a stipulated period of time.

When evaluating the tenders, the prices offered shall be considered separately, only after the technical evaluation of the tenders has been completed.

A public procurement contract of consulting services shall be awarded to the tenderer whose tender suits a procuring entity's needs the most, based on the criteria referred to in Article 102 of this Law and the weighted points assigned to these criteria in the manner outlined in the public invitation referred to in Article 101 of this Law.

### **Article 104**

Consecutive negotiations comprise the establishment of the minimum requirements that the tenders have to meet in terms of quality and the technical aspects referred to in Article 102 of this Law and the ranking of the tenders.

A procuring entity shall notify the tenderers ranked below the minimum requirements level of their rank.

A procuring entity shall invite the top-ranked tenderer to negotiate the price offered; the other tenderers ranked above the minimum requirements level shall be informed that they may be invited for negotiations if the public procurement contract in question is not awarded to the first invited tenderer.

The procedure referred to in paragraph 3 of this Article shall last until the public procurement contract is awarded, that is, until the remaining tenders are rejected.

### ***Design Contest as an Integral Part of Another Service***

### **Article 105**

The subject of public procurement under this Law encompasses design contests that form an integral part of the procedure for awarding public services contract referred to in:

- 1) Annex I B;
- 2) Annex I A, with the exception of voice telephony, radio telephony, paging and satellite services under item 5 of the said Annex.

## ***Design Contest as an Independent Service***

### **Article 106**

The subject of a public procurement contract include independent design contests, involving the award of prizes and payments to participants in the case of services referred to in:

- 1) Annex I B;
- 2) Annex I A, other than voice telephony, radio telephony, paging and satellite services referred to in item 5 of the said Annex.

## **V. PUBLIC PROCUREMENTS IN THE WATER, ENERGY, TELECOMMUNICATIONS AND TRANSPORT SECTORS**

### ***The Subject of the Contract***

### **Article 107**

Public procurement contracts in the water, energy, telecommunications and transport sectors shall encompass the following activities:

- 1) the supply or operation of permanent networks providing public services in connection with the production, transport or distribution of: drinking water, electricity, gas and heat, as well as supplying drinking water, electricity, gas or heat to these networks;
- 2) the exploitation of a specific geographic area for the purpose of exploring or extracting oil and gas, exploring or digging coal or other solid fuels, as well as construction, exploitation and maintenance of airports, river ports or other terminals for air or river transport carriers;
- 3) the operation of networks providing public services in the field of railway transport, automated systems, bus transport or telegraphy. In the case of transport services, it shall be considered that a network exists if the service in question is provided according to the operating conditions (e.g. the maintenance of roads, the availability or frequency of the service in question) prescribed by the authorized body;
- 4) maintenance or operation of public telecommunications networks or provision of telecommunications services, other than purchase contracts awarded by procuring entities carrying out such an activity whose sole purpose is to enable them to provide telecommunications services, provided other organizations may offer their services in the same area and under the same conditions.

### ***Awarding a Contract where Special or Exclusive Rights are Granted***

### **Article 108**

If the Republic, a territorially autonomous unit or local government has granted, through a special law, decree or other regulation, a special or exclusive right to perform the activities referred to in Article 106 of this Law, the holder of such a right shall be obligated, when procuring goods, services or works, to act like a procuring entity under the provisions of this Law.

Granting a special or exclusive right to perform the activities referred to in paragraph 1 of this Article shall not encompass granting concessions to a person who is not a procuring entity under the provisions of this Law.



The special or exclusive right referred to in paragraph 1 of this Article means that the holder of such a right may use expropriation for the purpose of building the networks or facilities referred to in Article 106, and that he may install the equipment for building a network on, below or above a public road.

According to the provisions of paragraph 1 of this Article, the right referred to in Article 100 item 1 of this Law, when its holder provides drinking water, electricity, gas or heat for a network operated by another person, shall also be considered to be a special or exclusive right.

### ***Definition of Exceptions Related to the Subject of Contract***

#### **Article 109**

The providing of drinking water, electricity, gas or heat shall not be considered to be one of the activities referred to in Article 107 of this Law in the following cases:

1) in the case of providing drinking water or electricity:

(a) if a person who is not an procuring entity according to the provisions of this Law draws drinking water or produces electricity, and the consumption of these goods is necessary for performing activities not specified in Article 107 of this Law;

(b) if the providing of a public network depends solely on the personal consumption of a person who is not a procuring entity according to the provisions of this Law, and if this consumption does not exceed 30% of the total consumption of drinking water or electricity on the part of that person, taking into consideration the average consumption over the last three years, including the current year;

2) in the case of providing gas and heat:

(a) if the production of gas or heat on the part of a person who is not a procuring entity according to the provisions of this Law is an unavoidable consequence of performing activities not specified in Article 107 of this Law, and

(b) if the providing of a public network is intended solely for the purpose of economic exploitation of such production and does not exceed 20% of the total annual income of the organization in question, taking into consideration the last three years, including the current year.

### ***Additional Contracts***

#### **Article 110**

The subject of public procurement contracts in the water, energy, telecommunications and transport sectors may also be procurement:

1) connected with hydraulic engineering projects, irrigation or land drainage, provided that the quantity of water intended for water supply exceeds 20% of the total quantity of water provided through these projects, irrigation or land drainage;

2) connected with wastewater treatment or filtration.

### ***Contracts in the Water, Energy, Telecommunications and Transport Sectors not Subject to this Law***

#### **Article 111**

The provisions of this law shall not apply to public procurement contracts in the water, energy, telecommunications and transport sectors in the following cases:

1) when a procuring entity responsible for the supply or operation of public telecommunications networks, or for providing public telecommunications services awards a purchase contract relating to the goods whose sole purpose is to enable it to provide one or more of telecommunications services, provided that another person may freely offer his services in the same area and under the same conditions;

2) when a procuring entity awards a contract for the purpose of purchasing water;

3) when a procuring entity awards a contract for the purpose of providing electricity or providing fuel for energy production;

4) when a procuring entity transports oil or natural gas through systems where only one tenderer exists;

5) in the case of a design contest that a procuring entity awards or organizes for purposes not specified in Article 107 of this Law;

6) in the case of services that a procuring entity awards to a mixed company, established by several procuring entities for the purpose of performing activities in the following areas:

(a) the supplying or operation of permanent networks intended for providing public services in connection with the production, transfer or distribution of drinking water, electricity, gas or heat, or supplying drinking water, electricity, gas or heat;

(b) the exploitation of a certain geographic area for the purpose of supplying airports, river ports or other terminals for air or river transport;

(c) the operation of networks providing public services in the field of railway traffic, automated systems, bus traffic and telegraphy. It shall be considered that a traffic network exists if the service in question is provided according to the operating conditions (e.g. the maintenance of roads, the availability or frequency of the service in question) prescribed by the authorized body;

(d) the supplying or the operation of public telecommunications networks or the provision of telecommunications services;

7) services that a procuring entity awards to an affiliated company, provided that the affiliated company in question has made at least 80% of its average overall income over the last three years from the services provided in the Republic, for the companies it is affiliated with;

8) providing public bus transport services, provided that other persons may provide those services in the same geographic area under the same conditions.

Also, the provisions of this Law shall not apply to public procurement contracts awarded to other undertakings for the purpose of resale or renting, provided that a procuring entity shall not have exclusive or special rights to the resale or renting of the subject of contract, and that other companies may freely sell or rent it under the same conditions.

A procuring entity shall notify the Office of the contracts referred to in paragraph 2 of this Article.

### ***Awarding a Contract without Prior Publication***

#### **Article 112**

A procuring entity may award a public procurement contract without prior publication:

1) if no tenders or no adequate tenders have been received in the procedure involving a public invitation for tenders submission, provided that the original conditions of the procurement contract remain essentially unchanged;

2) if the contract in question is awarded solely for the purpose of research, experimentation, study or development, and not for profit or to reimburse research and development expenses, provided that the awarding of such a contract does not determine or limit any future contracts awards, when it would be necessary to ensure that there is competition among the tenderers;

3) if, due to objective reasons or for reasons connected with the protection of exclusive rights, the contract in question may be executed by a specific supplier or provider of services;

4) if there occur any unforeseen circumstances which a procuring entity could not influence and on account of which he was unable to execute the procedure involving a public invitation within the stipulated period of time;

5) if the contract in question is awarded for additional deliveries by the original supplier intended for partial replacement of products, materials or installations, or for the extension of the range of existing products, materials or installations, in a situation where a change of supplier or provider of services would oblige a procuring entity to obtain materials with different technical characteristics, which would result in incompatibility or cause excessive technical difficulties in operation and maintenance;

6) for goods offered and purchased on commodity markets;

7) for additional works or services not included in the project initially awarded or in the contract initially concluded, which, due to unforeseeable circumstances, have become necessary for the execution of the public procurement contract in question, provided that the contract be awarded to the contractor or service provider executing the initial procurement contract:

(a) if such additional works or services cannot be separated, in technical or economic terms, from the principal contract without adverse consequences for the procuring entity;

(b) if the additional works or services, even though they are separable from the initial contract, are necessary for the subsequent phases of contract execution, provided that the total estimated value does not exceed 25% of the value of the initial contract;

8) for new works or services representing the repetition of similar services or works awarded to the contractor or service provider who has been awarded the previous contract, provided that the work or services in question fit the basic project for which the initial contract was awarded after a public invitation. A procuring entity shall announce such a possibility immediately after the publication of the first public invitation. A procuring entity may award a contract in this manner within a period of three years from the day of concluding the first contract;

9) for procuring goods sold under particularly advantageous opportunities, at a price considerably lower than the market price;

10) for the purchase of goods under particularly favorable circumstances from a supplier undergoing a liquidation procedure, with the agreement of other creditors, according to the regulations dealing with enforced settlement, liquidation and bankruptcy;

11) for services that are part of the continuation of a tender for designs organized according to this Law, if the contract in question was granted to a participant or participants who have been awarded prizes, in which case A procuring entity shall invite all the participants for negotiations;

12) for the services and goods of firms dealing with the training, professional rehabilitation and employment of disabled, if the procurement in question is directly connected with the training, professional rehabilitation and employment of such persons, provided that the firm in question fulfils the requirements referred to in Article 45 of this Law and that the Office has given its approval. A procuring entity shall check the price and the quality of the object of procurement by gathering several tenders, analyzing the expenses, comparing the quality or in some other way; he shall also be obligated to run checks taking into consideration the object of procurement as stated in his documentation.

### ***Prohibition to Restrict Participation***

#### **Article 113**

The right to participate in a tender for designs may not be limited by the territorial affiliation of the participants or by their character (physical or legal entity).

If tenders for designs are planned for a limited number of participants, a procuring entity shall establish clear and non-discriminatory criteria for selection.

The number of candidates invited to participate in a tender for designs has to be sufficient to ensure that there is real competition (no less than five, and 20 at the most).

The jury evaluating the proposals that have been submitted shall be composed solely of natural persons who are not in any way connected with the participants in the tender.

If special professional qualifications are required from the participants in a tender, a minimum of one half of the jury members shall have the same or corresponding professional qualifications.

The jury shall be independent in decision making, and participation in the tender shall be anonymous.

The decisions of the jury shall be made on the basis of the criteria stated in the tender advertisement and in tender documents, according to Article 55 of this Law.

### ***Prior Notice***

#### **Article 114**

When awarding public procurement contracts in the water, energy, telecommunications and transport sectors, at least once a year a procuring entity shall be obligated, according to the provision of Article 67, paragraph 2 of this Law, to give prior notice of:

1) basic characteristics of the work he intends to contract, if its estimated value is not less than:

a) 300,000,000 dinars if a procuring entity performs activities in telecommunications sector;

b) 25,000,000 dinars for procuring services not specified in Annex I A, with the exception of the services referred to in item 8 and telecommunications services referred to in item 5 of the said Annex, if a procuring entity is involved in the drawing, transfer or distribution of drinking water, the transfer or distribution of electricity, the supply of airports, bus, trolleybus or streetcar transport services, or the supply of river ports and other terminals;

c) 300,000,000 dinars if a procuring entity is involved in the transport or distribution of gas or heat, or the extraction and processing of oil or gas, or railway transport services;

2) the estimated total value of a public procurement contract of services in each of the category of services specified in Annex I A that a procuring entity intends to award in the next 12 months, if the estimated value in question is not less than 50,000,000 dinars.

### ***Updating the Criteria and Requirements***

#### **Article 115**

If a procuring entity decides to make a selection in the qualification procedure or if he updates the criteria and requirements, he shall set criteria and requirements that are not discriminatory towards tenderers.

### ***Submitting Attestations***

#### **Article 116**

A procuring entity may request the candidates to submit attestations issued by the bodies or organizations authorized to verify that tenderers comply with requirements concerning quality standards.

The attestations referred to in paragraph 1 of this Article shall refer to the systems for ensuring quality according to the corresponding European standards series EN 29000, for which the authorized bodies or organizations have to certify that they are in compliance with the European standards series EN 45000.

A procuring entity shall recognize the equivalent attestations issued by bodies or organizations established in other states if this is prescribed by an international agreement concluded by FR Yugoslavia.

A procuring entity shall recognize other proofs of equivalent measures of ensuring quality from service providers who do not have access to the attestations referred to in paragraph 3 of this Article or are unable to obtain them in time.

### ***Joint Tender***

#### **Article 117**

Tenderers may submit a joint tender or negotiate as a group, according to the provisions of the Article 51 of this Law.

A procuring entity who demands in the advertisement that only natural or legal persons may be tenderers or candidates may not reject tenderers or candidates who perform their activities according to the regulations of the state where their legal residence or seat is located, and who are allowed to perform the activity that is the object of the public procurement in question.

### ***Application of Other Criteria and Requirements***

#### **Article 118**

In addition to the criteria referred to in Articles 54 and 55 of this Law, a procuring entity may apply other criteria for tenders evaluation, if those criteria are prescribed by other regulations in force and give a certain advantage to tenderers or candidates, and if such a manner of awarding a public procurement contract is not in violation of international agreements concluded by FR Yugoslavia.

The application of other criteria has to be announced in the public invitation and in tender documents.

If the strategic interest in awarding a public procurement contract of goods or works is the elimination of regional differences or the provision of new jobs in underdeveloped regions, the manner of awarding a contract referred to in paragraph 1 of this Article may not be in contravention with international agreements concluded by FR Yugoslavia.

The Government shall be authorized to determine the strategic interests when setting other criteria and requirements.

### ***Observing the Principle of Reciprocity***

#### **Article 119**

If tenderers offer products originating from the country with which FR Yugoslavia has not concluded an agreement that would enable Yugoslav tenderers to have access to the market of that country on an equal footing, such a tender may be rejected if more than 50% of the products offered in the tender originate from the country in question.

The origin of products shall be established according to the relevant regulations.

According to the provisions of paragraphs 1 and 2 of this Article, software used for equipping a telecommunications network shall be considered as a product.

A procuring entity shall review carefully the list of countries of origin of products, tender of which may be rejected pursuant to the provisions of paragraph 1 of this Article.

## ***Suspension of Awarding Public Procurement Contracts of Services***

### **Article 120**

Having obtained the opinion of the federal Ministry authorized for economic relations with foreign countries, the Government may temporarily suspend the awarding procedure for public service contracts:

- 1) to tenderers having seat in the country with which FR Yugoslavia has not concluded an agreement on equal treatment of domestic and foreign tenderers;
- 2) to tenderers associated to the tenderers referred to in item 1 of this Article and having seat in the country with which FR Yugoslavia has concluded an agreement on equal treatment of domestic and foreign tenderers, but who does not have direct and effective links with the economy of the Republic;
- 3) to tenderers having submitted tenders offering services from the country with which Yugoslavia has not concluded an agreement on equal treatment of domestic and foreign tenderers.

## ***Preferential Award of Public Procurement Contract***

### **Article 121**

If two or more tenders are equal on the basis of the criteria stipulated in Articles 54, 55 and 56 of this Law, a procuring entity shall give priority to the tenders:

- 1) the award of which cannot be suspended on the basis of the Article 120 of this Law;
- 2) the award of which would not mean that a procuring entity have to procure materials whose technical characteristics are different from those of the existing materials.

According to the provisions of paragraph 1 of this Article, those tenders whose prices do not differ by more than 3% shall be considered as equal.

## ***Documentation Archive***

### **Article 122**

Procuring entities shall keep the documentation concerning procurement procedures for awarding contracts in the water, energy, telecommunications and transport sectors pertaining to:

- 1) the qualifications and selection of tenderers and the public procurement contract award;
- 2) applying the procedure without a prior publication, stipulated in the Article 112 of this Law;
- 3) awarding of public procurement contracts of services, the application of technical specifications and standards, and the selection of the public procurement procedure, when the provisions of this Law have not been applied.

A procuring entity shall keep the documentation referred to in paragraph 1 of this Article for at least four years following the date of the conclusion of a contract, and shall forward the data to the authorized body upon its request.

A procuring entity involved in the drawing, transfer and distribution of drinking water, electricity, bus and other city transport services, railway traffic and the operation of airports, river ports and other terminals, shall notify the tenderers on the required information upon their request.

The notification referred to in paragraph 3 of special tenderer's request, in writing.

this Article shall be imparted orally, and upon

Having received a request in writing from a tenderer who has been eliminated, a procuring entity shall forward the written notification referred to in paragraph 4 of this Article on the following day of the receipt of the request and inform him of the reasons for rejecting his tender, of the advantages of the selected tender and of the name of the tenderer who has been awarded the public procurement contract in question.

## **VI. LOW-VALUE PUBLIC PROCUREMENT CONTRACTS**

### ***The Notion of Low-Value Public Procurement Contract and the Low-Value Contract Award Procedure***

#### **Article 123**

Low-value public procurement contract, pursuant to the provisions of this Law, is the contract whose estimated value is lower than the value determined by the law regulating the annual Republic Budget.

Each year, when preparing the annual Republic Budget proposal, the Government shall determine the value representing the upper threshold in the budget year below which procuring entities may apply the low-value public procurement procedure.

In the low-value public procurement procedure, a procuring entity shall obtain at least three tenders and shall notify the tenderers of the elements included in the public procurement price (e.g. compensation for transport and insurance expenses, customs duty, turnover tax, excise, etc.).

Tenderers may submit only one tender each and may not alter it.

A procuring entity and the tenderers shall not be allowed to negotiate elements of the tenders.

Low-value public procurement contract shall be awarded to the tenderer offering the lowest price under the equal conditions.

### ***Preparation of Internal Regulations***

#### **Article 124**

For the award of low-value contract, a procuring entity shall lay down the award procedure by an internal regulation, with regard to the provisions of this Law.

By the internal regulation referred to in paragraph 1 of this Article, a procuring entity shall particularly regulate:

- 1) the method of contract performance with regard to the estimated value, technical and technological requirements and the financial consequences of the contract;
- 2) the method of preparing tender documents;
- 3) the persons authorized for collecting tenders by telephone, telefax and the like, and in particular the method of verifying the tendered price;
- 4) the method of documenting the tenders and keeping records of documentation;
- 5) the method of contract performance once it is concluded and monitoring the performance of low-value contracts, in particular within the guarantee period;

6) the method of using purchasing orders and other standard documents in this procedure prepared in advance; a procuring entity shall prescribe a threshold allowing previously prepared standard document to be used for each individual public procurement contract.

A procuring entity shall determine the method for proving that the minimum requirements for tenderers have been complied with, pursuant to the provisions of this Law.

### ***Keeping Records of Concluded Low-Value Contracts***

#### **Article 125**

A procuring entity shall keep records of low-value contracts, concluded following the low-value contract award procedure, separately for goods, services and works.

## **VII. PUBLIC PROCUREMENT RECORDS**

### **1. Keeping Records**

#### ***Types of Public Procurement Data***

#### **Article 126**

A procuring entities shall collect and keep records of certain data concerning awarded public procurement contracts, pursuant to the provisions of this Law; they shall keep records separately for supply contracts, service contracts and works contracts, as well as contracts in the water, energy, telecommunications and transport sectors.

In the case of awarding service contracts referred to in Annex I B, and telecommunication services referred to in item 5 of Annex I A, records need not be kept if the contract value does not exceed 12,500,000 dinars.

The Minister of Finance and Economy shall prescribe standard forms for documenting public procurement data.

#### ***The Content of the Report***

#### **Article 127**

If a procuring entity is a direct budget user, a report on public procurement contracts shall contain the following information:

- 1) the estimated total value of concluded contracts;
- 2) the number and the value of concluded contracts, and the type of procedure used in awarding a contract, the type of goods, works or services, the name of the other party to the contract and its seat. If the contract in question has been awarded by the negotiated procedure, the basis referred to in Article 23 of this Law shall be stated, as well as the number and the value of contracts concluded with parties to the contract whose seat is in the Republic of Montenegro or abroad.

If a procuring entity is not a direct budget user, a report on public procurement contracts shall contain only the data referred to in paragraph 1 item 2 of this Article.

A procuring entity shall record the data on low-value contracts separately.

The Minister of Finance and the Economy shall prescribe more closely the content of the report referred to in paragraph 1 of this Article.



A procuring entity shall forward to the Office the report on public procurement contracts concluded in the course of the previous year by April 30<sup>th</sup> of the current year at the latest.

The Office shall compile a cumulative report and shall submit it to the Government by July 31<sup>st</sup> of the current year at the latest.

## **VIII. PROTECTION OF THE TENDERERS' RIGHTS**

### *The Body Ensuring Legal Protection*

#### **Article 128**

In all the phases of the public procurement procedure, the protection of the rights of tenderers shall be ensured by the Office, through the Commission for the Protection of the Tenderers' Rights (hereinafter referred to as: the Commission), established at the Office.

### *The Composition and the Appointment of the Commission*

#### **Article 129**

The Commission shall have a Chairman and four members.

The Chairman and the members of the Commission shall be appointed by the Government, acting upon the proposal of the Minister of Finance and the Economy.

The Chairman of the Commission shall be a graduate lawyer who has passed the Bar examination.

A minimum of two members of the Commission shall be graduate lawyers, and the remaining members may be graduate economists or engineers.

The term of office of the Chairman and the members of the Commission shall be four years; upon its expiry, they may be appointed again.

### *Commission's Operating Procedure*

#### **Article 130**

The Commission's operating procedure shall be determined by a special act passed by the Commission.

Once a year, the Commission shall submit a report on its work to the Government and the National Assembly.

### *Secrecy Safeguard*

#### **Article 131**

The members of the Commission shall keep the secrecy of data relating to state, military, official or trade secrets, and shall treat the documents according to their level of confidentiality.

***The Right for Submitting a Request for Protection of the Tenderers' Rights to the Commission***

**Article 132**

A request for protection of the tenderers' rights may be submitted by any person who has participated in the public procurement procedure as a tenderer (hereinafter referred to as: the claimant) and is of the opinion that his rights have been violated in the public procurement procedure.

A request for protection of the tenderers' rights in the public procurement procedure may not call into question the criteria for evaluating the tenders or any restrictions on participation imposed by the procuring entity, unless they are in contravention of this Law.

***Consequences of Initiating the Procedure for the Protection of the Tenderers' Rights***

**Article 133**

A request for protection of the tenderers' rights in the public procurement procedure shall result in suspension of any further activities of the procuring entity in awarding a public procurement contract.

Acting upon the proposal of the Commission, regarding the request submitted by the procuring entity or the claimant, the Office may decide that the request for protection of the tenderers' rights should not suspend any further activities of the procuring entity in the public procurement contract award procedure.

***Time Limits for Submitting Requests for the Protection of the Tenderers' Rights***

**Article 134**

A request for protection of the tenderers' rights may be submitted in any phase of the public procurement procedure, unless otherwise stipulated by this Law.

A request for protection of the tenderers' rights may not be submitted if the reasons for submission of the said request were known to the tenderer, or could have been known to him, before the procuring entity made the decision on awarding the contract, but he failed to submit a request for protection of the tenderers' rights before the procuring entity made his decision.

After the passing of the decision on awarding a public procurement contract, the time limit for submitting a request for protection of the tenderers' rights shall be eight days from the date of the public procurement contract award.

***The Method for Submitting a Request for Protection of the Tenderers' Rights***

**Article 135**

A request for protection of the tenderers' rights shall be submitted to a procuring entity in two copies; the claimant shall inform the Office at the same time of having submitted the said request.

A request for protection of the tenderers' rights shall be submitted to a procuring entity by registered post, fax or e-mail.

A request for protection of the tenderers' rights has to contain the reasoning.

The claimant shall pay a tax in the amount of 40.000 dinars into the appropriate account on the request submission.

In the case of low value public procurement, the tax shall be in the amount of 20.000 dinars.

The claimant shall state the following information in the request:

- 1) name and address of the claimant;
- 2) name and address of the procuring entity;
- 3) the public procurement contract which is the subject of the request for protection of the tenderers' rights and the notice of awarding the said public procurement contract, if it has been forwarded to the tenderer;
- 4) the violation(s) of the provisions of this Law concerning the public procurement procedure;
- 5) the facts that prove that the provisions of this Law concerning the public procurement procedure have been violated;
- 6) a certificate of having paid the tax referred to in paragraph 4 or 5 of this Article.

If a procuring entity estimates that the request for protection of the tenderers' rights submitted does not contain all the information referred to in paragraph 6 of this Article, or that it is not possible to establish, on the basis of the data supplied in the request, how the public procurement procedure was violated, it shall invite the claimant to present additional information within three days of having received the request for additional information.

If the claimant fails to provide the additional information requested within the period stipulated in paragraph 7 of this Article, a procuring entity shall reject the request.

### ***Prior Verification of a Request for Protection of the Tenderers' Rights***

#### **Article 136**

After receiving a request for protection of the tenderers' rights, a procuring entity shall check whether it has been submitted in a timely manner and by a person referred to in Article 132 of this Law.

If a request for protection of the tenderers' rights has been submitted in an untimely manner, or if it has not been submitted by a person referred to in Article 132 of this Law, a procuring entity shall reject such a request and notify the Commission of it.

If a request for protection of the tenderers' rights has been submitted in a timely manner and by an interested party, a procuring entity shall consider the reasons pointed out by the claimant.

### ***Experts Authorizations***

#### **Article 137.**

A procuring entity shall request the Office to appoint an expert who will participate in the procedure initiated by a request for protection of the tenderers' rights.

The Office shall appoint an expert from the list of experts compiled in cooperation with the Chamber within three days of having received the procuring entity's request.

When selecting an expert, the Office shall take into consideration his knowledge of the regulations on public procurement, as well as the regulations related to the particular field of public procurement involving the public procurement contract which was the subject of a request for protection of the tenderers' rights.

The appointed expert shall examine the documentation of a procuring entity and present a reasoned opinion about potential violations of the provisions of this Law concerning the public procurement procedure within eight days of having received the decision on his appointment.

If the expert fails to forward his opinion within the time period stipulated in paragraph 4 of this Article, a procuring entity shall decide on the request without the expert opinion and inform the Office of the expert's inactivity.

If a procuring entity does not take into consideration the expert opinion when deciding on a request for protection of the tenderers' rights, it shall state this and to provide a reasoning for that.

The Minister of Finance and the Economy shall prescribe the conditions for appointing an expert referred to in paragraph 1 of this Article more closely.

### ***Deciding on a Request for Protection of the Tenderers' Rights***

#### **Article 138**

After the prior verification referred to in Article 136 of this Law, a procuring entity shall decide on a request for protection of the tenderers' rights by either:

- 1) annulling the public procurement procedure in its entirety or partly, or
- 2) rejecting the request for protection of the tenderers' rights.

A procuring entity shall pass the decision referred to in paragraph 1 of this Article within 20 days of having received the request for protection of the tenderers' rights.

If a procuring entity fails to pass the decision within the period stipulated in paragraph 2 of this Article, it shall be considered that the request has been rejected.

### ***Lodging a Complaint against the Procuring entity's Decision on the Request for Protection of the Tenderers' Right***

#### **Article 139**

A procuring entity shall inform the claimant in writing of his decision to reject the request for protection of the tenderers' rights within three days of having passed the decision.

When forwarding the information referred to in paragraph 1 of this Article, the procuring entity shall invite the claimant to forward a written statement on whether he will continue the procedure before the Commission or not, within three days of having received the procuring entity's decision.

If the claimant forwards a written statement to the effect that he will continue the procedure before the Commission, the procuring entity shall forward the request for protection of the tenderers' rights, together with the documentation and its decision, to the Commission within three days of having received the written statement.

If the claimant does not act in the manner and within the period of time referred to in paragraph 2 of this Article, the procuring entity shall decide to terminate the procedure.

It shall be allowed to lodge a complaint against the decision referred to in paragraph 4 of this Article within three days of the date of forwarding the decision to the claimant.

***Procedure before the Commission for the Protection of the Tenderers' Rights***

**Article 140**

The procedure before the Commission shall continue on the basis of the request submitted and the documentation referred to in Article 139, paragraph 3 of this Law.

The Commission shall decide within the framework of the request submitted.

In the case of violation of the basic principles of public procurement, the Commission shall use all the evidence that it considers conducive to the clarification of the problem and to the passing of a lawful and correct decision.

***Time Limits***

**Article 141**

The Commission shall pass its decision within 15 days of having received a request for protection of the tenderers' rights.

The term referred to in paragraph 1 of this Article may be extended by five days if the situation warrants it, of which the Commission shall inform the claimant.

The decision referred to in paragraph 1 of this Article shall be forwarded to the claimant and to the procuring entity.

***Additions to the Request for Protection of the Tenderers' Rights***

**Article 142**

If the Commission estimates that the request in question does not contain all the data referred to in Article 135 of this Law, or that it is not possible to establish, on the basis of the information provided in the request, what violations of the provisions of this Law are being pointed out, it will invite the claimant to forward additional information within eight days of having received the invitation.

If the claimant fails to comply with the provisions of paragraph 1 of this Article, the Commission shall reject such a request.

Before reaching a decision, the Commission may request the information it considers necessary for passing a decision from the authorized bodies and organizations.

The request for information referred to in paragraph 3 of this Article shall contain the reasoning.

***Expenses of the Procedure before the Commission***

**Article 143**

Each party to the procedure before the Commission shall bear its own expenses, incurred through its actions.

In a separate request, to be submitted to the Commission, the parties shall state the costs of the procedure for which they request compensation; the losing party in the procedure shall compensate the other party's expenses.

The Commission's decision on the costs of the procedure shall be enforceable.

### *The Commission's Decision*

#### **Article 144**

The Commission shall decide upon the request for protection of the tenderers' rights by either:

- 1) annulling the public procurement procedure in its entirety or partly, or
- 2) rejecting the request as unwarranted.

The Commission shall provide reasoning for its decision.

A procuring entity shall act according to the Commission's decision.

No complaint may be lodged against the Commission's decision, nor may administrative proceedings be initiated against it.

The claimant may before the authorized court claim the compensation from a procuring entity.

## **IX. NULLITY OF CONTRACTS**

### *Nullity*

#### **Article 145**

A public procurement contract shall be deemed as null and void:

- 1) if it has been concluded in contravention of the provisions of this Law regulating the manner and the procedure of awarding public procurement contracts;
- 2) if a procuring entity has acted in contravention of the provisions on determining the value of public procurement per lot;
- 3) if it has been concluded in order to settle rights and liabilities, without applying the public procurement procedure;
- 4) if a procuring entity has awarded the contract under conditions different from those prescribed by this Law or to a tenderer who has not been selected as the best one;
- 5) if a procuring entity awards contract performance, or authorizes a third person to perform the contract, or a person who is not the procuring entity according to the provisions of this Law, so as to avoid the application of this Law;
- 6) if the alterations of and additions to the original contract have been effected in contravention of the provisions of Article 87, 92 and 100 of this Law;
- 7) if it has been concluded in contravention of the Commission's decision, and
- 8) if it has been concluded without a prior public procurement contract award procedure, which a procuring entity was obligated to apply according to the provisions of this Law.

## X. PENAL PROVISIONS

### *Violations*

#### **Article 146**

A procuring entity shall be fined the amount of 100.000 to 200.000 dinars:

- 1) if it awards a public procurement contract without prior applying the procedure prescribed by this Law (Article 20);
- 2) if it commences the public procurement procedure before the prescribed conditions are fulfilled (Article 24 and 45);
- 3) if the subject of a contract, contract requirements, technical specifications or other elements of the public invitation are adjusted to a specific tenderer, or if a contract is awarded to a tenderer who has participated in the preparation of tender documents or part thereof (Articles 6 and 36);
- 4) if it awards a contact in violation of the principle of the equality of tenderers (Article 8);
- 5) if it does not protect the data contained in tender documents, according to the degree of confidentiality (Articles 9-12 and 82);
- 6) if it does not keep records or keep the documentation of public procurement (Article 12);
- 7) if it does not forward to the Office the information of rejected tenders for reasons of attempts of bribery (Article 15);
- 8) if it does not forward tender documents to everyone asking for it, according to the public invitation (Articles 28 and 29);
- 9) if it fails to observe the time limits for publishing public invitation and tenders submission (Articles 59-68);
- 10) if it fails to publish the prescribed notices in Article 70 of this Law in “The Official Gazette of the Republic of Serbia” or if it sends them to be published in other public media without having sent them to “The Official Gazette of the Republic of Serbia” for publication (Article 69);
- 11) if it does not observe the technical norms, standards and other technical regulations currently in effect while preparing tender documents (Articles 35-44);
- 12) if it sets conditions and criteria for participation that are not in conformity with this Law, or if it alters the conditions and criteria after the publication of a public invitation without notifying the tenderers (Articles 29 and 45-58);
- 13) if it fails to forward the information on conducted public procurement procedures (Article 126);
- 14) if it does not act in the manner prescribed by this Law in connection with a request for the protection of the tenderers rights in the public procurement procedure (Article 140);
- 15) if it fails to comply with the Commission’s decision (Article 144).

The liable official of a procuring entity shall also be fined the amount of 7.000 to 10.000 dinars for a violation referred to in paragraph 1 of this Article.

#### **Article 147**

A tenderer shall be fined the amount of 100.000 to 200.000 dinars:

- 1) if it fails to notify a procuring entity of alterations to the tender (Article 46 paragraph 4);
- 2) if it supplies false information concerning professional references (Article 47);
- 3) if it supplies false information in the documents proving the compliance with the conditions set by a procuring entity (Articles 46 and 48).

The liable official of the tenderer shall also be fined the amount of 7.000 to 10.000 dinars for a violation referred to in paragraph 1 of this Article).

Natural person as a tenderer shall also be fined the amount of 7.000 to 10.000 dinars for the violation referred to in paragraph 1 of this Article.

### **XI. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 148**

On the date this Law enters into force, the provisions of regulations that are in contravention of this Law shall no longer apply to the public procurements of the Government, ministries, special organizations, public services and other organizations founded by the Republic.

The provisions of this Law shall apply to the public procurements of other subjects considered to be procuring entities pursuant to this Law as of January 1st 2003.

Public procurement procedures initiated by persons considered to be procuring entities pursuant to this Law for which public invitations were published before entering into force of this Law shall be performed according to the regulations that were in effect when they have been commenced.

#### **Article 149**

Until the law regulating the Republic Budget comes into effect in 2003, public procurement whose estimated value is below 350.000 dinars shall be considered to be of low value according to this Law.

#### **Article 150**

The Public Procurement Office shall commence its work not later than a year of the date this Law enters into force.

Until the commencement of the work of the Office referred to in paragraph 1 of this Article, its work shall be performed by the Republic Common Affairs Office, which shall report its work to the Government once a month.



**Article 151**

Until the regulations referred to in Article 137, paragraph 7 of this Law come into effect, the Government shall give its approval to individual decisions on appointing experts.

**Article 152**

This Law shall come into effect on the 8<sup>th</sup> day after its publication in “The Official Gazette of the Republic of Serbia”.

## ANNEX I A:

### Services

Category no.	Object
1.	maintenance and repair services
2.	land transport services (except for railway transport services), including transport in armored vehicles and courier services (other than postal transport)
3.	air transport services of passengers and cargos (other than postal transport)
4.	land and air postal transport (other than railway transport services)
5.	telecommunication services (other than voice telephony, radio telephony, paging and satellite services)
6.	financial services: - insurance services, - banking and investment services (other than procurement of financial services in connection with issuing, sale, purchase or transfer of securities or other financial instruments, and the services of the National Bank of Yugoslavia)
7.	computer services and related equipment
8.	research and development services (other than procurement of research and development services where the research results are not used solely by a procuring entity for his own needs, provided that a procuring entity bears the costs of such services in its entirety)
9.	accounting, auditing and bookkeeping services
10.	market research services and public opinion surveys
11.	management consulting (other than arbitrage, settlement and related services)
12.	architectural, engineering, urban planning and landscape architecture services; technical testing and analyses
13.	Advertising services
14.	building cleaning and real estate management services
15.	publishing and printing services on a part-time or contractual basis
16.	waste removal, sanitary and other related services

## ANNEX I B:

### Services

Category no.	Object
17.	hotel and restaurant services
18.	railway transport services
19.	river transport services
20.	additional and auxiliary transport services
21.	legal services
22.	personnel recruitment services
23.	investigative and security services (other than transport in armored vehicles)
24.	education and vocational training services
25.	health care and social services
26.	recreational, cultural and sports services
27.	other services

**ANNEX II:**  
**Construction Works**

<b>Class</b>	<b>Group</b>	<b>Sub-group</b>	<b>Description</b>
50			BUILDINGS AND CIVIL ENGINEERING
	500		<b><i>General construction and civil engineering works (without special specifications) and demolition</i></b>
		500.1.	General construction and civil engineering works (without special specifications)
		500.2.	Demolition
	501		<b>Construction of objects and parts thereof</b>
		501.1.	General construction works
		501.2.	Construction of eaves and roofs
		501.3.	Construction of chimneys, furnaces and fireplaces
		501.4.	Protection against water and damp
		501.5.	Renovation and maintenance of external walls (refilling brick contacts with mortar, cleaning, etc.)
		501.6.	Erecting and dismantling scaffolding
		501.7.	Other specialized activities in connection with construction works, including carpentry
	502		<b><i>Civil engineering: building roads, bridges, railways, etc.</i></b>
		502.1.	General civil engineering works
		502.2.	Earthworks
		502.3.	Building bridges, tunnels and shafts; drilling
		502.4.	Hydraulic engineering and water management (rivers, canals, ports, inflows, dams, etc.)
		502.5.	Building roads, railway lines, airports and sports facilities
		502.6.	Specialized civil engineering works connected with water (irrigation, drainage, water supply, waste water removal, sewage, etc.)
		502.7.	Other types of civil engineering works, including specialized activities in other civil engineering sectors
	503		<b>Installations</b>
		503.1.	General industrial works
		503.2.	Installations for supplying gas and water, and sanitary equipment installations
		503.3.	Installation of heating and ventilation appliances (central heating, air conditioning, ventilation)
		503.4.	Isolation works
		503.5.	Electric installations
		503.6.	Installation of aerials, lightning conductors, telephones, etc.
	504		<b>Finishing construction works</b>
		504.1.	General finishing construction works
		504.2.	Façade and stucco work
		504.3.	Interior woodwork (including laying parquet floors)
		504.4.	Painting, glazing and wallpapering
		504.5.	Laying tiles and other floor and wall coverings

		504.6.	Other types of finishing and additional construction works (installation of fireplaces, etc.)
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