

ACT

As of 14 December 2005

On Public Procurement and on Modification and Amendment of Certain Acts

National Council of the Slovak Republic has resolved the following Act:

Section I

**PART ONE
BASIC PROVISIONS**

Article 1

Subject of Regulation

(1) This Act regulates

- a) public award of supply contracts, building works contract, service contracts,
- b) building works concessions,
- c) design contest and
- d) administration in public procurement.

(2) This Act does not apply to

- a) a contract where the main purpose is to enable a contracting authority to provide or take advantage of public electronic communications networks¹, take advantage of or provide the public one or several electronic communications services,
- b) a contract, the subject of which is constituted by Top Secret or Secret classified information where its performance must be accompanied by special safety measures based on law or decisions of the competent administration authorities or where protection of the essential interests of the Slovak Republic so requires,
- c) a contract awarded by a contracting authority in the defence sector in conformity with the Treaty establishing the European Community², when its subject relates to the production of guns, ammunition and combat material³ or to trade in them,
- d) a contract where its award is governed by rules based on an international agreement⁴ relating to the stationing of troops, which concerns activities in the territory of a Member State of the European Union (hereinafter referred to as the "Member State") or a third country,
- e) a contract, where its award is governed by a special procedure or rules of an international organisation,
- f) a contract, where its award is governed by the rules based on an international agreement concluded between the Slovak Republic and third countries and the contract concerns supplies, building works or services intended for a common performance or taking the advantage of a project by countries, which are parties to this agreement, and this international agreement was notified to the European Commission,
- g) acquisition or rental of immovable property and the rights connected thereto except financial services, which are connected thereto,
- h) a contract, by which the contracting authority acquires, develops, produces or coproduces programme material intended for television broadcasting or radio broadcasting, and a contract concerning the broadcast time,
- i) arbitration proceedings⁵ and conciliation proceedings,
- j) a contract having its object financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments⁶ or performance of other operations on financial markets, in particular operations to raise funds or own funding resources,

¹ Articles 4 and 5 of the Act No. 610/2003 Coll. on electronic communications, as amended by the Act No. 716/2004 Coll.

² Section 296 of the Treaty establishing the European Community (OJ EC C 325, 24 December 2002).

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

⁴ For instance, Treaty between the states which are parties to the North-Atlantic Treaty relating to the status of their armed forces (notification No. 566/2004 Coll.).

⁵ Act No. 244/2002 Coll. on arbitration proceedings, as amended by the Act No. 521/2005 Coll.

- k) award of a contract linked directly with services of the National Bank of Slovakia performed to the end of ensuring its main objective and tasks provided by law except for the performance of common general operating activities not linked with ensuring of its main objective and tasks provided by law,
- l) conclusion of an employment contract, agreements to work outside the scope employment or similar employment relationship,
- m) research and development services other than those where the benefits accrue exclusively to the contracting authority and contracting entity when exploiting them in the conduct of its own affairs, on condition that the service provided is wholly funded by the same,
- n) service concession, which is concluded by a contracting authority,
- o) building works concession (hereinafter referred to as "Concession") and service concession concluded by a contracting entity concerning activities referred to in Article 8 (3) to Article (9),
- p) contract for the provision of service to another contracting authority or association of contracting authorities based on an exclusive right resulting from law or from a decision of an administration authority,
- q) contract for the delivery of supplies intended for re-sale or rental to third persons when the contracting entity does not enjoy a special or exclusive right to sell or rent the supplies and another person can sell or rent the same supplies under the same conditions as the contracting entity,
- r) contract intended for other purpose than the performance of activities set out in Article 8 (3) to Article (9) where the contracting entity is not a contracting authority,
- s) contract intended for the performance of activities set out in Article 8 (3) to Article (9) in a third country where the advantage of networks or geographical territory within the European Communities is not taken in the performance of such activities,
- t) award of a contract by a contracting entity pursuant to Article 8 the value of which excluding the value-added tax is lower than the financial limits pursuant to Article 4 (2) (f) and (g).

(3) This Act does not apply to a contract below the limit, a contract below the threshold and a small-value contract, which have as their object

- a) activity of an expert, interpreter or translator for the purpose of civil court proceedings, criminal proceedings including preparatory proceedings, administrative proceedings, arbitration proceedings or other similar proceedings, expert activities of a legal entity or a natural person for the purpose of criminal proceedings including preparatory proceedings and expert activities of a person invited for auditing or for administrative proceedings,
- b) acquisition of library stock,
- c) supplies, building works or services, awarded by a representation of the Slovak Republic abroad,
- d) supplies, building works or services where customer is the state and contractor the Corps of Penitentiary and Judicial Guard where the supplies, building works or services are ensured through employment of the convicted and accused.

Article 2 Public Procurement

Public procurement shall be the procedures pursuant to this Act, by which supply contracts, building works contracts, service contracts are awarded, concession and design contest.

Article 3 Contract

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

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

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

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

(4) For the purpose of this Act, a service contract shall be a contract having as its object provision of a service listed in Annexes 2 or 3, except a contract referred to in paragraphs 2 and 3. A contract having as its object the provision of a service pursuant to Annexes 2 or 3 and includes as a secondary activity building works pursuant to Annex 1 shall be considered a service contract. A contract having as its object both the delivery of supplies and provision of a service pursuant to Annexes 2 and 3 shall be considered a service contract where the estimated value of service exceeds the estimated value of supplies.

(5) A contract must be in writing except a contract concluded pursuant to Article 102.

Article 4 Financial Limits

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

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

a) EUR 154 000 where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (a); for a contracting authority in the defence sector in the event of a contract for the delivery of supplies listed in Annex 4,
b) EUR 236 000 where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (b) to (e), for a contracting authority in the defence sector in the event of a contract for the delivery of supplies not listed in Annex 4,

c) EUR 154 000 where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (a) except a service contract referred to in (e),

d) EUR 236 000 where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (b) to (e),

e) EUR 236 000 where a contract is awarded for the provision of a service included in category 8 of Annex 2, category 5 telecommunications services pursuant to the Common Procurement Vocabulary⁷ (hereinafter referred to as the CPV) corresponding to CPC 7524, 7525, 7526 codes and a service listed in Annex 3 awarded by a contracting authority,

f) EUR 473 000 where a supply contract or a service contract is awarded by a contracting entity,

g) EUR 5 923 000 in the event of a building works contract.

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

a) SKK 2 000 000 where a supply contract or a service contract is awarded by a contracting authority,

b) SKK 12 000 000 where a building works contract is awarded by a contracting authority.

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

a) equals to or exceeds SKK 1 000 000 where the supply contract or service contract is awarded by a contracting authority,

b) equals to or exceeds SKK 4 000 000 where the building works contract is awarded by a contracting authority.

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

Article 5 Rules for Calculating the Estimated Contract Value

⁷ Regulation No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ EU L 340, 16 December 2002, p. 1) as amended by the Commission Regulation No. 2151/2003 of 16 December 2003 (OJ EU L 329, 16 December 2003, p. 1).

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

(2) The estimated contract value shall also include

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

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

(4) When a building work or service is subdivided under a single contract award into several lots, each of which will be object of a separate contract, the estimated contract value shall be determined as a sum of the estimated values of all contract lots. Where the total estimated contract value is not lower than the financial limit pursuant to Article 4 (2), the procedure of awarding contracts above the limit is to be applied. The procedure of awarding contracts below the limit may be used in the event that the estimated value of the lot of building works is lower than EUR 1 000 000 or the estimated value of the lot of service is lower than EUR 80 000 and where the value of those lots does not exceed 20 % of the total estimated value of all contract lots.

(5) Where the delivery of supplies is subdivided under a single contract award into several lots, each of which will be object of a separate contract, the estimated contract value shall be determined as a sum of the estimated values of all contract lots. Where the total estimated value is not lower than the financial limit pursuant to Article 4 (2), the procedure of awarding contracts above the limit shall be used.

Procedure of awarding contracts under the limit may be used in the event that the estimated value of the lot of delivery of supplies is lower than EUR 80 000 and the value of these lots does not exceed 20 % of the total estimated value of all contract lots.

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

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

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

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

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

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

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

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

(10) The estimated value of a contract including both supplies and services shall be calculated as the total value of the supplies and the total value of the service irrespective of their shares. The estimated contract value shall also include the price of the siting and installation operations.

(11) The estimated value of a framework agreement or a dynamic purchasing system shall be determined as the maximum estimated value of all contracts, which are expected during the framework agreement term or within the dynamic purchasing system duration.

(12) A contract may not be subdivided or a method for determining its estimated value may not be selected in order to avoid the application of the contract award procedures pursuant to this Act.

Article 6 Contracting Authority

(1) For the purpose of this Act, a contracting authority shall be

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

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

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

Article 7

Where a contracting authority provides a person that is not a contracting authority over 50 % of funds for the delivery supplies, execution of building works and provision of services, that person shall be obliged to apply the award procedures applicable to

- a) contracts above the limit
 1. for the execution of building works where the estimated contract value equals to or exceeds EUR 5 923 000,
 2. for the delivery of supplies and provision of a service where the estimated contract value equals to or exceeds EUR 154 000,
- b) contracts below the threshold,
 1. for the execution of building works where the estimated contract value equals to or exceeds SKK 4 000 000 and, at the same time, is lower than the financial limit set out in (a) of the first item,
 2. for the delivery of supplies and provision of a service where the estimated contract value equals to or exceeds SKK 1 000 000 and, at the same time, is lower than the financial limit set out in (a) of the second item.

Article 8 Contracting Entity

(1) For the purpose of this Act, the contracting entity shall be

- a) a contracting authority in the event it performs at least one of the activities referred to in paragraphs 3 to 9,
- b) a legal entity, in which the contracting entity pursuant to (a) exercises, directly or indirectly, dominant influence based on ownership right, financial interest or rules which govern it, and performs at least one of the activities referred to in paragraphs 3 to 9; dominant influence means that the contracting entity pursuant to (a), either directly or indirectly,
 1. owns the majority of shares or a majority business interest,

2. controls the majority share in voting rights, or
3. appoints more than a half of members of the administration body or another executive body, or of a supervisory body,
- c) a legal entity performing at least one of the activities referred to in paragraphs 3 to 9 on the basis of special rights or exclusive rights.

(2) Special right or exclusive right shall mean a right resulting from law, a decision of court or from a decision of an administration authority, the outcome of which is a restriction in the performance of activities referred to in paragraphs 3 to 9 to one person or several persons or which in a substantial manner affects the opportunity to carry out such activities by other persons.

(3) For the purpose of this Act, activity in the energy sector and in thermal energy sector shall be

a) in power engineering

1. operation of a transmission system intended for the provision of services to the public or operation of a distribution system intended for the provision of services to the public or provision of access to such systems, or
2. electricity generation for the purpose of provision of services to the public,

b) in the gas sector

1. operation of an extraction system intended for the provision of services to the public, operation of a transit system intended for the provision of services to the public or operation of a distribution system intended for the provision of services to the public or provision of access to such systems,
2. operation of storages for the purpose of ensuring the extraction activity, ensuring the activity of operators of a transit system intended for the provision of services to the public or a distribution system intended for the provision of services to the public, or
3. gas production for the purpose of provision of services to the public,

c) in thermal energy sector

1. operation of public heat distribution intended to provide services to the public or provision of access to such distribution, or
2. heat generation for the purpose of provision of services to the public.

(4) For the purpose of this Act, activity in the water sector shall be

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

(5) When awarding a contract or in a design contest, the contracting entity shall be obliged to comply with this Act in the event it carries out activities pursuant to paragraph 4 and at the same time carries out activities linked with

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

(6) For the purpose of this Act, activity in the transport sector shall be the provision or operation of a network providing transport services to the public by rail, automated systems, tramway, trolleybus, scheduled public bus or cable.

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

(8) For the purpose of this Act, activity in the postal services sector shall be the provision of postal services⁸ or services other than postal services where such service is provided by a contracting entity also providing postal services and provided that the conditions relating to postal services pursuant to Article 152 are not met. For the purpose of this Act, services other than postal services shall mean

- a) postal service management services; services preceding the dispatch or following the dispatch of a postal item,

⁸ Article 2 of the Act No. 507/2001 Coll. on postal services, as amended by of the Act No. 15/2004 Coll.

- b) added-value services carried out exclusively by electronic means including the secure transmission of encrypted documents, services of directories management and transmission of registered electronic mail,
- c) services of items other than postal items, for instance, direct mailing items,
- d) financial services listed in category 6 of Annex 2 and in Article 1 (2) (j), including in particular postal giro transfers and transfers using postal orders,
- e) philatelic services,
- f) logistics services, in particular services combining the delivery of postal items or their storage with other activities, which do not have the nature of activities in the postal services sector.

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

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

(10) For a contracting entity pursuant to paragraph 1 (b) or (c), the activity pursuant to paragraph 3 shall not be considered

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

(11) For contracting entity pursuant to paragraph 1 (b) or (c), activity pursuant to paragraph 4 shall not mean supply of drinking water to public water systems where

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

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

Article 9

Basic Obligations of a Contracting Authority and a Contracting Entity

- (1) In the award of contracts, the contracting authority and contracting entity shall be obliged to follow this Act.
- (2) In the award of contracts, the principle of equal treatment, the principle of non-discrimination of tenderers or candidates, the principle of transparency and the principle of economics and efficiency must be applied.
- (3) Equally beneficial conditions shall be applied with regard to tenderers and candidates of Members States in the award of contracts as those to be applied with regard to tenderers and candidates from third countries in the implementation of the Agreement on Government Procurement.

(4) In the event that a contracting authority awards a right or an exclusive right to provide services performed in the public interest to another person, which is not a contracting authority pursuant to this Act, the former must reserve in a contract or another document that the latter would comply with the principle of non-discrimination with regard to nationality when awarding a supply contract to a third person.

Article 10 Central Purchasing Organisation

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

(2) A contracting authority and contracting entity may acquire supplies, works or services through the central purchasing organisation or from the central purchasing organisation.

Article 11 Framework Agreement

For the purpose of this Act, a framework agreement shall be an agreement in writing between one or several contracting authorities or one or several contracting entities on one hand and one or several tenderers on the other. A framework agreement determines the contract award conditions during its term of validity, particularly as regards the price and the estimated quantity of the object of contract.

Article 12 Tenderer

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

Article 13 Candidate

For the purpose of this Act, a candidate shall be a natural person, a legal entity or a group of such persons that delivers supplies, executes building works or provides services on the market and is interested to participate in a restricted procedure, in a negotiated procedure or in a competitive dialogue, or has taken over tender documents in an open procedure.

Article 14 Concessionaire

For the purpose of this Act, a concessionaire shall be a natural person, a legal entity or a group of such persons with whom the contracting authority concluded a concession contract pursuant to this Act. A contracting authority may be a concessionaire as well.

Article 15 Concession

(1) A concession shall be a contract of the same type as a building works contract whilst the pecuniary performance for building works which are to be executed is compensated for by the right to use the building structure for agreed time. This right may be linked with pecuniary performance.

(2) A service concession shall be a contract of the same type as a service contract whilst the pecuniary performance for the services to be provided is compensated for by the right to enjoy the benefits of the services provided. This right may be linked with pecuniary performance.

Communication Article 16

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

(2) Notice, submission of documents and communication between a contracting authority or contracting entity and a tenderer or candidate may be carried out in writing by post, fax, by electronic means or by telephone or by a combination of those means. The contracting authority and contracting entity shall determine the means of communication so that they are generally available and that the opportunities of tenderers or candidates to participate in public procurement are not restricted.

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

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

Article 17

(1) For the purpose of this Act, a request to participate shall be

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

(2) A request to participate shall be submitted in writing. In the event that a request to participate is sent by fax, the contracting authority and contracting entity may request its confirmation by post or by electronic means. This requirement along with the time limit for the delivery of the confirmation by post or by electronic means shall be set out in the contract notice or in the notice used as a call for competition; the documents which demonstrate the meeting of conditions for participation in public procurement cannot be sent by fax.

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

Article 18

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

(2) In the event of electronic communication relating to a contract award procedure, the parties involved must have available all the necessary information of technical nature including encryption. A tender must be provided with electronic signature pursuant to a special regulation.⁹

(3) Where the documents demonstrating meeting of the conditions of participation in public procurement are not available in the electronic form, the tenderer or candidate shall submit those in writing within the time limit for the submission of tenders or requests to participate.

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

- a) meeting of the requirements concerning electronic signatures, which apply to tenders and to requests to participate,
- b) the opportunity to determine the exact time and date of receipt of tenders and requests to participate,

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

- c) the opportunity to reasonably ensure that no one has access to the information transmitted in accordance with these requirements before the determined time limit,
- d) in the event of breach of the access prohibition pursuant to (c), the opportunity to reasonably ensure an exact identification of such breach,
- a) that only authorised persons may determine or change the time limit for making the submitted information available,
- f) that during the contract award procedure, access to all or to a part of the information submitted is possible only on a basis of a previous decision of authorised persons,
- g) that the decision of authorised persons pursuant to (f) would allow access to the information submitted only after the time limit determined beforehand,
- f) that the information submitted and made available in accordance with these requirements may remain available only to persons who are authorised to be informed.

Article 19

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

(2) Tenders and other documents and documents in public procurement shall be submitted in the state language. In a contract notice or in a notice used as a call for competition, the contracting authority and contracting entity may allow the tender submission in another language as well.

(3) The documents which prove the meeting of participation conditions for tenderers or candidates established outside the Slovak Republic must be submitted in the original language and at the same time must be translated into the state language. In the event that a difference is identified in their content, the translation in the state language shall prevail.

Article 20

The contracting authority and contracting entity shall be obliged to keep confidential the information provided by the tenderer or candidate, which is indicated as confidential. Information indicated as confidential shall be in particular trade secret and confidential aspects of tenders. This shall be without prejudice to the provisions concerning contract award notices, commissions, opening of tenders and jury.

Article 21

Documentation

(1) The contracting authority and contracting entity shall register all documents and the documents from the contract award procedure applied and keep them five years from the expiry of the tender validity period. The documentation shall include justification for using negotiated procedure, competitive dialogue or using accelerated restricted procedure or accelerated negotiated procedure with a publication.

(2) The contracting authority and contracting entity shall draw up a report on every contract, on every framework agreement and on every establishment of a dynamic purchasing system, which shall make part of the documentation.

(3) The report shall include in particular

- a) identification of the contracting authority or contracting entity, object and value of the contract, framework agreement or dynamic purchasing system,
- b) date of publication of the notice in the Official Journal of the European Union and in the Journal of Public Procurement (hereinafter referred to as the "Journal") and the numbers of such notices,
- c) identification of the selected candidates and justification of their selection,
- d) identification of the excluded tenderers or candidates and justification of their exclusion,
- e) justification of exclusion of abnormally low tenders,

- f) identification of the successful tenderer and justification of his tender selection, the share of contract or framework agreement which the successful tenderer intends to subcontract to third persons, if known,
- g) justification for applying negotiated procedure or competitive dialogue,
- h) justification for cancellation of the applied contract award procedure.

(4) The contracting authority and contracting entity shall be obliged to document the contract award procedure carried out by electronic means.

(5) On request, the contracting authority and contracting entity shall submit complete documentation to the Office for Public Procurement (hereinafter referred to as the "Office") and the Antimonopoly Office of the Slovak Republic, courts and prosecuting and adjudicating bodies, as well as other audit bodies if that is set forth by law.

PART TWO AWARD PROCEDURES ABOVE THE LIMIT

TITLE ONE COMMON PROVISIONS

Notices Used in Public Procurement Article 22

(1) Notices used in public procurement shall be sent to the Office for Official Publications of the European Communities (hereinafter referred to as the "Publications Office") and to the Office for publication. A prior notice and a periodic indicative notice may be published on the internet in the contracting authority's profile or in the contracting entity's profile pursuant to Article 23 (2).

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

(3) A contract award notice shall be sent pursuant to paragraph 1 after conclusion of a contract, framework agreement and every contract under the dynamic purchasing system

- a) within 48 days by a contracting authority,
- b) within two months by a contracting entity.

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

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

(6) In the event of a contract for the provision of a service listed in Annex 3, the contracting authority and contracting entity shall indicate in the contract award notice if they agree to its publication.

Article 23

(1) The contracting authority and contracting entity shall send the Publications Office and the Office notices used in public procurement

- a) by electronic means, or
- b) by other means; a notice thus sent by a contracting authority may not exceed 650 words.

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

(3) The contracting authority and contracting entity shall send the Office a notice used in public procurement on the day following the date on which the notice was sent to the Publications Office. Evidence of the date of the notice dispatch to the Publications Office and to the Office shall be given by the contracting authority and contracting entity.

(4) In the contract notice, the contracting authority or contracting entity may give a rule when the public interest so requires, which is to be used for the conclusion of contract in the event that the natural person or legal entity with whom the supply, works or services contract is to be concluded loses the capacity to perform its contractual obligation during the contract performance.

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

(6) A notice sent pursuant to paragraph 1 (a) will be published by the Office not later than 6 days from the date of the notice dispatch to the Publications Office, a notice sent pursuant to paragraph 1 (b) will be published by the Office not later than 13 days from the date of the notice dispatch to the Publications Office in the event that the contracting authority and contracting entity has fulfilled its obligation pursuant to paragraph 3.

(7) In the same manner as notices used in public procurement, the contracting authority or contracting entity may also publish notices the publication of which is not obligatory.

Article 24 Procedures in Public Procurement

(1) Procedures in public procurement are

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

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

(3) Restricted procedure is organised for an unrestricted number of candidates. The contracting authority and contracting entity may restrict the number of candidates invited to submit a tender.

(4) Negotiated procedures are procedures under which the contracting authority and contracting entity negotiates the contract conditions with the selected candidate or selected candidates. Negotiated procedure may be with a publication or without a publication.

(5) Negotiated procedure with a publication is organised for an unrestricted number of candidates. The contracting authority and contracting entity may restrict the number of candidates invited to submit a tender and negotiate.

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

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

Article 25 Award of Service Contract and Award of Supply Contract

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

(2) When awarding contracts above the limit for services listed in Annex 3, procedures for awarding contracts under the threshold shall be applied. The technical requirements shall be determined by the contracting authority and contracting entity pursuant to Article 34 and a contract award notice shall be sent to the Publications Office and to the Office pursuant to Articles 22 and 23.

(3) When awarding a supply contract pursuant to Articles 51 to 54, the contracting authority shall be obliged to employ exclusively electronic communication while meeting the conditions pursuant to Article 18.

Article 26 Personal Status

(1) Only a person may take part in the public award of contracts who meets the conditions of participation concerning his personal status:

- a) neither he nor his statutory body or a member of the statutory body has been lawfully convicted for the offence of corruption, for the offence of damaging the financial interests of the European Communities, for the offence of laundering of the proceeds of crime or for the offence of establishing, plotting and supporting a criminal group,
- b) neither he nor his statutory body or a member of his statutory body has been lawfully convicted for an offence concerning the professional conduct of business,
- c) is not subject of proceedings for the declaration of bankruptcy, is not bankrupt or being wound up, nor a bankruptcy petition has been rejected against him due to lack of estate,
- d) does not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to seniors pension savings scheme to be collected by a judicial execution of a decision,
- e) does not have a history of tax arrears to be collected by a judicial execution of a decision,
- f) is authorised to deliver supplies, execute building works or provide a service,
- g) over the preceding five years, he has not violated the prohibition of illegal employment pursuant to a special regulation,
- h) he has not committed any grave professional misconduct over the preceding five years, which can be proven by the contracting authority and contracting entity.

(2) The tenderer or candidate shall demonstrate his meeting of the conditions of participation pursuant to paragraph 1

- a) letters (a) and (b) by an extract from the judicial record not older than three months,
- b) letter (c) by a confirmation of the competent court,
- c) letter (d) by a confirmation of the Social Insurance Agency and health insurance agency not older than three months,
- d) letter (e) by a confirmation of the locally competent tax authority not older than three months,
- e) letter (f) by a document proving his business authorisation or a document of enrolment in a professional register kept by a professional organisation,
- f) letter (g) by a confirmation of the competent labour inspectorate.

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

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

Article 27 Financial and Economic Standing

(1) As a rule, financial and economic standing may be proven by

- a) a statement of a bank or foreign bank branch, which may be a commitment of a bank or foreign bank branch to extend a loan,
- b) blue card of professional liability insurance or blue card of business liability insurance in the event such insurance is required,

c) balance sheet or statement of assets and liabilities or data therefrom, or
d) an overview of the total turnover or an overview of the turnover made in the field related to the object of contract, for not more than three economic years, for which they are available depending on the establishment or commencement of the activity operation.

(2) To demonstrate financial and economic standing, a tenderer or candidate may use financial resources of another person regardless of their legal relationship, which he would have available for the contract performance. In such event, he shall submit the contracting authority or contracting entity a document proving that fact, which may be a commitment of that person.

(3) In the event that, due to objective reasons, a tenderer or candidate is not able to prove his financial and economic standing by a specified document, the contracting authority and contracting entity may also recognise another document, by which financial and economic standing is demonstrated.

Article 28

Technical Ability or Professional Suitability

(1) Technical ability or professional suitability may be demonstrated by a document or by documents depending on the type, quantity, importance or use of the supply, building works or services, as a rule by

a) a list of supplies delivered or services provided over the preceding three years stating the prices, delivery dates and customers; where the customer was

1. a contracting authority pursuant to this Act, the proof of performance is to be confirmed by other contracting authority,

2. a person other than a contracting authority, the proof of performance is to be confirmed by the customer; where that is impossible, by a statement of delivery by the tenderer or candidate,

b) a list of building works executed over the preceding five years, accompanied by certificates of satisfactory execution of the building works stating the prices, places and dates of the works completion and assessment of the works performed according to the business conditions where the customer was

1. a contracting authority pursuant to this Act, the proof of performance is to be confirmed by other contracting authority,

2. a person other than a contracting authority, the proof of performance is to be confirmed by the customer; in the event that this is impossible, by a statement of their execution by the tenderer or candidate,

c) data regarding engineers or technical authorities responsible for the quality control regardless of their contractual relationship with the tenderer or candidate; in the event of a building works contract, those who may be referred to by the tenderer or candidate with a request to execute such works,

d) in the event of supply or service, by a description of the hardware and measures applied by the tenderer or candidate to assure quality and his study and research facilities,

e) in the event of complex products to be supplied or products intended for special purposes, by control of production capacity of the tenderer or candidate carried out by the contracting authority or contracting entity or on its behalf by the competent authority in the country of establishment of the tenderer or candidate, subject to that authority's agreement; if is necessary, by control of the means of study and research which are available and of the quality of the control measures applied,

f) in the event of complex services or services intended for special purposes, by control of technical ability of the tenderer or candidate providing services carried out by the contracting authority or contracting entity or on its behalf by the competent authority in the country of establishment of the tenderer or candidate, subject to that authority's agreement; if is necessary, by control of the means of study and research which are available and of the quality of the control measures applied,

g) data concerning education and professional experience or professional qualification of the managing staff, in particular of the persons responsible for the management of building works or for the provision of service,

f) indicating the environmental management measures which the tenderer or candidate will apply when performing the contract having as its object building works or service, if applicable,

i) in the event of building works or services, data concerning the average annual staff numbers and the number of managing staff over the preceding three years,

j) data concerning the machinery and hardware which the tenderer or candidate has available to execute building works or to provide service,

k) indicating the share of contract performance, which the tenderer or candidate providing service intends to subcontract,

l) in the event of supply which are products to be delivered,

1. by samples, descriptions or photographs,
2. by conformity statements and additional documents thereto, by certificates issued by persons authorised or persons notified by the European Communities which are authorised¹⁰ to assess conformity of products or establish the conformity of building products with technical specifications.

(2) To demonstrate one's technical ability or professional suitability, a tenderer or candidate may use technical and professional capacities of another person regardless of their legal relationship, which he would have available for the contract performance. In such event, he shall submit the contracting authority or contracting entity a document proving the fact, which may be a commitment of that person.

(3) In the event of a supply contract which also includes activities linked with siting and installation of the supplies, technical ability or professional suitability of a tenderer or candidate to carry out such activities shall be evaluated in particular with regard to his abilities, experience, efficiency and reliability.

Article 29 Quality Assurance

In the event that a contracting authority or contracting entity requires submission of a quality certificate issued by an independent institution attesting the compliance of the tenderer or candidate with the quality assurance standards, he may take the advantage of the quality assurance systems resulting from European standards. A contracting authority and contracting entity shall recognise as equivalent certificates issued by competent authorities in Member States. A contracting authority and contracting entity must accept also other proofs submitted by a tenderer or candidate which are equivalent to the quality assurance measures pursuant to the requirements for issuing the relevant certificate.

Article 30 Environmental Management

In the event that a contracting authority or contracting entity requires to submit a quality certificate issued by an independent institution by which the compliance with certain environmental management standards by the tenderer or candidate is confirmed, advantage may be taken of the Environmental Management and Audit Scheme of the European Community or environmental management standards resulting from the relevant European Standards or international standards of certified authorities. A contracting authority and contracting entity shall recognise as equivalent certificates issued by authorities in Member States. A contracting authority or contracting entity must accept also other proofs submitted by the tenderer or candidate which are equivalent to environmental management measures pursuant to the requirements for issuing the relevant certificate.

Article 31 Supplier Group

(1) A supplier group may take part in the public procurement.

(2) Neither a contracting authority nor a contracting entity may request that a supplier group establish legal relationships before a tender submission. A contracting authority and contracting entity may however request to establish legal relationships in the event that the tender of a supplier group has been accepted and establishment of legal relationships is necessary due to a proper contract performance.

(3) A supplier group shall demonstrate the meeting of the conditions of participation in public procurement regarding personal status for each group member separately and the meeting of the conditions of participation in public procurement regarding financial and economic standing and technical abilities and professional suitability shall be demonstrated jointly.

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

¹⁰ Article 11 of the Act No. 264/1999 Coll. on technical requirements concerning products and on conformity assessment and on the modification and amendment of certain acts, as amended by.

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

Article 32
Specification of the Conditions of Participation

- (1) In the contract notice, the contracting authority shall specify
- a) the conditions of participation concerning personal status pursuant to Article 26,
 - b) the scope of requirements concerning the financial and economic standing and the documents to demonstrate those,
 - c) the scope of requirements concerning the technical ability and professional suitability and the documents to demonstrate those.
- (2) The contracting entity may specify the conditions of participation in public procurement and the documents to demonstrate those. The conditions of participation may relate to
- a) personal status,
 - b) financial and economic standing,
 - c) technical ability or professional suitability.
- (3) The contracting entity pursuant to Article 8 (1) (a) shall be obliged to specify the conditions of participation pursuant to Article 26 (1) (a) and the documents pursuant to Article 26 (2).
- (4) In the event that the contracting entity specifies the conditions of participation pursuant to Article 26 (1), their meeting shall be demonstrated pursuant to Article 26 (2).
- (5) In the event that the contracting entity specifies the conditions of participation pursuant to paragraph 2 (b) or (c), the tenderer, candidate or supplier group may apply Article 27 (2) and (3) and Article 28 (2) and (3) to demonstrate those.
- (6) The scope of requirements which the contracting authority and contracting entity specifies to demonstrate the financial and economic standing and the technical ability or professional suitability must be adequate and must relate to the object of the contract. The contracting authority and contracting entity may request a minimum level of financial and economic standing or of technical ability from the tenderers or from the candidates.
- (7) The contracting authority and contracting entity may request that legal entities when demonstrating their meeting of the conditions of participation in the public procurement indicate the names, family names and the necessary professional qualifications of the employees who would be responsible for the contract performance.

Article 33
Evaluation of Meeting of the Conditions of Participation

- (1) The contracting authority shall assess the meeting of the condition of participation in public procurement in accordance with the contract notice and the tender documents. Where the conditions of participation are referred to in the tender documents as well, they may not be contrary to the contract notice.
- (2) The contracting entity shall assess the meeting of the conditions of participation in accordance with the rules it has specified. When specifying or updating the rules to evaluate the meeting of the conditions of participation pursuant to Article 32 (2) in a restricted procedure and in a negotiated procedure with a publication, such requirements must not be imposed on certain candidates which have not been imposed on other candidates, or documents must not be repeatedly requested which have already been made available.
- (3) The contracting authority and contracting entity may ask a tenderer or candidate for explanation of for completion of the documents submitted.
- (4) The contracting authority and contracting entity shall exclude a tenderer or candidate from public procurement in the event that the latter
- a) failed to meet the conditions of participation,
 - b) submitted invalid documents,
 - c) failed to submit the requested documents or information, or
 - d) provided untrue information or distorted information.

(5) Invalid documents shall be documents

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

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

(7) After assessment of meeting of the conditions of participation, minutes are drawn up which include in particular a list of

- a) all tenderers or candidates,
- b) the selected candidates and the reason for their selection in a restricted procedure and in a negotiated procedure with a publication.
- c) the excluded tenderers or candidates with an indication of the reason for their exclusion,
- d) the candidates who will not be invited to submit a tender or to negotiate with an indication of the reason.

(8) The contracting authority and contracting entity shall notify a tenderer or candidate in writing without any delay that the latter

- a) has been excluded with an indication of the reason,
- b) will not be invited to submit a tender or to negotiate with an indication of the reason.

(9) The contracting authority and contracting entity may establish a commission to evaluate the meeting of the conditions of participation by tenderers or candidates.

Article 34 Tender Documents

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

- a) will take into account the requirements of accessibility for handicapped persons and the solutions suitable for all users, if possible,
- b) must be defined in a way so as to ensure equal access for all tenderers or candidates and to ensure fair competition.

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

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

(3) The contracting authority or contracting entity cannot exclude a tender on the ground that

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

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

(4) An appropriate means pursuant to paragraph 3 may be considered also a submission of the technical dossier of the manufacturer or a test report issued by a test and calibration laboratory, certification and inspection body compliant with applicable European standards. The contracting authority and contracting entity must accept certificates issued by such institution established in another Member State.

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

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

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

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

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

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

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

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

(12) If necessary, the contracting authority and contracting entity may complement the information provided in the tender documents which he provably communicates to all candidates at the same time, not later than six days prior to the expiry of the tender submission period. Such information must not be contradictory to the contract notice or to the notice used as a call for competition.

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

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

(15) The contracting authority and contracting entity may specify special conditions of the contract performance provided that such conditions are indicated in the tender notice or in the tender documents. Special conditions governing the performance of contract may, in particular, concern social and environmental aspects.

(16) The contracting authority and contracting entity may indicate institutions in the tender documents from which a candidate will obtain information regarding obligations relating to taxes, environmental protection, labour protection and working conditions applicable in the place of building works or services during the contract performance. In the event such information is provided, the tender documents will request that each of the candidates in their tenders submit a declaration that obligations concerning labour protection and working conditions were taken into account when drawing up the tender. That provision shall not have any effect on the application of Article 42 (3).

Article 35 Criteria for the Evaluation of Tenders

(1) The contracting authority and contracting entity shall evaluate the tenders on the basis of criteria for the evaluation of tenders. The tenders shall be evaluated on the basis of

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

(2) The criteria for the evaluation of tenders shall be specified

- a) by the contracting authority in a contract notice,
- b) by the contracting entity in a notice used as a means of calling for competition, in an invitation to confirm repeated interest pursuant to Article 78 (3), in an invitation to tender, or in an invitation to negotiate, or in tender documents.

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

(4) The contracting authority and contracting entity shall determine a relative weight for each of the criteria pursuant to paragraph 3 which may be expressed by providing for a range with an appropriate maximum spread. The relative weight shall be indicated

- a) by a contracting authority in the contract notice, in the tender documents or in the invitation to tender, or in the indicative document,

b) by a contracting entity in the notice used as a means of calling for competition, in the invitation to confirm repeated interest pursuant to Article 78 (3), in the invitation to tender, or in the invitation to negotiate, or in the tender documents.

(5) Where it is impossible for demonstrable reasons to determine the relative weights of the individual criteria, they will be given in the descending order of importance.

(6) The warranty period, time of construction, time of service provision, share of subcontracts and the due time of invoices must not be a criterion for the evaluation of tenders.

Article 36 Tender Bond

(1) A tender validity may be secured by a tender bond. The bond shall be provision of a bank guarantee for the tenderer or payment of funds by the tenderer to the account of the contracting authority or contracting entity in a bank or in a foreign bank branch. The bond must not exceed 5 % of the estimated contract value and must not exceed SKK 10 000 000.

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

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

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

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

a) the tenderer failed to meet the conditions of participation in public procurement and was excluded by the contracting authority and contracting entity from the contract award and the tenderer has not lodged a protest against the course of action of the contracting authority or contracting entity within a period pursuant to Article 138 (5),

b) the latter's tender has been excluded in the evaluation of tenders and the tenderer has not lodged a protest against the course of action of the contracting authority or contracting entity within a period pursuant to Article 138 (5).

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

Article 37 Variants

(1) The contracting authority in the contract notice or, the contracting entity in the notice used as a means of calling for competition or in tender documents, shall specify whether a submission of variants is allowed. Unless allowed, variants shall not be considered.

(2) The contracting authority or contracting entity can allow variants where tenders are evaluated in order to select economically the most advantageous tender. Minimum requirements which must be met by the variants shall be specified in the tender documents, and special requirements for their submission.

(3) Only variants shall be evaluated, which meet the minimum criteria specified by the contracting authority and the contracting entity. A variant must not be excluded by that reason that a supply contract would become a service contract and a service contract would become a supply contract.

Article 38

Explanation

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

Article 39

Submission of Tenders

- (1) A tender shall be delivered in the tender submission period. Where a tender is delivered
- a) by post or by hand, then in a closed envelope stating the business name and seat of the tenderer or place of business of the tenderer with an indication “competition” (súťaž) and the competition slogan,
 - b) by electronic means, then stating the business name and seat or place of business of the tenderer with an indication “competition” (súťaž) and the competition slogan.
- (2) Where a tender is delivered by hand, the contracting authority and contracting entity shall issue a receipt of its take-over stating the date, time and place of the tender take-over. Where a tender is delivered by electronic means, the contracting authority and contracting entity shall confirm its receipt to the tenderer by electronic means.
- (3) A tender submitted by electronic means must be encrypted during the tender submission period pursuant to a procedure communicated and submitted in the document formats and communication formats notified. Its content may only be communicated upon the expiry of the tender submission period.
- (4) A tender delivered after the expiry of the tender submission period shall be returned to the tenderer unopened or undecrypted.
- (5) Each tenderer may submit one tender only. In the same contract award procedure, a tenderer must not be a subcontractor of another tenderer or a member of a group submitting a tender. The contracting authority and contracting entity shall exclude a tender which has been submitted contradictory to this provision.

Article 40

Commission

- (1) To evaluate the tenders, the contracting authority and contracting entity shall be obliged to establish a commission of at least three members. The commission members must have vocational education or professional experience relevant to the object of contract. The commission shall be capable of evaluating the submitted tenders where the majority of its members is present at the same time, however, not less than three.
- (2) To ensure transparency, the contracting authority and contracting entity may appoint additional members of the commission without a right to evaluate the tenders.
- (3) A commission member must be a person of integrity. A person shall be considered of integrity where he has not been lawfully convicted for an offence relating to public procurement or for some of the offences pursuant to Article 26 (1) (a) or (b).
- (4) A commission member must not be a person who is or during one year prior to his appointment for a commission member was
- a) a tenderer that is a natural person,
 - b) a statutory body, member of statutory body, member of supervisory body or other body of a tenderer which is a legal entity,
 - c) a partner or member of a legal entity which is a tenderer or a dormant partner of a tenderer,
 - d) employee of a tenderer, employee of an interest association of entrepreneurs whose member is the tenderer,
 - e) employee of the Office, except for contracts awarded exclusively for the own needs of the Office.

(5) The commission member must not be a person related¹¹ to the persons referred to in paragraph 4 (a) to (d).

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

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

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

Article 41 Opening of Tenders

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

(2) Not later than five days from the date of the opening of tenders, the contracting authority and contracting entity sends all tenderers that have submitted tenders in the tender submission period minutes from the opening of tenders. The minutes shall include data published pursuant to paragraph 1.

Article 42 Evaluation of Tenders

(1) The evaluation of tenders by the commission shall not be public. The commission shall evaluate the tenders with regard to meeting the requirements of the contracting authority or contracting entity concerning the object of contract and shall exclude tenders which fail to meet the requirements specified in the contract notice or in the notice used as a means of calling for competition and in the tender documents. When evaluating a tender with a variant, Article 37 (3) shall be applied.

(2) The commission may ask the tenderers in writing to explain their tenders. The commission must however not invite for or accept a tenderer's proposal of change through which his tender would take advantage.

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

a) the economics of the construction methods, the economics of the manufacturing processes or the economics of the services provided,

b) the technical solution or particularly favourable conditions available to the tenderer for the delivery of the supplies, for the execution of the building works, for the provision of the service,

c) special nature of the supplies, special nature of the building works or special nature of the service proposed by the tenderer,

d) compliance with the laws relating to the employment protection and working conditions in force at the place where the supplies are to be delivered, the building works executed or the services performed,

e) the opportunity of the tenderer to obtain state aid.

¹¹ Article 116 of the Civil Code.

(4) The commission shall take the explanation and proofs provided by the tenderer into consideration. The commission shall exclude a tender where the tenderer fails to submit an explanation within an adequate time limit determined by the commission or where the explanation submitted fails to meet the requirement of the contracting authority or contracting entity pursuant to paragraph 3.

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

(6) The commission shall communicate a list of excluded tenders to the contracting authority and contracting entity indicating the reason for their exclusion. The contracting authority and contracting entity shall be obliged to inform a tenderer in writing of the exclusion of his tender indicating the reason for doing so.

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

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

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

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

(10) The commission members must not provide information about the content of tenders in the course of the tenders evaluation. To a commission member, the obligation pursuant to Article 20 shall apply.

Article 43 Electronic Auction

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

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

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

(3) In an open procedure, in a restricted procedure or in a negotiated procedure with a publication, the contracting authority and contracting entity may use electronic auction when awarding a contract in the event it is possible to exactly specify the technical requirements concerning the object of contract. The contracting authority and contracting entity may use electronic auction also when awarding a contract under the dynamic purchasing system and when re-opening competition among all the parties to a framework agreement. In the event of electronic auction, Article 41 shall not be applied.

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

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

(5) In the event that the contracting authority and contracting entity uses electronic auction, that fact shall be indicated in the contract notice or in the notice used as a means of calling for competition. The tender documents shall include in particular

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

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

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

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

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

(9) The electronic auction may take place in a number of successive phases. An electronic auction may not start sooner than two working days after the date on which invitation to participate in the electronic auction is sent out.

(10) Throughout each phase of an electronic auction, the contracting authority and contracting entity shall instantaneously communicate sufficient information to all tenderers to enable them to ascertain their relative ratings at any moment. The contracting authority and contracting entity may also communicate other information concerning other prices or parameter values submitted, provided that this is specified in the tender documents. Anytime during an electronic auction, the contracting authority and contracting entity may disclose the number of tenderers at any stage of the electronic auction, however, not their identities.

(11) The contracting authority and contracting entity shall close the electronic auction in one or more of the following manners:

- (a) in the invitation to take part in the electronic auction, the date and time fixed beforehand shall be indicated,
- b) when no more new prices or new values are received which meet the requirements concerning the minimum differences; in that event, the invitation to take part in the electronic auction shall indicate the time allowed to elapse after receiving the last submission before the electronic auction is closed,

(c) when the number of phases in the electronic auction fixed in the invitation to take part in the electronic auction has been completed.

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

(13) The contracting authority and contracting entity must neither use electronic auction in a way preventing fair competition, nor change the object of contract which was defined in the tender notice or in the notice used as a means of calling for competition and in the tender documents.

Article 44

Information about the Result of Evaluation of Tenders

(1) After the evaluation of tenders, the contracting authority and contracting entity shall be obliged to inform in writing all tenderers whose tenders were evaluated, of the result of the evaluation of tenders without any delay. The successful tenderer or tenderers are to be informed that his/their tender(s) has/have been admitted. The unsuccessful tenderer will be informed that he has not succeeded and the reasons for the rejection of his tender will be indicated. In the notice, the successful tenderer or tenderers will be identified and information will be given on the characteristics and benefits of the admitted tender or tenders.

(2) The contracting authority and contracting entity shall not provide information concerning a contract award, conclusion of framework agreements or admission to a dynamic purchasing system where its provision would be contrary to law, to public interest or may harm legitimate interest of other persons or would prevent fair competition.

Article 45

Conclusion of Contract

(1) The contracting authority and contracting entity shall conclude a contract or a framework agreement during the tender validity period. The contract concluded must not be contrary to the tender documents and to the tender submitted by the successful tenderer or tenderers.

(2) The contracting authority and contracting entity may conclude a contract or a framework agreement with the successful tenderer or tenderers not earlier than on the fourteenth day from the date of dispatch of the contract award notice to all tenderers whose tenders were evaluated, unless a request for remedy was filed.

(3) Where a request for remedy was filed, the contracting authority and contracting entity may conclude a contract or a framework agreement with the successful tenderer or tenderers not earlier than on the fourteenth day after the expiry of the period to remedy pursuant to Article 136 (6) (a) unless protests have been lodged pursuant to Article 138 (5) (a).

(4) Where a request for remedy was rejected, the contracting authority and contracting entity may conclude a contract or a framework agreement with the successful tenderer or tenderers not earlier than on the fourteenth day after the date of dispatch of the notice of the rejected request for remedy pursuant to Article 136 (6) (b) unless protests have been lodged pursuant to Article 138 (5) (a).

(5) Where the contracting authority and contracting entity failed to act with regard to the request for remedy and protests have not been lodged pursuant to Article 138 (5) (b), a contract or a framework agreement may be concluded with the successful tenderer or tenderers not earlier than on the fourteenth day after the expiry of the period allowed to settle the request for remedy pursuant to Article 136 (6).

(6) Where protests have been lodged pursuant to Article 138, the contracting authority and contracting entity may conclude a contract or a framework agreement with the successful tenderer or tenderers not earlier than on the fourteenth day after the delivery of a decision of the Office or on the basis of the result of action by the Office.

(7) The contracting authority and contracting entity must not use a tender or parts thereof without the tenderer's approval.

Article 46 Cancellation of the Contract Award Procedure Applied

(1) The contracting authority and contracting entity shall cancel a contract award procedure applied where

- a) none of the tenderers or candidates has met the conditions of participation in public procurement and a tenderer or candidate has not put forward a request for remedy within the period pursuant to Article 136 (3) and protests within the period pursuant to Article 138 (5),
- b) no tender has been submitted,
- c) none of the tenders submitted meets the requirements specified pursuant to Article 34 and a tenderer has not put forward a request for remedy within the period pursuant to Article 136 (3) and has not lodged complaints within the period pursuant to Article 138 (5),
- d) its cancellation has been ordered by the Office.

(2) A contracting authority and contracting entity may cancel the contract award procedure applied also in the event that circumstances under which the public procurement was called have changed.

(3) The contracting authority and contracting entity shall be obliged to immediately notify all tenderers or candidates of cancellation of the contract award procedure applied indicating the reason and inform about the procedure to be used to award a contract for the initial object of contract.

(4) On request, the contracting authority and contracting entity shall notify the European Commission of the reasons of cancellation of the contract award procedure applied and dispatch the Office a notice of cancellation of the contract award procedure applied to be published in the Journal.

Article 47 Dynamic Purchasing System

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

(2) The contracting authority and contracting entity may use a dynamic purchasing system to award contracts. A dynamic purchasing system must not last for more than four year. The use of a dynamic purchasing system must not prevent fair competition. The tenderers involved must not be charged any fees.

(3) To establish a dynamic purchasing system, an open procedure shall be used in all its phases, including contract awarding under the dynamic purchasing system. For the purpose of setting up a dynamic purchasing system and contract awarding under that system, the contracting authority and contracting entity shall use solely electronic means. Any tenderer that has met the conditions of participation and submitted an indicative tender which is in accordance with the technical requirements and additional documents, if any, must be admitted to the dynamic purchasing system. A tenderer may improve his indicative tender anytime throughout the duration of the dynamic purchasing system provided that it continues to comply with the technical requirements.

(4) For the purpose of setting up a dynamic purchasing system, the contracting authority and contracting entity shall

- a) publish a contract notice stating that a dynamic purchasing system is being used; give the internet address on which information can be obtained pursuant to (c),
- b) indicate in the tender documents, amongst other matters, the nature of the purchases envisaged under the system, as well as all the necessary information concerning that system, the electronic equipment used, the conditions and specifications of the technical connection,
- c) offer by electronic means, on publication of the notice and until the system expires, unrestricted, direct access to tender documents and to all additional documents.

(5) Within the dynamic purchasing system duration, the contracting authority and contracting entity shall enable any candidate to submit an indicative tender and to be admitted in the system pursuant to paragraph 3. The contracting authority and contracting entity shall evaluate the indicative tender within 15 days from its submission. The contracting authority and contracting entity may extend the period for the evaluation of indicative tenders provided that no invitation to tender has been issued. The contracting authority and contracting entity shall immediately inform the tenderer about his admission in the dynamic purchasing system or communicate the reasons of his non-admission.

(6) The contracting authority and contracting entity shall publish a simplified notice for each specific contract inviting all tenderers involved to submit an indicative tender pursuant to paragraph 5 within a period which may not be shorter than 15 days from the date of dispatch of the simplified notice. The contracting authority and contracting entity shall evaluate all indicative tenders submitted within the specified period.

(7) After evaluation of indicative tenders, the contracting authority and contracting entity shall invite all tenderers admitted in the system to submit a tender separately for each contract awarded under the system. A tender notice shall include

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

(8) Tenders submitted within the tender submission period shall be evaluated according to the criteria set out in the contract notice. The contract shall be concluded with the tenderer which has submitted the best tender.

Article 48

Obligations of Contracting Authority and Contracting Entity in Respect of the European Commission

(1) The contracting authority and contracting entity shall be obliged to dispatch the European Commission a report or a part thereof pursuant to Article 21 (3) where an abnormally low tender has been rejected pursuant to Article 42 (5).

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

- a) any contract, framework agreement and any setting-up of a dynamic purchasing system,
- b) the use of a negotiated procedure without a publication pursuant to Article 58 (1) (a).

(3) On request of the European Commission, a contracting entity shall be obliged to provide

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

Article 49

Obligations of Contracting Authority and Contracting Entity in Respect of the Office

(1) The contracting authority and contracting entity shall be obliged to provide the Office a report on every contract, on every framework agreement and on every setting-up of a dynamic purchasing system pursuant to Article 21 (3) (a) to (g) by the end of January for the past calendar year.

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

(3) On request, the contracting authority and contracting entity shall be obliged to send the Office additional data or information concerning public procurement.

(4) On request, the contracting entity pursuant to Article 8 shall be obliged to provide the Office data and information on contracts concluded pursuant to Article 1 (2) (t).

TITLE TWO
AWARD OF CONTRACTS ABOVE THE LIMIT
BY A CONTRACTING AUTHORITY

Article 50
Publication of Notices

(1) The contracting authority shall publish an indicative notice as soon as possible after the calendar year beginning where the total estimated value of

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

(2) The contracting authority shall publish an indicative notice as soon as possible after the calendar year beginning or as soon as possible after the approval of the planned building works contracts stating the basic characteristics of the object of contract or framework agreement intended to award where the estimated value of the building works contract equals to or exceeds EUR 5 923 000.

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

(4) The contracting authority shall invite to public procurement by publishing a contract notice where the contracting authority intends to

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

(5) Where the contracting authority uses accelerated restricted procedure or accelerated negotiated procedure with a publication, the notices are sent by fax or by electronic means.

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

Article 51
Open Procedure

(1) The tender submission period shall be at least

- a) 52 days from the date of dispatch of the contract notice to the Publications Office, or
- b) 36 days from the dispatch of the contract notice to the Publications Office where the contracting authority published an indicative notice not earlier than 12 months and not later than 52 days before the date of dispatch of the contract notice; the tender submission period must not be less than 22 days.

(2) The tender submission period can be reduced

- a) by seven days where the contract notice is drawn up and sent by electronic means,
- b) by five days where the contracting authority enables unrestricted and direct access by electronic means to the tender documents and all additional documents; the period pursuant to (a) may also be added that period.

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

(4) Where the contracting authority does not offer unrestricted and direct access by electronic means to the tender documents and accompanying documents pursuant to paragraph 2 (b), he shall be obliged to send those to a candidate within six days of the presentation of the request to participate provided that the request was presented in good time prior to the expiry of the tender submission period. A tender may only be submitted by a tenderer who has requested the tender documents and to whom the tender documents have been provided by the contracting authority.

(5) The contracting authority or a commission established by the same shall evaluate meeting of the conditions of participation pursuant to Article 33. Tenders of the tenderers who have met the conditions of participation shall be evaluated pursuant to Article 42.

Restricted Procedure Article 52

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

(2) In the contract notice, the contracting authority shall determine in particular

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

(3) The time limit for the submission of requests to participate may not be less than 37 days from the date of dispatch of the contract notice to the Publications Office. That time limit may be reduced by seven days where the contract notice is drawn up and sent by electronic means.

(4) In the event of extreme urgency demonstrably not caused by the contracting authority, the time limit for the submission of requests to participate must not be less than

- a) 15 days from the date of dispatch of the contract notice to the Publications Office, or
- b) 10 days from the date of dispatch of the contract notice to the Publications Office where the contract notice is drawn up and sent by electronic means.

Article 53

(1) The contracting authority may call for submission of tenders a lower number of candidates that meet the conditions of participation and the minimum levels of ability/suitability where the specified minimum number has not been reached.

(2) A call for submission of tenders shall include

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

(3) The contracting authority shall send invitation to submit tenders simultaneously only to the selected candidates who have met the conditions of participation. Under the same procedure, the contracting authority must not invite to submit a tender anyone who has not requested to participate. Where the tender documents do not make a part of the invitation to submit tenders, the contracting authority shall provide those to the candidates

immediately after having made a request. A tender may only be submitted by a tenderer invited by the contracting authority to submit a tender.

Article 54

- (1) The tender submission period shall be at least
 - a) 40 days from the date of dispatch of the call for the submission of tenders,
 - b) 36 days from the date of dispatch of the call for the submission of tenders where the contracting authority published an indicative notice not earlier than 12 months and not later than 52 days before the date of dispatch of the contract notice; the tender submission period must not be less than 22 days from the dispatch of the call for the submission of tenders.
- (2) The tender submission period may be reduced by five days where the contracting authority enables unrestricted and direct access by electronic means to the tender documents and to any additional documents.
- (3) In the event of urgency demonstrably not caused by the contracting authority and where it is impossible to apply the time limits pursuant to paragraph 1, the time limit for the submission of tenders must not be less than ten days from the date of dispatch of the call for submission of tenders.
- (4) Where the contract documents and additional information is not provided within the time limits pursuant to Article 38 and Article 53 (3) although requested in good time, or where drawing up of a tender requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, the contracting authority shall reasonably prolong the tender submission period so that the selected candidates may be aware of all information needed to prepare a tender.

Negotiated Procedure with a Publication Article 55

- (1) The contracting authority may apply negotiated procedure with a publication only where at least one of the following conditions is met:
 - a) all tenders in a preceding open procedure, in a restricted procedure or in a competitive dialogue were irregular or otherwise unacceptable and provided that the initial conditions of contract have not substantially changed; the contracting authority shall not be obliged to publish a contract notice where it negotiates with all tenderers that have met the conditions of participation in a preceding open procedure, restricted procedure or competitive dialogue and submitted tenders pursuant to the requirements of the contracting authority,
 - b) the nature of supplies, building works or services provided or the risks related thereto exceptionally do not allow determine the requirements concerning the pricing method,
 - c) requirements for services, in particular financial services, cannot be determined sufficiently precisely to apply open procedure or restricted procedure,
 - d) building works will only be executed for research, testing or development but not to generate profit or to cover research and development costs.
- (2) Irregular or otherwise unacceptable tender shall be in particular a tender which
 - a) fails to meet the conditions determined by the contracting authority from a viewpoint other than the object of contract,
 - b) is contradictory to law,
 - c) includes obviously disadvantageous conditions.

Article 56

- (1) The contracting authority may restrict the number of candidates to be invited to submit tenders to three so as to allow competition.
- (2) In the contract notice, the contracting authority shall determine in particular
 - a) the time limit for the submission of requests to participate,
 - b) restriction of the number of candidates, if applied,
 - c) rules for the evaluation of meeting of the conditions of participation.
- (3) The time limit for the submission of requests to participate may not be less than 37 days from the date of dispatch of the contract notice to the Publications Office. That time limit may be reduced by seven days where the contract notice is drawn up and sent by electronic means.

- (4) In the event of urgency demonstrably not caused by the contracting authority, the time limit for the submission of requests to participate may not be less than
- a) 15 days from the date of dispatch of the contract notice to the Publications Office, or
 - b) 10 days from the date of dispatch of the contract notice to the Publications Office where the contract notice is drawn up and sent by electronic means.

Article 57

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

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

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

(4) The tender submission period must not be less than 22 days from the dispatch of the call for the submission of tenders.

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

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

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

(8) The contracting authority shall draw up minutes of every negotiation.

Negotiated Procedure without a Publication

Article 58

(1) The contracting authority may use negotiated procedure without a publication only where at least one of the following conditions is met:

- a) no tender was submitted or none of the tenders met the conditions specified by the contracting authority regarding the object of order in a preceding open procedure or restricted procedure, or no request to participate was submitted in a preceding open procedure or restricted procedure and provided that the initial conditions of contract have not substantially changed,
- b) for technical reasons, artistic reasons or for reasons resulting from exclusive rights¹², the supplies, building works or services may only be provided by a specific supplier/contractor/provider,
- c) the supply, building works or service contract is awarded due to an extraordinary event not caused by the contracting authority which could not have foreseen the event and, with regard to the resulting urgency, open procedure, restricted procedure or negotiated procedure with a publication cannot be organised; an extraordinary event shall mean in particular a natural disaster, accident or situation immediately threatening the lives or health

¹² For instance, Article 16 of the Act No. 618/2003 Coll. on copyright and rights relating to copyright (the Copyright Act), Article 14 of the Act No. 435/2001 Coll. on patents, additional protective certificates and on the modification and amendment of certain acts (the Patent Act), as amended by of the Act No. 402/2002 Coll.

of people or the environment; other related contracts shall be awarded by applying public procurement procedures using accelerated procedures, if possible,

d) the products requested are manufactured exclusively for the purpose of research, experiment, study or development; that does not apply to large-scale production related to economic activities intended to make profit or cover the research and development costs,

e) in the event of additional supplies from the initial supplier intended to partially substitute the usual supplies or equipment or to extend the supplies or equipment already supplied, where the change of supplier would force the contracting authority obtain material of different technical characteristics causing incompatibility or inadequate technical difficulties in operation or in maintenance; the validity of such contract as well as of repetitive contracts may not exceed three years,

f) in the event of supplies quoted in the commodity exchange,

g) in the event of supplies offered at exceptionally beneficial conditions by a supplier closing his business, from a liquidator, from a trustee or from an executor,

h) in the event of a tenderer whose tender was evaluated by the jury as winning or one of the winning in a design contest; where there are more winning tenders, the contracting authority must invite all to negotiate,

i) in the event of additional building works or services not included in the initial contract, the need of which has resulted additionally from unforeseeable circumstances, and the contract is awarded to the initial contractor/provider and the estimated value of building works or services shall not exceed 50 % of the initial contract value where the additional building works or services

1. cannot be technically or economically separated from the initial contract performance without causing inadequate difficulties to the contracting authority, or

2. can be technically or economically separated from the initial contract performance but are necessary for further performance pursuant to the initial contract,

j) in the event of new building works or services vested in the repetition of the same or comparable building works executed or services provided by the initial contractor/provider, provided that

1. they are in accordance with the basic project and the initial contract was awarded by open procedure or restricted procedure,

2. the information of contract award by negotiated procedure without a publication was contained in the contract notice when awarding the initial contract and

3. the repetitive contract is awarded within three years from conclusion of the initial contract.

(2) The contracting authority shall be obliged to notify the Office in writing about commencement of negotiated procedure without a publication pursuant to paragraph 1 immediately after the dispatch of the invitation to negotiate, however, not later than 14 days before the conclusion of contract. The notice shall include in particular

a) identification data of the contracting authority,

b) object of contract,

c) estimated value of contract,

d) condition of application pursuant to paragraph 1 and its justification,

e) identification data of the candidates to be invited to negotiate.

(3) The provision of paragraph 2 shall not apply to the use of negotiated procedure without a publication pursuant to paragraph 1 (c) in case of an extraordinary event pursuant to a special regulation¹³ and pursuant to paragraph 1 (f).

Article 59

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

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

¹³ Article 3 of the Act of the National Council of the Slovak Republic No. 42/1994 Coll. on civil protection of the population, as amended.

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

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

Competitive Dialogue Article 60

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

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

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

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

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

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

(5) The time limit for the submission of requests to participate may not be less than 37 days from the date of dispatch of the contract notice to the Publications Office. The time limit for the submission of the request to participate may be reduced by 7 days where the contract notice is drawn up and sent by electronic means.

Article 61

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

- a) the place and time limit determined to request an indicative document in the event it is not included in the call, or a reference to access that document where the contracting authority offers unrestricted and direct access by electronic means,
- b) the amount and method of payment for the indicative document, if required,
- c) information concerning the publication of the contract notice,
- d) the place and date of the dialogue and the language or languages to be held in,
- e) specification of additional documents, if necessary and intended to support the statements submitted by the candidate in accordance with the contract notice, or to complement the information requested in the contract notice; requirements relating to the financial and economic standing and technical ability or professional suitability other than those initially specified by the contracting authority must not be applied,
- f) relative weights of the specific criteria for the evaluation of tenders or the descending order of importance of the criteria unless stated in the contract notice or in the indicative document,
- g) other necessary information.

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

(3) In the course of dialogue, the contracting authority may negotiate all the project aspects with the selected candidates. The contracting authority may determine prizes or awards for candidates that participate in the dialogue.

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

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

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

(7) Where the contracting authority makes use of the option to reduce the number of solutions to be negotiated, their number achieved in the last phase must allow competition in the event there are sufficient solutions. The contracting authority shall continue in such dialogue until a solution or solutions meeting its needs are found. If necessary, by comparing such solutions. The contracting authority shall draw up minutes of every negotiation in a dialogue.

Article 62

(1) The contracting authority shall inform the tenderers about the dialogue closing and invite them to submit their final tenders on the basis of the solution or solutions submitted, which were specified in the dialogue. These tenders shall contain all the parameters required and necessary for the performance of the project.

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

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

Article 63

(1) To opening and evaluation of tenders, Articles 41 and 42 shall not apply.

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

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

(4) The contracting authority may ask the tenderer whose tender was evaluated as economically the most advantageous to explain the aspects of his tender or to confirm the commitments set out in the tender. The contracting authority must not however ask for or accept an explanation leading to a change in the basic aspects of the tender or call for the submission of tenders, to discrimination or preventing fair competition.

Article 64

Framework Agreement

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

(2) A framework agreement may be concluded for not more than four years, save in exceptional cases duly justified by the object of the framework agreement where the party is a contracting authority in the defence sector. A framework agreement shall end upon the expiry of the time or under the conditions set out in the framework agreement. A framework agreement may be concluded for the delivery of supplies, execution of building works or provision of services not featuring any complex technical requirements. Conclusion of a framework agreement must not prevent fair competition.

(3) On the basis of a framework agreement, a contract may be awarded only to a person that is a party to the framework agreement. When awarding a contract on the basis of a framework agreement, no substantial changes and amendments may be made to the terms laid down in the framework agreement.

(4) Where a framework agreement is concluded with a single party, the contracts based on such agreement shall be awarded within the limits of the terms laid down in the framework agreement. The contract award may be preceded by a consultation in writing. If necessary, the contracting authority may request to supplement the tender.

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

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

(6) In the event of re-opening competition, all parties of that agreement repetitively compete on the basis of the same and, if necessary, more precisely formulated terms set out in the framework agreement in the following manner:

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

Article 65 Housing Construction

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

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

TITLE THREE CONCESSION Article 66

(1) The contracting authority shall be obliged to follow these rules where the estimated value of a building works concession contract equals to or exceeds EUR 5 923 000. The estimated value of a building works contract shall be determined pursuant to Article 5.

(2) Concession period shall be a period set out in a concession contract during which the concessionaire has the right to use the object of the concession contract. A concession period shall run from the first day of the

month following issuance of the occupation permit for a building structure¹⁴ or a permit of its permanent operation, or following another event pursuant to the concession contract where the concessionaire had or could have revenues from operating the building structure. A concession period shall end upon the expiry of the last day of the month of the specified period. A concession period may not exceed 30 years.

(3) The duration of a concession period shall depend on the object of the concession contract, the amount of pecuniary performance for the building works to be executed and the estimated reasonable concessionaire's revenue resulting from the right to use the work during the concession period.

(4) By concluding a concession contract, the concessionaire shall acquire the rights and obligations of the property administrator. That property must not be alienated, charged, sold in auction or its administration transferred to a third person.

(5) After conclusion of a concession contract, the contracting authority must not transfer the ownership of the building structure or building plot to another person.

(6) The concession rules shall not be applied

- a) where the concession is awarded by a contracting authority carrying out one or more activities pursuant to Article 8 (3) to (9) and the concession is awarded for the execution of such activities,
- b) in cases set out in Article 1 (2) (a), (b), (d), (e) and (f).

Article 67

(1) The contracting authority shall announce a concession by publishing a concession notice. The concession notice shall be sent to the Publications Office and to the Office. The concession notice shall be published pursuant to Article 23.

(2) The time limit for the submission of concession requests may not be less than 52 days from the date of dispatch of the concession notice to the Publications Office. That time limit may be reduced by 7 days where the concession notice is drawn up and sent by electronic means.

Article 68

(1) A contracting authority may

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

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

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

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

Article 69

A concessionaire which is a contracting authority shall be obliged in the award of building works contracts to third persons to apply public procurement procedures pursuant to this Act.

¹⁴ Articles 76 and 77 of the Act No. 50/1976 Coll. on town and country planning and building order (the Building Act), as amended by of the Act No. 479/2005 Coll.

Rules for a Concessionaire Other than a Contracting Authority

Article 70

(1) In the award of building works contracts to third persons, a concessionaire other than a contracting authority shall follow the rules provided in Article 71 where the estimated value of such contracts equals to or exceeds EUR 5 923 000. The estimated value of a building works contract shall be determined pursuant to Article 5.

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

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

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

a) owns the majority of shares or a majority business interest, or

b) controls the majority share in voting rights, or

a) appoints more than a half of members of the administration body or executive body, or a supervisory body.

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

Article 71

(1) In the award of contracts pursuant to Article 70, a concessionaire other than a contracting authority shall be obliged to publish a contract notice. The notice shall be sent to the Publications Office and to the Office and published pursuant to Article 23. The notice shall set out

a) a description of the object of contract,

b) the place and time limit determined for the submission of requests to participate or the place and time limit determined for the submission of tenders,

c) criteria for the evaluation of tenders,

d) conditions of participation pursuant to Articles 27 and 28, if requested,

e) other necessary information.

(2) The time limit for the submission of requests to participate may not be less than 37 days from the date of dispatch of the contract notice to the Publications Office. That time limit may be reduced by seven days where the contract notice is drawn up and sent by electronic means.

(3) The tender submission period may not be less than 40 days from the date of dispatch of the contract notice to the Publications Office or from the date of the dispatch of the call for the submission of tenders. That period may be reduced by 5 days where the concessionaire enables unrestricted and direct access by electronic means to the tender documents and to all additional documents.

(4) Where the tender documents for drawing up a tender or additional information is not provided within the specified periods although requested in good time or where drawing up of a tender requires examination of extensive documentation or a site visit to the place of delivery of the object of contract, the concessionaire shall reasonably prolong the tender submission period so that the candidates may be aware of all information needed to prepare a tender.

(5) A concessionaire other than a contracting authority shall not be obliged to publish a contract notice where the building works contract awarded to third persons meets one of the conditions set out in Article 58 (1).

TITLE FOUR

AWARD OF CONTRACTS ABOVE THE LIMIT BY A CONTRACTING ENTITY

Article 72

To award a contract above the limit, the contracting entity shall be obliged to apply a procedure pursuant to Title Two, unless provided otherwise in this title.

Article 73

(1) Procedures for the award of contracts above the limit shall not be applied

- a) to purchase water where awarded by a contracting entity carrying out at least one of the activities pursuant to Article 8 (4),
- b) to supply energy or fuels for generation of energy where awarded by a contracting entity carrying out at least one of the activities pursuant to Article 8 (3) or Article 8 (9) (a).

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

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

(3) For the purpose of contract awarding, affiliated undertaking shall be a legal entity whose financial statements are consolidated with the financial statements of the contracting entity pursuant to a special regulation¹⁵, or a legal entity in which the contracting entity has, directly or indirectly, dominant influence pursuant to Article 8 (1) (b) or which has a dominant influence in the contracting entity, or which along with the contracting entity is subject to dominant influence of another legal entity on the basis of ownership, financial interest or by rules which govern it.

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

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

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

- a) are awarded by a legal entity founded by more contracting entities to carry out some of the activities pursuant to Article 8 (3) to (9) for one of such contracting entities, or
- b) the contracting entity being one of the founders of the legal entity pursuant to (a) awards contracts to that legal entity provided that

1. the legal entity was founded to carry out the activity concerned for a period of at least three years and
2. the Memorandum of Association sets forth that the contracting entities which have founded it shall remain its members for a period of at least three years.

Article 74

Contracts Including Several Activities

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

(2) The contract shall be awarded by a contracting authority by applying a procedure above the limit where a part of the contract is to be governed by that procedure and another part is to be governed by award procedure above

¹⁵ Article 22 of the Act No. 431/2002 Coll. on accounting, as amended by of the Act No. 561/2004 Coll.

the limit by a contracting entity, and objectively it is impossible to determine which activity in the contract prevails.

(3) The contract shall be awarded by a contracting entity by applying a procedure above the limit where a part of the contract is to be governed by that procedure and another part is not to be governed by that procedure or by award procedure above the limit by a contracting authority, and objectively it is impossible to determine which activity in the contract prevails.

Article 75 Evaluation of Certain Supply Tenders

(1) The contracting entity may exclude a supply tender where the share of products originating in a third country pursuant to a special regulation¹⁶ represents more than a half of the total value of the products tendered. For the purpose of assessing the share of products, software used in the telecommunications network devices shall also be considered a product.

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

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

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

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

Publication of Notices Article 76

(1) A contracting entity shall publish a periodic indicative notice at least once a year where

- a) the total estimated value of supply contracts or framework supply agreements by product groups intended for award during the following 12 months is at least EUR 750 000; a product group shall be specified by a reference to the CPV,
- b) the total estimated value of service contracts or framework services agreements in each category of services listed in Annex 2 intended for award during the following 12 months is at least EUR 750 000,
- c) the estimated value of a building works contract or a framework building works agreement stating the main characteristics, intended for award during the following 12 months equals to or exceeds EUR 5 923 000.

(2) The contracting entity shall publish a periodic indicative notice pursuant to paragraph 1 in the event of

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

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

(4) The contracting entity may also publish or send for publication to the Publications Office periodic indicative notices concerning important projects whose publication is not obligatory. Where such notice has been

¹⁶ Regulation No. 2913/92 of the Council (EEC) of 12 October 1992 establishing the European Community Tariff Code (OJ EU L 302, 19 October 1992), as amended.

published, the information contained therein does not have to be repeated in the contract notice, it is sufficient to set out that the notice is a notice additional to the periodic indicative notice published.

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

Article 77

(1) A call for competition shall be made by means of

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

(2) In the event of a dynamic purchasing system, a call for competitions shall be a contract notice pursuant to paragraph 1 (c) under that system. A call for competition for the award of contracts on the basis of that system shall be a simplified contract notice.

Article 78

(1) Where the contracting entity makes a call for competition by means of a periodic indicative notice with a call for competition, that notice shall include in particular

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

(2) Periodic indicative notice with a call for competition shall be published not earlier than 12 months prior to the date of dispatch of the call pursuant to paragraph 3.

(3) Before evaluating the meeting of the conditions of participation, the contracting entity shall invite all candidates to repeatedly confirm their interest to participate on the basis of detailed information concerning the object of contract. The invitation shall include in particular

- a) the type and quantity of the object of contract including the option of additional contracts, if possible, the estimated time limit by which the additional contract may be executed; in the event of repetitive contracts, the type and quantity of the object of contract and, if possible, the estimated time limit in which the supply, building works or service contract notices will be later published,
- b) indication whether it is restricted procedure or negotiated procedure with a publication,
- c) commencement date or closing date for the delivery of supplies, execution of building works or provision of services,
- d) address and time limit for the submission of requests to participate in the competition, as well as the language or languages, in which the requests must be submitted,
- e) address of the contracting entity and information needed to obtain the tender documents and other documents,
- f) economic and technical conditions, financial guarantees and other information requested from candidates,
- g) the amount and method of payment for the provision of tender documents, if required,
- h) indication of the contract: purchase, leasing, hire or hire-purchase with or without an option to buy, or any combination thereof,
- i) criteria for the evaluation of tenders and their relative weights or ranking of importance of those criteria where such information is not set out in the periodic indicative notice, tender documents, in the call for submission of tenders or in the call to negotiate.

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

Article 79

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

(2) In the event of research and development service contracts pursuant to Article 88 (1) (b), in the contract award notice the contracting entity may restrict information intended for publication, which concerns the nature and quantity of the services provided, by including a reference to research and development services.

(3) In the event of research and development service contracts in the award of which the condition set out in Article 88 (1) (b) cannot be applied, the contracting entity may on grounds of commercial confidentiality restrict the information to be provided, which concerns the nature and quantity of such services.

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

Article 80 Qualification System

(1) The contracting entity may establish and operate a qualification system of suppliers/contractors/providers. The contracting entity which has established a qualification system shall enable candidates to apply anytime and qualify.

(2) Establishment of a qualification system must be object of a qualification system notice. The notice must make clear its purpose and availability of the rules of application. Where a qualification system is to last more than three years, a qualification system notice shall be published by the contracting entity on an annual basis. Where the qualification system is of a shorter duration, its initial publication shall be sufficient.

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

(4) The contracting entity shall determine the conditions of participation pursuant to Article 32 (2); meeting of the conditions of participation shall be evaluated pursuant to Article 33 (2) and (7).

(5) The contracting entity shall make the criteria and rules of the qualification system available at a candidate's request. The suppliers/contractors/providers concerned shall be informed about updating of the criteria and rules. Where the contracting entity finds that the qualification system used by another person complies with its own requirements, the contracting entity shall communicate the name of that person to qualified suppliers/contractors/providers and candidates to qualify.

(6) The contracting entity shall run a list of qualified suppliers/contractors/providers. The list of qualified suppliers/contractors/providers may be structured into categories by the type of contract to which the qualification applies.

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

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

(9) The contracting entity which has established and operates a qualification system may bring the qualification of a supplier/contractor/provider to an end only for reasons based on the criteria for the qualification system pursuant to paragraph 3. The contracting entity shall inform the qualified supplier/contractor/provider of its intention to bring the latter's qualification to an end providing the reason or reasons allowing carry out the procedure at least 15 days before termination of its qualification.

(10) Where a contracting entity uses a qualification system notice as a call for competition, candidates in restricted procedure or in negotiated procedure with a publication shall be selected out of qualified suppliers/contractors/providers.

Article 81 Open Procedure

(1) In open procedure, the contracting entity shall follow Article 51 (1) (a) and Article 51 (2) to (4).

(2) Where the contracting entity published a periodic indicative notice not earlier than 12 months and not later than 52 days from the dispatch of the contract notice, the tender submission period shall not be less than 36 days from the date of dispatch of the contract notice to the Publications Office, however, it must not be less than 22 days.

(3) As a result of the cumulative effect of reducing the tender submission period pursuant to paragraph 2 and Article 51 (2), the tender submission period must not be less than 15 days from the date of dispatch of the contract notice to the Publications Office. Where the contract notice is sent by means other than fax or electronic means, the tender submission period must not be less than 22 days.

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

Restricted Procedure Article 82

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

(2) In a periodic indicative notice with a call for competition or in a tender notice, the contracting entity shall specify the time limit for the submission of requests to participate and the conditions of participation if determined.

(3) The time limit for the submission of requests to participate may not be less than 37 days from the date of dispatch of the contract notice to the Publications Office or of the periodic indicative notice with a call for competition to the Publications Office. Where the notice is sent by means other than fax or electronic means, the time limit for the submission of requests for participation must not be less than 22 days. Where the contract notice or the periodic indicative notice with a call for competition is sent by fax or by electronic means, the time limit for the submission of requests to participate must not be less than 15 days.

(4) The time limit for the submission of the requests to participate may be reduced by seven days where the contract notice or periodic indicative notice with a call for competition is drawn up and sent by electronic means.

Article 83

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

a) the place and time limit determined to request tender documents in case they are not included, or a reference for access to the tender documents where the contracting entity offers unrestricted and direct access by electronic means to the tender documents,

b) the amount and method of payment for the provision of tender documents, if required,

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

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

Article 84

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

(2) Where agreement cannot be reached regarding the time limit for the submission of tenders pursuant to paragraph 1, the contracting entity shall determine a time limit which should not be less than 24 days from the date of dispatch of the call for the submission of tenders and must not be less than 10 days.

(3) The time limit for the submission tenders pursuant to paragraph 2 may be reduced by 5 days where the contracting entity enables unrestricted and direct access by electronic means to the tender documents and to all additional documents from the date of publishing the notice used as a call for competition, and must not be less than 10 days.

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

Negotiated Procedure with a Publication

Article 85

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

(2) In a periodic indicative notice with a call for competition or in a tender notice, the contracting entity shall determine the time limit for the submission of requests to participate and the conditions of participation, if determined.

(3) The time limit for the submission of requests to participate should not be less than 37 days from the date of dispatch of the contract notice or periodic indicative notice with a call for competition to the Publications Office and must not be less than 22 days where the notice is sent by means other than fax or electronic means. Where the contract notice or the periodic indicative notice with a call for competition is sent by fax or by electronic means, the time limit for the submission of requests to participate must not be less than 15 days.

(4) The time limit for the submission of the requests to participate may be reduced by seven days where the contract notice or periodic indicative notice with a call for competition is drawn up and sent by electronic means.

Article 86

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

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

(3) The contracting entity may determine a time period for the submission of tenders in agreement with the selected candidates only where all of them will be given the same time for drawing up and submission of their tenders.

(4) Where agreement cannot be reached regarding the period for the submission of tenders pursuant to paragraph 3, the contracting entity shall determine a period which should not be less than 24 days from the date of dispatch of the call for the submission of tenders and must not be less than 10 days.

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

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

Article 87

The contracting entity shall negotiate the contract conditions with the tenderers and in the course of the negotiation shall be obliged to follow Article 57 (6) and (8). The contracting entity may follow Article 57 (7) in the event that the option is stated in the notice used as a call for competition or in the tender documents.

Negotiated Procedure without a Publication Article 88

(1) The contracting entity may use negotiated procedure without a publication only where at least one of the following conditions is met:

- a) no tender was submitted or none of the tenders submitted met the conditions determined by the contracting entity regarding the object of contract in a preceding open procedure, restricted procedure or negotiated procedure, or no request to participate was submitted and provided that the initial conditions of contract have not substantially changed,
- b) the contract is intended purely for the purpose of research, experiment, study or development, and not for the purpose of securing profit or of recovering research and development costs; the award of such contract must not prevent a competitive award of subsequent contracts which do seek, in particular, those ends;
- c) for technical reasons, artistic reasons or for reasons resulting from exclusive rights¹²⁾, the supplies, building works or services may only be provided by a specific supplier/contractor/provider,
- d) the supply, building works or service contract is awarded due to an extraordinary event not caused by the contracting entity which could not have foreseen the event and, with regard to the resulting urgency, open procedure, restricted procedure or negotiated procedure with a publication cannot be organised; an extraordinary event shall mean in particular a natural disaster, accident or a situation immediately threatening the lives or health of people or the environment; other related contracts shall be awarded by applying accelerated public procurement procedures, if possible,
- e) in the event of additional supplies from the initial supplier intended to partially substitute the usual supplies or equipment or to extend the supplies or equipment already supplied, where the change of supplier would force the contracting entity obtain material of different technical characteristics causing incompatibility or unreasonable technical difficulties in operation or in maintenance,
- f) in the event of additional building works or services not included in the initial contract, the need of which has resulted additionally from unforeseeable circumstances, and the contract is awarded to the initial contractor/provider where the additional building works or services

1. cannot be technically or economically separated from the initial contract performance without causing unreasonable difficulties to the contracting entity, or
2. can be technically or economically separated from the initial contract performance but are necessary for further performance pursuant to the initial contract,
- g) in the event of new building works vested in the repetition of identical or comparable building works executed by the initial contractor provided that
 1. they are in accordance with the basic project and the initial contract was awarded by open procedure, restricted procedure, or negotiated procedure with a publication,
 2. the information of contract award by negotiated procedure without a publication was contained in the notice used as a call for competition to award the initial contract and
 3. the estimated value of repetitive building works shall be included in the total estimated value of the building works contract,
- h) in the event of supplies quoted in the commodity exchange,
- i) in the event of contracts awarded on the basis of a framework agreement,
- j) in the event of supplies at an extraordinarily favourable price which is less than the market price and is offered in a certain short time period only,
- k) in the event of supplies offered at exceptionally beneficial conditions by a supplier closing his business activities, from a liquidator, from a trustee or from an executor,
- l) in the event of a tenderer whose tender was evaluated by the jury as winning or one of the winning in a design contest; where there are more winning tenders, the contracting entity must invite for negotiations all of them.

(2) The contracting entity shall be obliged to notify the Office in writing of starting a negotiated procedure without a publication pursuant to paragraph 1 except (d) and (h) immediately after the dispatch of the invitation to negotiate, however, not later than 14 days before the conclusion of contract. The notice shall include elements pursuant to Article 58 (2).

Article 89

The contracting entity shall invite one or more selected candidates to negotiate depending on the condition pursuant to Article 88 (1) to negotiate the conditions of contract, in particular technical, administrative and financial conditions. The contracting entity shall follow Article 59 (2) to (4).

Article 90

Framework Agreement

- (1) To conclude a framework agreement, the contracting entity shall apply award procedures pursuant to this part of the Act.
- (2) The contracting entity may consider a framework agreement to be a supply, building works or service contract.
- (3) Where the contracting entity has concluded a framework agreement pursuant to this part of the Act, a contract may be awarded on the basis of the framework agreement pursuant to Article 88 (1) (i).
- (4) A framework agreement must not prevent fair competition.

PART THREE

CONTRACT AWARD PROCEDURES BELOW THE LIMIT, BELOW THE THRESHOLD AND AWARD OF SMALL-VALUE CONTRACTS

Award of Contracts below the Limit

Article 91

(1) In the award of contracts below the limit, the contracting authority shall follow Part One and Part Two of this Act unless provided otherwise in this part; Article 21 (2) and (3), Article 48, Article 49 (1) and (2), Article 50 (1) to (3), Articles 72 to 79 and Articles 81 to 90 shall not be applied.

(2) The contracting authority shall determine the estimated value of a supply, building works or service contract below the limit pursuant to Article 5 (1) to (3) and Article 5 (6) to (12). Where the supplies, building works or services are subdivided under a single contract award into several lots, each of which will be object of a separate

contract, the sum of estimated values of all parts will be taken into account to calculate the estimated contract value.

(3) When awarding a supply contract pursuant to Articles 51 to 54, the contracting authority shall be obliged to employ exclusively electronic communication while compliant with the conditions pursuant to Article 18.

Article 92

(1) The contracting authority shall send the Office a contract notice to be published in the Journal.

(2) The contracting authority shall send the Office a contract award notice within 14 days from the conclusion of

a) a contract,

b) a framework agreement,

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

(3) The contracting authority shall send the Office a contract award notice for each contract awarded under a framework agreement in bulk for each quarter within 14 days of the quarter end.

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

(5) The contracting authority may publish notices used in public procurement on the internet in its profile after their publication in the Journal. In order to improve information rate, other information concerning public procurement may be published in that profile, too.

Article 93

(1) The contracting authority shall send the Office notices used in public procurement by electronic means or by other means.

(2) A notice sent by electronic means shall be published by the Office within 7 days from the date of the notice dispatch. A notice sent by other means shall be published by the Office within 12 days from the date of the notice dispatch. The date of the notice dispatch shall be demonstrated by the contracting authority.

Article 94

(1) The tenderer or candidate shall demonstrate its meeting of the conditions of participation in public procurement pursuant to Article 26.

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

(3) The contracting authority may establish and operate a qualification system of suppliers/contractors/providers pursuant to Article 80.

(4) The contracting authority shall evaluate meeting of the conditions of participation pursuant to Article 33.

Article 95

When awarding contracts below the limit for services listed in Annex 3, procedures for awarding contracts below the threshold shall be applied. The contracting authority shall send the contract award notice to the Office pursuant to Articles 92 and 93 and indicate whether it agrees to its publication.

Article 96

(1) In an open procedure, the tender submission period shall not be less than 36 days from the date of dispatch of the contract notice or of the notice used as a call for competition to the Office.

(2) The time limit for the submission of the requests to participate in a restricted procedure or in a negotiated procedure must not be less than 22 days from the date of dispatch of the contract notice or of the notice used as a call for competition to the Office.

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

Concession Article 97

(1) When concluding a concession contract, the contracting authority shall reasonably apply Articles 66 to 69 where the estimated value of the concession contract equals to or exceeds SKK 12 000 000 and, at the same time, is less than the financial limit pursuant to Article 66 (1). The estimated value shall be determined pursuant to the rules for calculation of the estimated contract value for building works set forth in Article 5.

(2) The contracting authority shall declare a concession by a concession notice to be sent to the Office for publication. The concession notice shall be published pursuant to Article 93.

(3) The contracting authority shall not apply paragraphs 1 and 2 where the conditions pursuant to Article 68 (2) are met.

Article 98 Rules for a Concessionaire Other than Contracting Authority

(1) When awarding building works contracts to third persons, the concessionaire other than a contracting authority shall reasonably apply Article 70 (2) to (4) and Article 71 where the estimated value of such contracts equals to or exceeds SKK 12 000 000 and, at the same time, is less than the financial limit pursuant to Article 70 (1). The estimated value of a building works contract shall be determined pursuant to Article 5.

(2) When awarding building works contracts to third persons, the concessionaire other than a contracting authority shall be obliged to send a contract notice for publication to the Office.

Award of Contracts below the Threshold Article 99

(1) When awarding contracts below the threshold, the contracting authority

- a) shall determine the estimated contract value pursuant to the conditions in effect on the day of publication of the call for the submission of tenders,
- b) shall request that the meeting of conditions of participation is demonstrated by a document proving business authorisation or, where appropriate, by other documents to prove financial and economic standing and technical ability or professional suitability,
- c) shall assess meeting of the conditions of participation in accordance with the call for the submission of tenders,
- d) in the tender documents, shall state the business conditions and a detailed description of the object of contract which must not discriminate any candidates,
- e) shall provide an explanation of the data specified in the call for the submission of tenders or in the tender documents without any delay, not later than three working days from the delivery of the request for explanation, to all candidates involved; a candidate may seek explanation not later than six working days prior to the expiry of the tender submission period,
- f) may establish a commission for the evaluation of tenders; in doing so, Article 40 shall be applied,
- g) in evaluating the tenders, shall only apply the criteria set out in the call for the submission of tenders,
- h) shall conclude a contract within the tender validity period with the successful tenderer and inform the remaining tenderers that they have not succeeded; where the used contract award procedure is cancelled, all tenderers shall be informed with an indication of the reason and the procedure shall be communicated to be used in the award of contract for the initial object of contract,
- i) shall determine a time limit for the submission of tenders by taking into account the time necessary to draw up tenders, to explain the tender documents and tenders and the specified means of communication,
- j) shall determine the tender validity period by taking into account the time necessary to evaluate the tenders and to conclude a contract with the successful tenderer.

(2) When awarding a supply contract pursuant to Articles 51 to 54, the contracting authority shall be obliged to employ exclusively electronic communication while compliant with the conditions pursuant to Article 18.

(3) The contracting authority shall publish the call for the submission of tenders by means available to the public. After such publication, the call for the submission of tenders must be sent to at least three selected candidates.

(4) When awarding a contract below the threshold, electronic auction may be used, too.

(5) Where the contracting authority operates a qualification system, the candidates to be invited to submit tenders may be selected out of qualified persons.

(6) In the call for the submission of tenders, the contracting authority may reserve the right to participate to candidates only that have the status of a sheltered workshop or sheltered workplace.

Article 100

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

(2) The contracting authority may request that the candidate submit documents demonstrating his meeting of the conditions of participation depending on the object of contract.

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

Article 101

(1) The contracting authority shall send the Office information about conclusion of a contract not later than 14 days thereafter. The information shall include in particular

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

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

Article 102

Award of Small-Value Contracts

(1) When awarding a small-value contract, the contracting authority shall act so that the expended costs to procure the object of contract are adequate to its quality and price.

(2) The contracting authority shall not be obliged to carry out activities in the award of small-value contracts through a professionally suitable person.

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

(4) The contracting authority shall register all the documents and keep them five years after the conclusion of contract.

PART FOUR DESIGN CONTEST

Article 103

Introductory Provisions

(1) For the purpose of this Act, design contest shall be a procedure enabling the caller of the design contest (hereinafter referred to as the “caller”) acquire a design mainly in the field of architecture, town and country

planning, construction engineering and data processing, which a jury selected out of the designs submitted in a design contest with or without award of prizes.

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

(3) A caller shall be anyone who is to use a design contest on a voluntary basis or if so set forth by law.

(4) A participant shall be anyone who has taken over the contest conditions and submitted a design in accordance with the conditions.

Article 104 Obligation of Design Contest

(1) A contracting authority shall be obliged to use a design contest where the following conditions are met:

- a) in the event of a design contest with the award of prizes or remuneration to participants,
- b) according to the contest conditions, a design contest makes part of a procedure leading to the award of a service contract to that participant whose design has been selected by the jury to be the winning or one of the winning,
- c) the estimated service contract value equals to or exceeds EUR 236 000, and
- d) the contract concerns
 1. telecommunications services pursuant to Annex 2 of reference numbers category 5 pursuant to the CPV corresponding to the CPC 7524, 7525 and 7526 codes,
 2. research and development services pursuant to Annex 2 category 8, or
 3. services listed in Annex 3.

(2) Where the conditions pursuant to paragraph (1) (a) and (b) are met, the contracting authority shall be obliged to use a design contest pursuant to

- a) Article 6 (1) (a) where the estimated service contract value equals to or exceeds EUR 154 000,
- b) Article 6 (1) (b) to (e) where the total value of all prizes awarded to the designs and remunerations provided to the participants including the estimated service contract value equals to or exceeds EUR 236 000.

(3) Where the conditions pursuant to paragraph 1 (a) and (b) are met, the contracting entity shall be obliged to use a design contest to award a service contract above the limit concerning activities pursuant to Article 8 (3) to

(9) where the estimated service contract value equals to or exceeds EUR 473 000.

(4) To calculate the estimated service contract value in paragraphs 1 to 3, Article 5 shall be applied.

Article 105 Participation in Design Contest

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

(2) Where design contest is organised for a restricted number of participants, the contest conditions must determine criteria for the selection of participants. The criteria for selection of participants must be specified in a clear, intelligible and non-discriminatory way so as to allow participation of a sufficient number of participants whereby effective competition would be enabled. The criteria for selection of participants must not restrict participation through a requirement concerning the establishment of a participant in a certain territory or part of a state territory, or a requirement concerning is legal form.

(3) In a specific design contest, the one who prepared criteria for the selection of participants or criteria for the evaluation of designs submitted or his near person must not participate.

(4) A bond may not be requested for participation in a design contest.

(5) A design contest shall be declared by publishing a design contest notice.

(6) In the event of a design contest pursuant to Article 104, the design contest notice shall be delivered to the Publications Office and to the Office. Article 23 shall apply to the manner and form of publication of the design contest notice.

Article 106 Contest Conditions

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

(2) The contest conditions must include

- a) identification of the caller,
- b) description of the object of the design contest and requirements regarding the scope, content and form of the design,
- c) type of design contest,
- d) circle of participants and criteria of their selection in the event of a design contest with a restricted number of participants,
- e) time limit for taking over the contest conditions, the design submission period and the estimated time limit for the evaluation of the design contest,
- f) composition of the jury stating the names and family names of the jury members and substitutes,
- g) criteria for the evaluation of the designs submitted and relative weights of the specific criteria,
- h) indication whether a decision of the jury shall be binding for the caller and the contract will be awarded to the participant whose design has been selected by the jury as winning, or to some of the participants whose designs have been selected by the jury as winning, according to a ranking made by the jury,
- i) number and value of prizes awarded to the winning design or winning designs,
- j) value of remunerations, of any, to participants that have met the contest conditions but their designs have not been selected by the jury as winning or one of the winning,
- k) means and form of communication with participants,
- l) indication whether the contest conditions have been verified pursuant to a special act¹⁷ before publication in the event of a design contest in the field of architecture, town and country planning and civil engineering,
- m) other data which the caller may consider meaningful.

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

Article 107 Jury

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

(2) A person who is a participant, his near person, his employee, partner or colleague must be neither a jury member or a jury member's substitute.

(3) The role of the jury shall be

- a) assess the contest conditions before a contest notice is published,
- b) control meeting of the contest conditions during the design contest,
- c) check the designs submitted on completeness according to the contest conditions,
- d) exclude the designs submitted after the time limit or submitted in a wrong place, and the designs whose anonymity was violated, or which otherwise failed to meet the conditions pursuant to the contest conditions,
- e) evaluate the designs submitted according to the criteria set forth in the contest conditions,
- f) rank the designs submitted according to the criteria set forth in the contest conditions,
- g) decide on the award of prizes to designs and remunerations to participants according to the contest conditions,

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

h) draw up the minutes.

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

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

Article 108
Result of Design Contest

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

(2) In the event of a design contest pursuant to Article 104, the notice of result of the design contest shall be sent to the Publications Office and to the Office. Article 22 (3), Article 23 and Article 50 (6) shall apply to the manner and form of publishing the result of the design contest.

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

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

PART FIVE
ADMINISTRATION IN PUBLIC PROCUREMENT

TITLE ONE
OFFICE

Article 109

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

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

Article 110

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

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

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

Article 111

(1) The term of office of the Office chairman and Office deputy chairman shall terminate

- a) upon the expiry of his term,
- b) by a resignation from the office,
- c) by a removal from the office,
- d) by death or in declaration of death.

- (2) The Government shall remove the Office chairman and the Office deputy chairman where he
- a) has been lawfully convicted of a malicious offence,
 - b) has been deprived of his legal capacity by a lawful decision of a court or his legal capacity has been restricted,
 - c) holds an office or performs an activity incompatible with the office of chairman or deputy chairman¹⁸,
 - d) has not exercised his office for a time exceeding six successive calendar months.

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

Article 112 Responsibility of the Office

The Office shall

- a) draw up public procurement concepts and develop programmes of vocational training and re-training,
- b) exercise state administration in public procurement,
- c) oversee public procurement,
- d) cooperate with the European Commission and ensure the fulfilment of notification obligations with regard to the European Commission within the scope of this Act,
- e) at least once a year submit a report on the results of public procurement and operation of public procurement to the Government, and on request also to a committee of the National Council of the Slovak Republic,
- f) issue non-periodic publications,
- g) run a list of entrepreneurs,
- h) issue certificates of professional suitability and run a list of professionally suitable persons,
- i) register persons pursuant to Article 116 (3) and run a list of registered persons,
- j) provide methodology guidance to participants in the public procurement process,
- k) publish all its methodology guidance for participants in the public procurement process and all its decisions regarding protests including justifications,
- l) impose fines for administrative delicts,
- m) run and make available examples of electronic documents, special software meeting the conditions pursuant to Article 18 (4) and other elements needed to ensure electronic communication in the procurement of supplies pursuant to Article 25 (3), Article 91 (3) and Article 99 (2) to the contracting authority and contracting entity on its internet site,
- n) perform other activities pursuant to this Act.

Article 113 Journal

- (1) The Office shall issue the Journal to publish
- a) notices used in public procurement,
 - b) list of entrepreneurs and its modifications,
 - c) entrepreneurs deleted from the list of entrepreneurs of a reason referred to in Article 134 (2) (b) or (c),
 - d) list of professionally suitable persons and its modifications,
 - e) lists of training providers and data concerning vocational training,
 - f) dates/times of examinations,
 - g) invitations for re-training and dates/times of re-training,
 - h) use of classifications in public procurement,
 - i) list of contracting authorities and list of contracting entities subject to the Government Procurement Agreement,
 - j) conversions of financial limits for public procurement methods above the limit into Slovak currency,
 - k) other information as decided by the Office.

(2) The correct content of the documents to be published shall be the responsibility of the one who sent such documents for publication. The Office shall be entitled to edit the layout of the data to be published in the Journal, without any changes to the content and meaning of the data or information to be published. Errata in the Journal shall be remedied by publishing an editorial notice of their correction.

¹⁸ Section 5 of the Constitutional Act No. 357/2004 Coll. on public interest protection in the performance of offices of public officers.

Article 114
Obligations of the Office with regard to the European Commission

(1) The Office shall

- a) draw up and by 31 October of each year submit the European Commission a statistical report on the contracts awarded in the preceding calendar year,
- b) periodically notify the European Commission of all changes in the list of contracting authorities and in the list of contracting entities,
- c) notify the European Commission which authorities and bodies in the Slovak Republic issue documents and certificates pursuant to Article 26 (2),
- d) notify the European Commission of the texts of generally binding legal regulations in effect in public procurement,
- e) based on notifications of legal entities or natural persons inform the European Commission of general legal or practical difficulties which those persons have encountered in third countries in the award of service contracts or which they faced due to non-observance of international labour law provisions in the award of a contract in third countries.

(2) A statistical report pursuant to paragraph 1 (a) shall include

- a) in the event of a contracting authority pursuant to paragraph 6 (1) (a), information concerning the number of contracts concluded and values of contracts above the limit
 1. structured by award procedures of contracts above the limit, separately for supplies, building works pursuant to Annex 1 and services pursuant to Annexes 2 and 3, by CPV categories and nationality of the tenderer with whom the contract was concluded, if possible; in the event of contracts awarded by negotiated procedure with a publication or by negotiated procedure without a publication, structured pursuant to Article 55 (1) or Article 58 (1) stating the number of contracts concluded with foreign tenderers for each Member State and for each third country and the contract prices,
 2. by virtue of the derogations pursuant to an international agreement¹⁹,
- b) in the event of a contracting authority pursuant to Article 6 (1) (b) to (e), for each category of contracting authorities information concerning the number of contracts concluded and the contract prices above the limit structured pursuant to (a) (1) and pursuant to (a) (2),
- c) in the event of a contracting entity pursuant to Article 8, information
 1. concerning the total price of contracts below the limit structured by Member States and activities pursuant to Article 8 (3) to (9),
 2. needed to monitor the performance of an international agreement²⁰ in the event of activities pursuant to Article 8 (3) to (7) and paragraph 9 (b), except for services listed in Annex 2 category 8, telecommunications services listed in Annex 2 category 5 pursuant to the CPV corresponding to CPC 7524, 7525 and 7526 codes and services listed in Annex 3,
- d) information requested pursuant to an international agreement²⁰).

Article 115
Remedial Mechanism

(1) Where the European Commission has notified the Slovak Republic and a contracting authority or contracting entity of reasons leading to a conclusion that legal acts of the European Communities and of the European Union in public procurement have been violated and requested correction, paragraphs 2 to 5 shall be applied.

(2) The Office shall notify the European Commission

- a) that the violation pursuant to paragraph 1 has been corrected and attach a proof thereof,
- b) of a justified explanation why the violation has not been corrected,
- c) that the contracting authority or contracting entity did not act as a result of the review procedures applied.

(3) The time limit for the notification pursuant to paragraph 2 shall be

- a) 21 days from the date of delivery of the notification pursuant to paragraph 1 in the event of contract award by a contracting authority,

¹⁹ Section V and Section XXIII of the Government Procurement Agreement (OJ EC C 256, 3 September 1996).

²⁰ Section XIX of the Government Procurement Agreement.

b) 30 days from the date of delivery of the notification pursuant to paragraph 1 in the event of contract award by a contracting entity.

(4) The justification pursuant to paragraph 2 (b) shall specify in particular that the violation pursuant to paragraph 1 was subject to review procedures pursuant to this Act. The Office shall be obliged to notify the European Commission of the result of the action without any delay.

(5) Following a notification of information pursuant to paragraph 2 (c), the Office shall be obliged to inform the European Commission without any delay of continuation in the contract award procedure suspended as a result of applying review procedures or of opening a new contract award procedure partially or fully relating to the preceding contract award procedure. This new information shall indicate whether the violation has been corrected and a justification why the violation has not been corrected.

TITLE TWO PROFESSIONAL SUITABILITY IN PUBLIC PROCUREMENT

Article 116

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

(2) Professional suitability shall mean a complex of professional knowledge and practical experience needed to ensure the tasks of a contracting authority, contracting entity and person pursuant to Article 7 in public procurement.

(3) The contracting authority, contracting entity and person pursuant to Article 7 may carry out the activities in public procurement through another person who is an entrepreneur²¹ and may seek registration by the Office; that shall be without prejudice to the responsibility of the contracting authority, contracting entity and person pursuant to Article 7 pursuant to this Act.

(4) The condition for registration pursuant to paragraph 3 shall be

- a) certificate of attestation issued pursuant to paragraph 6 by a person with accreditation pursuant to a special regulation²²,
- b) the fact that the representative responsible for public procurement and all persons carrying out activities in public procurement for him have not committed any grave misconduct in public procurement.

(5) The request for registration shall include

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

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

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

²¹ Article 2 (2) of the Commercial Code.

²² Act No. 264/1999 Coll., as amended.

(7) The Office shall register a person on the basis of that person's request where the same meets the conditions pursuant to paragraph 4 within 30 days from the date of the request delivery.

(8) Where the request for registration fails to meet all the elements required, the Office shall invite the applicant to complement those within a specified time limit. Where the applicant fails to complement those within a specified time limit, the Office shall discontinue the proceedings and return the request and its attachments.

(9) The Office shall cancel a registration where

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

(10) The person registered shall be obliged to inform the Office in writing within 30 days of a change in data which is indicated in the request for registration and establish the change by a demonstrating document.

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

Article 117

Prerequisites for Recognition of Professional Suitability

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

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

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

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

Article 118

Vocational Training

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

(2) Vocational training shall be enrolled by applicant who submits the following documents by the date of the training commencement:

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

Article 119

Examination Board of the Office

(1) Examination shall be made in front of an examination board of the Office consisting of at least three members. The members of the examination board of the Office and its chairman shall be appointed and removed by the Office chairman.

(2) The examination board of the Office shall be capable to examine and decide about an examination result where all its members are present at the same time; it meets its decisions by majority of votes.

(3) Details of activity of the examination board of the Office shall be governed by the examination board statute to be issued by the Office chairman.

Examination Article 120

(1) Only an applicant may sit for examination who has participated in vocational training and requested the Office to sit for the examination. The applicant shall submit the examination board of the Office a certificate proving his vocational training before the examination beginning. The examination shall be taken free of charge.

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

(3) The dates/times of examinations shall be notified by the Office. The applicant shall be invited by the Office to sit for an examination not later than ten days beforehand.

Article 121

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

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

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

Article 122 Request for Enrolment in the List of Professionally Suitable Persons

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

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

(2) The request for enrolment in the list of professionally suitable persons shall be appended with a confirmation of passing the examination and a receipt of payment of the administrative fee.

List of Professionally Suitable Persons Article 123

(1) The list of professional suitable persons shall be a list available to the public which anyone may consult and make excerpts from.

(2) The Office shall meet the decision regarding the enrolment in the list of professionally suitable persons for anyone who has met the prerequisites of professional suitability and requested to be enrolled in the list of professionally suitable persons.

Article 124

(1) In the list of professionally suitable persons, the following data is kept:

- a) name, family name and title of the professionally suitable person,
- b) domicile,
- c) date of passing the examination,

- d) date of issuance of certificate of professional suitability,
- e) registration number.

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

(3) A professionally suitable person shall be obliged to notify the Office within 30 days of a change in the data which is specified in the request for enrolment in the list of professionally suitable persons.

Article 125

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

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

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

- a) failed to participate in re-training without any justification,
- b) not carried out activities in public procurement for more than three successive years,
- c) failed to inform the Office of a change in the data stated specified in the certificate of professional suitability,
- d) gravely violated law in the execution of an activity relating to public procurement; grave violation of law shall be considered violation of the principles pursuant to Article 9 (2),
- e) been additionally found by the Office not to meet the prerequisites of professional suitability,
- f) been lawfully convicted of a malicious offence relating to public procurement,
- g) failed the re-examination pursuant to Article 127 (1) and (4).

(3) Before deletion from the list of professionally suitable persons pursuant to paragraph 2, the Office shall invite the person to be deleted to give his position on that issue within 15 days from the delivery of the invitation. Where the person fails to give his position within the time limit or his position does not make it obvious that there is not a reason for deletion, the Office shall delete the professionally suitable person from the list of professionally suitable persons and invite the same to return the licence of professional suitability within a specified time limit.

Article 126

Licence of Professional Suitability

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

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

(2) The licence of professional capability shall be a proof of its holder's capability to perform activities in public procurement.

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

(4) The professionally suitable person shall be obliged to

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

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

Article 127
Re-Training, Re-Examination

- (1) The Office shall order re-training of professionally suitable persons and may order their re-examination where major changes have occurred in legal regulations concerning public procurement. A professionally suitable person shall be obliged to participate in re-training if invited by the Office to do so.
- (2) Re-training shall be performed by a training provider according to training programmes approved by the Office.
- (3) The Office shall invite the professionally suitable persons for re-training in writing and the invitation to re-training shall also be published in the Journal.
- (4) The Office may order re-examination of a professionally suitable person even if that person does not carry out activities in public procurement in accordance with this Act. To re-examination, Article 119 shall apply.

TITLE THREE
LIST OF ENTREPRENEURS

Article 128

- (1) The Office shall keep a list of entrepreneurs who have proven their capability to conclude contracts or framework agreements in public procurement and who have applied for enrolment. Enrolment in the list of entrepreneurs shall entitle the entrepreneur to demonstrate in public procurement his meeting of conditions of participation concerning his personal status pursuant to Article 26 (2) through a confirmation by the Office.
- (2) The list of entrepreneurs shall be a list available to the public which anyone may consult and make excerpts from. The list of entrepreneurs shall be published by the Office on its internet site.
- (3) The data entered in the list shall be effective with regard to any contracting authority and contracting entity and there is no need of its verification in public procurement procedures.
- (4) The entrepreneur whom the entry concerns cannot object against a contracting authority and contracting entity acting in good faith in the list entries objecting that the entry is not responsive of reality.
- (5) Enrolment in the list shall be performed with one year validity.

Request for Enrolment
Article 129

The request for enrolment in the list shall include

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

Article 130

- (1) Where the request fails to meet all the elements required, the Office shall invite the entrepreneur to complement those within a specified time limit. Where the entrepreneur fails to complement those within a specified time limit, the Office shall discontinue the proceedings and return the request and its attachments.
- (2) The Office shall enrol the entrepreneur in the list within 15 days of the request delivery and where the request failed to meet the required elements, from the date of its completion.

(3) The Office shall not enrol in the list an entrepreneur who fails to meet the conditions of participation in public procurement pursuant to Article 26.

Article 131 Content of the List of Entrepreneurs

The list of entrepreneurs shall contain

- a) business name and seat of the entrepreneur,
- b) scope of business,
- c) identification number of the organisation (IČO),
- d) registration number.

Article 132 Change in Data

(1) The entrepreneur shall be obliged to inform the Office in writing within 30 days of a change in data which is indicated in the request and establish the change by a recent document demonstrating the change.

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

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

Article 133 Confirmation of Enrolment in the List of Entrepreneurs

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

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

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

Article 134 Deletion from the List of Entrepreneurs

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

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

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

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

(3) The Office shall inform the entrepreneur that a reason for deletion from the list of entrepreneurs pursuant to paragraph 2 has been identified and invite the same to give his position thereto within 15 days from the date of the notice delivery. Where the entrepreneur fails to give his position within the time limit or his position does not make it obvious that there is not a reason for deletion, the Office shall decide about deletion of the entrepreneur from the list.

(4) Where an entrepreneur has been deleted from the list of a reason referred to in paragraph 2 (b) or (c), he may be repeatedly enrolled in the list of entrepreneurs upon the expiry of three years from his deletion from the list.

TITLE FOUR REVIEW PROCEDURES

Article 135

The review procedures pursuant to this Act shall be:

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

Article 136 Request for Remedy

(1) A tenderer, candidate or person who believes that his rights or rightfully protected interest have been or might have been affected by the course of action of a contracting authority, contracting entity or person pursuant to Article 7, may file a request for remedy concerning

- a) the conditions set out in the notice pursuant to Article 50 (4), Article 77 or Article 105 (5),
- b) the conditions set out in the tender documents or other documents provided by the contracting authority, contracting entity or person pursuant to Article 7 within the tender submission period or concerning the conditions set out in the contest conditions in a design contest provided in the design submission period,
- c) the conditions set out in the call for submission of tenders or designs,
- d) the selection of candidates in a restricted procedure pursuant to Article 52 (1) and Article 82 (1), in a negotiated procedure with a publication pursuant to Article 56 (1) and Article 85 (1) or in a design contest pursuant to Article 105 (2),
- e) exclusion of a tenderer, candidate or participant,
- f) the result of evaluation of tenders or designs,
- g) an action of a contracting authority, contracting entity or persons pursuant to Article 7 other than set out in (a) to (f).

(2) A request for remedy must include

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

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

- a) within seven days from the date of publishing the notice pursuant to Article 50 (4), Article 77 or Article 105 (5) where the request for remedy is aimed at the conditions set out in the notice,
- b) within seven days from the date of taking over the tender documents or other documents provided in the tender submission period or conditions set out in the contest conditions in a design contest provided in the design submission period, where the request for remedy is aimed at the conditions set out in the tender documents or other documents provided in the tender submission period or in the contest conditions provided in the design submission period,
- c) within seven days from the date of taking over a call for the submission of tenders or designs where the request for remedy is aimed at the conditions set out in the call for the submission of tenders or designs,
- d) within seven days from the date of taking over the notice of the result of the selection of candidates in a restricted procedure pursuant to Article 52 (1) and Article 82 (1), in a negotiated procedure with a publication pursuant to Article 56 (1) and Article 85 (1) or in a design contest pursuant to Article 105 (2), where the request for remedy is aimed at the selection of candidates in a restricted procedure, in a negotiated procedure with a publication and at the selection of participants in a design contest,
- e) within seven days from the date of taking over the notice of exclusion of a tenderer, candidate or participant where the request for remedy is aimed at exclusion of a tenderer, candidate or participant,

f) within seven days from the date of taking over the result of evaluation of tenders or designs, where the request for remedy is aimed at the result of evaluation of tenders or designs,

g) anytime prior to a contract conclusion or, in a design contest, where the request for remedy is aimed at an action of a contracting authority, contracting entity or person pursuant to Article 7 other than that set out in paragraph 1 (a) to (f).

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

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

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

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

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

(8) Delivery of a notice in writing about the result of settlement of a request for remedy, a notice in writing about the rejection of a request for remedy or the failure to meet the obligation pursuant to paragraph 6 or paragraph 7 shall give the claimant the right to file protests in the subject matter.

Article 137 Supervision of Public Procurement

(1) The Office shall oversee the compliance of the contracting authority, contracting entity or person pursuant to Article 7 (hereinafter referred to as the "Supervised") with their obligations.

(2) In supervising, the Office shall

- a) decide on protests of tenderers, candidates, participants or persons who believe that their rights or rightfully protected interests have been or might have been affected by the course of action of the Supervised,
- c) decide on protests of a state administration authority where the Supervised has been provided funds for supplies, building works or services by the European Communities,
- c) audit the contract award procedures and audit the design contests organised by the Supervised,
- d) impose fines for administrative delicts,
- e) perform other activities pursuant to this title.

Protest Proceedings Article 138

(1) Lodging of a protest must be preceded by filing of a request for remedy. Furnishing a bail pursuant to paragraph 16 shall be a condition for the Office to act in protest proceedings. Such obligations shall not apply to a state administration authority lodging protests pursuant to Article 137 (2) (b).

(2) A tenderer, candidate or person who believes that his rights or rightfully protected interest have been or might have been affected by course of action of a Supervised or a state administration authority pursuant to Article 137

(2) (b) may lodge protests prior to the conclusion of a contract or framework agreement regarding

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

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

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

(5) The protests must be submitted in writing to the Office and to the Supervised

- a) not later than seven days from the date of delivery of a notice in writing about the result of settlement of the request for remedy or a notice in writing rejecting a request for remedy, or
- b) not later than seven days from the expiry of the time limit for the delivery of a notice in writing about the result of settlement of the request for remedy or a notice in writing rejecting a request for remedy where the Supervised failed to fulfil its obligations pursuant to Article 136 (6) or (7).

(6) The protests lodged with the Office must include

- a) identification data of the proponent,
- b) identification data of the Supervised,
- c) indication of the public procurement at which the protests are aimed,
- d) indication of the facts at which the protests under paragraph 2 at aimed,
- e) description of the decisive facts and indication of proofs,
- f) proposal of decision regarding the protests pursuant to Article 139 (2) or (3),
- g) a notification in writing about the result of settlement of the request for remedy pursuant to Article 136 (6) (a), notification in writing rejecting the request for remedy pursuant to Article 136 (6) (b) or a receipt of delivery of a request for remedy in the event that the Supervised failed to settle within the statutory time limit,
- h) signature of the proponent or person authorised to act on the proponent's behalf.,
- i) a receipt proving the transfer of bail to the account of the Office.

(7) The protests lodged with the Supervised must include elements pursuant to paragraph 6 except (g) and (i).

(8) The Supervised shall be obliged to deliver the Office a statement in writing regarding the protests lodged, stating the estimated contract value and complete documentation within two working days from the date of delivery of the protests. Should the Supervised fail to fulfil that obligation, the Office shall suspend the protest proceedings until obstacles have been removed for which the proceedings were suspended. From the issuance of a decision to suspend the protest proceedings till the delivery of complete documentation, the time limit pursuant to Article 139 (5) shall not continue.

(9) The Office may suspend the protest proceedings by a decision in order to obtain professional opinion. From the issuance of a decision to suspend the protest proceedings till the delivery of complete documentation, the time limit pursuant to Article 139 (5), however, not exceeding 30 days, shall not continue.

(10) Protests shall have the effect of suspending the action of the Supervised except protests pursuant to paragraph 2 (g). The Office may withdraw the suspension effect of protests pursuant to paragraph 2 (a) to (f) by a decision in the event its negative consequences pose a threat to public interest. There is no remedy against a decision of the Office to withdraw the suspension effect.

(11) Until its decision regarding protests pursuant to paragraph 2 (g), the Office may issue a decision of preliminary ruling to suspend the action of the Supervised for a time not longer than the delivery of the Office decision regarding protests.

(12) The time limits available for the Supervised, except the time limit pursuant to paragraph 8, shall not continue

- a) where protests have been lodged pursuant to paragraph 2 (a) to (f), until the delivery of the Office decision concerning the protests,
- b) where the Office has issued a decision of a preliminary ruling suspending the action of the Supervised pursuant to paragraph 11, while such preliminary ruling continues,
- c) during a suspension of protest proceedings pursuant to paragraph 8 or paragraph 9.

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

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

(15) Where protests have been lodged pursuant to paragraph 2 (d) or (e), the time limits set out by the Supervised shall not continue. The Supervised shall be obliged without any delay to inform all candidates or participants that such protests have been lodged.

(16) Along with lodging of protests, the proponent shall be obliged to deposit bail to the account of the Office. The bail must be credited to the Office account not later than the last day of the time limit for the submission of protests pursuant to paragraph 5. The amount of bail for lodging of protests

- a) pursuant to paragraph 2 (a) to (e) and (g) shall be
 1. SKK 60 000 in the award of a supply contract above the limit and in the award of a service contract,
 2. SKK 250 000 in the award of a building works contract above the limit,
 3. SKK 20 000 in the award of a supply contract below the limit and in the award of a service contract,
 4. SKK 120 000 in the award of a building works contract below the limit,
- b) pursuant to paragraph 2 (f), 1 % of the tender price shall not exceed SKK 20 000 000.

(17) Should the Office by its decision in protest proceedings admit the proponent's protests or issue a decision to suspend the proceedings pursuant to Article 139 (1) (d), (e) or (g), the bail shall be returned not later than 60 days from coming of the decision into force.

(18) The bail shall be state budget income by the date of the Office decision coming into force, by which the proponent's protests have been rejected, or by the date of coming into force of the decision to suspend the proceedings pursuant to Article 139 (1) (a), (b), (c) or (f).

Article 139

(1) The Office shall suspend protest proceedings by a decision in the event that

- a) the protests have not been lodged by the proponent,
- b) have been lodged after expiry of the time limit pursuant to Article 138 (5),
- c) fail to include all elements pursuant to Article 138 (6),
- d) the proponent has withdrawn the protests before a decision has been issued in the merit of the matter,
- e) the Supervised has cancelled the used contract award procedure, design contest, or where the Office has already issued a decision pursuant to paragraph 2 (a) in the matter of the same contract award procedure or in the same design contest,
- f) the protests have not been lodged with the Supervised,
- g) a protest had already been lodged in the same matter set out in Article 138 (2) (a) to (c) or (g) and the protest has been admitted.

(2) Should the Office in protest proceedings discover that this Act has been violated by the action of the Supervised and the violation could have had major effect on the result of public procurement, a decision shall be issued to

- a) order to cancel the used contract award procedure or design contest,
- b) order to cancel the discriminatory conditions or requirements of the Supervised set out in the contract notice, in the notice used as a call for competition or in the design contest notice, in the tender documents, in the contest conditions or in another document concerning public procurement,
- c) cancel a decision of the Supervised to exclude a tenderer, candidate or participant and order to include the excluded tenderer, candidate or participant in the public procurement process,
- d) cancel the decision of the Supervised concerning the selection of candidates or participants and order to re-select,
- e) cancel the decision of the Supervised concerning the result of evaluation of tenders or designs and order to re-evaluate the tenders or designs.

(3) Where the violation of this Act could not have affected the result of public procurement, the Office may order to eliminate the illegal status by a decision.

(4) Should the Office in the protest proceedings not discover such violation of this Act which could have major effect on the result of public procurement and the Office did not take action pursuant to paragraph 3, the protests shall be rejected.

(5) The Office shall decide about protests within 30 days from the date of the protests delivery to the Office.

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

Article 140

(1) Protests cannot be lodged

- a) in the event of a contract award below the threshold and of a small-value contract,
- b) against the course of electronic auction and its automated evaluation of tenders.

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

(3) An Office decision regarding protests shall be valid from the date of its delivery and enforceable upon the expiry of the performance period.

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

(5) The Office shall decide in the protest proceedings in commissions except decisions made pursuant to Article 139 (1).

(6) In the event of a contract above the limit, the Office shall order oral hearing in the protest proceedings. The Office shall draw up minutes from the oral hearing.

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

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

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

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

Article 141

(1) The commission chairman and the commission members shall be obliged to maintain confidentiality regarding the facts made available to them in the execution of their office, even after a decision has been issued in the matter, unless released from that obligation in writing in public interest, for the purpose of informing the public by the Office chairman.

(2) Violation of the confidentiality obligation shall not be

- a) taking the advantage of such information for the purpose of supervision pursuant to Article 137,
- b) making such information available for the purpose of conciliation proceedings pursuant to Article 151,
- c) making such information available to a court for the purpose of proceedings.

Delivery in Protest Proceedings

Article 142

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

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

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

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

Article 143

(1) Written documents intended for delivery in the own hands, addressed to authorities and legal entities shall be delivered to their employees authorised to receive written documents. Where no employee has been appointed to receive written documents, the written document shall be delivered to the own hands of the person authorised to act on behalf of the authority or legal entity.

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

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

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

(5) Where the party to the proceedings has a deputy with a full power of attorney, the written document indicated to the own hands shall be delivered to that deputy only. Provisions of paragraphs 1 to 3 shall apply to that delivery. Where the party to proceedings is to carry out something in person, the written document shall be delivered not only to his deputy but to that party as well.

Article 144 Time Limits

(1) If necessary, in the protest proceedings the Office determines a reasonable time limit to perform an action, unless set forth in this Act.

(2) The time limit for filing of protests pursuant to Article 138 (5) shall be preserved where the filing is made on the last day of the time limit with the Office and the Supervised or where submitted for postal transfer.

(3) The time limit to issue a decision in protest proceedings shall run from the day following the delivery of protests to the Office.

(4) The time limit to issue a decision in protest proceedings shall be preserved where the decision has been issued on the last day of the time limit to issue a decision.

(5) In the event of doubts, the time limit shall be considered preserved unless the opposite has been proven.

Article 145 Elements of a Decision in Protest Proceedings

(1) A decision must include a statement, justification and instruction.

(2) Statement shall include the decision in the matter indicating the provisions of this Act, pursuant to which the decision has been made. Where the decision imposes an obligation on the Supervised to perform an action, the Office shall determine a reasonable time limit.

(3) In justification of the decision, the Office shall set out which the facts have served as a basis for the decision, which were its considerations in the evaluation of evidence including the statements of parties in the proceedings, how the proper consideration was applied in applying legal regulations which served as a basis of its decision, which documentary evidence was the basis of its decision.

(4) The instruction shall contain data that the decision is final and there is no remedy against it and may be scrutinised by a court in the event the action is lodged within ten days from the decision delivery.

(5) The written version of the decision shall include the date on which the decision was issued and identification of the parties to the proceedings. The decision must bear an imprint of the official seal and signature with the indication of name, family name and function of the authorised person.

(6) Mistypings, miscalculations and other obvious errors in the written version of the decision shall be considered formal deficiencies which the Office shall correct anytime even without a request to do so and notify the parties of the proceedings thereof. Formal deficiencies shall not have any effect on the validity and enforceability of the decision.

Audit of Contract Award Procedure Article 146

(1) The Office shall audit the contract award procedure prior to the conclusion of a contract or framework agreement and in the event of audit prior to closing a design contest on its own initiative only. The audit shall commence on the day of delivery of a notice of its commencement to the Supervised.

(2) When auditing a contract award procedure prior to the conclusion of a contract or framework agreement and in the event of audit prior to closing a design contest, the Office shall reasonably apply Articles 138 to 145.

(3) The Office shall audit a contract award procedure after the conclusion of a contract or framework agreement and in the event of audit after closing a design contest on the initiative of natural persons and legal entities that are not entitled to file protests and on its own initiative. When performing audit, the Office shall also examine the fulfilment of orders imposed by the Office decisions. The audit shall commence on the day of delivery of a notice of its commencement to the Supervised.

(4) When auditing a contract award procedure after the conclusion of a contract or framework agreement and in the event of audit after closing a design contest, the Office shall apply basic rules for audit activities²³, in addition to the audit activities focusing on meaningful, efficient and economic manner of the fulfilment of tasks.

Article 147

(1) The contract award procedure below the threshold and small-value contract award procedure shall be audited by internal audit unit.

(2) The audit authorities shall be obliged to cooperate with the Office in its auditing activities, in particular coordinate the execution of audits with the Office.

Article 148 Motion to Nullify a Contract

Where the Supervised has concluded a contract or framework agreement contradictory to this Act, the Office may file a motion to have it nullified by the court within the time limit of one year from its conclusion.

Article 149 Administrative Delicts

(1) The Office shall impose a fine to a contracting authority and contracting entity amounting to

- 5 % of the contract value where the obligation to conclude the contract pursuant to this Act was avoided, or where a contract was concluded by negotiated procedure with a publication or by negotiated procedure without a publication without having fulfilled the conditions for their application,
- 5 % of the contract value where the published criteria for the evaluation of tenders were not complied with,
- 5 % of the sum of contract values where the object of contract was split up in order to avoid the award procedure above the limit and the award procedure below the limit,
- SKK 500 000 where the contract notice or the notice used as a call for competition was not published in the award of a contract above the limit,
- SKK 500 000 where a framework agreement was concluded by a negotiated procedure without a publication,
- up to SKK 500 000 where the obligation imposed by an Office decision was not fulfilled.

(2) The Office shall impose a fine from SKK 10 000 to SKK 500 000 to a contracting authority and contracting entity where

- meeting of the conditions of participation in public procurement was not evaluated pursuant to Article 33 (1) and (2),
- at a contract or framework agreement conclusion, the conditions set out in Article 45 (2) to (6) were not complied with,
- the obligation pursuant to Article 49 (2) was not complied with,
- the obligation pursuant to Article 58 (2) or Article 88 (2) was not complied with,
- the obligation pursuant to Article 25 (3), Article 91 (3) and Article 99 (2) was not complied with.

(3) When imposing a fine, the Office shall take into account in particular the nature, gravity, manner and consequences of the breach of obligation.

(4) The Office shall start proceedings to impose a fine within one year of the day on which the information of a law violation was made available, however, not later than three years of the day when the violation occurred.

(5) The revenues from fines shall be state budget income.

²³ Articles 8 to 16 the Act of the Slovak National Council No. 10/1996 Coll. on audit in state administration, as amended.

TITLE FIVE
CERTIFICATE OF ATTESTATION, CONCILIATION PROCEEDINGS AND ACTIVITIES SUBJECT TO
COMPETITION

Article 150
Certificate of Attestation

- (1) The contracting entity may subject its procedures used in the award of contracts to regular assessment in order to obtain and maintain a certificate of attestation (hereinafter referred to as the “Certificate”).
- (2) Attestation shall mean assessment of conformity of the procedures applied in the award of contracts with this Act carried out by an accredited person pursuant to a special regulation.²⁴
- (3) The accredited person shall assess the conformity also pursuant to the established public procurement system. The accredited person shall notify the contracting entity of the result of attestation. Prior to issuing the Certificate, the accredited person shall assure itself whether all the deficiencies identified have been removed by the contracting entity and whether the contracting entity has adopted efficient measures to prevent the identified deficiencies from being repeated.
- (4) The contracting entity which has obtained the Certificate pursuant to paragraph 1 may use the statement pursuant to Annex 6 in notices used in public procurement.

Article 151
Conciliation Proceedings

- (1) Where a tenderer, candidate or other person believes that its rights or rightfully protected interests have been or might have been affected by the course of action of a contracting entity in the award of a supply, building works or service contract above the limit, it may seek commencement of conciliation proceedings by the European Commission. The motion shall be filed with the European Commission or the Office, which shall forward it to the European Commission without any delay.
- (2) On request of the European Commission, the contract entity communicates whether it takes part in the conciliation proceedings. The conciliation proceedings shall not be commenced where the contracting entity has refused to take part therein.
- (3) Each party of the conciliation proceedings shall give a statement whether it agrees to the conciliator proposed by the European Commission and shall designate another conciliator. The conciliators may invite not more than two experts to professional cooperation. The parties to the conciliation proceedings may refuse any of the experts invited by the conciliators.
- (4) The parties to the conciliation proceedings as well as the tenderers or candidates participating in public procurement which is subject of conciliation proceedings may anytime give their written or oral position to the subject of the conciliation proceedings.
- (5) The objective of conciliation proceedings shall be reaching agreement between the parties involved within the shortest possible time in accordance with this Act.
- (6) The conciliators shall notify their findings and the result of the conciliation proceedings to the European Commission.
- (7) The parties to the conciliation proceedings may anytime withdraw their approval of the conciliation proceedings. By withdrawing the approval, the conciliation proceedings shall discontinue.

²⁴ Articles 22 to 29 of the Act No. 264/1999 Coll., as amended by of the Act No. 436/2001 Coll.

(8) Unless agreed by the parties otherwise, none of the parties shall have the right to reimbursement of its own costs relating to the conciliation proceedings. The costs of conciliation proceedings shall be borne by the parties in equal shares except the costs of other persons involved.

(9) The contracting entity shall be obliged to inform the conciliators that any court or out-of-court proceedings concerning public procurement have been commenced which is subject of the conciliation proceedings, and where a motion to commence court or out-of-court proceedings has been filed by a person not involved in the conciliation proceedings. The conciliators shall inform the person who filed the motion to commence the court proceedings or out-of-court proceedings of the conciliation proceedings and invite that person to express his approval of the conciliation proceedings within a specified time limit. Where the approval has been rejected or given after the specified time limit and participation of that person is necessary in the conciliation proceedings, the conciliators may adopt a decision to discontinue the conciliation proceedings by the majority of votes. The conciliators shall inform the European Commission of the proceedings discontinuation with a justification.

(10) The procedure pursuant to paragraph 1 to 9 shall not have effect on
a) the procedure pursuant to an international agreement²⁵ or on the procedure pursuant to Article 115 and
b) the rights of parties of the conciliation proceedings or other legal persons or natural persons concerned.

Article 152

Procedure in Assessing Activities pursuant to Article 8 (3) to (9)

(1) In the event there is a reasoned assumption that some of the activities set out in Article 8 (3) to (9) is directly exposed to competition on the market without a restricted access, on request of a contracting entity and with an assessment of the state administration authority in whose competence the contracting entity belongs, the Office shall submit a proposal to the European Commission to decide on the matter.

(2) The request of the contracting entity must feature the prescribed elements²⁶ and include all substantial facts concerning in particular legal regulations, decisions of administration authorities or agreements relating to the assessment whether the activity set out in Article 8 (3) to (9) is directly exposed to competition on the market without a restricted access.

(3) Where the contracting entity's request satisfies the elements pursuant to paragraph 2, the Office shall submit the request to the competent state administration authority to assess whether there is a justified assumption pursuant to paragraph 1 with regard to the activity pursuant to Article 8 (3) to (9).

(4) The contracting entity shall not follow this Act when awarding a contract relating to an activity pursuant to Article 8 (3) to (9) from the date of efficiency of the decision of the European Commission following which the activity pursuant to Article 8 (3) to (9) has been excluded from the scope of this Act or from the date following the expiry of the time limit set out to issue such decision where the European Commission failed to decide within the time limit.

PART SIX FINAL PROVISIONS

Article 153

Proceedings

General regulations on administrative proceedings²⁷ shall not apply to the proceedings pursuant to this Act except proceedings pursuant to Article 116 (9) and (11), Article 123 (2), Article 125 (2), Article 130, Article 134 (2) and Article 149.

Article 154

²⁵ Section 226 and Section 227 of the Treaty establishing the European Community.

²⁶ Commission Decision No. 2005/15/ES of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/ES of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ EU, 11 January 2005, p. 7).

²⁷ Act No. 71/1967 Coll. on administrative proceedings (the Administrative Order), as amended.

Authorising Provisions

- (1) Details of notices used in public procurement and their content, details of notices used in a design contest and their content, sample notices used in the award of contracts below the limit, the content and samples of information concerning the performance of a contract pursuant to Article 49 (2), a sample of information concerning the conclusion of a contract pursuant to Article 101 shall be set out by a generally binding legal regulation to be issued by the Office.
- (2) Details concerning the types of design contests in architecture, town and country planning and civil engineering, concerning the content of contract documents and concerning the jury activities shall be set out by a generally binding legal regulation to be issued by the Office.

Article 155 Temporary Provisions

- (1) Open procedure, restricted procedure, negotiated procedure with a publication or design contest called for by 31 January 2006 shall be completed pursuant to previous regulations.
- (2) Negotiated procedure without a publication which demonstrably started by 31 January 2006 shall be completed pursuant to previous regulations.
- (3) By negotiated procedure without a publication, partial contracts may be concluded based on a valid framework agreement concluded pursuant to previous regulations not later than 31 December 2007.
- (4) Proceedings started by the Office by 31 January 2006 shall continue pursuant to previous regulations.
- (5) Proceedings started by the Office after 1 February 2006 which relate to public procurement pursuant to paragraphs 1 and 3 shall continue pursuant to previous regulations.
- (6) Professional suitability in public procurement acquired by a natural person pursuant to previous regulations shall remain preserved.
- (7) The Office shall ensure re-training of professionally suitable persons by 31 July 2006.
- (8) An entrepreneur enrolled in the list of entrepreneurs pursuant to previous regulations shall be obliged
 - a) in addition to a confirmation by the Office of being enrolled in the list of entrepreneurs, to submit the contracting authority also the document pursuant to Article 26 (2) (f) in every contract award procedure to prove the meeting of the conditions of participation in public procurement pursuant to Article 26 (1),
 - b) to submit documents pursuant to (a) to a contracting entity if requested.
- (9) The term of office of the Office chairman and the Office deputy chairman shall end upon the expiry of the time for which he was appointed.

Article 156

By this Act, legal acts of the European Communities and the European Union listed in Annex 7 shall be transposed.

Article 157 Repealing Provisions

The following shall be repealed:

1. Article I of the Act No. 523/2003 Coll. on public procurement and on modification of the Act No. 575/2001 Coll. on the structure of activities of the Government and central state administration authorities, as amended, as amended by the Act No. 82/2005 Coll.
2. Article 86c including the footnote to reference 99 of the Act No. 581/2004 Coll. on health insurance agencies, supervision of health care and on modification and amendment of certain acts, as amended by the Act No. 353/2005 Coll.

3. Decree of the Office for Public Procurement No. 575/2003 Coll. on the subject and samples of notices used in public procurement.

Section II of the Act No. 215/2002 Coll. on electronic signature and on modification and amendment of certain acts, as amended by the Act No. 679/2004 Coll. shall be modified and amended as follows: In Article 5, new paragraph 2 shall be inserted after paragraph 1, which reads: “(2) The provision of paragraph 1 shall not apply to the use of electronic signature for the purpose of public procurement.^{2a)}”. Previous paragraphs 2 to 5 shall be marked as paragraphs 3 to 6. The footnote to reference 2a shall read: “2a) Article 18 of the Act No. 25/2006 Coll. on public procurement and on modification and amendment of certain acts.”.

Section III
Effectiveness

This Act shall come into effect on 1 February 2006 except Article 25 (3), Article 91 (3) and Article 99 (2) in Section I, which shall come into effect on 1 January 2007.

Ivan Gašparovič m.p.
Pavol Hrušovský m.p.
Mikuláš Dzurinda m.p.