

# **PUBLIC PROCUREMENT ACT (ZJN-2)**

## **Part One**

### **Common Provisions**

#### **Chapter One**

### **GENERAL PROVISIONS**

#### **1.1. Scope of the Act**

##### **Article 1**

##### **(Subject matter of the Act)**

(1) This Act lays down the mandatory actions required of contracting authorities and tenderers in awarding public supply contracts, public service contracts and public works contracts.

(2) This Act transposes into the national legislation of the Republic of Slovenia the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (UL L No 134 of 30 April 2004, p. 114) and Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (UL L No 257 of 1 October 2005, p. 127) (hereinafter: Directive 2004/18/EC).

(3) Contracting authorities operating in the water, energy, transport or postal services sectors shall award contracts in compliance with the law regulating awarding of contracts in the water, energy, transport and postal services sectors.

#### **1.2. Definitions**

##### **Article 2**

##### **(Meaning of terms used in this Act)**

(1) The terms used in this Act shall have the following meaning:

1. "Dynamic purchasing system" shall be a method of awarding public contracts under the open award procedure and shall be a completely electronic process. It shall be used for making commonly used purchases which, as generally available on the market, fully meet the requirements of the contracting authority. This procedure shall be limited in duration and open throughout its validity to any tenderer (hereinafter: tenderer) that satisfies the selection criteria and has requested participation in compliance with the contract documents.

2. An "electronic auction" shall be a repetitive process within the public procurement procedure conducted by electronic means, in which tenderers present

new prices, discounts, and/or improved levels concerning certain elements of tenders.

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

4. "The Common Procurement Vocabulary (CPV)" adopted by Commission Regulation (EC) No 2151/2003 of 16 December 2003 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) (UL L No 239 of 17. 12. 2003, p. 1) (hereinafter: Regulation) shall be an equivalent reference nomenclature applicable to public contracts. The Common Procurement Vocabulary shall be equivalent to other existing nomenclatures. In the event of varying interpretations of the scope of this Act, owing to possible differences between nomenclatures, the following shall apply:

- between the Common Procurement Vocabulary and NACE (General Industrial Classification of Economic Activities within the European Communities) included in the List of activities in the construction field annexed to a Decree adopted by the Government of the Republic of Slovenia, the NACE shall be used,

- between the Common Procurement Vocabulary and CPC (Provisional Central Product Classification) included in the list of services annexed to a Decree adopted by the Government of the Republic of Slovenia (hereinafter: List of services), the CPC shall be used.

5. "Economic operator" shall cover the concepts of supplier, service provider and contractor, and may be any legal or natural person or public law entity or group of such persons which offers the execution of works and/or work, products or services on the market.

6. "Industrial or commercial character" shall be the characteristic of an entity that operates with other entities on the market under conditions of free competition by carrying out economic activities aimed at supplying products or services to private or public economic operators.

7. "Public works contract" shall be a public contract having as its subject either the execution or both the design and execution of works related to one of the activities contained in the List of activities in the construction field, or a work or the realisation of an activity in the construction field corresponding to the requirements specified by the contracting authority. A "work" shall mean the outcome of activities within the meaning of this point, which, taken as a whole, has an economic and technical function.

8. "Public supply contract" shall be a public contract having as its subject matter the purchase, lease, rental or hire purchase, with or without the option to buy, of products. A public contract having as its subject the supply of products and also covering siting and installation concerning these products or necessary for the products to be used according to their purpose, shall be considered a "public supply contract".

9. "Public service contract" shall be a contract having as its subject the provision of services or the execution of one or more services from the List of services. A public contract having as its subject products and services from the List of services shall be considered a "public service contract" where the value of the services in question exceeds that of the products covered by the contract. A public contract having as its

subject services from the List of services and including activities from the List of activities in the construction field that are only incidental to the principal subject matter of the contract shall be considered a public service contract.

10. "A candidate" shall be an entity which expresses interest under a restricted procedure, under a negotiated procedure or under a competitive dialogue procedure upon the invitation of the contracting authority.

11. "Public authority's electronic information on public procurement" shall be that part of the public authority's website that contains information on contracts which the authority intends to award, which are being performed, have been cancelled or terminated, prior information notices, and any other information useful to potential tenderers when preparing their tenders, such as contact points or contact persons, their telephone and fax numbers, mailing and e-mail addresses.

12. A "framework agreement" shall be an agreement between one or more contracting authorities and one or more tenderers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

13. "Written" or "in writing" shall mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It shall also mean information which is transmitted and stored by electronic means.

14. A "public contract" shall be a contract for pecuniary interest concluded between one or more tenderers and one or more contracting authorities and having as its subject matter the execution of works, the supply of products or the provision of services within the meaning of this Act.

15. A "tenderer" shall be an economic operator which is a legal or natural person and offers the execution of works, services and/or supply of products and has submitted a tender.

16. A "complete tender" shall be a tender that is received on time, is formally complete, admissible, properly prepared and appropriate.

17. A "formally incomplete tender" shall be a tender that is incomplete in those elements that have no impact on its classification according to the selection criteria. Where the tender is incomplete in the insubstantial sense, it shall not be considered formally incomplete.

18. A "timely tender" shall be a tender that is received by the contracting authority before the specified tender receipt date.

19. An "irregular tender" shall be a tender which does not comply with the rules of the procurement or a tender the prices of which are manifestly in breach of the rules of fair competition or which does not fulfil the conditions set out in Articles 41 to 47 of this Act.

20. An "inappropriate tender" shall be a tender which does not meet the conditions related to the subject matter of the tender and therefore does not fully fulfil the conditions laid down in the contract documentation by the contracting authority.

21. An "inadmissible tender" shall be a tender which contains prices which exceed the contracting authority's budget.

22. A "procurement portal" shall be the electronic information Web portal of the ministry responsible for finance, where contracting authorities publish information notices and contract documentation in compliance with this Act.

23. An "open procedure" shall be a procedure whereby any interested economic operator may submit a tender.

24. A "restricted procedure" shall be an awarding procedure in which any economic operator may request participation and whereby only those economic operators invited by the contracting authority may submit a tender.

25. A "negotiated procedure" shall be a procedure whereby the contracting authority invites economic operators to submit tenders and negotiates the terms of contract with them.

26. A "design contest" shall be a procedure which enables the contracting authority to acquire, mainly in the fields of urban or spatial or landscape design, architecture, engineering and information technology and data processing, a design or a project selected by a jury after having been competitively judged with or without the award of prizes.

27. "Competitive dialogue" shall be a procedure used by the contracting authority in the event of particularly complex public contracts, in which any economic operator may request participation and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender. For the purpose of recourse to the procedure mentioned in this point, a public contract shall be considered to be "particularly complex" where

- it is not objectively possible to define the technical means in accordance with Points b), c) or ě) of Paragraph 3 of Article 37 of this Act, capable of satisfying the needs or objectives of the contracting authority, and/or

- it is not objectively possible to specify the legal and/or financial make-up of a project or of the subject matter of the public contract.

28. "Tender collection procedure" shall be a public procurement procedure whereby, in the event that there are a sufficient number of economic operators on the relevant market, the contracting authority invites at least three economic operators to tender.

29. "Tender collection procedure with prior publication of an information notice" shall be a public procurement procedure whereby tenderers submit their tenders on the basis of a contract notice published on the procurement portal.

30. "Prior information notice" shall be the publication of the intention of entities to award public works contracts, public supply contracts and public service contracts in the ensuing 12 month period.

31. A "lot" shall be a segment of a public contract which constitutes an independent unit and may be awarded separately.

32. A "central purchasing body" shall be the contracting authority which is authorised by other contracting authorities or by competent government or municipal authorities to perform the following:

- award public supply and/or services contracts, or
- carry out the procedure to award a public contract or the procedure of signing a framework agreement for awarding works, supply or services contracts.

33. "Advisory Committee for Public Contracts" shall be a body of the European Commission (hereinafter: Commission), composed of representatives (hereinafter: representative) of EU Member States which examines regularly, on the initiative of

the Commission or at the request of a Member State, the application of the measures adopted by the Council with regard to public works contracts.

(2) For the purpose of Point 2 of Paragraph 1 of Article 17 and of Article 97 of this Act, the terms used in this Act shall have the following meaning:

1. "public telecommunications network" shall mean the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, microwave, optical or other electromagnetic means;

2. "network termination point" shall mean all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

3. "public telecommunications services" shall mean telecommunications services the provision of which the Member States have specifically assigned, notably to one or more telecommunications entities;

4. "telecommunications services" shall mean services the provision of which consists wholly or partly in the transmission and/or routing of signals on the telecommunications network by means of telecommunications processes, with the exception of radio broadcasting and television.

### **Article 3**

#### **(Contracting authorities)**

(1) The following shall be contracting authorities under this Act:

- authorities of the Republic Slovenia and of self-governing local communities,
- public funds, public agencies, public institutes,
- public commercial institutions, and
- other bodies governed by public law.

(2) A "body governed by public law" under this Act shall be any body:

a) established for the pursuit of activities in the general interest, not having an industrial or commercial character;

b) having legal personality; and

c) financed at more than 50% from the budgets of the authorities of the Republic of Slovenia and of self-governed local communities, or other bodies governed by public law; or subject to management supervision by those bodies; or having a managerial or supervisory board, more than half of whose members are appointed by authorities of the Republic of Slovenia and of self-governed local communities, or by other bodies governed by public law.

(3) The term "contracting authorities" shall also cover associations formed by one or several contracting authorities referred to in Paragraph 1 of this Article.

(4) An indicative list of contracting authorities shall be annexed to a decree adopted by the Government of the Republic of Slovenia (hereinafter: Government). The ministry responsible for finance shall periodically notify the Commission of any changes to its List of contracting authorities.

(5) In the event of doubt about whether a body meets the conditions that define a contracting authority under this Act, a body that expresses legitimate interest may file a written request with the ministry responsible for finance that its status of contracting

authority be established. Should the body not agree with the decision of the ministry responsible for finance, the final decision shall be taken by the Government. The Government shall lay down the rules and the procedure for establishing the status of a contracting authority by means of a decree.

#### **Article 4**

##### **(Treatment of economic operators)**

(1) A contracting authority shall not be allowed to reject candidates or tenderers solely on the grounds that under the law of the Republic of Slovenia a candidate or a tenderer is required to be either a natural or legal person to provide a certain service, if candidates or tenderers are entitled to provide the relevant service in the Member State in which they are established.

(2) Notwithstanding the provisions of the preceding paragraph, the contracting authority may, in the case of public service and public works contracts as well as public supply contracts covering in addition services and/or siting and installation operations, require tenderers, both legal and natural persons, to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

(3) Groups of economic operators may submit tenders or put themselves forward as candidates. The contracting authority may not require these groups to assume a specific legal form; however, the group selected may be required to present a relevant instrument attesting to joint performance of the contract (e.g. a cooperation agreement), to the extent necessary for satisfactory performance of the contract.

(4) In the contract documents, the contracting authority may ask tenderers to indicate in their tenders all shares of the contract they may intend to subcontract to third parties and all proposed subcontractors.

(5) The economic operator who was awarded the contract shall remain fully liable to the contracting authority.

(6) In order to ensure financial discipline, the Government shall adopt rules for cases when tenderers perform a contract with subcontractors, providing for a clause in the main contract whereby the principal economic operator authorises the contracting authority to pay directly to subcontractors, on the basis of endorsed invoices or statements. The principal economic operator shall always attach endorsed invoices or status of his subcontractors to his own invoice or statement.

(7) In the contract documentation, the contracting authority may ask tenderers to indicate the breakdown of the contract price, in particular for contracts performed in cooperation with subcontractors.

### **1.3. Fundamental principles**

#### **Article 5**

##### **(Principles of public procurement)**

The organisation, development and performance of the public procurement system shall be based on the principle of freedom of movement of goods, the principle of

freedom of establishment, the principle of freedom to provide services deriving from the Treaty establishing the European community (*Uradni list RS – Mednarodne pogodbe*, No 7/04, hereinafter: Treaty) and on the principles of economy, efficiency and effectiveness, competition among tenderers, transparency of public procurement, equal treatment of tenderers and proportionality.

## **Article 6**

### **(Principles of economy, efficiency and effectiveness)**

(1) The contracting authority shall award public contracts in such a way as to ensure economical and efficient use of public funds and an effective realisation of its goals defined in compliance with regulations governing the use of the budget and other public funds.

(2) Where the subject matter of the public contract so permits and where this adds to the economy and efficiency of the public contract, the contracting authority shall formulate the contract documents in such a way as to permit the contract to be awarded by lots. In so doing the contracting authority shall ensure non-discriminatory treatment of economic operators and thus make public contracts accessible to a wider circle of economic operators.

## **Article 7**

### **(Principle of competition among tenderers)**

(1) In public procurement procedures, the contracting authority shall not restrict competition among tenderers; in particular it shall not restrict possible providers by choosing types or procedures and the performance thereof that are contrary to this Act, and shall carry out the public procurement procedure in compliance with relevant legislation on the protection and/or restriction of competition.

(2) The contracting authority may not request the tenderer to hire any particular subcontractor for the performance of the contract, nor to perform any other activity, such as export of certain goods or services, unless otherwise stipulated by a special act or international agreement.

## **Article 8**

### **(Principle of transparency of public procurement)**

(1) Selection of tenderers shall be conducted in a transparent way and in compliance with the prescribed procedure.

(2) Procurement procedures under this Act shall be public, which shall be ensured by free publication of contract notices in respect of the values referred to in Article 12 of this Act, both in the Official Journal of the European Union and on the public procurement portal.

## **Article 9**

### **(Principle of equal treatment of tenderers)**

(1) Contracting authorities shall ensure that there is no discrimination between tenderers in any phase of a public procurement procedure and in relation to any element of the tender, taking into consideration mutual recognition and proportionality of the contracting authority's requests in relation to the subject of the contract.

(2) Contracting authorities shall exercise due diligence not to create circumstances that would result in territorial, material or personal discrimination of tenderers, discrimination on the grounds of the classification of the tenderer's activity, or any other form of discrimination.

(3) When awarding public contracts that involve the design of works, the selected design engineer may not participate in competitions for the execution of works designed by himself, unless he has received written consent from the minister responsible for finance; such consent shall be delivered in cases where the design engineer who is also a tenderer is the owner of a specific technological or construction solution for the project, which because of a resulting lower price or higher quality of the project would represent a competitive advantage not accessible to other tenderers. The minister responsible for finance shall deliver consent within eight days following the receipt of the request by the design engineer.

## **Article 10**

### **(Principle of proportionality)**

The award of public contracts shall be proportional to the subject matter of the contract, in particular as regards the selection, definition and application of terms and selection criteria which shall be logically related to the subject of the public contract.

## **1.4. Special or exclusive rights**

### **Article 11**

#### **(Granting of special or exclusive rights)**

Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than a contracting authority under this Act, the act by which that right is granted shall provide that, in respect of the supply contracts which such entity awards to third parties as part of its activities for which it has special or exclusive rights, the entity concerned must comply with the principle of non-discrimination on the basis of registered office location or nationality.

## **1.5. Scope**

### **Article 12**

#### **(Thresholds for publication)**

(1) Contracting authorities shall send for publication to the Office for Official Publications of the European Communities and the procurement portal contract notices for all public contracts whose value, net of value-added tax (VAT), is equal to or greater than the following thresholds:

1. for public supply contracts:

a) EUR 137 000, when awarded by contracting authorities from the List of contracting authorities which are Government authorities and bodies within these Government authorities and local communities, annexed to a decree issued by the Government (hereinafter: List of government authorities and bodies within these government authorities and local communities); which are authorities of the Republic of Slovenia and bodies within these authorities and contracting authorities operating in the field of defence for contracts involving products from the List of products with regard to contracts awarded by contracting authorities in the field of defence annexed to a decree issued by the Government (hereinafter: List of products),

b) EUR 211 000 for public supply contracts awarded by other contracting authorities under this Act, and by contracting authorities operating in the field of defence, when these contracts involve products other than those listed in the List of products;

2. for public service contracts:

a) EUR 137 000 when awarded by contracting authorities contained in the List of Government authorities and bodies within these Government authorities and local communities, which are authorities of the Republic of Slovenia and bodies within these authorities;

b) EUR 211 000:

– for public service contracts awarded by other contracting authorities under this Act;

– for public service contracts awarded by any contracting authority in respect of the services listed in Category 8 of the List of services annexed to a decree adopted by the Government (hereinafter: List of services A), of Category 5 telecommunications services the positions of which in the CPV are equivalent to CPC reference Nos 7524, 7525 and 7526 and/or the services listed in the List of services B annexed to a decree adopted by the Government (hereinafter: List of services B);

3. EUR 5 278 000 for public works contracts:

(2) Contracting authorities shall send for publication to the procurement portal contract notices for all public contracts whose value, net of VAT, is equal or greater than the following thresholds:

1. for public supply and service contracts: EUR 40 000;

2. for public works contracts: EUR 80 000;

(3) In cases where the Commission publishes revisions of the thresholds referred to in his Act, the revised EU thresholds under this Act shall be published in the *Uradni list Republike Slovenije* by the Government of Slovenia.

## **Article 13**

### **(Contracts subsidised by more than 50% by contracting authorities)**

(1) This Act shall apply to the awarding of:

a) works contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than EUR 5 278 000:

– where these contracts involve civil engineering activities listed in the List of activities in the construction field;

– where these contracts involve construction work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;

b) service contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than EUR 211 000 and which are connected with a works contract within the meaning of Point a) of this paragraph.

(2) When the contracts referred to in the previous paragraph, subsidised by more than 50% by contracting authorities, are awarded by contracting authorities or any other entity, the awarding of such contracts shall be done in compliance with this Act.

## **Article 14**

### **(Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems)**

(1) The contracting authority shall calculate the estimated value of a public contract on the basis of the total amount payable, net of VAT, which shall include a possible increase in the volume of the contract and any increase of the value of the contract resulting from the selection of the right awarding procedure. Where the contracting authority provides for prizes or payments to candidates or tenderers, it shall take them into account when calculating the estimated value of the contract.

(2) The estimated value of the contract must be valid at the moment at which the contract notice is sent or, in cases where such notice is not required, at the moment at which the contracting authority issues the decision to commence the contract awarding procedure.

(3) The contracting authority may not determine the estimated value of the contract in such a way that it would result in a lower value and would therefore be excluded from the scope of this Act in relation to the threshold values applicable to the subject of the contract.

(4) With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authorities.

(5) With regard to contracts that may be awarded in the form of separate lots, the following rules shall apply:

a) where the proposed work or purchase of services may result in contracts being awarded in the form of separate lots, account shall be taken of the aggregate estimated value of all such lots. Where the aggregate value of the lots is equal to or greater than the threshold above which the contract notice must be published in the Official Journal of the European Union, the provisions of this Act applicable to contracts the value of which is equal to or greater than the threshold above which the contract notice must be published in the Official Journal of the European Union shall apply to the awarding of each lot. However, the contracting authority may waive the application of the provision regarding publication of the contract notice in the Official Journal of the European Union in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that

the aggregate value of those lots does not exceed 20% of the aggregate value of the lots of the contract as a whole.

b) where on the basis of information on the acquisition of similar supplies it may be concluded that these are contracts that may be awarded at the same time in the form of separate lots, account shall be taken of the aggregate estimated value of all such lots, taking into consideration the threshold value above which the contract notice must be published in the Official Journal of the European Union. Where the aggregate value of the lots is equal to or exceeds the threshold above which the contract notice must be published in the Official Journal of the European Union, the provisions of this Act applicable to contracts the value of which is equal to or exceeds the threshold above which the contract notice must be published in the Official Journal of the European Union shall apply to the awarding of each lot. However, the contracting authorities may waive the application of the provision regarding publication of the contract notice in the Official Journal of the European Union in respect of lots the estimated value of which net of VAT is less than EUR 80 000, provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots as a whole.

(6) With regard to public supply contracts relating to the leasing, hire, or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

a) in the case of fixed-term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

(7) In the case of public supply or service contracts which are accessible on the market or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or in the preceding calendar year adjusted to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the calendar year, if the period is not longer than 12 months.

(8) With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall be the following:

a) for insurance services: the premium payable and other forms of remuneration;

b) for banking and other financial services: the fees, commissions, interest and other forms of remuneration;

c) for design contracts: fees, commissions payable and other forms of remuneration;

č) for service contracts which do not indicate a total price:

– for fixed-term contracts, where their term is 48 months or less, the total value for their whole duration;

– in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

(9) With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

(10) When the subject matter of a public contract may be maintained, upgraded or serviced only by a person authorised to do so, the estimated value of all relevant elements for a period of five years shall be included in the calculation of the estimated value of the public contract.

## **1.6. Specific situations**

### **Article 15**

#### **(Defence procurement)**

(1) This Act shall apply to public contracts awarded by contracting authorities in the field of defence, subject to Article 296 of the Treaty.

(2) The contracting authority shall report to the Government by the end of February of the current year for the previous year on public contracts awarded pursuant to Article 296 of the Treaty.

### **Article 16**

#### **(Public contracts and framework agreements awarded by central purchasing bodies and/or on the basis of an authorisation)**

(1) Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body. The central purchasing body may not charge a commission for the carrying out of the awarding procedure.

(2) In the cases referred to in the preceding paragraph the contracting authority is responsible for the regularity of the awarding procedure. Contracting authorities shall be deemed to have complied with this Act insofar as the central purchasing body has complied with it.

(3) Notwithstanding the provisions of the preceding paragraph the central purchasing body shall be responsible for carrying out the awarding procedure in cases where purchasing is done on the basis of a Government decision.

(4) For the carrying out of the awarding procedure contracting authorities may authorise only contracting authorities listed in the List of public law entities and categories of public law entities annexed to a decree adopted by the Government (hereinafter: List of public law entities and categories of public law entities) and in the List of government authorities and bodies within these government authorities, and local communities. Contracting authorities may not transfer these competences to any private law entity.

## **1.7. Exceptions in public procurement, not subject to this Act**

## Article 17

### (General exceptions not subject to public procurement)

(1) This Act shall not apply to:

1. public contracts which, under the Act regulating public procurement in the water, energy, transport and postal services sectors, are awarded by contracting authorities exercising one or more of the activities referred to in Articles 5 to 9 of the Act Regulating Public Procurement Procedures in the Water, Energy, Transport and Postal Services Sectors (Uradni list RS, No 128/06; hereinafter: ZJNVETPS) and are awarded for the pursuit of those activities, or to public contracts excluded from the scope of the above-mentioned Act;

2. public contracts which permit the contracting authorities operating in the field of telecommunications to enable, provide or exploit public telecommunications networks or to provide one or more telecommunications services, provided other entities are free to offer the same services in the same geographical area under practically the same conditions;

3. public contracts through which classified information is disclosed, when their performance must be accompanied by special security measures in accordance with the law, or when the protection of the essential interests of the Republic of Slovenia so requires, and are stipulated by a regulation of the Government; the contracting authority shall report to the Government on the awarded contracts by the end of February of the current year for the previous year;

4. public contracts governed by different procedural rules relating to procurement and awarded:

a) pursuant to an international agreement concluded in conformity with the EC Treaty between the Republic of Slovenia and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation of a service contract or exploitation of project results by the signatory States; all agreements shall be communicated to the Commission by the ministry responsible for foreign affairs;

b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings in the Republic of Slovenia or a third country;

c) pursuant to the particular procedure of an international organisation;

5. service concessions;

6. public service contracts awarded by a contracting authority to another tenderer which, under this Act, is itself a contracting authority or an association of contracting authorities on the basis of an exclusive right which it enjoys pursuant to law or other regulations;

7. public contracts for equipment, technical products and other public contracts to ensure fundamental conditions for survival and/or life in the event of natural or other disaster, in accordance with regulations on the protection against natural or other disasters, when the value of the contract does not exceed the value requiring publication in the Official Journal of the European Union;

8. contracts concluded between one or more contracting authorities or one or more economic operators, whose operation is subject to the supervision exercised by

contracting authorities, which is comparable to the supervision over internal organisational units of the contracting authority. Economic operators shall also conclude contracts in compliance with the provisions of this Act even if not acting as contracting authorities and the tender price being equal to or lower than that on the market;

9. public contracts whose value does not exceed the value referred to in Paragraph 1 of Article 12 of this Act, provided the subject matter of the contract also covers the provision of supplies, the execution of works or services where the contracting authority, within the framework of this activity, acts on the market as the supplier, contractor or service provider.

(2) In the award of public works contracts whose value does not exceed the value referred to in Paragraph 1 of Article 12 of this Act and where additional works are required, contracting authorities may permit the contractor already carrying out works on site, after the confirmation of the scope of works by a person who already exercises supervision over construction works, to begin these works simultaneously with the initiation of the negotiated procedure if the delay in the execution of works due to the implementation of the procedure may incur additional costs on the contracting authority, taking into account that the value of these works may not exceed 10% of the main contract value.

## **Article 18**

### **(Specific exclusions not subject to public procurement)**

This Act shall not apply to public service contracts for:

1. the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
2. arbitration and conciliation services;
3. financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and services of the Bank of Slovenia;
4. employment contracts;
5. research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on the condition that the service provided is wholly remunerated by the contracting authority;
6. the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall not be subject to this exclusion.

## **1.8. Special arrangements in the award of contracts**

### **Article 19**

#### **(Reserved contracts)**

(1) Where the award of contract is reserved, the contracting authority shall, in compliance with all tender conditions, select a tenderer demonstrating the status of social enterprise or employment centre, pursuant to the Vocational Rehabilitation and Employment of Disabled Persons Act (*Uradni list RS*, No 100/05 – UPB1, hereinafter: ZZRZI-UPB1), and whose tender price and/or the economically most advantageous tender shall not exceed 5% of the tender price submitted by the most successful tenderer which is not a social enterprise or employment centre, taking into account that the same conditions referred to in this Article shall be fulfilled by subcontractors.

(2) Where the contracting authority referred to in the preceding paragraph alternatively fulfils the quota, it shall take into account the provisions of Article 64 of the ZZRZI-UPB1.

(3) A contracting authority which intends to award a public contract under this Article shall so specify in the notice and in the contract documents.

## **1.9. Public service contracts**

### **Article 20**

#### **(Service contracts listed under A and B)**

(1) Public contracts having as their subject matter services from the List of services A shall be awarded in accordance with this Act.

(2) Public contracts having as their subject matter services from the List of services B shall be awarded in accordance with the provisions of the Act laying down the subject matter of the contract and/or technical specifications. In the award of service contracts from the List of services B, the contracting authority shall comply with the rules of this Act concerning the publication of contract notices. In the event of any differences between CPV and CPC nomenclatures, the CPC nomenclature shall apply.

(3) Contracts which have as their subject matter services from the List of services A and the List of services B shall be awarded in accordance with this Act where the value of the services in the List of services A is greater than the value of the services in the List of services B. In other cases, contracts shall be awarded in accordance with the provisions of this Act laying down technical specifications and rules on the publication of contract notices.

## **1.10. Agreements concluded within the World Trade Organisation**

### **Article 21**

#### **(Conditions relating to agreements concluded within the World Trade Organisation)**

In the award of public contracts, all economic operators shall be granted the same conditions as those granted to economic operators of third countries, in accordance with the Agreement of Government Procurement (GPA) concluded within the World Trade Organisation.

## **1.11. Public disclosure and confidentiality**

### **Article 22**

#### **(Data protection)**

(1) Contracting authorities shall ensure that during the contract award procedure all data classified by tenderers as confidential according to the law governing commercial companies remain a trade secret. The data are classified as confidential if regarded as such by the law regulating classified data or any other law.

(2) Without prejudice to the provision of the preceding sentence, the tender price and, in case of criteria representing the most economically advantageous tender, data indicating the evaluation and/or the classification of the tender within other award criteria shall be disclosed to the public.

(3) Contracting authorities shall ensure communications, exchanges and the storage of information in such a way that the integrity and confidentiality of the information are preserved, as well as the confidential treatment of tenders and applications to participate. In submitting technical specifications to tenderers and candidates for the selection of suppliers of goods and service providers and contractors in connection with the award of contracts, contracting authorities may require the protection of classified data which they make available to them.

(4) Contracting authorities shall withhold as a trade secret the names of tenderers and the submitted tenders until the date fixed for the opening of tenders.

(5) Anyone who has received data classified as confidential by the law shall respect the confidential nature of such information according to the classification level.

(6) All documents concerning the contract award procedure shall be public unless they contain trade secrets or classified data as referred to in this Article. After adopting the decision on the award of the contract, the contracting authority shall give a tenderer, at his request, access to other tenders and other documents. The provisions of the law regulating access to information of a public character, concerning insight into contract documents between the time of the opening of tenders and the adoption of the decision on the contract award, shall not apply.

(7) The contracting authority shall enable a tenderer whose tender is subject to access to be present at the consultation of its tender, providing him the possibility to protect its interests.

## **1.12. Language**

### **Article 23**

#### **(Language used in the public procurement procedure)**

(1) The public procurement procedure shall be conducted in the Slovene language. The contracting authority may stipulate in contract documents that tenderers may submit their tenders, in part or in full, in a foreign language, particularly in those parts which relate to technical characteristics, quality and technical documentation, such as prospectus, promotional and technical and other material. In exceptional cases, where the Slovene terminology of a specific technical

area is poor, the contracting authority shall also draw up contract documents, or a part thereof, in a foreign language. If the contracting authority allows tenderers to submit part of the tender documents in one of the languages of the European Union or in any other foreign language, it shall specify which part of the tender may be in a foreign language, as well as in which foreign language.

(2) If the contracting authority, during the revision and evaluation of tenders, deems it necessary that the part of tender documents which is not submitted in the Slovene language should be officially translated into the Slovene language, it may require the tenderers to do so and set an appropriate time limit. The translation costs shall be borne by the tenderer.

(3) In the case of a dispute, the tender or its official translation into the Slovene language shall apply and, where contract documents, or a part thereof, are in a foreign language, the language concerned shall prevail.

(4) The provisions of this Article applying to the Slovene language shall also apply, *mutatis mutandis*, to the Italian and Hungarian languages in bilingual areas within the framework of exercising specific rights of Italian and Hungarian Communities.

## **Chapter Two**

### **PROVISIONS COMMON TO ALL PUBLIC PROCUREMENT PROCEDURES WITH THE EXCEPTION OF TENDER COLLECTION PROCEDURES**

#### **Article 24**

##### **(Types of procedure)**

(1) The contracting authority shall award public contracts in accordance with one of the following procedures:

1. open procedure;
2. restricted procedure;
3. competitive dialogue;
4. negotiated procedure without prior publication of a contract notice;
5. negotiated procedure with prior publication of a contract notice;
6. tender collection procedure with prior publication of a contract notice; and
7. tender collection procedure.

(2) The contracting authority shall award public contracts if:

- a) the value of the subject matter of the public contract:
  - is equal to or greater than EUR 10 000 and less than EUR 40 000 for public supply and service contracts and
  - is equal to or greater than EUR 20 000 and less than EUR 80 000 for public works contracts,under the tender collection procedure.
- b) the value of the subject matter of the public contract:
  - is equal to or greater than EUR 40 000 and less than EUR 137 000 for public supply and service contracts and

- is equal to or greater than EUR 80 000 and less than EUR 274 000 for public works contracts,

under the tender collection procedure with prior publication of a contract notice or under any other procedure referred to in Points 1 to 5 of the preceding paragraph.

c) the value of the subject matter of the public contract:

- is equal to or greater than EUR 137 000 for public supply and service contracts and

- is equal to or greater than EUR 274 000 for public works contracts, under Points 1 to 5 of the preceding paragraph.

(3) Public contracts referred to in Point c) of the preceding paragraph shall be awarded by applying the open or restricted procedure. In the specific circumstances expressly provided for in Article 27 of this Act, contracting authorities may award their public contracts by means of competitive dialogue. In the specific cases and circumstances referred to expressly in Articles 28 and 29 of this Act, they may apply a negotiated procedure, with or without publication of a contract notice.

(4) Where it has been established any time during the procedure that the value of the public contract exceeds any threshold set in this Act, the contracting authorities shall cancel the procedure and initiate a new one in accordance with the provisions of this Act.

(5) The provisions of this Act shall not apply to public contracts the value of which, net of VAT, does not exceed EUR10 000 for supplies and services and EUR 20 000 for works, net of VAT. Contracting authorities shall only be obliged to keep records of contract awards, documenting the subject matter and value of the public contract.

(6) The Government may issue a regulation specifying individual elements in implementing public procurement procedures.

## **Article 25**

### **(Award of contracts by open procedure)**

The open procedure shall be a procedure wherein all parties interested in the public contract award may submit their tenders in accordance with previously defined requirements of the contracting authority specified in contract documents.

## **Article 26**

### **(Award of contracts by restricted procedure)**

The restricted procedure shall be a procedure for awarding a contract in which the contracting authorities in the first phase recognise the qualifications of tenderers on the basis of previously submitted applications, whereas in the second phase they invite all candidates with recognised qualifications to submit tenders.

## **Article 27**

### **(Competitive dialogue)**

(1) Competitive dialogue shall be a procedure that may be applied only where neither open nor restricted procedures will allow the award of the contract due to its complexity and provided the award criterion for the selection of the most successful tenderer is that of the most economically advantageous tender.

(2) During the dialogue, the contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

(3) Contracting authorities may not reveal to other participants the solutions proposed or other classified information communicated by a candidate participating in the dialogue without his agreement.

(4) Contracting authorities shall open, with the candidates meeting the criteria of Articles 41 to 47 of this Act which are set out in advance in the contract documents, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. During this dialogue with the chosen candidates, they may discuss all aspects of the contracts.

(5) The contracting authority shall continue this dialogue until it can identify the solution or solutions, if necessary after comparing them, which meet its needs.

(6) Once the dialogue is concluded, the contracting authorities shall inform the participants thereof and ask them to submit their final tenders on the basis of the solution or solutions reached in the final dialogue. These tenders shall meet all the requirements of the contract documents.

(7) Contracting authorities may request the tenderers to clarify or specify their submitted final tenders. Such clarification, specification or additional information may not involve changes to the basic features of the tender or the invitation to tender which are likely to distort competition or have a discriminatory effect.

(8) Contracting authorities shall assess the tenders and, on the basis of the criterion of the most economically advantageous tender, choose the most favourable tender as defined in the contract notice or contract documents.

(9) At the request of the contracting authority, the tenderer chosen may be asked to clarify or justify the tender or confirm the commitments contained therein; however, this may not involve changes to the basic features of the tender or the invitation to tender or contract documents, variations in which are likely to distort competition or have a discriminatory effect among tenderers.

(10) Contracting authorities may specify prices or payments to the participants in the dialogue, which must be defined in the contract documents.

## **Article 28**

### **(Award of contracts by negotiated procedure with prior publication of a contract notice)**

(1) The contracting authority may award a contract by negotiated procedure, after the publication of a contract notice:

1. if, in response to the open or restricted procedure or competitive dialogue, irregular or unacceptable tenders have been submitted, insofar as the original terms of the contract documents are not substantially altered. The contracting authority need not publish a contract notice where it includes in the negotiated procedure all of the tenderers which satisfy the criteria of Articles 44 to 47 of this Act and which,

during the prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure;

2. in exceptional cases, when the nature of the contract or the risks attaching thereto do not permit prior overall pricing;

3. in the case of services, *inter alia* services within Category 6 in the List of services A, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

4. in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

5. in respect of public contracts the value of which does not exceed the value referred to in Paragraph 1 of Article 12 of this Act.

(2) In the cases referred to in the preceding paragraph, the contracting authority shall negotiate with tenderers the tenders submitted by them in this procedure in order to adapt them to the requirements which it has set in the contract notice or contract documents, and to seek out the best tender while applying the criteria set in advance. In the case referred to in Point 1 of the preceding paragraph, the tender price quoted during the negotiated procedure may not exceed the price quoted by the same tenderer in the unsuccessful public procurement procedure previously conducted.

(3) During the negotiations, the contracting authority shall ensure the equal treatment of all tenderers. In particular, it must not provide information to the participants in negotiations in a discriminatory manner which may favour certain tenderers. Before the negotiations, the contracting authority shall inform the tenderers of the rules governing the negotiation procedure.

## **Article 29**

### **(Award of contracts by negotiated procedure without prior publication of a contract notice)**

(1) Contracting authorities may award public works contracts, public supply contracts and public service contracts by negotiated procedure without prior publication of a contract notice in the following cases:

1. when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or restricted procedure, provided that the initial subject matter of the contract or contents of the contract documents are not substantially altered and on condition that a report is sent to the Commission if it so requests;

2. when, for technical or artistic requirements of the subject matter of the public contract, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular tenderer;

3. insofar as is strictly necessary when, for reasons that could not have been foreseen and cannot in any event be attributable to the conduct of the contracting authorities, the public contract must be inevitably awarded and the shortened time

limits for the open, restricted or negotiated procedures with publication of a contract notice cannot be complied with;

4. when the value of the public contract does not exceed the value requiring the publication of a contract notice in the Official Journal of the European Union, provided that the contract may be executed by a previously identified and final number of qualified tenderers and provided that all tenderers are treated equally;

5. in the case where during the previously initiated procedure of public procurement the contracting authority cannot award a public contract within the time limit due to a review claim having been lodged and due to the urgency of the contract, on the condition that the value of the contract does not exceed the value referred to in Paragraph 1 of Article 12 and subject to previous approval of the ministry responsible for finance. In such a case, the contracting authority may award the contract only for the period until the contract is concluded on the basis of the initiated procedure.

(2) The tender price quoted during the negotiated procedure in the case referred to in Point 1 of the preceding paragraph may not exceed the price quoted by the same tenderer in the unsuccessful public procurement procedure previously conducted.

(3) In cases of public procurement on the basis of the provisions of Paragraph 1 of this Article, except in the case referred to in Point 1 of Paragraph 1 of this Article, the contracting authority shall, prior to initiating the contract award procedure, inform the ministry responsible for finance of the subject matter of the contract, reasons for applying such a procedure, value of the contract, validity of the contract and economic operators to participate in the negotiations, and where appropriate include several economic operators in the negotiated procedure and justify the application of procedures in the case referred to in Points 2 and 3 of Paragraph 1.

(4) Public contracts may also be awarded by a negotiated procedure without prior publication of a contract notice in the following cases:

1. for public supply contracts when the products involved are manufactured purely for the purpose of research, experimentation, study and development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

2. for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;

3. for supplies quoted and purchased on a commodity market;

4. for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws regulating this area.

(5) The negotiated procedure without prior publication of a contract notice may be applied for public service contracts when the contract concerned follows a design contest and must, under the applicable rules of procedure, be awarded to the successful candidates or to one of the successful candidates. If there is more than one candidate, all of them must be invited to participate in the negotiations.

(6) The negotiated procedure without prior publication of a contract notice may also be applied to public works contracts and public service contracts in the following cases:

1. for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the tenderer performing such works or services;

– when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, or

– when such additional works or services, although separable from the performance of the original contract, are strictly necessary for its completion. However, the aggregate amount of contracts referred to in this point may not exceed 30% of the amount of the original contract;

2. for additional works or services consisting in the repetition of similar works or services contained in the original contract, on condition that they are entrusted to the same contractor to whom the contracting authority has awarded an original contract, provided that such works or services are in conformity with a basic project and/or the original contract awarded according to the open or restricted procedure. The possible use of this procedure shall have already been disclosed during the procedure of the original public contract award and when calculating the estimated contract value, taking into consideration the value of additional works and services. This procedure may be used only during the three years following the conclusion of the original contract award.

### **Article 30**

#### **(Tender collection procedure with prior publication of a contract notice)**

(1) The contracting authority may provide for the tender collection procedure in one of the following ways:

a) among the received tenders, the most favourable tender is selected, taking into account the conditions and criteria laid down in the published contract notice according to the tender collection procedure or in the contract documents; or

b) the procedure is divided into two stages:

– in the first stage, the contracting authority establishes whether the economic operators which have submitted the applications to participate comply with the conditions specified in the published contract notice according to the tender collection procedure and in the contract documents and, in the second stage, invites them to submit tenders, or

– in the first stage, the contracting authority, on the basis of the received applications, holds a dialogue with the applicants for the purpose of drawing up final contract documents and establishing which of them complies with the specified conditions, while in the second stage, it invites them to submit tenders in accordance with the final contract documents.

c) after the final revision and evaluation of tenders, the contracting authority chooses the most successful tender or tenderer with which it concludes framework agreements.

(2) The contracting authority may include negotiations in the tender collection procedure with the prior publication of a contract notice.

## **Article 31**

### **(Special methods of public procurement and framework agreement)**

(1) Special methods of public procurement shall comprise:

1. a dynamic purchasing system,
2. particular rules for subsidised housing schemes,
3. electronic bidding, and
4. joint public procurement.

(2) Subject to a prior public procurement procedure, the contracting authority may conclude a framework agreement.

## **Article 32**

### **(Framework agreements)**

(1) For the purpose of concluding a framework agreement, the contracting authority shall follow the rules of procedure referred to in this Act for all phases up to the award of contracts based on that framework agreement. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 48 of this Act. The contracting authority shall lay down in its contract documents the method of selection of tenderers for concluding a framework agreement, based on compliance with the relevant criteria.

(2) The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject matter of the framework agreement, for which, however, the contracting authority shall seek the consent of the ministry responsible for finance.

(3) The contracting authority may not use framework agreements improperly with regard to the purpose and nature of the subject matter or in a way that would violate basic principles.

(4) A framework agreement shall be concluded following a prior open or restricted procedure, or negotiated procedure with prior publication of a contract notice or negotiated procedure without prior publication of a contract notice. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in Paragraphs 5 and 6 of this Act. Those procedures may be applied only between contracting authorities and selected tenderers under a completed public procurement procedure. When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement.

(5) Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded in compliance with the terms laid down in the framework agreement. For the award of those contracts, the contracting authority may consult, in writing, the tenderer, a party to the framework agreement, requesting it, where appropriate, to submit a tender.

(6) Where a framework agreement is concluded with several economic operators, it shall be concluded with at least three of them, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria. Contracts based on framework agreements concluded with several economic operators may be awarded either:

a) by application of the specifications laid down in the framework agreement without reopening competition, where the specifications of that agreement so allow;

b) where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

– for every contract to be awarded, the contracting authorities shall consult, in writing, the economic operators capable of performing the contract;

– the contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders;

– tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;

– the contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

(7) The contracting authority shall inform the tenderers of the conclusion of a framework agreement. Tenderers may ask for further explanation of the decision. The contracting authority is not bound to inform the parties to a framework agreement of the conclusion of each contract based on the framework agreement.

(8) The contracting authority shall publish a prior information notice if it opts for shortening the time limits for the submission of tenders.

(9) The contracting authority is bound to publish a contract award notice at each conclusion of a framework agreement no later than 48 days after the conclusion of the framework agreement. The contracting authority is not bound to publish a contract award notice at the conclusion of each contract based on the framework agreement. The contracting authority is not bound to publish the information on the conclusion of the framework agreement which would imply non-compliance with laws and regulations or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

## **Article 33**

### **(Dynamic purchasing systems)**

(1) In order to set up a dynamic purchasing system, the contracting authority shall follow the rules of open procedure in all its phases up to the award of the contracts to be concluded under the dynamic purchasing system. All tenderers satisfying the selection criteria and having submitted a request in accordance with the contract documents and any possible additional documents shall be admitted to the system;

requests may be improved at any time provided that they continue to comply with the contract documents. With a view to setting up the system and awarding contracts under that system, contracting authorities shall solely use electronic means.

(2) For the purposes of setting up the dynamic purchasing system, the contracting authority shall:

a) publish a contract notice indicating that a dynamic purchasing system is involved;

b) indicate in the contract documents, amongst other matters, the nature of the purchases envisaged under the dynamic purchasing system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection appliances and specifications;

c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the contract documents and to any additional documents, and indicate in the notice the Internet address at which such documents may be consulted.

(3) The contracting authority shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting a request and of being admitted to the system under the conditions referred to in Paragraph 1 of this Article. The contracting authority shall complete an evaluation within a maximum of 15 days from the date of submission of the request. However, it may extend the evaluation period provided that no invitation to tender is issued in the meantime. The contracting authority shall inform the tenderer at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its request.

(4) Each individual contract must be the subject of an invitation to tender. Before issuing the invitation to tender, the contracting authority shall publish a simplified contract notice inviting all interested economic operators to submit a request within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. The contracting authority may not proceed with tendering until it has completed the evaluation of all the requests submitted by that deadline.

(5) The contracting authority shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each specific contract to be awarded under this system. To that end it shall set a time limit for the submission of tenders. It shall award the contract to the tenderer which submitted the best tender, by using the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation.

(6) A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases, for which, however, the contracting authority shall seek the consent of the ministry responsible for finance.

(7) The contracting authority may not use this system in such a way as to prevent, restrict or distort competition.

(8) No charges for admittance to a dynamic purchasing system may be billed to the economic operators.

(9) The contracting authority shall publish a notice of the result within 48 days of the award of each contract or may, however, publish a grouped notice of the contracts awarded on a quarterly basis. In that case, it shall send the grouped

notices within 48 days of the end of each quarter for which a dynamic purchasing system is established.

## **Article 34**

### **(Public works contracts: particular rules on subsidised housing schemes)**

(1) In the case of public contracts relating to the design and construction of a subsidised housing scheme whose size and complexity as well as the estimated duration of the work involved require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

(2) In particular, the contracting authority shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, the contracting authority shall, in accordance with the provisions of Articles 41 to 47 of this Act, set out in such a contract notice the personal, technical, economic and financial conditions to be fulfilled by candidates.

(3) In the case of a special procedure, the contracting authority shall apply basic principles of awarding contracts, provisions of this Act concerning publication of notices, fixing time limits, providing information to the candidates and tenderers, notifications, drawing up reports on the contract award and qualification assessment criteria.

## **Article 35**

### **(Use of electronic auction)**

(1) In open, restricted or negotiated procedures with prior publication of a contract notice, the contracting authority may decide that a public contract shall be awarded by electronic auction when the technical specifications of the contract can be established unambiguously and with precision. Under the same circumstances an electronic auction may be held on the reopening of competition among the parties to a framework agreement and on the opening of competition for contracts to be awarded under the dynamic purchasing system. The auction shall occur after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Service contracts and works contracts including intellectual performance, such as the design of works, may not be the subject of electronic auctions. The electronic auction shall be based:

- solely on prices when the contract is awarded to the lowest price tender, or
- on prices and/or on the new values of the features of the tenders indicated in the contract documents when the contract is awarded to the most economically advantageous tender.

(2) A contracting authority which decides to hold an electronic auction shall state that fact in the contract notice. The contract documents shall include, *inter alia*, the following details:

a) the features of goods and services, the values of which will be the subject of electronic auction, provided that such features are quantifiable and may be expressed in figures or percentages;

b) any limits on the values which may be submitted, as they result from the contract documents relating to the subject matter of the contract;

c) information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

č) information concerning the electronic auction process;

d) conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

e) relevant information concerning the electronic equipment used and the arrangements and technical specifications for the connection with the system to be used.

(3) Before launching an electronic auction, the contracting authority shall make a full initial evaluation of the tenders in accordance with the set award criterion/criteria and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may be conducted in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

(4) When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of an integral evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in Article 48 of this Act. The invitation shall also indicate the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. This formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the contract documents; for that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

(5) Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It shall also communicate other information concerning other prices or values submitted, provided that this is stated in the contract documents. It may also at any time announce the number of participants in that phase of the auction. In no case, however, may it disclose the identities of the tenderers during any phase of an electronic auction.

(6) An electronic auction may be closed in one or more of the following manners:

a) in the invitation to the electronic auction the contracting authority shall indicate the date and time fixed in advance;

b) in the invitation to the electronic auction the contracting authority shall indicate that the auction will be closed when it receives no further new prices or new values. In that event, in the invitation to the electronic auction the contracting authority shall state the time limit after the lapse of which no new tenders may be submitted and which marks the termination of the electronic auction;

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

(7) When the contracting authority decides to close an electronic auction in accordance with Point c) of the preceding paragraph, possibly in combination with the arrangements laid down in Point b) of the preceding paragraph, the invitation to the auction shall indicate the timetable for each phase of the auction.

(8) After closing an electronic auction the contracting authority shall award the contract on the basis of the results of the electronic auction, which shall be calculated by the criteria published in advance and the weighting fixed to them. The contracting authority may not have improper recourse to electronic auctions nor may it use them in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as defined in the published contract notice and in the contract documents.

(9) If the electronic auction is based on the electronic submission of tenders, the contracting authority shall indicate that in the contract documents and the tenderers must be able to examine the current ranking based on applicable criteria at their first registration in the electronic auction information system.

## **Article 36**

### **(Joint public procurement by the Government)**

(1) In accordance with the annual public procurement programme for individual joint public procurements, the Government may allow direct budget spending units and bodies within ministries to act jointly in public procurement if it estimates, on the basis of the proposal of contracting authorities supported by analysis, that such joint procurements enhance the efficiency and effectiveness of use of budgetary funds and do not reduce market competition.

(2) In the decision on joint public procurement the Government shall define the kind of goods and services and the time limit of the joint public procurement, the central purchasing body and persons responsible for efficient and effective performance of the joint procurement, indicative time schedule of the implementation of the joint public procurement and the type of joint contract award.

(3) Not later than within thirty days from the receipt of the decision on joint public procurements referred to in Paragraph 1 of this Article, the state authorities shall notify the central purchasing body of their requirements.

(4) In cases of joint public procurement performed on the basis of other laws or of the interest of contracting authorities, provisions applicable to joint public procurement of the Government shall apply *mutatis mutandis*.

## **Chapter Three**

### **GENERAL RULES GOVERNING TECHNICAL SPECIFICATIONS**

#### **AND OTHER ELEMENTS OF PUBLIC PROCUREMENT**

## **Article 37**

### **(Technical specifications)**

(1) The technical specifications referred to in Point 1 of the List of individual technical specifications annexed to the decree to be issued by the Government (hereinafter

Whenever possible, technical specifications shall be defined so as to take into account accessibility criteria for people with disabilities or standards for works intended for all users.

(2) Technical specifications shall afford equal access for tenderers and not have the effect of creating obstacles to access to public procurement to competitive economic operators. Technical specifications shall be formulated on the basis of functional requirements of the subject matter of the contract in connection with contracting authorities' objective needs and requirements, so that they do not create unjustified restrictions of competition among tenderers.

(3) Notwithstanding the technical rules laid down by the regulations as mandatory, the technical specifications shall be formulated:

a) by reference to technical specifications defined in the List of individual technical specifications and, in order of preference, to Slovenian standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or, when these do not exist, to Slovenian standards, Slovenian technical approvals or Slovenian technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent"; or

b) in terms of performance or functional requirements, which may also include elements relevant to environmental protection. However, such parameters must be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow the contracting authorities to award the contract; or

c) in terms of performance or functional requirements as mentioned in Point b) of this paragraph, with reference to the specifications mentioned in Point a) of this paragraph as a means of presuming conformity with such performance or functional requirements; or

č) by referring to the specifications mentioned in Point a) of this paragraph for certain characteristics and by referring to the performance or functional requirements mentioned in Point b) of this paragraph for other characteristics.

(4) Where a contracting authority makes use of the option of referring to the specifications mentioned in Point a) of the preceding paragraph, it cannot reject a tender on the grounds that the products or services tendered for do not comply with the specifications to which it has referred if the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. An appropriate means might constitute a technical dossier of the manufacturer or a test report from a recognised body.

(5) Where a contracting authority uses the option laid down in Point a) of Paragraph (3) of this Article to prescribe technical specifications in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a Slovene standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by European standardisation bodies, if these specifications address the performance or functional

requirements which they have laid down. In his tender the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority. An appropriate means might constitute a technical dossier of the manufacturer or a test report from a recognised body.

(6) Where the contracting authority lays down environmental characteristics in terms of the performance or functional requirements referred to in Point b) of Paragraph (3) of this Article, it may use the detailed specifications or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

a) those specifications are appropriate to define the characteristics of the supplies or services that are the subject matter 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 government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and

č) they are accessible to all interested parties.

(7) The contracting authority may indicate that the products and services bearing an eco-label are presumed to comply with the technical specifications laid down in the contract documents; it must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

(8) Recognised bodies, within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards. The contracting authority shall accept certificates from recognised bodies established in other Member States, but it may also accept certificates from recognised bodies established in other states.

(9) Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source or a particular process or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis where a sufficiently precise and intelligible description of the subject matter of the contract pursuant to Paragraphs 3 and 4 of this Article is not possible; such reference shall be accompanied by the words "or equivalent".

(10) When functional requirements stated in the technical specifications are specified as a condition, the tenderer shall provide proof to the effect that such requirements have been complied with.

## **Article 38**

### **(Variants)**

(1) Where the criterion for award is that of the most economically advantageous tender, the contracting authority may authorise tenderers to submit variants.

(2) The contracting authority shall indicate in the contract notice whether or not it authorises variants: variants shall not be authorised without this indication.

(3) The contracting authority authorising variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

(4) Only variants meeting the minimum requirements laid down by the contracting authority shall be taken into consideration. In procedures for awarding public supply or service contracts, the contracting authority which has authorised variants may not reject a variant on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

### **Article 39**

#### **(Conditions including social and environmental aspects)**

(1) The Government may prescribe that certain kinds of public procurements and individual products and services must observe environmental technical specifications or environmental selection criteria. At the same time the Government shall define, in an appropriate way, the nature of such criteria and their application.

(2) The contracting authority may also specify other conditions for performance of the contract, which may particularly relate to social and environmental aspects, provided that such conditions comply with European regulations and have been stated in the contract notice or in the contract documents.

### **Article 40**

#### **(Obligations relating to taxes, environmental protection, employment protection provisions and working conditions)**

(1) A contracting authority may state in the contract documents the body or bodies from which a candidate or a tenderer may obtain appropriate information on obligations relating to taxes, environmental protection, employment protection provisions and working conditions which are in force in the Republic of Slovenia, region or locality in which the works are to be carried out or services are to be provided, and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

(2) A contracting authority which supplies the information referred to in the preceding paragraph shall request the tenderers or candidates in the public procurement procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and working conditions which are in force in the locality where the works are to be carried out or the service is to be provided. The above requirement is not linked to the provision concerning the examination of abnormally low tenders.

## **Chapter Four**

### **QUALIFICATION ASSESSMENT CRITERIA**

### **AND SELECTION CRITERIA**

## **Article 41**

### **(Qualification assessment, selection of participants and award of contracts)**

(1) Contracts shall be awarded by the contracting authority on the basis of the criteria laid down in Article 48 of this Act, taking into account the provisions of Article 49 of this Act and the acceptability of variants, after the qualification of the economic operators has been examined by the contracting authority in accordance with the criteria of economic and financial standing, professional and technical knowledge, and ability to pursue its activity. The examination shall relate to the qualification assessment criteria referred to in Articles 44 to 47 of this Act and to the non-discriminatory rules and criteria referred to in Paragraph 3 of this Article.

(2) Notwithstanding other provisions of this Act, the tenderer is not obliged to provide any evidence regarding the data of which an official record is kept by a state authority, local authority or by the holder of public authority; instead of such evidence the tenderer shall make a statement on the data required to be included in the tender. The data available in official records shall be obtained by the contracting authority itself. Personal data shall be obtained subject to the consent of the entity concerned.

(3) The contracting authorities may require candidates and tenderers to meet minimum qualification levels regarding their economic and financial standing, and technical and professional qualification. The quantity of information for the assessment of minimum levels of a tenderer's qualifications required for a specific contract must be related and proportionate to the subject matter of the contract. These minimum levels shall be indicated in the contract notice.

(4) In the restricted procedure, the negotiated procedure with prior publication of a contract notice and in the competitive dialogue procedure, the contracting authority may, by relevant indication in the contract notice or contract documents, limit the number of suitable candidates it will invite to tender, to negotiate or to participate in a dialogue, provided a sufficient number of suitable candidates is available. The contracting authority shall indicate in the contract notice the objective and non-discriminatory criteria or rules it intends to apply, the minimum number of candidates it intends to invite and, where appropriate, the maximum number. In the restricted procedure the contracting authority shall invite a minimum of five candidates. In the negotiated procedure with prior publication of a contract notice and in the competitive dialogue, the contracting authority shall invite a minimum of three candidates. In any event, the number of candidates invited shall be sufficient to ensure competition.

(5) The contracting authority shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum qualification levels is below the minimum number, the contracting authority may continue the procedure by inviting the candidate or candidates with the required qualifications. In the context of this same procedure, the contracting authority may not include other economic operators who did not request participation or candidates who do not have the required qualifications.

(6) Where the contracting authority exercises the option of reducing the number of solutions to be discussed or of tenders to be negotiated in case of the application of competitive dialogue or the negotiated procedure with prior publication of a contract

notice, it shall do so by applying the criteria and rules stated in the contract notice, in the contract documents or in another document containing information on the subject matter of the public contract. In the final stage the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

## **Article 42**

### **(Basic suitability of the candidate or tenderer)**

(1) Any candidate or tenderer or its legal representative in the case of legal persons, who has been the subject of a conviction by final judgement for one or more of the reasons listed below and defined in the Penal Code of the Republic of Slovenia (Uradni list RS, Nos 63/94, 70/94, 23/99, 60/99, 40/04, 37/05 and 17/06, hereinafter: Penal Code) shall be excluded by the contracting authority from participation in a public contract:

- participation in a criminal organisation;
- accepting a bribe in elections (in the case of natural persons), prohibited acceptance of gifts, prohibited giving of gifts, accepting a bribe (in the case of natural persons), giving a bribe, acceptance of gifts for illegal intermediation and giving of gifts for illegal intermediation;
- fraud, commercial fraud, deception in obtaining loan or advantages and concealment of financial commitments and fraud affecting the European Communities' financial interests within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;
- money laundering.

(2) The contracting authority may ask candidates or tenderers to supply a statement to the effect that they have not committed any of the acts referred to in the preceding paragraph. Tenderers not established in the Republic of Slovenia shall supply evidence of non-conviction of the acts referred to in the preceding paragraph. The contracting authority may, where it has doubts concerning the personal situation of such candidates or tenderers referred to in the preceding paragraph, apply to the competent authorities to obtain any information it considers necessary on the personal situation of the candidates or tenderers referred to in the preceding paragraph. Where the information concerns a candidate or tenderer not established in the Republic of Slovenia, the contracting authority may seek the cooperation of the competent authorities in the country where such candidate or tenderer is established. Information to be obtained by the contracting authorities shall relate to legal or natural persons and any other persons having powers of representation, decision or control in respect of the candidate or tenderer.

(3) The contracting authority may decide to exclude from the contract award procedure a candidate or tenderer where that candidate or tenderer:

- a) is subject to a forced settlement proceeding, bankruptcy or winding up, where his affairs are being administered by the court for other reasons, where he has suspended business activities or is in any analogous situation;
- b) is the subject of proceedings for a declaration of bankruptcy, for an order for winding up or forced settlement under regulations;
- c) has been convicted by a final judgement in accordance with the legal provisions of the country of any offence concerning his professional conduct;

d) has been guilty of grave professional misconduct in the area of the public contract subject matter proven by any means which the contracting authority can demonstrate;

e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

g) is guilty of a misleading interpretation in providing the information required under the provisions of Articles 41 to 49 of this Act in current or preliminary procedures or has not provided such information.

(4) Where the country in which the candidate or tenderer is established does not issue such documents, the contracting authority may accept a declaration under oath by witnesses or a declaration by the candidate or tenderer. If the contract value equals or exceeds the amount referred to in Paragraph 1 of Article 12 of this Act, such declaration shall be made before a competent judicial or administrative authority, a notary or a competent professional or trade body in the country where the candidate or tenderer is established.

(5) On the proposal of the ministry responsible for finance made on the basis of information provided by the ministry responsible for justice and the Tax Administration of the Republic of Slovenia, the Government shall notify the Commission or the state authorities and other entities competent to issue evidence from the preceding paragraph.

### **Article 43**

#### **(Suitability to pursue professional activity)**

(1) The contracting authority may request any economic operator wishing to take part in a public contract to prove its entry, pursuant to the regulations of the Member State of his establishment, in one of the professional or trade registers or to provide a declaration or certificate. Information from public records on tenderers from the Republic of Slovenia shall be obtained by the contracting authority itself.

(2) In procedures for the award of public service contracts, insofar as candidates or tenderers must possess a particular authorisation or to be members of a particular organisation in order to be able to perform the service concerned in the country of their establishment, the contracting authority may require them to submit proof of such authorisation or membership.

### **Article 44**

#### **(Economic and financial suitability)**

(1) The contracting authority may require that candidates or tenderers also satisfy the conditions provided for in this Article. Satisfying minimum requirements for the recognition of suitability for an individual contract shall be associated with and proportionate to the subject matter of the contract. The conditions for the recognition

of suitability shall be stated by the contracting authority in the contract notice either by way of description or by referring to the provisions of this Act.

(2) The contracting authority may require the economic operator to provide as proof of his financial and economic suitability one or more of the following documents, from which the required financial and economic suitability of the economic operator is evident, with the exception of data which it can obtain by itself in accordance with Article 41 of this Act:

a) relevant bank statements, credit rating information, or, where appropriate, evidence of relevant professional risk indemnity insurance;

b) balance sheets or extracts from the balance sheets and books of account with the contents specified in the contract documents when required by the rules of the country in which the economic operator is established;

c) various statements of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the data on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

(3) An economic operator may, where appropriate and for a particular contract, rely on the capacities of other economic operators, regardless of the legal nature of the links which it has with them. In this case it shall prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract. An agreement to that effect signed between such operators may be considered as such proof. If the economic operator fails to provide the required proof, the contracting authority may exclude his tender.

(4) The requirements referred to in the preceding paragraph shall also apply to a group of economic operators that submits a joint tender. In this case the individual operator may rely on the capacities of the participants in the group or of other operators.

(5) In the contract notice or in the invitation to tender or in the contract documents, the contracting authority shall specify which reference or references referred to in Paragraph 2 have been chosen and which other references must be provided by the economic operators.

(6) In the tender, the tenderer must include the statement that he has no outstanding liabilities to his subcontractors in previous public procurement procedures.

(7) If for any valid reason the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial capability by any other document which the contracting authority considers appropriate.

## **Article 45**

### **(Technical and/or professional ability)**

(1) The technical and/or professional abilities of economic operators shall be assessed and examined by the contracting authority in accordance with Paragraphs 2 and 3 of this Article.

(2) Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

a) a list of:

– works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify that they were carried out according to the rules of the trade and properly completed, and indicate the details of the contractor. The contracting authority may provide that the contractors submit the certificates of completion issued by them to the contracting authority directly;

– principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. The economic operator shall give evidence of delivery and services provided, where the recipient was a contracting authority under this Act, in the form of declarations issued or countersigned by the competent authority, or in the form of contracts, invoices etc., or, where the recipient was not a contracting authority under this Act, in the form of a declaration by the recipient or a contract or of its parts relating to the procurement contract or invoice, or, failing this, in the form of a declaration by the economic operator.

b) an indication of the technicians or technical bodies involved, whether or not employed with or working at present or in the future for the economic operator, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality, and of the study and research facilities;

d) where the products or services to be supplied are complex or where the subject matter of a contract is intended for a special purpose, a check may be carried out. This check shall be carried out by the representatives of the contracting authority or, under the powers granted by the contracting authority, or by a competent official body of the country in which the supplier is established, subject to that body's agreement. The check shall concern the production capacities of the supplier or its technical capacity and, if necessary, its means of study and research and its quality control measures;

e) an indication of the educational and professional qualifications of the staff of the service provider or contractor and/or the managerial staff and, in particular, of the persons responsible for providing the services or managing the work;

f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;

h) a statement of the tools and plant, technical or other equipment available to the service provider or contractor for carrying out the contract;

i) an indication of the proportion of the contract which the services provider possibly intends to subcontract;

j) with regard to the products to be supplied:

– samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;

– certificates drawn up by official authorised quality control institutes or agencies of recognised competence attesting to the conformity of products by reference to technical specifications or applicable standards.

(3) An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract. The evidence may consist of a written agreement concluded by the entities for this purpose. If the economic operator fails to present the required evidence, its tender may be rejected.

(4) The conditions referred to in the preceding paragraph also apply to a group of economic operators. Thereby any entity may rely on the abilities of the participants in the group or of other entities.

(5) In public procurement procedures having as their subject matter supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of the economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability as specified by the contracting authority in the contract documents.

(6) The contracting authority shall specify, in the notice or in the invitation to tender, which evidence under Paragraph 2 shall be regarded as acceptable. It shall, however, not determine a tenderer's operation period in the list as a decisive criterion in the procedure of gathering evidence of professional (technical) ability.

## **Article 46**

### **(Quality assurance standards)**

Should the contracting authority require the production of certificates drawn up by independent bodies attesting to the compliance of the economic operator with applicable quality assurance standards, it shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. The contracting authority shall recognise equivalent certificates issued by bodies established in other Member States. It shall also accept other evidence of equivalent quality assurance measures from economic operators.

## **Article 47**

### **(Environmental management standards)**

Should the contracting authority, in the cases referred to in Point f) of Paragraph 2 of Article 45 of this Act, require the production of certificates drawn up by independent bodies attesting to the compliance of the economic operator with certain environmental management standards, it shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by

bodies recognised by the European Community. It shall accept equivalent certificates issued by bodies established in other Member States, as well as other evidence of equivalent environmental measures.

## **Article 48**

### **(Contract award criteria)**

(1) The contracting authority may award a contract either:

a) to the most economically advantageous tender by using various criteria linked to the subject matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service and technical assistance, delivery date and delivery period or completion date, or

b) on the basis of the lowest price.

(2) Should the criteria be specified in both the contract notice and contract documents, they should be the same.

(3) In the event of awarding a public contract by using the most economically advantageous tender criteria, the contracting authority shall describe and weight each award criterion in the contract notice or in the contract documents or, in the case of competitive dialogue, in the descriptive document. The criteria shall be non-discriminatory and shall be logically related to the subject matter of the public contract. The criteria may be weighted by determining a maximum range. Where, in the opinion of the contracting authority, weighting is not possible on objective grounds, the contracting authority shall indicate in the contract notice or contract documents or, in the case of competitive dialogue, in the descriptive document, the criteria in descending order of importance.

(4) In the evaluation of tenders, the contracting authority shall apply only the criteria indicated in the contract notice or contract documents, as they were described and weighted.

(5) In the case of two or more most economically advantageous tenders, the contracting authority shall select the most advantageous one by also applying predetermined social elements aimed at promoting professional in-service training, creating jobs for the difficult-to-employ and combating unemployment, and shall lay them down in the contract documents.

(6) Should the contracting authority award a contract to a most economically advantageous tender by applying different criteria, the price criterion shall be given a weighting of at least 60%.

## **Article 49**

### **(Abnormally low tenders)**

(1) If the contracting authority considers a tender for a given contract to be abnormally low or it is doubtful that the contract could be executed given the supplies, works or services concerned, it shall, before rejecting such a tender, request in writing the details of the predetermined constituent elements of the tender which it considers relevant to the execution of the contract or to the classification of

tenders, and require the tenderer to indicate the weighting basis. These details may relate in particular to:

- a) the economics of the construction method, the manufacturing process or the services provided;
- b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, and for the supply of the goods or services;
- c) the originality of the work, supplies or services proposed by the tenderer;
- d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- e) the possibility of the tenderer obtaining state aid.

(2) The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied. Where the contracting authority establishes that a tender is abnormally low, the tender can be rejected.

(3) Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, the tender can be rejected on that basis alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the ministry responsible for finance and the Commission of that fact.

## **Chapter five**

### **TIME LIMITS**

#### **Article 50**

##### **(Time limits for the receipt of requests to participate and receipt of tenders)**

(1) When fixing the time limits for the receipt of requests to participate and tenders, the contracting authority shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in this Act.

(2) Where the contract notice is published in the Official Journal of the European Union, the time limit allowed for tender submission shall run from the date on which the contracting authority sent the request for its publication in the Official Journal of the European Union to the Office for Official Publications of the European Communities.

#### **Article 51**

##### **(Time limit for the receipt of tenders in open procedure)**

The minimum time limit for the receipt of tenders shall be not less than 40 days from the date on which the contract notice was sent for publication to the Official Journal of the European Union.

## **Article 52**

### **(Shortened time limits in open procedure)**

(1) When the contracting authority has published a prior information notice, the time limit for the receipt of tenders under the preceding paragraph may be shortened, but not to less than 29 days.

(2) The time limit shall run from the date on which the contract notice was sent for publication to the Office for Official Publications of the European Communities.

(3) The shortened time limits under Paragraph 1 hereof shall be permitted, provided that a prior information notice has included all the information required for the contract notice as defined in the List of information to be included in notices annexed to a decree issued by the Government (hereinafter: List of information to be included in notices) insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

## **Article 53**

### **(Extension of time limits)**

If, for whatever reason, the contract documents or additional information, although requested by the economic operator in good time, are not supplied within the time limits set out in this Act, or where it is subsequently established that tenders can be made only after a visit to the site or after on-the-spot inspection of other documents relating to the public contract concerned, the contracting authority shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders. The contracting authority shall publish the extended time limits in the Official Journal of the European Union or on the procurement portal.

## **Article 54**

### **(Time limits in restricted procedure)**

(1) The minimum time limits for the receipt of requests and tenders in the case of public contracts awarded under restricted procedure shall be:

1. for receipt of requests to participate: 30 days from the date on which the contract notice is sent;
2. for receipt of tenders under restricted procedure: 35 days from the date on which the invitation is sent.

(2) When the contracting authority has published a prior information notice, the time limit under Point 2 of the preceding paragraph may be shortened, but not to less than 31 days.

(3) The time limits referred to in Paragraphs 1 and 2 above shall run from the date on which the invitation to tender was sent in restricted procedures.

(4) The shortened time limits under Paragraph 1 hereof shall be permitted, provided that a prior information notice has included all the information required for the contract notice as defined in the List of information to be included in notices,

insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

### **Article 55**

#### **(Time limit for the receipt of requests in competitive dialogue and in negotiated procedure with prior publication of a contract notice)**

The time limit for the receipt of requests in competitive dialogues and in negotiated procedures with prior publication of a contract notice shall be 30 days from the date on which the contract notice is sent.

### **Article 56**

#### **(Time limits fixed for reasons of urgency in restricted procedures and negotiated procedures with prior publication of a contract notice)**

In the case of public contracts awarded under restricted procedure and negotiated procedure with prior publication of a contract notice, where urgency renders impracticable the time limits laid down for the submission of tenders, contracting authorities may fix:

– a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent for publication, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in Point 2 of the Information Concerning Publication annexed to a decree issued by the Government (hereinafter: Information Concerning Publication);

– a time limit for the receipt of tenders which shall not be less than 10 days from the date of the invitation to tender.

## **Chapter 6**

### **NOTICES**

#### **Article 57**

##### **(Types of notices)**

(1) Notices shall be of the following types:

1. prior information notice,
2. contract notice,
3. contract award notice,
4. contract notice under the tender collection procedure with prior publication of a contract notice,
5. contract award notice under the tender collection procedure with prior publication of a contract notice.

(2) The contracting authority shall send all types of public contract notices for publication to the procurement portal and before that, in respect of the value, also to the Office for Official Publications of the European Communities.

## **Article 58**

### **(Form and manner of publication of notices)**

(1) Notices shall be in the format of standard forms and include the information from the List of information to be included in notices. Any other information deemed useful by the contracting authority may be included. The contracting authority is bound to use the standard forms set out in Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (OJ L, No 257/1 of 1.10.2005).

(2) Notices sent by the contracting authority to the procurement portal shall be sent by electronic means in accordance with the format and procedure for transmission indicated in the Information Concerning Publication. Notices sent for publication by the contracting authority to the Office for Official Publications of the European Communities shall be sent electronically through the procurement portal.

(3) Notices drawn up and transmitted electronically in accordance with the rules on the format and procedures for transmission laid down in Point 2 of the Information Concerning Publication, shall be published no later than five days after they are sent for publication.

(4) Contract notices shall be published in full in Slovene. A summary of the important elements of each notice shall be published in the other official languages of the European Community.

(5) The costs of publication of such notices on the procurement portal shall be covered by the budget of the Republic of Slovenia, and the costs of publication in the Official Journal of the European Union by the budget of the European Community. The publication arrangements and costs shall also include translation into the other official languages of the European Union.

## **Article 59**

### **(Publishing sequence rule)**

(1) The notices required to be published in the Official Journal of the European Union shall not be published on the procurement portal before they are sent for publication to the Office for Official Publications of the European Communities. The content published on the procurement portal shall be the same as that published in the Official Journal of the European Union. The notices published on the procurement portal shall indicate the date of their dispatch to the Commission.

(2) The procurement portal and the Office for Official Publications of the European Communities shall give the contracting authority confirmation of the receipt of the information sent for publication, mentioning the date of that publication. Such confirmation shall constitute proof of publication. Contracting authorities shall keep

evidence of the dates on which notices were sent and, where appropriate, provide them as proof.

## **Article 60**

### **(Prior information notice)**

(1) Publication of prior information notices shall be compulsory only when the contracting authorities take the option of shortening the time limits for the receipt of tenders. However, the provisions of this Article shall not apply to negotiated procedures without prior publication of a contract notice.

(2) In the cases referred to in the preceding paragraph, contracting authorities shall send the Commission or the procurement portal a prior information notice providing:

1. where supplies are concerned, the estimated total value of the public contracts by product area which they intend to award over the following 12 months, where the total estimated value is equal to or greater than EUR 750 000. The product area shall be established by the contracting authorities by reference to CPV nomenclature;

2. where services are concerned, the estimated total value of the public contracts in each of the categories of services from the List of services A which they intend to award over the following 12 months, where such estimated total value is equal to or greater than EUR 750 000;

3. where works are concerned, the essential characteristics of the public contracts which they intend to award, the estimated value of which is equal to or greater than the threshold specified in Paragraph 1 of Article 12 of this Act.

(3) Under Points 1 and 2 of the preceding paragraph, a prior information notice shall be sent to the Office for Official Publications of the European Communities or published on the procurement portal as soon as possible after the adoption of the budget.

(4) Under Point 3 of Paragraph 2 hereof, the prior information notice shall be sent to the Office for Official Publications of the European Communities or published on the procurement portal as soon as possible after the decision approving the planning of the works contracts.

(5) The contracting authority that publishes a prior information notice on the procurement portal shall send the Office for Official Publications of the European Communities, electronically, a notice of the publication of the prior information notice on the procurement portal, in accordance with the format and procedure for sending notices indicated in Point 2 of the Information Concerning Publication.

(6) Prior information notices may be published on the procurement portal once the notice of their publication in that form is dispatched to the Office for Official Publications of the European Communities. Prior information notices shall include the date of their dispatch to the Office for Official Publications of the European Communities.

## **Article 61**

### **(Contract notices under the tender collection procedure with prior publication of a contract notice)**

(1) Contract notices under the tender collection procedure with prior publication of a contract notice shall be sent by the contracting authority for publication to the procurement portal.

(2) The contract notices under the tender collection procedure with prior publication of a contract notice referred to in the preceding paragraph shall include the following information:

- a) details of the contracting authority;
- b) subject matter of the public contract and, where appropriate, its description;
- c) details of the tender collection procedure with prior publication of a contract notice: whether the contracting authority will use a two-phase procedure, a dialogue with the tenderers in the first phase, or involve negotiations in the procedure;
- d) indication of setting up a dynamic purchasing system, where appropriate;
- e) conditions to be fulfilled;
- f) criteria to be used for comparing tenders;
- g) time limit for the submission of requests and/or tenders;
- h) indication of whether the contract notice acts as contract documents.

## **Article 62**

### **(Contract award notice)**

(1) The contracting authority is bound to publish notices of the award of public contracts the value which is equal to or greater than those laid down in Paragraph 1 of Article 12 of this Act within 48 days after the award of the contract.

(2) In the case of public contracts for services from the List of services B, the contracting authority shall specify in their notices whether it agrees on the publication of their content.

(3) The contracting authority is not bound to publish information on public contracts which would impede law enforcement, harm the commercial interests of economic operators, public or private, or might prejudice fair competition between them.

## **Article 63**

### **(Contract award notices under the tender collection procedure with prior publication of a contract notice)**

(1) Contract notices under the tender collection procedure for publication shall be sent by the contracting authority to the procurement portal.

(2) The notices referred to in the preceding paragraph shall include the following information:

- a) details of the contracting authority;
- b) subject matter of the public contract and, where appropriate, its description;
- c) details of the tender collection procedure with prior publication of a contract notice;
- d) criteria used for comparing tenders;
- e) indication of the successful tenderer or party to the framework agreement;

- f) contract value, and
- g) term of the contract.

## **Article 64**

### **(Non-mandatory publication)**

The contracting authority may, in accordance with the two preceding Articles, also publish notices of public contracts which are not subject to publication under this Act.

## **Chapter 7**

### **COMMUNICATION**

## **Article 65**

### **(Rules applicable to communication)**

(1) The contracting authority may send all communications and information relating to a public procurement procedure by post, fax or electronic means. In the case of requests to participate, communications and information may also be transmitted by telephone.

(2) The means of communication chosen by the contracting authority must be generally available to all economic operators and not restrict their access to the public procurement procedure.

(3) Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(4) The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

(5) Economic operators shall transmit requests to participate in one of the following ways:

- a) in writing or by telephone;
- b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;
- c) the contracting authority may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation, must be stated by the contracting authority in the contract notice.

## **Article 66**

### **(Electronic transmission and receipt of tenders)**

The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

a) any information regarding the contract documents, necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested economic operators. In addition, devices for the electronic transmission and receipt of tenders and requests to participate shall comply with the Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests which form an annex to a decree to be issued by the Government (hereinafter: Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests);

b) tenderers or candidates shall undertake to submit paper documents, certificates and declarations fulfilling the conditions under Articles 42 to 47 of this Act, if they do not exist in electronic format, by the expiry of the time limit laid down for submission of tenders or requests to participate.

## **Article 67**

### **(Electronic tenders)**

(1) Tenderers may submit their tenders electronically if this is supported by the information system used by the contracting authority.

(2) The contracting authority shall inform tenderers of the possibility of electronic submission of tenders in the contract documents. The information system of the contracting authority must ensure a technologically independent receipt of tenders.

(3) The structure of the information system used by the contracting authority must enable the opening of and access to tenders only after the time limits set for the receipt of tenders have expired. The information system of the contracting authority must keep track of all activity within the system in the form of electronic evidence prohibiting any later changes.

(4) Electronic tenders must be accompanied by a secure electronic signature based on a qualified certificate.

(5) Electronic tenders must be accompanied by time stamps.

(6) The request of the contracting authority to receive tenders in electronic format shall by no means prevent or restrict competition among tenderers. The information system of the contracting authority must enable sending return receipts for the electronic tenders to the tenderers.

(7) The information system of the contracting authority must prevent denial of a tenderer's identity (undeniability).

(8) The information system of the contracting authority must enable archiving of electronic tenders in compliance with this Act, with the law governing electronic commerce and electronic signature, and with the law governing the preservation of documentary and archival materials and archives.

## **Part Two**

### **CONDUCT OF PUBLIC PROCUREMENT PROCEDURES**

## **Chapter One**

### **COMMON PROVISIONS**

#### **Article 68**

##### **(Technical Commission)**

The contracting authority may appoint a Technical Commission to manage a public procurement procedure. A Technical Commission may take part throughout the whole or part of the public procurement procedure.

#### **Article 69**

##### **(Technical dialogue)**

Before launching a public procurement procedure, the contracting authority may lead a technical dialogue with economic operators to seek or accept advice which may be used in the preparation of the contract documents, provided that such advice or recommendations do not prevent or restrict competition.

#### **Article 70**

##### **(Phases of the procedure)**

(1) Public procurement procedure shall consist of the following phases, unless otherwise provided in this Act for a particular type of procedure:

1. prior information notice, where appropriate;
2. decision to initiate the procedure;
3. preparation of contract documents;
4. publication of the contract notice;
5. submission and opening of tenders;
6. examination and evaluation of tenders;
7. contract award decision;
8. publication of the contract award notice.

(2) In its decision to initiate the procedure, the contracting authority shall specify the source of funds for financing public contracts.

#### **Article 71**

##### **(Preparation of contract documents and draft contract)**

(1) Unless otherwise provided in this Act for a particular type of procedure, contract documents may include the following elements:

1. invitation to tender;
2. instructions to tenderers on the elaboration of the tender;
3. requirements to assess ability and instructions to prove tenderers' ability;

4. general and specific conditions governing the contract;
5. elements for the preparation of a pro-forma invoice with instructions for its completion;
6. financial or other types of insurance, if any.

(2) Taking into account the subject matter of the contract, the contract documents may also include other documents required for the preparation of the tender. Data contained in the contract documents shall be the same as those indicated in the published contract notice. The information provided by the contracting authority to economic operators that take part in the contract award procedure shall also be regarded as part of the contract documents.

## **Article 72**

### **(Publication of the contract notice and contract documents)**

The contracting authority is bound to publish contract notices and contract documents, including their amendments, on or through the procurement portal. Access to and examination of contract documents on the procurement portal and their retrieval shall be free of charge. The contracting authority shall enable access to and retrieval of those parts of contract documents which for technical reasons are not accessible on or through the procurement portal.

## **Article 73**

### **(Submission of tenders)**

(1) Timely submission of tenders means that tenders shall be submitted to the contracting authority within the time limit set for the receipt of tenders.

(2) The date and time of tender submission shall be laid down in the contract notice and contract documents.

(3) Where a tender exceeds the time limit set for the receipt of tenders, such submissions shall be considered late. Such tenders shall be returned to tenderers after the completion of the opening procedure, unopened and marked as late.

(4) Tenders shall be submitted personally, by post, fax, electronic means or any other appropriate means in accordance with the requirements of the contracting authority.

(5) Upon receipt of a tender, the contracting authority shall mark the date and time of the receipt and, at the request of the tenderer, issue an acknowledgement of receipt.

## **Article 74**

### **(Tenders for lots)**

Where the contracting authority allows the submission of tenders for separate lots, the tenderers shall indicate whether the tenders refer to the entire contract or to separate lots only. Even though a tender is submitted for all lots, it shall be done in such a way as to allow evaluation of separate lots. After the evaluation of tenders by

separate lots and the evaluation of all lots, the contracting authority shall make a contract with one or more tenderers offering the most favourable tender combination.

## **Article 75**

### **(Public opening of tenders)**

Public opening of tenders shall be held in cases where the estimated value of the public contracts is equal to or greater than the value laid down in Paragraph 2 of Article 12 of this Act.

## **Article 76**

### **(Tender opening sessions)**

(1) Tender opening sessions shall be conducted by the contracting authority. The opening session shall be held at the place and time indicated in the published contract notice and in the contract documents. Minutes of the tender opening session shall be taken. Tenders shall be opened in order of receipt.

(2) Minutes of the tender opening shall indicate the following details:

- name of the tenderer or, in the case of anonymous calls for tender, his code;
- variants, if admitted, or tenders including options;
- tender price and discounts, if any.

If so decided by the contracting authority, other tender details may also be noted in the minutes.

(3) If the minutes of the tender opening are not served on the tenderers' authorised representatives at the session, the contracting authority shall pass them on to all the tenderers concerned within a maximum of three working days.

## **Article 77**

### **(Examination of tender)**

(1) The contracting authority must, prior to the awarding of the contract at the latest, examine the existence and content of data provided in the selected tender and other information provided therein.

(2) Where the contracting authority in the public procurement procedure establishes that the proof submitted by a tenderer in a tender is false and/or misleading, it is obliged to eliminate the said tenderer from further public procurement procedure. The contracting authority is obliged to notify thereupon the ministry responsible for finance, which keeps records of tenderers with negative references. Such tenderer or subcontractor shall be eliminated from public procurement procedures for a period of three years when the subject of the contract is goods or services, or for a period of five years when the subject of the contract is work. The ministry responsible for finance shall publish the list of tenderers with negative references on its website.

## **Article 78**

### **(Admissible amendments to a tender)**

(1) Where the contracting authority establishes, either by itself or upon the proposal of an economic operator, that a tender is formally incomplete, it must admit and enable the amendment of such tender. The contracting authority shall require the amendment of a tender from a tenderer only where it cannot examine certain facts by itself. Where the tenderer fails to make appropriate amendments within the time limit set by the contracting authority, the contracting authority must eliminate such tender.

(2) The tenderer must not change its price and tender in the framework of criteria and that part of the tender relating to technical specifications of the subject of public contract, or those elements of the tender which may cause a different classification of its tender in regard to other tenders received by the contracting authority in the public procurement procedure.

## **Article 79**

### **(Decision on the award of contract)**

(1) After the examination and evaluation of tenders, the contracting authority shall decide on the award of contract within a reasonable time limit, which may not exceed 60 days. It shall justify its decision and provide the relevant conclusions and reasons. The contracting authority must notify the tenderers of its decision in writing by mail, fax or electronic means.

(2) Upon written notification of a tenderer regarding the decision of the contracting authority, submitted within five days after the receipt of the notification on the award of contract, the contracting authority may, after previously establishing validity, amend its decision and adopt a new one pursuant to the provision referred to in the preceding paragraph. The time limit to submit a request for revision shall be calculated from the day of receipt of the new decision on the award of contract.

(3) Where the decision on the award of contract does not contain the following:

- reasons for rejection of the tender of a tenderer which was not selected, and
- the advantages of the accepted tender in relation to a tenderer which was not selected, a tenderer which was not selected may submit a request to the contracting authority for an additional explanation of the decision on the award of contract, which must clearly state the subject of the contracting authority's explanation. Such request may be submitted within five days following the receipt of the decision of the contracting authority. Where the request is not reasoned, the contracting authority shall invite the tenderer to amend it in the time limit set by the contracting authority. If the tenderer fails to amend the request, the contracting authority shall discard it. The contracting authority must send the additional explanation of the decision or the decision on discarding the request to the tenderer within five days. The time limit to submit a request for revision shall be calculated, pursuant to the law regulating the revision of the procedures to award public contracts, from the day of receipt of the additional explanation of the decision.

(4) The contracting authority may refuse to provide an additional explanation of its decision, in full or in part, if the disclosure of such information is contrary to the rules, or could disclose a business secret of the tenderer, or if the information provided would affect the rules of fair competition among tenderers or other parties in the

procedure according to the provisions of the Data Protection Act. The contracting authority may not refuse to disclose all data related to the public procurement procedure at the request of the Commission responsible for the revision of public procurement procedures.

## **Article 80**

### **(Elimination of tenders, suspension of procedure, rejection of all tenders)**

(1) In the public contract award procedure, the contracting authority must, after the examination and amendment of tenders pursuant to Article 87 of this Act, eliminate all incomplete tenders.

(2) The contracting authority may suspend the public procurement procedure at any time.

(3) The contracting authority may reject all tenders. Where the contracting authority has rejected all tenders, it must immediately send written notification to tenderers or candidates of its decision and provide the reasons for having rejected all tenders, or of its decision to initiate a new procedure, and notify the government or its supervisory authority. The decision must also be sent for publication on the procurement portal.

(4) In the case of contracts whose value equals or exceeds the value referred to in Paragraph 1 of Article 12 of this Act, the contracting authority must also notify the Commission and forward the decision to the Office for Official Publications of the European Communities.

## **Chapter Two**

### **SPECIAL PROVISIONS IN PUBLIC PROCUREMENT PROCEDURES**

#### **1.1. Special provisions for open procedure**

### **Article 81**

#### **(Amendments and clarifications to contract documents)**

(1) After the expiry of the time limit for the receipt of tenders the contracting authority may no longer amend the contract documents.

(2) The contracting authorities are obliged to provide additional explanations relating to the contract documents on or through the procurement portal no later than six days before the expiry of the time limit for the submission of offers, provided that the request was issued on time.

#### **1.2. Special provisions for restricted procedure**

### **Article 82**

#### **(Preparation of contract documents and draft contract)**

(1) The contracting authority shall prepare separate contract documents for every phase of the procedure. The contract documents for the first phase shall contain the following:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. indication of the number of candidates to be invited to tender, when applicable;
4. conditions relating to the subject matter of the contract and other conditions to be met by tenderers for the execution of public contract;
5. indication of criteria of selection, where applicable;
6. other.

(2) The contract documents for the second phase shall contain the following:

1. invitation to tender;
2. instructions to tenderers on the elaboration of the tender;
3. general and specific conditions which will be an integral part of the contract;
4. elements for the preparation of a pro-forma invoice with instructions on how to complete it;
5. description and evaluation of selection criteria;
6. other.

### **Article 83**

#### **(Amendments and clarifications to contract documents)**

The contracting authorities are obliged to provide additional explanations relating to the contract documents on or through the procurement portal no later than four days before the expiry of the time limit for the receipt of tenders, provided that the request was issued on time.

### **Article 84**

#### **(Notification on recognition of suitability)**

The contracting authority must send a notification on the recognition of suitability or on its rejection to those economic operators which have submitted a tender.

### **Article 85**

#### **(Invitation to submit a tender)**

(1) Where a public contract is awarded under the restricted procedure, the contracting authority must invite all candidates to submit their tenders at the same time. The invitation must be sent to the candidates in written form.

(2) The invitation to candidates must contain information on the publication of contract documents.

(3) The invitation to candidates shall also be the same if the contract documents are handled by another entity and not by the contracting authority responsible for public procurement.

### **1.3. Special provisions for competitive dialogue**

#### **Article 86**

##### **(Preparation of contract documents)**

(1) The contracting authority must provide needs and requirements related to the subject matter of contract in the notification of the contract and/or in the contract documents.

(2) The contracting authority may provide that the procedure shall be implemented in successive phases with the intention of eliminating offered solutions less successful in meeting the provided and described criteria indicated in the publication or in the contract documents. The contracting authority is obliged to indicate the aforementioned possibility in the contract notice or in the contract documents.

(3) The contracting authority shall prepare separate contract documents for every stage of the procedure. The contract documents for the first stage shall contain the following:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. indication of criteria;
4. indication of the number of candidates to be invited to submit an offer;
5. description of the subject matter of the contract and aims to be attained by the contracting authority for the execution of contract;
6. conditions for the first phase;
7. other.

(4) The contract documents for other phases shall contain the following:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. contract documents prepared on the basis of the completed dialogue;
4. elements for the preparation of a pro-forma invoice with instructions on how to complete it;
5. description and evaluation of selection criteria;
6. other.

#### **Article 87**

##### **(Invitation to submit a tender)**

(1) The contracting authority must invite candidates to submit tenders pursuant to Paragraph 1 of Article 85 of this Act. In the event of competitive dialogue, the invitation must also contain the following:

1. a reference to the contract notice published;
2. indication of the final date for receipt of offers, the address to which they must be sent and the language or languages in which they must be drawn up;
3. in the event of competitive dialogue the date and address set for the start of the dialogue, and language or languages in which it will be conducted;

4. reference to all potentially enclosed documents to be submitted either as a supplement to the statements of the tenderers or as a supplement to information pursuant to the conditions referred to in Articles 44 and 45 of this Act;

5. relative relevance of criteria for awarding the contract or, where applicable, descending order of relevance of these criteria where this is not defined in the published contract notice or in the contract documents.

(2) In the case of contracts awarded pursuant to the provision referred to in Article 27 of this Act, the information referred to in Paragraph 1 shall not be provided in the invitation to participate in the dialogue but in the invitation to submit a tender.

(3) The invitation to candidates shall also be the same where the contract documents are handled by another entity and not by the contracting authority responsible for public procurement.

#### **1.4. Special provisions for negotiated procedure after preliminary publication of a contract notice**

##### **Article 88**

###### **(Preparation of contract documents and draft contract)**

(1) The contracting authority may provide that the negotiated procedure shall be implemented in successive phases in order to reduce the number of negotiated solutions by applying selection criteria. The contracting authority must provide the use and manner of this option in the contract notice or in the contract documents.

(2) Contract documents may contain:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. conditions to be met by the tenderer;
4. description of the subject matter of the contract and aims to be attained by the contracting authority with the execution of contract;
5. general requirements of the contract;
6. elements for the preparation of a pro-forma invoice with instructions on how to complete it.

##### **Article 89**

###### **(Invitation to negotiate after prior publication of a contract notice)**

(1) After the examination of tenders, the contracting authority shall invite the tenderers meeting the required conditions to negotiate pursuant to Paragraph 1 of Article 85 of this Act. The invitation must contain at least the information referred to in Paragraph 1 of Article 87 of this Act.

(2) The contracting authority shall negotiate with tenderers on all conditions for the award of contract defined in the tenders submitted by tenderers in order to adapt these to the requirements provided in the publication or in the tendering documentation, with the aim of selecting the most advantageous tender and with the application of the criteria set in advance.

(3) In negotiations, the contracting authority must grant the same treatment to all tenderers. In particular, it must not provide information to participants in negotiations in a discriminating manner which may favour certain tenderers.

(4) After the completed negotiations, the contracting authority shall request the submission of a final tender from the tenderers in accordance with the results of the negotiations. Where the contracting authority conducts a negotiated procedure in several successive phases, the above shall separately apply to each phase.

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

### **Article 90**

#### **(Time limit for the receipt of tender)**

The contracting authority shall set the time limit for the receipt of the tender with regard to the reasons for which it may use the negotiated procedure without prior publication of a contract notice and regarding the subject of the contract.

### **Article 91**

#### **(Invitation to negotiate without prior publication of a contract notice)**

In the negotiated procedure, the contracting authority shall act pursuant to Article 89 of this Act.

## **1.6. Special provisions for tendering procedure with prior publication of a contract notice**

### **Article 92**

#### **(Time limits for receipt of tenders)**

(1) The time limit for the receipt of tenders must be such as to allow an economic operator to prepare a complete tender.

(2) Where the contracting authority estimates on its own initiative or on the initiative of an economic operator that this is necessary, it shall extend the time limit for the receipt of tenders accordingly.

## **1.6. Tender collection procedure with prior publication of a contract notice**

### **Article 93**

#### **(Contract documents)**

(1) In the tender collection procedure, the contracting authority shall prepare the contract documents, especially the conditions forming a constituent part of the contract, where necessary and as applicable regarding the manner of implementing the procedure.

(2) The contracting authority shall not be obliged to prepare separate contract documents where all necessary information and bases for submitting a tender are provided in the publication of the contract notice following the tender collection procedure with prior publication of a contract notice.

#### **Article 94**

##### **(Documentation of contract award procedure)**

(1) Documentation of the procedure of individual award of contract, which must be kept by the contracting authority, shall consist of the following:

- publication of contract notice or invitation to submit a tender,
- contract documents where applicable,
- submitted tenders.

(2) Furthermore, the documentation shall consist of other documents regarding the method of executing the contract.

#### **1.7. Special provisions for the tender collection procedure**

#### **Article 95**

##### **(Tender collection procedure)**

The contracting authority must provide a written and documented explanation of the selection of the most favourable tender and respect the basic principles of public procurement.

### **Part Three**

## **RULES GOVERNING DESIGN CONTESTS**

#### **Article 96**

##### **(Scope of application)**

(1) Design contests shall be organised by:

a) contracting authorities from the List of contracting authorities which are state authorities and bodies within them, and local communities which are the authorities of the Republic of Slovenia and bodies within them, where the public contract value equals or exceeds EUR 137 000;

b) contracting authorities not listed on the List of contracting authorities which are state authorities and bodies within them, and local communities where the public contract value equals or exceeds EUR 211 000;

c) all contracting authorities where the contract value equals or exceeds EUR 211 000, where contracts refer to the services in Category 8 from the List of services A, telecommunication services in Category 5 whose CPV reference numbers are the same as CPC reference numbers 7524, 7525 and 7526, and/or to the services from the List of services B.

(2) The provisions of this part of this Act shall apply to:

- a) design contests organised as part of the service contract awarding procedure;
- b) design contests including the award of prizes and payments to participants.

(3) In the cases referred to in Point a) from the preceding paragraph, the limit value refers to the estimated value of the service contract net of VAT, including all potential awards and/or payments to participants. In the cases referred to in Point b) from the preceding paragraph, the limit value refers to the total sum of awards and payments, including the estimated value of the service contracts net of VAT, which may be submitted subsequently pursuant to Paragraph 5 of Article 29 of this Act, provided the contracting authority does not exclude such contract award in the design contest notice.

## **Article 97**

### **(Exclusion from scope)**

Provisions of this part of this Act shall not apply to:

a) design contests in terms of this Act organised by contracting authorities engaged in one or more of the activities referred to in Articles 5 to 9 of the Public procurement in water management, energy transport and postal services area act (PPWMETPSAA) and organised with the aim of implementing these activities; furthermore, it shall not apply to design contests excluded from the scope of application of this Act. Nevertheless, this Act shall continue to apply to design contests organised by contracting authorities engaged in one or more activities referred to in Article 8 of the PPWMETPSAA, and organised with the aim of implementing these activities where required by field legislation;

b) design contests organised in the same cases as those referred to in Points 2, 3 and 4 of Paragraph 1 of Article 17 of this Act for public service contracts.

## **Article 98**

### **(General provisions)**

(1) The contract authority must communicate the rules of organisation and implementation of design contests to all parties interested in participating in the design contests.

(2) The right to participate in design contests must not be restricted:

- a) to the territory or a part of the territory of a Member State;
- b) on the grounds that the participants must be natural or legal persons pursuant to the legislation of the Member State organising the design contest.

## **Article 99**

### **(Publications)**

(1) Where contract authorities wish to organise a design contest, they must publish it.

(2) Contracting authorities which organise design contests are obliged to publish the results of the competition pursuant to the provisions of this Act. The contracting authority must keep evidence of the date of dispatch for publication. The contracting authority is not obliged to publish the information on the results of the design contest where its publication would hinder the implementation of the Act, conflict with the public interest, intervene in the legitimate business interests of individual public or private companies or harm fair competition among service providers.

(3) Furthermore, Article 64 of this Act shall apply to design contests.

## **Article 100**

### **(Form and manner of publication of design contests)**

(1) Publications referred to in the preceding article must contain information from the List of information to be included in notices on design contests annexed to the Decree issued by the Government (hereinafter: List of information to be included in notices on design contests), in accordance with standard notices.

(2) Notices shall be made in accordance with the provisions of this Act.

## **Article 101**

### **(Means of communication)**

(1) Paragraphs 1, 2 and 4 of Article 65 of this Act shall apply to all communications concerning design contests.

(2) The contracting authority must ensure the communication, exchange and storage of information in such a way as to ensure that the integrity of data and the confidentiality of all information communicated by participants in a competition are preserved. The jury may not ascertain the content of plans and projects before the expiry of the time limit for their submission.

(3) All information regarding the contract documents necessary for the electronic presentation of plans and projects, including encryption, shall be available to all interested economic operators. In addition, devices for the electronic receipt of plans and projects shall comply with the requirements of the Requirements concerning the equipment for the electronic receipt of offers, requests to participate and plans and projects in design contests.

## **Article 102**

### **(Composition of jury)**

The jury shall be composed exclusively of natural persons who are independent of the participants in the competition. The jury shall be composed of a chairperson, alternate and at least two members. Where the contracting authority requests particular expert skills and experience from the participants in a competition, at least one-third of the members of the jury must have these or equal skills and experience.

## **Article 103**

### **(Selection of competitors)**

Where a design contest is restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

### **Article 104**

#### **(Decisions of jury)**

(1) The jury shall be autonomous in adopting its decisions or opinions.

(2) The jury must examine plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the competition notice.

(3) The jury shall classify the projects in a report, signed by its members, according to the evaluation of each project, together with its remarks and any points which may need clarification.

(4) The jury must preserve the anonymity of participants in the competition until it has reached its opinion or decision.

(5) Candidates may be invited, if need be, to a dialogue and answer the questions recorded by the jury in the report referred to in Paragraph 3 of this Article in order to clarify any aspects of the projects.

(6) The jury must draw up exhaustive minutes of the dialogue between jury members and candidates.

### **Part Four**

## **REPORTS AND STATISTICS**

### **Chapter One**

#### **REPORTS**

### **Article 105**

#### **(Final report on the contract award)**

(1) For every awarded contract, concluded framework agreement, and every establishment of a dynamic purchasing system, the contracting authority shall draw up a written report, which shall include principally the following:

a) name and address of the contracting authority, subject matter and value of the contract, framework agreement or dynamic purchasing system;

(b) names of the selected candidates or tenderers and the reasons for their selection, and the ranking of tenders demonstrating which of them meets the set criteria to the greatest extent, or the further order in terms of the extent of meeting the set criteria;

c) names of the candidates or tenderers rejected and the reasons for their rejection;

d) reasons for the rejection of tenders found to be abnormally low;

(e) name of the selected tenderer and the reasons why his tender was selected and, insofar as this is known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;

f) for negotiated procedures, the circumstances referred to in Articles 28 and 29 of this Act which justify the use of these procedures;

g) for competitive dialogue, the circumstances referred to in Article 27 justifying the use of this procedure;

h) if necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system.

(2) The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

(3) The report, or the main features of it, shall be communicated to the Commission if it so requests.

## **Chapter Two**

### **STATISTICS**

#### **Article 106**

##### **(statistical report)**

(1) Contracting authorities must report to the ministry responsible for finance on the public contracts awarded in the previous year by the end of February of the current year. On the basis of the reports submitted, the ministry responsible for finance shall prepare a statistical report on awarded public contracts by 30 September of the current year at the latest, and submit it for approval to the Government.

(2) The Government shall forward to the Commission a statistical report on awarded public contracts, prepared pursuant to Article 107 of this Act and separately addressing public supply, services and works contracts awarded by contracting authorities during the preceding year, by no later than 31 October of the current year.

#### **Article 107**

##### **(Content of statistical report)**

(1) For each contracting authority listed in the List of public law entities and categories of public law entities and in the List of contracting authorities which are state authorities and bodies within them and local communities, the statistical report shall contain at least:

a) the number and value of awarded contracts;

b) the number and total value of contracts awarded pursuant to limitations in the Agreement on Government Procurement.

(2) As far as possible, the data referred to in Point a) of the preceding paragraph shall be broken down by:

- the contract award procedures used by the contracting authority; and
- reference numbers or categories of CPV nomenclature for each of these procedures, works as given in the List of activities in the construction field and products and services as given in the List of services;
- name, head office and nationality of the economic operator to which the contract was awarded.

(3) Where contracts have been awarded according to the negotiated procedure, the data referred to in Point a) of Paragraph 1 of this Article shall be broken down further according to the circumstances referred to in Articles 28 and 29 of this Act and shall specify the number and value of contracts awarded by the Republic of Slovenia and the country of the selected tenderer.

(4) For each category of contracting authority not listed on the List of contracting authorities which are Government authorities and bodies within these Government authorities and local communities, the statistical report shall contain at least:

- a) the number and value of the contracts awarded, broken down in accordance with Paragraph 2 of this Article;
- b) the total value of contracts awarded pursuant to limitations in the Agreement on Government Procurement.

(5) The statistical report shall contain any other statistical information required under the Agreement on Government Procurement.

(6) The minister responsible for finance shall issue the Rules on the types and method of gathering information about awarded public procurement contracts in the previous year.

## **Part Five**

### **BODY FOR MISDEMEANOURS**

#### **Article 108**

##### **(Body for misdemeanours)**

(1) The body competent for the detection of misdemeanours of contracting authorities shall be the National Audit Commission for Auditing of Public Procurement Award Procedures (hereinafter: National Audit Commission).

(2) Violation procedures shall be led and decided on by an official of the National Audit Commission who meets the conditions stipulated by the General Offences Act and regulations adopted on the basis therein. The official shall be appointed by the chairperson of the National Audit Commission pursuant to the General Offences Act.

## **Part Six**

### **PENAL PROVISIONS**

#### **Article 109**

### **(Penal provisions)**

(1) A fine of EUR 5 000 to 350 000 shall be imposed on a contracting authority if:

1. it awards a contract without implementing an appropriate procedure, other than in cases permitted by law (Articles 25 to 30 of the Act);

2. it fails to observe the time limits for publication and submission of tenders determined in this Act (Articles 50 to 56 of the Act);

3. it establishes selection criteria contrary to this Act (Article 48 of the Act);

4. it chooses the method of determining value in order to avoid the procedure of public contract award for reasons of lower price (Article 14 of the Act);

5. where the criterion for award is that of the most economically advantageous tender, it alters the subject matter of the public contract during the performance of the contract in such a way that the selected tender ceases to be the most economically advantageous tender due to this alteration (Article 48 of the Act);

6. the provisions of the public award contract diverge in their essential elements from the provisions indicated in the contract documents;

7. it awards a public contract to a tenderer from the list of tenderers with negative references (Paragraph 2 of Article 77 of the Act).

(2) A fine of EUR 2 000 to 12 000 shall be imposed on the person responsible for the contracting authority who has committed an act referred to in Paragraph 1 of this Article.

### **Article 110**

#### **(Null and void contracts)**

Public procurement contracts shall be null and void in the following cases:

- when concluded contrary to the awarding procedures and conduct prescribed by this Act, which contracting authorities have broken up into several minor parts in order to avoid the award of contract pursuant to this Act;

- when concluded in order to settle claims and liabilities without carrying out the contract award procedure;

- when contracting authorities have awarded a contract under other terms than those prescribed by this Act, or concluded contracts with a tenderer which was not selected as the most favourable;

- when contracting authorities have awarded the execution of contract, or authorised a third person to this effect, or a person that is not a contracting authority under this Act in order to avoid the application of this Act;

- when the initial contract has been amended contrary to the provisions of this Act;

- when concluded contrary to the decision of the authority responsible for the audit of public procurement procedures;

- when concluded without previously performing a contract award procedure which the contracting authorities should have performed under the provisions of this Act;

- when concluded on the content resulting from a committed criminal offence of a tenderer or a person responsible for him.

### **Part Seven**

## **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 111**

#### **(Regulations that cease to be in force)**

(1) On the day of entry into force of this Act, the Public Procurement Act (Uradni list RS, Nos 39/00, 102/00, 2/04 and 36/04) and the regulations issued on its basis:

- Rules on the contents, conditions and restrictions for carrying out electronic auction in public contract award procedures (Uradni list RS, No 130/04);

- Rules laying down the equivalent amounts in tolar above which public contracts need to be published in the Official Journal of European Communities (Uradni list RS, No 40/04);

- Rules on harmonised forms for all types of publications to be made by contracting entities under the Public Procurement Act (Uradni list RS, No 44/04);

- Decree on the common bases for the preparation of the internal act for the award of low-value public contracts (Uradni list RS, No 84/04);

- Decree on the List of Clients according to the Public Procurement Act (Uradni list RS, No 73/04);

- Rules on the types and method of gathering information and on the single forms for communicating information about awarded public procurement contracts in the previous year (Uradni list RS, No 41/05);

- Rules on determining when a tender is to be considered irregular, inadequate or unacceptable (Uradni list RS, No 33/04);

Rules on the detailed contents of the Decision on the commencement of the public procurement award procedure (Uradni list RS, Nos 32/04 and 87/04);

- Rules on types of financial security used by individuals as surety for the fulfilment of their obligations in public contract-awarding procedure (Uradni list RS, Nos 25/04 and 87/04);

- Instructions on the procedure of opening bids (Uradni list RS, No 86/01).

(2) On the day this Act enters into force, Article 20 of the Act Regulating the Implementation of the Budget of the Republic of Slovenia for 2006 and 2007 (Uradni list RS, No 116/01) shall cease to apply.

(2) Pending the entry into force of this Act and regulations issued on its basis, the regulations referred to in Paragraphs 1 and 2 of this Article shall continue to apply, except where in contravention with this Act.

### **Article 112**

#### **(Conclusion of procedures initiated under the previous Act)**

(1) Public contract award procedures whose contract notices were published prior to the entry into force of this Act shall be carried out in accordance with the regulations applicable to date.

(2) The second phase of a restricted procedure or public contract award following a negotiated procedure shall be implemented in compliance with this Act when the contracting authority has not yet supplied the contract documents to the candidates.

## **Article 113**

### **(Establishment of procurement portal)**

(1) Besides the publication of notices in the Official Journal of the European Union, depending on the thresholds, notices concerning design contests shall be published in the *Uradni list Republike Slovenije* pending the establishment of the procurement portal.

(2) The ministry responsible for finance shall ensure the establishment of the procurement portal within six months of the entry into force of this Act.

## **Article 114**

### **(Publications pending the establishment of the portal)**

(1) Pending the establishment of the procurement portal, the contracting authority must observe the following time limits for the receipt of requests to participate and the receipt of tenders:

- in the case referred to in Article 51, the minimum time limit for the receipt of tenders shall be 52 days;

- in the case referred to in Paragraph 1 of Article 52 and Paragraph 2 of Article 54, the minimum time limit for the receipt of tenders shall be 36 days;

- in the case referred to in Point 1 of Paragraph 1 of Articles 54 and 55, the time limit for the receipt of requests to participate shall be 37 days from the date on which the contract notice was sent for publication;

- in the case referred to in Point 2 of Paragraph 1 of Article 54, the time limit for the receipt of tenders shall be 40 days from the date on which the invitation was sent.

(2) Pending the establishment of the procurement portal, notices not transmitted by electronic means in accordance with the format and procedure for transmission indicated in Point 2 of the Information Concerning Publication shall be published within 12 days following transmission or, in the event of shortened time limits for reasons of urgency, within 5 days following transmission.

(3) The content of notices not transmitted by electronic means in accordance with the format and procedure for transmission indicated in Point 2 of the Information Concerning Publication shall be limited to approximately 650 words.

## **Article 115**

### **(Regulations based on this Act)**

(1) The minister responsible for finance shall issue the Rules referred to in Article 107 of this Act within 3 months following the entry into force of this Act.

(2) The Government shall issue the Rule referred to in Paragraph 5 of Article 3 and Paragraph 6 of Article 4 of this Act within 3 months following the entry into force of this Act.

(3) The Government shall issue the Regulation referred to in Paragraph 1 of Article 2, Paragraph 4 of Article 3, Paragraph 1 of Article 12, Paragraph 4 of Article 16,

Paragraph 1 of Article 37, Paragraph 3 of Articles 52, 56 and 66 of this Act within 15 days following the entry into force of this Act.

### **Article 116**

#### **(Entry into force)**

This Act shall enter into force on the fifteenth day after its publication in *Uradni list Republike Slovenije* and shall begin to apply 15 days after its entering into force.

No: 411-07/06-10/1

Done at Ljubljana, 23 November 2006

EPA 1029-IV

President  
of the National Assembly  
of the Republic of Slovenia  
France Cukjati, MD (s)