

Public Procurement Act

Promulgated, SG No. 28/ 6.04.2004, effective 1.10.2004, amended and supplemented, SG No. 53/22.06.2004, effective 1.10.2004, SG No. 31/8.04.2005, effective 1.05.2005, supplemented, SG No. 34/19.04.2005, effective 1.06.2005, amended, SG No. 105/29.12.2005, effective 1.01.2006, supplemented, SG No. 18/28.02.2006, amended, SG No. 33/21.04.2006, SG No. 37/5.05.2006, effective 1.07.2006, SG No. 79/29.09.2006, SG No. 59/20.07.2007, effective 1.03.2008, amended and supplemented, SG No. 94/31.10.2008, effective 1.01.2009, supplemented, SG No. 98/14.11.2008, amended, SG No. 102/28.11.2008, amended and supplemented, SG No. 24/31.03.2009, amended, SG No. 82/16.10.2009, effective 16.10.2009, amended and supplemented, SG No. 52/9.07.2010, amended, SG No. 54/16.07.2010, SG No. 97/10.12.2010, effective 10.12.2010, supplemented, SG No. 98/14.12.2010, SG No. 99/17.12.2010, effective 1.01.2011, SG No. 19/8.03.2011, effective 19.04.2011, SG No. 43/7.06.2011, effective 15.06.2011, amended, SG No. 73/20.09.2011, effective 20.10.2011, amended and supplemented, SG No. 93/25.11.2011, effective 26.02.2012

Text in Bulgarian: Закон за обществените поръчки

Part One COMMON RULES

Chapter One GENERAL DISPOSITIONS

Section I Purpose and Principles

Article 1. This Act establishes the principles, terms and procedure for the award of public procurements for the purpose of ensuring efficiency in the spending of on-budget and off-budget resources, as well as of the resources associated with the carrying out of relevant public activities specified in the Act.

Article 2. (1) (Redesignated from Article 2 and amended, SG No. 37/2006) Public procurements shall be awarded according to the procedures established in this Act, in accordance with the following principles:

1. public openness and transparency;
2. (Amended, SG No. 37/2006) free and fair competition;
3. (Amended, SG No. 37/2006) equality and non-discrimination.

(2) (New, SG No. 37/2006) Where a contracting authority grants special or exclusive rights to carry out a public service activity to a person other than a contracting authority, the act by which these rights are granted shall provide that, in respect of the supply contracts which it awards to third parties as part of its activities, the person concerned must comply with the principle of non-discrimination on the basis of nationality.

Section II

Public Procurement Objects and Parties

Article 3. (1) The following shall be objects of public procurement:

1. (Amended, SG No. 37/2006) supply of goods, performed by means of purchase, lease, rental with or without option to buy, or hire purchase, as well as all preliminary operations as shall be necessary for the actual use of the products, such as installation, testing of machinery and plant, etc.;

2. provision of services;

3. works, including:

(a) building or civil engineering (design and construction) of building works;

(b) (Supplemented, SG No. 37/2006) realization or design and execution, by whatever means, of one or several construction and erection works covered under Annex 1 hereto, related to the construction, redevelopment, remodelling, maintenance, restoration or rehabilitation of buildings or construction facilities;

(c) (Supplemented, SG No. 37/2006) integrated engineering services and realization, by whatever means, of one or more activities related to construction of building works in compliance with the requirements of the contracting authority, such as feasibility study, design, organization of building, supply and installation of machinery, plant and technical equipment, preparation and commissioning of works.

(2) (Repealed, SG No. 37/2006).

Article 4. The following shall not be objects of public procurement:

1. (Supplemented, SG No. 37/2006) the acquisition or rental of land, existing buildings or other corporeal immovables, as well as the creation of limited rights in rem, with the exception of the financial services in connection with such transactions;

2. the acquisition, development, production and co-production of programme material by radio and television broadcasters and the provision of broadcasting time;

3. (Amended, SG No. 53/2004, supplemented, SG No. 34/2005, SG No. 18/2006, amended, SG No. 37/2006, supplemented, SG No. 98/2008) the financial services in connection with the

issue and transfer of securities or other financial instruments; the services provided by the Bulgarian National Bank; the services provided in connection with the management of the government debt; the services provided in connection with the management of the assets of the State Fund for Guaranteeing the Stability of the State Pension System, upon purchase and certification of produce, approval of warehouses for storage and conduct of auctions for sale with intervention on the farm produce markets under the Agricultural Producers Support Act;

4. (Amended, SG No. 37/2006) the scientific research and experimental developments, where the contracting authority wholly remunerates the service but the benefits from the said research and development do not accrue exclusively to the contracting authority in the conduct of its own affairs.

5. (New, SG No. 53/2004, amended, SG No. 37/2006, SG No. 52/2010) arbitration and conciliation services;

6. (New, SG No. 37/2006) the employment contracts;

7. (New, SG No. 99/2010, effective 1.01.2011) the extending of loans by the Bulgarian Development Bank for the financing of the shortage of financing for projects under Operational Programmes Transport, Environment and Regional Development, approved by the European Investment Bank in accordance with the procedure under the Credit Agreement for a Structural Programme Loan, Bulgaria EU Funds Co-financing 2007 - 2013, between the Republic of Bulgaria and the European Investment Bank.

Article 5. (1) Depending on the award procedure thereof, public procurements of services shall be grouped into:

1. (Amended, SG No. 37/2006) public procurements of services included in Annex 2 hereto, which are awarded according to:

(a) an open or restricted procedure by contracting authorities covered under Items 1 to 4 of Article 7 herein;

(b) an open procedure, a restricted procedure or a negotiated procedure with publication of a contract notice by contracting authorities covered under Items 5 and 6 of Article 7 herein;

2. (Amended, SG No. 37/2006) public procurements of services included in Annex 3 hereto, which are awarded according to an open procedure, a restricted procedure or a negotiated procedure with publication of a contract notice.

(2) (Amended, SG No. 37/2006) A public procurement, which includes simultaneously any services included in Annexes 2 and 3 hereto, shall be awarded according to the procedure provided for the services whereof the value is higher.

(3) (New, SG No. 94/2008, effective 1.01.2009, amended, SG No. 52/2010) The public procurements covered under Paragraph (1) shall be awarded for a period of up to five years. As an exception, the period may be set at up to ten years for services of extending bank loans for the

financing of development-project designs or of projects and programmes of the European Union, with the contracting authority stating the reasons for this in the decision to initiate a procedure or in the contract notice.

Article 6. (Supplemented, SG No. 37/2006) The following shall be parties to public procurement award procedures: the contracting authorities, the candidates, the tenderers, and the suppliers, contractors and service providers.

Article 7. (Amended, SG No. 37/2006) The following shall be contracting authorities:

1. (supplemented, SG No. 93/2011, effective 26.02.2012) the bodies of State power, the President of the Republic of Bulgaria, the Ombudsman of the Republic of Bulgaria, the Bulgarian National Bank, as well as other institutions of State established by a statutory instrument;

2. the diplomatic missions and the consular posts of the Republic of Bulgaria abroad, as well as the permanent missions of the Republic of Bulgaria to the international organizations;

3. the bodies governed by public law;

4. the combinations formed by parties referred to in Item 1 or 3;

5. the public undertakings and any combinations thereof, where carrying out one or several of the activities covered under Articles 7a to 7e herein;

6. the merchants and other persons which are not public undertakings, where carrying out one or several of the activities covered under Articles 7a to 7e herein on the basis of special or exclusive rights.

Article 7a. (New, SG No. 37/2006) (1) The following shall be activities relating to natural gas, heat or electricity:

1. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of: drinking water, electricity, natural gas or heat, or

2. the supply of natural gas, heat or electricity to such networks.

(2) The supply of natural gas or heat to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of natural gas or heat is the consequence of carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b to 7e herein, and

2. supply to the public network is aimed only at the economic exploitation of the production of natural gas or heat, subject to the condition that the amount of the supplies does not exceed 20 per cent of the producer's average annual turnover for the preceding three years, including the current year.

(3) The supply of electricity to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of electricity is intended for carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b to 7e herein, and

2. supply to the public network depends only on the producer's own consumption and has not exceeded 30 per cent of the producer's average annual production for the preceding three years, including the current year.

Article 7b. (New, SG No. 37/2006) (1) The following shall be activities relating to drinking water:

1. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or

2. the supply of drinking water to such networks.

(2) The persons which pursue an activity referred to in Paragraph (1) shall also apply the provisions of this Act to any activities relating to:

1. irrigation, land drainage or other hydraulic engineering projects, provided that the volume of water to be used for the supply of drinking water represents more than 20 per cent of the total volume of water made available by such activities, or

2. the disposal or treatment of sewage

(3) The supply of drinking water to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of drinking water is necessary for carrying out an activity other than the activities referred to in Paragraph (1) or in Article 7a, Articles 7c to 7e herein, and

2. supply to the public network depends only on the producer's own consumption and has not exceeded 30 per cent of the producer's average annual production for the preceding three years, including the current year.

Article 7c. (New, SG No. 37/2006) (1) (Supplemented, SG No. 52/2010) Activities relating to transport services shall be the provision or operation of networks providing a service to the public in the field of transport by railway, tramway, trolley bus or bus, as well as of automated transport systems or cableway.

(2) Providing bus transport services to the public, where other parties are free to provide such services under the same conditions as the contracting authority, shall not be considered a relevant activity within the meaning given by Paragraph (1) herein.

Article 7d. (New, SG No. 37/2006) (1) Activities relating to the provision of a universal postal service shall be the services provided for in Article 34 of the Postal Services Act.

(2) The persons carrying out the activities referred to in Paragraph (1) shall apply the provisions of the Act for all the activities thereof.

Article 7e. (New, SG No. 37/2006) The following shall be activities relating to exploitation of a geographical area:

1. prospecting or exploring for or extracting oil, natural gas, coal or other solid fuels;
2. the operation of airports, maritime or inland ports or other terminal facilities used for carriage by air, sea or by inland waterway.

Article 8. (1) (New, SG No. 37/2006) Contracting authorities shall be obligated to conduct a public procurement award procedure where the grounds provided for in the law exist.

(2) (Renumbered from Paragraph (1) and amended, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Contracting authorities or officials authorized thereby shall organize and conduct the public procurement award procedures and shall conclude public procurement contracts. Authorization may not be used to split public procurements for the purpose of circumventing the application of the law.

(3) (New, SG No. 37/2006, supplemented, SG No. 52/2010) Where the contracting authority is a collective authority or a legal person, the powers referred to in Paragraph (2) shall be implemented by the person who represents the said authority.

(4) (Renumbered from Paragraph (2) and amended, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

(5) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

(6) (Renumbered from Paragraph (3), SG No. 37/2006) Two or more than two contracting authorities may adopt a decision on conduct of a joint procedure for a public procurement award.

(7) (New, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 93/2011, effective 26.02.2012).

Article 8a. (New, SG No. 93/2011, effective 26.02.2012) (1) Acting on a motion by the Minister of Economy, Energy and Tourism, the Council of Ministers may establish a central public procurement authority for the needs of the executive authorities.

(2) The central public procurement authority shall be a contracting authority which shall conduct procedures for conclusion of public procurement contracts or framework agreements instead of other contracting authorities.

Article 8b. (New, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall be

obligated to adopt internal rules for the award of public procurements which shall contain the procedure for planning and organizing the conduct of the procedures and for control of the performance of the public procurement contracts as concluded.

Article 9. (Amended, SG No. 37/2006) Any Bulgarian or foreign natural or legal person, as well as any combination of such persons, may be a candidate or tenderer in a public procurement procedure.

Article 10. (Amended, SG No. 37/2006) A public procurement supplier, contractor or service provider shall be a tenderer in a public procurement award procedure wherewith the contracting authority has concluded a public procurement contract.

Article 11. (Amended, SG No. 37/2006) (1) (Redesignated from Article 11 and amended, SG No. 52/2010) The decisions of contracting authorities, adopted in connection with the public procurement award procedures, shall be individual administrative acts which are issued according to the rules of this Act.

(2) (New, SG No. 52/2010) The decisions referred to in Paragraph (1) shall contain:

1. name of the contracting authority;
2. number, date and legal basis for the issuing of the act;
3. indication of the type of procedure and the subject matter of the procurement;
4. an operative part, whereof the content shall depend on the stage of the procedure;
5. reasons: where required;
6. the authority before which the decision may be appealed, and time limit for appeal;
7. forename, patronymic and surname of the person who issued the act, with an indication of the position thereof.

(3) (New, SG No. 52/2010) Upon the issuing of the decisions referred to in Paragraph (1), contracting authorities shall not have the right to admit anticipatory enforcement.

Article 12. (1) This Act shall not apply to:

1. (Amended, SG No. 37/2006) any contracts or the award of a construction concession within the meaning given by the Concessions Act;

2. (Amended, SG No. 37/2006, effective 1.01.2007) any contracts which the contracting authorities covered under Item 5 or 6 of Article 7 herein conclude in connection with an activity other than the activities covered under Articles 7a to 7c and in Article 7e herein, or in connection with any such activities which are pursued in a third country and which does not involve the use of a network or geographical area within a Member State of the European Union;

3. (Amended, SG No. 37/2006) any supply contracts concluded by a contracting authority covered under Item 5 or 6 of Article 7 herein for purposes of resale or hire of the subject matter of the contract to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or hire the subject matter of such contracts and other entities are free to carry out the said activity under the same conditions [as the contracting authority];

4. (Amended, SG No. 37/2006) any contracts for the supply of energy or of fuels for the production of energy, concluded by contracting authorities covered under Item 5 or 6 of Article 7 herein, carrying out an activity under Article 7a herein;

5. (New, SG No. 37/2006) any contracts for the supply of water, concluded by contracting authorities covered under Item 5 or 6 of Article 7 herein, carrying out activities under Article 7b herein;

6. (Renumbered from Item 5 and amended, SG No. 37/2006) any service, supplies or works contracts concluded by a contracting authority referred to in Item 5 or 6 of Article 7 herein with an affiliated undertaking, provided that at least 80 per cent of the average annual turnover of the said undertaking with respect to services, supplies or works arising within the Republic of Bulgaria for the preceding three years derives from the provision of such services, supplies or works to undertakings wherewith the said undertaking is affiliated;

7. (Renumbered from Item 6 and amended, SG No. 37/2006) any contracts awarded by a combination formed by a number of contracting authorities for the purpose of carrying out an activity covered under Articles 7a to 7e herein, to any of the partners in the said combination;

8. (New, SG No. 37/2006) any contracts awarded by a partner in a combination formed by a number of contracting authorities for the purpose of carrying out an activity covered under Articles 7a to 7e herein, to the said combination, provided that the said combination has been formed in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the said combination stipulates that the contracting authorities which form it will be part thereof for the same period;

9. (Renumbered from Item 7 and amended, SG No. 37/2006, effective 1.01.2007 in respect of sentence two, SG No. 93/2011, effective 26.02.2012) any service contracts awarded by a contracting authority to another contracting authority referred to in Items 1 and 3 of Article 7 herein or to an association of such contracting authorities which enjoy exclusive rights to provide such services by virtue of a law, a statutory instrument of secondary legislation or an administrative act; the act conferring the exclusive rights shall be issued in compliance with the provisions of the Treaty on the Functioning of the European Union;

10. (Renumbered from Item 8 and supplemented, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012);

11. (Renumbered from Item 9, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) any contracts for medicinal products, medical goods and for dietetic foods for special medical purposes, concluded by the National Health Insurance Fund under Article 45 (8) of the

Health Insurance Act.

12. (New, SG No. 19/2011, effective 19.04.2011) contracts whereby activities are assigned pertinent to afforestation, logging and timber harvesting and the utilization of non-timber forest resources within the meaning given by the Forestry Act;

13. (New, SG No. 93/2011, effective 26.02.2012) contracts for public utility services, concluded by the contracting authorities referred to in Item 1 of Article 7 herein, which are local executive authorities or combinations thereof, with a corporation created according to the procedure established by the Municipal Property Act, which is a contracting authority referred to in Item 3 of Article 7 herein and which simultaneously meets the following conditions:

(a) the capital of the said corporation is wholly municipal-owned;

(b) the said corporation is subject to control similar to the control exercised by contracting authorities over their own structural units;

(c) the objects, according to the basic or organic instruments of the said corporation, are carrying out public utility services;

(d) at least 90 per cent of the turnover of the said corporation derives from the provision of public utility services to the contracting authority or combination of contracting authorities concerned.

(2) (New, SG No. 37/2006) In the cases under Item 6 of Paragraph (1), where the turnover of the affiliated undertaking is not available for the preceding three years because of the date on which the said undertaking was created or commenced activities, it will be sufficient for the business projections of the said undertaking to show that at least 80 per cent of the average annual turnover thereof is to derive from the provision of supplies, services or works to affiliated undertakings.

(3) (New, SG No. 37/2006) Where more than one undertaking affiliated with the contracting authority provides the same or similar services, supplies or works, the percentage referred to in Item 6 of Paragraph (1) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(4) (New, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Item 13 of Paragraph (1), where the turnover of the corporation is not available because of the date on which the said corporation was created or commenced activities, it will be sufficient for the projections of the said corporation upon the creation thereof to show that the annual turnover thereof is to derive from the services provided thereby to the contracting authority.

(5) (New, SG No. 93/2011, effective 26.02.2012) Upon the lapse of any of the conditions covered under Item 13 of Paragraph (1), the contracting authority shall be obligated to terminate the contract within one month.

(6) (Renumbered from Paragraph (2), SG No. 37/2006, renumbered from Paragraph (4), SG No. 93/2011, effective 26.02.2012) Contracting authorities shall notify the Public Procurement Agency when requested thereby of:

1. (Amended, SG No. 37/2006) the cases whereto the exceptions covered under Item 2 of Paragraph (1) are applied;

2. the subject matter of the contracts referred to in Item 3 of Paragraph (1);

3. (Amended, SG No. 37/2006) the name of the affiliated undertaking, the subject matter and the value of the contract, as well as the proofs of existence of circumstances referred to in Items 6, 7 and 8 of Paragraph (1) in the cases where the said exceptions apply.

Article 13. (1) (Amended, SG No. 37/2006) This procedures under this Act shall not apply to any public procurements:

1. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) associated with national defence or national security within the meaning given by Article 346 of the Treaty on the Functioning of the European Union;

2. (Amended, SG No. 37/2006) which are a subject of classified information constituting a state secret, or where the performance of the public procurement must be accompanied by special security measures in accordance with the effective legislation;

3. (Amended and supplemented, SG No. 37/2006, effective 1.01.2007, amended, SG No. 93/2011, effective 26.02.2012) upon implementation of an international treaty, concluded in compliance with the provisions of the Treaty on the Functioning of the European Union, between the Republic of Bulgaria and a third party, providing for supplies, services or works intended for the joint implementation or exploitation by the signatories thereto;

4. (Amended, SG No. 93/2011, effective 26.02.2012) awarded according to a special procedure established by an international organization;

5. awarded in implementation of an international treaty relating to the stationing of troops and support for the participation of armed forces and police contingents in international missions and exercises;

6. (New, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 93/2011, effective 26.02.2012);

7. (New, SG No. 52/2010) of works, supplies and services awarded by bodies or structures of the North Atlantic Treaty Organization (NATO).

(2) (Effective 6.04.2004, SG No. 28/2004, supplemented, SG No. 37/2006) The terms and a procedure for the award of public procurements in the cases referred to in Items 1 and 2 of Paragraph (1) shall be established by an ordinance adopted by the Council of Ministers on a motion by the Minister of Interior, the Minister of Defence, the Minister of Economy, Energy and

Tourism and the Minister of Finance. The said ordinance shall furthermore establish the terms and a procedure for conclusion of compensatory (offset) arrangements, as well as the cases in which the said arrangements shall be admissible.

(3) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Item 3 of Paragraph (1), the contracting authorities shall notify the Public Procurement Agency of the contracts concluded within seven days.

Article 14. (Amended and supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) (1) The procedures under this Act shall be applied mandatorily upon the award of public procurements which have the following values, exclusive of value added tax:

1. for works: equal to or greater than BGN 240,000 and, where the place of performance of the procurement is outside Bulgaria, equal to or greater than BGN 1,500,000;

2. for supplies, services and design contest: equal to or greater than BGN 60,000 and, where the place of performance of the procurement is outside Bulgaria, equal to or greater than BGN 120,000.

(2) Contracting authorities may apply the simplified rules provided for in this Act where the public procurements have the following values, exclusive of value added tax:

1. for works: from BGN 240,000 to BGN 2,400,000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 1,500,000 to BGN 6,000,000;

2. for supplies, services and design contest: from BGN 60,000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 120,000, to the threshold values established in Article 45a (2) herein.

(3) Contracting authorities need not conduct the procedures under this Act but shall be obligated to apply the terms and procedure established by Chapter Eight A herein to public procurements of a value exclusive of value added tax:

1. for works: from BGN 45,000 to BGN 240,000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 500,000 to BGN 1,500,000;

2. for supplies or services: from BGN 15,000 to BGN 60,000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 60,000 to BGN 120,000.

(4) Contracting authorities shall not be obligated to apply the procedures under this Act or the terms and procedure established by Chapter Eight A herein upon expenditure of resources of the following values exclusive of value added tax:

1. for works: less than BGN 45,000 and, where the place of performance of the procurement is outside Bulgaria, less than BGN 500,000;

2. for supplies or services: less than BGN 15,000 and, where the place of procurement of the procurement is outside Bulgaria, less than BGN 60,000;

3. for design contest: less than BGN 60,000.

(5) In the cases referred to in Items 2 and 3 of Paragraph (4), contracting authorities need not conclude a written contract and shall support the expenditure by means of primary payment documents.

Article 14a. (New, SG No. 93/2011, effective 26.02.2012) (1) Where the object of a public procurement is the provision of services but also includes works which are incidental to the principal object of the procurement, the said procurement shall be awarded as a public procurement of services.

(2) Upon the award of a public procurement including simultaneously supply of goods and provision of services, the procedure for the object having a higher value shall apply.

(3) Where contracting authorities covered under Items 1 to 4 of Article 7 herein finance a works contract by more than 50 per cent, the persons who receive the financing and award the contract shall be obligated to comply with the provisions of this Act as a contracting authority where the total value of the said contract, exclusive of value added tax, is greater than BGN 2,400,000.

(4) Where contracting authorities covered under Items 1 to 4 of Article 7 herein finance by more than 50 per cent a service contract which is related to a works contract, the persons who receive the financing and award the service contract shall be obligated to comply with the provisions of this Act as a contracting authority where the total value of the said contract, exclusive of value added tax, is equal to or greater than BGN 377,469.

(5) In the cases under Paragraphs (3) and (4), the contracting authorities shall be obligated to exercise control over the persons who have received the financing as to compliance with this Act.

Article 15. (1) (Amended, SG No. 93/2011, effective 26.02.2012) The estimated value of a public procurement shall be fixed as of the date of the decision to initiate a public procurement award procedure.

(2) (Amended, SG No. 94/2008, effective 1.01.2009) For establishment of the public procurement award procedure, the value of the public procurement shall be calculated as follows:

1. (Amended and supplemented, SG No. 37/2006) with regard to a supply contract for the lease, rental with or without option to buy, as well as for hire purchase, where the term of the said contract:

(a) (Supplemented, SG No. 37/2006) is one year or less: the total contract value for the duration of the contract;

(b) (Supplemented, SG No. 37/2006) is more than one year: the total contract value for the duration of the contract, including the estimated residual value of the procurement;

(c) (New, SG No. 37/2006) is not fixed or cannot be defined: the monthly value multiplied by 48;

2. with regard to regular supply and/or service contracts, on the basis of:

(a) the total actual value of similar contracts, concluded over the previous fiscal year and adjusted for anticipated changes in quantity or value of the relevant supply or service; or

(b) the total estimated value of the supply and/or the services during the twelve months following the first delivery or service or for the duration of the supplies and/or services, where the said duration is greater than twelve months;

3. (Amended, SG No. 37/2006) with regard to a supply, service and/or work contract providing for options: the maximum permitted total value, including use of the option clauses;

4. with regard to a service contract which does not indicate a total price:

(a) if the term of the contract is fixed at four years or less: the total contract value for the duration of the contract;

(b) (Amended, SG No. 37/2006) if the term of the contract cannot be fixed in advance or the term of the contract is greater than four years: the value of the monthly instalment multiplied by 48;

5. (Supplemented, SG No. 37/2006) with regard to an insurance service contracts the insurance premium payable and other forms of remuneration;

6. (Supplemented, SG No. 37/2006) with regard to a financial service contract: the price of the service, inclusive of fees, commissions or interest and other forms of remuneration;

7. with regard to a service contract preceded by a design contest, as well as with regard to design contests followed by a service contract, the value shall be calculated on the basis of the price of the service and the total value of the contest prizes and other payments to participants in the contest;

8. with regard to a works contract: on the basis of the value of construction and supply of all goods and provision of all services for execution of the works, where provided by the contracting authority;

9. with regard to a design contest: the value of the procurement shall include the total value of the contest prizes and other payments to participants in the contest;

10. (New, SG No. 37/2006) with regard to a framework agreement or a dynamic purchasing

system: on the basis of the maximum estimated value, exclusive of value added tax, of all the contracts envisaged to be concluded for the total term of the said agreement or system.

(3) (Amended, SG No. 37/2006) For the purpose of calculating the value of a public procurement, account shall be taken of all payments, exclusive of value added tax, to the supplier, contractor or service provider of the public procurement, including any form of options provided for and any renewal of the service or work under Item 9 of Article 90 (1) and Item 8 of Article 103 (2) herein.

(4) (Supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Where a public procurement is subdivided into several lots, each one the subject of a contract, the value of the procurement shall equal the sum total of the values of all lots. Where the aggregate value of the lots is equal to or exceeds the thresholds fixed under Article 14 (1), (2) or (3) herein, the procedure applicable to the total value of the procurement shall be complied with upon award of the procurement for each lot.

(5) The selection of a method for calculation of the public procurement contract value may not be used with the intention of avoiding the application of this Act.

(6) It shall be inadmissible to split up a public procurement with the intention of circumventing the application of this Act, even in stage-by-stage construction, where the completed stage cannot be granted a use permit as a self-contained building work.

(7) (New, SG No. 37/2006) When calculating the value of a works contract, it shall be inadmissible to include supplies or services which are not necessary for executing the said contract.

Section III

Types of Procedure

Article 16. (1) (Amended and supplemented, SG No. 37/2006, supplemented, SG No. 93/2011, effective 26.02.2012) Public procurements covered under Article 14 (1) herein shall be awarded by means of conduct of an open procedure, a restricted procedure, a competitive dialogue and negotiated procedures.

(2) (Repealed, SG No. 37/2006).

(3) (Repealed, SG No. 37/2006).

(4) An open procedure shall be a procedure whereby all interested parties may submit a tender.

(5) A restricted procedure shall be a procedure whereby only qualified candidates invited by the contracting authority may submit a tender.

(6) (New, SG No. 37/2006) A competitive dialogue shall be a procedure in which any

interested party may request to participate and whereby the contracting authority conducts a dialogue with the qualified candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting the requirements of the contracting authority, and on the basis of which the contracting authority invites the candidates with suitable alternatives to tender.

(7) (Renumbered from Paragraph (6), SG No. 37/2006) The negotiated procedures shall be:

1. (Amended, SG No. 37/2006) a negotiated procedure with publication of a contract notice, whereby the contracting authority conducts negotiation for determination of the terms of the contract with one or more qualified participants selected by the contracting authority;

2. a negotiated procedure without publication of a contract notice, whereby the contracting authority conducts negotiations for determination of the terms of the contract with one or more specific persons.

(8) (Renumbered from Paragraph (7) and amended, SG No. 37/2006) The contracting authorities covered under Items 1 to 4 of Article 7 herein shall make a decision on the award of a public procedure according to an open and restricted procedure wherever the conditions for conduct of a competitive dialogue or negotiated procedures do not exist.

Article 16a. (New, SG No. 37/2006) A design contest shall be a procedure whereby the contracting authority acquires a plan or design selected by an independent jury after being put out to competition with or without the award of prizes.

Article 16b. (New, SG No. 37/2006) (1) (Amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities may select a supplier, contractor and service provider of a public procurement according to an open or restricted procedure or a negotiated procedure with publication of a contract notice in the cases referred to in Item 1 of Article 84 herein by means of using an electronic auction, as well as in the cases referred to in Article 93b (3) and Article 93i herein, when the technical specifications of the public procurement can be established with precision.

(2) Public procurements of services and works, having as their subject matter intellectual performances, such as the design of works, may not be the object of an electronic auction.

(3) The decision to hold an electronic auction shall be stated in the contract notice.

(4) An electronic auction may not be used if it prevents, restricts or distorts competition, nor can it be used to change the subject matter of the procurement as put up for tender in the promulgated contract notice and as designated in the specification.

(5) The terms and procedure for use of electronic auctions shall be regulated by the Regulations for Application of this Act.

Article 16c. (New, SG No. 37/2006) (1) (Amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall reserve the right to participation in public

procurement award procedures for specialized undertakings and cooperatives of persons with disabilities where the subject matter of the procurement is included in a list endorsed by the Council of Ministers or the procurement is performed under sheltered employment programmes for persons with disabilities.

(2) The contracting authority must state the requirement referred to in Paragraph (1) in the public procurement initiation notice.

Chapter Two

AUTHORITIES. PUBLIC PROCUREMENT REGISTER

Section I

Authorities

Article 17. (Amended, SG No. 37/2006) The Minister of Economy, Energy and Tourism shall implement the State policy in the sphere of public procurement.

Article 18. (Effective 6.04.2004) (1) (Supplemented, SG No. 37/2006) There shall be established a Public Procurement Agency with the Minister of Economy, Energy and Tourism, hereinafter referred to as "the Agency," to assist the said Minister in the implementation of the state policy in the sphere of public procurement.

(2) The Agency shall be a legal person with a head office in Sofia.

(3) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) The maintenance of the Agency shall accrue from budget revenue.

(4) (New, SG No. 94/2008, effective 1.01.2009) The Executive Director of the Agency shall designate the employees entitled to incentives supplementary to the basic salary for work at the Agency, as well as the individual amount of the said incentive on the basis of internal rules approved by the Minister of Economy, Energy and Tourism.

(5) (New, SG No. 94/2008, effective 1.01.2009) The total amount of the resources for supplementary incentives shall be 25 per cent of the annual amount of the wage bill under the budget of the Agency and shall be included in the said budget for the relevant year.

(6) (Renumbered from Paragraph (4), SG No. 94/2008, effective 1.01.2009) The operation, structure, organization of work and staff size of the Agency shall be determined by Rules of Operation adopted by the Council of Ministers.

Article 19. (1) (Effective 6.04.2004, SG No. 28/2004, supplemented, SG No. 37/2006) The Agency shall be managed and represented by an Executive Director, who shall be appointed by the Minister of Economy, Energy and Tourism.

(2) The Executive Director of the Agency shall perform the following functions:

1. (Supplemented, SG No. 93/2011, effective 26.02.2012) issue methodological directions on unification of the practice of application of this Act and of the statutory instruments of secondary legislation thereto related;

2. (Amended, SG No. 93/2011, effective 26.02.2012) provide opinions on queries from contracting authorities;

3. (Amended, SG No. 37/2006, amended and supplemented, SG No. 94/2008, effective 1.01.2009, amended, SG No. 93/2011, effective 26.02.2012) apprise the competent authorities so as to exercise control over compliance with the Act;

4. (Amended, SG No. 52/2010) lodge appeals with the Commission on Protection of Competition against the decisions of contracting authorities whereby infringements have been committed upon the conduct of a public procurement award procedure, found by the European Commission until conclusion of the contract and specified in the notification referred to in Article 122o (1) herein;

5. (Effective 6.04.2004, SG No. 28/2004, amended, SG No. 37/2006) elaborate drafts of statutory instruments and give opinions on international treaties in the sphere of public procurement;

6. keep a Public Procurement Register;

7. (Amended, SG No. 37/2006, effective 1.01.2007 in the part regarding the notification of the European Commission of changes in the lists) maintain lists of contracting authorities covered under Article 7 herein and notify the European Commission of any changes in the said lists;

8. (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) maintain, with the assistance of the professional associations and organizations in the relevant sector, a list of persons whom contracting authorities may recruit as outside experts upon the preparation and conduct of public procurement award procedures;

9. (Effective 6.04.2004, SG No. 28/2004, amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) elaborate standard forms of documents for publication of information in the Public Procurement Register;

10. (Effective 6.04.2004, SG No. 28/2004, amended, SG No. 37/2006) coordinate the activity related to training of parties to public procurement;

11. (Effective 6.04.2004, SG No. 28/2004) participate in the international cooperation of the Republic of Bulgaria with organizations in other countries in the sphere of public procurement;

12. (Supplemented, SG No. 37/2006) submit an annual report on the operation of the Agency to the Minister of Economy, Energy and Tourism;

13. (Supplemented, SG No. 37/2006) collect and summarize the case law on application of this Act and carry out monitoring of public procurement;

14. (Amended, SG No. 37/2006, supplemented, SG No. 93/2011, effective 26.02.2012) pursue cooperation in the sphere of public procurement with other authorities, as well as with branch organizations;

15. (New, SG No. 37/2006, amended and supplemented, SG No. 94/2008, effective 1.01.2009) provide summarized information from the Public Procurement Register through the Internet site of the Agency;

16. (New, SG No. 37/2006) assist the process of public procurement award by electronic means;

17. (New, SG No. 37/2006, effective 1.01.2007, supplemented, SG No. 93/2011, effective 26.02.2012) notify the European Commission of all international contracts referred to in Item 3 of Article 13 (1) herein;

18. (New, SG No. 37/2006, effective 1.01.2007, amended, SG No. 93/2011, effective 26.02.2012) upon request, transmit the information referred to in Article 12 (6) herein to the European Commission;

19. (New, SG No. 37/2006, effective 1.01.2007, supplemented, SG No. 52/2010) transmit annual statistical reports to the European Commission, as well as the enforceable rulings of the Commission on Protection of Competition, referred to in Article 121b (3) herein, and the related decisions of the said Commission, referred to in Article 122d (4) herein;

20. (New, SG No. 37/2006, effective 1.01.2007) notify the European Commission of any difficulties, in law or in fact, encountered in connection with participation of Bulgarian persons in public procurement award procedures for services in third countries;

21. (New, SG No. 37/2006, effective 1.01.2007) notify the European Commission of any difficulties, in law or in fact, encountered in connection with participation of Bulgarian persons in public procurement award procedures in third countries which are due to non-observance of international labour law provisions;

22. (New, SG No. 37/2006, effective 1.01.2007, amended, SG No. 94/2008, effective 1.01.2009, SG No. 24/2009, SG No. 93/2011, effective 26.02.2012) exercise ex ante control over public procurement procedures fully or partially funded by resources of European Union funds, as follows:

(a) for works of a value equal to or greater than BGN 2,400,000;

(b) for supplies or services of a value equal to or greater than the respective value specified in Article 45a (2) herein;

23. (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) popularize good practices upon the award of public procurements, including such related to the application of environmental, social and innovative requirements;

24. (New, SG No. 94/2008, effective 1.01.2009) exercise ex ante control over decisions to initiate negotiated procedures without publication of a contract notice in pursuance of Items 3 to 9 and Item 12 of Article 90 (1) herein, issued by the contracting authorities covered under Items 1 to 4 of Article 7 herein.

25. (New, SG No. 94/2008, effective 1.01.2009) maintain a list of the persons in respect of whom non-performance of a public procurement contract has been ascertained by an effective judgment of court;

26. (New, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 93/2011, effective 26.02.2012).

(3) In connection with the execution of the powers thereof, the Executive Director of the Agency shall have the right to require the necessary information from public-procurement contracting authorities.

(4) Contracting authorities shall be obligated to provide the information required under Paragraph (3) within a time limit set by the Executive Director of the Agency.

(5) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) The directions referred to in Item 1 of Paragraph (2) shall be cleared with the control authorities referred to in Article 123 (1) herein and shall be mandatory for them. The procedure for clearance shall be determined by the Regulations for Application of this Act.

(6) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Contracting authorities shall send the Executive Director of the Agency the decisions referred to in Item 25 of Paragraph (2) by electronic means within fourteen days after the entry into effect of the said decisions.

(7) (New, SG No. 37/2006) The standard forms referred to in Item 9 of Paragraph (2) shall be endorsed by the Minister of Economy, Energy and Tourism and shall be promulgated in the State Gazette.

(8) (New, SG No. 94/2008, effective 1.01.2009, amended, SG No. 93/2011, effective 26.02.2012) The following shall be posted on the Internet site of the Agency:

1. the information referred to in Items 1, 6 to 8, 12, 13 and 25 of Paragraph (2);
2. the endorsed standard forms referred to in Item 9 of Paragraph (2);
3. the Common Procurement Vocabulary (CPV), as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV);

4. other information specified by the Regulations for Application of this Act.

Article 20. (Amended, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 20a. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, amended and supplemented, SG No. 24/2009, amended, SG No. 93/2011, effective 26.02.2012)
(1) The ex ante control referred to in Item 22 of Article 19 (2) herein shall cover:

1. the contract notice;

2. the decision to initiate a restricted procedure in pursuance of Article 76 (3) herein, a negotiated procedure with publication of a contract notice, or a competitive dialogue procedure;

3. the methods for evaluation of the tenders, where the criterion of the most economically advantageous tender applies.

(2) For exercise of ex ante control, the contracting authority shall be obligated to dispatch the drafts of documents covered under Paragraph (1) to the Agency before the initiation of the procedure.

(3) Within ten days after receipt of the drafts referred to in Paragraph (2), the Agency shall prepare an opinion on conformity with the requirements of this Act and shall dispatch the said opinion to the contracting authority. Upon ascertainment of any non-conformities, the opinion shall contain recommendations on curing the said non-conformities.

(4) Where the contracting authority ignores the recommendations in the opinion referred to in Paragraph (3), simultaneously with the initiation of the procedure the said authority may dispatch reasons in writing to the Agency.

(5) Within ten days after the publication of the documents referred to in Items 1 and 2 of Paragraph (1), the Agency shall assess the conformity of the said documents with the recommendations made and shall prepare a conclusive report on legal conformity.

(6) Within the time limit referred to in Paragraph (5), the report shall be dispatched to the contracting authority, to the control authorities referred to in Article 123 (1) herein and to the authorities responsible for the management and spending of the resources under the programme concerned.

(7) The ex ante control of procedures referred to in Article 76 (3) and in Article 86 (3) herein shall be completed by the opinion referred to in Paragraph (3).

(8) The information exchange in connection with the exercise of ex ante control shall be regulated by the Regulations for Application of this Act.

Article 20b. (New, SG No. 94/2008, effective 1.01.2009) (1) For the exercise of control under Item 24 of Article 19 (2) herein, contracting authorities shall be obligated to send the

Agency the decisions to initiate procedures and the invitations endorsed by the said decisions, as well as the evidence related to the choice of this procedure.

(2) The terms and procedure for exercise of control under Paragraph (1) shall be established by the Regulations for Application of this Act.

Section II

Public Procurement

Article 21. (1) There shall be established a Public Procurement Register.

(2) The Public Procurement Register shall be open to public inspection.

(3) (Amended, SG No. 94/2008, effective 1.01.2009) Contracting authorities shall be obligated to send the Executive Director of the Agency the information envisaged for entry into the Public Procurement Register in the Bulgarian language.

(4) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) The Executive Director of the Agency shall determine by an order the electronic format and the technical requirements regarding the information referred to in Paragraph (3). The said order shall be posted on the Internet site of the Agency.

(5) (New, SG No. 94/2008, effective 1.01.2009) Any information sent in violation of the order referred to in Paragraph (4) shall not be published in the Register and shall be presumed un sent.

(6) (New, SG No. 94/2008, effective 1.01.2009) The terms and procedure for the operation of the Register shall be established by the Regulations for Application of this Act.

Article 22. The Public Procurement Register shall contain:

1. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) the decisions to initiate, to modify and to terminate public procurement award procedures;

2. the notices envisaged for entry into the Register;

3. the information on public procurement awards;

4. (New, SG No. 94/2008, effective 1.01.2009) information on the performed public procurement contracts;

5. (New, SG No. 93/2011, effective 26.02.2012) information on the progress of the procedure in an appeal proceeding;

6. (Renumbered from Item 4, SG No. 94/2008, effective 1.01.2009, renumbered from Item 5, SG No. 93/2011, effective 26.02.2012) any other information as shall be specified in the

Regulations for Application of this Act.

Article 22a. (New, SG No. 93/2011, effective 26.02.2012) (1) Entry of circumstances in the Register shall be refused where:

1. the information has been provided otherwise than in the standard form endorsed for the relevant type of contracting authority;

2. the required fields in the standard form are not completed;

3. the information is not provided according to the procedure established by the Regulations for Application of this Act;

4. there is a discrepancy between the data indicated in the documents on one and the same procurement.

(2) Any refusal referred to in Paragraph (1) shall be communicated to the contracting authority within five days after receipt of the information at the Agency.

Part Two

PUBLIC PROCUREMENT AWARD

Chapter Three

COMMON RULES FOR PUBLIC PROCUREMENT AWARD

Section I

Prior Information

Article 23. (1) (Supplemented, SG No. 31/2005, amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall dispatch a prior information notice of all public procurement award procedures which they envisage initiating during the next succeeding twelve months to the Agency for entry into the Public Procurement Register or shall publish such prior information notice on the buyer profile:

1. (Amended, SG No. 52/2010) for supply of goods and for services under Item 1 of Article 5 (1) herein, differentiated by category, where the total value, exclusive of value added tax, for the relevant category of goods or services, is greater than BGN 450,000;

2. (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) for works, where the total value of the procurement, exclusive of value added tax, is greater than BGN 2,400,000.

(2) (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) When

publishing prior information notices on the buyer profile, contracting authorities shall send the Agency, by electronic means, a communication in an endorsed standard form. Prior information notices may not be published on the buyer profile before the date of dispatch of the said communication.

(3) (New, SG No. 37/2006) In the case of supplies and services, the notices referred to in Paragraph (1) and the communication referred to in Paragraph (2) must be dispatched on or before the 1st day of March.

(4) (Supplemented, SG No. 31/2005, renumbered from Paragraph (2) and amended, SG No. 37/2006) Where contracting authorities intend to take the option of shortening the time limits under Article 64 (2) herein, they shall furthermore transmit a prior information notice of public procurements where the total value, exclusive of value added tax, is not greater than the values referred to in Paragraph (1).

(5) (Renumbered from Paragraph (3), amended and supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) In the cases referred to in Item 1 of Paragraph (1), the category of goods shall be determined by contracting authorities by reference to the nomenclature of the Common Procurement Vocabulary (CPV), and the category of services shall be determined according to Annex 2 hereto.

(6) (Renumbered from Paragraph (4), SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Publication of a prior information notice shall not bind the contracting authority to conduct the relevant public procurement award procedures.

Article 24. (Amended, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Section II

Decision to Initiate Public Procurement Award Procedure and Contract Notice

Article 25. (1) The contracting authority shall adopt a decision to initiate a public procurement award procedure, whereby the said authority shall approve the contract notice and the contract documents. Any such decision and notice shall be dispatched to the Agency for entry into the Public Procurement Agency on an electronic data medium as well.

(2) A contract notice shall include at least the following information:

1. name, address, telephone and facsimile numbers and electronic mail address of the contracting authority, and contact person;

2. type of procedure;

3. (Amended, SG No. 93/2011, effective 26.02.2012) object and subject matter of

procurement, as well as quantity or scope, including such information about lots;

4. (Amended, SG No. 94/2008, effective 1.01.2009) reference number according to the Common Procurement Vocabulary (CPV);

5. place and time limit for performance of the procurement;

6. (Amended, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009) the selection criteria, including minimum requirements for the economic and financial standing of the candidate or tenderer, for the technical capacity and qualifications thereof, where the contracting authority establishes such requirements, as well as the references required to be provided in evidence;

7. terms and amount of the participation guarantee and of the contract performance guarantee;

8. terms and method of payment;

9. (Supplemented, SG No. 94/2008, effective 1.01.2009) period of tender validity in an open procedure;

10. (Supplemented, SG No. 94/2008, effective 1.01.2009) criteria to be applied in the evaluation of tenders, and where the criterion of the most economically advantageous tender applies, also the criteria for arrival at an integral evaluation, including the relative weighting given to each of the criteria or indication of the said criteria in descending order of importance where weighting is not possible for demonstrable reasons;

11. (New, SG No. 37/2006) indication of the possibility of submitting variants in the tenders;

12. (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) indication of the possibility of the tenderers tendering for one, for several or for all the lots, where the subject matter of the procurement is subdivided into lots;

13. (Renumbered from Item 11, SG No. 37/2006) address wherefrom the contract documents can be requested and the final date for making such a request, the price and method of payment of the price to be paid for such documents;

14. (Renumbered from Item 12 and amended, SG No. 37/2006) address whereat requests or tenders must be received, and deadline for the receipt thereof;

15. (Renumbered from Item 13, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009) place and date of the opening of tenders or requests to participate;

16. (Renumbered from Item 14, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) date of publication of the prior information notice referred to in Article 23 herein, if any;

17. (Renumbered from Item 15, SG No. 37/2006) date of dispatch of the notice.

(3) In the notice, the contracting authority may furthermore provide for:

1. (Amended, SG No. 37/2006) the possibility of holding an electronic auction;

2. (Amended and supplemented, SG No. 37/2006) a requirement to establish a legal person where the tenderer which has been selected as a supplier, contractor or service provider is a combination of natural and/or legal persons; the newly established legal person shall be bound by the tender submitted by the combination;

3. (Repealed, SG No. 37/2006);

4. (Repealed, SG No. 94/2008, effective 1.01.2009).

(4) (New, SG No. 37/2006) In restricted procedures, negotiated procedures with publication of a contract notice and competitive dialogue procedures, contracting authorities may limit the number of candidates which will be invited to tender, to negotiate or to conduct a dialogue, provided a sufficient number of suitable candidates is available. In such cases, the notice shall indicate objective and non-discriminatory criteria or rules that contracting authorities intend to apply, the minimum number of candidates which will be invited and, at the discretion of the contracting authority, the maximum number as well.

(5) (Renumbered from Paragraph (4), SG No. 37/2006) No terms or requirements offering an advantage or unjustifiably restricting the participation of any parties in the public procurements may be included by contracting authorities in the decision, notice, or documents.

(6) (Renumbered from Paragraph (5) and amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The selection criteria referred to in Item 6 of Paragraph (2) and the documents required for the fulfilment of the said criteria must take account of, and conform to, the value, the complexity and the scope of the public procurement. Where the contracting authority sets a requirement for the availability of turnover under Item 3 of Article 50 (1) herein which relates to the subject matter of the procurement, the said turnover may not exceed the estimated value of the procurement more than three-fold. Where the public procurement is subdivided into lots, the selection criteria for each of the lots must conform to the complexity, value and scope of the relevant lot.

(7) (New, SG No. 93/2011, effective 26.02.2012) The selection criteria referred to in Item 6 of Paragraph (2), which the contracting authority determines, must be identical for all tenderers in the procedure.

(8) (New, SG No. 93/2011, effective 26.02.2012) Upon participation of combinations which are not legal persons, the selection criteria shall be applied to the tenderer combination and not to each of the persons included therein, with the exception of a relevant registration, producing a certificate or another condition necessary for performance of the procurement according to the requirements of a statutory instrument or an administrative act and depending on the distribution

of the participation of the persons upon performance of the activities as provided for in the agreement on establishment of the combination.

(9) (New, SG No. 93/2011, effective 26.02.2012) The criteria for arrival at an integral evaluation, referred to in Item 10 of Paragraph (2), must be related to the subject matter of the public procurement.

(10) (New, SG No. 94/2008, effective 1.01.2009, renumbered from Paragraph (7) and amended, SG No. 93/2011, effective 26.02.2012) Where the criterion chosen is the most economically advantageous tender, contracting authorities shall not have the right to include selection criteria as criteria for arrival at the evaluation of the tenders.

(11) (New, SG No. 93/2011, effective 26.02.2012) Upon fixing the deadline referred to in Item 14 of Paragraph (2), the contracting authority must take account of the complexity of the procurement and of the time required for preparing requests to participate or tenders.

Article 26. (1) (Redesignated from Article 26 and amended, SG No. 37/2006) In the notice referred to in Article 25 herein, the contracting authority may furthermore establish additional requirements for the performance of the public procurement related to environmental protection, unemployment and creation of jobs for persons with disabilities, while complying with the requirements referred to in Article 25 (5) herein.

(2) (New, SG No. 37/2006) In the cases under Paragraph (1), upon preparing the tender the tenderers shall indicate, inter alia, the way of fulfilment of the additional requirements.

Article 26a. (New, SG No. 52/2010, effective 4.12.2010) (1) Upon award of a public procurement for the supply of any road transport vehicles listed in Annex 3a hereto, contracting authorities shall be obligated to take into account the lifetime energy and environmental impacts of the said vehicles, which include at least requirements for:

1. energy consumption, and
2. emissions of carbon dioxide (CO₂), and
3. emissions of oxides of nitrogen (NO_x), non-methane hydrocarbons (NMHC) and particulate matter.

(2) Contracting authorities shall apply the requirements covered under Paragraph (1):

1. by stating the said requirements as technical specifications in the public procurement documents, or

2. as criteria [for arrival at the evaluation of the tender] where the criterion of the most economically advantageous tender applies in the evaluation of the tenders.

(3) In the cases referred to in Item 2 of Paragraph (2), the operational lifetime costs for energy consumption, emissions of carbon dioxide, oxides of nitrogen, non-methane hydrocarbons

and particulate matter shall be calculated using a methodology. The said methodology shall be set out in an ordinance approved by the Minister of Transport, Information Technology and Communications.

(4) (Amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities need not apply the requirements of Paragraph (1) where:

1. awarding a public procurement for the supply of road transport vehicles which are not subject to mandatory type approval or to individual approval according to an ordinance of the Minister of Transport, Information Technology and Communications, adopted in pursuance of Article 138 (4) of the Road Traffic Act, or

2. the public procurement is of a value covered under Article 14 (2) herein.

Article 27. (1) (Amended, SG No. 31/2005, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) After publication of the notice referred to in Article 25 (2) herein, the contracting authority may furthermore insert an advertisement of the public procurement in a local newspaper or in a national daily newspaper. Any such advertisement shall state at least the subject matter of public procurement and the date of publication of the notice in the Public Procurement Register and may not contain any information which was not included in the said notice.

Article 27a. (New, SG No. 93/2011, effective 26.02.2012) (1) The contracting authority may, acting on its own initiative or on a proposal by the interested party, make changes in the contract notice and/or the public procurement documents related to ensuring legal conformity of the procedure, curing omissions or an apparent error of fact.

(2) Each interested party may make a proposal for changes in the contract notice and/or the documents within ten days after the publication of the notice on the initiation of the procedure.

(3) The changes referred to in Paragraph (1) shall be effected by means of a decision on change, which shall be published in the Public Procurement Register within fourteen days after publication of the notice on the initiation of the procedure.

(4) By the decision on change, the contracting authority shall have no right to alter the activities and/or the supplies under the subject matter of the procurement as announced.

(5) In the decision referred to in Paragraph (3), the contracting authority shall furthermore fix a new deadline for the receipt of tenders or requests to participate, which may not be shorter than the deadline as initially fixed.

(6) The contracting authority need not fix a new deadline under Paragraph (5) where the changes do not affect the selection criteria, the requirements to the tender or the performance of the procurement.

(7) After the expiry of the deadline referred to in Paragraph (3), the contracting authority may publish a decision on change solely when extending the deadlines announced in the procedure.

(8) The contracting authority shall be obligated to extend the deadlines announced in the procedure:

1. where it is established that the deadline as initially fixed is insufficient for preparing the tenders, inter alia owing to a need of on-the-spot inspection of documents supporting the contract documents or a visit to the site of the performance;

2. in the cases referred to in Article 29 (2) herein.

(9) The contracting authority may extend the deadlines announced in the procedure where:

1. no requests or tenders have been received by the deadline as initially fixed, or a single request or tender has been received;

2. this is necessary as a result of an appeal proceeding.

(10) By the publication of a decision on change in the Public Procurement Register, all interested parties shall be presumed notified.

Article 27b. (New, SG No. 93/2011, effective 26.02.2012) (1) Article 27a herein shall not apply in the cases referred to in Article 76 (3) and Article 86 (3) herein.

(2) In the cases referred to in Paragraph (1), the contracting authority may publish a decision on change in the Public Procurement Register extending the deadlines for submission of requests as announced where:

1. no requests have been received by the deadline as initially fixed, or a single request has been received;

2. this is necessary as a result of an appeal proceeding.

Section III

Contract Documents for Participation in Public Procurement Award Procedure

Article 28. (1) The contract documents for participation in a public procurement award procedure must contain:

1. the decision to initiate a public procurement award procedure;

2. the contract notice;

3. (Amended, SG No. 93/2011, effective 26.02.2012) a complete description of the subject

matter of procurement, including such information about lots;

4. the technical specifications;

5. (New, SG No. 37/2006) the minimum requirements to be met by the variants and the specific requirements for the presentation thereof, where the contracting authority authorizes variants;

6. (Renumbered from Item 5 and amended, SG No. 37/2006) the development-project designs, where required upon a public procurement of works;

7. (Renumbered from Item 6, SG No. 37/2006) the criteria to be applied in the evaluation of tenders, the relative weighting to be given to each such criterion, and the methods for arrival at the integral evaluation of the tender, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders;

8. (Renumbered from Item 7, SG No. 37/2006) a standard form of the tender, as well as directions for drawing up of the tender;

9. (Repealed, renumbered from Item 8, SG No. 37/2006) the draft of a contract.

(2) (Amended and supplemented, SG No. 37/2006) The methods referred to in Item 7 of Paragraph (1) shall contain precise directions on arrival at an evaluation under each criterion and on arrival at an integral evaluation of the tender, including the relative weighting given by the contracting authority to each of the criteria chosen to determine the most economically advantageous tender to each of those criteria. The relative weighting given to the separate criteria can be expressed by providing for a range with an appropriate maximum spread.

(3) (New, SG No. 94/2008, effective 1.01.2009) The contracting authority shall apply the methods referred to in Item 7 of Paragraph (1) in respect of all tenders admitted to evaluation without modifying the said methods.

(4) (Supplemented, SG No. 37/2006, renumbered from Paragraph (3) and amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) Where the contracting authority provides that the contract documents be paid for, the contracting authority may not set a price exceeding the actual costs of printing and replicating the said documents. At the request of the interested party, the contracting authority shall be obligated to dispatch the documents for the account of the requesting party.

(5) (Amended, SG No. 37/2006, renumbered from Paragraph (4) and amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) The contract documents may be purchased or received within ten days prior to expiry of the deadline fixed for the receipt of tenders or requests to participate and, applicable to procurements covered under Article 14 (2) herein, within seven days.

(6) (New, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Article 76 (3) and Article 86 (3) herein, the documents may be purchased or received within three working days

prior to the expiry of the deadline fixed for the receipt of requests to participate.

(7) (New, SG No. 93/2011, effective 26.02.2012) The persons shall have the right to examine the documents on the spot before purchasing the said documents.

(8) (New, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Article 27a (1) herein, the contracting authority shall be obligated to provide gratuitously the changed documents to the persons who have purchased such documents prior to the issuing of the decision on a change.

Article 29. (1) (Amended, SG No. 37/2006, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The persons may request in writing additional information relating to the contract documents from the contracting authority before the expiry of the deadline for the purchase or receipt of the said documents. The contracting authority shall dispatch the additional information within four days after the receipt of any such request.

(2) (New, SG No. 93/2011, effective 26.02.2012) In case less than six days remain from the provision of the additional information by the contracting authority until the expiry of the deadline for the receipt of tenders or requests to participate and, in the cases covered under Article 14 (2) herein, less than three days, the contracting authority shall be obligated to extend the deadline for the receipt of tenders or requests to participate by as many days as is the delay.

(3) (Amended and supplemented, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009, renumbered from Paragraph (2) and amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall dispatch any additional information referred to in Paragraph (1) to all persons who or which have received the contract documents and who or which have indicated a mailing address, without identifying the inquiring person in the reply thereof. Any such additional information shall furthermore be attached to the contract documents which are to be provided to other candidates or tenderers.

Section IV

Technical Specifications

Article 30. (Amended, SG No. 37/2006) (1) The contracting authority shall give the technical specifications in the contract documents, defining the said specifications by reference to:

1. Bulgarian standards, which transpose European, international standards, European technical approvals or common technical specifications, or other technical reference systems established by the European standardization bodies, accompanying the said indication by the words "or equivalent";

2. Bulgarian standards, technical approvals or specifications, regarding design, method of calculation and execution of works, as well as use of materials, accompanying the said indication by the words "or equivalent" where standards referred to in Item 1 do not exist;

3. (Amended, SG No. 93/2011, effective 26.02.2012) performance characteristics or functional requirements referred to in Item 3, which must be sufficiently precise to determine the subject matter of the procurement; functional requirements may include environmental characteristics;

4. performance characteristics or functional requirements referred to in Item 3, with reference to the specifications referred to in Item 1 or 2, the conformity with which shall be presumed conformity with such performance characteristics or functional requirements;

5. the specifications referred to in Item 1 or 2 for certain characteristics and by referring to the performance characteristics or functional requirements referred to in Item 3 for other characteristics.

(2) In the cases referred to in Item 3 of Paragraph (1), where the contracting authority has laid down environmental characteristics in terms of performance characteristics or functional requirements, the contracting authority may use specifications or parts thereof as defined by European or national eco-labels, or by any other eco-label, which simultaneously meet the following conditions:

1. the specifications are appropriate to define the characteristics of the supplies or services;

2. the requirements for the label are drawn up on the basis of scientific information;

3. the eco-labels are adopted according to a procedure in which all interested parties: State bodies, consumers, manufacturers, distributors and environmental organizations, are eligible to participate;

4. are accessible to all interested parties.

(3) The contracting authority may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents for participation in a public procurement award procedure.

(4) (Amended, SG No. 93/2011, effective 26.02.2012) In the cases covered under Paragraph (2), the contracting authority shall accept, in addition to a test report or a certificate issued by a recognized body, or the technical dossier of the manufacturer, any other appropriate means of proof.

Article 31. (Amended, SG No. 37/2006) (1) Upon provision of technical specifications to candidates or tenderers in the procedure and upon conclusion of a public procurement contract, the contracting authority may designate which part of the information made available thereby to the said candidates or tenderers is of a confidential nature.

(2) The candidates or tenderers shall have no right to disclose the information referred to in Paragraph (1).

Article 32. (1) (Supplemented, SG No. 37/2006) The technical specifications must afford

the candidates or tenderers equal access to participation in the procedure and must not unjustifiably hinder competition.

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The technical specifications must not be defined by reference to a specific make, source, a particular process, trade mark, patent, type, a specific origin or production with the effect of favouring or eliminating certain persons or certain products. Such reference shall be permitted on an exceptional basis, where a precise and intelligible description of the subject matter of the procurement according to the procedure established by Article 30 herein is not possible, and any such reference shall mandatorily be accompanied by the words "or equivalent".

Article 33. (1) (Amended and supplemented, SG No. 37/2006, supplemented SG No. 93/2011, effective 26.02.2012) In the cases covered under Item 1 or 2 of Article 30 (1) herein, the contracting authority may not exclude a tender on the grounds of non-conformity of the products or services tendered to the technical specifications referred to by the said authority, once the tenderer proves in the tender thereof, by whatever appropriate document, that the solution proposed thereby satisfies in an equivalent manner the requirements defined in the said technical specifications.

(2) (Amended, SG No. 37/2006, supplemented, SG No. 93/2011, effective 26.02.2012) In the cases covered under Article 30 (2) herein, the contracting authority may not exclude a tender which conforms to a Bulgarian standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardization body, once the tenderer proves in the tender thereof, by whatever appropriate document, that the said standards relate to the performance characteristics and functional requirements defined by the contracting authority.

(3) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) In the cases covered under Paragraphs (1) and (2), the contracting authority shall accept, in addition to a test report or a certificate issued by a recognized body, or the technical dossier of the manufacturer, any other appropriate means of proof.

(4) (Amended, SG No. 37/2006) Upon submission of the tender, the tenderer may designate which part of the said tender is of a confidential nature and may impose requirements of non-disclosure of the said part on the contracting authority.

(5) (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall have no right to disclose any information made available thereto by candidates and tenderers, which has been designated as confidential by the said candidates and tenderers in respect of technical or trade secrets, with the exception of the cases under Article 44 and Article 73 (4) herein.

Section V

Examination, Evaluation and Ranking of Tenders

Article 34. (1) The contracting authority shall appoint a commission for the conduct of a

public procurement procedure, designating the composition of the said commission and substitute members.

(2) (Amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The composition of the commission shall mandatorily include a qualified lawyer, and the remaining members shall be persons possessing the professional qualification and practical experience required in accordance with the subject matter and complexity of the procurement. Any such commission shall consist of an odd number of members: at least five and, in the cases covered under Article 14 (2) herein, at least three.

(3) (Amended, SG No. 94/2008, effective 1.01.2009, supplemented, SG No. 93/2011, effective 26.02.2012) The contracting authorities covered under Items 1 to 4 of Article 7 herein may recruit, as a member of the commission, an outside expert who is included in the list referred to in Item 8 of Article 19 (2) herein and is qualified in accordance with the subject matter of the procurement.

(4) (New, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 93/2011, effective 26.02.2012).

(5) (Amended, SG No. 37/2006, renumbered from Paragraph (4), SG No. 94/2008, effective 1.01.2009) In an open procedure, the commission shall be appointed by the contracting authority after the final date fixed for receipt of tenders, and in a restricted procedure, competitive dialogue or negotiated procedure the commission shall be appointed after the final date fixed for receipt of the requests to participate.

(6) (Amended, SG No. 37/2006, renumbered from Paragraph (5) and amended, SG No. 94/2008, effective 1.01.2009) The contracting authority shall give the commission a time limit for completion of the work thereof, which must take account of the specifics of the public procurement. The said time limit may not exceed the period of tender validity.

(7) (Renumbered from Paragraph (6), SG No. 94/2008, effective 1.01.2009) The remunerations of the members of the commission and all expenses arising in connection with the work of the said commission shall be for the account of the contracting authority.

Article 35. (1) (Amended, SG No. 37/2006) Eligibility for appointment as members of or consultants to the commission shall be limited to persons who declare that they:

1. have no material interest in the award of the public procurement to a particular candidate or tenderer;

2. (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) have no "close links" with any candidate or tenderer in the procedure or to any subcontractor named by any such candidate or tenderer, or to any members of the management or supervisory bodies thereof;

3. (New, SG No. 94/2008, effective 1.01 2009) have no private interest, within the meaning given by the Conflict of Interest Prevention and Ascertainment Act, in the award of the public procurement.

(2) The members of the commission and the consultants shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with the work thereof on the commission.

(3) (Amended, SG No. 94/2008, effective 1.01.2009) The members of the commission and the consultants shall submit declarations on conformity with the circumstances referred to in Paragraph (1) and on compliance with the requirements referred to in Paragraph (2) to the contracting authority after receipt of the list of candidates or tenderers, upon occurrence of any intervening change in the circumstances as declared.

Article 36. (1) The commission shall make decisions by a majority of the members thereof. Should any member of the commission dissent from a decision adopted, the said member shall sign the memorandum with a dissenting opinion and shall set forth the reasons thereof in writing.

(2) Should, for any valid reason, any member of the commission be unable to perform the duties thereof and may not be replaced by a substitute member, the contracting authority shall issue an order designating a new member.

(3) (New, SG No. 37/2006, repealed, SG No. 94/2008, effective 1.01.2009).

Article 36a. (New, SG No. 93/2011, effective 26.02.2012) (1) The contracting authority or the authorized person referred to in Article 8 (2) herein shall have the right to control the work of the commission for the conduct of the procedure before the relevant decisions are issued.

(2) Upon exercise of the control under Paragraph (1), the contracting authority shall check only the content of the memoranda drawn up by the commission as to conformity with the requirements of the law and the terms and conditions of the public procurement as announced in advance.

(3) In case the control under Paragraph (1) ascertains any infringements in the work of the commission which can be cured without this necessitating termination of the procedure, the contracting authority shall give directions in writing for curing the said infringements.

(4) The directions of the contracting authority referred to in Paragraph (3) shall be binding on the commission. The steps performed and the decisions taken acting on the directions shall be shown in a memorandum, and in case of disagreement a dissenting opinion shall be attached thereto.

Article 37. (1) (Redesignated from Article 37 and amended, SG No. 37/2006) The contracting authority shall select the supplier, contractor or service provider of the public procurement on the basis of evaluation of the tenders under one of the following criteria as indicated in the notice:

1. the lowest price tendered;

2. the most economically advantageous tender.

(2) (New, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009) Where the criterion chosen is the most economically advantageous tender, the contracting authority shall be obligated to indicate the award criteria, the relative weighting given thereto and the methods for arrival at the evaluation under each criterion, expressed by providing for a range reduced beforehand to a specified value. In duly justified cases, where the relative weighting given to each criterion cannot be established, the contracting authority shall indicate the descending order of importance of the criteria.

(3) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) The criteria referred to in Paragraph (2) shall be applied upon the evaluation of tenders which:

1. comply with the terms and conditions as announced in advance by the contracting authority;

2. have been submitted by tenderers in respect of whom the circumstances covered under Article 47 (1) and (5) herein and the circumstances covered under Article 47 (2) herein, as indicated in the notice, do not exist, and who meet the requirements for financial and economic standing, technical capacity and qualifications.

(4) (New, SG No. 37/2006) Where the criterion to be applied in the evaluation of the tenders is the most economically advantageous tender and the contracting authority has indicated in the notice that the said authority authorizes the submission of variants, all variants submitted which meet the stated requirements referred to in Item 5 of Article 28 (1) herein shall be subject to evaluation.

(5) (New, SG No. 37/2006) In the cases referred to in Paragraph (4), the tenderer shall enter the ranking solely with the variant which has been ranked highest.

Article 38. (Amended, SG No. 37/2006, SG No. 52/2010) The procedures under this Act shall be completed by:

1. selection of a contractor under a public procurement contract, including under a contract concluded through application of a framework agreement, a dynamic purchasing system or a qualification system;

2. conclusion of a framework agreement;

3. (Repealed, SG No. 93/2011, effective 26.02.2012);

4. ranking of the tenderers and/or award of prizes and/or other payments in a design contest;

5. termination of the procedure.

Article 39. (1) (Amended, SG No. 93/2011, effective 26.02.2012) The contracting

authority shall terminate a procedure by a reasoned decision where:

1. (Amended, SG No. 37/2006, SG No. 52/2010, amended and supplemented, SG No. 93/2011, effective 26.02.2012) not a single tender, request to participate or design has been submitted, or not a single candidate or tenderer complies with the requirements covered under Articles 47 to 53a herein;

2. (Supplemented, SG No. 37/2006, amended, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) none of the tenders or designs complies with the terms and conditions as announced in advance by the contracting authority;

3. all tenders, which comply with the terms and conditions as announced in advance by the contracting authority, exceed the financial resources which the said authority can ensure;

4. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) the tenderers ranked highest and second highest decline to conclude a contract;

5. (Amended, SG No. 37/2006) the necessity to conduct the procedure is eliminated as a result of a material change in circumstances, including an impossibility to ensure financing for performance of the procurement for any reasons which the contracting authority could not have foreseen;

6. (Amended, SG No. 37/2006) irregularities are detected in the initiation and conduct of the procedure which cannot be cured without change of the terms whereunder the procedure has been announced;

7. (New, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009) a public procurement contract is not concluded by reason of existence of any of the grounds covered under Article 42 (1) herein.

(2) (New, SG No. 94/2008, effective 1.01.2009) The contracting authority may terminate the procedure by a reasoned decision where:

1. (Amended and supplemented, SG No. 93/2011, effective 26.02.2012) a single tender, request to participate or design has been submitted;

2. (Amended and supplemented, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) a single candidate or tenderer complies with the requirements covered under Articles 47 to 53a herein, or a single tender or design complies with the terms and conditions as announced in advance by the contracting authority;

3. (New, SG No. 93/2011, effective 26.02.2012) the highest ranked tenderer:

(a) declines to conclude a contract, or

(b) fails to fulfil any of the requirements covered under Article 42 (1) herein, or

(c) does not comply with the requirements covered under Article 47 (1) and (5) herein or with the requirements covered under Article 47 (2) herein, where indicated in the contract notice.

(3) (Amended and supplemented, SG No. 37/2006, renumbered from Paragraph (2) and supplemented, SG No. 94/2008, effective 1.01.2009) Within three days after the decision referred to in Paragraph (1) or (2), the contracting authority shall be obligated to notify the candidates or tenderers of the termination of the public procurement award procedure, as well as to dispatch a copy of the said decision to the Executive Director of the Agency.

(4) (Renumbered from Paragraph (3), SG No. 94/2008, effective 1.01.2009) In the cases referred to in Item 3 of Paragraph (1), the contracting authority shall mandatorily include in the decision the lowest price tendered and may not conclude a contract with the same subject matter at a price equal to or greater than the price specified in the decision upon conduct of a successive procedure within the same year.

(5) (Supplemented, SG No. 37/2006, renumbered from Paragraph (4) and supplemented, SG No. 94/2008, effective 1.01.2009) Upon termination of the public procurement award procedure under Items 3, 5 and 6 of Paragraph (1) or Paragraph (2), the contracting authority shall reimburse the candidates or tenderers for the expenses incurred thereby on purchase of the contract documents within fourteen days after the decision referred to in Paragraph (1) or (2).

(6) (New, SG No. 93/2011, effective 26.02.2012) Where the procedure as initially announced is terminated, the contracting authority may initiate a new public procurement award procedure with the same subject matter solely if the decision on termination has entered into effect.

Article 40. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The contracting authority may revoke the decision on selection of a supplier, contractor or service provider after the entry into effect of the said decision but before conclusion of the contract and may issue a decision on termination of the procedure where the circumstances referred to in Items 4, 5 and 7 of Article 39 (1) and Item 3 of Article 39 (2) herein arise.

Section VI

Public Procurement Contract

Article 41. (Amended, SG No. 37/2006) (1) The contracting authority shall conclude a written public procurement contract with the tenderer who or which has been selected as a supplier, contractor or service provider as a result of the procedure conducted.

(2) (Amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall be obligated to conclude a contract which conforms to the draft attached to the documents, supplemented by all proposals contained in the tender of the tenderer on the basis of which the said tenderer has been selected as a supplier, contractor or service provider.

(3) (Amended, SG No. 52/2010) The contracting authority shall have no right to conclude a contract before the lapse of 14 days after the candidates concerned and/or the tenderers concerned

are notified of the decision on selection of a supplier, contractor or service provider.

(4) (Amended, SG No. 52/2010) The contracting authority shall conclude the contract within one month after entry into effect of the decision on selection of a supplier, contractor or service provider or of the ruling whereby anticipatory enforcement of the said decision has been admitted, but not before the expiry of the period referred to in Paragraph (3).

(5) (New, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) The contracting authority shall have no right to conclude a contract with the selected supplier, contractor or service provider before the entry into effect of all decisions under the procedure, unless anticipatory enforcement has been admitted.

(6) (Renumbered from Paragraph (5), SG No. 52/2010) It shall be inadmissible to conclude public procurement contracts of indefinite duration.

Article 41a. (New, SG No. 52/2010) The contracting authority may conclude a public procurement contract before the expiry of the period referred to in Article 41 (3) herein where:

1. the supplier, contractor or service provider has been selected as a result of a negotiated procedure without publication of a contract notice and a single participant has been invited;
2. the selected supplier, contractor or service provider is the sole tenderer concerned and there are no candidates concerned;
3. the contract is concluded on the basis of a framework agreement with a single participant.

Article 41b. (New, SG No. 52/2010) (1) The following contracts shall be ineffective in respect of the persons covered under Article 122i (1) herein:

1. (New, SG No. 93/2011, effective 26.02.2012) any contract which is concluded without a public procurement award procedure despite the existence of grounds for conduct of such procedure;

2. (Renumbered from Item 1 and amended, SG No. 93/2011, effective 26.02.2012) any contract which is concluded upon legally non-conforming application of the grounds of Article 4, Article 12 (1), Article 13 (1), Article 90 (1) or Article 103 (2) herein;

3. (Renumbered from Item 2, SG No. 93/2011, effective 26.02.2012) any contract which is concluded before the entry into effect of any of the decisions of the contracting authority issued in connection with the procedure and an infringement is ascertained which has affected the chances of:

- (a) an interested party submitting a request to participate or a tender;
- (b) a candidate concerned submitting a tender;
- (c) a candidate or tenderer concerned taking part in the selection of a supplier, contractor or

service provider.

(2) The contract shall subsist if a decision referred to in Article 122d (4) herein has entered into effect.

Article 41c. (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) (1) The contracting authority may publish a notice for voluntary transparency where the contracting authority applies Items 2, 4 and 5 of Article 4, Items 2 to 9, 11, 12 and 13 of Article 12 (1), Items 3 and 4 of Article 13 (1), Article 90 (1) or Article 103 (2) herein.

(2) The notice for voluntary transparency shall be an individual administrative act which shall include at least:

1. name and particulars of the contracting authority;
2. description of the subject matter of the contract which the contracting authority intends to conclude;
3. reasons for applying the grounds referred to in Paragraph (1);
4. name and particulars of the selected supplier, contractor or service provider.

(3) The notice referred to in Paragraph (1) shall be prepared in the Bulgarian language in a standard form endorsed by Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EU) No 1564/2005 (OJ L 222/1 of 27 August 2011), hereinafter referred to as "Implementing Regulation (EU) No 842/2011".

(4) Where using a notice for voluntary transparency, the contracting authority shall dispatch the said notice for publication in the Public Procurement Register, and where the value of the procurement is equal to or greater than the values specified in Article 45a (2) herein, the said notice shall furthermore be dispatched to the Official Journal of the European Union.

(5) In the cases referred to in Item 2 of Article 41b (1) herein, the contract shall subsist if concluded after the entry into effect of the notice for voluntary transparency and the contracting authority has complied with the terms established by Paragraphs (1) to (4).

Article 42. (1) (Amended, SG No. 37/2006, redesignated from Article 42, SG No. 94/2008, effective 1.01.2009) A public procurement contract shall not be concluded with a tenderer selected as a supplier, contractor or service provider, who or which, upon signature of the said contract:

1. fails to present documentary proof of registration in compliance with the requirement established by Item 2 of Article 25 (3) herein;

2. (Amended, SG No. 93/2011, effective 26.02.2012) fails to fulfil the obligation referred to in Article 47 (10) and Article 48 (2) herein;

3. fails to present the contract performance guarantee as determined;

4. (New, SG No. 52/2010) fails to effect a relevant registration, to produce a document or to fulfil another requirement which is necessary for performance of the procurement according to the requirements of a statutory instrument or an administrative act and which has been set by the contracting authority upon initiation of the procedure.

(2) (New, SG No. 94/2008, effective 1.01.2009, amended, SG No. 93/2011, effective 26.02.2012) Item 2 of Paragraph (2) shall not apply in the cases referred to in Article 47 (11) herein.

Article 43. (1) (Amended, SG No. 37/2006) The parties to a public procurement contract may not amend the said contract.

(2) (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) An amendment to a public procurement contract shall be admissible on an exceptional basis:

1. (Supplemented, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) where, for reasons brought about through unforeseen circumstances:

(a) the time limits of the contract cannot be adhered to, or

(b) activities within the subject matter of a procurement of works or service have to be partially replaced, where this is in the interest of the contracting authority and does not lead to an increase of the value of the contract, or

(c) the total value of the contract has to be reduced in the interest of the contracting authority owing to a reduction of the agreed prices or of agreed quantities or abandonment of activities, or;

2. (Amended and supplemented, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 93/2011, effective 26.02.2012);

3. (New, SG No. 94/2008, effective 1.01.2009, supplemented, SG No. 93/2011, effective 26.02.2012) upon change of State-regulated prices, where an activity whereof the price is subject to State regulation is a principal subject matter of the public procurement contract and the period of performance of the said contract exceeds twelve months, or;

4. (New, SG No. 93/2011, effective 26.02.2012) where the price has to be increased owing to the adoption of a statutory instrument: up to the amount arising as a direct and immediate consequence from the said instrument, or

5. (New, SG No. 93/2011, effective 26.02.2012) upon extension of the duration of a supply contract or service contract requiring periodic or continuous performance, in case the following conditions are simultaneously fulfilled:

(a) not later than six months before the end of the duration of the contract the contracting authority has initiated a procedure with the same subject matter for a subsequent period which has not been completed by the selection of a supplier, contractor or service provider;

(b) the duration of the contract is extended until the selection of a supplier, contractor or service provider but by not more than six months;

(c) an interruption of the supply or service would lead to substantial difficulties for the contracting authority.

(3) (New, SG No. 94/2008, effective 1.01.2009) The change of the price in pursuance of Item 3 of Paragraph (2) shall be admissible up to the amount of the actual increase of the costs incurred by the supplier, contractor or service provider, which has resulted from the change of the State-regulated price.

(4) (Renumbered from Paragraph (2), SG No. 37/2006, renumbered from Paragraph (3), SG No. 94/2008, effective 1.01.2009) The contracting authority may terminate a public procurement contract if not in a position to perform the obligations thereof as a result of any circumstances which have occurred after the conclusion of the said contract. In such a case, the contracting authority shall be liable to the supplier, contractor or service provider for compensation for the damages sustained by signature of the contract.

Article 44. (1) (Supplemented, SG No. 37/2006) The contracting authority shall be obligated to dispatch information on each public procurement contract as concluded or of a framework agreement as concluded to the Agency for entry into the Public Procurement Register not later than seven days from conclusion of any such contract or framework agreement.

(2) (Amended, SG No. 37/2006) The information referred to in Paragraph (1) must be based on the standard form referred to in Item 7 of Article 19 herein.

(3) (Amended, SG No. 37/2006) Any information referred to in Paragraph (1), whereof the disclosure conflicts with a law, shall not be entered into the Public Procurement Register. In such a case, the contracting authority shall justify this to the Agency.

(4) (New, SG No. 37/2006) Any information which, according to the standard form referred to in Article 19 (7) herein, is not intended for publication, shall be used for statistical purposes.

(5) (New, SG No. 37/2006) The information on contracts concluded on the basis of a dynamic purchasing system may be sent on a quarterly basis. In such case, the contracting authority must send the information within seven days after the end of each quarter.

(6) (New, SG No. 37/2006) Contracting authorities shall be obligated to send the Agency information on each contract concluded on the basis of a framework agreement within seven days after the conclusion of any such contract.

(7) (New, SG No. 37/2006, effective 1.01.2007, amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) Contracting authorities may furthermore publish information on a

contract concluded in the cases where the contracting authorities apply Items 2, 4 and 5 of Article 4, Items 2 to 9, 11, 12 and 13 of Article 12 (1) and Items 3 and 4 of Article 13 (1) herein if the contracts are of values set in Article 14 (1) herein.

(8) (New, SG No. 37/2006, amended, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) The information referred to in Paragraph (7) shall be prepared in the relevant standard form referred to in Article 19 (7) herein and shall be dispatched for entry into the Public Procurement Register within seven days after conclusion of the contract. In the said information, the contracting authority shall mandatorily state the reasons for applying the relevant ground.

(9) (New, SG No. 93/2011, effective 26.02.2012) The contracting authority shall dispatch information to the Agency within one month after completion of the performance of a public procurement contract or after the early termination of any such contract.

(10) (New, SG No. 93/2011, effective 26.02.2012) Not later than the 31st day of March of each year succeeding the reporting year, the contracting authority shall dispatch summarized information in a standard form endorsed by the Executive Director of the Agency about all resources spent in connection with public procurements of a value covered under Article 14 (3) and (4) herein.

Article 45. The provisions of the Commerce Act and of the Obligations and Contracts Act shall apply to any unregulated matters in connection with the conclusion, performance and termination of public procurement contracts.

Section VII

(New, SG No. 37/2006, effective 1.01.2007)

Dispatch of Information to European Commission

Article 45a. (New, SG No. 372/2006, effective 1.01.2007, amended, SG No. 94/2008, effective 1.01.2009) (1) (Amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall be obligated to send the following documents for publication, in addition to the Public Procurement Register, to the Official Journal of the European Union:

1. (Supplemented, SG No. 52/2010) the prior information notices or communications of publication of prior information notices on the buyer profile: applicable to public procurements of works;

2. the periodic indicative notices;

3. the procedure initiation notices;

4. (New, SG No. 93/2011, effective 26.02.2012) information on change of the notice and/or the documents;

5. (Renumbered from Item 4, SG No. 93/2011, effective 26.02.2012) the information on contracts concluded or on framework agreements;

6. (Renumbered from Item 5, SG No. 93/2011, effective 26.02.2012) the information on design contests held;

7. (Renumbered from Item 6, SG No. 93/2011, effective 26.02.2012) the simplified contract notices within the framework of a dynamic purchasing system.

(2) (Amended, SG No. 93/2011, effective 26.02.2012) The documents covered under Paragraph (1) shall be sent where:

1. contracting authorities referred to in Item 1 of Article 7 herein, with the exception of those which are local executive authorities, and contracting authorities referred to in Items 2 and 4 of Article 7 herein award public procurements of values, exclusive of value added tax, which are equal to or greater than:

(a) BGN 9,475,851: for works;

(b) BGN 244,475: for supplies, services listed in Annex 2 hereto and design contest;

(c) BGN 377,469: for services listed in Category 8 of Annex 2 hereto, Category 5 telecommunications services [the positions of which in the CPV are] equivalent to CPC reference Nos 7524, 7525 and 7526, services listed in Annex 3 hereto, as well as a design contest related to such services;

2. contracting authorities referred to in Item 1 of Article 7 herein, which are local executive authorities, award public procurements of values, exclusive of value added tax, which are equal to or greater than:

(a) BGN 9,475,851: for works;

(b) BGN 377,469: for supplies, services and design contest;

3. contracting authorities referred to in Item 1 of Article 7 herein, operating in the field of defence, award public procurements of values, exclusive of value added tax, which are equal to or greater than:

(a) BGN 9,475,851: for works;

(b) BGN 377,469: for supplies, and BGN 244,475: for supplies listed in Annex 4 hereto;

4. contracting authorities referred to in Item 3, which are central executive authorities, award public procurements of values, exclusive of value added tax, which are equal to or greater than:

(a) BGN 244,475: for services listed in Annex 2 and design contest;

(b) BGN 377,469: for services listed in Category 8 of Annex 2 hereto, Category 5 telecommunications services [the positions of which in the CPV are] equivalent to CPC reference Nos 7524, 7525 and 7526, services listed in Annex 3 hereto, as well as a design contest related to such services;

5. contracting authorities referred to in Item 3, which are local executive authorities, award public procurements of services and design contest of values, exclusive of value added tax, which are equal to or greater than BGN 377,469;

6. contracting authorities referred to in Item 5 or 6 of Article 7 herein award public procurements of values, exclusive of value added tax, which are equal or greater than:

(a) BGN 9,475,851: for works;

(b) BGN 756,895: for supplies, services and design contest.

(3) (New, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Article 14a (3) herein, the documents covered under Paragraph (1) shall be sent where the total estimated value of the procurement of works, exclusive of value added tax, is equal to or greater than BGN 9,475,851.

(4) (New, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Article 14a (4) herein, the documents covered under Paragraph (1) shall be sent where the total estimated value of the procurement of services, exclusive of value added tax, is equal to or greater than BGN 377,469.

(5) (New, SG No. 52/2010, renumbered from Paragraph (3), SG No. 93/2011, effective 26.02.2012) Contracting authorities shall furthermore be obligated to dispatch, according to the procedure established by Paragraph (1), the prior information notices or the communications of publication of prior information notices on the buyer profile where the public procurements differentiated by category of supplies and services under Annex 2 to Item 1 of Article 5 (1) herein have a lev equivalent equal to or greater than EUR 750,000.

(6) (Renumbered from Paragraph (3), SG No. 52/2010, renumbered from Paragraph (4), SG No. 93/2011, effective 26.02.2012) Contracting authorities shall furthermore be obligated to send the notices of establishment of qualification systems according to the procedure established by Paragraph (1).

(7) (Renumbered from Paragraph (4) and amended, SG No. 52/2010, repealed, renumbered from Paragraph (5) and amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities may dispatch the documents covered under Paragraphs (1), (5) and (6) to the Official Journal of the European Union by post, by telefax or by electronic means, and in the cases referred to in Article 76 (3) and Article 86 (3) herein, the said documents may be dispatched by telefax or by electronic means. The communication referred to in Item 1 of Paragraph (1) shall be dispatched by electronic means.

(8) (Renumbered from Paragraph (5), SG No. 52/2010, renumbered from Paragraph (6), SG No. 93/2011, effective 26.02.2012) Contracting authorities may not publish prior information notices on the buyer profile before the date of dispatch of the notice referred to in Item 1 of Paragraph (1) for publication in the Official Journal of the European Union.

(9) (Renumbered from Paragraph (7) and amended, SG No. 52/2010, renumbered from Paragraph (8) and amended, SG No. 93/2011, effective 26.02.2012) The documents covered under Paragraphs (1), (5) and (6) shall be dispatched for publication in the Official Journal of the European Union in the Bulgarian language, according to standard forms endorsed by Implementing Regulation (EU) No 842/2011. The Bulgarian language version shall constitute the sole authentic text.

(10) (Renumbered from Paragraph (8) and amended, SG No. 52/2010, renumbered from Paragraph (9) and amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall be obligated to dispatch the documents covered under Paragraph (1), (5) and (6) for publication in the Official Journal of the European Union not later than the dispatch of the said documents for publication in the Public Procurement Register. The documents dispatched for publication at national level shall mention the date of dispatch to the Official Journal.

(11) (Renumbered from Paragraph (9), SG No. 52/2010, renumbered from Paragraph (10), SG No. 93/2011, effective 26.02.2012) Contracting authorities shall be obligated to:

1. (Amended, SG No. 93/2011, effective 26.02.2012) complete the documents which they dispatch to the Official Journal of the European Union and the documents which they dispatch to the Public Procurement Register with identical information;

2. upon request, supply proof of the dates on which the documents are dispatched and the confirmation of the date of publication of the said documents, given by the Official Journal of the European Union.

(12) (Renumbered from Paragraph (10), SG No. 52/2010, renumbered from Paragraph (11) and amended, SG No. 93/2011, effective 26.02.2012) In the event of any difference between the information published in the Public Procurement Register and in the Official Journal of the European Union, the information published in the Official Journal shall apply.

(13) (New, SG No. 93/2011, effective 26.02.2012) Contracting authorities may furthermore send to the Official Journal of the European Union a contract notice of a procurement awarded in the cases where the contracting authorities apply Items 2, 4 and 5 of Article 4, Items 2 to 9, 11, 12 and 13 of Article 12 (1), Items 3 and 4 of Article 13 (1), where the contracts have values equal or greater than the values specified in Paragraph (2). In the said notice, the contracting authority shall mandatorily state the reasons for applying the relevant exception.

Chapter Four

COMMON RULES FOR PARTICIPATION IN PUBLIC

PROCUREMENT AWARD PROCEDURE

Section I Requirements to Candidates or Tenderers

(Heading amended, SG No. 37/2006)

Article 46. (Supplemented, SG No. 37/2006) Any candidate or tenderer, who or which possesses the required qualifications as announced in advance, may participate in a public procurement award procedure.

Article 47. (Amended, SG No. 105/2005, SG No. 37/2006) (1) The contracting authority shall exclude from participation in a public procurement award procedure any candidate or tenderer who or which:

1. has been convicted by an enforceable sentence, unless rehabilitated, of:

(a) a criminal offence against the financial, tax or social security system, including money laundering, under Articles 253 to 260 of the Criminal Code;

(b) bribery under Articles 301 to 307 of the Criminal Code;

(c) participation in an organized criminal group under Articles 321 and 321a of the Criminal Code;

(d) a criminal offence against property under Articles 194 to 217 of the Criminal Code;

(e) a criminal offence against the economy under Articles 219 to 252 of the Criminal Code;

2. has been adjudicated bankrupt;

3. is being wound up or is in any analogous situation arising from a similar procedure under national laws and regulations.

(2) The contracting authority may exclude from participation in a public procurement award procedure any candidate or tenderer who or which:

1. is the subject of pending bankruptcy proceedings, or has made an out-of-court arrangement with the creditors thereof within the meaning given by Article 740 of the Commerce Act or, in case the candidate or tenderer is a foreign person, is in any analogous situation arising from a similar procedure under national laws and regulations, including where the affairs thereof are being administered by the court, or the candidate or tenderer has suspended the business activities thereof;

2. has been disqualified from practising a specific profession or activity according to the legislation of the State where the violation has been committed;

3. (Amended, SG No. 93/2011, effective 26.02.2012) incurs any obligations to the State or to a municipality within the meaning given by Item 1 of Article 162 (2) of the Tax and Social-Insurance Procedure Code, established by an enforceable act of a competent authority, save as where a rescheduling or deferral of the said obligations has been allowed, or incurs any obligations related to the payment of taxes or social insurance contributions according to the legislation of the State in which the candidate or tenderer is established;

4. (New, SG No. 43/2011, effective 15.06.2011) an administrative sanction has been imposed thereon within the last five years for hiring aliens residing without authorization.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) Where the contracting authority provides for the exclusion of a candidate or tenderer on the basis of the existence of any of the circumstances covered under Paragraph (2), the contracting authority shall be obligated to indicate the said circumstances in the contract notice and, in negotiated procedures without publication of a contract notice, the contracting authority shall be obligated to indicate the said circumstances in the invitation to participate.

(4) (Amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) The requirements referred to in Item 2 of Paragraph (1) and Item 2 of Paragraph (2), where indicated by the contracting authority in the notice, shall apply as follows:

1. in the case of a general partnership: to the persons referred to in Article 84 (1) and Article 89 (1) of the Commerce Act;

2. in the case of a limited partnership: to the persons referred to in Article 105 of the Commerce Act, excluding the limited partners;

3. in the case of a limited liability company: to the persons referred to in Article 141 (2) of the Commerce Act and, in the case of a single-member limited liability company, to the persons referred to in Article 147 (1) of the Commerce Act;

4. in the case of a joint-stock company: to the persons empowered under Article 235 (2) of the Commerce Act, and in the absence of empowerment, to the persons referred to in Article 235 (1) of the Commerce Act;

5. in the case of a partnership limited by shares: to the persons referred to in Article 244 (4) of the Commerce Act;

6. (New, SG No. 93/2011, effective 26.02.2012) in the case of a sole trader: to the natural-person merchant;

7. (Supplemented, SG No. 52/2010, renumbered from Item 6, SG No. 93/2011, effective 26.02.2012) in all other cases, including non-resident persons: to the persons who represent the candidate or tenderer;

8. (New, SG No. 52/2010, renumbered from Item 7 and amended, SG No. 93/2011, effective 26.02.2012) in the cases covered under Items 1 to 7: also to the managerial agents, if any; where a non-resident person has multiple managerial agents, the declaration shall be submitted solely by the managerial agent whereof the representative authority covers the territory of the Republic of Bulgaria or, respectively, the territory of the State wherein the procedure is conducted in the case of a contracting authority referred to in Item 2 of Article 7 herein.

(5) (Amended, SG No. 94/2008, effective 1.01.2009) The following candidates or tenderers may not participate in a public procurement award procedure:

1. (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) whereof any persons covered under Paragraph (4) have close links with the contracting authority or with any holders of a position of responsibility at the organisation of the said contracting authority;

2. who have concluded a contract with any person referred to in Article 21 or 22 of the Conflict of Interest Prevention and Ascertainment Act.

(6) (New, SG No. 93/2011, effective 26.02.2012) In respect of the circumstances referred to in Items 2 and 3 of Article 47 (1), Items 1 and 3 of Article 47 (2) and Item 2 of Article 47 (5) herein, where the candidate or tenderer is a legal person, submission of a declaration by one of the [natural] persons who can represent the said legal person independently shall suffice.

(7) (Renumbered from Paragraph (6), SG No. 93/2011, effective 26.02.2012) The requirements referred to in Items 2 and 3 of Paragraph (1) and Item 1 of Paragraph (2) shall not apply in the cases referred to in Item 12 of Article 90 (1) and Item 11 of Article 103 (2) herein.

(8) (Renumbered from Paragraph (7), SG No. 93/2011, effective 26.02.2012) Where the candidate or tenderer envisages the participation of subcontractors in the performance of the procurement, the requirements covered under Paragraphs (1) and (5) and the requirements under Paragraph (2) as indicated in the notice shall apply to the subcontractors as well.

(9) (Renumbered from Paragraph (8), SG No. 93/2011, effective 26.02.2012) Upon submission of a request to participate or of a tender, the candidate or tenderer shall attest, by means of a declaration, the non-existence of the circumstances covered under Paragraphs (1) and (5) and the conformity with the requirements under Paragraph (2) as indicated in the notice.

(10) (Amended, SG No. 94/2008, effective 1.01.2009, renumbered from Paragraph (9), SG No. 93/2011, effective 26.02.2012) Upon signature of the public procurement contract, the tenderer, who or which has been selected as a supplier, contractor or service provider, shall be obligated to produce documents issued by the relevant competent authorities attesting the non-existence of the circumstances covered under Paragraph (1) and the circumstances covered under Paragraph (2) indicated in the notice.

(11) (New, SG No. 94/2008, effective 1.01.2009, renumbered from Paragraph (10) and amended, SG No. 93/2011, effective 26.02.2012) The contracting authorities whereof Article 23 (4) of the Commercial Register Act applies may not require production of the documents referred

to in Paragraph (10) where the said documents concern any circumstances recorded in the Commercial Register.

Article 48. (1) (Amended, SG No. 37/2006) Any foreign natural or legal person, in respect of whom or which any of the circumstances covered under Article 47 (1) and (2) herein exists in the State in which the said person is established, may not participate in a public procurement award procedure.

(2) (Amended and supplemented, SG No. 37/2006) Upon signature of the public procurement contract, the tenderer who or which has been selected as a supplier, contractor or service provider, shall be obligated to produce documents issued by a competent authority attesting the non-existence of the circumstances covered under Article 47 (1) herein and of the circumstances covered under Article 47 (2) herein as indicated in the notice, or an extract from a court register, or an equivalent document by a judicial or administrative authority of the State in which the said tenderer is established.

(3) (New, SG No. 37/2006) Where the documents referred to in Paragraph (2) are not issued in the relevant foreign State, or where the said documents do not cover all cases specified in Article 47 (1) and (2) herein, the tenderer shall submit a declaration on oath, if such declaration has a legal significance according to the law of the State in which the tenderer is established.

(4) (New, SG No. 37/2006) Where the declaration on oath has no legal significance according to the relevant national law, the tenderer shall submit a solemn declaration made before a judicial or administrative authority, a notary or a competent professional or trade body in the State in which the tenderer is established.

Article 49. (Amended, SG No. 37/2006) (1) The contracting authority may require from each candidate or tenderer to prove the enrolment thereof in one of the professional or trade registers of the State in which the tenderer is established, or to present a declaration or a certificate of the existence of such registration, issued by the competent authorities according to the national law of the said tenderer.

(2) In procedures for the award of public procurements of services, insofar as candidates or tenderers have to possess a particular authorization or to be members of a particular organization in order to be able to perform the service concerned in their country, the contracting authority may require the said candidates or tenderers to prove that they hold such authorization or membership.

(3) (New, SG No. 52/2010) For the purpose of admission of candidates or tenderers established in another Member State of the European Union to participation in a procedure, a contracting authority shall have no right to require such candidates or tenderers to obtain any certificate or documentary proof of registration from an administrative authority if they produce an equivalent document issued by the State in which they are established.

Article 50. (1) (Supplemented, SG No. 37/2006) As evidence of the economic and financial standing of the candidates or tenderers, the contracting authority may require that they provide one or more of the following references:

1. appropriate statements from bankers or copy of a professional liability insurance policy;

2. (Amended and supplemented, SG No. 37/2006) the annual financial statement or any of the constituent parts thereof, where publication of the said parts is required by the legislation of the State in which the candidate or tenderer is established;

3. (Supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) a statement of the overall turnover and of the turnover in respect of the supplies, services or works which are subject matter of the procurement, for the three previous years, depending on the date on which the candidate or tenderer was created or commenced activities.

(2) (Supplemented, SG No. 37/2006) If, for any valid reason, the candidate or tenderer is unable to provide the references required by the contracting authority, the said candidate or tenderer may prove the economic and financial standing thereof by any other document which the contracting authority considers appropriate.

(3) (Supplemented, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 51. (1) (Redesignated from Article 51 and supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) As evidence of the technical capacity and/or qualifications of the candidates or tenderers, the contracting authority may require that they provide one or more of the following references:

1. (Amended, SG No. 37/2006) a list of the principal supply and service contracts performed in the past three years, including the sums, dates and recipients, accompanied by certificates of satisfactory execution;

2. (New, SG No. 37/2006) a list of the works contracts performed in the past five years, accompanied by certificates of satisfactory execution for the most important works; the said certificates shall indicate the value, date and site of the works, as well as whether the works were carried out professionally and in accordance with the statutory requirements;

3. (Renumbered from Item 2 and amended, SG No. 37/2006) a description of the technical facilities for ensuring quality and the study and research facilities;

4. (Renumbered from Item 3, SG No. 37/2006) a list of the technicians involved, including those responsible for quality control;

5. (Renumbered from Item 4, SG No. 37/2006) samples, description and/or photographs of the goods to be supplied, the authenticity of which must be certified if the contracting authority so requests;

6. (Renumbered from Item 5 and amended, SG No. 37/2006) certificates issued by accredited quality management institutes or agencies attesting the conformity of the products with the relevant specifications or standards;

7. (Renumbered from Item 6 and amended, SG No. 37/2006) documents attesting the educational and professional qualifications of the candidate or tenderer and/or of the managerial staff thereof, or of the persons responsible for carrying out the service or the works, as well as the supply which includes services and/or preparing and commissioning of the work;

8. (Renumbered from Item 7 and amended and supplemented, SG No. 37/2006) a statement of the average annual manpower and of the size of managerial staff of the candidate or tenderer for the last three years;

9. (New, SG No. 37/2006) a statement of the technical equipment available to the service provider or contractor for performance of a public procurement of services or works;

10. (Renumbered from Item 8 and supplemented, SG No. 37/2006) a statement of the technicians whom the candidate or tenderer can call upon for carrying out the works, whether or not they belong to the firm;

11. (New, SG No. 37/2006) for public procurements of works and services: an indication of the environmental protection measures that the candidate or tenderer will apply when performing the procurement, if the contracting authority has envisaged such measures in the notice.

(2) (New, SG No. 37/2006) In procedures for the award of public procurement of supplies which require siting or installation work, the provision of services and/or the execution of works, contracting authorities may impose requirements on the candidates or tenderers with regard to their skills, efficiency, experience and reliability in providing the services or in executing the installation or building works.

Article 51a. (New, SG No. 37/2006) (1) A candidate or tenderer may use the resources of other natural or legal persons upon performance of the procurement, subject to the condition that the said candidate or tenderer prove that it will have the said resources at its disposal.

(2) The conditions referred to in Paragraph (1) shall furthermore apply where the candidate or tenderer in the procedure is a combination of natural and/or legal persons.

Article 52. (Supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Where the subject matter of a public procurement is complex or is required for a special purpose, the contracting authority may carry out a check of the technical capacity of the candidate or tenderer and, if necessary, on the study and research facilities and the quality assurance measures thereof. Alternatively, the contracting authority may request that such a check be carried out on its behalf by a competent official body of the country in which the candidate or tenderer is established, subject to the agreement of the said body.

Article 53. (1) (Supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Should the contracting authority require the production of certificates attesting conformity of the candidate or tenderer to quality management systems, the contracting authority shall define the quality management systems by reference to the relevant European standards series.

(2) (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Item 11 of Article 51 (1) herein, the contracting authority shall require the production of certificates which attest the compliance of the candidate or tenderer with certain environmental management standards, and shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards.

(3) (Renumbered from Paragraph (2) and supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) The certificates referred to in Paragraphs (1) and (2) must be issued by independent bodies accredited under the relevant European standards series by the Bulgarian Accreditation Service Executive Agency or by another national accreditation body which is a party to the European co-operation for Accreditation Multilateral Agreement on mutual recognition for the respective field or meet the requirements for recognition according to Article 5a (2) of the National Accreditation of Conformity Assessment Bodies Act.

(4) (Renumbered from Paragraph (3) and amended, SG No. 37/2006) The contracting authority shall accept equivalent certificates issued by bodies established in other Member States, as well as other evidence of equivalent environmental quality assurance or environmental protection measures.

Article 53a. (New, SG No. 37/2006) (1) A candidate or tenderer may submit a certificate or registration on an official list of approved economic operators of a Member State of the European Union.

(2) In the cases referred to in Paragraph (1), the contracting authority may not exclude a candidate or tenderer from a public procurement award procedure or to refuse to conclude a contract therewith on the grounds of the said candidate or tenderer failing to produce any of the documents referred to in Article 48 (2), Article 50 (1) and (2), Article 51 and Article 51 (3) herein, provided that the circumstance is proved by the certificate produced.

Article 53b. (New, SG No. 93/2011, effective 26.02.2012) The contracting authority may not exclude a candidate or tenderer from a public procurement award procedure or refuse to conclude a contract on the grounds that the said candidate or tenderer has failed to provide any of the references covered under Article 50 (1), Article 51 and Article 53 (1) herein, where the said candidate or tenderer has submitted a certificate of entry into the Central Register of Professional Developers, with the conditions for entry into the said Register being identical or more rigorous than the requirements set by the contracting authority.

Section II

Tender

Article 54. (1) (Amended, SG No. 37/2006) In drawing up a tender, each tenderer must strictly observe the terms and conditions announced by the contracting authority.

(2) (Amended, SG No. 37/2006) Before expiry of the deadline fixed for submission of tenders, each tenderer in a procedure may modify, supplement or withdraw the tender thereof.

Article 55. (1) (Amended, SG No. 37/2006) Each tenderer in a public procurement award procedure shall have the right to submit a single tender.

(2) (Amended, SG No. 37/2006) Where the criterion to be applied in the evaluation of the tenders is the most economically advantageous tender and the contracting authority has authorized variants, the tenderer may submit several variants in the tender thereof.

(3) (New, SG No. 93/2011, effective 26.02.2012) Where the prices of the goods and services which are the subject matter of a public procurement are an object of regulation, the tenderers may tender prices which are lower than the regulated prices.

(4) (New, SG No. 37/2006, renumbered from Paragraph (3), SG No. 93/2011, effective 26.02.2012) Only variants meeting the minimum requirements laid down by the contracting authority shall be taken into consideration.

(5) (Renumbered from Paragraph (3) and amended, SG No. 37/2006, renumbered from Paragraph (4) and supplemented, SG No. 93/2011, effective 26.02.2012) No party, who or which participates in a combination or has given their consent and is named as a subcontractor on the tender of another tenderer, may submit a separate tender.

(6) (New, SG No. 93/2011, effective 26.02.2012) In a public procurement award procedure, a natural or legal person may participate in only one combination.

Article 56. (1) Each tender must contain:

1. (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) a copy of the document on registration or Standard Identification Code according to Article 23 of the Commercial Register Act, where the tenderer is a legal person or a sole trader, or a copy of the identity document, where the tenderer is a natural person;

2. (New, SG No. 93/2011, effective 26.02.2012) where the tenderers are combinations: a document signed by the partners in the combination which shall mandatorily state the person representing the combination;

3. (Renumbered from Item 2, SG No. 93/2011, effective 26.02.2012) documentary proof of provision of a participation guarantee;

4. (Renumbered from Item 3, SG No. 93/2011, effective 26.02.2012) evidence of economic and financial standing under Article 50 herein, as specified by the contracting authority in the contract notice;

5. (Renumbered from Item 4, SG No. 93/2011, effective 26.02.2012) evidence of technical capacity and/or qualifications under Article 51 herein, as specified by the contracting authority in the contract notice;

6. (Supplemented, SG No. 37/2006, renumbered from Item 5, SG No. 93/2011, effective

26.02.2012) a declaration on non-existence of the circumstances covered under Article 47 (1), (2) and (5) herein;

7. (New, SG No. 93/2011, effective 26.02.2012) a technical proposal for performance of the procurement;

8. (Amended, SG No. 37/2006, SG No. 52/2010, renumbered from Item 7, SG No. 93/2011, effective 26.02.2012) the subcontractors, where the tenderer envisages subcontractors, as well as the type of the works that the subcontractors are to perform and the share of the participation thereof;

9. (Renumbered from Item 8, SG No. 93/2011, effective 26.02.2012) time limit for performance of the procurement;

10. (Renumbered from Item 9, SG No. 93/2011, effective 26.02.2012) price tendered;

11. (Renumbered from Item 10 and amended, SG No. 93/2011, effective 26.02.2012) a declaration to the effect that the minimum labour cost requirement is complied with, in the cases where the public procurement is of works;

12. (New, SG No. 93/2011, effective 26.02.2012) a declaration of acceptance of the terms and conditions in the draft of a contract;

13. (Renumbered from Item 11, SG No. 93/2011, effective 26.02.2012) any other information indicated in the notice or in the contract documents;

14. (Amended, SG No. 37/2006, renumbered from Item 12, SG No. 93/2011, effective 26.02.2012) a list of the documents contained in the tender, signed by the tenderer.

(2) (Amended, SG No. 37/2006, supplemented, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) Where the tenderer envisages participation of subcontractors, the documents referred to in Items 1, 4, 5, 6 and 11 of Paragraph (1) shall be submitted for each subcontractor, and the requirements thereto shall be applied depending on the type and share of the participation thereof.

(3) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Where the tenderer in the procedure is a combination which is not a legal person:

1. the documents referred to in Items 1 and 6 of Paragraph (1) shall be submitted for each natural or legal person included in the said combination;

2. the documents referred to in Items 4 and 5 of Paragraph (1) shall be submitted only for the partners through which the combination proves the conformity thereof with the selection criteria referred to in Item 6 of Article 25 (2) herein;

3. a declaration referred to in Item 11 of Paragraph (1) shall be submitted only for the partners in the combination which are to execute activities relating to works.

(4) (Amended, SG No. 37/2006, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) Where the tenderer in the procedure is a foreign natural or legal person or a combination of such persons, the tender shall be submitted in the Bulgarian language, and the document referred to in Item 1 of Paragraph (1) shall be produced in an official translation, whereas the documents referred to in Items 4, 5, 6 and 11 of Paragraph (1), which are in a foreign language, shall be produced both in the original and in a translation.

(5) (New, SG No. 52/2010) Where the place of performance of the procurement is outside Bulgaria, the contracting authority may admit submission of the request to participate and the tender in an official language of the relevant country.

Article 57. (1) (Amended, SG No. 37/2006) The tender shall be submitted sealed in an opaque envelope by the tenderer or by an authorized representative thereof, in person or by registered mail with advice of delivery. On the said envelope, the tenderer shall indicate a mailing address, a telephone number and, if possible, a facsimile number and an electronic mail address and, where the tender is for lots, the lots to which the said tender applies.

(2) (Amended, SG No. 52/2010) The envelope referred to in Paragraph (1) shall contain three separate opaque sealed and inscribed envelopes as follows:

1. (Amended, SG No. 93/2011, effective 26.02.2012) envelope No. 1, inscribed "Selection Documents", whereinto the documents required by the contracting authority according to Items 1 to 6, 8, 11 to 14 of Article 56 (1) herein, concerning the selection criteria for the tenderers or candidates, shall be inserted;

2. (Supplemented, SG No. 93/2011, effective 26.02.2012) envelope No. 2, inscribed "Procurement Performance Proposal", whereinto the documents referred to in Items 7 and 9 of Article 56 (1) herein, related to the performance of the procurement, depending on the criterion chosen by the contracting authority and the requirements stated in the contract documents, shall be inserted;

3. envelope No. 3, inscribed "Price Tendered", which shall contain the price proposal of the tenderer.

(3) (New, SG No. 93/2011, effective 26.02.2012) Where a tenderer submits a tender for several lots, envelopes No. 2 and No. 3 shall be submitted for each of the lots. If the contracting authority has required submission of different documents to prove conformity with the selection criteria under the various lots, the tenderers shall submit different envelopes No. 1 as well.

(4) (Renumbered from Paragraph (3), SG No. 93/2011, effective 26.02.2012) Upon receipt of any tender, the consecutive number, date and hour of receipt shall be marked on the envelope, and the said particulars shall be entered in an incoming register wherefor a document shall be issued to the bearer.

(5) (Amended and supplemented, SG No. 37/2006, renumbered from Paragraph (4) and amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall reject and shall

immediately return to the tenderers any tenders submitted after expiry of the deadline or in envelopes which are unsealed or physically unsound. These circumstances shall be noted in the register referred to in Paragraph (4).

(6) (New, SG No. 37/2006, renumbered from Paragraph (5), SG No. 93/2011, effective 26.02.2012) The tender may alternatively be submitted by electronic means under the terms and according to the procedure established by the Electronic Document and Electronic Signature Act. In such case, the tenderer shall be obligated to submit to the contracting authority all documents which do not exist in electronic format according to the procedure established by Paragraph (1) before expiry of the deadline for the receipt of tenders.

(7) (New, SG No. 37/2006, renumbered from Paragraph (6), SG No. 93/2011, effective 26.02.2012) The terms and procedure for receipt and storage of tenders sent by electronic means shall be regulated by the Regulations for Application of this Act.

Article 58. (1) (Amended, SG No. 37/2006) The period of tender validity shall be the period during which the tenderers shall be bound by the terms of the tenders thereby submitted.

(2) (Supplemented, SG No. 93/2011, effective 26.02.2012) The contracting authority shall fix the period referred to in Paragraph (1) in calendar days. The said period shall begin to run as from the date fixed as a deadline for the receipt of tenders.

(3) (Amended, SG No. 37/2006) The contracting authority may require from the ranked tenderers to extend the period of tender validity thereof until the point of conclusion of the public procurement contract.

(4) (New, SG No. 94/2008, effective 1.01.2009) Except in an open procedure, the contracting authority shall fix the period of tender validity in the invitation to tender.

Article 58a. (New, SG No. 37/2006) (1) The procedures shall be prepared and conducted by the contracting authority. The contracting authority shall be responsible for the receipt and storage of the requests to participate, the tenders and the projects.

(2) The information exchange may be by post, by telefax, by electronic means under the terms and procedure established by the Electronic Document and Electronic Signature Act, or by a combination of those means, according to the choice of the contracting authority. The means of communication chosen must be generally available.

(3) The exchange and storage of information in the course of conduct of the public procurement award procedure shall be carried out in such a way as to ensure that the integrity, veracity and confidentiality of the requests to participate and the tenders are preserved.

(4) All representations by a contracting authority to the candidates or tenderers shall be evidenced in writing.

(5) The decisions of the contracting authority, which the contracting authority is obligated to communicate to the candidates or tenderers, shall be delivered thereto in person upon signed

acknowledgement of service or shall be dispatched by registered mail with advice of delivery, by telefax or by electronic means under the terms and according to the procedure established by the Electronic Document and Electronic Signature Act.

(6) The contracting authority shall be obligated to preserve the entire documentation on the conduct of each public procurement award procedure for at least four years after completion of the performance of a contract.

Section III

Guarantees

Article 59. (1) (Supplemented, SG No. 37/2006) Each candidate or tenderer shall provide a guarantee for participation in the public procurement award procedure, and the candidate or tenderer, who or which has been selected as supplier, contractor or service provider, shall provide a performance guarantee upon signature of the contract.

(2) The contracting authority shall determine the terms and the amount of the participation guarantee as a fixed sum of money, which may not exceed 1 per cent of the value of the procurement.

(3) (Amended, SG No. 52/2010) The contracting authority shall determine the terms and the amount of the contract performance guarantee as a percentage of the value of the public procurement, which may not exceed 3 per cent of the value of the said procurement.

(4) The contracting authority shall also require other performance guarantees in the cases specified by a statute.

(5) (Repealed, SG No. 37/2006, new, SG No. 93/2011, effective 26.02.2012) The contracting authority need not require a participation guarantee or a performance guarantee where:

1. the contracting authority conducts a negotiated procedure without publication of a contract notice, or
2. the procurement is of a value covered under Article 14 (2) herein.

Article 60. (1) Guarantees shall be provided in one of the following forms:

1. a cash deposit;
2. a bank guarantee.

(2) (Supplemented, SG No. 37/2006) The candidate or tenderer or the selected supplier, contractor or service provider shall be free to choose a form of the participation guarantee or of the performance guarantee, as the case may be.

(3) (New, SG No. 93/2011, effective 26.02.2012) Where the candidate, tenderer or selected supplier, contractor or service provider is a combination which is not a legal person, each of the partners therein may be an originator under the bank guarantee and, respectively, a payer of the cash deposit under the guarantee.

Article 61. (Amended and supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) (1) The contracting authority shall have the right to retain possession of the participation guarantee until settlement of the dispute, when the candidate or tenderer in a public procurement award procedure lodges an appeal against the decision of the contracting authority whereby the results of the qualification proceedings are declared or against the decision on selection of a supplier, contractor or service provider.

(2) The contracting authority shall have the right to call the participation guarantee regardless of the form of the said guarantee where a candidate or tenderer:

1. withdraws the request to participate thereof after the expiry of the deadline for the receipt of requests to participate or withdraws the tender thereof after the expiry of the deadline fixed for the receipt of tenders;

2. is selected as a supplier, contractor or service provider but fails to fulfil the obligation thereof to conclude a public procurement contract.

Article 62. (1) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) The contracting authority shall release the participation guarantees provided by:

1. any excluded candidates or tenderers: within five working days after expiry of the time limit for lodging an appeal against the decision of the contracting authority on qualification proceedings or on selection of a supplier, contractor or service provider, as the case may be;

2. the highest and second highest ranked tenderers: after conclusion of the public procurement contract, and the rest of the tenderers ranked: within five working days after expiry of the time limit for lodging an appeal against the decision on selection of a supplier, contractor or service provider.

(2) (Repealed, SG No. 37/2006).

(3) (Amended and supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Upon termination of the public procurement award procedure, the guarantees provided by all candidates or tenderers shall be released within five working days after expiry of the time limit for lodging an appeal against the decision on termination.

(4) (Amended, SG No. 37/2006) The contracting authority shall release the guarantees referred to in Paragraph (1) without owing interest for the period during which the said guarantees were in the legal possession thereof.

Article 63. (1) (Redesignated from Article 63, SG No. 93/2011, effective 26.02.2012) The terms and time limits for retention or release of the performance guarantee shall be regulated

in the public procurement award contract.

(2) (New, SG No. 93/2011, effective 26.02.2012) Where the public procurement contract is performed in stages, the contracting authority may include in the draft of a contract a clause on partial release of the guarantee under Paragraph (1) in proportion to the performed part of the subject matter of the public procurement.

Chapter Five

OPEN PROCEDURE

Section I

Open Procedure Preparation

Article 64. (1) (Supplemented, SG No. 31/2005, amended, SG No. 37/2006, amended and supplemented, SG No. 93/2011, effective 26.02.2012) Upon conduct of an open procedure, the contracting authority shall dispatch the contract notice to the Agency for entry into the Public Procurement Register not later than fifty-two days before expiry of the deadline fixed for the receipt of tenders, and in the cases covered under Article 14 (2) herein, not later than forty days before expiry of the deadline.

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The deadlines referred to in Paragraphs (1) and (2) may be shortened to thirty-six days, provided that the prior information notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Paragraph (1) and contains the information which is available at the date of dispatch of the said notice.

(3) (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) The deadlines referred to in Paragraphs (1) and (2) may be shortened by seven days where the notice has been transmitted by electronic means and by additional five days if the contracting authority offers full access by electronic means to the contract documents from the date of publication of the notice in an electronic format and if an Internet address at which these documents are accessible is specified in the text of the notice.

(4) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 65. (Supplemented, SG No. 31/2005, amended, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 66. (Repealed, SG No. 37/2006).

Article 67. (Repealed, SG No. 37/2006).

Section II

Examination, Evaluation and Ranking of Tenders

Article 68. (1) (Amended, SG No. 37/2006) The commission, appointed by the contracting authority to examine, evaluate and rank the tenders, shall commence work after receipt from the contracting authority of the list of tenderers and of the tenders as submitted.

(2) (Amended, SG No. 37/2006) Upon alteration of the date and hour of the opening of tenders, the tenderers shall be notified in writing.

(3) (Amended, SG No. 52/2010) The opening of the tenders shall be public and may be attended by the participants in the procedure or by authorized representatives thereof, as well as by representatives of the mass communication media and of not-for-profit legal entities.

(4) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010) The commission shall open the tenders in the order of submission thereof and shall check the presence of three separate sealed envelopes, whereafter at least three of the members of the commission shall sign envelope No. 3. The commission shall propose that one representative of each of the tenderers present sign envelope No. 3 of the rest of the tenderers.

(5) (Renumbered from Paragraph (4), amended and supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) In the presence of the persons referred to in Paragraph (3), the commission shall open envelope No. 2 and at least three of the members of the commission shall sign all documents contained in the said envelope. The commission shall propose that one representative of each of the tenderers present sign the documents contained in envelope No. 2 of the rest of the tenderers. Thereafter, the commission shall open envelope No. 1, shall announce the documents contained therein, and shall check conformity with the list referred to in Item 14 of Article 56 (1) herein.

(6) (Renumbered from Paragraph (5), SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009, amended, SG No. 52/2010) The public part of the meeting of the commission shall be completed after performance of the steps covered under Paragraphs (4) and (5).

(7) (Repealed, renumbered from Paragraph (6), amended and supplemented, SG No. 37/2006, amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The commission shall examine the documents in envelope No. 1 as to conformity with the selection criteria set by the contracting authority and shall draw up a memorandum.

(8) (New, SG No. 94/2008, effective 1.01.2009, amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) Where it ascertains missing documents and/or non-conformities with the selection criteria or with other requirements set by the contracting authority, the commission shall dispatch the memorandum referred to in Paragraph (7) to all tenderers.

(9) (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) The tenderers shall submit to the commission the relevant documents within five working days after the receipt of the memorandum referred to in Paragraph (7). A tenderer shall have no right to produce any documents other than the missing ones and those curing the non-conformities specified in the

memorandum of the commission.

(10) (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) Upon expiry of the time limit referred to in Paragraph (9), the commission shall proceed with examination of the additionally submitted documents as to the conformity of the tenderers with the selection criteria set by the contracting authority. The commission shall not examine the documents in envelope No. 2 of any tenderers who or which do not comply with the selection criteria.

(11) (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) If necessary, the commission may at any time:

1. verify the data stated by the tenderers, inter alia by means of requesting information from other authorities and persons;

2. require from the tenderers:

(a) clarifications regarding data stated thereby;

(b) additional proof regarding data in the documents contained in envelopes No. 2 and No. 3; this possibility may not be used for modification of the technical and price proposal of the tenderers.

Article 68a. (New, SG No. 93/2011, effective 26.02.2012) (1) The commission shall notify the contracting authority where, in the course of the work of the commission, reasonable doubts arise that tenderers have entered into agreements, resolutions or concerted practices within the meaning given by Article 15 of the Protection of Competition Act.

(2) In the cases referred to in Paragraph (1), the contracting authority shall notify the Commission on Protection of Competition. Any such notification shall not suspend the conduct and completion of the procedure.

Article 69. (1) (Amended, SG No. 37/2006) The commission shall propose for exclusion from the procedure any tenderer:

1. (Supplemented, SG No. 37/2006) who or which has failed to submit any of the documents required under Article 56 herein;

2. (Amended, SG No. 37/2006) in respect of whom there exist any circumstances covered under Article 47 (1) and (5) herein and any circumstances covered under Article 47 (2) herein as indicated in the notice;

3. (Amended and supplemented, SG No. 37/2006) who or which has submitted a tender which does not comply with the terms and conditions as announced in advance by the contracting authority

4. (Supplemented, SG No. 37/2006) who or which has submitted a tender which does not comply with the requirements of Article 57 (2) herein;

5. (New, SG No. 93/2011, effective 26.02.2012) in respect of whom or which, it has been ascertained according to the procedure established by Article 68 (11) herein that the said tenderer has submitted untrue information to prove the conformity thereof with the selection criteria announced by the contracting authority.

(2) (Amended, SG No. 37/2006) The commission may not propose for exclusion any tenderer where the said tenderer has the right to provide the relevant service in the Member State of establishment thereof regardless of the status or legal form of business organization of the said tenderer.

(3) (Amended and supplemented, SG No. 37/2006) While the conduct of the open procedure is in progress, the tenderers shall be obligated to notify the contracting authority of any intervening changes in the circumstances covered under Article 47 (1) and (5) herein and the circumstances covered under Article 47 (2) herein as indicated in the notice within seven days after the occurrence of any such change.

Article 69a. (New, SG No. 94/2008, effective 1.01.2009) (1) Any envelope containing a price tendered by a tenderer whereof the tender does not comply with the requirements of the contracting authority shall not be opened.

(2) (Amended, SG No. 93/2011, effective 26.02.2012) Where the criterion of the most economically advantageous tender applies, the commission shall open the envelope containing the price tendered after performing the following steps:

1. examining the proposals contained in envelope No. 2 to ascertain the conformity of the said proposals with the requirements of the contracting authority;

2. conducting a check as to whether the grounds referred to in Article 70 (1) herein apply to the proposals contained in envelope No. 2;

3. evaluating the tenders under all criteria other than the price.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) The commission shall announce, in an appropriate manner, the date, time and place of the opening of the price tenders, which the tenderers participating in the procedure or authorized representatives thereof, as well as representatives of not-for-profit legal entities and of the mass communication media, shall have the right to attend. Upon opening of the price tenders, the commission shall announce the prices tendered.

(4) Where the criterion of the most economically advantageous tender applies in the evaluation of the tenders, before the opening of the price tenders the commission shall announce to the persons present under Paragraph (3) the results of the evaluation of the tenders under the rest of the criteria.

Article 70. (1) (Amended, SG No. 37/2006, supplemented, SG No. 94/2008, effective 1.01.2009, amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) Where the tender

of any tenderer contains a proposal on a numerical basis which is subject to evaluation and which is 20 per cent more favourable than the average value of the proposals of the rest of the tenderers under the same criterion applied in the evaluation, the commission must require from the said tenderer a detailed justification in writing of the manner of formation of the said proposal. The commission shall allow reasonable time for submission of the said justification, which may not be less than three working days from the receipt of the request therefor.

(2) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) The commission may accept the justification in writing referred to in Paragraph (1) and not propose for exclusion the tender where objective circumstances are cited, relating to:

1. an original solution as to the performance of the public procurement;
2. the technical solutions proposed;
3. (Amended, SG No. 37/2006) the exceptionally favourable conditions available to the tenderer;
4. the economics of the performance of the public procurement;
5. (New, SG No. 37/2006) obtaining State aid.

(3) (Amended, SG No. 37/2006) Should a tenderer fail to submit the justification in writing as requested within the time limit as fixed, or should the commission determine that the circumstances cited are not objective, the commission shall propose the tenderer for exclusion from the procedure.

(4) (New, SG No. 37/2006) Where the commission establishes that the tender of a tenderer is abnormally low because the tenderer has obtained State aid on legal grounds which cannot be proven within the time limit as fixed, the commission may propose rejection of the tender and exclusion of the tenderer.

Article 71. (1) The commission shall examine the tenders admitted and shall evaluate the said tenders in accordance with the terms and conditions as announced in advance.

(2) (Amended, SG No. 37/2006) Where the contracting authority has authorized the submission of variants in the tender, the commission may not reject a variant on the sole grounds that selection of the said variant would lead to conclusion of a service contract rather than a supply contract or vice versa.

(3) (Amended, SG No. 37/2006) The commission shall rank the tenderers according to the extent to which the tenders comply with the terms and conditions as announced in advance by the contracting authority.

(4) (New, SG No. 52/2010) In case the integral evaluations of two or more tenders are equal, where the criterion referred to in Item 2 of Article 37 (1) herein has been chosen, the tender in which the lowest price is offered shall be treated as the most economically

advantageous tender. Provided that the prices are equal as well, the evaluations shall be compared under the criterion which is given the highest relative weighting and the tender with a more favourable value under this criterion shall be selected.

(5) (New, SG No. 52/2010) The commission shall publicly draw lots to select a supplier, contractor or service provider among the tenders ranked highest if the procurement is awarded:

1. under the criterion of "the lowest price tendered" and the said price is tendered in two or more tenders, or

2. under the criterion of "the most economically advantageous tender", but the said tender cannot be determined according to the procedure established by Paragraph (4).

Article 72. (1) The commission shall draw up a memorandum on the examination, evaluation and ranking of the tenders which shall contain:

1. the composition of the commission and a list of the consultants;

2. (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) a list of the tenderers who have been proposed for exclusion from the procedure, and the reasons for the exclusion thereof;

3. the opinions of the consultants;

4. (Amended, SG No. 37/2006) the results of the examination and evaluation of the tenders admitted, including a brief description of the tenders submitted by the tenderers and the evaluations under each award criterion, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders;

5. (Amended, SG No. 37/2006) the ranking of the tenderers whereof the tenders have been admitted to examination and evaluation;

6. the date of drawing up of the memorandum;

7. (New, SG No. 52/2010) dissenting opinions of the members of the commission, if any, with the relevant reasons.

(2) The memorandum of the commission shall be signed by all members [thereof] and shall be delivered to the contracting authority together with the full set of documents.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) The commission shall complete the work thereof by the acceptance of the memorandum by the contracting authority.

Section III

Selection of Public Procurement Supplier, Contractor or

Service Provider

Article 73. (1) (Amended, SG No. 37/2006, supplemented, SG No. 24/2009, amended, SG No. 93/2011, effective 26.02.2012) Within five working days after completion of the work of the commission, the contracting authority shall issue a reasoned decision, declaring thereby the ranking of the tenderers and the tenderer who or which has been selected as a supplier, contractor or service provider.

(2) (Amended, SG No. 37/2006) In the decision referred to in Paragraph (1), the contracting authority shall furthermore specify the tenderers and tenders who and which have been excluded from participation in the procedure and the reasons for the exclusion thereof.

(3) (Amended and supplemented, SG No. 37/2006, effective 1.01.2007 in respect of sentence two) The contracting authority shall dispatch the decision referred to in Paragraph (1) to the tenderers within three days after the issuing of the said decision. The contracting authority shall notify the European Commission in the cases referred to in Article 70 (4) herein.

(4) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Should a tenderer request so in writing before expiry of the time limit for lodging an appeal against the decision, the contracting authority shall be obligated to ensure to the said tenderer a copy of the memorandum or access thereto depending on the request of the tenderer within three days after receipt of any such request. The contracting authority may refuse access to some of the data contained in the memorandum where disclosure of the said data conflicts with a statutory instrument or prevents, restricts or distorts competition.

(5) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 74. (Amended, SG No. 37/2006) (1) The contracting authority shall conclude a public procurement contract with the tenderer who or which has been ranked highest by the commission and who or which has been selected as a supplier, contractor or service provider.

(2) (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The contracting authority may, by a decision, select the second highest ranked tenderer as a supplier, contractor or service provider and conclude a contract therewith in the cases where the highest ranked tenderer:

1. declines to conclude a contract;

2. fails to meet any of the requirements covered under Article 42 (1) herein;

3. (new, SG No. 93/2011, effective 26.02.2012) does not comply with the requirements of Article 47 (1) and (5) herein or with the requirements covered under Article 47 (2) herein as indicated in the notice.

Chapter Six

RESTRICTED PROCEDURE

Article 75. (1) (Redesignated from Article 75 and amended, SG No. 37/2006) In the contract notice of public procurement awarded by restricted procedure, the contracting authority may limit the number of candidates which the contracting authority intends to invite to tender, the said number being not less than five. The contracting authority may furthermore indicate the maximum number of such candidates. The number of candidates invited must be sufficient to ensure free and fair competition.

(2) (New, SG No. 37/2006) In the contract notice, the contracting authority shall indicate objective and non-discriminatory criteria or rules which the contracting authority will apply upon selection of the candidates under Paragraph (1).

Article 76. (1) (Supplemented, SG No. 31/2005, amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall dispatch the contract notice to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the deadline fixed for receipt from the candidates of applications to qualify.

(2) (New, SG No. 37/2006) The deadline referred to in Paragraph (1) may be shortened by seven days where the notice has been dispatched by electronic means as well.

(3) (Renumbered from Paragraph (2) and amended, SG No. 37/2006) Should any reasons of extreme urgency arise as a result of which the deadline referred to in Paragraph (1) cannot be complied with, contracting authorities covered under Items 1 to 4 of Article 7 herein may fix a deadline for receipt of the applications to qualify that may not be less than fifteen days from the date of dispatch of the notice or less than ten days, where the notice has been sent by electronic means.

(4) (Amended and supplemented, SG No. 31/2005, repealed, renumbered from Paragraph (3) and amended, SG No. 37/2006) In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the contract notice.

Article 77. (1) The contracting authority shall conduct qualification proceedings for the purpose of selecting the candidates possessing the financial and technical capacity required to perform the public procurement.

(2) Any candidate may submit an application to qualify.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) An application to qualify shall contain:

1. (Amended, SG No. 94/2008, effective 1.01.2009) a copy of the document on registration or Standard Identification Code according to Article 23 of the Commercial Register Act, where the tenderer is a legal person or a sole trader, or a copy of the identity document, where the tenderer is a natural person;

2. (Supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) a declaration on non-existence of the circumstances covered under Article 47 (1) and (2) herein, as

well as of the circumstances covered under Article 47 (2) herein, where this is indicated in the notice;

3. (Repealed, SG No. 37/2006, new, SG No. 93/2011, effective 26.02.2012) where the tenderers are combinations: a document signed by the partners in the combination which shall mandatorily state the person representing the combination;

4. evidence of economic and financial standing under Article 50 herein, as specified by the contracting authority in the contract notice;

5. evidence of technical capacity and/or qualifications under Article 51 herein, as specified by the contracting authority in the contract notice;

6. (Supplemented, SG No. 52/2010) the subcontractors who or which will participate upon performance of the procurement and the type and share of the participation thereof, where participation of subcontractors is envisaged;

7. documentary proof of provision of a participation guarantee;

8. (New, SG No. 93/2011, effective 26.02.2012) a declaration to the effect that the minimum labour cost requirement is complied with, in the cases where the public procurement is of works;

9. (New, SG No. 93/2011, effective 26.02.2012) a declaration of acceptance of the terms and conditions in the draft of a contract;

10. (New, SG No. 93/2011, effective 26.02.2012) any other information indicated in the notice or in the contract documents;

11. (New, SG No. 93/2011, effective 26.02.2012) a list of the documents contained in the tender, signed by the tenderer.

(4) (Amended, SG No. 37/2006, supplemented, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) Where the candidate envisages participation of subcontractors, the documents referred to in Items 1, 2, 4, 5 and 8 of Paragraph (3) shall be submitted for each subcontractor, and the requirements shall be applied depending on the type and share of the participation thereof.

(5) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Where the candidate in the procedure is a combination which is not a legal person:

1. the documents referred to in Items 1 and 2 of Paragraph (3) shall be submitted for each natural or legal person included in the said combination;

2. the documents referred to in Items 4 and 5 of Paragraph (3) shall be submitted only for the partners through which the combination proves the conformity thereof with the selection criteria referred to in Item 6 of Article 25 (2) herein;

3. a declaration referred to in Item 8 of Paragraph (3) shall be submitted only for the partners in the combination which are to execute activities relating to works.

(6) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012) .

(7) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012) .

Article 78. (1) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The application shall be submitted according to the procedure established by Article 57 (1), (4) to (6) herein, by telefax or shall be stated by telephone.

(2) (New, SG No. 37/2006) Where the application to qualify is communicated by telephone, the candidate must confirm the said application in writing before expiry of the time limit fixed for the receipt of applications.

(3) (New, SG No. 37/2006) Where the application to qualify is dispatched by telefax, the contracting authority may obligate the candidate to confirm the said application by a letter sent with advice of delivery or by electronic means. This requirement, as well as the time limit for receipt of the written confirmation, must be indicated in the contract notice.

(4) (New, SG No. 37/2006) The terms and procedure for receipt and storage of the applications sent by electronic means or by telefax shall be regulated in the Regulations for Application of this Act.

(5) (Renumbered from Paragraph (2), SG No. 37/2006) In the qualification proceedings, the contracting authority shall have no right to require a tender, and the candidate shall have no right to submit a tender.

Article 79. (1) (Amended, SG No. 37/2006) The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 to 36 herein.

(2) (Supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, supplemented, SG No. 52/2010) The commission shall examine the applications to qualify as submitted according to the procedure established by Article 68 (7) to (11) herein and shall select the candidates on the basis of the documents submitted according to the notice and attesting the economic and financial standing of the said candidates, and the technical capacity and/or qualifications thereof to perform the public procurement. The candidates or authorized representatives thereof, as well as representatives of the mass communication media and of not-for-profit legal entities, shall have the right to be present upon the opening of the applications.

(3) (New, SG No. 37/2006) In case the contracting authority has not included in the notice a limitation of the candidates who or which will be invited to tender, the contracting authority shall be obligated to invite all candidates who or which meet the selection criteria and the minimum requirements for technical capacity.

(4) (New, SG No. 37/2006) In case the contracting authority has including in the notice a limitation of the number of candidates who or which will be invited to tender, the contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

(5) (Amended, SG No. 37/2006) Where in the cases referred to in Paragraph (4) the number of candidates who or which meet the requirements indicated in the restricted procedure notice exceeds the stated maximum number of persons who or which will be invited to tender, the commission shall perform the selection on the basis of the objective and non-discriminatory criteria indicated in the notice.

(6) (New, SG No. 37/2006, amended, SG No. 52/2010) Where the number of candidates meeting the selection criteria and the minimum requirements is below the minimum number indicated in the notice, the contracting authority may continue the procedure by inviting all candidates who or which possess the required capacity. In such case, the contracting authority may not invite any other persons, who or which did not request to participate, or any candidates, who or which do not possess the required capacity, to tender.

(7) (Renumbered from Paragraph (3) and amended, SG No. 37/2006) The commission shall draw up a memorandum on the results of the selection referred to in Paragraph (2) which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates who or which do not meet the requirements announced by the contracting authority, as well as the reasons for this;
3. a list of the candidates who or which meet the requirements referred to in Paragraph (2) and will be invited to tender and, where the number of such candidates exceeds the number of candidates who or which will be invited to tender as indicated in the notice, the candidates selected on the basis of the objective and non-discriminatory criteria indicated in the notice;
4. the date of drawing up of the memorandum.

(8) (Renumbered from Paragraph (4) and amended, SG No. 37/2006) Within five working days after the date of the memorandum, the contracting authority shall declare by a decision the candidates proposed by the commission who or which will be invited to submit tenders. The said decision shall furthermore specify the candidates who or which do not meet the requirements announced by the contracting authority and the reasons for this.

(9) (Renumbered from Paragraph (6) and amended, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Within three days after making the decision referred to in Paragraph (8), the contracting authority shall dispatch the said decision simultaneously to all candidates and shall furthermore invite in writing the selected candidates to tender.

Article 80. (Amended, SG No. 37/2006) An invitation to submit a tender for participation in the restricted procedure must contain:

1. a time limit and place for submission of tenders;

2. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) date of publication of the contract notice;

3. (New, SG No. 37/2006) a copy of the specifications and all supporting documents, unless contained in the contract documents, and Internet address for accessing the specifications and the supporting documents, where they are made available by electronic means;

4. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) the methods for arrival at an evaluation under each criterion and the methods for arrival at an integral evaluation of the tender, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders.

Article 81. (Amended, SG No. 37/2006) (1) In the invitation referred to in Article 80 herein, the contracting authority shall fix a time limit for receipt of the tenders, which may not be less than forty days from the date of dispatch.

(2) The time limit referred to in Paragraph (1) may be shortened to twenty-two days, provided that the prior information notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Article 76 (1) herein and contains the information available at the date of dispatch of the said notice.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) The time limit referred to in Paragraph (1) may be reduced by five days where, as from the date of publication of the notice, the contracting authority offers full access by electronic means to the contracting documents, specifying in the text of the notice an Internet address at which the said documents are accessible.

(4) In the cases referred to in Article 76 (3) herein, the contracting authority may fix a time limit for receipt of tenders which may not be less than ten days from the date of dispatch of the invitation referred to in Article 80 herein.

(5) (Amended, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Article 76 (3) herein, within seven days before expiry of the time limit for receipt of tenders, each candidate may request in writing additional information relating to the contract documents from the contracting authority. The contracting authority shall be obligated to reply within three days after receipt of any such request and to notify the non-inquiring candidates according to the procedure established by Article 29 (3) herein.

(6) (Repealed, SG No. 93/2011, effective 26.02.2012).

(7) (Amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall be obligated to extend the deadline for the receipt of tenders:

1. where it is established that the deadline as initially fixed is insufficient for preparing the tenders, inter alia owing to a need of on-the-spot inspection of documents supporting the contract

documents or a visit to the site of the performance;

2. in the cases referred to in Article 29 (2) herein;
3. where this is necessary as a result of an appeal proceeding.

Article 82. (1) Each tender must comply with the requirements covered under Article 56 herein.

(2) (Amended, SG No. 37/2006) A tenderer need not submit the documents which the said candidate has submitted with the application to qualify.

Article 83. (Amended, SG No. 37/2006) The examination, evaluation and ranking of tenders shall follow the procedure established by Articles 68 to 72 herein.

(2) The selection of a supplier, contractor or service provider of the public procurement shall follow the procedure established by Articles 73 and 74 herein.

Chapter Six A

(New, SG No. 37/2006)

COMPETITIVE DIALOGUE

Article 83a. (New, SG No. 37/2006) (1) The contracting authority may award a public procurement by means of competitive dialogue where the procurement is particularly complex, which precludes award of the said procurement applying an open or restricted procedure.

(2) A public procurement is considered to be "particularly complex" where the contracting authority is objectively unable to define:

1. the technical specifications referred to in Article 30 herein, and/or
2. the financial or legal make-up of the procurement.

(3) In the decision on the award of a public procurement by means of competitive dialogue, the contracting authority shall justify the choice of the said procedure and shall approve the contract notice and a descriptive document.

(4) (New, SG No. 94/2008, effective 1.01.2009) The decision referred to in Paragraph (3) shall be adopted on the basis of a proposal by a commission appointed by the contracting authority with the participation of experts of the said contracting authority, not fewer than two outside experts included in the list referred to in Item 8 of Article 19 (2) herein, and at least one outside independent consultant, all of whom must be qualified in accordance with the subject matter of the procurement.

(5) (Renumbered from Paragraph (4), SG No. 94/2008, effective 1.01.2009) The contracting

authority shall set out the needs and the requirements thereof in the contract notice and/or in the descriptive document, which shall replace technical specifications.

(6) (Renumbered from Paragraph (5), SG No. 94/2008, effective 1.01.2009) Upon award of a public procurement by means of competitive dialogue, the contracting authority shall evaluate the tenders on the sole basis of the criterion for the most economically advantageous tender.

Article 83b. (New, SG No. 37/2006) (1) (Amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall dispatch the public procurement notice to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for the receipt of requests to participate in the competitive dialogue.

(2) The time limit referred to in Paragraph (1) may be shortened by seven days if the notice is transmitted by electronic means as well.

(3) (Repealed SG No. 93/2011, effective 26.02.2012).

Article 83c. (New, SG No. 37/2006) (1) The contracting authority may indicate in the notice the minimum and the maximum number of candidates that the said contracting authority intends to invite to participate in a competitive dialogue, the said number being not less than three. The number of candidates invited must be sufficient to ensure free and fair competition.

(2) The contracting authority may provide for the competitive dialogue to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage, by applying the award criteria as indicated in the notice or in the descriptive document.

Article 83d. (New, SG No. 37/2006) (1) The qualification proceedings for the candidates that have submitted a request shall follow the procedure established by Article 79 (1) to (6) herein.

(2) The commission shall draw up a memorandum on the results of the selection which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates who or which do not meet the requirements announced by the contracting authority, as well as the reasons for this;
3. a list of the candidates who or which meet the requirements announced by the contracting authority and will be invited to participate in a dialogue;
4. the date of drawing up of the memorandum.

(3) Within five working days after the date of the memorandum, the contracting authority shall declare by a decision the candidates proposed by the commission who or which will be invited to participate in a dialogue. The said decision shall furthermore specify the candidates who or which do not meet the requirements announced by the contracting authority and the

reasons for this.

(4) Within three days after completion of the qualification proceedings, the contracting authority shall simultaneously and in writing invite the selected candidates to participate in a dialogue, and shall dispatch the decision referred to in Paragraph (3) to the Agency and to the candidates who or which have not been admitted.

(5) (New, SG No. 94/2008, effective 1.01.2009) In the qualification proceedings, the contracting authority shall have no right to require a tender, and the candidate shall have no right to submit a tender.

Article 83e. (New, SG No. 37/2006) (1) An invitation to participate in a dialogue shall contain at least:

1. (Amended, SG No. 93/2011, effective 26.02.2012) date of publication of the contract notice;

2. a copy of the descriptive document and all supporting documents, or Internet address for accessing the said documents when they are made available by electronic means;

3. the date and the address set for conduct of the dialogue;

4. (Amended, SG No. 94/2008, effective 1.01.2009) the methods for arrival at an evaluation under each criterion and the methods for arrival at an integral evaluation of the tender, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders.

Article 83f. (New, SG No. 37/2006) (1) The commission which conducted the qualification proceedings shall open a dialogue with each of the candidates approved, the aim of which shall be to identify the parameters of the procurement best suited to satisfying the needs of the contracting authority.

(2) All substantial aspects of the procurement may be discussed during the dialogue.

(3) All participants in the dialogue shall be ensured equality of treatment, providing them with identical information.

(4) The commission shall have no right to reveal to the other candidates any solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his or her agreement.

(5) The solutions proposed and the agreements reached with each candidate shall be shown in a separate memorandum, which shall be signed by the members of the commission and by the candidate.

(6) (Supplemented, SG No. 93/2011, effective 26.02.2012) Upon completion of the dialogue with all candidates, the commission shall draw up a report to the contracting authority which shows the result of the dialogue, proposing therein the candidates to be invited to tender.

Article 83g. (New, SG No. 37/2006) (1) Within five working days after submission of the report by the commission, the contracting authority shall issue a decision declaring that the dialogue is completed and designating the candidates that the said contracting authority will invite to tender.

(2) Within three days after making a decision under Paragraph (1), the contracting authority shall dispatch the said decision simultaneously to the Agency and to all participants in the dialogue, and a written invitation to the designated candidates to tender.

(3) In the invitation referred to in Paragraph (2), the contracting authority shall indicate a deadline for the receipt of tenders and the address to which the tenders must be sent.

(4) A tender must comply with the requirements of the contracting authority and must contain all the solutions proposed during the dialogue for the performance of the procurement.

(5) At the request of the commission, tenders may be modified, complemented and specified. Any such modification, complementation and specification may not involve changes to the substantial aspects of the tender or of the invitation to tender, if this is likely to lead to a restriction of competition or have a discriminatory effect on the candidates.

(6) The commission shall evaluate the tenders received on the basis of the award criteria as laid down in the notice or the descriptive document, and shall choose the most economically advantageous tender.

(7) The commission may ask the tenderer identified as having submitted the most economically advantageous tender to clarify certain aspects of the tender or to confirm the commitments thereof contained in the said tender, provided that this does not have the effect of modifying substantial aspects of the tender or of the invitation to tender, nor lead to a restriction of competition or to causing discrimination against the candidates.

Article 83h. (New, SG No. 37/2006) The contracting authority shall select the supplier, contractor or service provider of the public procurement and shall conclude a contract therewith according to the procedure established by Articles 73 and 74 herein.

Chapter Seven

NEGOTIATED PROCEDURES

Section I

Negotiated Procedure with Publication of Contract Notice

Article 84. Contracting authorities may award a public procurement by negotiated procedure with publication of a contract notice solely where:

1. (Amended and supplemented, SG No. 37/2006) the open or restricted procedure or the

competitive dialogue has been terminated under Item 2 of Article 39 (1) herein and the terms and conditions as initially announced have not been substantially changed;

2. (Supplemented, SG No. 37/2006) in exceptional cases, when the nature of the supply, service or works, or the risks attaching thereto, do not permit prior overall pricing;

3. when the nature of the service to be procured is such that the technical specifications cannot be established with sufficient precision to permit the award of the procurement according to the rules governing open or restricted procedures;

4. the procurement is of services referred to in Item 2 of Article 5 (1) herein;

5. in works, when the works involved are carried out purely for the purpose of research, experiment or development, and not for the purpose of ensuring profit or of recovering research and development costs.

Article 85. In the decision referred to in Article 25 (1) herein, the contracting authority shall be obligated to justify the choice of a negotiated procedure with publication of a contract notice.

Article 86. (1) (Supplemented, SG No. 31/2005, amended, SG No. 93/2011, effective 26.02.2012) The contract notice shall be dispatched to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the deadline fixed for the receipt of the requests to participate in the procedure.

(2) (New, SG No. 37/2006) The deadline referred to in Paragraph (1) may be shortened by seven days where the notice has been transmitted by electronic means as well.

(3) (Renumbered from Paragraph (2) and amended, SG No. 37/2006) Should any reasons of extreme urgency arise as a result of which the deadline referred to in Paragraph (1) cannot be complied with, contracting authorities covered under Items 1 to 4 of Article 7 herein may fix a deadline for the receipt of requests to participate in the negotiated procedure that may not be less than fifteen days from the date of dispatch of the notice or not less than ten days, where the notice has been sent by electronic means.

(4) (Renumbered from Paragraph (3) and amended, SG No. 37/2006) In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the contract notice.

(5) (New, SG No. 37/2006) In the contract notice, the contracting authority may limit the number of candidates which the contracting authority intends to invite to participate in the negotiations, the said number being not less than three. The contracting authority may furthermore indicate the maximum number of such candidates. The number of candidates invited must be sufficient to ensure free and fair competition.

(6) (New, SG No. 37/2006) In the contract notice, the contracting authority shall indicate objective and non-discriminatory criteria or rules which the contracting authority will apply upon

selection of the candidates under Paragraph (5).

(7) (New, SG No. 37/2006) The contracting authority may provide for the negotiations to take place in successive stages in order to reduce the number of tenders to be negotiated at each successive stage so as to achieve the fullest possible correspondence of the tenders with the requirements as announced.

(8) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

(9) (New, SG No. 37/2006, repealed, SG No. 93/2011, effective 26.02.2012).

Article 87. (1) The request to participate in a negotiated procedure with publication of a contract notice must comply with the requirements covered under Paragraphs (3) to (5) of Article 77 herein.

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The request shall be submitted according to the procedure established by Article 57 (1), (4) to (6) herein, by telefax or shall be stated by telephone.

(3) (New, SG No. 37/2006) Where the request to participate is communicated by telephone, the candidate must confirm the said request in writing before expiry of the time limit fixed for the receipt of requests.

(4) (New, SG No. 37/2006) Where the request to participate is dispatched by telefax, the contracting authority may obligate the candidate to confirm the said request by a letter sent with advice of delivery by electronic means. This requirement, as well as the time limit for receipt of the written confirmation, must be indicated in the contract notice.

(5) (New, SG No. 94/2008, effective 1.01.2009) In the qualification proceedings, the contracting authority shall have no right to require a tender, and the candidate shall have no right to submit a tender.

Article 88. (1) (Amended, SG No. 37/2006) The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 to 36 herein.

(2) (Supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, supplemented, SG No. 52/2010) The commission shall examine the requests as submitted according to the procedure established by Article 68 (7) to (11) herein and shall select the candidates on the basis of the documents submitted according to the notice regarding the economic and financial standing thereof, and the technical capacity and/or qualifications thereof to perform the public procurement. The candidates or authorized representatives thereof, as well as representatives of the mass communication media and of not-for-profit legal entities, may be present upon the opening of the requests.

(3) (New, SG No. 37/2006) In case the contracting authority has not included in the notice a limitation of the candidates who or which will be invited to participate in the negotiations, the

contracting authority shall be obligated to invite all candidates who or which meet the selection criteria and the minimum requirements for technical capacity.

(4) (New, SG No. 37/2006) In case the contracting authority has including in the notice a limitation of the number of candidates who or which will be invited to participate in the negotiations, the contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

(5) (Amended, SG No. 37/2006) Where in the cases referred to in Paragraph (4) the number of candidates who or which meet the requirements indicated in the negotiated procedure notice exceeds the stated maximum number of persons who or which will be invited to participate in the negotiations, the commission shall perform a selection on the basis of the objective and non-discriminatory criteria indicated in the notice.

(6) (New, SG No. 37/2006, amended, SG No. 52/2010) Where the number of candidates meeting the selection criteria and the minimum requirements is below the minimum number indicated in the notice, the contracting authority may continue the procedure by inviting all candidates who or which possess the required capacity. In such case, the contracting authority may not invite any other persons, who or which did not request to participate, or any candidates, who or which do not possess the required capacity, to participate in the negotiations.

(7) (Renumbered from Paragraph (3) and amended, SG No. 37/2006) The commission shall draw up a memorandum on the results of the selection referred to in Paragraph (2) which shall contain:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates who or which do not meet the requirements announced by the contracting authority, as well as the reasons for this;
3. a list of the candidates who or which meet the requirements referred to in Paragraph (2) and will be invited to participate in the negotiations and, where the number of such candidates exceeds three, the candidates selected on the basis of the objective and non-discriminatory criteria as indicated in the notice;
4. the date of drawing up of the memorandum.

(8) (Renumbered from Paragraph (4) and amended, SG No. 37/2006) Within five working days after the date of the memorandum, the contracting authority shall declare by a decision the candidates proposed by the commission who or which will be invited to participate in the negotiations. The said decision shall furthermore specify the candidates who or which do not meet the requirements announced by the contracting authority and the reasons for this.

(9) (Renumbered from Paragraph (6) and amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Within three days after making the decision referred to in Paragraph (8), the contracting authority shall dispatch the said decision simultaneously to all candidates and shall furthermore invite in writing the candidates referred to in Item 3 of Paragraph (7) to

participate in negotiations.

Article 89. (1) An invitation to participate in negotiations must contain:

1. a date and place for conduct of the negotiations;

2. a requirement to produce additional evidence of the circumstances as declared, should any such evidence be necessary;

3. (Amended, SG No. 37/2006) a time limit for receipt of a tentative tender, which may not be less than ten days from the dispatch of the invitation;

4. (Amended, SG No. 37/2006) the address at which the tender must be dispatched;

5. (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) date of publication of the public procurement notice;

6. (New, SG No. 37/2006) a copy of the specifications and all supporting documents, unless contained in the contract document, and Internet address for accessing the specifications and the supporting documents, where they are made available by electronic means;

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) The commission shall conduct the negotiations with the tenderers invited in the order of receipt of the initial tenders.

(3) (Amended, SG No. 37/2006) The proposals made and the arrangements reached with each tenderer shall be shown in a separate memorandum, which shall be signed by the members of the commission and by the tenderer.

(4) (New, SG No. 93/2011, effective 26.02.2012) The commission shall apply Article 70 herein where the commission ascertains that the proposal of any of the tenderers, reached as a result of the negotiations, is 20 per cent more favourable than the average value of the proposals of the rest of the tenderers under the same criterion applied in the evaluation.

(5) (Amended, SG No. 37/2006, renumbered from Paragraph (4) and amended, SG No. 93/2011, effective 26.02.2012) After conduct of negotiations, the commission shall draw up a report to the contracting authority, showing therein the result of the negotiations and proposing:

1. a ranking of the tenderers, or

2. termination of the procedure.

(6) (Amended, SG No. 37/2006, renumbered from Paragraph (5) and amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall select a supplier, contractor or service provider by a reasoned decision within the time limit referred to in Article 73 (1) herein.

(7) (New, SG No. 93/2011, effective 26.02.2012) The contracting authority shall conclude a

contract with the tenderer selected as a supplier, contractor or service provider. The said contract may be concluded with the second highest ranked tenderer under the terms established by Article 74 (2) herein.

(8) (New, SG No. 93/2011, effective 26.02.2012) Should a tenderer request so in writing before expiry of the time limit for lodging an appeal against the decision, the contracting authority shall be obligated to ensure to the said tenderer a copy of the decision or access thereto depending on the request of the tenderer within three days after the receipt of any such request.

Section II

Negotiated Procedure without Publication of Contract Notice

Article 90. (1) Contracting authorities may award a public procurement by negotiated procedure without publication of a contract notice solely where:

1. (Amended, SG No. 37/2006) the open or restricted procedure has been terminated under Item 1 of Article 39 (1) herein and the conditions as initially announced are not substantially changed;

2. (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) in the cases referred to in Item 3 of Article 39 (1) herein, contracting authorities invite only the participants who or which have submitted tenders and meet the requirements as indicated in the notice of the open or restricted procedure or the competitive dialogue, to participate in the procedure;

3. the award of the public procurement to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a statute or of an administrative act;

4. (Amended, SG No. 93/2011, effective 26.02.2012) a need has arisen to take urgent action, brought about by the occurrence of an event of an extraordinary nature which the contracting authority, while exercising due care, was unable or was not obligated to foresee or to avoid and for the mitigation of which the time limits for conduct of an open or a negotiated procedure or a negotiated procedure with publication of a contract notice cannot be adhered to;

5. the goods which are the subject matter of procurement are manufactured purely for the purpose of research, experiment, study or development, and this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

6. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;

7. (Supplemented, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) the service is awarded after organization of a design contest, dispatching invitations to the highest ranked participant or to all ranked participants in accordance with the terms and conditions of the contest, to participate in the negotiations;

8. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:

(a) the additional service or works cannot be technically or economically separated from the subject matter of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement;

(b) (Amended, SG No. 93/2011, effective 26.02.2012) the aggregate value of the procurements whereby additional services or works are awarded does not exceed 50 per cent of the value of the principal procurement;

9. the repetition of a service or work has to be entrusted to the same service provider or contractor not later than three years following the award of the original procurement, subject to the following conditions:

(a) the original procurement has been awarded by open or restricted procedure and the notice of the said procurement has mentioned the possibility of such an award;

(b) the aggregate value of the said procurement was included when the value of the original procurement was established;

(c) the new procurement conforms to a basic project for the implementation of which the original procurement was awarded;

10. (Repealed, SG No. 37/2006);

11. (Amended, SG No. 93/2011, effective 26.02.2012) the subject matter of the procurement is the supply of goods specified according to a list proposed by the State Commission on Commodity Exchanges and Wholesale Markets and approved by the Council of Ministers in the Regulations for Application of the Act;

12. (New, SG No. 37/2006) where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, upon sale by auction of the property of commercial corporations which have been put into liquidation or adjudicated bankrupt;

13. (New, SG No. 93/2011, effective 26.02.2012) the procurement is of Category 21 services listed in Annex 3 to Item 2 of Article 5 (1) herein and is of a value covered under Article 14 (2) herein.

(2) (Amended, SG No. 37/2006) In the cases referred to in Items 6 and 9 of Paragraph (1),

the duration of the additional procurement contract may not be longer than three years.

Article 91. (1) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) In the decision on public procurement award by negotiated procedure without publication of a contract notice, the contracting authority shall justify the choice of this procedure.

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) By the decision referred to in Paragraph (1), the contracting authority shall approve an invitation to participate in the procedure, which shall contain:

1. subject matter of the procurement, including quantity and/or scope and description of the lots if any;

2. requirements set by the contracting authority for the performance of the procurement;

3. where applicable, the criterion to be applied in the evaluation of the tenders, and where the criterion is the most economically advantageous tender, also the criteria for arrival at an integral evaluation, including the relative weighting given to each of the criteria or indication of the said criteria in descending order of importance where weighting is not possible for demonstrable reasons, as well as the methods for integral evaluation of the tenders;

4. place and date for conduct of the negotiations;

5. other requirements at the discretion of the contracting authority.

(3) (New, SG No. 93/2011, effective 26.02.2012) The requirements covered under Paragraph (2) shall not apply in the cases referred to in Items 11 and 12 of Article 90 (1) herein.

Article 92. (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) An invitation to participate in a negotiated procedure without publication of a contract notice shall be dispatched to the selected parties and to the Agency.

Article 92a. (New, SG No. 93/2011, effective 26.02.2012) (1) The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 to 36 herein.

(2) The commission shall conduct the negotiations with the participants in order to determine the contractual terms and conditions according to the requirements as specified by the contracting authority in the invitation to participate. The results of the negotiations shall be shown in a memorandum which shall be signed by the commission and by the participant.

(3) Where the contracting authority has invited several participants, the proposals made and the arrangements reached with each participant shall be shown in a separate memorandum.

(4) The commission shall apply Article 70 herein where the commission ascertains that the proposal of any of the participants, reached as a result of the negotiations, is 20 per cent more favourable than the average value of the proposals of the rest of the participants under the same

criterion applied in the evaluation.

(5) After conduct of the negotiations, the commission shall draw up a report to the contracting authority, showing therein the result of the negotiations and proposing:

1. conclusion of a contract with the sole participant, or
2. a ranking of the participants in the cases referred to in Paragraph (3), or
3. termination of the procedure.

(6) The contracting authority shall select a supplier, contractor or service provider by a reasoned decision within the time limit referred to in Article 73 (1) herein.

(7) The contracting authority shall conclude a contract with the participant selected as a supplier, contractor or service provider. The said contract may be concluded with the second highest ranked participant under the terms established by Article 74 (2) herein.

(8) Should a participant request so in writing before expiry of the time limit for lodging an appeal against the decision, the contracting authority shall be obligated to ensure to the said participant a copy of the report or access thereto depending on the request of the participant within three days after receipt of any such request.

(9) In the cases referred to in Item 11 of Article 90 (1) herein, the provisions of Paragraphs (1) to (8) shall not apply and the contract shall be concluded according to the procedure established by the Commodity Exchanges and Wholesale Markets Act.

(10) In the cases referred to in Item 12 of Article 90 (1) herein, the provisions of Paragraphs (1) to (8) shall not apply and the contract shall be concluded according to the procedure established by the Commerce Act.

Article 93. (Amended and supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) The contracting authority need not apply Article 91 (2), Articles 92 and 92a herein where the contracting authority concludes contracts in pursuance of:

1. Item 3 of Article 90 (1) herein having as their subject matter the supply of natural gas, heat power or electricity, or drinking water with the companies holding exclusive rights;
2. Item 4 of Article 90 (1) herein;
3. Item 13 of Article 90 (1) herein having as their subject matter representation by legal counsel.

Chapter Seven A

(New, SG No. 37/2006)

FRAMEWORK AGREEMENT

Article 93a. (New, SG No. 37/2006) (1) A "framework agreement" shall be an agreement concluded between one or more contracting authorities and one or more potential suppliers, contractors or service providers of public procurements, whereof the purpose is to pre-establish the terms governing the contracts which the parties intend to conclude during a given period not longer than four years, in particular with regard to the prices and, where appropriate, the quantity envisaged. In exceptional cases, the period of a framework agreement may exceed four years, and the contracting authority shall state the reasons for this in the contract notice.

(2) Where the contracting authority concludes a framework agreement with several persons, the number thereof may not be less than three, provided that there is a sufficient number of potential suppliers, contractors or service providers to satisfy the selection criteria, and/or a sufficient number of tenders which meet the conditions pre-announced by the contracting authority.

(3) Contracting authorities may conclude a framework agreement for public procurement awards on the basis of each procedure conducted with the exception of a negotiated procedure without publication of a contract notice. The criteria covered under Article 37 herein shall apply upon conclusion of a framework agreement.

(4) In the cases of concluding a contract on the basis of a framework agreement, the parties shall have no right to make substantial amendments to the terms laid down in the said framework agreement.

(5) A framework agreement may not be concluded or applied if it prevents, restricts or distorts competition.

Article 93b. (New, SG No. 37/2006) (1) (Redesignated from Article 93b, SG No. 93/2011, effective 26.02.2012) Where all the terms are laid down in the framework agreement, the contracting authority shall conclude a public procurement contract applying the said terms.

(2) (New, SG No. 93/2011, effective 26.02.2012) Where not all the terms are laid down in the framework agreement and the said agreement is concluded with a single person, the contracting authority shall require in writing from the said person to complement the tender thereof.

(3) (New, SG No. 93/2011, effective 26.02.2012) Where not all the terms are laid down in the framework agreement and the said agreement is concluded with several persons, for every contract which is to be concluded the contracting authority:

1. shall invite in writing the persons under the framework agreement;
2. shall fix a suitable deadline for the receipt of tenders, taking into account the subject matter and the time;

3. shall preserve the tenders, submitted in opaque sealed envelopes, until expiry of the deadline for the receipt thereof;

4. shall appoint a commission which shall examine and rank the tenders according to the criterion determined in the framework agreement and in compliance with the provisions of Articles 70 to 72 herein.

Article 93c. (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012)
The contracting authority shall select a supplier, contractor or service provider according to the procedure established by Article 73 herein and shall conclude a contract according to the procedure established by Article 74 herein.

Article 93d. (New, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012)
The public procurement contracts on the basis of a framework agreement concluded by the central public procurement authority shall be awarded by the said authority or by the separate contracting authorities according to the procedure established by Article 93b herein.

Chapter Seven B

(New, SG No. 37/2006)

DYNAMIC PURCHASING SYSTEMS

Article 93e. (New, SG No. 37/2006) (1) (Amended, SG No. 94/2008, effective 1.01.2009) A "dynamic purchasing system" shall be a completely electronic process for making commonly used purchases, the market characteristics of which meet the requirements of the contracting authority. Any such system may not last for more than four years and shall be open throughout the period of validity thereof to any candidate who or which satisfies the selection criteria and has submitted an indicative tender that complies with the specifications. By exception, the period of validity of such a system may last for more than four years, and the contracting authority shall state the reasons for this in the notice.

(2) A dynamic purchasing system shall be set up by means of an open procedure.

(3) The system shall be open to each candidate who or which:

1. complies with the requirements of the contracting authority as indicated in the contract notice;

2. has submitted an indicative tender which complies with the specifications as defined by the contracting authority;

3. has submitted all additional documents as indicated by the contracting authority in the contract notice.

(4) The indicative tenders referred to in Item 2 of Paragraph (3) may be altered at any time within the period of validity of the system provided that they continue to comply with the

specifications.

(5) Upon setting up a system referred to in Paragraph (1) and awarding public procurements through any such system, contracting authorities shall use solely electronic means.

Article 93f. (New, SG No. 37/2006) (1) Upon setting up a dynamic purchasing system, contracting authorities shall:

1. publish a contract notice, expressly indicating therein that such a system is set up;
2. define the technical specifications according to the procedure established by Articles 30 to 33 herein, the nature of the purchases, as well as all the necessary information concerning the system, the type and technical characteristics of the electronic means used.

(2) As from the publication of the notice on the setting up and up to the expiry of the period of validity of the system, contracting authorities shall offer, by electronic means, full, direct and unrestricted access to the technical specifications, as well as to any additional documents, mandatorily indicating in the notice the Internet address at which such documents may be consulted.

Article 93g. (New, SG No. 37/2006) (1) An indicative tender for admittance to a dynamic purchasing system may be submitted at any time within the period of validity of the system.

(2) The contracting authority shall appoint a commission according to the procedure established by Articles 34 to 36 herein for examination of the tenders referred to in Paragraph (1).

(3) The commission shall examine each indicative tender submitted and, on the basis of the criteria and rules as announced, shall propose to the contracting authority to admit or to refuse admittance of the candidate to the dynamic purchasing system.

(4) The contracting authority shall be obligated to make a decision within fifteen days after submission of the indicative tender and to inform the candidate of the admittance thereof to the dynamic purchasing system or of the refusal to admit the said candidate within three days after the date of the decision.

Article 93h. (New, SG No. 37/2006) (1) Before awarding each specific public procurement contract for purchasing, the contracting authority shall publish a simplified contract notice, inviting all interested parties to submit an indicative tender in accordance with Item 2 of Article 93f (1) herein and fixing a time limit for the submission of indicative tenders that may not be less than fifteen days from the date of dispatch of the simplified notice.

(2) Indicative tenders shall be evaluated and candidates shall be admitted to the system according to the procedure established by Article 93g (2) to (4) herein.

Article 93i. (New, SG No. 37/2006) (1) After making the decisions referred to in Article 93g (4) herein, the contracting authority shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each specific public procurement contract for

purchasing to be awarded under the system.

(2) In the invitation referred to in Paragraph (1), the contracting authority shall fix a time limit for the submission of tenders and may formulate more precisely the award criteria for the public procurement contract.

Article 93j. (New, SG No. 37/2006) (1) The commission referred to in Article 93g (2) herein shall examine and rank the tenders, and shall propose to the contracting authority to conclude a public procurement contract for purchasing with the tenderer whereof the tender was ranked highest on the basis of the award criteria as set out in the notice or in the invitation referred to in Article 93i herein.

(2) The contracting authority shall select a supplier, contractor or service provider according to the procedure established by Article 73 herein and shall conclude a contract according to the procedure established by Article 74 herein.

Article 93k. (New, SG No. 37/2006) (1) A dynamic purchasing system may not be applied if it prevents, restricts or distorts competition.

(2) The access to the dynamic purchasing system and the participation therein shall be unimpeded and free of charge to all interested parties.

Chapter Eight

DESIGN CONTEST

Section I

Design Contest Preparation

Article 94. (1) (New, SG No. 37/2006) The provisions of this Chapter shall apply upon conduct of a design contest:

1. organized as part of a procedure for the award of a public procurement of service;
2. with prizes and/or payments to participants in the contest.

(2) (Redesignated from Article 94, SG No. 37/2006) A design contest shall be organized for acquisition of:

1. a spatial-development concept for preparation of a spatial-development scheme, a spatial-development plan, a land-distribution plan, or a forest-management design;

2. a conceptual design for the preparation of designs, including landscape, architectural, structural, technological, utility-system designs, as well as designs for works of art and for restoration and renovation of cultural property;

3. designs in the sphere of data processing;
4. other designs.

(3) (New, SG No. 37/2006, amended, SG No. 79/2006) The terms and the procedure for the conduct of contests in spatial planning and development-project designing shall be established by an ordinance of the Council of Ministers.

Article 95. (1) A design contest may be open or restricted.

(2) (Amended, SG No. 37/2006) In an open contest, all interested parties may submit designs.

(3) In a restricted contest, designs may be submitted solely by candidates who or which have been invited by the contracting authority on the basis of qualification.

Article 96. (1) The contracting authority shall adopt a decision to organize a design contest, whereby the said authority shall approve the participation notice and the contest programme.

(2) The contest programme must contain:

1. the design assignment and directions as to the implementation thereof;
2. all technical data as shall be necessary for implementation of the design;
3. the criteria to be applied in the evaluation of designs, the relative weighting to be given to each such criterion, and the methods for arrival at the integral evaluation of the design.

(3) The price of the contest programme may not exceed the actual costs of the preparation thereof.

Article 97. (1) (Supplemented, SG No. 31/2005, amended, SG No. 93/2011, effective 26.02.2012) The contracting authority shall dispatch the design contest notice to the Agency for entry into the Public Procurement Register not later than:

1. fifty-two days before expiry of the time limit for receipt of designs, in the case of an open contest;
2. thirty-eight days before expiry of the time limit for receipt of requests to participate in a restricted contest.

(2) (Amended, SG No. 37/2006) A design contest notice must not be greater than 650 words in length and must be based on the standard form referred to in Article 19 (7) herein.

(3) (Repealed, SG No. 37/2006).

(4) In the restricted contest notice, the contracting authority may limit the number of participants to be invited to submit designs, but the number thereof may not be less than five.

(5) (New, SG No. 37/2006) In the restricted design contest notice, the contracting authority shall indicate objective and non-discriminatory criteria or rule that the contracting authority will apply upon selection of the candidates.

Section II

Design Contest Organization

Article 98. (1) (New, SG No. 37/2006) Requests to participate in a restricted design contest may be submitted in writing according to the procedure established by Paragraphs (1), (3), (4) and (5) of Article 57 herein, by fax or by telephone. Where a request is made by telephone, it must be confirmed in writing before expiry of the time limit for the receipt of such requests.

(2) (New, SG No. 37/2006) In the restricted design contest notice, the contracting authority may include a requirement that requests to participate made by fax must be confirmed by post or by electronic means.

(3) (Redesignated from Article 98 and amended, SG No. 37/2006) The contracting authority shall conduct qualification proceedings and shall invite the approved candidates to submit designs according to the procedure established by Articles 79, 80 and Article 81 (1) herein.

Article 99. (1) The contracting authority shall appoint a jury consisting of not fewer than three members for examination and ranking of the designs.

(2) The members of the jury must comply with the eligibility requirements covered under Article 35 herein.

(3) Where the participants in the contest are required to possess a particular professional qualification or licensed competence, at least a third of the members of the jury must possess the same qualification or competence or its equivalent.

(4) (New, SG No. 37/2006) The jury shall be autonomous in making its decisions and in expressing opinions on the designs.

Article 100. (1) (Supplemented, SG No. 37/2006, amended SG No. 93/2011, effective 26.02.2012) The contracting authority shall designate an official to receive the contest designs, which shall be submitted according to the procedure established by Article 57 (1) or (6) herein.

(2) The person referred to in Paragraph (1) shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with the designs and shall pledge so in writing.

(3) (Amended, SG No. 37/2006) The designs as submitted shall be assigned a number in the

order of receipt, and a list of the numbers and the corresponding names of participants shall be drawn up. The said list shall be inserted into an envelope, which shall be sealed and shall not be opened until the date of declaration of the results of the contest.

(4) In an open contest, the participants shall produce data and evidence of the professional qualification and licensed competence thereof in a separate opaque envelope, which shall be opened after the designs are ranked.

Article 101. (Amended, SG No. 37/2006) (1) The jury shall examine the designs and shall draw up a memorandum on the ranking thereof. Ranking shall be based on the conformity of the designs with the criteria as announced in the procedure initiation notice.

(2) The jury shall draw up a memorandum recording the ranking of the designs, which shall be signed by all members.

(3) The memorandum shall furthermore state the remarks of the jury and any points which need additional clarification or specification if necessary.

(4) In the cases referred to in Paragraph (3), the jury shall notify the candidates and shall enable them to answer the questions, whereafter the jury shall amend or supplement the memorandum if necessary.

(5) In an open contest, the jury shall propose for exclusion the participants in the contest that do not meet the criteria referred to in Paragraph (1).

(6) The contracting authority shall declare by a decision the ranking of the participants in the contest according to the memorandum of the jury, as well as the prizes and/or the other payments.

(7) The contracting authority shall dispatch information on the contest as organized to the Agency for entry into the Public Procurement Register not later than seven days after making the decision referred to in Paragraph (6).

(8) The information referred to in Paragraph (7) shall be drawn up in the standard form referred to in Item 4 of Article 17 herein.

(9) Any information referred to in Paragraph (7) whereof the disclosure conflicts with a law shall not be entered into the Public Procurement Register. In such case, the contracting authority shall justify this to the Agency.

Chapter Eight A
(New, SG No. 93/2011, effective 26.02.2012)
AWARD OF PUBLIC PROCUREMENTS BY PUBLIC
CALL FOR TENDERS

Article 101a. (New, SG No. 93/2011, effective 26.02.2012) (1) The terms and procedure under this Chapter shall apply upon the award of public procurements covered under Article 14 (3) herein.

(2) For the award of the procurements covered under Article 14 (3) herein, the contracting authority shall solicit tenders by publication of a call.

Article 101b. (New, SG No. 93/2011, effective 26.02.2012) (1) The call for tenders shall be prepared in a standard form endorsed by the Executive Director of the Agency and shall include at least the following information:

1. name and address of the contracting authority;
2. description of the subject matter of the procurement and, where applicable, quantity or scope as well;
3. the requirements set by the contracting authority for performance of the procurement;
4. the criterion for award and, where the criterion of the most economically advantageous tender applies in making the selection, also the criteria for arrival at an integral evaluation, including the relative weighting given to each of the criteria;
5. deadline for receipt of the tenders.

(2) The contracting authority shall publish the call for tenders on the Public Procurement Portal according to a procedure established by the Regulations for Application of this Act and shall indicate a time limit for public access to the said call which may not be shorter than seven days. The call for tenders shall simultaneously be published on the buyer profile.

(3) The contracting authority may furthermore insert an announcement of the call for tenders in print media, as well as dispatch the said call to persons selected thereby, without changing the conditions referred to in Items 2 to 5 of Paragraph (1). The announcement may not contain more information than the information in the call as published on the Portal.

(4) The deadline referred to in Item 5 of Paragraph (1) may not be shorter than the time limit for public access to the call for tenders.

(5) Upon change of the conditions as initially announced, the contracting authority shall be obligated to re-apply the procedure for soliciting tenders under Paragraphs (1) to (3).

Article 101c. (New, SG No. 93/2011, effective 26.02.2012) (1) The tender referred to in Article 101a (2) herein must include at least:

1. particulars of the person who or which makes the proposal;
2. proposal for meeting the requirements referred to in Item 3 of Article 101b (1) herein;

3. price proposal;
4. period of tender validity, where applicable.

(2) The content of the tender shall be submitted in an opaque sealed envelope.

Article 101d. (New, SG No. 93/2011, effective 26.02.2012) (1) The tenders shall be received, examined and evaluated by officials designated by the contracting authority.

(2) Upon receipt of the tenders, the persons referred to in Paragraph (1) shall submit declarations on the circumstances referred to in Items 2 and 3 of Article 35 (1) herein.

(3) The persons referred to in Paragraph (1) shall establish a procedure for examination of the tenders and shall draw up a memorandum on the results of the work thereof. The said memorandum shall be submitted to the contracting authority for endorsement.

Article 101e. (New, SG No. 93/2011, effective 26.02.2012) The contracting authority may award the performance of the procurement even in the cases where a single tender has been submitted.

Article 101f. (New, SG No. 93/2011, effective 26.02.2012) (1) The contractor shall conclude a written contract with the tenderer selected thereby as a supplier, contractor or service provider.

(2) Upon conclusion of a contract, the tenderer selected as a supplier, contractor or service provider shall submit documents, issued by a competent authority, certifying the non-existence of the circumstances covered under Item 1 of Article 47 (1) herein, and declarations on the non-existence of the circumstances covered under Article 47 (5) herein, except in the cases where the procurement is awarded by a contracting authority referred to in Item 2 of Article 7 herein.

Article 101g. (New, SG No. 93/2011, effective 26.02.2012) The contracting authority shall be obligated to preserve all documents relating to the award of procurements under this Chapter for a period of three years after completion of the performance of the contract.

Part Three

PUBLIC PROCUREMENT AWARDS BY CONTRACTING AUTHORITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SECTORS

Chapter Nine

COMMON RULES FOR PUBLIC PROCUREMENT AWARD

Section I

General Dispositions

Article 102. (Amended, SG No. 37/2006) (1) The provisions of Part Three herein shall be applied by:

1. the contracting authorities covered under Items 5 and 6 of Article 7 herein;

2. the contracting authorities covered under Items 1, 3 and 4 of Article 7 herein, where carrying out any of the activities covered under Articles 7a to 7e herein.

(2) Any public procurement, which is intended to cover several activities covered under Articles 7a to 7e herein and other activities under this Act, shall be subject to the rules applicable to the activity for which the said procurement is principally intended.

(3) (Amended, SG No. 93/2011, effective 26.02.2012) In case one of the activities for which a public procurement is intended as a subject matter is subject to the special rules of this Part and the other to the general rules of this Act, or if it is objectively impossible to determine for which activity the procurement is principally intended as a subject matter, the said procurement shall be awarded according to the procedure established by the general rules of this Act.

(4) (Amended, SG No. 93/2011, effective 26.02.2012) In case one of the activities for which a public procurement is intended is as a subject matter is subject to the special rules of this Part and the other is not subject to either the general or the special provisions of this Act, and if its objectively impossible to determine for which of the activities the procurement is principally intended as a subject matter, the said procurement shall be awarded according to the procedure established by this Part.

Article 103. (Amended, SG No. 37/2006) (1) Contracting authorities shall make a decision on the award of public procurements by open procedure, restricted procedure and negotiated procedure with publication of a contract notice whenever there are no conditions for conduct of a negotiated procedure without publication of a contract notice.

(2) Contracting authorities shall make a decision on the award of public procurements by negotiated procedure without publication of a contract notice solely where:

1. the open procedure, the restricted procedure, or the negotiated procedure with publication of a contract notice has been terminated because not a single tender or request to participate has been submitted, or no candidates or tenderers have been admitted, and the terms and conditions as initially announced are not substantially altered;

2. the award of the public procurement to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a law or of an administrative act;

3. (Amended, SG No. 93/2011, effective 26.02.2012) a need has arisen to take urgent action, brought about by the occurrence of an event of an extraordinary nature which the contracting authority, while exercising due care, was unable or was not obligated to foresee or to avoid and for the mitigation of which the time limits for conduct of an open or a negotiated procedure or a negotiated procedure with publication of a contract notice cannot be complied with;

4. the contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek those ends;

5. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;

6. (Supplemented, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) the service is awarded after organization of a design contest, dispatching invitations to the highest ranked participant or to all ranked participants in accordance with the terms and conditions of the contest, to participate in the negotiations;

7. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:

(a) the additional service or works cannot be technically or economically separated from the subject matter of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement;

(b) (Amended, SG No. 93/2011, effective 26.02.2012) the aggregate value of the procurements whereby additional services or works are awarded does not exceed 50 per cent of the value of the principal procurement;

8. the repetition of a work has to be entrusted to the same service provider or contractor subject to fulfilment of the following conditions:

(a) the original procurement has been awarded by open or restricted procedure and the contract notice of the said procurement has mentioned the possibility of such an award;

(b) the aggregate value of the said procurement was included when the value of the original procurement was established;

(c) the new procurement conforms to a basic project for the implementation of which the original procurement was awarded;

9. (Amended, SG No. 93/2011, effective 26.02.2012) the subject matter of the procurement is the supply of goods specified according to a list proposed by the State Commission on Commodity Exchanges and Wholesale Markets and approved by the Council of Ministers in the Regulations for Application of the Act;

10. the procurement is awarded on the basis of a framework agreement concluded according to the procedure established by this Act;

11. where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, inter alia upon sale of the property of commercial corporations which have been put into liquidation or adjudicated bankrupt;

12. (New, SG No. 93/2011, effective 26.02.2012) the procurement is of Category 21 services listed in Annex 3 to Item 2 of Article 5 (1) herein and is of a value covered under Article 14 (2) herein.

(3) In the cases referred to in Items 5 and 8 of Paragraph (2), the duration of the additional procurement contract may not be longer than three years.

(4) In the cases referred to in Item 9 of Paragraph (2), the contract shall be concluded according to the procedure established by the Commodity Exchanges and Wholesale Markets Act.

(5) In the cases referred to in Item 11 of Paragraph (2), the contract shall be concluded according to the procedure established by the Commerce Act.

Article 104. (Amended, SG No. 37/2006) (1) In an open procedure, where contracting authorities have published a prior information notice, the minimum time limit for receipt of tenders may be shortened to twenty-two days from the date on which the procedure initiation notice was sent.

(2) Where the procedure initiation notice was transmitted by electronic means as well, the time limit referred to in Paragraph (1) may be shortened by seven days.

Article 104a. (New, SG No. 37/2006) (1) In the case of restricted procedures and negotiated procedures with publication of a contract notice, the minimum time limit for receipt of requests to participate shall be thirty-seven days from the date on which the contract notice was sent.

(2) The time limit referred to in Paragraph (1) may be shortened by seven days if the contract notice was transmitted by electronic means as well.

(3) The time limit for the receipt of tenders in a restricted procedure and in a negotiated procedure with publication of a contract notice may be set by mutual agreement between the contracting authority and the candidates selected in the qualification proceedings. An agreement shall be admissible solely provided that all candidates have the same time limit to prepare and

submit the tenders thereof.

(4) Should no agreement under Paragraph (3) be reached, the time limit shall be fixed by the contracting authority and may not be less than twenty-four days from the date of dispatch of the invitation to tender or to participate in the negotiations.

(5) In the cases referred to in Paragraph (4), where the contracting authority offers full access by electronic means to the contract documents and if the notice specifies an Internet address at which these documents are accessible, the time limit may be reduced by five days.

Section II

Qualification System

Article 105. (1) Contracting authorities may establish and use systems of qualification of suppliers, contractors or service providers of public procurements.

(2) (New, SG No. 37/2006) The qualification systems may involve different qualification stages.

(3) (Renumbered from Paragraph (2) and amended, SG No. 37/2006) The qualification systems shall be based on objective criteria and rules which shall be established by the contracting authority and may be altered thereby as required.

(4) (Renumbered from Paragraph (3) and amended, SG No. 37/2006) The criteria and rules for qualification shall include requirements relating to economic and financial standing under Article 50 (1) herein and/or technical ability, and/or qualifications under Article 51 (1) herein, and may include the requirements covered under Article 47 (1) and (2) herein.

(5) (New, SG No. 37/2006) Where the criteria and rules for qualification include technical specifications, the provisions of Articles 30 to 32 herein shall apply.

(6) (New, SG No. 37/2006) Where the criteria and rules for qualification of applicants include requirements relating to economic and financial standing and technical ability, and/or qualifications, the candidate may rely on the resources of third parties, whatever the legal nature of the link between itself and those third parties. In such cases, the candidate must be in a position to prove to the contracting authority that these resources will be available throughout the period of validity of the qualification system. In case the candidate is a combination of natural and/or legal persons, the said candidate may refer to the resources of a person included in the said combination or of third parties under the same conditions.

(7) (New, SG No. 37/2006) The criteria and rules for qualification, referred to in Paragraph (3), shall be made available to the candidates on request. The updating of the said criteria and rules shall be communicated to the persons included in the qualification system.

(8) (Supplemented, SG No. 31/2005, renumbered from Paragraph (4) and amended, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall dispatch

a notice on the existence of qualification systems established thereby to the Agency for entry into the Public Procurement Register. Where the system is of a duration greater than three years, the notice shall be published annually.

(9) (Renumbered from Paragraph (5) and amended, SG No. 37/2006) The notice referred to in Paragraph (8) shall be based on the standard form referred to in Article 19 (7) herein.

(10) (Renumbered from Paragraph (6), SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) Where the description of the subject matter of the qualification system and/or the criteria and rules for qualification is of a large volume, the contracting authority shall include a brief description in the notice, whereas the detailed requirements shall be included in the contract documents.

(11) (Renumbered from Paragraph (7), SG No. 37/2006) Where the contracting authority uses a qualification system, the said authority shall select the candidates for participation in restricted procedures and negotiated procedures in accordance with the requirements of the said system.

(12) (Renumbered from Paragraph (8) and amended, SG No. 37/2006) Where a contracting authority considers that the qualification system of another contracting authority meets its requirements, the said authority shall inform the interested parties that the said authority will use the said system.

Article 106. (1) An application for participation in the qualification system may be presented at any time within the duration of the said system.

(2) (Amended, SG No. 37/2006) The contracting authority shall appoint a commission for examination of the applications for participation in the qualification system according to the procedure established by Articles 34 to 36 herein.

(3) (Supplemented, SG No. 37/2006) The commission shall examine each application received and, on the basis of the objective criteria and rules as announced, shall propose to the contracting authority to accept or to refuse inclusion of an applicant in the qualification system.

(4) The contracting authority shall be obligated to make a decision within six months after submission of the application for inclusion in the qualification system.

(5) If the decision referred to in Paragraph (4) will take longer than four months, the contracting authority shall inform the applicant, within two months after submission of the application, of the reasons justifying a longer period and of the date by which a decision will be made.

(6) Within fifteen days after the date of the decision referred to in Paragraph (4), the contracting authority shall inform the applicant of the inclusion thereof in the qualification system or of the refusal of such inclusion. A refusal shall have to be reasoned.

(7) (Amended, SG No. 37/2006) In reaching a decision referred to in Paragraph (4) or when

the criteria and rules are being altered, contracting authorities may not:

1. impose conditions of an administrative, technical or financial nature on some applicants which are not imposed on others;
2. require tests or proof which duplicate evidence already provided by the applicant.

(8) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Contracting authorities shall keep a written record of qualified suppliers, contractors or service providers, and the said record may be divided into categories, according to the subject matter of the procurement for which the qualification is valid. In the cases referred to in Article 105 (12) herein, the contracting authority shall be obligated to provide information on the system and the record to other contracting authorities.

(9) The contracting authority may bring the qualification of an applicant to an end where the said applicant has ceased to meet the criteria for qualification as announced. The contracting authority shall be obligated to notify the applicant of the intention to bring qualification to an end at least fifteen days beforehand, together with the reason or reasons justifying the proposed action.

Section III

Framework Agreement

(Repealed, SG No. 37/2006)

Article 107. (Repealed, SG No. 37/2006).

Article 108. (Repealed, SG No. 37/2006).

Chapter Ten

SPECIAL RULES

Article 109. (1) (Supplemented, SG No. 31/2005, redesignated from Article 109 and amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) Under the terms established by Article 23 herein, the contracting entities covered under Items 5 and 6 of Article 7 herein may dispatch to the Agency for entry into the Public Procurement Register a prior information notice or a periodic indicative notice of the public procurements or framework agreements planned for the following twelve months. The type of notice shall be at the choice of the contracting authority.

(2) (New, SG No. 37/2006) Contracting authorities may publish a prior information notice of the public procurements or framework agreements planned for the following twelve months on the buyer profile thereof under the terms established by Article 23 (2) herein.

Article 110. (Amended, SG No. 37/2006) Where contracting authorities publish a prior information notice on major projects which have been included in a previous prior information notice, they do not have to repeat the said information, provided that they indicate the notice wherein the said information has been included.

Article 111. (Supplemented, SG No. 37/2006) Contracting authorities may announce a public procurement award by restricted procedure or by negotiated procedure with publication of a contract notice and by means of:

1. (Repealed, SG No. 37/2006);

2. (Amended, SG No. 37/2006) a periodic indicative notice, promulgated according to the procedure established by Article 23 herein;

3. (Amended, SG No. 37/2006) a notice on the existence of a qualification system under Article 105 (9) herein.

Article 112. (1) (Amended, SG No. 37/2006) A periodic indicative notice shall be used as a means of calling on potential candidates to express interest in participating in the procedure.

(2) (Amended, SG No. 37/2006, SG No. 93/2011, effective 26.02.2012) A periodic indicative notice must be based on the standard form referred to in Article 19 (7) herein.

(3) A periodic indicative notice must furthermore include the following information, if available at the date of dispatch of the said notice:

1. possibility to conclude framework agreements;

2. possibility to award additional procurements;

3. date scheduled for start and for completion of performance of the procurement;

4. duration of the contract;

5. requirements for the economic and financial standing of the candidate, as well as for the technical capacity and/or qualifications thereof;

6. terms and amount of the participation guarantee and of the contract performance guarantee;

7. (New, SG No. 37/2006) criteria to be applied in selecting a supplier, contractor or service provider and relative weighting to be given to the criteria in the integral evaluation of the tender;

8. (Renumbered from Item 7, SG No. 37/2006) address wherefrom the contract documents can be requested and the final date for making such a request, the price and method of payment of the price to be paid for such documents;

9. (Renumbered from Item 8 and supplemented, SG No. 37/2006, amended, SG No. 93/2011, effective 26.02.2012) other information specified in the standard form referred to in Article 19 (7) herein.

Article 113. (Amended, SG No. 37/2006) (1) The contracting authority shall make available on request to interested parties the technical specifications regularly referred to in the supply, works or service contracts of the said authority, or the technical specifications which the said authority intends to apply to contracts covered by periodic indicative notices.

(2) Where the technical specifications are based on documents available to interested parties, the inclusion of a reference to those documents shall be sufficient.

Article 114. (Amended, SG No. 37/2006) (1) When a negotiated procedure with publication of a contract notice or a restricted procedure has been announced by means of a periodic indicative notice, the contracting authority shall dispatch an invitation to participate in the procedure to all candidates that have expressed interest within the time limit indicated in the periodic indicative notice.

(2) The invitation to participate in the procedure shall be dispatched simultaneously to all candidates not later than twelve months after the date of publication of the periodic indicative notice. The said invitation shall be dispatched not later than thirty-seven days before the final date for receipt of requests to participate and, where transmitted by electronic means, the time limit for dispatch may be shortened by seven days.

(3) Where the periodic indicative notice does not include the information covered under Article 112 (3) herein, the contracting authority shall make the said information available to the candidates by means of the invitation referred to in Paragraph (1), furthermore indicating:

1. the address and final date for the submission of requests to participate;
2. documents which must be attached to the request to participate.

(4) Where the contracting authority has ensured direct and unrestricted access, by electronic means, to the information covered under Article 112 (3) herein from the day of publication of the prior indicative notice, the invitation to participate in the procedure shall indicate the Internet address at which the said information is accessible.

(5) The contracting authority shall conduct qualification proceedings according to the procedure established by Articles 77 to 79 herein.

(6) When selecting participants in a restricted procedure or in a negotiated procedure with publication of a contract notice, the contracting authority may not:

1. impose administrative, technical or financial conditions on certain candidates which would not be imposed on others;
2. require tests or evidence which would duplicate objective evidence already available.

Article 115. When the negotiated procedure or the restricted procedure has been announced by means of a notice on the existence of a qualification system, the contracting authority shall select participants from the qualified candidates in accordance with such a system.

Article 116. (Repealed, SG No. 37/2006).

Article 117. (1) (Amended, SG No. 37/2006) The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement in a restricted procedure shall follow the procedure established by Articles 68 to 74 herein.

(2) (Amended, SG No. 37/2006) The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement in a negotiated procedure shall follow the procedure established by Articles 88 and 89 herein.

Article 118. (1) (Amended, SG No. 37/2006) The contracting authority may exclude a tender for a procurement where the proportion of the goods originating in third countries exceeds 50 per cent of the total value of the goods constituting the tender.

(2) (New, SG No. 37/2006) The provision of Paragraph (1) shall not apply if there is a treaty concluded between European Union or the Republic of Bulgaria and a third country ensuring comparable and effective access for Bulgarian persons to participation in public procurement in that country.

(3) (Renumbered from Paragraph (2), SG No. 37/2006) The origin of the goods shall be determined in accordance with the effective customs legislation.

(4) (Renumbered from Paragraph (3), SG No. 37/2006) Where two or more tenders are equivalent in the light of the criterion applied in the evaluation of tenders, preference in the ranking shall be given to the tenders which may not be excluded according to Paragraph (1). The prices of the said tenders shall be considered equivalent if the price difference does not exceed three per cent.

(5) (Renumbered from Paragraph (4) and amended, SG No. 37/2006) A tender may not be preferred to another according to Paragraph (4) where its acceptance would oblige the contracting authority to acquire goods having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance.

Article 118a. (New, SG No. 37/2006) (1) Where a public procurement having as its subject matter research and development services is awarded by an open or restricted procedure or by a negotiated procedure with publication of a contract notice, contracting authorities need not indicate nature and quantity in the information on a contract concluded in case such publication would breach a commercial secret. In such case, the information shall contain any information contained in the notice.

(2) Where a public procurement having as its subject matter research and development services is awarded by a negotiated procedure without publication of a contract notice under Item

4 of Article 103 (2) herein, contracting authorities need not indicate nature and quantity in the information on a contract concluded.

(3) In case of a contract concluded through a qualification system, the information on a contract concluded shall contain at least the particulars of the supplier, contractor or service provider included in the list under Article 106 (8) herein.

Article 118b. (New, SG No. 37/2006, effective 1.01.2007) (1) Where any activity covered under Articles 7a to 7e herein is exposed to competition, the supervisory authority in the relevant sphere may notify the Agency by dispatch of an opinion accompanied by evidence, for exemption of this activity from the scope of application of this Act.

(2) Within one month, the Agency shall send the documents referred to in Paragraph (1) to the European Commission for the adoption of a Decision.

Article 119. The provisions of Part Two herein shall apply, mutatis mutandis, to any matters unregulated in Part Three herein.

Part Four

APPEAL AND CONTROL

(Heading amended, SG No. 37/2006)

Chapter Eleven

APPEAL

(Heading amended, SG No. 37/2006)

Article 120. (Amended, SG No. 37/2006, SG No. 52/2010) (1) (Amended, SG No. 93/2011, effective 26.02.2012) Appealability according to the procedure established by this Chapter shall apply to any decision by the contracting authorities under a procedure for:

1. the award of a public procurement, including through application of a framework agreement, a dynamic purchasing system or a qualification system;
2. conclusion of a framework agreement;
3. setting up a dynamic purchasing system or establishment of a qualification system;
4. a design contest.

(2) The decisions covered under Paragraph (1) may be appealed before the Commission on Protection of Competition as to the legal conformity thereof, including as to the presence of

discriminatory economic, technical or qualification requirements in the contract notice, the contract documents or in any other document related to the procedure.

(3) (New, SG No. 93/2011, effective 26.02.2012) Appealability according to the procedure established by this Chapter shall furthermore apply to any actions or omissions of the contracting authority whereby the access to or participation of persons in the procedure is impeded. Separate appealability shall not apply to the actions of the contracting authority for the issuing of the decisions referred to in Paragraph (1).

(4) (Renumbered from Paragraph (3), SG No. 93/2011, effective 26.02.2012) An appeal may be lodged within ten days after:

1. (Amended, SG No. 93/2011, effective 26.02.2012) the expiry of the time limit referred to in Article 27a (3) herein: where the appeal is against the decision to initiate the procedure and/or the decision on change;

2. (New, SG No. 93/2011, effective 26.02.2012) the publication of the decision to initiate a procedure under Article 76 (3) or Article 86 (3) herein, or of a negotiated procedure without publication of a contract notice;

3. (Renumbered from Item 2, amended and supplemented, SG No. 93/2011, effective 26.02.2012) the receipt of the decision referred to in Article 79 (8), Article 83d (3), Article 83g (1), Article 88 (8), Article 93g (4) and Article 106 (4) herein;

4. (Renumbered from Item 3, SG No. 93/2011, effective 26.02.2012) the receipt of the decision on selection of a supplier, contractor or service provider or on termination of the procedure;

5. (Renumbered from Item 4 and amended, SG No. 93/2011, effective 26.02.2012) the publication of the notice for voluntary transparency in the Public Procurement Register or in the Official Journal of the European Union.

(5) (New, SG No. 93/2011, effective 26.02.2012) The time limit for lodging an appeal against the decision referred to in Item 1 of Paragraph (4) shall begin to run as from the receipt of the documents if the following conditions are simultaneously met:

1. the appeal is against requirements which are not indicated in the notice;
2. the documents are not published simultaneously with the notice;
3. the documents are received after the expiry of the time limit referred to in Article 27a (3) herein.

(6) (New, SG No. 93/2011, effective 26.02.2012) The appeal referred to in Paragraph (3) shall be lodged within ten days after notification of the relevant step, and if the person is not notified, within ten days after the date on which the time limit for performance of the relevant step expired.

(7) (Renumbered from Paragraph (4) and amended, SG No. 93/2011, effective 26.02.2012)
An appeal may be lodged by:

1. (Amended, SG No. 93/2011, effective 26.02.2012) any interested party: in the cases referred to in Items 1, 2 and 5 of Paragraph (4), Paragraphs (5) and (6);

2. (Amended, SG No. 93/2011, effective 26.02.2012) any candidate concerned in the procedure: in the cases referred to in Item 3 of Paragraph (4) and Paragraph (6);

3. (Amended, SG No. 93/2011, effective 26.02.2012) any candidate or tenderer concerned: in the cases referred to in Item 4 of Paragraph (4) and Paragraph (6).

(8) (New, SG No. 93/2012, effective 26.02.2012) Within the time limit referred to in Item 1 of Paragraph (4), an appeal against the decision to initiate a procedure and/or against the decision on change may furthermore be lodged by professional associations and organizations in the relevant sector for protection of the interests of the members thereof.

(9) (Renumbered from Paragraph (5) and amended, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Items 1 and 5 of Paragraph (4), where the publication dates of the contract notices in the Public Procurement Register and in the Official Journal of the European Union are different, the time limit for appeal shall begin to run from the later date.

(10) (Renumbered from Paragraph (6) and amended, SG No. 93/2011, effective 26.02.2012) An appeal against a decision on ranking the participants in a design contest may be lodged by any candidate concerned or tenderer concerned within the time limit referred to in Paragraph (4).

Article 120a. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010) (1) An appeal against a decision of the contracting authority, with the exception of the decision on selection of a supplier, contractor or service provider shall not suspend the public procurement award procedure unless an interim measure of suspension has been requested.

(2) Where the interim measure referred to in Paragraph (1) has been requested by the appeal, the public procurement award procedure shall be suspended until the entry into effect of:

1. the ruling whereby the request for an interim measure is rejected, or
2. the decision on the appeal, if the interim measure has been imposed.

Article 120b. (New, SG No. 52/2010) An appeal against a decision on selection of a supplier, contractor or service provider shall suspend the public procurement award procedure until the conclusive settlement of the dispute, except where anticipatory enforcement has been admitted.

Article 121. (Amended, SG No. 37/2006) (1) (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) An appeal shall be lodged simultaneously with the Commission on Protection of Competition and with the contracting authority whose decision, action or

omission is appealed.

(2) The appeal must be written in the Bulgarian language and must contain:

1. designation of the authority wherewith the appeal is lodged;
2. designation, registered office and address of the place of management and court registration data on the appellant if a legal person; name, address and identity data on the appellant if a natural person;
3. (Amended, SG No. 52/2010) name and address of the contracting authority;
4. data on the public procurement and the decision, action or omission which is appealed;
5. the complaints and the request of the appellant;
6. signature of the person who lodges the appeal or of the authorized representative thereof.

(3) A request for imposition of an interim measure shall be made simultaneously with the lodging of the appeal.

(4) (Amended, SG No. 93/2011, effective 26.02.2012) The following shall be attached to the appeal lodged with the Commission on Protection of Competition:

1. a copy of the decision against which an appeal is being lodged, where the said decision is not published in the Public Procurement Register;
2. evidence of adherence to the time limit referred to in Article 120 (4) and (6) herein;
3. documentary proof of payment of stamp duty fixed by a rate schedule approved by the Council of Ministers;
4. proof of dispatch of the appeal to the contracting authority;
5. other evidence, if the appellant is in possession of such.

(5) (Amended, SG No. 93/2011, effective 26.02.2012) If the appeal does not comply with the requirements covered under Paragraph (2) and Items 1 to 3 of Paragraph (4), the Commission on Protection of Competition shall notify the appellant and shall allow the appellant three days to cure the non-conformities.

(6) The Commission on Protection of Competition shall not institute a proceeding where:

1. (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) the appeal has been lodged after expiry of the time limit referred to in Article 120 (4) and (6) herein;
2. the non-conformities have not been cured within the time limit referred to in Paragraph

(5);

3. documentary proof of payment of stamp duty has not been presented;

4. (Repealed, SG No. 52/2010, new, SG No. 93/2011, effective 26.02.2012) the appeal has been lodged before the expiry of the time limit referred to in Article 27a (3) herein;

5. (New, SG No. 94/2008, effective 1.01.2009) the appeal has been withdrawn before the institution of the said proceeding.

(7) (Amended, SG No. 52/2010) In the cases covered under Paragraph (6), the Chairperson of the Commission on Protection of Competition shall return the appeal by an order, which shall be appealable before a three-judge panel of the Supreme Administrative Court within three days after communication.

(8) Acting on its own initiative, the contracting authority may eliminate the violation before pronouncement by the Commission on Protection of Competition.

Article 121a. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010) (1) (Amended and supplemented, SG No. 93/2011, effective 26.02.2012) Within three days after receipt of an appeal or after the curing of the non-conformities of any such appeal, the Chairperson of the Commission on Protection of Competition shall institute a proceeding, shall designate a rapporteur and shall notify the contracting authority.

(2) (New, SG No. 93/2011, effective 26.02.2012) The contracting authority shall send an opinion on the appeal, supported by evidence where necessary, within three days after the receipt of the notification referred to in Paragraph (1).

(3) (Renumbered from Paragraph (2), SG No. 93/2011, effective 26.02.2012) Where the appeal contains a request for the imposition of an interim measure, the Commission on Protection of Competition, meeting behind closed doors, shall pronounce on the said request by a reasoned ruling within seven days after the institution of the proceeding.

(4) (Renumbered from Paragraph (3), SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition shall pronounce on the request after an assessment of the possible consequences of the imposition of an interim measure for all interests that may be injured, including for the public interest, making the said assessment on the basis of the allegations in the appeal, the opinion of the contracting authority and the evidence attached by the parties.

(5) (Renumbered from Paragraph (4), SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition may not impose an interim measure where the adverse consequences for all interests that may be injured outweigh the benefit of the imposition of the said measure.

(6) (Renumbered from Paragraph (5), SG No. 93/2011, effective 26.02.2012) The pronouncement on the interim measure shall not be binding on the Commission on Protection of

Competition upon deciding the dispute on the merits, nor shall it affect the rest of the requests of the appellant.

(7) (Renumbered from Paragraph (6) and amended, SG No. 93/2011, effective 26.02.2012) The ruling whereby a pronouncement on the interim measure is made shall be appealable before a three-judge panel of the Supreme Administrative Court within three days after being communicated to the parties. The court, sitting in camera, shall pronounce within fourteen days after the institution of the proceeding on the interlocutory appeal. The rules of Chapter Thirteen of the Administrative Procedure Code shall apply to any unregulated matters regarding the proceeding on the appeal.

(8) (New, SG No. 93/2011, effective 26.02.2012) An appellate review of the ruling whereby an interim measure is imposed shall not suspend the proceeding before the Commission on Protection of Competition.

Article 121b. (New, SG No. 52/2010) (1) (Amended, SG No. 93/2011, effective 26.02.2012) Where a decision on selection of a supplier, contractor or service provider is appealed, the contracting authority may, within the time limit for submission of an opinion under Article 121a (2) herein, request from the Commission on Protection of Competition to admit anticipatory enforcement of the decision. Any request for anticipatory enforcement made after the expiry of the said time limit shall not be examined by the Commission on Protection of Competition.

(2) The contracting authority shall justify the request referred to in Paragraph (1) and shall attach evidence in support of the allegations thereof.

(3) The Commission on Protection of Competition, meeting behind closed doors, shall pronounce on the request to admit anticipatory enforcement of the decision by a ruling within three days after receipt of the ruling.

(4) The Commission on Protection of Competition shall admit anticipatory enforcement of the decision on selection of a supplier, contractor or service provider as an exception, where this is necessary in order to safeguard human life or public health, to protect vital State or public interests, or if a delay of enforcement may cause substantial damage or damage which would be difficult to repair.

(5) Anticipatory enforcement under Paragraph (4) shall not be admitted where justified by economic interests linked to costs resulting from:

1. delay in the execution of the contract;
2. initiation of a new procedure for award of the procurement.

(6) The ruling shall be appealable before the Supreme Administrative Court within three days after being communicated to the parties.

(7) (Amended, SG No. 93/2011, effective 26.02.2012) The Supreme Administrative Court,

sitting in camera, shall pronounce on the ruling within fourteen days after institution of the proceeding on the interlocutory appeal.

Article 122. (Amended, SG No. 37/2006, SG No. 52/2010) (1) Where a proceeding has been instituted against a decision on selection of a supplier, contractor or service provider and anticipatory enforcement has not been admitted, the Commission on Protection of Competition shall check ex officio whether any other proceeding against another decision of the contracting authority in the same procedure is pending.

(2) The Commission on Protection of Competition shall suspend the proceeding instituted on an appeal against a decision on selection of a supplier, contractor or service provider where the said Commission finds that a proceeding referred to in Paragraph (1) is pending.

(3) The proceeding shall be resumed either ex officio or at the request of one of the parties after the grounds for suspension have lapsed.

Article 122a. (New, SG No. 37/2006) (1) The rapporteur shall conduct an inquiry into the circumstances concerning the appeal, in which the said rapporteur shall be assisted by the administration of the Commission on Protection of Competition.

(2) Written and oral evidence and expert opinions shall be admitted in the proceeding before the Commission on Protection of Competition.

(3) (Amended, SG No. 52/2010) Upon recourse to expert opinions in the proceeding before the Commission on Protection of Competition, the amounts due for fees of the experts shall be paid in advance by the party which requested the expert examination. Should an expert examination be ordered on the initiative of the Commission on Protection of Competition, the costs of the expert fee shall be awarded against the appellant if the appeal is left without consideration or the proceeding is terminated and against the contracting authority in the cases referred to in Item 2, 4 or 5 of Article 122d (1) herein.

(4) The parties to the proceeding, the State bodies and the officials shall be obligated to cooperate with the Commission on Protection of Competition in the fulfilment of the obligations assigned thereto by the law.

(5) No evidence collected in the proceeding may be disclosed if it constitutes an industrial, trade or other secret protected by law. Where any such evidence contains data constituting classified information, the procedure established by the Classified Information Protection Act shall apply.

(6) After completion of the inquiry, the parties shall be afforded an opportunity to familiarize themselves with the evidence collected under the case file.

(7) The parties shall be obligated to submit all evidence thereof not later than on the day before the sitting at which the appeal is to be considered.

Article 122b. (New, SG No. 37/2006) (1) After completion of the inquiry, the rapporteur

shall submit the case file to the Chairperson, who shall schedule a public sitting for consideration of the said case file.

(2) (Amended, SG No. 59/2007) The parties shall be summoned according to the procedure established by the Code of Civil Procedure. Upon summoning, the time limit referred to in Article 56 (3) of the Code of Civil Procedure shall apply.

(3) The parties may use defence by legal counsel.

Article 122c. (New, SG No. 37/2006) (1) (Amended, SG No. 102/2008, SG No. 54/2010, SG No. 73/2011, effective 20.09.2011) For the valid transaction of business at sittings, at least four of the members of the Commission on Protection of Competition shall have to be present thereat.

(2) (Amended, SG No. 102/2008, SG No. 54/2010, SG No. 73/2011, effective 20.09.2011) The Commission on Protection of Competition shall render decisions and rulings by an open ballot and by a majority of four votes. In case the sitting is attended by fewer than seven members, the decision shall be rendered only provided at least four members of the Commission have voted in favour.

(3) (Amended, SG No. 102/2008) No member of the Commission may participate in an inquiry proceeding under this Act if he or she has an interest in the outcome of the said proceeding or where there are reasonable doubts as to his or her impartiality. Such Member of the Commission shall be recused either on his or her own initiative or upon the request of the parties.

(4) The sitting shall commence with addressing the preliminary issues regarding the validity of the procedure.

(5) (Repealed, SG No. 102/2008).

(6) The parties to the proceeding may be asked questions according to a procedure established by the Chairperson.

(7) When he or she considers that the circumstances concerning the appeal are clarified, the Chairperson shall call upon the parties to give opinions.

(8) After the factual and legal aspects of the dispute are clarified, the Chairperson shall close the sitting.

Article 122d. (New, SG No. 37/2006) (1) (Supplemented, SG No. 94/2008, effective 1.01.2009, amended and supplemented, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition, meeting behind closed doors, shall render a decision whereby:

1. the Commission shall leave the appeal without consideration;

2. the Commission shall revoke the decision and shall return the case file for continuation of

the public procurement award procedure as from the last legally conforming decision or action or for termination of the procedure;

3. the Commission shall establish legal non-conformity of the decision and shall impose the sanctions provided for under Paragraphs (4) and (5);

4. the Commission shall declare the nullity of the decision of the contracting authority;

5. the Commission shall revoke the legally non-conforming action or shall establish the legally non-conforming omission and shall return the case file for continuation of the public procurement award procedure as from the last legally conforming decision or action or for termination of the procedure;

6. the Commission shall revoke the decision where the Commission ascertains that the contract has been concluded in violation of Article 41 (3) or (5) herein and ascertains a violation of the law which has affected the possibility of the appellant to participate in the procedure or to be selected as a supplier, contractor or service provider.

(2) (Amended, SG No. 93/2011, effective 26.02.2012) In the cases referred to in Items 2 and 5 of Paragraph (1), the Commission on Protection of Competition may give mandatory directions on the progress of the public procurement award procedure.

(3) (Amended, SG No. 94/2008, effective 1.01.2009, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) Where before or in the course of the proceeding the contracting authority concludes a contract, the said authority shall be obligated to notify the Commission on Protection of Competition immediately, sending a copy of the contract as well.

(4) (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition shall ascertain legal non-conformity of the decision and shall impose a sanction at the amount of 10 per cent of the value of the contract as concluded where the Commission has admitted anticipatory enforcement but, upon rendition of the decision, the Commission ascertains a violation of the law which has affected the possibility of the appellant to participate in the procedure or to be selected as a supplier, contractor or service provider.

(5) (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) Where the contract has been concluded in violation of Article 41 (3) or (5) herein but no violation of the law is ascertained which has affected the possibility of the appellant to participate in the procedure or to be selected as a supplier, contractor or service provider, the Commission on Protection of Competition shall impose a sanction at the amount of 3 per cent of the value of the contract as concluded.

(6) (New, SG No. 52/2010) In the cases referred to in Paragraphs (4) and (5), where the value of the contracts is not stated therein, the specific amount of the sanction shall be imposed by the Commission on Protection of Competition on the basis of an expert examination ordered to determine the anticipated value of the contract as concluded. Upon ordering the expert examination, the costs of the remuneration of the expert shall be paid by the contracting authority.

(7) (Renumbered from Paragraph (5), SG No. 52/2010) The decision of the Commission on Protection of Competition shall be evidenced in writing and shall state:

1. the designation of the issuing authority;
2. the grounds of fact and law for the issuance of the decision;
3. reasons;
4. operative part;
5. the authority before which the decision may be appealed, and time limit for appeal.

(8) (Renumbered from Paragraph (6), SG No. 52/2010) Any member of the Commission, who disagrees with the decision, shall sign the decision with a dissenting commission, which shall be attached to the decision.

(9) (New, SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition shall pronounce on the liability for the costs under the terms and according to the procedure established by Article 143 of the Administrative Procedure Code.

Article 122e. (New, SG No. 37/2006) (1) (Amended, SG No. 52/2010) The Commission on Protection of Competition shall pronounce on an appeal within one month after institution of the proceeding.

(2) (Amended, SG No. 52/2010) The decision together with the reasons shall be drawn up and declared not later than seven days after pronouncement on the appeal.

Article 122f. (New, SG No. 37/2006) (1) The decision of the Commission on Protection of Competition shall be appealable before a three-judge panel of the Supreme Administrative Court within fourteen days after being communicated to the parties.

(2) (Amended, SG No. 52/2010) The Supreme Administrative Court shall pronounce within one month after receipt of the appeal and the judgment of the said Court shall be final.

(3) (New, SG No. 93/2011, effective 26.02.2012) The rules of Chapter Twelve of the Administrative Procedure Code shall apply to any unregulated matters regarding a proceeding on the appeal.

Article 122g. (New, SG No. 37/2006) (1) The Commission on Protection of Competition shall terminate the proceeding by a ruling:

1. upon ascertainment that the appeal is inadmissible;
2. if the natural-person appellant has died or if the legal-person appellant has been dissolved;

3. upon withdrawal of the appeal.

(2) (Amended, SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) The rulings referred to in Paragraph (1) shall be appealable according to the procedure established by Article 121a (7) herein.

Article 122h. (New, SG No. 37/2006, supplemented, SG No. 52/2010) The procedure for appeal of individual administrative acts under the Administrative Procedure Code shall apply to all unregulated matters regarding the appeals procedure before the Commission on Protection of Competition.

Article 122i. (New, SG No. 37/2006, supplemented, SG No. 2008, effective 1.01.2009, amended, SG No. 52/2010) (1) The following may request that a contract as concluded be declared ineffective on the grounds covered under Article 41b (1) herein:

1. (Amended, SG No. 93/2011, effective 26.02.2012) any interested party: in the cases referred to in Items 1 and 2 of Article 41b (1) herein;

2. (Amended, SG No. 93/2011, effective 26.02.2012) any interested party and any candidate concerned: in the cases referred to in Item 3 (a) and (b) of Article 41b (1) herein;

3. (Amended, SG No. 93/2011, effective 26.02.2012) any candidate concerned and/or tenderer concerned: in the cases referred to in Item 3 (c) of Article 41b (1) herein.

(2) The action shall be brought according to the procedure established by the Code of Civil Procedure.

(3) Declaration of ineffectiveness of a contract under Paragraph (1) may be requested within two months after publication of information of a contract concluded in the Public Procurement Register and, if no such information has been published, after learning but not later than one year after conclusion of the contract.

(4) (New, SG No. 93/2011, effective 26.02.2012) Where the contracting authority has published information on a contract concluded in pursuance of Items 2, 4 and 5 of Article 4, Items 2 to 9, 11, 12 and 13 of Article 12 (1) and Items 3 and 4 of Article 13 (1) herein and has stated reasons for applying the relevant ground, the two-month time limit referred to in Paragraph (3) shall apply.

(5) (New, SG No. 93/2011, effective 26.02.2012) Where the contracting authority has published information on a contract concluded before completion of an appeal proceeding, the two-month time limit for requesting declaration of ineffectiveness in pursuance of Item 3 of Article 41b (1) herein shall begin to run as from the entry into effect of the decision whereby the decision of the contracting authority against which an appeal has been lodged was revoked.

Article 122j. (New, SG No. 37/2006, amended, SG No. 52/2010) When the contract is declared ineffective, each of the parties must restate to the other party everything received

therefrom. In case this is impossible, relations shall be settled by means of restitution of the money equivalent of what has been received under the contract.

Article 122k. (New, SG No. 37/2006, amended, SG No. 52/2010) Each interested party may claim compensation for damages sustained as a result of breaches upon the conduct of a procedure and conclusion of a public procurement contract, under the terms established by Article 203 (1) . Article 204 (1), (3) and (4) and Article 205 of the Administrative Procedure Code.

Article 122l. (New, SG No. 52/2010) The amounts implementing the sanctions referred to in Article 122d (4) and (5) herein shall be paid by the Exchequer to legal-person contracting authorities or to legal persons headed by natural-person contracting authorities.

Article 122m. (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) The Commission on Protection of Competition shall dispatch the decisions referred to in Article 122d herein and the rulings referred to in Article 121a (3), Article 121b (3) and Article 122g (1) herein to the Public Procurement Agency within seven days after the declaration of the said decisions and rulings.

Article 122n. (New, SG No. 52/2010) (1) (Repealed, SG No. 93/2011, effective 26.02.2012).

(2) Where the acts of contracting authorities upon award of public procurements defined by the ordinance referred to in Article 13 (2) herein are contested, the procedure for contestation of individual administrative acts shall apply.

Chapter Eleven A **(New, SG No. 52/2010)** **PROCEDURE FOR CORRECTION OF** **INFRINGEMENTS FOUND BY THE EUROPEAN** **COMMISSION**

Article 122o. (New, SG No. 52/2010) (1) On the day of receipt or at the latest on the next succeeding working day, the Permanent Representation of the Republic of Bulgaria to the European Union shall forward to the Public Procurement Agency, the administration of the Council of Ministers, the Ministry of Foreign Affairs and to the Ministry of Economy, Energy and Tourism the notification received from the European Commission of infringements it has found the contracting authorities have committed upon conduct of a procedure for conclusion of a public procurement award contract.

(2) The Executive Director of the Public Procurement Agency shall dispatch the notification referred to in Paragraph (1) to the relevant contracting authority, which must submit a reply within five days after receipt of the said notification.

(3) By the reply referred to in Paragraph (2), the contracting authority shall notify the Agency and shall attach the relevant evidence where:

1. the contracting authority concedes that the allegations of the European Commission are well founded and corrects the infringement, or

2. the infringement cited in the notification is already the subject of appeal.

(4) Outside the cases referred to in Paragraph (3), where the contracting authority finds that there has been an infringement, the said authority shall send the Public Procurement Agency a reasoned opinion and shall attach evidence.

(5) The contracting authority shall be obligated to discontinue any steps related to conduct of the procedure or conclusion of a public procurement contract as from the time of receipt of the notification under Paragraph (2) and until the conclusive settlement of the dispute.

(6) In the cases referred to in Paragraph (4), the Executive Director of the Agency:

1. shall exercise the power thereof referred to in Item 4 of Article 19 (2) herein, where the infringement cited in the notification referred to in Paragraph (1) is a result of an act of the contracting authority;

2. shall apprise the competent State body where the infringement results from the application of a statutory instrument which is inconsistent with European Union law.

(7) Within five days the body referred to in Item 2 of Paragraph (6) shall notify the Agency by a reasoned opinion and shall state relevant measures, where the said body envisages such measures.

(8) The Executive Director of the Public Procurement Agency shall prepare a reply to the European Commission, which shall contain:

1. a confirmation that the infringement has been corrected: in the cases referred to in Item 1 of Paragraph (3);

2. information that the infringement is already the subject of an appeal proceeding: in the cases referred to in Item 2 of Paragraph (3);

3. information on taking of measures for correction of the infringement: in the cases referred to in Item 1 of Paragraph (6) and Paragraph (7).

(9) The reply referred to in Paragraph (8) with evidence attached thereto shall be dispatched to the Permanent Representation of the Republic of Bulgaria to the European Union, the administration of the Council of Ministers, the Ministry of Foreign Affairs and to the Ministry of Economy, Energy and Tourism within seventeen days after receipt at the Public Procurement Agency of the notification referred to in Paragraph (1).

(10) The Permanent Representation of the Republic of Bulgaria to the European Union shall communicate to the European Commission the reply referred to in Paragraph (8) not later than the lapse of 21 days after the date of receipt of the notification under Paragraph (1).

Article 122p. (New, SG No. 52/2010) The information under Article 122o herein may be exchanged using electronic means with electronic signature or fax.

Article 122q. (New, SG No. 52/2010) Contracting authorities shall be obligated to notify the Agency in writing:

1. of the result of the appeal in the cases referred to in Item 2 of Article 122o (3) herein: within seven days after the entry into effect of the decision of the Commission on Protection of Competition;

2. where the procedure whereto the notification referred to in Article 122o (1) herein relates has been terminated by an enforceable decision and the said authorities initiate a new procedure relating in whole or in part to the same subject matter: within three days after the initiation of the procedure.

Article 122r. (New, SG No. 52/2010) In the cases referred to in Article 122q herein, the Executive Director of the Agency shall notify the European Commission according to the procedure established by Article 122o (9) herein within seven days after receipt of the notification.

Chapter Twelve

CONTROL

Article 123. (1) (Amended, SG No. 33/2006) Control over compliance with this Act shall be exercised by the Bulgarian National Audit Office and by the authorities of the Public Financial Inspection Agency.

(2) (Amended, SG No. 37/2006) The contracting authorities covered under Article 7 herein, which fall within the scope of the Bulgarian National Audit Office Act, shall be subject to control by the Bulgarian National Audit Office.

(3) (Amended, SG No. 33/2006, SG No. 37/2006) The contracting authorities covered under Article 7 herein, which fall within the scope of the Public Financial Inspection Act, shall be checked by the authorities of the Public Financial Inspection Agency as to compliance with this Act within the framework of financial inspection.

(4) (Amended, SG No. 33/2006, SG No. 93/2011, effective 26.02.2012) The authorities of the Public Financial Inspection Agency shall conduct periodic follow-up checks as to compliance with the public procurement regime of any contracting authorities which do not fall within the scope of the Public Financial Inspection Act, on the basis of an approved annual plan.

(5) (Amended, SG No. 33/2006) The orders on the performance of checks by the authorities

of the Public Financial Inspection Agency shall be issued by the Director of the Agency or by officials authorized thereby.

(6) The orders referred to in Paragraph (5) shall be unappealable.

(7) (Amended, SG No. 33/2006) The Director of the Public Procurement Agency may request from the authorities of the Public Financial Inspection Agency to exercise the powers thereof in a specific case.

Article 124. (1) (Amended, SG No. 33/2006) Upon performance of any checks referred to in Article 123 herein, the authorities of the Public Financial Inspection Agency shall have the right:

1. to gain free access to the auditee;
2. to examine the full set of documents associated with public procurement awards and with the activities requiring public procurement award;
3. to require documents, information and reference briefs associated with the public procurements from the officials at the auditees;
4. (New, SG No. 98/2008) to search premises, means of transport, as well as other places where documents of the auditee are stored, and to seize documents, computer information data records and computer information data storage mediums in order to secure evidence: with the assistance of the authorities of the Ministry of Interior, after a warrant obtained from the court.

(2) (Amended, SG No. 33/2006, SG No. 37/2006) The persons at the auditees shall be obligated to cooperate with the authorities of the Public Financial Inspection Agency and to provide the requisite documents, information and reference briefs associated with public procurements.

Article 125. Upon performance of any checks referred to in Article 123 herein, the control authorities shall be obligated:

1. to identify themselves, producing an official identity card and an order on performance of the check;
2. to show accurately the results of the control activity;
3. to respect the confidentiality of any information as may have come to the knowledge thereof upon performance of the checks.

Article 126. (1) (Amended, SG No. 33/2006) The control authorities of the Public Financial Inspection Agency shall draw up a report on the results of each check as performed, containing the findings as arrived at, supported by evidence, conclusions, and recommendations.

(2) The report referred to in Paragraph (1) shall be served on the contracting authority.

(3) Should any administrative violations be ascertained, the control authorities shall draw up written statements on administrative violations.

(4) Should there be reason to believe that criminal offences have been committed, the records of the check shall be transmitted to the prosecuting magistracy.

(5) (Amended, SG No. 33/2006) Where any breaches of the public procurement award procedures have been ascertained, the relevant parts of the financial inspection report and of the report referred to in Paragraph (1) regarding the breaches of the procedures as ascertained shall be dispatched promptly to the Director of the Public Procurement Agency.

(6) (Amended, SG No. 33/2006) Information on control exercised as to compliance with this Act may be provided solely by the Director of the Public Financial Inspection Agency or by officials thereby empowered, as well as by the Director of the Public Procurement Agency in the cases referred to in Paragraph (5).

Chapter Thirteen

ADMINISTRATIVE PENALTY PROVISIONS

Article 127. (1) (Amended, SG No. 33/2006, SG No. 37/2006, supplemented, SG No. 93/2011, effective 26.02.2012) The written statements ascertaining violations of this Act shall be drawn up by officials of the Public Financial Inspection Agency within six months after the day whereon the offender was detected by authorities of the Agency but not later than three years after the commission of any such violation.

(2) The penalty decrees shall be issued by the Minister of Finance or by officials empowered thereby.

(3) The ascertainment of violations, the issuing, appeal against and execution of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 127a. (New, SG No. 37/2006) (1) Upon non-compliance with any effective decisions and/or rulings of the Commission on Protection of Competition or non-fulfilment of the obligation referred to in Article 122a (4) herein, natural persons shall be liable to a fine and legal persons and sole traders shall be liable to a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 100,000.

(2) The Commission on Protection of Competition shall ascertain the violation committed and shall impose the sanctions referred to in Paragraph (1) by a decision which shall be appealable before the Supreme Administrative Court.

(3) The pecuniary penalties and the fines under effective decisions of the Commission shall be subject to collection according to the procedure established by the Tax and Social-Insurance Procedure Code.

Article 127b. (New, SG No. 37/2006) The Commission on Protection of Competition shall send the decisions referred to in Article 127a (2) herein to the Public Procurement Agency within seven days after declaration of the said decisions.

Article 127c. (New, SG No. 98/2010) (1) (Supplemented, SG No. 93/2011, effective 26.02.2012) Written statements establishing violations under this Act, ascertained by authorities of the Bulgarian National Audit Office, shall be drawn up by empowered auditors within six months after the day on which the offender has been detected by the authorities of the Bulgarian National Audit Office, but not later than three years after the commission of the said violations.

(2) Penalty decrees shall be issued by the President of the Bulgarian National Audit Office or by officials empowered thereby.

(3) The establishing of violations, the issuance, appeal and enforcement of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 127d. (New, SG No. 93/2011, effective 26.02.2012) Any contracting authority, who or which fails to adopt internal rules for the award of public procurements under Article 8b herein, shall be liable to a fine or to a pecuniary penalty of BGN 100 or exceeding this amount but not exceeding BGN 500.

Article 128. (1) (Amended, SG No. 37/2006, redesignated from Article 128 and amended, SG No. 94/2008, effective 1.01.2009) Any contracting authority, which or who violates the prohibition under Paragraphs (4) to (7) of Article 15 herein, shall be liable to a pecuniary penalty of BGN 10,000 or exceeding this amount but not exceeding BGN 30,000 or to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 8,000, and any person referred to in Article 8 (1) herein shall be liable to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 8,000.

(2) (New, SG No. 94/2008, effective 1.01.2009) The sanctions referred to in Paragraph (1) shall furthermore be imposed on any contracting authority which or who violates the prohibition referred to in sentence two of Article 8 (2) herein.

Article 128a. (New, SG No. 37/2006, amended, SG No. 94 of 2008, effective 1.01.2009) Any contracting authority, which or who breaches the time limits referred to in Article 64, Article 76 (1) to (3), Article 81 (1) to (3), Article 83b (1) and (2), Article 86 (1) to (3), Article 93h (1), Article 97 (1), Article 104, Article 104a (1), (2) and (4) and Article 114 (2) herein upon conduct of a procedure, shall be liable to a pecuniary penalty of BGN 2,000 or exceeding this amount but not exceeding BGN 3,000 or to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000, and any person referred to in Article 8 (2) or (3) shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000.

Article 128b. (New, SG No. 37/2006, amended and supplemented, SG No. 94/2008, effective 1.01.2009, amended, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who violates the prohibition referred to in Article 25 (5) or (10) herein, shall be liable to a pecuniary penalty of BGN 7,000 or exceeding this amount but not exceeding BGN 25,000 or to

a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 7,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 7,000.

Article 128c. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) (1) Any contracting authority, which or who endorses and dispatches for publication in the Public Procurement Register a contract notice which lacks the mandatory minimum content under Article 25 (2) herein, where applicable to that particular public procurement, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000. The sanction shall not be imposed where the relevant part of the contract notice is complemented by a decision on change, published according to the rules and within the time limit under Article 27a (3) herein, or where the procedure has been terminated.

(2) Any contracting authority, which or who violates Article 27a (4) herein upon publication of a decision on change, or which or who does not comply with the requirement of Article 47 (3) herein, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000.

(3) Any contracting authority, which or who endorses contract documents wherein the methods for evaluation of the tenders applying the criterion of the most economically advantageous tender do not comply with the requirements of Article 28 (2) herein, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

(4) Any contracting authority, which or who sets a price of contract documents in violation of Article 28 (4) herein or an amount of a participation guarantee or of a performance guarantee in violation of Article 59 (2) or (3) herein, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 1,000 or to a fine of BGN 200 or exceeding this amount but not exceeding BGN 500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 200 or exceeding this amount but not exceeding BGN 500.

(5) Any contracting authority, which or who defines technical specifications in violation of Article 32 (2) herein, shall be liable to a pecuniary penalty of BGN 7,000 or exceeding this amount but not exceeding BGN 25,000 or to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 7,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 7,000.

(6) Any contracting authority, which or who in the cases referred to in Article 29 (2) herein fails to extend the deadline for the receipt of tenders or requests to participate, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 2,000 or to a

fine of BGN 300 or exceeding this amount but not exceeding BGN 1,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 300 or exceeding this amount but not exceeding BGN 1,000.

(7) Any contracting authority, which or who violates Article 73 (4), Article 89 (8) or Article 92a (8) herein, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 300 or exceeding this amount but not exceeding BGN 1,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 300 or exceeding this amount but not exceeding BGN 1,000.

Article 128d. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Any member of a commission for the conduct of a public procurement procedure, who violates Article 69 (1), Article 70 (1) or Article 72 (1) and (2) herein, shall be liable to a fine of BGN 500.

Article 128e. (New, SG No. 37/2006, amended and supplemented, SG No. 94/2008, effective 1.01.2009) (1) (Redesignated from Article 67 and amended, SG No. 52/2010) Any contracting authority, which or who concludes a contract in violation of Article 41 (2), shall be liable to a pecuniary penalty of BGN 10,000 or exceeding this amount but not exceeding BGN 20,000 or to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000.

(2) (New, SG No. 52/2010) The pecuniary penalty referred to in Paragraph (1) shall furthermore be imposed on any contracting authority which concludes a contract before expiry of the period referred to in Article 41 (3) herein, with the exception of the cases covered under Article 41a herein.

(3) (New, SG No. 52/2010) The sanction referred to in Paragraph (2) shall not be imposed in the cases where a sanction under Article 122d (5) herein has been imposed for the violation as ascertained.

Article 128f. (New, SG No. 94/2008, effective 1.01.2009) Any contracting authority, which or who fails to make a decision on qualification proceedings and a decision on selection of a supplier, contractor or service provider of a public procurement within the statutorily established time limit, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 5,000 or to a fine of BGN 200 or exceeding this amount but not exceeding BGN 2,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 200 or exceeding this amount but not exceeding BGN 2,000.

Article 129. (1) (Redesignated from Article 129 and amended, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Any contracting authority, which or who fails to conduct a public procurement award procedure despite the existence of grounds for conduct of such a procedure or which amends a public procurement contract in violation of Article 43 (1) herein, shall be liable to a pecuniary penalty of BGN 15,000 or exceeding this amount but not exceeding BGN 50,000 or to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 10,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 10,000.

(2) (New, SG No. 37/2006) The sanctions referred to in Paragraph (1) shall furthermore be imposed on any contracting authority or any person referred to in Article 8 (2) or (3) herein which or who, on the basis of a framework agreement, concludes a contract which makes substantial amendments to the terms laid down in the framework agreement.

(3) (New, SG No. 94/2008, effective 1.01.2009) The sanctions referred to in Paragraph (1) shall furthermore be imposed on any contracting authority or person referred to in Article 8 (2) or (3) herein which or who concludes a contract in violation of Article 5 (3) herein.

(4) (New, SG No. 93/2011, effective 26.02.2012) The sanctions referred to in Paragraph (1) shall furthermore be imposed on any contracting authority which or who, in violation of Article 12 (5) herein, fails to terminate a contract for public utility services referred to in Item 13 of Article 12 (1) herein.

(5) (New, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who awards a public procurement to a value covered under Article 14 (3) herein without complying with the rules of Article 101a, 101b or 101f herein, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,000.

Article 129a. (New, SG No. 37/2006) (1) (Amended, SG No. 94/2008, effective 1.01.2009 SG No. 52/2010, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who fails to send the documents referred to in Article 45a (1), (3), (4), (5) and (6) herein or to fulfil the obligations referred to in Article 45a (10) and (11) herein, shall be liable to a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 15,000 or to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 3,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 3,000.

(2) (Amended, SG No. 94/2008, effective 1.01.2009, repealed, SG No. 52/2010).

Article 129b. (1) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, redesignated from Article 129b, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who fails to preserve the documentation on the conduct of public procurement within the time limit referred to in Article 58a (6) herein, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 5,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

(2) (New, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who fails to preserve all documents relating to the award of procurements under Chapter Eight A herein for the period referred to in Article 101g herein, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 1,000 or to a fine of BGN 300 or

exceeding this amount but not exceeding BGN 500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 300 or exceeding this amount but not exceeding BGN 500.

Article 130. (1) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) Any contracting authority covered under Items 1 to 4 of Article 7 herein, which or who conducts a competitive dialogue or a negotiated procedure despite the absence of the prerequisites under Article 83a, Article 84 or Article 90 herein, shall be liable to a pecuniary penalty of BGN 10,000 or exceeding this amount but not exceeding BGN 20,000 or to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000.

(2) (Amended, SG No. 37/2006, SG No. 94/2008, effective 1.01.2009) Any contracting authority covered under Items 5 and 6 of Article 7 herein, which or who conducts a negotiated procedure without publication of a contract notice despite the absence of prerequisites under Article 103 (2) herein, shall be liable to a pecuniary penalty of BGN 10,000 or exceeding this amount but not exceeding BGN 20,000 or to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000.

Article 130a. (New, SG No. 94/2008, effective 1.01.2009) Any contracting authority, which or who concludes a framework agreement or sets up a dynamic purchasing system of a duration greater than four years in violation of Article 93a (1) or Article 93e (1) herein or who fails to fulfil the obligation thereof to publish annually a notice on the qualification system for a duration greater than three years, shall be liable to a pecuniary sanction of BGN 10,000 or exceeding this amount but not exceeding BGN 20,000 or to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 3,000 or exceeding this amount but not exceeding BGN 5,000.

Article 131. (1) (Amended and supplemented, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Any contracting authority, which or who terminates a procedure despite the absence of the grounds covered under Article 39 (1) or (2) herein, shall be liable to a pecuniary penalty of BGN 2,000 or exceeding this amount but not exceeding BGN 10,000 or to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 3,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 3,000.

(2) (Amended, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who initiates a new procedure in violation of Article 39 (6) herein, shall be liable to a pecuniary penalty of BGN 2,000 or exceeding this amount but not exceeding BGN 7,000 or to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000.

(3) Any contracting authority, which or who concludes a public procurement contract in

violation of Article 42 (1) herein, shall be liable to a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 10,000 or to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 2,000 or exceeding this amount but not exceeding BGN 5,000.

Article 131a. (New, SG No. 52/2010) Any contracting authority, which or who fails to fulfil the obligation thereof under Article 62 (1) or (3) herein within the statutorily established time limit, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 5,000, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

Article 132. (1) (Redesignated from Article 132 and amended, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who fails to dispatch in due time the information subject to entry into the Public Procurement Register, shall be liable to a pecuniary penalty of BGN 1,000 or exceeding this amount but not exceeding BGN 2,000 or to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

(2) (New, SG No. 52/2010, amended, SG No. 93/2011, effective 26.02.2012) Any contracting authority, which or who fails to fulfil the obligation thereof under Article 44 (10) herein, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 1,000 or to a fine of BGN 100 or exceeding this amount but not exceeding BGN 500, and any person referred to in Article 8 (2) or (3) herein shall be liable to a fine of BGN 100 or exceeding this amount but not exceeding BGN 500.

(3) (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009, renumbered from Paragraph (2) and amended, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) Any person referred to in Article 8 (2) or (3) herein, who fails to fulfil the obligation thereof referred to in Article 19 (4), Article 20a (2), Article 122o (2) or (7) herein, shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

Article 132a. (New, SG No. 37/2006, amended, SG No. 94/2008, effective 1.01.2009) Any person, who fails to present to the authorities of the Public Financial Inspection Agency any documents, information and reference briefs within the time limits fixed by the said authorities in violation of Article 124 (2) herein, shall be liable to a fine of BGN 200 or exceeding this amount but not exceeding BGN 500.

Article 133. (1) (Amended, SG No. 37/2006, redesignated from Article 133, SG No. 93/2011, effective 26.02.2012) In the event of a repeated violation covered under Articles 128 to 132a herein, the fine or the pecuniary penalty, as the case may be, shall be imposed on the offender in a double amount.

(2) (New, SG No. 93/2011, effective 26.02.2012) Where the violations under Articles 128 to 132a herein, with the exception of such under Article 129 (4), Article 129b (2) and Article 132 (2) herein, are committed upon the award of public procurements to values covered under Article

14 (2) herein, the amounts of the fines and pecuniary penalties as provided for shall be reduced by half.

SUPPLEMENTARY PROVISIONS

(Heading amended, SG No. 94/2008, effective 1.01.2009)

§ 1. (Amended, SG No. 37/2006) Within the meaning given by this Act:

1. (Amended, SG No. 52/2010) "Public procurement contract" shall be a contract for pecuniary interest in writing between one or more suppliers, contractors or service providers and one or more contracting authorities and having as its object the execution of works, the supply of products, or the provision of services, concluded after conduct of a public procurement award procedure.

1a. (New, SG No. 93/2011, effective 26.02.2012) "Contracts for public utility services" shall be the contracts for performance of the following activities:

(a) operation, maintenance, monitoring, reclamation and after-care of facilities and installations for the treatment and final disposal of household waste;

(b) management of and arrangements for activities related to the reuse, recycling, recovery and final disposal of waste for attainment of the targets according to the municipal waste-related operations management programmes.

1b. (New, SG No. 24/2009, renumbered from Item 1a, SG No. 93/2011, effective 26.02.2012) "European Union funds" shall be the Structural Funds, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Fisheries Fund.

2. "European technical approval" shall be a favourable technical assessment of the fitness of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by bodies designated for this purpose by the Member State.

3. "Operation of airports" shall be the performance of activities concerning: maintenance of the airfield and development of airport infrastructure; containment and elimination of obstacles; maintenance of visual signalling devices; arrangement of emergency rescue, salvage and fire-prevention services for flights both within the airport perimeter and in the surrounding area; physical security of the airport; flight safety; commissioning of the elaboration and updating of the master plan and cadastral plan of the airport.

4. "Operation of maritime or inland ports" shall be the performance of activities concerning: maintenance of the aquatic areas adjacent to public-transport ports, the navigable and approach channels; survey and dredging; maintenance of moorage walls, port call facilities, port industrial

track and crane tracks, fire-protection, water-supply and sewerage system, high and low voltage power lines, public-transport surfacing within the perimeter of ports.

5. "Electronic auction" shall be a repetitive (standard) process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

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

6a. (New, SG No. 52/2010) "Candidate concerned" shall be a candidate who has not been definitively excluded from participation at the stage of qualification proceedings because the said candidate has not been notified of the exclusion or the proceeding for appeal of the decision whereby the said candidate has been excluded has not been completed.

6b. (New, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) "Tenderer concerned" shall be a tenderer who has not been definitively excluded from a procedure. An exclusion shall be definitive where the tenderer has been notified of the decision whereby the said tenderer has been excluded and the said decision has entered into effect. A tenderer concerned shall furthermore be any tenderer who has been ranked but who has not been selected as a supplier, contractor or service provider.

6c. (New, SG No. 52/2010) "Interested party" shall be any person who or which has or has had an interest in being awarded a specific public procurement and who or which has sustained or is likely to sustain a damage resulting from the alleged infringement.

7. "Law of the State in which the candidate or tenderer is established" shall be:

(a) applicable to natural persons: the national law (*lex patriae*) thereof, within the meaning given by Article 48 of the Private International Law Code;

(b) applicable to legal persons: the law of the State determined according to Article 56 of the Private International Law Code;

(c) applicable to combinations which are not legal persons: the law of the State in which they are registered or instituted.

8. (Amended, SG No. 93/2011, effective 26.02.2012) "Most economically advantageous tender" shall be the tender which complies to the greatest extent with the criteria as announced in advance by the contracting authority and the weight to be given to each such criterion, directly related to the subject matter of the public procurement with regard to quality, price, technical merit, aesthetic and functional characteristics, characteristics related to environmental protection, running costs, warranty after-sales service and technical assistance, delivery date etc.

9. (Supplemented, SG No. 94/2008, effective 1.01.2009) "Candidate" shall be a natural or

legal person or a combination of such persons, who or which has submitted a request to participate in a restricted procedure, a negotiated procedure with publication of a contract notice, a competitive dialogue or a restricted design contest.

10. (Repealed, SG No. 94/2008, effective 1.01.2009).

11. "Compensatory (offset) arrangement" shall be any contract whereby a supplier, contractor or service provider of a public procurement undertakes to make investments, to conclude and perform contracts for the supply of Bulgarian goods or for services or works by Bulgarian corporations, to make available to Bulgarian corporations technical equipment, technologies, licences for use of intellectual property rights, or to transfer intellectual property rights to any such corporations.

12. "Minimum labour costs" shall be the minimum amount of remuneration of labour, defined as a minimum monthly amount of the contributory income differentiated by economic activity and occupations grouped by qualification according to Item 1 of Article 8 of the Public Social Insurance Budget Act for the relevant year.

13. "Network in the field of transport" shall be any network whereof the operating conditions are laid down by the State or a municipality, and which includes the routes to be served, the capacity to make the transport service available, and the frequency of the service.

14. (Repealed, SG No. 93/2011, effective 26.02.2012).

14a. (New, SG No. 94/2008, effective 1.01.2009) "Common Procurement Vocabulary (CPV) shall be a single classification system applicable to public procurements intended to standardize the references used by contracting authorities to describe the subject matter of the public procurement award procedures conducted thereby. In the event of any differences established between the CPV and the General Industrial Classification of Economic Activities within the European Communities (NACE) nomenclatures or between the CPV and the Central Product Classification (CPC) nomenclatures, the NACE and the CPC nomenclatures, respectively, shall take precedence.

14b. (New, SG No. 52/2010, supplemented, SG No. 93/2011, effective 26.02.2012) "Unforeseen circumstances" shall be the circumstances, including circumstances of an extraordinary nature, which have occurred after conclusion of the contract, regardless of the will of the parties, and which could not have been foreseen and render impossible compliance with the terms agreed.

15. "Common technical specification" shall be a technical specification laid down in accordance with a procedure recognized by a Member State and published in the Official Journal of the European Union.

16. (Amended, SG No. 93/2011, effective 26.02.2012) "Lot" shall be such a part of the subject matter of the public procurement which, even though can be treated as a self-contained subject matter of public procurement, is systemically related to the other lots in which the subject matter of the public procurement is subdivided.

16a. (New, SG No. 52/2010) "Official translation" shall be a translation performed by a translator who has concluded a contract with the Ministry of Foreign Affairs for performance of official translations.

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

18. "Recognized body" shall be a person accredited by the Bulgarian Accreditation Service Executive Agency or by a foreign accreditation body which is a full member of the European Cooperation for Accreditation.

19. "Repeated violation" shall be any violation which is committed by the same person within one year after the entry into effect of a penalty decree whereby the said person was penalized for a violation of the same kind.

19a. (New, SG No. 52/2010) "Terms and conditions as announced in advance" shall be the terms and conditions contained in the contract notice and/or the contract documents.

20. "Buyer profile" shall be an Internet address of the contracting authority which may include the prior information notices, information on invitations to tender, contracts concluded, procedures terminated and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an electronic mail address.

21. "Body governed by public law" shall be any legal person which, regardless of its commercial or industrial character, is established for the specific purpose of meeting needs in the public interest and which fulfils any of the following conditions:

(a) (Amended, SG No. 93/2011, effective 26.02.2012) it is more than 50 per cent financed by the State budget, by the budgets of public social insurance or of the National Health Insurance Fund, by the municipal budgets, or by any contracting authorities covered under Item 1 or 3 of Article 7 herein;

(b) more than half of the members of the management or supervisory body thereof are appointed by any contracting authorities covered under Item 1 or 3 of Article 7 herein;

(c) which is subject to management supervision on the part of any contracting authorities covered under Item 1 or 3 of Article 7 herein; management supervision shall be presumed when a person can exert, in any way whatsoever, a dominant influence on the activity of another person.

Any medical-treatment facility, which is a commercial corporation and more than 30 per cent of the income whereof for the preceding year is for the account of the State budget and/or a municipal budget, and/or the budget of the National Health Insurance Fund, shall likewise be a body governed by public law.

22. (Amended, SG No. 52/2010) "Dominant influence" shall be presumed when any

contracting authorities covered under Item 1 of Article 7 herein, or any bodies governed by public law:

(a) hold more than 50 per cent of the capital of the undertaking, or

(b) hold blocking minority rights to the capital of the undertaking, or

(c) can appoint more than half of the members of the management or supervisory bodies of the undertaking.

23. "Public undertaking" shall be any merchant, within the meaning given by the Commerce Act or according to the legislation of a Member State, over which any contracting authorities covered under Item 1, 3 or 4 of Article 7 herein may exert directly or indirectly a dominant influence.

23a. (New, SG No. 93/2011, effective 26.02.2012) "Persons having close links" shall be:

(a) lineal relatives up to any degree of consanguinity;

(b) collateral relatives up to the fourth degree of consanguinity inclusive;

(c) affines up to the second degree of affinity inclusive;

(d) spouses or de facto cohabitantes;

(e) partners;

(f) any two persons, of whom one participates in the management of the corporation of the other;

(g) a corporation and a person who holds more than 5 per cent of the voting interests or shares issued in the corporation.

A corporation whereof the capital is wholly State-owned or municipal owned and a person who exercises the rights of the State or of the municipality, as the case may be, in the said corporation shall not be persons having close links.

24. "Affiliated undertaking" shall be any undertaking:

(a) whereof the annual accounts are consolidated with those of the contracting authority, or

(b) over which the contracting authority may exercise, directly or indirectly, a dominant influence, or

(c) which may exercise a dominant influence over any contracting authority covered under Item 5 or 6 of Article 7 herein, or

(d) which, in common with any contracting authority covered under Article 7 herein, is subject to the dominant influence of another undertaking.

25. "Specialized undertakings or cooperatives of persons with disabilities" shall be those undertakings within the meaning given by Article 28 (1) of the Integration of Persons with Disabilities Act or the equivalent thereof under the legislation of a Member State.

26. "Special or exclusive rights" shall be rights granted by law or by a competent State body on grounds provided for by law, the effect of which is to reserve the exercise of any activities including those defined in Articles 7a to 7e herein for one or more persons, and which substantially limits the ability of other persons to carry out such activities.

27. "Standard" shall be a technical specification approved by a recognized standardization body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

(a) "international standard": a standard adopted by an international standards organization and made available to the general public;

(b) "European standard": a standard adopted by a European standards organization and made available to the general public;

(c) "national standard": a standard adopted by a national standards organization and made available to the general public.

28. "Work" shall be the outcome of above-ground, semi-subterranean, underground or underwater construction which is sufficient of itself to fulfil an economic or technical function.

28a. (New, SG No. 93/2012, effective 26.02.2012) "Event of an extraordinary nature" shall be a natural disaster, accident or catastrophe, as well as any other event which immediately endangers human life and health or the environment.

29. "Technical reference" shall be any product produced by European standardization bodies, other than official standards, according to procedures adopted for the development of market needs.

30. "Technical specification in the case of works" shall be the totality of technical prescriptions contained in the contract documents, defining the characteristics required of the materials and the products to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics must include levels of environmental performance, design for all requirements, including accessibility for disabled persons, and conformity assessment, performance characteristics, safety or dimensions, including quality assurance procedures, terminology, symbols, testing and test methods, packaging, marking and labelling. They must also include rules relating to design, testing, construction supervision and conditions for acceptance of works and methods or techniques of construction, and all other technical conditions which the contracting authority is in a position to prescribe, by virtue of a law or of statutory instruments of secondary legislation, in relation to a finished work and to the

materials or parts which it involves.

31. "Technical specification in the case of services or supplies" shall be the specification in a document defining the required characteristics of a product or a service, such as: quality levels, environmental performance levels, design for all requirements, including accessibility for disabled persons, and conformity assessment, production process or method, use or the product, safety, dimensions, requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking, labelling, user instructions, conformity assessment procedures.

32. "Third country" shall be any country which is not a Member State of the European Union.

33. "Tenderer" or "participant" shall be a natural or legal person or a combination of such persons who or which has submitted a tender or a project;

34. "Fixed networks intended to provide a service to the public" shall be:

(a) the transmission and distribution networks within the meaning given by the Energy Act: applicable to the activities covered under Article 7a herein;

(b) the water-supply system and the sewer system within the meaning given by Items 32 and 33 of § 1 (1) of the Supplementary Provisions of the Water Act: applicable to the activities covered under Article 7b herein.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. This Act shall supersede the Public Procurement Act (promulgated in the State Gazette No. 56 of 1999, amended in Nos. 92 and 97 of 2000, Nos. 43 and 45 of 2002, and No. 109 of 2003).

§ 3. (Effective 6.04.2004) The Council of Ministers shall adopt the Regulations for Application of this Act, as well as the ordinances referred to in Article 13 (2) and Article 14 (5) herein and the rate schedule referred to in Article 20 (6) herein, not later than the 1st day of October 2004.

§ 4. (1) (Effective 6.04.2004) The Council of Ministers shall adopt Rules of Organization of the Public Procurement Agency within two months after the promulgation of this Act in the State Gazette.

(2) The Public Procurement Agency shall become a legal successor to all rights to the existing Public Procurement Register, including the technical facilities for the maintenance of the said Register.

(3) (Effective 6.04.2004) The Council of Ministers shall adopt a decision on allocation of a suitable building to the Public Procurement Agency within two months after the promulgation of

this Act in the State Gazette.

§ 5. (1) Upon evaluation of tenders submitted by a candidate or tenderer who or which is a small or medium-sized enterprise within the meaning given by the Small and Medium-Sized Enterprises Act, the price tendered thereby shall be treated as the lowest if exceeding the lowest price tendered by another candidate or tenderer by not more than:

1. fifteen per cent: applicable to public procurements awarded in 2004;
2. ten per cent: applicable to public procurements awarded in 2005;
3. five per cent: applicable to public procurements awarded in 2006.

(2) Paragraph (1) shall apply where the tenders evaluated have been submitted by candidates or tenderers originating in countries which are not included in the list referred to in Item 14 of Article 19 (1) herein.

(3) The provisions of Paragraphs (1) and (2) shall apply until the 1st day of January 2007.

§ 6. (Amended, SG No. 94/2008, effective 1.01.2009) In the cases referred to in § 9 of the Transitional and Final Provisions of the Environmental Protection Act, when the State finances measures to eliminate environmental damage resulting from past acts or omissions by the State, the suppliers, contractors or service providers shall be selected according to the procedure established by Part Two herein, and when the contracting authorities are entities covered under Items 5 and 6 of Article 7 herein, the selection shall follow the procedure established by Part Three herein.

§ 7. Any public procurement award procedures, in respect whereof a decision on initiation has been made prior to the entry of this Act into force, shall be completed according to the hitherto effective procedure.

§ 8. (Effective 6.04.2004) The Council of Ministers shall adopt the Rules and the Statute of the Arbitration Court and shall designate the President thereof not later than the 1st day of September 2004.

§ 9. (Effective 6.04.2004) The Health Insurance Act (promulgated in the State Gazette No. 70 of 1998; amended in Nos. 93 and 153 of 1998, Nos. 62, 65, 67, 69, 110 and 113 of 1999, Nos. 1, 31 and 64 of 2000, No. 41 of 2001, No. 1, 54, 74, 107, 112, 119 and 120 of 2002, Nos. 8, 50, 107 and 114 of 2003) shall be amended and supplemented as follows:

1. In Article 45:

(a) Paragraph (4) shall be amended to read as follows:

"(4) The Council of Ministers shall adopt an ordinance establishing a procedure and terms for contracting of medicinal drugs which are fully or partly reimbursable by the NHIF. The said ordinance shall contain the procedure and criteria for contracting of the particular medicinal

drugs, as well as the methods for determination of the proportion of reimbursement thereof. The draft of the said ordinance shall be drawn up by the NHIF, shall be cleared with the Transparency Commission referred to in Article 85b of the Human Medicinal Drugs and Pharmacies Act, and shall be laid by the Minister of Health before the Council of Ministers.";

(b) in Paragraph (5), the words "the manufacturers and wholesalers of medicinal drugs" shall be replaced by "the holders of medicinal drugs registrations or the authorized representatives thereof within the territory of the Republic of Bulgaria under Article 17 of the Human Medicinal Drugs and Pharmacies Act";

(c) there shall be added the following new paragraph:

"(6) After the contracting referred to in Paragraph (5), the NHIF shall conclude contracts for the particular medicinal drugs referred to in Item 10 of Paragraph (1) and for the prices thereof with the holders of medicinal drugs registrations or the authorized representatives thereof within the territory of the Republic of Bulgaria under Article 17 of the Human Medicinal Drugs and Pharmacies Act."

2. In the Transitional and Final Provisions, there shall be inserted the following new clause:

"§ 19b. The Council of Ministers shall adopt and promulgate in the State Gazette the ordinance referred to in Article 45 (4) herein not later than the 30th day of April 2004."

§ 10. (Effective 6.04.2004) In the Public Procurement Act (promulgated in the State Gazette No. 56 of 1999; amended in Nos. 92 and 97 of 2000, Nos. 43 and 45 of 2002, No. 109 of 2003), the following new item shall be added in Article 4:

"4. of the National Health Insurance Fund, in respect of medicinal drugs provided for treatment at home within the entire territory of Bulgaria."

§ 11. In Paragraph (3) of Article 126a of the Code of Civil Procedure (promulgated in Transactions of the Presidium of the National Assembly No. 12 of 1952; amended in No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, Nos. 50 and 90 of 1961, corrected in No. 99 of 1961; amended in the State Gazette No. 1 of 1963, No. 23 of 1968, No. 27 of 1973, No. 89 of 1976, No. 36 of 1979, No. 28 of 1983, No. 41 of 1985, No. 27 of 1986, No. 55 of 1987, No. 60 of 1988, Nos. 31 and 38 of 1989, No. 31 of 1990, No. 62 of 1991, No. 55 of 1992, Nos. 61 and 93 of 1993, No. 87 of 1995, Nos. 12 and 26 of 1996, Nos. 37, 44 and 104 of 1996, Nos. 43, 55 and 124 of 1997, Nos. 59, 70 and 73 of 1998, Nos. 64 and 103 of 1999, Nos. 36, 85 and 92 of 2000, No. 25 of 2001, Nos. 105 and 113 of 2002, Nos. 58 and 84 of 2003), after the words "the State Receivables Collection Act" there shall be added "and under Article 120 of the Public Procurement Act."

§ 12. This Act shall enter into force on the 1st day of October 2004, with the exception of the provisions of Article 13 (2), Article 14 (5), Items 3 and 4 of Article 17, Article 18, Paragraph (1) and Item 5 and Items 9 to 11 of Paragraph (2) of Article 19, Article 20, § 3, Paragraphs (1) and (3) of § 4, § 8, § 9 and § 10, which shall enter into force on the day of promulgation of the Act in the State Gazette.

This Act was passed by the 39th National Assembly on the twenty-fourth day of March in the year two thousand and four, and the Official Seal of the National Assembly has been affixed thereto.

Act to Amend and Supplement the State Gazette Act

Promulgated, State Gazette No. 31/2005

FINAL PROVISIONS

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§ 6. The Council of Ministers shall bring the statutory instruments of secondary legislation on the application of the Public Procurement Act into conformity with this Act not later than the 1st day of May 2005.

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Act to Amend and Supplement the Public Procurement Act

Promulgated, State Gazette No. 37/2006 (effective 1.07.2006)

TRANSITIONAL AND FINAL PROVISIONS

§ 148. (1) Any procedures initiated by a decision prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

(2) Any disputes on procedures referred to in Paragraph (1) shall be settled according to the hitherto effective procedure before the regional and district courts.

§ 149. Any cases pending before the courts of law and before the Arbitration Court with the Public Procurement Agency, which have been instituted prior to the entry of this Act into force, shall be completed according to the hitherto effective procedure.

§ 150. (1) The Council of Ministers shall bring the statutory instruments of secondary legislation as issued into conformity with the provisions of this Act within two months after the promulgation of the said act in the State Gazette.

(2) The Council of Ministers shall release the President of the Arbitration Court with the Public Procurement Agency within one month after the entry of this Act into force.

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§ 160. This Act shall enter into force as from the 1st day of July 2006 with the exception of Item 1 (a) of § 12 herein (regarding Item 2) and Item 1 (g) of § 12 herein (regarding sentence two), Item 1 (c) of § 13 herein, Item 2 (c) of § 20 herein (in the part regarding the notification of

the European Commission of changes in the lists) and Item 2 (i) of § 20 herein (regarding Items 17 to 22), Item 4 of § 46 herein (regarding Paragraph (7), § 47, Item 3 of § 78 herein (regarding sentence two) and § 125 herein, which shall enter into force as from the 1st day of January 2007.

Act to Amend and Supplement the Public Procurement Act

Promulgated, State Gazette No. 94/2008 (effective 1.01.2009)

TRANSITIONAL AND FINAL PROVISIONS

§ 70. Any procedures initiated by a decision prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

§ 71. (1) Where the contracting authority under public procurement contracts financed by resources under the Phare Programme is a Programme Authorizing Officer, the contracting authority shall mandatorily include an independent lawyer in the commissions for the conduct of the procedures.

(2) The lawyer referred to in Paragraph (1) may not be an official of the Phare Implementing Agency within the meaning given by the Memorandum of Understanding on the Establishment of the National Fund between the Government of the Republic of Bulgaria and the European Commission, signed in Sofia on 7 December 1998 (ratified by an Act promulgated in the State Gazette No. 15 of 1999) (promulgated in the State Gazette No. 37 of 1999), or an employee of the beneficiary.

(3) After completion of the procedure, the lawyer referred to in Paragraph (1) shall prepare a report on the work of the commission and shall present the said report to the National Operating Officer.

(4) The requirements referred to in Paragraphs (1) and (2) shall apply until completion of the implementation of the Phare Programme.

Act to Amend and Supplement the Public Procurement Act

Promulgated, State Gazette No. 24/2009

FINAL PROVISION

§ 5. (1) The ex ante control referred to in Article 20a [of the Public Procurement Act] shall be exercised for public procurement award procedures conducted in implementation of projects approved after the 1st day of January 2009.

(2) In respect of Operational Programme Transport, the control referred to in Paragraph (1) shall be exercised for public procurement award procedures conducted after the entry into force of this Act.

Act to Amend and Supplement the Tourism Act

Promulgated, State Gazette No. 82/2009 (effective 16.10.2009)

TRANSITIONAL AND FINAL PROVISIONS

§ 38. In the Public Procurement Act (promulgated in the State Gazette No. 28 of 2004, amended in No. 53 of 2004, Nos. 31, 34 and 105 of 2005, Nos. 18, 33, 37 and 79 of 2006, No. 59 of 2007, Nos. 94, 98 and 102 of 2009), the words "the Minister of Economy and Energy" shall be replaced passim by "the Minister of Economy, Energy and Tourism".

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Act to Amend and Supplement the Public Procurement Act

Promulgated, State Gazette No. 52/2010

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SUPPLEMENTARY PROVISION

§ 58. This Act transposes the requirements of Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ, L 335/31 of 20 December 2007) and of Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ, L 120/5 of 15 May 2009).

TRANSITIONAL AND FINAL PROVISIONS

§ 59. Any procedures initiated prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

§ 60. Any proceedings instituted before the Commission on Protection of Competition prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

§ 61. The Council of Ministers shall bring the statutory instruments of secondary legislation on the application of the Public Procurement Act into conformity with this Act within three months after the promulgation thereof.

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§ 64. § 9 shall enter into force as from the 4th day of December 2010.

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Act to Amend and Supplement the Conflict of Interest Prevention and

Disclosure Act

Promulgated, State Gazette No. 97/2010, effective 10.12.2010

TRANSITIONAL AND FINAL PROVISIONS

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§ 49. In the Public Procurement Act (promulgated in the State Gazette No. 28 of 2004; amended in No. 53 of 2004, Nos. 31, 34 and 105 of 2005, Nos. 18, 33, 37 and 79 of 2006, No. 59 of 2007, Nos. 94, 98 and 102 of 2008, Nos. 24 and 82 of 2009 and SG Nos. 52 and 54 of 2010), the words "Conflict of Interest Prevention and Disclosure Act" shall be replaced passim by "Conflict of Interest Prevention and Ascertainment Act".

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Election Code

Promulgated, State Gazette No. 9/2011

SUPPLEMENTARY PROVISIONS

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§ 3. The provisions of the Public Procurement Act regarding the time limits of the procedures shall not apply upon the commissioning of a contest for the computer processing of the voting data and the publication of the election results in a bulletin, as well as in respect of the manufacture and printing of the election stationery and materials.

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Forestry Act

Promulgated, State Gazette No. 19/2011, effective 19.04.2011

TRANSITIONAL AND FINAL PROVISIONS

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§ 3. (Effective 8.03.2011, SG No. 19/2011) (1) Land properties within wooded areas acquired from the State by natural and legal persons or municipalities as a result of land swaps effected prior to the date of promulgation of this Act in the State Gazette shall not be subject to change of the assigned purpose in accordance with the procedure of this Act, and no construction can be carried out on them.

(2) The restriction under Paragraph (1) shall also apply in the event of change of ownership of such land properties, where said wooded area is acquired from the State.

(3) The restriction under Paragraph (1) shall not apply in case where the change of the assigned purpose is made for building a site or facility of national significance or a municipal site or facility of prime significance within the meaning given by the State Property Act and the Spatial Development Act, which become public state or municipal property.

(4) Within one month from the date of promulgation of this Act, the Ministry of Agriculture and Food shall cause a list of the properties under Paragraph (1) to be promulgated in the State Gazette.

(5) Within 14 days after the promulgation of the list under Paragraph (4), the Geodesy, Cartography and Cadastre Agency, the municipal agriculture services and the Registry Agency shall cause the restrictions under Paragraph (1) to be entered into the cadastral maps, respectively into the restituted property maps, and into the property register.

§ 4. (1) Within one month from the entry into force of this Act, the Minister of Agriculture and Food shall issue an order to appoint regional commissions to prepare lists of land properties within wooded areas having the characteristic features of a forest, within the meaning of Article 2 (1), Item 1 herein, which by the day of entry into force of this Act had not been entered as such in the cadastral map or in the restituted property map.

(2) The commissions under Paragraph (1) shall comprise a representative of the Regional Agriculture Directorate (Chair of the Commission) and the following members: a representative of the relevant municipality, appointed by the mayor thereof, a representative of the relevant municipal agriculture service, a representative of the relevant geodesy, cartography and cadastre service, and a representative of the relevant regional forestry directorate.

(3) The regional commission shall verify in situ, by way of a desk review, or on the basis of the digital ortho-photographic map, the existence of landproperties under Paragraph (1) within the territorial area of operation of the relevant state forest enterprise or state hunting enterprise, and shall draw up a protocol of its findings, with a list of such properties attached therewith. Said protocol shall describe the size of the properties, the type and origin of the forest, and a plat of each property and a taxonomic description shall be attached thereto.

(4) The protocol under Paragraph (3) shall be submitted within 6 months from the entry into force of this Act to be endorsed by the Minister of Agriculture and Food.

(5) Within 14 days after the endorsement of the protocol under Paragraph (1), the Minister of Agriculture and Food shall issue an order whereby said land properties shall be designated as wooded areas. Said order shall be transmitted to the municipal agriculture service or to the geodesy, cartography and cadastre service.

(6) The order under Paragraph (5) shall be handed to the owners of properties under Paragraph (1) and shall be subject to appeal in accordance with the Administrative Procedure Code.

(7) Following the entry into force of the order under Paragraph (5), a copy thereof shall be

transmitted to the regional forestry directorate and to the relevant geodesy, cartography and cadastre service in cases where a cadastral map has been approved for the relevant territory, or to the municipal agriculture service for entry of the land properties concerned as wooded areas into the relevant cadastral map or in the restituted property map.

§ 5. (1) Applications for exclusion of areas from the forest estate, for granting a rights to use and servitudes in respect of forests and lands within the state forest estate, as well as applications under § 123 of the Transitional and Final Provisions of the Act to Amend and Supplement

the Forestry Act as superseded (promulgated in the State Gazette No. 16 of 2003; amended in Nos. 29 and 34 of 2006), submitted prior to the entry into force of this Act, shall be considered in accordance with the hitherto effective procedure, with the value of properties being determined in accordance with the procedure established by Article 86 (2) herein, in cases of expiry of the term of validity of a certificate of value issued in accordance with the procedure established by the Ordinance on Determining the Basic Prices, Prices of Excluded Areas, Creation of a Right to Use and Servitudes in Forests and Lands within the Forest Estate (promulgated in the State Gazette No. 101 of 2003; amended in No. 39 of 2004 , No. 6 of 2005, No. 1 of 2007, No. 38 of 2010).

(2) Procedures under Article 15b of the Forestry Act as superseded, launched prior to the entry into force of this Act, shall be terminated.

(3) Procedures under Article 15b of the Forestry Act as superseded shall be completed in accordance with the hitherto effective procedure in cases where the entity that requested such exclusion:

1. has submitted, or submits within three months from the entry into force of this Act, an application supported with all requisite documents, and

2. pays the price due for such transaction within 6 months from the entry into force of the order of sale, property swap or creation a limited real right.

(4) Failure to satisfy the requirements of Paragraph(3) shall result in the extinction of the rights of entities to whom a change of the assigned purpose was granted.

(5) In cases under Paragraph (4), the Minister of Agriculture and Food shall issue an order for the properties in question to be entered as wooded areas; a copy of said order shall be transmitted to the regional forestry directorate and to the relevant geodesy, cartography and cadastre service, or to the municipal agriculture service, for entry of said changes into the cadastral map or into the restituted property map. The Minister shall also file a request in accordance with the procedure established by the Spatial Development Act, for a change to be made in the relevant effective spatial-development plan.

(6) Where a detailed plan is developed in respect of land properties within wooded areas that are subject to sale in accordance with the procedure of § 123 of the Transitional and Final Provisions of the Act to Amend and Supplement the Forestry Act as superseded (promulgated in

the State Gazette No. 16 of 2003; amended in Nos. 29 and 34 of 2006), the statutory adjacent area subject to such sale shall be determined on the basis of the maximum allowed statutory rates of development density and intensity for individual types of territory and zone.

(7) The provisions of Article 73 (5) and Article 78 (4), Item 2, and Article 78 (7) herein shall also apply to proceedings conducted in accordance with the Forestry Act as superseded, seeking exclusion or change of assigned purpose in respect of lands and forests within the forest estate, for purposes of construction of sites and facilities of national significance or municipal sites and facilities of prime significance, which have not been completed by the date of entry into force of this Act.

(8) The provision of Article 78 (3), Item 2 herein shall not apply to completed procedures under the Forestry Act as superseded.

(9) In cases where, by the date of entry into force of this Act, advance clearance has been granted, or an application for advance clearance has been submitted, for exclusion of areas from the forest estate, the procedure of changing the assigned purpose of such properties shall be completed in accordance with the hitherto effective procedure.

§ 6. (1) Wooded areas subsumed within the boundaries of urbanized areas, whether nucleated settlements or dispersed settlements, defined by an urban development plan or by an outlying land strip, approved prior to June 1st, 1973, shall be considered to be of changed assigned purpose, and shall not be subject to assigned purpose changing procedures according to the procedure of this Act. Any change of the functional purpose or the regulation allocations regarding such lands shall be effected in accordance with the procedure of the Spatial Development Act.

(2) In respect of wooded areas subsumed within the boundaries of urbanized areas, whether nucleated settlements or dispersed settlements, whether defined by a detailed plan, by an urban development plan, or by an outlying land strip, approved after June 1st, 1973, in respect of which no procedures have been performed to change their assigned purpose in accordance with the Forestry Act as superseded, a procedure for change of their assigned purpose in accordance with this Act shall be conducted on the initiative of their owners.

(3) In cases under Paragraph (2), where such territories are developed, the price of changing their assigned purpose shall be determined on the basis of data from the latest forest management design preceding their development.

§ 7. (1) From the day of entry into force of this Act, state forest nurseries created within agricultural lands or urbanized areas shall become wooded areas.

(2) Within one year from the entry into force of this Act, the director of the regional forestry directorate shall file a request with the relevant municipal agriculture services, as well as with the geodesy, cartography and cadastre services, to have the properties under Paragraph (1) entered as wooded areas into the restituted property map, respectively into the cadastral map.

§ 8. Schools of higher learning, research institutes and research stations primarily engaged

in forest research and training of forestry personnel shall retain the rights vested in them by law or by an administrative act of the Council of Ministers in respect of wooded areas designated for research or experimental and educational purposes.

§ 9. (1) Within 7 days from the entry into force of this Act, the

Minister of Agriculture and Food shall issue orders determining the area of operation of the state enterprises under Annex 1 hereto as well as the registered offices of those.

(2) From the date of entry into the commercial register of the state enterprises under Annex 1 hereto, they shall be successors in title to the relevant state hunting enterprises under Article 2, Items 1 through 25, of the Hunting and Game Protection Act, with all their assets and liabilities and with their archive, as well as to the state forest enterprises in existence by the day of entry into force of this Act.

(3) From the date of entry into the commercial register of the state enterprises under Annex 1 hereto, the state forest enterprises and the state hunting enterprises in existence by the date of entry into force of this Act shall become territorial affiliates of the relevant state enterprise within whose area of operation they are located.

(4) Where, by the date of entry into the commercial register under Paragraph (3), the area of operation of a state forest enterprise or a state hunting enterprise falls within the areas of operation of two or more state enterprises under Annex 1 hereto, the relevant enterprise shall become a territorial affiliate of the state enterprise within whose area of operation its registered office is located.

(5) The areas of operation of the territorial affiliates under Paragraphs (3) and (4) shall encompass the areas of operation, respectively the territorial scope of operation, of the state forest enterprises and the state hunting enterprises in existence by the date of entry into force of this Act.

(6) From the date of entry into the commercial register of the state enterprises under Annex 1 hereto, the registration of the relevant state forest enterprises or state hunting enterprises shall be deleted.

(7) The boundaries of areas of operation of hunting enterprises, approved by an order of the Minister of Agriculture and Food prior to the entry into force of this Act, shall be preserved.

(8) Contracts under Article 9 (12) and Article 36m of the Hunting and Game Protection Act, as well as contracts whereby the stewardship of game is delegated to hunting associations, concluded by the state forest enterprises and state hunting enterprises under Paragraphs (2) and (3) prior to the entry into force of this Act, shall remain in effect.

(9) (Effective 8.03.2011, SG, No. 19/2011) The state hunting enterprises of Beglika, Midjour, Seslav, Razlog, Tervel, Rhodopi, Preslav, Toundja, Kotel, Bolyarka and Alabak, in existence towards the day of promulgation of this Act, shall become state forest enterprises.

(10) (Effective 8.03.2011, SG, No. 19/2011) Management contracts concluded with the directors of state hunting enterprises under Paragraph (9) above shall remain in effect, whereas the employment relationships with their factory and office workers shall be settled according to the procedure established by Article 123 of the Labour Code.

(11) (Effective 8.03.2011, SG, No. 19/2011) Contracts under Article 9 (12) of the Hunting and Game Protection Act concluded by the state hunting enterprises under Paragraph (9), as well as contracts whereby the stewardship of game is delegated to hunting associations, shall remain in effect.

§ 10. Until the state enterprises under Annex 1 hereto are entered into the commercial register, the existing bank accounts of state forest enterprises and state hunting enterprises shall be used for the collection of proceeds and the making of payments.

§ 11. For 2011, the state enterprises under Annex 1 hereto shall remit to the budget of the Ministry of Agriculture and Food 50 per cent, and for 2012, 25 per cent of proceeds under Article 179 (1) herein.

§ 12. The directors of state forest enterprises and state hunting enterprises in existence by the day of entry into force of this Act shall be reappointed as directors of the relevant territorial affiliates of the state enterprises under Annex 1 hereto, and shall conclude a management contract with the director of the relevant enterprise.

§ 13. Employment relationships with the factory and office workers of state forest enterprises and state hunting enterprises in existence by the day of entry into force of this Act shall be settled in accordance with the procedure established by Article 123 of the Labour Code; these shall be reappointed with the relevant territorial affiliates of the state enterprises under Annex 1 hereto.

§ 14. In their designated area of operation, experimental/educational forest farms shall operate and shall perform the functions of state forest enterprises and state hunting enterprises assigned to them by force of this Act, the Hunting and Game Protection Act and the relevant secondary legislation governing the application of those acts, unless otherwise provided by another law.

§ 15. Within 6 months from the adoption of the ordinance under Article 175 herein, the directors of state enterprises and the directors of territorial affiliates shall endorse the staffing schedules naming the positions for the central offices, respectively for the territorial affiliates of these enterprises, and shall bring the labour remunerations of the office and factory workers into conformity with the new labour remuneration system.

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§ 33. (1) Within one year from the entry into force of this Act, persons holding a certificate of a completed training course in appraisal of forests and lands within the forest estate issued by the University of Forest Engineering, the Forestry Institute of the Bulgarian Academy of Sciences, the National Forestry Board, the State Forestry Agency or the Executive Forestry

Agency shall be entered by right into the register under Article 15 of the Independent Appraisers Act.

(2) Entry under Paragraph (1) shall be made on the basis of an application supported by a copy of the certificate of a completed training course in appraisal of forests and lands within the forest estate.

(3) Following expiry of the time period under Paragraph (1), wooded areas shall only be appraised by appraisers entered into the register under Paragraph (1).

§ 34. Any and all branch organizations registered prior to the day of entry into force of this Act shall be re-registered within one year in accordance with the requirements herein.

§ 35. (1) Within one year from the entry into force of this Act, the Executive Forestry Agency shall re-register any and all persons entered into the public registers under Article 39 (2) and Article 57a (1) of the Forestry Act as superseded.

(2) Persons entered into the public registers under Article 39 (2) of the Forestry Act as superseded shall be entered into the register under Article 235 herein, and shall be issued a certificate of registration, as follows:

1. a certificate for planning and implementation of afforestation activities shall be issued to persons holding a certificate for collection and harvesting of seeds, production of saplings and other reproductive materials for forest tree and bush species, establishment of forest cultures and drawing up of reporting documents, accompanying the activity under the Forestry Act as superseded;

2. a certificate for marking of trees scheduled to be felled shall be issued to persons holding a certificate for marking of trees, subject to felling, raising young plantations without production of material, trimming of trees and drawing up of reporting documents, accompanying the activity under the Forestry Act as superseded;

3. a certificate for development of terms of reference and forestry plans and programs shall be issued to persons holding a certificate for development of terms of reference and organizational forest products, plans and programs for forests and lands of the forest estate under the Forestry Act as superseded;

4. a certificate for development of forestry plans and programs and inventories of wooded areas shall be issued to persons holding a certificate for development of terms of reference and organizational forest projects, plans and programs for forests and lands of the forest estate under the Forestry Act as superseded;

5. a certificate for development of terms of reference and projects, plans and programs for erosion control and biological re-cultivation of damaged terrains shall be issued to persons holding a certificate for development of terms of reference and projects, plans and programs for erosion control and biological re-cultivation of damaged terrains under the Forestry Act as superseded;

6. a certificate for planning and implementation of timber harvesting shall be issued to persons holding a certificate for organization of lumbering and development of transportation and technological projects, plans and schemes for usage of forests and lands of the forest stock and drawing up of documents accompanying this activity under the Forestry Act as superseded;

7. a certificate for planning and implementation of the harvesting of non-timber forest products shall be issued to persons holding a certificate for organization of lumbering and development of transportation and technological projects, plans and schemes for usage of forests and lands of the forest stock and drawing up of documents accompanying this activity under the Forestry Act as superseded;

8. a certificate for designing forest tracks navigable by motor vehicle and the relevant infrastructural facilities shall be issued to persons holding a certificate for drawing of plans for forest roads and installations under the Forestry Act as superseded.

(3) The entries of persons into the public register under Article 39 (2) of the Forestry Act as superseded for the activities evaluation of forests and lands of the forest estate, management of forests and lands of the forest estate owned by natural and legal persons and municipalities and expert appraisals and consultations on forestry activities shall be deleted.

(4) Persons who have been entered into the register under Paragraph (3) for the activity evaluation of forests and lands of the forest estate may seek entry into the public register under the Independent Appraisers Act within one year from the entry into force of this Act. Until they are entered into said register, such persons shall have the right to appraise wooded areas on the basis of their certificate of a completed course in appraisal of forests and lands of the forest estate.

(5) Merchants entered into the public register under Article 57a (1) of the Forestry Act as superseded shall be entered into the register under Article 241 herein and shall be issued a certificate of registration as follows:

1. a certificate for management of wooded areas shall be issued to merchants holding a certificate for forest reproduction under the Forestry Act as superseded;

2. a certificate for timber harvesting shall be issued to merchants holding a certificate for use of timber from the forest estate under the Forestry Act as superseded;

3. a certificate for development of plans and programs for management and development of wooded areas shall be issued to merchants holding a certificate for zoning of lands and forests of the forest estate and of game stewardship areas under the Forestry Act as superseded.

(6) The re-registration under Paragraphs (1) to (5) shall be done ex officio and free of charge.

(7) Paragraph (6) shall not apply in cases where parallel to the re-registration the entitled person has also applied for entry into the register of changed circumstances.

(8) Until they are re-registered, the persons under Paragraphs (1) to (7) shall use the certificates of registration issued in accordance with the Forestry Act as superseded to prove their right to perform activities in wooded areas.

(9) Holders of a certificate of completed course in appraisal of forests and lands in the forest estate issued prior to the date of entry into force of this Act shall have the right to perform appraisals of wooded areas until they are entered into the register as per the Independent Appraisers Act.

§ 36. (1) Within one year from the entry into force of this Act, employees of state forest enterprises, state hunting enterprises and educational and experimental forest farms who occupy positions for which a degree in forest engineering is required shall be allowed to perform activities in wooded areas without being entered into the public register under Article 235 herein.

(2) Within the time period under Paragraph (1), those employees shall cause themselves to be entered into the public register under Article 235 herein.

(3) State forest enterprises, state hunting enterprises and educational and experimental forest farms may use the forest control markings in their possession for a period of two years following the entry into force of this Act, and shall make these available to:

1. their employees with a degree in forest engineering, irrespective of whether they are entered into the register under Article 235 herein, until the expiry of the time period under Paragraph (1);

2. their employees with a degree in forest engineering entered into the public register under Article 235 herein, following expiry of the time period under Paragraph (1).

§ 37. (1) The Executive Director of the Executive Forestry Agency shall issue an order endorsing the standard forms of the requisite documents under this Act, unless otherwise provided by another statutory instrument. Such standard forms shall be posted on the website of the Executive Forestry Agency.

(2) The order under Paragraph (1) shall also define the terms and procedure of issuance and accountability of such documents, as well as the documents that can be submitted in electronic format.

§ 38. (1) Any statutory instruments of secondary legislation issued in pursuance of the Forestry Act as superseded shall apply as long as they do not come in conflict with this Act.

(2) Until the adoption of regional plans for the development of wooded areas, the categorization and re-categorization of wooded areas shall take place under the terms and according to the procedure of the ordinance under Article 18 (1) herein.

(3) Any statutory instruments of secondary legislation issued by the Executive Director of the Executive Forestry Agency in implementation of the provisions of this Act shall be

promulgated in the State Gazette.

§ 39. Within one month from the entry into force of this Act, the Council of Ministers shall bring the Rules of Organization of the Executive Forestry Agency into conformity herewith.

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Act to Amend and Supplement the Public Procurement Act

Promulgated, State Gazette No. 93/2011, effective 26.02.2012

TRANSITIONAL AND FINAL PROVISIONS

§ 120. (1) Any procedures initiated prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

(2) Contracting authorities may apply a negotiated procedure without publication of a contract notice in pursuance of Items 1 and 2 of Article 90 (1) [of the Public Procurement Act] when, after the entry of this Act into force, there arise grounds for application of a negotiated procedure with invitation under Items 1 and 2 of Article 53 (1) of the Ordinance on the Award of Small Public Procurements (promulgated in the State Gazette No. 84 of 2004; corrected in No. 93 of 2004; amended in No. 59 of 2005, No. 53 of 2006, No. 83 of 2007, Nos. 3 and 34 of 2009 and No. 86 of 2010).

§ 121. (1) The appeals under procedures referred to in § 120 (1) herein shall be examined by the Commission on Protection of Competition according to the hitherto effective procedure.

(2) The proceedings instituted before the Commission on Protection of Competition prior to the entry of this Act into force shall be completed according to the hitherto effective procedure.

§ 122. The ex ante control referred to in Item 22 of Article 19 (2) [of the Public Procurement Act] over any documents received at the Public Procurement Agency prior to the entry of this Act into force shall be exercised according to the hitherto effective procedure.

§ 123. The Council of Ministers shall bring the statutory instruments of secondary legislation on the application of this Act into conformity with this Act within three months after the promulgation of the Act.

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Annex 1

to Item 3 (b) of Article 3 (1)
(Amended, SG No. 94/2008, effective 1.01.2009)

NACE (1)

SECTION F			CONSTRUCTION	CPV code	
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	450000
	45.1		Site preparation		451000 00
		45.11	Demolition and wrecking of buildings and earth moving	This class includes:— demolition of buildings and other structures— clearing of building sites— earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.— site preparation for mining:— overburden removal and other development and preparation of mineral properties and sitesThis class also includes:— building site drainage— drainage of agricultural or forestry land	451100
		45.12	Test drilling and boring	This class includes:— test drilling, test boring and core sampling for construction, geophysical, geological or similar purposesThis class excludes:— drilling of production oil or gas wells, see 11.20— water well drilling, see 45.25— shaft sinking, see 45.25— oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	451200
	45.2		Building of		452000

construction railways—except:-
 construction of airfield45231000 -
 runways— construction work,45232000-
 other than buildings, for45234115
 stadiums, swimming pools,
 gymnasiums, tennis courts, golf
 courses and other sports
 installations— painting of
 markings on road surfaces and
 car parksThis class excludes:—
 preliminary earth moving, see
 45.11

45.24 Construction of This class includes 452400
 water projects construction of:— waterways,00
 harbour and river works,
 pleasure ports (marinas), locks,
 etc.— dams and dykes—
 dredging— subsurface work

45.25 Other construction This class includes:— 452500
 work involving specialconstruction activities00
 trades specialising in one aspect45262000
 common different kinds of
 structures, requirement
 specialised skill or
 equipment— construction of
 foundations, including pile
 driving— water well drilling
 and construction, shaft
 sinking— erection of non-self-
 manufactured steel elements—
 steel bending— bricklaying and
 stone setting— scaffolds and
 work platform erecting and
 dismantling, including renting
 of scaffolds and work
 platforms— erection of
 chimneys and industrial
 ovensThis class excludes:—
 renting of scaffolds without
 erection and dismantling, see
 71.32

1	45.3	Installation of electrical wiring fittings	This class includes:— and installation in buildings or other construction projects of:— electrical wiring and fittings— Except:— telecommunications systems— electrical heating systems— residential antennas and aerials— fire alarms— burglar alarm systems— lifts and escalators— lightning conductors etc.	452133 16 45310000 45316000
	45.32	Insulation work activities	This class includes:— installation in buildings or other construction projects of thermal, sound or vibration insulation This class excludes:— waterproofing, see 45.22	453200 00
	45.33	Plumbing	This class includes:— installation in buildings or other construction projects of:— plumbing and sanitary equipment— gas fittings— heating, ventilation, refrigeration or air-conditioning equipment and ducts— sprinkler systems This class excludes:— installation of electrical heating systems, see 45.31	453300 00
	45.34	Other building installation	This class includes:— installation of illumination and signalling systems for roads, railways, airports and harbours— installation in buildings or other construction projects of fittings and fixtures n.e.c.	452341 15 45316000 45340000
45.4		Building completion		454000 00

- 45.41 Plastering This class includes:— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials 454100
- 45.42 Joinery installation This class includes:— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials— interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes:— laying of parquet and other wood floor coverings, see 45.43 454200
- 45.43 Floor and wall covering This class includes:— laying, tiling, hanging or fitting in buildings or other construction projects of:— ceramic, concrete or cut stone wall or floor tiles— parquet and other wood floor coverings— carpets and linoleum floor coverings, including of rubber or plastic— terrazzo, marble, granite or slate floor or wall coverings— wallpaper 454300
- 45.44 Painting and glazing This class includes:— interior and exterior painting of buildings— painting of civil engineering structures— installation of glass, mirrors etc. This class excludes:— installation of windows, see 45.42 454400
- 45.45 Other building completion This class includes:— installation of private swimming pools— steam and 452122 and steamDA04

cleaning, sand blasting and similar activities for building exteriors— other building completion and finishing work n.e.c. This class excludes:— interior cleaning of buildings and other structures, see 74.70

45.5 Renting of construction or demolition equipment with operator 45500000

45.50 Renting of construction or demolition equipment with operator This class excludes:— renting of construction or demolition machinery and equipment without operators, see 71.32 45500000

(1) Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as last amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p. 1).

Annex 2

to Item 1 of Article 5 (1)
(Amended, SG No. 94/2008, effective 1.01.2009)

Category No	Subject	CPC reference No(1)	CPV reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1
2	Land transport services(2), including armoured car services, and	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to

	courier services, except transport of mail		64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9
4	Transport of mail by land (2) and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: (a) Insurance services (b) Banking and investment services (3)	ex 81, 812, 814	From 66100000-1 to 66720000-3 (3)
7	Computer and related services	84	From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services (4)	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and book-keeping services	862	From 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6
11	Management consulting services (5) and related services	865, 866	From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8
12	Architectural services; engineering	867	From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8

	services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services		
13	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or a contract basis	88442	From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7
16	Sewage and refusal disposal services, sanitation and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0

(1) CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

(2) Except for rail transport services covered by category 18.

(3) Except public procurements for financial services in connection with the issue, sale, purchase and transfer of securities or other financial instruments, and central bank services. Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

(4) Except public procurement for research and development services other than those where the benefits accrue exclusively to the contracting authority and/or contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority and/or contracting entity.

(5) Except arbitration and conciliation services.

Annex 3

to Item 2 of Article 5 (1)
(Amended, SG No. 94/2008, effective 1.01.2009)

Category No	Subject	CPC reference No(1)	CPV reference No
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1 to 63727200-3) and 98361000-1
21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services (2)	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25	Health and social services	93	79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services (3)	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)

27	Other services		
<p>(1) CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC. (2) Except public procurements for employment contracts. (3) Except public procurements for the acquisition, development, production or co-production of programmes by broadcasting organisations and public procurements for broadcasting time.</p>			

Annex 3a

to Article 26a
(New, SG No. 52/2010)

Lifetime Mileage of Road Transport Vehicles

Vehicle category (M and N categories as defined in Directive 2007/46/EC)	Lifetime mileage
Passenger cars (M1)	200,000 km
Light commercial vehicles (N1)	250,000 km
Heavy goods vehicles (N2, N3)	1,000,000 km
Buses (M2, M3)	800,000 km

Annex 4

to Item 3 (b) of Article 45a (2)
(New, SG No. 37/2006, effective 1.07.2006, amended, SG No. 94/2008, effective 1.01.2009, SG No. 93/2011, effective 26.02.2012)

List of the Supplies of Products Awarded by Contracting Authorities in the Field of Defence

- 25: Chapter Salt, sulphur, earths and stone, plastering materials, lime and cement
- 26: Chapter Metallic ores, slag and ash
- 27: Chapter Mineral fuels and products of their distillation, bituminous substances, mineral waxes
- except:
- ex 27.10: special engine fuels
- 28: Chapter Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes
- except:
- ex 28.09: explosives
- ex 28.13: explosives
- ex 28.14: tear gas
- ex 28.28: explosives
- ex 28.32: explosives
- ex 28.39: explosives
- ex 28.50: toxic products
- ex 28.51: toxic products
- ex 28.54: explosives
- 29: Chapter Organic chemicals
- except:
- ex 29.03: explosives

	ex 29.04:	explosives
	ex 29.07:	explosives
	ex 29.08:	explosives
	ex 29.11:	explosives
	ex 29.12:	explosives
	ex 29.13:	toxic products
	ex 29.14:	toxic products
	ex 29.15:	toxic products
	ex 29.21:	toxic products
	ex 29.22:	toxic products
	ex 29.23:	toxic products
	ex 29.26:	explosives
	ex 29.27:	toxic products
	ex 29.29:	explosives
30:	Chapter	Pharmaceutical products
31:	Chapter	Fertilisers
32:	Chapter	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
33:	Chapter	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
34:	Chapter	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
35:	Chapter	Albuminoidal substances, glues, enzymes

- 37: Chapter Photographic and cinematographic goods
- 38: Chapter Miscellaneous chemical products
- except:
- ex 38.19: toxic products
- 39: Chapter Artificial resins and plastic materials, celluloses esters and ethers, articles thereof
- except:
- ex 39.03: explosives
- 40: Chapter Rubber, synthetic rubber, factice, and articles thereof
- except:
- ex 40.11: bullet-proof tyres
- 41: Chapter Raw hides and skins (other than furskins) and leather
- 42: Chapter Articles of leather, saddlery and harness, travel goods, handbags and similar containers. Articles of animal gut (other than silk-worm gut)
- 43: Chapter Furskins and artificial fur, manufactures thereof
- 44: Chapter Wood and articles of wood, wood charcoal
- 45: Chapter Cork and articles of cork
- 46: Chapter Manufactures of straw, basketware and wickerwork
- 47: Chapter Paper-making material

- 48: Chapter Paper and paperboard, articles of paper pulp, of paper or of paperboard
- 49: Chapter Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
- 65: Chapter Headgear and parts thereof
- 66: Chapter Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- 67: Chapter Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
- 68: Chapter Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- 69: Chapter Ceramic products
- 70: Chapter Glass and glassware
- 71: Chapter Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- 73: Chapter Iron and steel and articles thereof
- 74: Chapter Copper and articles thereof
- 75: Chapter Nickel and articles thereof
- 76: Chapter Aluminium and articles thereof
- 77: Chapter Magnesium and beryllium and articles thereof
- 78: Chapter Lead and articles thereof
- Chapter Zinc and articles thereof

79:

Chapter Tin and articles thereof

80:

Chapter Other base metals employed in metallurgy and articles thereof

81:

Chapter Tools, implements, cutlery, spoons and forks, of base metal, parts thereof

82:

except:

ex 82.05: tools

ex 82.07: tools, parts

Chapter Miscellaneous articles of base metal

83:

Chapter Boilers, machinery and mechanical appliances, parts thereof

84:

except:

ex 84.06: engines

ex 84.08: other engines

ex 84.45: machinery

ex 84.53: automatic data-processing machines

ex 84.55: parts of machines under heading No. 84.53

ex 84.59: nuclear reactors

Chapter Electrical machinery and equipment, parts thereof

85:

except:

ex 85.13: telecommunication equipment

ex 85.15: transmission apparatus

86: Chapter Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered)

except:

ex 86.02: armoured locomotives, electric

ex 86.05: armoured wagons

ex 86.06: repair wagons

ex 86.07: wagons

87: Chapter Vehicles, other than railway or tramway rolling-stock, and parts thereof

except:

ex 87.08: tanks and other armoured vehicles

ex 87.01: tractors

ex 87.02: military vehicles

ex 87.03: breakdown lorries

ex 87.09: motorcycles

ex 87.14: trailers

89: Chapter Ships, boats and floating structures

except:

ex
89.01A: warships

90: Chapter Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof

except:

ex 90.05: binoculars

- ex 90.13: miscellaneous instruments, lasers
- ex 90.14: telemeters
- ex 90.28: electrical and electronic measuring instruments
- ex 90.11: microscopes
- ex 90.17: medical instruments
- ex 90.18: mechano-therapy appliances
- ex 90.19: orthopaedic appliances
- ex 90.20: X-ray apparatus
- 91: Chapter Manufacture of watches and clocks
- 92: Chapter Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
- 94: Chapter Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings
 - except:
 - ex 94.01A: aircraft seats
- 95: Chapter Articles and manufactures of carving or moulding material
- 96: Chapter Brooms, brushes, powder-puffs and sieves
- 98: Chapter Miscellaneous manufactured articles