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- 26 April 2018 [shall come into force on 1 June 2018];
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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>1</sup> has adopted and  
the President has proclaimed the following law:

# Public Procurement Law

## Chapter I General Provisions

### Section 1. Terms Used in the Law

The following terms are used in the Law:

1) **subcontractor** - a person contracted by the tenderer or a person contracted by such person, in its turn, who performs construction work or provides services for the performance of the procurement contract;

2) **life cycle** - all consecutive and interlinked stages, including inter alia research and development, production, trading and its conditions, transport, use, maintenance throughout the entire period of existence of the product or structure, or provision of the service, from recovery of raw materials or production of resources to waste disposal, demolition, and termination or use of the service;

3) **open procedure** - a procurement procedure where all interested economic operators are entitled to submit tenders;

3<sup>1</sup>) **offshore** - a low-tax or tax-free country or territory within the meaning of the Enterprise Income Tax Law, except for the Member States of the European Economic Area or the territories thereof, Member States or territories of the Agreement on Government Procurement of the World Trade Organisation and such countries or territories with whom the European Union or Latvia has entered into international agreements on opening the market in the field of public procurements;

4) **central purchasing body** - a contracting authority meeting one of the following features:

a) purchases products or services for the needs of other contracting authorities or public service providers,

b) performs procurements or procurement procedures in order to conclude procurement contract or framework agreement for the needs of other contracting authorities or public service providers;

5) **dynamic purchasing system** - a completely electronic process applied to construction work, services, and supplies frequently used and widely available on the market and which is limited in time and open to all economic operators meeting the candidate selection requirements;

5<sup>1</sup>) **electronic invoice** - an invoice issued, sent, and received in a structured electronic form allowing to process it automatically and electronically;

6) **electronic auction** - an electronic process repeatedly depicting the descending prices or new values of the lots of certain tenders, enabling the ranking of the tenders by means of automatic evaluation methods;

7) **electronic means** - means suitable for processing of the data received or sent via the electronic communications network (also for digital compression) and storage thereof, and also for transmission of data via the electronic communications networks;

8) **procurement identification number** - a designation containing the abbreviation of the name of the contracting authority (the first capital letters), the relevant year and the procurement sequence number in ascending order. The contracting authority may also indicate other information in the final part of the procurement identification number;

9) **procurement contract** - a public construction work, supply, or service contract for pecuniary interest concluded in writing between one or several contracting authorities and one or several economic operators;

10) **common procurement vocabulary (CPV)** - a vocabulary approved by the European Union which is applied in public procurements;

11) **procurement procedure document** - any document prepared or referred to by the contracting authority to describe or determine the elements and requirements of the procurement or procurement procedure;

12) **innovation partnership procedure** - a procurement procedure where all interested economic operators may request the right to participate, but the tenders may only be submitted by the candidates invited by the contracting authority, and which is applied to establish a long-term innovation partnership aimed at the development and subsequent acquisition of an innovative product, service or construction work;

13) **candidate** - an economic operator taking part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure, in a competitive dialogue or in an innovation partnership procedure prior to submission of the tender;

14) **competitive dialogue** - a procurement procedure where all interested economic operators may request the right to participate, but the tenders may only be submitted by the candidates invited by the contracting authority, and which shall be applied when it is impossible to obtain the tender meeting the needs of the contracting authority within an open or restricted procedure, and the aim of which shall be to identify and define, in a dialogue with the selected candidates, the means best suited to satisfy the needs of the contracting authority;

15) **competitive procedure with negotiation** - a procurement procedure where all interested economic operators may request the right to participate, but the tenders may only be submitted by the candidates invited by the contracting authority, and which shall be applied when it is impossible to obtain the tender meeting the needs of the contracting authority within an open or restricted procedure, and the aim of which shall be to give the possibility to the tenderers, during the negotiation, to improve the content of the tenders in accordance with the needs of the contracting authority;

16) **common technical specification** - a technical specification in the field of information and communication technologies laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council;

16<sup>1</sup>) **zero-emission heavy duty vehicle** - a clean electric vehicle of category M<sub>3</sub>, N<sub>2</sub>, or N<sub>3</sub> or a road transport vehicle using alternative fuels, excluding fuels which do not comply with the low indirect land-use change-risk, without an internal combustion engine, or with an internal combustion engine that emits less than 1 gram CO<sub>2</sub>/kWh as measured in accordance with Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC and its implementing

measures, or that emits less than 1 gram CO<sub>2</sub>/km as measured in accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (hereinafter - Regulation No 715/2007) and its implementing measures;

17) **contract price** - total remuneration for the performance of the procurement contract, including all applicable taxes, except for the value added tax;

17<sup>1</sup>) **Contract Register** - information reflected in the publication management system regarding the procurement contract concluded by the contracting authority, the framework agreement or amendments thereto which is published on the website of the Procurement Monitoring Bureau. Such data shall be available in the Contract Register which contain information regarding the contracting authority, the economic operator, the date of concluding the contract, the subject-matter of the contract, the contract price, the time limit for the performance of the contract, amendments to the contract, and also information regarding the actual performance of the contract (the contract price, the time limit for the performance, the contractor, and the reason for termination of the contract where applicable), and any other information where necessary;

18) **design contest** - a procedure which enables the contracting authority to acquire [mainly in the fields of city and any other territory planning, architecture, construction or data processing (including information systems)] a design or plan, recognised as the best by a jury commission;

19) **contracting authority** - a public entity or institution thereof, an association in which all members are contracting authorities, a foundation all founders of which are contracting authorities, and also such legal person governed by private law which conforms with all of the following criteria:

a) is established or operates in order to satisfy the needs of the public which are not of commercial or industrial nature;

b) is subordinate to a public entity or authority thereof, or is a public entity or authority thereof, or another legal person governed by private law which corresponds to the criteria referred to in this Clause and supervises management of such legal person governed by private law, including exercises a decisive influence in respect of such legal person governed by private law within the meaning of the Group of Companies Law, or more than 50 per cent of financing for activities of such legal person governed by private law come from the public entity or authority thereof, or another legal person governed by private law which corresponds to the criteria referred to in this Clause;

20) **research and development** - all activities related to the fundamental and industrial studies and experimental development;

21) **tender security** - payment of a sum of money provided for in the procurement procedure documents into the account indicated by the contracting authority, guarantee from the bank or insurance company for a specific amount of money, which the tenderer submits together with the tender to the contracting authority as a security for the validity of the tender;

22) **economic operator** - a natural person or a legal person, an association of such persons in any combination thereof, which offer on the market to perform construction works, supply products or provide services accordingly;

23) **buyer profile** - the site of a contracting authority in the State electronic information system publicly available on the internet for acceptance of the tenders and applications, where the contracting authority posts information regarding subsequent invitations to tender, regarding planned procurements, concluded contracts, suspended procedures, as well as other information related to procurements as defined in the laws and regulations;

24) **tenderer** - an economic operator who has submitted a tender;

25) **publication management system** - the State information system under supervision of the Procurement Monitoring Bureau and available on the website of the Procurement Monitoring Bureau which ensures the preparation and submission of such information to the Procurement Monitoring Bureau, publication of such information on its website, or sending to the Publications Office of the European Union for publication in the Official Journal of the European Union which should be prepared, submitted, and published in accordance with laws and regulations. This system shall include information on the persons whereon an administrative penalty, i.e. a prohibition to exercise the rights, a prohibition to hold offices the duties of which include taking of decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, has been imposed for the offences in the field of public procurement and public-private partnership;

26) **public works contract** - a procurement contract whose subject-matter is the execution or designing of the construction work referred to in Annex 1 to this Law, and the execution of the relevant construction work referred to in Annex 1, or the development of the structure, or designing and development of the structure, or the development of the structure by whatever means, according to the requirements of the contracting authority who has the decisive influence on the type or design of a structure. For the purposes of this Law, the structure shall mean the outcome of

the construction work referred to in Annex 1 to this Law taken as a whole, which is sufficient for the structure to be able to ensure certain economic or technical function;

27) **public service contract** - a procurement contract the subject-matter of which is the provision of services other than those referred to in Annex 1 to this Law;

28) **public supply contract** - a procurement contract the subject-matter of which is the purchase, hire-purchase, lease of a product, or lease of a product with an option to buy. A contract the subject-matter of which is the supply of products and the insignificant part of which is the process of building-in or installation of the products shall also be regarded as a public supply contract;

29) **public service provider** - a public service provider within the meaning of the legal acts governing the procurement of public service providers;

30) **negotiated procedure** - a procurement procedure where the contracting authority, without prior publication of the contract notice, consults with the economic operators selected by it and organises negotiation with one or several of them regarding the conditions of the procurement contract;

31) **restricted procedure** - a procurement procedure where all interested economic operators may request the right to participate, however, the tenders may only be submitted by the candidates invited by the contracting authority;

32) **technical reference** - any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs;

32<sup>1</sup>) **clean road transport vehicle:**

a) a road transport vehicle of category M<sub>1</sub>, M<sub>2</sub>, or N<sub>1</sub> with a maximum tail-pipe emission of less than 50 CO<sub>2</sub> g/km according to the Worldwide Harmonised Light-duty Vehicles Test Procedure and with real-driving emission of less than 80 per cent of the emission limit values set out in Annex I to Regulation No 715/2007;

b) an electric vehicle of category M<sub>3</sub>, N<sub>2</sub>, or N<sub>3</sub> or a road transport vehicle using alternative fuels, excluding fuels which do not comply with the low indirect land-use change-risk in accordance with the laws and regulations regarding the sustainability criteria for biofuels and bioliquids, their implementation mechanism, and the monitoring and control procedures. In the case of road transport vehicles using liquid biofuels, synthetic and paraffinic fuels, the abovementioned fuels are not blended with conventional fossil fuels;

33) **framework agreement** - such agreement between one or several contracting authorities and one or several economic operators the purpose of which is to establish and characterise the procurement contracts to be concluded within a certain period of time and to provide for the provisions according to which such contracts will be concluded (especially in relation to the prices and, if necessary, the quantity envisaged);

34) **green public procurement** - procurement of such products, services or construction work the environmental impact whereof during their life cycle is smaller than the impact of the products, services and construction work with the same purpose of use, acquired without applying the principles of green public procurement.

[26 April 2018; 21 February 2019; 5 December 2019; 2 September 2021; 24 March 2022; 3 March 2022; 5 October 2023]

## **Section 2. Purpose of the Law**

The purpose of the Law is to ensure:

- 1) openness of procurements;
- 2) free competition of economic operators, and also equal and fair treatment thereof;
- 3) effective use of the funds of the contracting authority, minimising the risk thereof as far as possible.

## **Section 3. Exceptions to the Application of the Law**

(1) This Law shall not be applied if the contracting authority concludes a procurement contract for:

- 1) the purchase or lease of land, existing structure or other immovable property or the acquisition of other rights to such immovable property with any financial resources;
- 2) the purchase, development, production, or co-production of such broadcast material intended for audio and audio-visual electronic mass media services, if the contract is awarded by electronic mass media, or the contracts for the provision of transmission time or broadcasts that are awarded to electronic mass media;
- 3) arbitration and conciliation services;

4) document certification services provided by notaries;

5) legal services the providers of which are designated by a court or the providers of which are assigned by external laws and regulations to carry out specific tasks under the supervision of a court;

6) legal services related to the exercise of official authority;

7) the financial services related to the issue, purchase, sale, or transfer of securities or other financial instruments, services, and activities of the Bank of Latvia which are performed through the European Financial Stability Facility and the European Stability Mechanism;

8) the loans which are related or not related to the issue, sale, purchase, or transfer of securities or other financial instruments;

9) services of natural persons under the employment contracts;

10) services in the field of civil defence, civil protection, and disaster prevention which are provided by associations, foundations, or unions and to which any of the following CPV codes refers to: 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9, and 85143000-3, except for the emergency medical services related to the transport of patients;

11) public passenger transport services by rail or metro;

12) services provided by another contracting authority or by an association of contracting authorities which, in accordance with external laws and regulations, have an exclusive right to provide the relevant service.

(2) This Law shall apply only to public service contracts for research and development services under the CPV code from 73000000-2 to 73120000-9, 73300000-5, 73420000-2, and 73430000-5, if the following conditions are concurrently met:

1) only the contracting authority will benefit from the results of the service provided who will use these results only for their own needs;

2) the contracting authority will fully pay for the service provided.

(3) This Law shall not be applied to:

1) procurements to ensure the activities referred to in Sections 3, 4, 5, 6, and 7 of the Law on the Procurement of Public Service Providers in the fields specified in these Sections;

2) procurements specified as an exception to the scope of application of the Law on the Procurement of Public Service Providers;

3) [26 April 2018].

(4) This Law shall not be applied by the universal post service provider, if the public service contract is concluded for:

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

2) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and include postal money orders and postal giro transfers;

3) philatelic services;

4) logistics services (services combining both physical delivery and warehousing of postal items, or only delivery or warehousing with other non-postal functions).

(5) This Law shall not be applied when concluding a procurement contract the main purpose of which is to provide or operate public electronic communications networks maintained by the contracting authority or one or several publicly available electronic communications services provided by the contracting authority.

(6) This Law shall not be applied when the procurement contracts are concluded in accordance with the provisions of other procedures and are awarded in accordance with:

1) an international agreement which, in accordance with the legal framework of the European Union, has been entered into by a European Union Member State with one or several countries, other than the European Union Member States, or administrative units of such countries regarding construction work, supplies, or services in connection with the participation of the countries having signed the agreement in the implementation of a joint measure or the use of

its outcomes. The contracting authority shall notify the European Commission of all such agreements;

2) a specific procedure of an international organisation;

3) a specific procedure of an international organisation or international financial institution if the relevant procurements are fully financed by the relevant organisation or institution. If the international organisation or international financial institution finances the procurement in the amount of at least 50 per cent, the parties shall agree on the applicable procurement procedures;

4) an international agreement related to the deployment of troops and applicable to the economic operators of the European Union Member State or the economic operators of a country other than the European Union Member State.

(7) This Law shall not be applied to the supplies, services and construction work that comply with Section 3 of the Law on Procurement in the Field of Defence and Security.

(8) This Law shall not be applied if its application may cause harm to the protection of essential State security interests. The Cabinet shall decide on the protection of essential State security interests on a case-by-case basis. The basis for the application of this exception shall be neither urgency nor protected information itself, if the protection thereof can be ensured in procurement procedures in accordance with this Law or the laws and regulations governing procurements in the field of defence and security.

(9) This Law shall not be applied if the Cabinet, in accordance with external laws and regulations, has recognised the information on a contract or the performance thereof as an official secret.

[26 April 2018]

#### **Section 4. Mutual Procurement Contracts Between the Contracting Authorities**

(1) This Law shall not be applied to the construction work performed, supplies, or services provided by a person who meets all of the following features:

1) it is under such control of the contracting authority that manifests as the rights to influence the strategic objectives and decisions of the activities of the controlled person, or under the control of a person controlled in the abovementioned manner by the contracting authority;

2) more than 80 per cent of its activities are comprised of carrying out specific tasks in the interests of the controlling contracting authority or other persons controlled by the abovementioned contracting authority;

3) there is no direct private capital participation in it, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control its decisions and does not exert a decisive influence on it.

(2) This Law shall not be applied if the controlled person corresponding to the features of Paragraph one of this Section which concurrently is also the contracting authority, awards a procurement contract to its controlling contracting authority or to another person controlled by the controlling contracting authority within the meaning of Paragraph one, Clause 1 of this Section, provided that the person to whom the procurement contract is awarded does not have direct private capital participation, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control the decisions of such person and does not exert a decisive influence on it.

(3) This Law shall not be applied to the construction work performed, supplies or services provided by a person who meets all of the following features:

1) it is under the joint control of several contracting authorities that manifests as the rights to influence the strategic objectives and decisions of the activities of the controlled person;

2) more than 80 per cent of its activities are comprised of carrying out specific tasks in the interests of the jointly controlling contracting authorities or other persons controlled by the abovementioned contracting authorities;

3) there is no direct private capital participation in it, with the exception of such form of private capital participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control its decisions and does not exert a decisive influence on it.

(4) Within the meaning of Paragraph three of this Section, the person is under the joint control of several contracting authorities if:

1) the composition of the administrative authorities of the controlled person includes representatives of all contracting authorities (individual representatives may represent several or all of the participating contracting

authorities);

2) all contracting authorities have the right to jointly influence the strategic objectives and decisions of the activities of the controlled person;

3) the controlled person operates within the interests of the contracting authorities.

(5) This Law shall not be applied to the procurement contracts concluded between two or several contracting authorities, provided that the following conditions have been met:

1) the procurement contract establishes or implements a cooperation between the contracting authorities with the aim of ensuring public services under the competence thereof;

2) the cooperation is implemented in the interests of public;

3) the share of the public services provided by the participating contracting authorities in the open market for the ensuring of which the cooperation is implemented is less than 20 per cent.

(6) In order to determine a percentage of the activities referred to in Paragraph one, Clause 2, Paragraph three, Clause 2, and Paragraph five, Clause 3 of this Section, the average financial turnover or another activity-based measure (for example, costs of services, supplies or construction work of the controlled person or the contracting authority) for the last three years until awarding of the procurement contract shall be taken into account. If the controlled person or the contracting authority has been established or has commenced activities after the set deadline or if data on its financial turnover or activity-based measures are not available due to its reorganisation or no longer apply, the percentage of the activities may be proved by using business projections.

#### **Section 5. Exceptions to the Application of the Procurement Procedure**

The contracting authority shall not apply the procurement procedures laid down in this Law, if the estimated contract price of the procurement contract is less than the thresholds of contract prices determined by the Cabinet for procurement contracts and if it is concluded regarding:

1) supplies or services provided by a public service provider by performing the activities referred to in Sections 3, 4, 5, 6, and 7 of the Law on the Procurement of Public Service Providers in the fields specified in these Sections;

2) the procurement of printed publications, electronic publications, manuscripts, and other documents for the supplementation of library collections or the organisation of education and research process in educational institutions, and also in scientific institutions established by the State or higher education institutions;

3) the procurement of such museum-related objects for the supplementation of museum collections which have an artistic, cultural and historical, scientific or memorial value;

4) the procurements in foreign countries performed by foreign economic representative offices, the Ministry of the Interior and the authorities subordinated thereto, and also the units of the National Armed Forces participating in international operations and international training;

5) the supplies and services for the performance of a research and development contract completely financed by a legal person governed by private law in a scientific institution established by the State or higher education institution which has been registered in the register of scientific institutions, if such supplies and services are completely reimbursed from the resources received for the performance of this research and development contract;

6) the supply of materials, reactants and constituents for the conduct of experiments, development of mock-ups and prototypes in a scientific institution established by the State or higher education institution which has been registered in the register of scientific institutions, if the necessity of such materials, reactants and constituents, their parameters or quantity is determined by the progress of the research or development process;

7) publishing of a scientific article in a scientific periodical or other scientific publication, and it is paid for or reimbursed to the scientist by a scientific institution established by the State or higher education institution which is registered in the register of scientific institutions;

8) the services provided by an economic operator for the attraction of students of higher education institutions from the countries other than European Union Member States;

9) the services provided by specialists and experts necessary for the performance of investigative actions in criminal proceedings;

10) the supplies, services or construction work procured by the diplomatic and consular missions of Latvia for ensuring their functions, if the procurement contract is performed in the accreditation country of the mission or another country where the head of the mission is accredited, irrespective of the country of registration or permanent residence of the economic operator;

11) the supplies, services or construction work procured by valsts akciju sabiedrība "Valsts nekustamie īpašumi" [State joint-stock company State Real Estate] for the purposes of administering its own immovable property or immovable property transferred into its administration which is located abroad, if the procurement contract is performed in the country of location of the immovable property;

12) such services of the experts registered in the European Commission database of scientific experts or in another database of scientific experts in the field of research and development, which are related to the preliminary scientific assessment of the research and development project proposals or the interim assessment of such projects, or the assessment of achieved outcomes thereof, if the attraction of the abovementioned experts is prescribed by the legal acts of the Cabinet on the implementation of funds and programmes financed from the State budget or the European Union budget, and also the implementation of schemes and mechanisms established jointly with the Member States;

13) the services of travel agencies covered by CPV code 63510000-7;

14) implementation of significant measures for strengthening civic consciousness, contributing to the defence of State security interests, if the procurement is carried out by the institution of direct administration and the Cabinet has decided on the application of this exception;

15) the services provided by the experts in the group of experts during the process of accrediting the higher education institution or college, or the academic discipline, or of licensing the study programme;

16) the services provided by the authors, composers, sculptors, entertainment artists and other individual artists, which are covered by CPV code 92312200-3, and the services of artistic and literary creation and interpretation, which are covered by CPV code 92310000-7;

17) the services covered by CPV codes 55300000-3, 55100000-1 and 60170000-0 which are necessary for ensuring the State, official, work visits of the foreign delegations organised by the Chancery of the President, Administration of the *Saeima* and the Ministry of Foreign Affairs, if the delegation is chaired by the foreign presidents, vice-presidents, heads and deputy heads of the parliaments, prime ministers and their deputies, ambassadors, ministers for foreign affairs and their deputies, heads of international organisations, or if the abovementioned delegations are staying in Latvia according to an official invitation of the President, the Chairperson of the *Saeima*, the Prime Minister or the Minister for Foreign Affairs, and for ensuring international events of national importance;

18) the services provided by the quality assurance agency included in the register of the Academic Information Centre or the European Association for Quality Assurance in Higher Education during the process of assessing the academic discipline;

19) the construction works, supplies, or services within the framework of the programme for improving energy efficiency of multi-apartment residential houses which is administered by *akciju sabiedrība "Attīstības finanšu institūcija Altum"* [joint-stock company Latvian Development Finance Institution Altum];

20) the training services provided by foreign experts, public administration experts, experts of courts and the Prosecutor's Office which ensure achievement of the objectives set by the Latvian School of Public Administration and by a public entity organising the provision of training for officials and employees, investigators or operative employees of courts and the Prosecutor's Office and to which CPV code 80500000-9 is applied;

21) the service of expert-examination of a structure which has been commissioned in order to evaluate the conformity of the construction work performed for the performance of a works contract with the requirements of laws and regulations and the contracting authority.

22) the services of specialists and experts in the development cooperation projects to be implemented in accordance with the Law on International Assistance.

[14 February 2019; 30 April 2020; 3 March 2022; 16 March 2023; 5 October 2023; 30 May 2024]

## **Section 6. Contracts the Performance of Which is Financed by the Contracting Authority by More than 50 Per cent**

(1) This Law shall be applied for the conclusion of contracts if:

1) the performance of a works contract is financed by more than 50 per cent of the contract price directly by the contracting authority and the estimated contract price of this contract is equal to or exceeds the contract price thresholds determined by the Cabinet and if this contract relates to specialised construction work in accordance with Annex 1 to this Law, and also to the construction of structures intended for sports, medical treatment and recreation, hospitals, schools and administrative buildings;

2) the performance of a service contract is financed by more than 50 per cent of the contract price directly by the contracting authority and the estimated contract price of this contract is equal to or exceeds the contract price thresholds determined by the Cabinet and if this contract relates to the works contract in accordance with Clause 1 of

this Section.

(2) If the contracting authority financing the performance of the contracts referred to in Clause 1 and 2 of Paragraph one of this Section is not itself ensuring the awarding of contracts or awards the contracts in favour or on behalf of other persons, it shall ensure the compliance of the contract awards with this Law.

### **Section 7. Other Projects Financed by the Contracting Authority**

(1) If the contracting authority finances the performance of such contract which is not referred to in Section 6 of this Law from their own funds or from the funds of the European Union policy instruments or other foreign financial assistance and national co-financing, the procurement procedures and the procedures for application thereof, and also persons who apply these procedures shall be determined by the Cabinet.

(2) Paragraph one of this Section shall not apply to financing which is granted as compensation. Within the meaning of this Paragraph, compensation is a sum of money which is calculated according to a specific rate and issued as a remuneration for the implementation of a specific objective.

### **Section 8. Types of Procurement Procedures and Application Thereof**

(1) The following procurement procedures exist:

- 1) open procedure;
- 2) restricted procedure;
- 3) competitive procedure with negotiation;
- 4) competitive dialogue;
- 5) innovation partnership procedure;
- 6) negotiated procedure.

(2) The contracting authority is entitled to organise the design contest, if the estimated contract price is EUR 10 000 or more. Design contest shall be organised as part of a procurement procedure leading to the award of a public service contract, or as a separate contest providing for the prizes or payment to participants. The procedures for the course of the design contest shall be determined by the Cabinet.

(3) The Cabinet shall determine the following regulations related to the course of procurement procedures and design contests, insofar as it is not governed by this Law:

- 1) the procedures for the course and regulations on application of the procurement procedures and design contests;
- 2) the minimum terms for submission of the applications, tenders, and designs and the cases for reduction thereof;
- 3) the cases when the contracting authority does not have an obligation to use electronic information systems for the receipt of applications, tenders, designs, or constituent parts thereof;
- 4) the content of the regulations of the procurement procedures and design contests;
- 5) the rules for the announcing, suspension, and termination of procurement procedures and design contests;
- 6) the rules for the communication of results of the procurement procedure and design contest;
- 7) the rules for the documentation of the procurement procedure and design contest and the contents of the notice of the procurement procedure and design contest;
- 8) the rules for the publication of the notices;
- 9) the procedures for the application of the dynamic purchasing system.

(4) This Law shall be applied to the procurement procedures referred to in Paragraph one of this Section if the contract price of public supply contracts or of service contracts is EUR 42 000 or more and the contract price of public works contracts is EUR 170 000 or more.

(5) In the cases specified in Section 17, Paragraphs seven and eight of this Law the contracting authority shall purchase products and services from a central purchasing body or with the intermediation thereof, not applying the procurement procedures laid down in Paragraph one of this Section or the provisions of Sections 9 and 10 of this Law.

(6) The contracting authority is entitled to apply a competitive procedure with negotiation or a competitive dialogue if:

- 1) the needs of the contracting authority cannot be met without adjusting solutions already available on the market;
- 2) the procurement contract includes designing or innovative solutions;
- 3) the procurement contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up of the procurement, or because of the risks attaching to them;
- 4) the technical specifications cannot be prepared with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical references;
- 5) in response to an open or a restricted procedure, the tenders not corresponding to the requirements prescribed by the procurement procedure documents are submitted or the tenders exceed the estimated contract price specified in the procurement procedure documents, or the tenders have been found to be abnormally low, or the tenders are submitted after the expiry of the term for submission thereof, or the tenderers do not meet the qualification requirements prescribed by the procurement procedure documents. This procedure may be applied, without prior publication of a contract notice, if only all those tenderers are called for negotiation, who meet the qualification requirements prescribed in an open or restricted procedure and who have not been excluded from participation in the procurement procedure, and who have submitted their tenders within the term for the submission of the tenders prescribed in an open or restricted procedure.

(7) The contracting authority may apply a negotiated procedure if:

1) no tenders or applications have been submitted, or tenders not corresponding to the procurement contract have been submitted in response to an open procedure or a restricted procedure, where such tenders are incapable, without substantial changes, of meeting the requirements as specified in the procurement procedure documents, or the applications of the candidates who do not meet the qualification requirements and are to be excluded from the procurement procedure have been submitted, provided that the initial conditions for the performance of the procurement contract are not substantially altered. Upon a request of the European Commission, the contracting authority shall send it the procurement procedure report. Where an open or restricted procedure is terminated or suspended, because the tenders are rejected in accordance with Section 41, Paragraph eleven of this Law, the contract price of the contract concluded as a result of negotiation may not exceed any of the following values:

a) the contract price specified by the contracting authority in the procurement procedure documents in an open or restricted procedure which is set as the tender conformity requirement;

b) 150 per cent of the estimated contract price specified in the procurement procedure documents of an open or restricted procedure;

2) the construction work, supplies, or services may be provided only by a specific economic operator in one of the following cases:

a) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

b) competition is absent for technical reasons;

c) it is necessary to observe the protection of exclusive rights, including intellectual property rights;

3) as a result of extraordinary events unforeseeable by the contracting authority, a situation has objectively occurred, where, for reasons of urgency, it is not possible to apply an open procedure, a restricted procedure, or a competitive procedure with negotiation. The abovementioned circumstances which justify extraordinary situation may not depend upon the activities of the contracting authority;

4) the necessary products are specifically produced for research and experimentation. This norm shall not apply to the production of products to establish their commercial viability or to recover research and experimentation costs;

5) the contracting authority is in need of additional deliveries by the original economic operator (producer) of products, in order to extend or partially replace the already existing supplies or installations, because a change of economic operator (producer) of products would oblige the contracting authority to purchase supplies having different technical characteristics than those of the existing supplies, and such difference would result in incompatibility or disproportionate technical difficulties in operation and maintenance of supplies or installations. The duration of such procurement contract, and also that of recurrent procurement contracts may not exceed three years;

6) the procurement contract has as its subject-matter the supplies of the products quoted and purchased by the contracting authority on a commodity exchange;

7) it is possible to purchase products or services on particularly advantageous terms from either an economic operator which is definitively winding up its business activities or the liquidator which has carried out the liquidation procedure of the economic operator, or the administrator organising the auction of the property of a bankrupt economic operator in accordance with the laws and regulations;

8) public service contract is concluded with the winner or any of the winners of the design contest and the design contest has been organised in accordance with the requirements of this Law. If several winners have been determined in the design contest, all winners shall be invited to participate in the negotiations;

9) the procurement contract has as its subject-matter the repeated performance of construction work or provision of the services specified in the previously concluded procurement contract as a result of the procurement procedure, entrusted to the contractor, and the repeatedly required construction work or services correspond to the project underlying the previously concluded procurement contract as a result of the procurement procedure. This condition shall apply to the cases when the contracting authority in the procurement procedure documents of the first project, when determining the estimated contract price, has provided for the repeated conclusion of the procurement contracts, total estimated value of the construction work or services and the conditions for awarding them. The negotiated procedure may be used only during the three years following the conclusion of the original procurement contract.

(8) The exceptions referred to in Clause 2, Sub-clauses "b" and "c" of Paragraph seven of this Section shall only apply where there is no reasonable alternative or substitute and if the reason for the absence of competition is other than the requirements set for the procurement.

(9) The procurement contract having as its subject-matter two or more types of procurement (construction work, services, or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject-matter of the respective procurement contract. For the procurement contracts consisting partly of the services referred to in Annex 2 to this Law and other services or partly of services and partly of supplies, the main subject matter and the applicable procurement procedure shall be determined according to which of the estimated contract prices of the respective services or supplies is the highest.

(10) If the subject-matter of a procurement contract is a procurement to which this Law applies, and a procurement to which this Law does not apply, and the different lots of the procurement are objectively separable, the contracting authority is entitled to apply appropriate legal regime to each lot or conclude a full procurement contract and apply this Law. If parts of the procurement contract are not objectively separable, the applicable legal regime shall be determined according to the main subject-matter of the procurement contract, except for the case referred to in Paragraph thirteen of this Section.

(11) If the subject-matter of a procurement contract is a procurement to which this Law applies, and it also contains the elements of concession contract, the procurement contract shall be awarded in accordance with this Law, provided that the contract price of the lot of the procurement contract to which this Law applies is equal to or greater than the contract price thresholds determined by the Cabinet.

(12) If the subject-matter of a procurement contract is both the procurement to which this Law applies and the procurement for the pursuit activities subject to the laws and regulations governing the field of procurement of public service providers, the provisions applicable to awarding such procurement contract shall be determined in accordance with Sections 8 and 9 of the Law on the Procurement of Public Service Providers.

(13) If the subject-matter of a procurement contract is both the procurement to which this Law applies and the procurement to which the laws and regulations governing the procurement in the field of defence and security apply, and if the contracting authority has chosen to award a single procurement contract (decision to award a single contract shall not be taken for the purpose of excluding contracts from the application of either this Law or the laws and regulations governing the procurement in the field of defence and security), the applicable legal regime shall be determined according to the following features:

1) if Article 346 of the Treaty on the Functioning of the European Union applies to a part of the procurement contract, the procurement contract may be awarded without applying this Law, provided that awarding of a full procurement contract is justified on objective grounds;

2) where a specific part of a procurement contract is covered by Section 3, Paragraph one, Clauses 2, 3, and 4 of the Law on Procurement in the Field of Defence and Security, the procurement contract may be awarded in accordance with the laws and regulations governing the procurement in the field of defence and security, provided that awarding of a full procurement contract is justified on objective grounds.

(14) If a procurement contract corresponds to both Clause 1 and Clause 2 of Paragraph thirteen of this Section, the contracting authority shall apply Paragraph thirteen, Clause 1 of this Section.

[20 September 2018]

### **Section 9. Procurements to which the Procurement Procedures Laid Down in this Law shall not Apply**

(1) If the estimated contract price of a public supply contract or public service contract is EUR 10 000 or more, but less than EUR 42 000 and the estimated contract price of a public works contract is EUR 20 000 or more, but less than EUR 170 000, the contracting authority shall perform procurement in accordance with the procedures laid down in this Section.

(2) When preparing the procurement, the contracting authority shall apply Paragraph one of Section 18 of this Law. When preparing the procurement, the contracting authority may apply Paragraph two and three of Section 18 of this Law.

(3) For performing the procurement the contracting authority shall establish a procurement commission in accordance with Section 24 of this Law. The operation of the procurement commission shall be subject to the provisions of Section 25 of this Law. The procurement commission shall take decisions in accordance with the procedures laid down in Section 26 of this Law.

(4) The procurement commission shall prepare the regulations for the procurement to be performed under the procedures laid down in this Section. The regulations shall contain:

1) justified and objective requirements with respect to the subject-matter of the procurement, taking into account Sections 20, 21, and 22 of this Law and ensuring that the abovementioned requirements do not create unjustified restrictions for competition;

2) the requirements for the tenderers, taking into account Sections 13, 44, 45, and 46 of this Law;

3) the cases when the tenderers shall be excluded in accordance with the provisions of Paragraph eight of this Section, or the reference to the exclusion of the tenderers in accordance with Paragraph eight of this Section;

4) the requirements for tender security, if any is provided for, and the performance bond, if any is provided for, taking into account Section 50 of this Law;

5) the tender evaluation criteria, taking into account Sections 19, 51, and 54 of this Law;

6) information security rules, if any are necessary, taking into account Section 14, Paragraph one of this Law;

7) the procedures for the conclusion of a procurement contract;

8) other rules.

(5) It is prohibited to request the inclusion in the composition of the tender of a work prepared for a specific procurement, forming the object of copyright or considered to be partial performance of the service.

(6) The contracting authority for the announcement of the procurement shall prepare and publish in the publication management system the notice of the planned contract, stating the term for the submission of tenders which shall not be shorter than 10 working days from the day of publishing the notice on the planned contract. The contracting authority shall ensure free and direct electronic access to procurement documents on the buyer profile, starting from the day of announcing the procurement. If the economic operator has requested additional information in due time on the requirements included in the procurement regulations, the contracting authority shall provide it within three working days, but not later than four days before the end of the term for submission of tenders. The contracting authority shall send the additional information to the economic operator who asked the question and shall concurrently post this information on the buyer profile where the procurement regulations are available, indicating also the question asked. The contracting authority shall ensure the exchange of information related to the procurement in accordance with Section 38 of this Law.

(6<sup>1</sup>) The contracting authority may make amendments to the procurement documentation, provided that the amended provisions do not allow for the submission of different tenders or participation or selection of other tenderers in the procurement. If the procurement commission makes amendments to the procurement documentation, the contracting authority shall repeatedly prepare and publish the notice on the planned contract in the publication management system. The contracting authority shall determine the term for the submission of tenders which is not less than 10 working days from the day of repeated publication of the notice on the planned contract and shall ensure free and direct electronic access to the amended procurement documents on its buyer profile, starting from the day of publishing the abovementioned notice.

(7) Upon expiry of the term for submission of tenders, the procurement commission shall assess the submitted tenders, carry out the selection of tenderers, and select one or more tenders, taking into account the requirements of Section 41 of this Law.

(8) The contracting authority shall exclude the tenderer to whom the procurement contract would be awarded from the participation in the procurement if the reasons for exclusion referred to in Section 42, Paragraph two, Clauses 1, 2, 3, 4, and 11 of this Law are established, and also if such reasons are established in respect of the persons referred to in Section 42, Paragraph three of this Law.

(9) In order to verify whether a tenderer is to be excluded from participation in the procurement for the reasons referred to in Paragraph eight of this Section, the contracting authority shall act in accordance with the procedures referred to in Section 42, Paragraph four, Clause 2 and Paragraphs five, six, and nine of this Law, and also in compliance with the provisions of Section 43 of this Law.

(10) [3 March 2022]

(11) [3 March 2022]

(12) [3 March 2022]

(13) The procurement commission shall recognise as the winner in the procurement the tenderer selected in accordance with the requirements and criteria laid down in the procurement regulations and not subject to exclusion from the participation in the procurement in accordance with Paragraph eight of this Section. In addition, all rejected tenderers and the reasons for rejection thereof, the contract prices offered by all tenderers and the comparative advantages of the tenderer determined as the winner shall be indicated in the decision by which the winner is determined, taking into account the provisions of Section 14, Paragraph two of this Law. and Section 196 Part Two;

(13<sup>1</sup>) If the tenders not corresponding to the requirements laid down in the procurement regulations are submitted or no tenders are submitted at all, the procurement commission shall take the decision to terminate the procurement without result. The contracting authority is also entitled to suspend the procurement at any point in the course of the procurement if it has an objective substantiation. If the decision to terminate or suspend the procurement has been taken, the contracting authority shall, within three working days after the relevant decision has been taken, prepare and publish an informative contract award notice in the publication management system, and also, starting from the day when such notice is published, ensure free and direct electronic access in its buyer profile to the decision to terminate or suspend the procurement, indicating the date and substantiation for taking thereof.

(14) Within three working days following the taking of the decision, the contracting authority shall inform all the tenderers of the tenderer or tenderers selected within the procurement and shall provide them with the information to be specified in the decision referred to in Paragraph thirteen of this Section or shall send the abovementioned decision, and also shall ensure free and direct electronic access to the decision referred to in Paragraph thirteen of this Section on its buyer profile.

(15) The contracting authority shall award the procurement contract to the tenderer selected by the procurement commission in accordance with Section 60, Paragraphs one, two, three, four, and five of this Law.

(16) The contracting authority shall ensure the documentation of the procurement, issuance and storage of the procurement documents in accordance with Section 40, Paragraphs one, three, four, and five of this Law.

(17) The contracting authority shall, within 10 working days after conclusion of the procurement contract, prepare and publish in the publication management system the informative contract award notice.

(18) The contracting authority shall ensure that the procurement contract, the framework agreement or amendments thereto are posted on its buyer profile in accordance with Section 60, Paragraph ten of this Law.

(19) Amendments to the procurement contract to be concluded in accordance with the procedures laid down in this Section shall be made taking into account Section 61 of this Law.

(19<sup>1</sup>) The contracting authority shall, within 10 working days after performance of the procurement contract, prepare and publish the notice on the performance of the contract in the publication management system.

(20) The contracting authority is entitled not to apply the provisions of this Section if the procurement contracts referred to in Section 10 are concluded, and also in case referred to in Section 19, Paragraph three of this Law. In carrying out procurements in respect of the security services referred to in Part "Investigation and security services" of Annex 2 to this Law covered by CPV code 79710000-4, the contracting authority shall apply Paragraphs eight and nine of this Section.

(21) The contracting authority is entitled not to apply the provisions of Paragraphs six and eight of this Section if:

1) the procurement meets the conditions of Section 8, Paragraph seven and eight of this Law;

2) a procurement has been carried out previously in accordance with the procedures laid down in this Section and tenders not corresponding to the requirements laid down in the procurement regulations have been submitted - by taking into account the condition that the provisions of the procurement contract do not significantly differ from the requirements necessary for the performance of the procurement contract provided for in the procurement carried out previously and in this procurement only those tenderers are invited to submit a tender who have not been excluded in the procurement carried out previously and were not to be excluded, and who correspond to the defined qualification requirements;

3) a procurement has been carried out previously in accordance with the procedures laid down in this Section and tenders have not been submitted therein - taking into account the condition that the provisions of the procurement contract do not significantly differ from the requirements necessary for the performance of the procurement contract provided for in the procurement carried out previously;

4) the audit services of a sworn auditor are procured with respect to the audits (reviews) of the annual financial

statements.

(22) The Cabinet shall determine:

1) [3 March 2012];

2) [3 March 2012];

3) [3 March 2012];

4) the content of the notice referred to in Paragraphs six, 6.<sup>1</sup>, 13.<sup>1</sup>, seventeen, and 19.<sup>1</sup> of this Section. The notice forms shall be determined by Annex to Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (eForms).

(23) A tenderer who has submitted a tender in a procurement to which the provisions of this Section apply, and who deems that the rights thereof have been infringed or an infringement of such rights is possible, is entitled to appeal the decision taken in the District Administrative Court in accordance with the procedures laid down in the Administrative Procedure Law within one month following the day of receipt of the decision. A ruling of the District Administrative Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Supreme Court. Appeal of the decision shall not suspend the operation thereof.

*[26 April 2018; 20 September 2018; 14 February 2019; 2 September 2021; 3 March 2022; 24 March 2022; 5 October 2023 / Paragraph 6.<sup>1</sup> shall be applied from 1 July 2024. See Paragraph 24 of Transitional Provisions]*

#### **Section 10. Procurements of the Services Referred to in Annex 2 to this Law**

(1) If the estimated contract price of a public service contract is EUR 42 000 or more and the contract is concluded for the services referred to in Annex 2 to this Law, the contracting authority is entitled not to apply the procurement procedures laid down in this Law, except for the requirements referred to in Sections 13, 14, 19, 20, 21, and 22, Chapter III, Section 28, Paragraph two, Sections 32, 33, and 33.<sup>1</sup>, Section 36, Paragraphs one, three, and four, Sections 37, 38, and 39, Section 40, Paragraphs one, three, four, and five, Sections 60 and 61 of this Law. If a public service contract is concluded for the security services indicated in Part "Investigation and security services" of Annex 2 to this Law covered by CPV code 79710000-4, the contracting authority shall also apply the requirements referred to in Sections 42 and 43 of this Law.

(2) The contracting authority is entitled not to apply this Law to a public service contract the subject-matter whereof is covered by any of the CPV codes referred to in Part "Health, social and related services" of Annex 2 to this Law, if the estimated contract price thereof is less than EUR 750 000. If the estimated contract price of such public service contract is EUR 750 000 or more, the procurement shall be subject to the procedures for the performance of the procurement laid down in paragraph one of this Section.

(3) The contracting authority is entitled not to apply this Law to a public service contract concluded for the provision of training practice or study practice, or the work-based learning, if the estimated contract price thereof is less than EUR 750 000.

*[14 February 2019; 5 October 2023]*

#### **Section 11. Determining the Estimated Contract Price**

(1) The estimated contract price shall be determined in order to select the type and the applicable procedure of the procurement.

(2) The estimated contract price shall be determined as the total planned payment by the contracting authority for performance of the procurement contract which the economic operator may receive from the contracting authority and other persons. The contracting authority, when planning the total payment, shall take into account any selection opportunity and any supplements to the procurement contract, all taxes to be paid in relation to the procurement contract (except for the value added tax), and also the value of prizes and payments if the contracting authority intends to award prizes or to disburse payments to the candidates, tenderers, participants of a competitive dialogue, innovation partnership procedure partners, or participants of a design competition.

(2<sup>1</sup>) If the contracting authority consists of separate structural units, not assigned by independent liability for the performance of the procurement, the estimated contract price shall be determined as the total planned payment of all structural units for performance of the procurement contract or the framework agreement. Independent liability for the performance of the procurement is if the structural unit of the contracting authority in accordance with the competence specified in laws and regulations performs the procurement independently and concludes the procurement contract or framework agreement, and such procurement is financed from the financial resources at its disposal and intended for the performance of the specific procurement.

(3) The estimated contract price shall be determined prior to the publication of the notice referred to in Section 9, Paragraph six, Section 28, Paragraph one, Section 31, Paragraph one, or Section 32, Paragraph one of this Law or, if publication of such notice is not necessary, prior to the commencement of the procurement or the procurement procedure.

(4) It shall not be allowed to divide construction work projects, estimated supplies or services in order to avoid the procurement or the application of the relevant procurement procedure. It shall not be allowed to use such method for the determination of the estimated contract price which is aimed towards the non-application of the procurements or procurement procedures specified in this Law.

(5) The estimated contract price of public works contracts shall be the total value of all construction work or structures, including the contract price of the supplies or services necessary for the performance of the public works contract and which the contracting authority has intended to correspondingly perform or provide to the contractor of construction work. The contracting authority shall not add the estimated contract price of the supplies and services, which are not necessary for the performance of the specific public works contract, to the estimated contract price of the public works contract, if thus the application of the requirements of this Law may be avoided in relation to the relevant supply or service contracts.

(6) If the possible subject-matter of a public works or service contract may be divided into lots, when concluding concurrently procurement contracts for each of the lots, the estimated contract price shall be determined as the total amount of all the lots. The contracting authority shall apply the requirements of this Law to each lot, if the total amount of the lots is equal to or exceeds the contract price thresholds referred to in Section 8, Paragraph four of this Law. With respect to the lots the estimated contract price whereof is less than EUR 80 000 for public service contracts and less than EUR 1 000 000 for public works contracts, the contracting authority is entitled to carry out the procurement, which would relate to the estimated contract price of these lots in accordance with Section 8, 9, or 10 of this Law, if the total estimated contract price of the relevant lots is less than 20 per cent of the total estimated contract price of all lots. If the total estimated contract price of such lots is less than EUR 20 000 for public works contracts and less than EUR 10 000 for public service contracts, the contracting authority is entitled not to apply this Law in relation to such lots.

(7) If similar products are intended to be purchased, by concurrently concluding several public supply contracts so that they are procurement contracts concerning lots, the estimated contract price shall be determined as the total amount of all lots. The contracting authority shall apply the requirements of this Law to each lot, if the total amount of the lots is equal to or exceeds the contract price thresholds referred to in Section 8, Paragraph four of this Law. With respect to the lots the estimated contract price whereof is less than EUR 80 000, the contracting authority is entitled to carry out the procurement, which would relate to the estimated contract price of these lots in accordance with Section 8 or 9 of this Law, if the total estimated contract price of the relevant lots is less than 20 per cent of the total estimated contract price of all lots. If the total estimated contract price of such lots is less than EUR 10 000, the contracting authority is entitled not to apply this Law in relation to such lots.

(8) The estimated contract price for public supply contracts providing for lease, hire-purchase or leasing shall be determined as follows:

1) for fixed-term procurement contracts:

a) if the term is 12 months or less - as the total contract price for the term of the procurement contract;

b) if the term is longer than 12 months - as the total contract price for the term of the procurement contract, taking into account the residual value;

2) for procurement contracts without a fixed term or the procurement contracts the term of which cannot be defined - as the estimated monthly payment multiplied by 48.

(9) If regular public supply or public service contracts are concluded or the term of the procurement contract is extended in a specific period of time, the estimated contract price shall be determined:

1) as the total actual value of the successive procurement contracts of the same type during the preceding 12 months or the preceding financial year, taking into account the possible changes in quantity or value during the subsequent 12 months;

2) as the total estimated value of the successive procurement contracts of the same type during the subsequent 12 months after the initial supply or during the next financial year (if it is longer than 12 months).

(10) The estimated contract price for services shall be determined:

1) for insurance services - as the total sum of the insurance premium payable and other forms of remuneration;

2) for banking and other financial services - as the total sum of the fee for services, commission, interest to be paid and other forms of remuneration;

3) for public service contracts, which include construction, the designing and modelling of the architecture or engineering structures - as the total sum of the fee for services, commission, and other forms of remuneration.

(11) If the total contract price is not indicated for public service contracts, the estimated contract price shall be determined as follows:

1) for fixed-term procurement contracts of 48 months or less - as the total contract price for the term of the procurement contract;

2) for procurement contracts without a fixed term or the procurement contracts the term of which exceeds 48 months - as the estimated monthly payment multiplied by 48.

(12) The estimated contract price in case of a framework agreement and for the dynamic purchasing system shall be the total contract price of the procurement contracts envisaged during the term of the framework agreement or the dynamic purchasing system.

(13) The estimated contract price in case of an innovation partnership procedure shall be the maximum estimated value of all research and development activities during all stages of the procedure and the estimated maximum contract price of all supplies, services, or construction work intended to be developed during the procedure and subsequently purchased.

(14) If the design contest is planned as a part of the procurement procedure resulting in the award of the public service contract, the estimated contract price shall be determined, taking into account the total amount of the prizes or payments and the estimated contract price of the public service contract to be concluded.

*[26 April 2018; 14 February 2019; 5 October 2023]*

## **Section 12. Thresholds of Contract Prices**

The thresholds of the contract prices referred to in Section 5, Section 6, Paragraph one, Clauses 1 and 2, Section 8, Paragraph eleven, Section 27, Paragraph two, Section 34, Paragraphs two and three, Section 35, Paragraph four, Section 47, Paragraph three, Section 48, Paragraph three, Section 54, Paragraph six, Section 55, Paragraph one, Section 61, Paragraph five, Clause 1, Section 73, Paragraph three, Clause 2, Sub-clause "a", Section 74, Paragraph one, Clauses 2, 5, and 6 and Paragraph two, Clause 2 of this Law shall be determined by the Cabinet on the basis of the international commitments of the European Union in relation to the contract price thresholds which must be complied with by the contracting authority. The Cabinet shall determine the abovementioned contract price thresholds at least once in every two years within one month after the European Commission has announced the relevant contract price thresholds in the Official Journal of the European Union.

*[26 April 2018; 2 September 2021; 3 March 2022; 24 March 2022; 5 October 2023]*

## **Section 13. General Conditions in Relation to an Economic Operator**

(1) The contracting authority shall not reject a candidate, a tenderer or a participant of a design contest if it does not have the specific legal status in accordance with the laws and regulations of Latvia, however, it is entitled to perform construction work, supply products or provide services in accordance with the laws and regulations of the European Union Member State where it has been founded.

(2) The contracting authority shall request only such information or documents from the candidate, the tenderer or the participant of a design contest, which are necessary for the verification of the conformity of the qualification and tenders, and also for the selection of a tender in accordance with the determined tender evaluation criteria.

(3) If a public works or public service contract is being concluded or if a public supply contract also includes the services or the process of building-in and installation of a product, the contracting authority may request that the legal persons indicate in the application or the tender the name, surname, and professional qualification of employees responsible for the performance of the procurement contract.

(4) Economic operator associations may submit tenders or apply as candidates. The contracting authority is not entitled to set a requirement for these associations to get organised in a specific legal status for them to be able to submit a tender as a tenderer or an application in the procurement procedure as a candidate.

(5) The contracting authority may specify in the procurement procedure documents how the economic operator associations are to meet the requirements with respect to the economic and financial standing or technical and professional ability. The requirements must be commensurate, and they shall be determined on the basis of objective reasons.

(6) The contracting authority may determine different, commensurate, and objectively justified conditions for the economic operator associations with respect to the performance of the procurement contract. The contracting authority may request that the association with respect to which the decision is taken to award the procurement contract, at its own choice, establishes in accordance with a specific legal status or concludes a partnership

agreement, agreeing upon the allocation of liability of the members of the association, if necessary for the successful performance of the provisions of the procurement contract.

#### **Section 14. Protection of Information**

(1) The contracting authority may prescribe the conditions for the protection of such information which it has transferred to economic operators together with technical specifications, and also during the procurement procedure.

(2) When notifying of the conclusion of a procurement contract and informing the candidates and tenderers, the contracting authority is not entitled to reveal information which has been transferred thereto by other candidates and tenderers as a commercial secret or confidential information.

#### **Section 15. Conditions in Relation to the Agreement on Government Procurement of the World Trade Organisation and Other International Agreements**

The contracting authority, insofar as it is prescribed by the Agreement on Government Procurement of the World Trade Organisation and other international agreements binding on the European Union, shall apply at least as favourable conditions to the construction work, supplies, services, and economic operators of the abovementioned contracting parties as those applied to the European Union construction work, supplies, services and economic operators.

[26 April 2018]

#### **Section 16. Privileged Contracts**

(1) If the subject-matter of an intended procurement contract allows, the contracting authority is entitled, within the scope of the measures intended for certain groups of persons, to reserve the possibility to participate in procurement procedures only for those candidates or tenderers, where more than 30 per cent of the average number of employees per year are persons with disabilities.

(2) If the procurement contract is concluded for the services of the health, social and culture field referred to in Annex 2 to this Law covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, the contracting authority is entitled to reserve the possibility to participate in the procurement procedure and the procurement in accordance with the procedures laid down in Section 10 of this Law only for those candidates or tenderers who have been granted the status of a social enterprise and who provide the services in the referred to field, and to whom, for the last three years from the day when the decision on awarding of the procurement contract would be potentially taken, the contracting authority has not awarded the procurement contract for the services referred to in this Section and under the procedures laid down in this Section. The term of such procurement shall not exceed three years.

(3) If Paragraph one or two of this Section is applied, the contracting authority shall indicate it in the relevant procurement notice.

[26 April 2018; 5 October 2023]

#### **Section 17. Procurements by Central Purchasing Bodies and Joint Procurements by Contracting Authorities**

(1) The central purchasing body may purchase products and services, and also carry out procurements in order to conclude procurement contracts and framework agreements for the needs of other contracting authorities and public service providers, including contracting authorities and public service providers of other countries. In such case, the central purchasing body shall apply the requirements laid down in this Law. The central purchasing body may maintain an electronic information system for the receipt of applications and tenders, and also provide consultations to the contracting authorities and economic operators regarding the use of such system.

(2) The contracting authority may purchase products and services from the central purchasing body or receive construction work, supplies, and services through the intermediation thereof.

(3) If the contracting authority purchases products and services from the central purchasing body or receives construction work, supplies, and services through the intermediation thereof, it shall be considered that it has applied the requirements of this Law if the central purchasing body, upon carrying out the procurement, has applied the requirements of this Law.

(4) The contracting authority may purchase products and services from the central purchasing body located in another European Union Member State, or receive construction work, supplies, and services through the intermediation of such body, if it, upon carrying out the procurement for the needs of the contracting authority, applies the requirements of such laws and regulations which conform to the European Union law in the field of public procurement. In such case, it shall be considered that the contracting authority has complied with the requirements of this Law.

(5) Several contracting authorities from different European Union Member States may jointly award the procurement contract, conclude a framework agreement, or use the dynamic purchasing system. If the provisions for such cooperation are not incorporated in the international agreement concluded between the European Union Member States, the contracting authorities concerned shall conclude the agreement providing for the rights and obligations of the parties, stating the relevant national law applicable to the liabilities, and also the provisions for organisation of the procurement and conclusion of the procurement contract. The rights and obligations of the contracting authorities shall also be specified in the relevant procurement or procurement procedure documents.

(6) If several contracting authorities from different European Union Member States have set up a joint entity, including European Grouping of Territorial Cooperation or another entity in accordance with the European Union legal acts, the contracting authorities involved shall, by a decision of the competent body of the joint entity, agree whether to apply the public procurement rules of the Member State where the joint entity has its registered address or where the joint entity is carrying out its activities.

(7) Institutions of direct administration have a duty to purchase products and services from the central purchasing body determined by the Cabinet or through its intermediation, if the relevant products or services are in the groups of products and services determined by the Cabinet and their contract price within a 12-month period in the relevant group of products or services is EUR 1000 or more. This condition shall not apply to the case referred to in Paragraph ten of this Section.

(8) Local governments and local government institutions have a duty to purchase products and services from the central purchasing body or through the intermediation thereof, if the relevant products or services are in the groups of products and services determined by the Cabinet and their contract price within a 12-month period in the relevant group of products or services is EUR 10 000 or more.

(9) The duty specified in Paragraph eight of this Section is fulfilled if the relevant products and services are purchased in any of the following ways:

1) from the central purchasing body determined by the Cabinet or through the intermediation thereof;

2) from the central purchasing body established by one or several local governments or through the intermediation thereof, if the relevant central purchasing body ensures procurements of the relevant products and services for the local government and all institutions thereof.

(10) A local government and a local government institution in the case referred to in Paragraph eight of this Section and an institution of direct administration in the case referred to in Paragraph seven of this Section have the right not to purchase the relevant products and services from the central purchasing body stipulated by the Cabinet or through the intermediation thereof in any of the following cases:

1) it is not possible to purchase from the central purchasing body or through the intermediation thereof the product or service corresponding to the needs of the institution of direct administration or local government institution, or the local government in accordance with the technical specifications published by the central purchasing body;

2) an institution of direct administration or local government institution, or the local government may ensure purchase of the products or services for a lower price. In such case it shall, within one working day before the conclusion of the procurement contract, fix the contract price offered by a central purchasing body for the relevant products and services, printing out the information on the price of the relevant products and services from the information system maintained by the central purchasing body, or requesting such information from the central purchasing body, if the information system does not ensure the relevant printouts.

(11) The contracting authorities may agree to perform certain specific procurements jointly. Where the joint procurement is organised in the name and on behalf of all contracting authorities, even though the procurement is carried out by only one contracting authority, the contracting authorities concerned shall be jointly responsible for complying with the requirements of this Law. The contracting authorities shall be jointly responsible only for those lots of the procurement which are intended for the needs of all contracting authorities concerned.

(12) The Cabinet shall determine:

1) the groups of products and services referred to in Paragraphs seven and eight of this Section;

2) the central purchasing bodies referred to in Paragraph seven and Paragraph nine, Clause 1 of this Section and the conditions for the use of the services provided thereby.

## **Chapter II**

### **Preparation for the Procurement, Preparation of the Procurement Procedure Documents and Technical Specifications**

## **Section 18. Informing of the Planned Procurements and Procurement Procedures, Consultation with Economic Operators, and Prior Involvement of Candidates and Tenderers**

(1) The contracting authority shall, within one month from the day of approval of the annual budget, publish in the State electronic information system intended for the receipt of tenders and applications the information on the planned procurements and procurement procedures to be carried out in accordance with the procedures laid down in Section 8, Paragraph two, Section 9 and 10 of this Law, specifying at least the contracting authority, planned subject-matter of the procurement and the link to the buyer profile, where the procurement procedure documentation will be available, the planned procedures for conducting the procurement, the planned CPV code, the type of the procurement contract, the planned year and quarter or month of announcement of the procurement, and the date of data updates. The contracting authority shall update the information as necessary.

(2) Before launching a procurement procedure, the contracting authority may conduct consultations with the economic operators with a view to prepare the procurement and inform the economic operators of the procurement plan and requirements. The contracting authority shall announce the consultation on its website, specifying the issues to be discussed, the time and place of the consultation, the manner how economic operators can apply for participation in the consultation, the requirements with respect to documenting the consultation and publishing such documentation.

(2<sup>1</sup>) The contracting authority is entitled to apply the exception referred to in Section 41, Paragraph twelve, Clause 1 of this Law if it ensures that consultation with the economic operators has been conducted and it conforms to the following requirements:

1) not earlier than 12 months before announcing the procurement, the notice on the consultation has been published in the publication management system;

2) starting from the day when the notice on the consultation has been published, the contracting authority ensures free and direct electronic access on its buyer profile to as detailed qualification requirements and technical specifications as possible on which economic operators are entitled to comment electronically for at least 10 working days after publication of the abovementioned notice and documents;

3) the participants of the consultation have been indicated in the report of consultation, their comments, main conclusions of the contracting authority, and an assessment of the comments of economic operators received during the consultation and of the potential competition in the relevant procurement have been documented.

(2<sup>2</sup>) The qualification requirements and technical specifications published in accordance with Paragraph 2.<sup>1</sup>, Clause 2 of this Section shall be available on the buyer profile for three years after the publication thereof.

(3) The contracting authority may receive advice from independent experts or authorities, or from economic operators. The abovementioned advice may be used in the planning and preparation of the procurement, provided that it does not restrict competition and does not violate the principles of equal treatment and transparency.

(4) If the candidate or tenderer, or a legal person connected with the candidate or tenderer consulted the contracting authority or otherwise engaged in the preparation of the procurement, the contracting authority shall ensure that the participation of the relevant candidate or tenderer does not give rise to the restriction of competition in the procurement, communicating to other candidates and tenderers the relevant information which has been provided when the candidate or the tenderer engaged in the preparation of the procurement or which arises out of such engagement, and setting a corresponding term for the submission of, respectively, applications or the tenders.

*[26 April 2018; 24 March 2022; 5 October 2023]*

## **Section 19. Green Public Procurement**

(1) The contracting authority, when preparing the procurement, shall take into account the requirements laid down in accordance with Paragraph two of this Section. If such requirements are not laid down, the contracting authority shall give preference to such requirements of technical specifications, tender evaluation criteria, and conditions for the performance of the procurement contract which ensure the conformity of the procurement to the green public procurement principles, taking into account the principle of commensurability and based on objective reasons.

(2) The Cabinet shall determine the green public procurement principles, the requirements and the procedures for application thereof, the groups of products, the services and construction work subject to the requirements of green public procurement, the tender evaluation criteria, the conditions for the performance of the procurement contract, and the procedures for the control thereof.

(3) The contracting authority is entitled not to apply the provisions of Section 9 of this Law, if the procurement contract on supply of food products is concluded, the estimated contract price thereof is less than EUR 42 000 and the green public procurement requirements stipulated by the Cabinet with respect to the supplies of food products are complied with.

## Section 20. Technical Specifications

(1) Technical specifications shall be included in the procurement procedure documents and shall prescribe the requirements for construction work, services, or supplies. Technical specifications shall ensure equal opportunities to all tenderers and shall not create unjustified restrictions for the competition in the procurement.

(2) The requirements of the contracting authority may refer to a special production or provision process or a method of the requested construction work, services, or supplies, or a special process in another stage of their life cycle even if such factors are not directly related to the nature of the construction work, services, or supplies, provided that they are related to the subject-matter of the procurement contract and are commensurate to the value and purposes of the procurement contract.

(3) Technical specifications for public works contracts is a summary of technical descriptions which determines the requirements of the contracting authority in relation to materials, products, technical equipment, or supplies and which characterise materials, products, technical equipment or supplies so that, upon acquisition thereof, they would conform to the purposes intended by the contracting authority. These descriptions shall include environmental protection requirements, designing requirements (also requirements in relation to accessibility for persons with disabilities), the requirements for conformity assessment and implementation, safety rules, quality assurance system, terminology, measurements, symbols, testing rules and methods, packaging, labelling, production processes and methods in all stages of a life cycle of the construction work. Technical specifications shall also include the rules regarding work completion tests and work acceptance, the requirements in relation to methods and technology for performance of construction work, the rules regarding the building design and determining the price, and other technical rules which the contracting authority has provided for construction work or the structure at large, or for materials and objects intended to be used in the structure. The scope of construction work shall be determined according to the building design and shall be included in the list of the scope of construction work. The procedures for the determination of construction costs for a public works contract shall be determined by the Cabinet.

(4) Technical specifications shall prescribe the requirements set for the supplies and services necessary for the public supply and service contracts. The purpose, methods, and resources to be used (if necessary), and also the end result of services shall be additionally determined for a public works contract. Technical specifications for public supply and service contracts shall additionally contain technical descriptions which include such requirements of the contracting authority in relation to the product or service as the level of quality, the environmental protection requirements, the rules regarding climate change reduction (reduction of emissions of greenhouse gasses) and climate change adaptation, energy efficiency, construction requirements (also requirements in relation to accessibility of a product or service for persons with disabilities), the performance requirements, the methodology for service provision, the requirements for product use, the safety rules, measurements, terminology, symbols, testing rules and methods, the requirements in relation to the product name under which it is sold, the packaging and labelling, user manuals, production process and methods at any stage of a life cycle of a product or service, and also the conformity assessment methods.

(5) Technical specifications shall be prepared in one of the following ways:

1) by determining the functional requirements or performance results, including also environmental protection requirements. The requirements shall be precisely defined for the tenderer to be able to determine the subject-matter of the contract, and for the contracting authority to be able to compare tenders;

2) with reference to the technical specifications referred to in Paragraphs three and four of this Section and to the standards in the following sequence: the European standards adapted in the status of a Latvian national standard, European technical assessments, common technical specifications, other international standards, and also other technical reference systems established by the European standardisation institutions, or if the abovementioned standards do not exist, in the following sequence: the Latvian national standards, the national technical approvals or the national technical specifications with respect to designing, cost estimation and performance, and the use of the products. Each reference shall include the words "or equivalent";

3) by determining the functional requirements or performance results in accordance with Clause 1 of this Paragraph and with reference to the specifications in accordance with Clause 2 of this Paragraph in order to ensure the conformity to the functional or performance requirements;

4) by referring to the specifications in accordance with Clause 2 of this Paragraph, but specifying other requirements as functional requirements or performance requirements in accordance with Clause 1 of this Paragraph.

(6) If it is not decisive for the existence of the subject-matter of the procurement contract, the technical specifications shall not specify a specific origin, special process characterising the products or services of only a specific economic operator, brand, patents or specific types of products creating advantages or a reason for the rejection of certain economic operators or products. Such reference may be included in exceptional cases if it is not possible to prepare a sufficiently precise and clear description of the subject-matter of the procurement contract in accordance with Paragraph five of this Section. In such case the reference shall be used together with the words "or equivalent".

(7) If the contracting authority prepares the technical specification in accordance with Paragraph five, Clause 2 of this Section, it shall not reject a tender because the offered product or services do not conform to the standards or technical specifications specified in the reference, if the tenderer, by any appropriate means, inter alia, evidence referred to in Section 22 of this Law, can prove that the tender is equivalent and meets the requirements of the contracting authority indicated in the technical specification.

(8) If the contracting authority prepares the technical specification in accordance with Paragraph five, Clause 1 of this Section, it shall not reject the tenders corresponding to the European standards adapted in the status of a Latvian national standard, European technical assessments, common technical specifications, other international standards, other technical reference systems established by the European standardisation institutions if such standards, technical specifications, or reference systems prescribe the same functional requirements or performance requirements as those stipulated by the contracting authority, and if the tenderer, by any appropriate means, inter alia, the evidence referred to in Section 22 of this Law, can prove that the construction work, supplies, or services corresponding to the standard conform to the functional requirements or performance requirements stipulated by the contracting authority.

(9) For procurements the result whereof is intended for use by natural persons, including the staff of the contracting authority, the technical specifications shall be drawn up so as to take into account accessibility of the procurement results for persons with disabilities or the principles of universal design, except for when the contracting authority duly justifies the non-inclusion of such requirements in the technical specifications. If directly applicable legal acts of the European Union or national laws and regulations transposing the requirements of the European Union legal acts confirm the mandatory accessibility requirements, the technical specifications shall contain a reference to such standards, insofar as they require to ensure accessibility for persons with disabilities or to observe the principles of universal design.

*(9<sup>1</sup>) [Paragraph shall come into force on 28 June 2025 and shall be included in the wording of the Law as of 28 June 2025. See Paragraph 23 of Transitional Provisions]*

(10) The technical specifications may also specify the conditions for the transfer of intellectual property rights to the contracting authority.

(11) The procurement procedure documents shall specify the date of the preparation or last update of the technical specifications. The contracting authority shall update the technical specifications before announcing the procurement if, after preparation or last update thereof, amendments have been made to the laws and regulations in the relevant field. If the technical specifications have been prepared or updated more than 12 months before announcing the procurement, the contracting authority shall, by recording it in the minutes and before announcing the procurement, review and, where necessary, update the indicators and calculations included in the technical specifications and, where applicable, other procurement procedure documents which can affect determination of the estimated contract price.

*[24 March 2022; 16 March 2023]*

## **Section 21. Labels**

(1) If the contracting authority intends to purchase construction work, products, or services meeting specific environmental protection, social or other special requirements, it may, in the technical specifications, the tender evaluation criteria, or the conditions for the performance of the procurement contract require a special label as means of proof that the construction work, services, or supplies correspond to the specified requirements, provided that all of the following conditions are fulfilled:

1) the label requirements only concern criteria which are linked to the subject-matter of the procurement contract and are appropriate to define characteristic features of the construction work, supplies, or services that are the subject-matter of the procurement contract;

2) the label requirements are prepared based on objectively verifiable and non-discriminatory criteria;

3) the labels are established in an open and transparent procedures in which all relevant stakeholders, including State authorities, consumers, social partners, producers, distributors and non-governmental organisations, may participate;

4) the labels are accessible to all stakeholders;

5) the label requirements are set by a person over which the economic operator applying for the label cannot exercise a decisive influence.

(2) If a label fulfils the conditions provided for in Paragraph one, Clauses 2, 3, 4, and 5 of this Section, but also contains information on the requirements not linked to the subject-matter of the procurement contract, the contracting authority shall not require the conformity to all label requirements, but shall refer the detailed specifications of the relevant label or the parts thereof that are linked to the subject-matter of the procurement contract and are appropriate

to define the characteristic features of the subject-matter of the procurement contract.

(3) The contracting authority shall specify which label requirements must be met, if the conformity of the construction work, supplies, or services to all of the label requirements is not required. The contracting authority shall accept equivalent labels confirming that the construction work, supplies, or services meet the label specified by the contracting authority.

(4) If the economic operator had no possibility of obtaining the label indicated by the contracting authority or an equivalent label by the day of submission of the tender for reasons that are not attributable to the economic operator, the contracting authority shall accept other appropriate means of proof, inter alia, a technical dossier from the producer, proving that the construction work, supplies, or services fulfil the requirements of the label indicated by the contracting authority.

[26 April 2018]

## **Section 22. Test Reports, Specifications and Other Means of Proof**

(1) The contracting authority may require that economic operator submits a test report and statements or certificates of the conformity assessment body accredited in accordance with the procedures laid down in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 and thus proves the conformity to the requirements or criteria set out in the technical specification, tender evaluation criteria or the procurement contract performance conditions. If the contracting authority requires the submission of certificates drawn up by a specific conformity assessment body, certificates from other equivalent conformity assessment bodies shall also be accepted by the contracting authority.

(2) The contracting authority shall accept other appropriate means of proof, inter alia, a technical dossier of the producer, if the economic operator had no possibility of obtaining the certificates or test reports referred to in Paragraph one of this Section, or no possibility of obtaining them by the expiry of the term for submission of tenders, provided that it is not attributable to the economic operator and provided that the economic operator proves that the construction work, supplies, or services meet the requirements or criteria set out in the technical specification, tender evaluation criteria or conditions for the performance of the procurement contract.

## **Section 23. Variants of Tenders**

(1) The contracting authority may provide for a possibility to submit variants of tenders. The contracting authority shall indicate in the contract notice whether or not the submission of variants of tenders is mandatory, admissible, or is not authorised.

(2) The contracting authority shall state in the procurement procedure documents the minimum requirements to be met by the variants and any specific requirements for submission of variants, specifying whether variants may be submitted only where a tender which is not a variant has also been submitted. The contracting authority shall ensure that the tender evaluation criteria can be applied to the tender with variants, and also to conforming tenders which do not include variants. Variants shall be mandatory linked to the subject-matter of the procurement contract.

(3) Only the variants of tenders meeting the minimum requirements stipulated by the contracting authority shall be taken into consideration.

(4) If within the procurement procedures it is intended to award public supply or public service contract and the contracting authority has authorised the submission of variants of tenders, it shall not reject a variant of tender on the sole ground that it would, where successful, lead to either a public service contract rather than a public supply contract or a public supply contract rather than a public service contract.

[26 April 2018; 5 October 2023]

# **Chapter III Procurement Commission**

## **Section 24. Establishment of the Procurement Commission**

(1) The contracting authority shall establish a procurement commission for the performance of the procurement procedures referred to in Section 8, Paragraph one, Clauses 1, 2, 3, 4, 5, and 6 of this Law and for the performance of the procurement referred to in Sections 9 and 10 of this Law. The commission shall consist of persons on whom administrative sanction - a prohibition to exercise the rights - the prohibition to hold the offices whose duties include taking of decisions in the field of public procurements and public-private partnership or the award of procurements contracts, framework agreements, partnership procurement contracts, or concession contracts, has not been imposed for violations in the area of public procurement and public-private partnership, or the enforcement of such sanction has ended. The contracting authority shall, before establishment of the procurement commission or inclusion of a new

member in the procurement commission, obtain the abovementioned information on the person from the publication management system.

(2) A procurement commission shall be established for each procurement separately or for a certain period of time. When establishing the procurement commission, the contracting authority shall ensure that this commission is competent in the field where the procurement contract is being awarded. The procurement commission is entitled to call on experts and a secretary of the procurement commission when performing its duties.

(3) The contracting authority shall establish a procurement commission in the composition of at least three members. If the estimated contract price of a procurement exceeds EUR 1 000 000, the contracting authority shall establish a procurement commission in the composition of at least five members.

[5 December 2019; 24 March 2022]

## **Section 25. Basic Operating Principles of the Procurement Commission**

(1) A person preparing the procurement procedure documents (an official or employee of the contracting authority), members of the procurement commission, a secretary of the procurement commission, and experts may not represent interests of a candidate or tenderer, including they may not have a direct or indirect financial, economic, or other personal interest which can affect impartiality and independence of the person in respect of the particular procurement, and also they may not be connected to a candidate or tenderer. Within the meaning of this Paragraph, a person preparing the procurement procedure documents (an official or employee of the contracting authority), a member of the procurement commission, a secretary of the procurement commission, and an expert is connected to a candidate or tenderer if he or she is:

1) the current or former employee, official, shareholder, stockholder, a proctor or member of a legal person - candidate, tenderer, or subcontractor, and if this connection with the legal person has terminated within the last 24 months;

2) the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister, or spouse (hereinafter - the relative) of a stockholder who owns at least 10 per cent of stocks, shareholder, proctor, or official of a legal person - candidate, tenderer, or subcontractor;

3) the relative of a natural person - candidate, tenderer, or subcontractor;

4) the current or former beneficial owner of a legal person - candidate or tenderer - and if this connection with the legal person has terminated within the last 24 months;

5) a relative of the beneficial owner of a legal person - candidate or tenderer.

(2) Connection of a person preparing the procurement procedure documents (an official or employee of the contracting authority), members of the procurement commission, a secretary of the procurement commission, and experts with a candidate or tenderer shall also apply to cases where the candidate or tenderer is an association of persons the members of which are natural or legal persons with whom the person preparing the procurement procedure documents (official or employee of the contracting authority) or the member of the commission, or the secretary of the procurement commission, or the expert has the connection referred to in Paragraph one, Clause 1, 2, 3, 4, or 5 of this Section.

(3) A person preparing the procurement procedure documents (an official or employee of the contracting authority), members of the procurement commission, a secretary of the procurement commission, and experts shall sign a confirmation that there are no such circumstances due to which it might be regarded that they are interested in selecting or activities of a particular candidate or tenderer or that they are connected to a particular candidate or tenderer within the meaning of Paragraph one of this Section, and that they will not disclose the information obtained within the scope of the procurement which is non-disclosable in accordance with laws and regulations.

(4) The procurement commission shall ensure the drafting of procurement procedure documents, procurement documents referred to in Sections 9 and 10 of this Law, shall record the progress of the procurement process and shall be responsible for the procurement process.

(5) The procurement commission shall select candidates and evaluate tenderers and the tenders submitted by them in accordance with this Law, the procurement procedure documents, procurement documents referred to in Sections 9 and 10 of this Law, and also other laws and regulations. The decision of the procurement commission shall be binding on the contracting authority if a procurement contract is being awarded.

(6) The chairperson of the procurement commission shall organise and manage the work of the commission, determine the venue, time, and agenda of the commission meetings, convene and chair the commission meetings, and also shall ensure signing of the certifications referred to in Paragraph three of this Section.

[26 April 2018; 3 March 2022; 24 March 2022]

## **Section 26. Procedures for the Taking of Decisions of the Procurement Commission**

(1) The procurement commission shall take decisions at meetings. The procurement commission shall have a quorum if at least two thirds, but not less than three members of the members of the commission are present at the meeting. The number of the members of the commission shall be determined by rounding up the obtained result. The procurement commission shall take decisions with a simple majority of votes. In the event of a tied vote of the members of the procurement commission, the chairperson of the commission shall have the casting vote. The member of the commission may not abstain from taking the decision.

(2) Each member of the procurement commission shall evaluate the tender individually according to all evaluation criteria indicated in the procurement procedure documents, except for where only the price is used for the comparison and evaluation of the tenders. The tender which upon summarisation of individual evaluations has achieved the highest score shall be recognised as the most economically advantageous tender.

## **Chapter IV Announcement and Observance of Transparency**

### **Section 27. Prior Information Notice**

(1) The contracting authority may inform of the planned procurements through the publication of a prior information notice which is used for informing only or through the publication of a prior information notice which is used for the reduction of the term for the submission of tenders.

(2) The contracting authority shall publish the prior information notice if the estimated contract price of the procurement contract is equal to or exceeds the contract price thresholds determined by the Cabinet.

[5 October 2023]

### **Section 27.<sup>1</sup> Notice on the Consultation**

If the contracting authority organises a consultation in accordance with Section 18, Paragraph 2.<sup>1</sup> of this Law, it shall publish the notice on the consultation.

[5 October 2023]

### **Section 28. Contract Notice and Notice on Making Amendments**

(1) If a contracting authority applies open or restricted procedure, competitive procedure with negotiation, innovation partnership procedure, competitive dialogue or plans to establish a dynamic purchasing system, it shall publish a contract notice.

(2) If the contracting authority makes amendments to the procurement procedure documents or to the documents of the procurement to be performed in accordance with the procedures laid down in Section 10 of this Law, to the documentation of a design contest or extends the laid down terms for the submission of applications, tenders, or designs, it shall repeatedly publish the notice by which the procurement procedure, the procurement to be performed in accordance with the procedures laid down in Section 10 of this Law, or design contest has been announced.

[5 October 2023]

### **Section 29. Contract Award Notice**

(1) The contracting authority shall publish the contract award notice within 10 working days after conclusion of a procurement contract or a framework agreement, taking the decision to terminate or suspend the procurement procedure or to suspend the operation of a dynamic purchasing system.

(2) If the contracting authority takes a decision within the scope of the dynamic purchasing system, it shall publish the contract award notice with respect to each procurement contract within 10 working days after conclusion of the contract. The contracting authority may group the contract award notices on a quarterly basis and publish them within 10 working days after the end of each quarter.

[5 October 2023]

### **Section 30. Voluntary Notice on the Procurement Results**

(1) The contracting authority may submit a voluntary notice on the procurement results in the cases referred to in Section 3, 4, or 5 of this Law, or in case of a negotiated procedure.

(2) A voluntary notice on the procurement results shall be published so that the stakeholders could contest the justification of such procurement which, because of an error by the contracting authority, has been performed without

applying a corresponding procurement procedure and without publishing a contract notice, and in order to concurrently eliminate the consequences referred to in Section 75 of this Law.

[26 April 2018]

### **Section 31. Design Contest Notice and Notice on the Results of the Design Contest**

(1) The contracting authority which organises a design contest shall publish a design contest notice.

(2) The contracting authority shall, within 10 working days after notifying the participants of the design contest, publish the notice on the results of the design contest.

[5 October 2023]

### **Section 32. Notice in Relation to Social and Other Specific Services**

(1) The contracting authority which organises a procurement in accordance with the procedures laid down in Section 10 of this Law shall publish a contract notice in relation to social and other specific services. The contracting authority shall determine the term for the submission of applications of not less than five working days from the day when the contract notice in relation to social and other specific services has been published on the website of the Procurement Monitoring Bureau or sent to the Publications Office of the European Union for publication in the Official Journal of the European Union. The contracting authority shall determine the term for the submission of tenders of not less than five working days from the day when the contract notice in relation to social and other specific services has been published on the website of the Procurement Monitoring Bureau, has been sent to the Publications Office of the European Union for publication in the Official Journal of the European Union, or when the invitation to tender has been sent to the selected candidates if the selection of candidates is provided for.

(1<sup>1</sup>) If the contracting authority makes amendments to the documentation of a procurement organised in accordance with the procedures laid down in Section 10 of this Law, the minimum term for the submission of applications and tenders shall be not less than five working days from the day when the contract notice in relation to social and other specific services has been published repeatedly on the website of the Procurement Monitoring Bureau or sent the Publications Office of the European Union for publication in the Official Journal of the European Union.

(2) The contracting authority shall, within 10 working days after the day of conclusion of a public service contract or the day of taking the decision to terminate or suspend the procurement, publish the contract award notice in relation to social and other specific services.

(3) The contracting authority is entitled not to publish the notice referred to in Paragraph one of this Section, if the procurement complies with any of the cases referred to in Section 8, Paragraph seven of this Law.

[26 April 2018; 24 March 2022; 5 October 2023]

### **Section 33. Notice of Changes during the Term of the Contract**

The contracting authority which has made the amendments to the procurement contract which have been referred to in Section 61, Paragraph three, Clauses 2 and 3 of this Law, if the contract price of a public supply contract or service contract is equal to or exceeds EUR 42 000 and the contract price of a public works contract is equal to or exceeds EUR 170 000, shall, within 10 working days following the day of entering into effect of the amendments, publish a notice of changes during the term of the contract.

[3 March 2022]

### **Section 33.<sup>1</sup> Notice on the Performance of the Contract**

(1) The contracting authority shall, within 10 working days after performance of a procurement contract or a framework agreement, publish the notice on the performance of the contract.

(2) The contracting authority may group notices on the performance of the contract for procurement contracts being concluded within the scope of the framework agreement on a quarterly basis and publish them within 10 working days after the end of each quarter.

[5 October 2023]

### **Section 34. Publication of Notices**

(1) The Cabinet shall determine the content of the notices referred to in Sections 27, 27.<sup>1</sup>, and 28, Section 29, Paragraph one, Sections 30, 31, 32, 33, and 33.<sup>1</sup> of this Law. The notice forms shall be determined by Annex to Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986

(eForms).

(2) The contracting authority shall prepare the relevant notice referred to in Paragraph one of this Section and publish it in the publication management system.

(3) The contracting authority shall send the notice referred to in Paragraph one of this Section (except for the notices referred to in Sections 27.<sup>1</sup> and 33.<sup>1</sup> of this Law) in the publication management system to the Publications Office of the European Union for publication in the Official Journal of the European Union if the estimated contract price is equal to or exceeds the contract price thresholds determined by the Cabinet. The notice is published on the website of the Procurement Monitoring Bureau after receipt of the confirmation that the notice has been published in the Official Journal of the European Union or 48 hours after receipt of the confirmation from the Publications Office of the European Union that the notice has been received.

(4) When announcing the procurement results, the contracting authority is entitled to withhold certain information from publication in the notice, where its release would impede the application of laws and regulations or be contrary to the public interest, or would restrict competition among economic operators, or would harm the legitimate commercial interests (public or private) of economic operators.

[5 October 2023]

### **Section 35. Terms for Submission of Applications or Tenders**

(1) The contracting authority, when determining the terms for submission of applications or tenders, shall take into account the level of complexity of the potential procurement contract and the time period which is necessary for the preparation of tenders, and also the minimum terms for submission of applications and tenders stipulated by the Cabinet.

(2) The contracting authority shall determine a longer term for submission of tenders than the minimum term for submissions stipulated by the Cabinet, if the tender can be prepared only after a visit to the site of the performance of the procurement contract specified by the contracting authority or after becoming acquainted with the additional documents specified in the procurement procedure documents on the site stipulated by the contracting authority. The term for submission of the tenders shall be fixed so that the economic operators or candidates would have the possibility to become acquainted with all the information needed to prepare tenders.

(3) The contracting authority may make amendments to the procurement procedure documents, provided that the amended provisions do not allow for submission of different tenders or participation or selection of other candidates or tenderers in the procurement procedure. If the amendments have been made to the procurement procedure documents, the term for submission of tenders shall be extended according to the relevance of information or changes so that the economic operators or candidates would be able to get acquainted with all the information needed to prepare tenders, and taking into account the minimum terms for submission of applications and tenders stipulated by the Cabinet.

(4) The contracting authority is entitled to extend the specified terms for the submission of applications and tenders by repeatedly publishing the notice announcing the procurement procedure. If the notice should be sent to the Publications Office of the European Union for publication in the Official Journal of the European Union, the minimum term for which the contracting authority is entitled to extend the term for the submission of applications or tenders shall be seven days after the day when the notice has been sent to the Publications Office of the European Union for publication in the Official Journal of the European Union. Such extension of terms shall not be considered amendments to the procurement procedure documents within the meaning of Paragraph three of this Section.

[26 April 2018; 5 October 2023]

### **Section 36. Access to Procurement Procedure Documents, Issuance Thereof and Provision of Additional Information**

(1) The contracting authority shall ensure free and direct electronic access to the procurement procedure documents and all additionally required documents in the buyer profile, and also a possibility for economic operators to become acquainted on site with the additional procurement documents to which free and direct electronic access cannot be ensured due to technical reasons or due to the information included therein, or for the purpose of protection of commercial interests, starting from the moment of the announcement of the relevant procurement. If the economic operator requests to issue the procurement procedure documents in printed form, the contracting authority shall issue them within three working days after receipt of the request for these documents, provided that the request for documents has been submitted in due time prior to the expiry of the term for submission of tenders. The contracting authority may charge a fee for the issue of the procurement procedure documents in printed form which shall not exceed the actual expenses of reproduction and sending of the documents.

(2) If the economic operator or the candidate has timely requested additional information on the requirements contained in the procurement procedure documents, the contracting authority shall provide it within five working days, but not later than six days before the expiry of the term for submission of applications and tenders. If the contracting

authority, due to urgency considerations, has shortened the term for submission of tenders in an open procedure or the term for submission of applications and tenders in a restricted procedure or competitive procedure with negotiation, the contracting authority shall provide additional information within three working days, but not later than four days before the expiry of the term for submission of applications and tenders.

(3) The contracting authority shall send additional information to the economic operator or the candidate who has asked the question, and shall concurrently insert this information on the buyer profile where the procurement procedure documents are available, indicating also the question asked.

(4) If the contracting authority has made amendments to the procurement procedure documents, it shall insert information on the amendments on the buyer profile, where these documents are available, not later than on the day when the notice announcing the procurement procedure has been published repeatedly.

[26 April 2018; 5 October 2023]

### **Section 37. Procedures by which Candidates and Tenderers shall be Informed of Results**

(1) The contracting authority shall, within three working days after taking the decision, concurrently inform all candidates of the decision taken in relation to the results of candidate selection or of inclusion in the dynamic purchasing system (the rejected tenderer shall also be notified of the reasons for rejecting the tender submitted by it), or design contest participants of the decision taken in relation to the results of the design contest. The contracting authority shall notify all candidates or design contest participants of the term during which the person, taking into account Section 68, Paragraph two, Clause 1 and 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding infringements of the procurement procedure.

(2) The contracting authority shall, within three working days after taking the decision, concurrently inform all tenderers of the decision taken in relation to conclusion of a procurement contract or a framework agreement. The contracting authority shall notify the name of the selected tenderer or the names of the selected participants of the framework agreement, indicating:

1) to the rejected tenderer - the reasons for rejecting the tender submitted by it, inter alia, by justifying the decision on non-conformity to equivalence or the decision on non-conformity of the relevant tender to the functional requirements or performance requirements (where applicable);

2) to the tenderer which has submitted a conforming tender - the characterisation and relative advantages of the selected tender;

3) the time period within which the tenderer, taking into account Section 68, Paragraph two, Clauses 1 and 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding infringements of the procurement procedure.

(3) If procurement procedure is terminated or suspended, or the dynamic purchasing system is not established, the contracting authority shall, within three working days after taking the decision, concurrently inform all candidates or tenderers of all reasons due to which the procurement procedure is terminated or suspended, or the dynamic purchasing system is not established. The contracting authority shall notify all candidates or tenderers of the time period during which the person, taking into account Section 68, Paragraph two, Clause 1 and 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding infringements of the procurement procedure.

(4) The contracting authority shall send information on the results by post, fax or electronically, using secure electronic signature or attaching a scanned document to the electronic mail message, or shall deliver it in person. Within the meaning of this Section, it shall be deemed that information has been concurrently handed over to all candidates, tenderers, or design contest participants, if information has been sent out or handed over to them on the same day.

(5) Upon informing on the results, the contracting authority shall keep evidence regarding the date and manner of sending or handing over of information.

(6) The contracting authority is entitled not to reveal information referred to in Paragraphs one and two of this Section, if its release would impede the application of laws and regulations or be contrary to the public interest, or would restrict competition among economic operators, or would harm the legitimate commercial interests of economic operators.

[26 April 2018]

### **Section 38. Exchange of Information**

(1) An exchange of information between the contracting authority and economic operators shall take place by post, fax, or electronically (in accordance with the conditions referred to in Paragraphs three, four, six, and eight of this Section), depending on the choice of the contracting authority.

(2) Verbal communication may be used for the exchange of information which does not refer to procurement procedure documents, applications, and tenders. The content of verbal communication which could have an impact on the content of the applications or tenders and on the assessment of the tenders shall be documented as written or audio records.

(3) The contracting authority shall choose such means for the exchange of information which are generally accessible in order not to hinder the access by the economic operator to the procurement. The contracting authority shall choose such method of sending the documents referred to in this Law which ensures that the addressee receives information as soon as possible. If electronic means are used for the exchange of information, such means shall be chosen which are publicly accessible and compatible with generally used information and communication technologies, thereby avoiding the possibility of discriminating economic operators on these grounds.

(4) The exchange and storage of information shall be carried out so as to protect all the data contained in tenders and applications and that the contracting authority might examine the content of tenders and applications only after the expiry of term for submission of tenders or applications.

(5) The contracting authority shall not provide any information on the existence of other tenders or applications from the day of submission of tenders or applications until the time of opening thereof. During the period of evaluation of tenders and applications until the notification of results, the contracting authority shall not provide information on the evaluation process.

(6) The provisions of Section 39 of this Law shall be applied to electronic equipment which is used for the receipt and sending of tenders and applications.

(7) The contracting authority may, where necessary, request that special equipment and technologies which are not generally accessible are used for submission of the tenders, provided that the contracting authority offers the following alternative means of access:

1) offer unrestricted and full direct access free of charge by electronic means to special equipment and technologies starting from the day of publication of the contract notice. The contract notice shall specify the website address where the relevant technologies and equipment are accessible;

2) ensure that tenderers having no access to the relevant technologies and equipment or no possibility to acquire them within the relevant time limits (provided that the lack of access is not attributable to the tenderer concerned) might access the procurement procedure by exercising a temporary right of access which is available online free of charge;

3) support an alternative data channel for electronic submission of tenders.

(8) When submitting a tender or application electronically, a candidate or economic operator is entitled to sign all documents as one set with one secure electronic signature. If a tender or application may be submitted electronically, a contracting authority shall not be entitled to request that a candidate or economic operator submit also a written tender or application in addition to electronic tender or application.

### **Section 39. Requirements for the Electronic Receipt of Applications and Tenders**

(1) The contracting authority shall provide for the electronic submission of tenders and applications in the procurements, except for the cases stipulated by the Cabinet, when the contracting authority does not have an obligation to use electronic information systems for the receipt of applications or tenders, or the constituent parts thereof. For the receipt of applications and tenders the contracting authority shall choose the electronic information systems which may be used free of charge and are intended for the electronic receipt of tenders and applications.

(2) Upon using electronic information systems by which tenders and applications, and also plans and projects are received in the procurements and procurement procedures, the following rules shall be complied with:

1) all interested economic operators have access to the information on specifications for the electronic submission, encryption, and time-stamping of applications and tenders;

2) a system-integrated signature tool is used, ensuring the validation of the identity of the signatory of electronic document, or an electronic signature which conforms to the laws and regulations regarding the status of electronic documents and electronic signature;

3) the date and time when tenders and applications, and also plans and projects are submitted may be precisely defined;

4) the contracting authority ensures that no-one has access to information submitted prior to the end of the specified term;

5) only authorised persons may set or change the time for opening the received documents;

6) during the different stages of the procurement or of the procurement procedure access to the documents submitted, or to a part thereof, shall be possible only after activities performed simultaneously by authorised persons;

7) the submitted documents may be accessed only on a specific date after activities performed simultaneously by authorised persons;

8) the submitted and opened documents remain accessible only to those authorised persons to whom such access has been granted;

9) it is possible to discover that the prohibition referred to in Clauses 4, 5, 6, 7, and 8 of this Paragraph have been violated.

(3) The Cabinet shall determine the requirements and standards for the systems which are used for submission of tenders and applications.

(4) If such malfunctions of the system are established due to which it has not been possible to submit tenders or applications for at least two hours within the last 24 hours in total or for 10 minutes within the last four hours until expiry of the time limit for the submission of tenders or applications, the holder of the system shall, after restoration of the operation of the system, postpone the time limit for the submission of tenders or applications by one working day. On the day of restoring the operation of the system, a notice of the malfunctions of the system shall be posted thereon, indicating the procurements and procurement procedures the time limits of which have been postponed. Such postponement of the time limit shall not be considered amendments to the procurement or procurement procedure documents or extension of the time limit for the submission of the tenders and applications within the meaning of Section 35, Paragraph three of this Law.

(5) The provisions of this Section shall also be applicable to a design competition if it provides for electronic submission of designs or slogan transcripts.

*[26 April 2018; 24 March 2022 / See Paragraph 22 of Transitional Provisions]*

#### **Section 40. Documentation of the Procurement Procedure and Storage of the Procurement Procedure Documents**

(1) The contracting authority shall ensure the documentation of each stage of the procurement procedure and the documentation of the procurements referred to in Sections 9 and 10 of this Law, and also shall document the procurement procedure taking place by electronic means.

(2) A procurement procedure notice (hereinafter - the notice) is a report reflecting the progress of the procurement procedure. The notice shall be prepared and published on the buyer profile regarding each procurement procedure after taking of a decision on the procurement procedure results, taking into account the procedures and content stipulated by the Cabinet.

(3) The minutes reflecting the progress of the procurement, the notice, the notice of the consultation referred to in Section 18, Paragraph 2.<sup>1</sup> of this Law, the procurement procedure documents, except for the tenders and applications, shall be generally accessible information.

(4) The contracting authority shall ensure the issuance of the documents referred to in Paragraph three of this Section within three working days after the day of receipt of the respective request. The contracting authority shall not issue the minutes, except for the minutes of the meeting of the opening of tenders, while the evaluation of the applications or tenders takes place.

(5) The contracting authority shall store all the originals of the documents referred to in Paragraph three of this Section, and also the originals of applications and tenders for 10 years after the conclusion of the procurement contract, conclusion of the framework agreement, or establishment of the dynamic purchasing system.

*[24 March 2022]*

## **Chapter V**

### **Selection of Candidates and Tenderers and Selection of the Tender**

#### **Section 41. General Conditions for Selection of Candidates and Tenderers, Conformity Check and Selection of Tenders**

(1) The contracting authority shall select candidates and tenderers in accordance with the qualification requirements laid down in Sections 44, 45, 46, 47, and 48 of this Law, shall check the conformity of tenders with the requirements specified in the procurement procedure documents, and choose a tender or tenders in accordance with the specified tender evaluation criteria.

(2) The contracting authority may specify the minimum conformity level for the requirements referred to in Sections 45 and 46 of this Law. The scope of requirements, and also the requested minimum level of capabilities for the performance of the particular procurement contract shall be determined commensurate to the subject-matter of the procurement contract. Such requirements for the minimum level of conformity shall be included in the contract notice, and also in the procurement procedure documents.

(3) Statements and other documents issued by Latvian competent authorities in the cases referred to in this Law shall be accepted and recognised by the contracting authority if they have been issued not earlier than one month prior to the day of submission, but the statements and other documents issued by foreign competent authorities shall be accepted and recognised by the contracting authority if they have been issued not earlier than six months prior to the day of submission, unless the issuer of the statement or the document has specified a shorter term of validity thereof.

(4) If the contracting authority obtains the necessary information on the candidate or tenderer directly from the competent authority, databases or other sources, the relevant candidate or tenderer is entitled to submit a statement or another document regarding the relevant fact, if the information obtained by the contracting authority does not conform to the actual situation.

(5) If the contracting authority has a reason to doubt the authenticity of the document copy submitted, it shall request that the candidate or tenderer present the original document or submit a certified copy of the document.

(6) If the contracting authority establishes that the information or a document contained in the application or the tender or submitted by the candidate or tenderer is unclear or incomplete, it shall request that the candidate or tenderer, or the competent authority clarify or supplement the relevant information or document or submits the missing document, ensuring equal treatment of all candidates and tenderers. The contracting authority shall determine the term for submission of the necessary information or document commensurate with the time necessary to prepare and submit such information or document.

(7) If the contracting authority in accordance with Paragraph six of this Section has requested to clarify or supplement the information contained in the application or tender or submitted by the candidate or tenderer, but the candidate or tenderer has failed to do it in accordance with the requirements stipulated by the contracting authority, the contracting authority shall evaluate the application or tender based on information at its disposal.

(8) During the evaluation of the tenders, the contracting authority is entitled to request that information contained in the technical and financial tender be explained, and also the samples of offered products are submitted, if any are necessary for the product conformity assessment and the tenderer through the documents available thereto cannot prove to the contracting authority the conformity of the products. The contracting authority shall not request to submit the samples of such products which are to be adjusted or produced during the performance of the procurement contract in accordance with the requirements thereof, if such samples are not available to the economic operator before the conclusion of the procurement contract, and also the product samples the submission whereof causes incommensurate expenses to the economic operator.

(9) During the evaluation of the tenders, the contracting authority shall check whether the tender is free of arithmetic errors. If the contracting authority detects such errors, it shall correct such errors. The contracting authority shall notify the tenderer whose errors have been corrected of the correction of errors and the corrected sum of the tender. When evaluating the financial tender, the contracting authority shall take corrections into account.

(10) During the evaluation of the tenders, the contracting authority is entitled to request that the tenderer submit a certification that it has developed the tender independently.

(11) The contracting authority shall reject the tender of the tenderer within an open or restricted procedure, if the contract price offered by the tenderer exceeds any of the following values:

1) the contract price specified by the contracting authority in the procurement procedure documents, if it is set as the tender conformity requirement;

2) 150 per cent of the estimated contract price specified in the procurement procedure documents.

(12) The contracting authority shall take the decision to suspend the procurement procedure if only one candidate or tenderer has submitted an application or tender in an open or restricted procedure or competitive procedure with negotiation, except for the following cases:

1) before announcing the procurement procedure, the contracting authority has organised a consultation with economic operators which conforms to the requirements of Section 18, Paragraph 2.<sup>1</sup> of this Law;

2) suspension of the procurement procedure poses a threat to the public safety or health protection interests. In such case the contracting authority shall include a justification in the procurement procedure notice in respect of what public safety and health protection interests would be threatened by organising a repeated procurement.

## **Section 42. Provisions for the Exclusion of Candidates and Tenderers**

(1) The contracting authority shall exclude a candidate or tenderer from further participation in the procurement procedure in accordance with the provisions of this Section.

(2) The reasons for the exclusion of candidates and tenderers shall be as follows:

1) a candidate, a tenderer, or a person who is a member of the executive board or supervisory board, a person with representation rights, a proctor of the candidate or tenderer, or a person who is authorised to represent the candidate or tenderer in activities related to a branch has been found guilty of any of the following criminal offences by such prosecutor's penal order or a court judgement that has entered into effect and has become incontestable and unappealable, or a coercive measure has been applied thereto:

a) establishment, leading of a criminal organisation, involvement in such organisation or in an organised group included within such organisation, or in another criminal formation, or participation in criminal offences committed by such organisation;

b) accepting of bribes, giving of bribes, misappropriation of a bribe, intermediation in bribery, unlawful participation in property transactions, unauthorised receipt of benefits, commercial bribery, unlawful requesting, receiving, or giving of benefit, trading with influence;

c) fraud, misappropriation, or money laundering;

d) terrorism, financing of terrorism, establishment or organisation of a terrorist group, travelling for terrorism purposes, justification of terrorism, invitation to terrorism, terrorism threats, or recruitment or training of a person for the committing of acts of terrorism;

e) human trafficking;

f) evasion of tax payments or payments equivalent thereto;

2) on the last day of the time limit for the submission of applications in case of a candidate and of tenders in case of a tenderer, or on the day when the decision is taken to possibly award the procurement contract, they have outstanding tax liabilities (including in the field of mandatory State social insurance) in Latvia in accordance with the law On Taxes and Fees or in the country of registration or permanent place of residence thereof in accordance with the legal acts of the relevant foreign country;

3) a candidate or tenderer is a legal person or association of persons registered offshore or the owner or holder of more than 25 per cent of capital shares (stocks) of the candidate or tenderer registered in Latvia is a legal person or association of persons registered offshore;

4) insolvency proceedings have been declared for the candidate or tenderer, the economic activity of the candidate or tenderer has been suspended, the candidate or tenderer is being liquidated;

5) a candidate or tenderer, by such decision of the competent authority or a court judgement which has entered into effect and has become incontestable and unappealable, has been found guilty of or is liable for the payment of fine in relation to violating the competition law which manifests itself in a horizontal cartel agreement, except for the case where the relevant authority, upon establishing a violation of the competition law, has given immunity from a fine to the candidate or tenderer or has reduced the fine for cooperation under the leniency programme;

6) a candidate or a tenderer, by such a decision of a competent authority, a court judgment or prosecutor's penal order which has entered into effect and has become incontestable and unappealable, has been found guilty of and punished for an infringement which manifests as:

a) employment of one or several persons if they do not have the necessary work permit or they are not entitled to reside in a European Union Member State;

b) employment of a person without concluding a written employment contract, failing to submit, within the time limit specified in the laws and regulations regarding taxes, an informative declaration regarding such person which is to be submitted on persons who commence employment;

7) the contracting authority has sufficiently strong indications at its disposal to conclude that a candidate or tenderer has entered into an agreement with other economic operators with the aim of hindering, restricting, or distorting competition;

8) the contracting authority has indicated this fact in the contract notice or procurement procedure documents and can prove by any appropriate means that a candidate or tenderer has violated the laws and regulations of Latvia or the European Union legal acts in the environmental, social field or field of labour law, a collective agreement, a general agreement, or the requirements laid down in the international conventions referred to in Annex 3 to this Law;

9) the contracting authority has indicated this fact in the contract notice or procurement procedure documents and can prove by any appropriate means that a candidate or tenderer has committed such significant violations in its professional activity which raise a reasonable doubt as to its integrity to execute the procurement contract or framework agreement properly;

10) a candidate or tenderer, a participant or member thereof (if the candidate or tenderer is an association of economic operators or a partnership) as a contracting party or member or participant of the contracting party (if the contracting party has been an association of economic operators or a partnership) has failed to execute the procurement contract, framework agreement, partnership procurement contract, or concession contract concluded with the contracting authority, public service provider, public partner, or representative of the public partner and therefore the contracting authority, public service provider, public partner, or representative of the public partner has unilaterally withdrawn from the procurement contract, framework agreement, partnership procurement contract, or concession contract;

11) a person preparing the procurement procedure documents (an official or employee of the contracting authority), a member of the procurement commission, an expert, or a secretary of the procurement commission is connected to the candidate or tenderer within the meaning of Section 25, Paragraph one or two of this Law or is interested in the selection of one candidate or tenderer and the contracting authority has no possibility to prevent this situation by less restrictive measures with respect to the candidate or tenderer;

12) a candidate or tenderer has advantages restricting the competition within the procurement procedure if it or a legal person connected thereto has been involved in preparation of the procurement procedure in accordance with Section 18, Paragraph four of this Law and such advantages cannot be prevented by less restrictive measures, moreover, the candidate or tenderer cannot prove that the participation thereof or of the legal person connected thereto in preparation of the procurement procedure does not restrict the competition;

13) a candidate or tenderer has made an effort to unlawfully influence the decision of the contracting authority, the procurement commission, or member of the procurement commission in respect of the procurement procedure or has made an effort to obtain confidential information which would provide it with unjustified advantages within the procurement procedure, or has provided misleading information which could significantly influence the decision on further participation of the candidate or tenderer in the procurement procedure or awarding of the procurement contract;

14) a candidate or tenderer has provided false information to certify the conformity with the provisions of this Section or qualification requirements for the candidates and tenderers laid down in accordance with this Law, or has failed to submit the requested information.

(3) The reasons for the exclusion referred to in Paragraph two of this Section shall also apply to any of the following persons:

1) a member of the partnership if the candidate or tenderer is a partnership;

2) the person indicated by the candidate or tenderer on whose capacities the candidate or tenderer relies to confirm that its qualification conforms to the requirements specified in the contract notice or the procurement procedure documents;

3) to the subcontractor indicated by the tenderer the value of the construction work to be performed or the services to be provided is at least EUR 10 000;

4) Paragraph two, Clauses 1, 2, and 3 of this Section - to the persons which have a decisive influence in the candidate or tenderer on the basis of participation within the meaning of the laws and regulations regarding groups of companies;

5) Paragraph two, Clauses 1, 2, and 11 of this Section - to the beneficial owner of the candidate or tenderer.

(4) The contracting authority shall, however, not exclude a candidate or tenderer from participation in the procurement procedure in any of the following cases:

1) the candidate or tenderer has ensured reliability in accordance with the procedures laid down in Section 43 of this Law;

2) in the case referred to in Paragraph two, Clauses 1, 5, and 6 of this Section, three years have passed from the day when the court judgement, the prosecutor's penal order, or a decision taken by another competent authority has become incontestable and unappealable until the day of submitting the application or tender;

3) in the case referred to in Paragraph two, Clause 7 of this Section, in respect of the decision of the competent authority in the field of competition three years have passed from the day of entering into effect of such decision and, in the case referred to in Clauses 8 and 9, from the day when the relevant violation has been established until the day of submitting the application or tender;

4) in the case referred to in Paragraph two, Clause 10 of this Section, three years have passed from the day when

the contracting authority, the public service provider, the public partner, or the representative of the public partner has unilaterally withdrawn from the procurement contract, framework agreement, partnership procurement contract, or concession contract until the day of submitting the application or tender;

5) when applying the negotiated procedure in accordance with Section 8, Paragraph seven, Clause 3 of this Law if conclusion of the procurement contract is relevant to meeting the public interest (for example, ensuring safety, health, or environmental protection);

6) when applying the negotiated procedure in accordance with Section 8, Paragraph seven, Clause 7 of this Law.

(5) The contracting authority shall exclude the candidate or tenderer from participation in the procurement procedure for the reasons referred to in Paragraph two, Clause 1, 2, 3, 4, 5, or 6 of this Section on the basis of the information obtained by it in accordance with the following procedures:

1) in connection with a person registered or permanently residing in Latvia, and also with the reasons for exclusion referred to in Paragraph two, Clauses 1, 2, 5, and 6 of this Section, shall use the information system determined by the Cabinet in respect of a person registered or permanently residing abroad in conformity with the following procedures and without requesting consent of the relevant persons:

a) the contracting authority, and also the economic operator shall obtain information regarding themselves from the Information Centre of the Ministry of the Interior (Punishment Register) in respect of the reason for exclusion referred to in Paragraph two, Clauses 1, 5, and 6 of this Section;

b) the contracting authority shall obtain information from the Enterprise Register regarding the person referred to in Paragraph two, Clause 1 of this Section (a member of the executive board or supervisory board, a person with representation rights, a proctor, or a person who is authorised to represent the candidate or tenderer in activities related to a branch) and regarding the person referred to in Paragraph three, Clause 5 of this Section;

c) the contracting authority, and also the economic operator shall obtain information regarding themselves from the State Revenue Service and local governments of Latvia in respect of the reason for exclusion referred to in Paragraph two, Clause 2 of this Section. The contracting authority shall take into account information posted in the information system determined by the Cabinet on the date of the last update of data in the public tax debtors' database and the Administration System of Immovable Property Tax of the State Revenue Service. If the contracting authority establishes that in the information system determined by the Cabinet, according to the information posted on the date of the last update of data in the public tax debtors' database and the Administration System of Immovable Property Tax of the State Revenue Service, the tenderer, or the person referred to in Paragraph three of this Section has outstanding tax liabilities on the last day of the time limit for the submission of applications or tenders or on the day when the decision is taken to possibly award the procurement contract the candidate, the contracting authority shall set the time limit - three working days after the day of sending an information request - for the submission of the evidence referred to in Paragraph six of this Section that the candidate, the tenderer, or the person referred to in Paragraph three of this Section did not have any outstanding tax liabilities on the relevant day;

d) the contracting authority, and also the economic operator shall obtain information regarding themselves from the Enterprise Register in respect of the reason for exclusion referred to in Paragraph two, Clauses 3 and 4 of this Section. If the data in respect of the reason for exclusion referred to in Paragraph two, Clause 3 of this Section are not available in the information system determined by the Cabinet, the contracting authority shall request a confirmation that this reason for exclusion does not apply to the candidate, the tenderer, or the person referred to in Paragraph three of this Section, setting the time limit for the submission of confirmation - at least 10 days after the day of sending an information request;

e) the contracting authority shall obtain information from the candidate or tenderer regarding the person registered or permanently residing abroad, and also the persons referred to in Paragraph three, Clause 4 of this Section;

2) in order to confirm that the reasons for exclusion referred to in Paragraph two of this Section do not apply to a person registered or permanently residing abroad, including a member of the executive board or supervisory board, a person with representation rights, a proctor of the candidate or tenderer registered in Latvia or the person referred to in Paragraph three of this Section, or to a person who is authorised to represent the candidate or tenderer in activities related to a branch and who permanently resides abroad, the candidate or the tenderer shall submit the following upon request of the contracting authority within the time limit specified by the contracting authority which may not be less than 10 working days after the day of sending the request:

a) in relation to the reasons for exclusion referred to in Paragraph two, Clauses 1, 2, 4, 5, and 6 of this Section - a statement or another document of the relevant foreign competent authority confirming the absence of the reason for exclusion. The relevant statement of the foreign competent authority can be replaced by an explanation if, in accordance with the legal acts of the country of registration of the candidate, the tenderer, or of the person referred to in Paragraph three of this Section, a member of the executive board or supervisory board, a person with representation rights, a proctor, or a person who is authorised to represent the candidate or tenderer in activities related to a branch may not be a person to which the reasons for exclusion referred to in Paragraph two, Clause 1 of this Section are applicable;

b) in relation to the reason for exclusion referred to in Paragraph two, Clause 3 of this Section - a confirmation that the reason for exclusion does not apply to the candidate, the tenderer, or the person referred to in Paragraph three of this Section. The confirmation shall be accompanied by a document confirming the country of registration of each person;

c) if the statements or other documents of the competent authority referred to in Sub-clause "a" of this Clause are not issued in a relevant foreign country or they are not sufficient to confirm that the reasons for exclusion referred to in Paragraph two of this Section are not applicable to the candidate, the tenderer, or the person referred to in Paragraph three of this Section, such statements or other documents can be replaced by an oath or, if the legal acts of the relevant country do not provide for taking the oath, in respect of the reason for exclusion referred to in Paragraph two, Clause 1, 2, or 4 of this Section - by the confirmation of the candidate, the tenderer, or another person referred to in Paragraph two or three of this Section to a competent executive or judicial authority, a sworn notary, or a competent organisation of the relevant sector in the country of registration or permanent place of residence thereof, but in respect of the reason for exclusion referred to in Paragraph two, Clause 5 or 6 of this Section - by the confirmation of the candidate, the tenderer, or the person referred to in Paragraph three to the contracting authority.

(6) The evidence referred to in Paragraph five, Clause 1, Sub-clause "c" of this Section which can confirm that the candidate, the tenderer, or the person referred to in Paragraph three of this Section has not had any outstanding tax liabilities on the relevant day shall be as follows:

1) a statement from the Electronic Declaration System of the State Revenue Service;

2) a statement issued by a local government that the relevant person did not have debts of the immovable property tax;

3) any other objective evidence regarding non-existence of tax debts or tax liabilities.

(7) The contracting authority may exclude a candidate or tenderer due to the reason for exclusion referred to in Paragraph two, Clause 7 of this Section in any of the following cases:

1) there is information regarding the decision of the competent authority in the field of competition by which the candidate or tenderer has been found guilty of violating the competition law which manifests itself in a horizontal cartel agreement, except for the case where the relevant authority, upon establishing a violation of the competition law, has given immunity from a fine to the candidate or tenderer or has reduced the fine for cooperation under the leniency programme;

2) upon evaluating the application, the tender, or other available information, indications have been established possibly attesting to the existence of an agreement aimed at hindering, restricting, or distorting competition in the specific procurement procedure or an opinion of the Competition Council has been received that the indications established by the contracting authority can attest to the existence of a relevant agreement. The Competition Council shall provide its opinion within 10 working days from the day of receiving a relevant request of the contracting authority.

(8) The contracting authority may exclude a candidate or tenderer due to the reason for exclusion referred to in Paragraph two, Clauses 8, 9, and 10 of this Section if it has sufficient and objective information at its disposal which can prove that the relevant reason for exclusion exists. A candidate or tenderer registered in Latvia may be excluded due to the reasons referred to in Paragraph two, Clauses 8 and 9 of this Section if the contracting authority has a decision of the competent authority at its disposal by which the relevant violation has been established. If, in evaluating the information at its disposal, the contracting authority has a reasonable doubt as to the sufficiency of the evidence or the violations committed by the particular person are minor, the contracting authority shall not exclude the candidate or the tenderer from further participation in the procurement procedure.

(9) The contracting authority shall exclude a candidate or tenderer from participation in the procurement procedure if the contracting authority establishes the reasons for exclusion referred to in Paragraph two, Clause 11, 12, 13, or 14 of this Section.

(10) The contracting authority shall carry out the verification regarding the reasons for exclusion of candidates and tenderers specified in Paragraph two of this Section:

1) in an open procedure - in respect of each tenderer for whom the contract should be awarded in conformity with other requirements laid down in the notice regarding the contract and procurement procedure documents and chosen tender evaluation criteria;

2) in a restricted procedure, competitive dialogue, innovation partnership procedure, and competitive procedure with negotiation - in respect of each candidate who conforms to other requirements laid down in the contract notice and rules for the selection of candidates and should be invited to submit a tender. If it is provided for in the procurement documents, the verification may be carried out in respect of a tenderer to whom the procurement contract should be awarded in conformity with the requirements laid down in the contract notice and procurement procedure documents and the selected tender evaluation criteria, but if the contracting authority applies reduction in the number

of candidates, the contracting authority shall carry out the abovementioned verification prior to reducing the number of candidates. The contracting authority shall carry out verification of the reason for exclusion referred to in Paragraph two, Clause 2 of this Section in respect of each tenderer to whom the procurement contract should be awarded in conformity with other requirements laid down in the contract notice and procurement procedure documents and the selected tender evaluation criteria;

3) in the procurement referred to in Section 10 of this Law (if the contracting authority has provided for in the procurement procedure documents the application of the reasons for exclusion referred to in Paragraph two of this Section) and in the negotiated procedure - in respect of each tenderer to whom the procurement contract should be awarded;

4) in the competitive procedure with negotiation in the case referred to in Section 8, Paragraph six, Clause 5 of this Law, if only all the tenderers not excluded in the previously announced relevant procurement procedure in accordance with the provisions of this Section and conforming to the qualification requirements brought forward are invited to participate in negotiations. If the competitive procedure with negotiations is applied after termination of the open procedure, the contracting authority shall carry out the verification in respect of each tenderer that has submitted a tender in the open procedure and has been invited to the negotiated procedure. This verification shall be carried out before commencement of negotiations.

(11) The Cabinet shall determine:

1) the information system where the verification referred to in Paragraph five, Clause 1 of this Section is to be carried out, and also the procedures for maintaining and using such system;

2) the purpose and scope of processing the information to be verified and referred to in Paragraph five, Clause 1, Sub-clause "a" of this Section, and also the laws and regulations and sections thereof which correspond to the reasons for exclusion of candidates and tenderers laid down in Paragraph two of this Section and provide for the violations and criminal offences in respect of which the verification referred to in Paragraph five, Clause 1, Sub-clause "a" of this Section is to be carried out;

3) the procedures by which the information system referred to in Clause 1 of this Paragraph receives and processes information from the information systems maintained by the institutions referred to in Paragraph five of this Section;

4) the scope of the information to be verified and referred to in Paragraph five, Clause 1 of this Section in the information system referred to in Clause 1 of this Paragraph in respect of the persons registered or permanently residing abroad.

[3 March 2022]

### **Section 43. Ensuring of Reliability**

(1) If the contracting authority establishes that a candidate or tenderer should be excluded from participation in the procurement procedure on the basis of the reasons for exclusion referred to in Section 42, Paragraph two, Clauses 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of this Law, including in relation to the person referred to in Section 42, Paragraph three, Clauses 1, 4, and 5 of this Law, and the exclusions specified in Section 42, Paragraph four, Clauses 2, 3, 4, 5, and 6 of this Law are not applicable, the contracting authority shall grant the candidate or the tenderer the right, within the time limit which is at least 10 days after the day of sending an information request, to provide an explanation and evidence which confirm reliability of the candidate or tenderer in accordance with the provisions of this Section.

(2) In order to confirm reliability, the candidate or the tenderer shall provide an explanation and evidence for the compensation of the damage caused or an agreement concluded on the compensation of the damage caused, cooperation with the investigating institutions and the technical, organisational, or personnel measures taken in order to prove its reliability and to prevent repetition of the same and similar events in the future.

(3) The contracting authority shall evaluate the information provided in the explanation, the measures taken by the candidate, tenderer, or a member of partnership (if the candidate or the tenderer is a partnership), and the evidence thereof, taking into account the severity of the violation and specific circumstances. The contracting authority may request opinions from the competent authorities in the field of the relevant violation on the fact whether the measures taken by the candidate or tenderer are sufficient to restore reliability and to prevent the same and similar events in the future. The opinion shall not be requested if the opinion of the competent authority in the field of the relevant violation is available to the contracting authority in respect of the sufficiency of the measures taken by the candidate or tenderer to restore reliability and to prevent the same and similar events in the future or if the candidate or the tenderer has submitted such opinion.

(4) If the contracting authority considers the information provided in the explanation and the measures taken to be sufficient to restore reliability and to prevent the same and similar events in the future, it shall take the decision that the relevant candidate or tenderer has ensured reliability and should not be excluded from participation in the

procurement procedure in accordance with Section 42, Paragraph four, Clause 1 of this Law.

(5) If the candidate or tenderer should be excluded from participation in the procurement procedure because the reasons for exclusion referred to in Section 42, Paragraph two of this Law apply to the person referred to in Section 42, Paragraph three, Clauses 2 and 3 of this Law, reliability shall be ensured by the candidate or the tenderer replacing the person referred to in Section 42, Paragraph three, Clauses 2 and 3 of this Law with a person who corresponds to the requirements laid down in the contract or procurement procedure documents and to whom the reasons for exclusion specified in Section 42, Paragraph two of this Law are not applicable.

(6) If the candidate or tenderer fails to submit the documents referred to in Paragraph two of this Section within 10 working day after the day of sending a request or the contracting authority does not consider the explanation and evidence provided to be sufficient to restore reliability and to prevent the same and similar events in the future, or the candidate or tenderer does not replace the persons referred to in Section 42, Paragraph three, Clauses 2 and 3 of this Law in accordance with Paragraph five of this Section, the contracting authority shall take the decision to exclude the candidate or tenderer from further participation in the procurement procedure.

(7) The possibility provided for in this Section to ensure restoration of responsibility in accordance with Paragraphs two and three of this Section shall not be applicable to a person in respect of whom a final and unappealable judgement has entered into effect in his or her country of registration or permanent place of residence by which the person is excluded from participation in the procurement procedures and the time limit specified in the relevant judgement until which the person should be excluded from participation in the procurement procedures has not expired.

[3 March 2022]

#### **Section 44. Conformity for the Performance of Professional Activities**

(1) The contracting authority may request evidence that the relevant economic operator is registered, licensed or certified in accordance with the requirements of the laws and regulations of the country of registration or permanent residence.

(2) In case of a public service contract, insofar as the economic operators have to be authorised or have to be members of a specific organisation so that they might provide the particular service in their country of registration or permanent residence, the contracting authority may request evidence regarding such authorisation or membership.

(3) [30 April 2020]

(4) The contracting authority shall not determine the requirements in respect of the minimum time since the registration, licensing, or authorisation of an economic operator, or becoming of the member of any special organisation.

[30 April 2020]

#### **Section 45. Economic and Financial Standing**

(1) The contracting authority may impose requirements with respect to the economic and financial abilities of the economic operator, required to perform the procurement contract. Such requirements may refer to the following:

- 1) the minimum yearly financial turnover of the economic operator, including in the area covered by the procurement contract concerned;
- 2) the financial indicators of the economic operator;
- 3) the professional risk insurance.

(2) The minimum yearly financial turnover may be specified not exceeding two times the estimated contract price value, except for the case where the performance of the procurement contract is related to special risks attached to the nature of the construction work, services or supplies concerned. The contracting authority shall provide for the justification for the application of exception in the procurement procedure documents.

(3) If the subject-matter of the procurement contract is divided into parts, the contracting authority may determine the minimum yearly financial turnover of an economic operator by reference to groups of parts, if the procurement contract is awarded as several parts to be executed at the same time.

(4) If within the scope of a framework agreement a re-evaluation of the tenders is provided for, the minimum yearly financial turnover of the economic operator shall be determined on the basis of the estimated maximum contract price of procurement contracts the performance of which is envisaged at the same time, or, if the estimated maximum contract price of the procurement contracts is not known, on the basis of the estimated contract price of the framework agreement.

(5) In case of a dynamic purchasing system, the minimum yearly turnover of the economic operator shall be

determined on the basis of the estimated maximum contract price of procurement contracts to be awarded within that system.

(6) An economic operator may attest the conformity of the economic and financial standing thereof to the set requirements mainly by submitting the following documents:

1) certifications of a credit institution or, if necessary, evidence of the relevant professional risk insurance company;

2) a financial statement or an extract from the financial statement, if a financial statement is publicly available information in accordance with the laws and regulations of the country of registration of the economic operator;

3) a certification of its overall net turnover or, where appropriate, of turnover in the area covered by the procurement contract concerned, but not more than regarding three previous reporting years, insofar as the information on such turnover is available, taking into account the date on which the economic operator was established or commenced its activities.

(7) When laying down the requirements regarding the financial indicators of an economic operator, the contracting authority shall clearly indicate in the procurement procedure documents objective and non-discriminatory methods and criteria which will be used for determination of financial indicators.

(8) The economic operator may rely on the economic and financial capacities of other persons if it is necessary for the performance of the relevant contract, regardless of the legal nature of mutual relations thereof. In such case the economic operator shall prove to the contracting authority that it will have the necessary resources at its disposal, by submitting, for example, a certification of these persons or an agreement on the cooperation for the performance of the relevant contract. The contracting authority may request that the economic operator and the person on whose economic and financial capacities it relies are jointly responsible for the performance of the procurement contract.

(9) In the contract notice or in the invitation to tender, and also in the procurement procedure documents the contracting authority shall determine the documents which the economic operator or candidate submits to certify its conformity with the requirements set by the contracting authority. If the economic operator or the candidate is unable to submit the documents requested by the contracting authority due to substantiated reasons, it is entitled to certify its economic or financial standing with any other documents if the contracting authority considers these appropriate.

[26 April 2018; 30 April 2020]

#### **Section 46. Technical and Professional Abilities**

(1) The contracting authority may impose requirements with respect to the technical and professional abilities of the economic operator which are required to perform the procurement contract. Such requirements may refer to the personnel involved in the performance of the contract, experience and technical resources of the economic operator.

(2) In procurement procedures for supplies requiring siting or installation work, services or construction work, the professional ability of the economic operator to provide the service or to execute the installation or perform the construction work may be evaluated with regard to their skills, efficiency, and experience.

(3) The technical and professional abilities of the economic operator according to the nature, quantity, level of significance, and application of construction work, supply or service may be certified by the following:

1) information on the executed construction work by attaching statements and references on the execution of the most important works in the course of not more than five preceding years, except for the case when the contracting authority has determined a longer term for the certification of experience for the purpose of promotion of competition;

2) information on the most significant supplies performed or services provided by attaching statements and references for not more than three preceding years and indicating the amounts, time and recipients (public or private persons). If it is necessary for the promotion of competition, the contracting authority may determine a longer term for certification of experience;

3) information on the technical personnel or institutions responsible for the quality control, but, if construction work is to be performed, on the technical personnel or institutions which will be involved in the performance of construction work;

4) description of the technical equipment and resources used by the economic operator for ensuring quality, and also the description of training and research equipment of the economic operator;

5) information on the management and route control systems of the supply chain which the economic operator will use for the performance of the procurement contract;

6) where the products to be supplied or the services to be provided are of a complex nature or required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent public body of the

country of the economic operator or the service provider. The abovementioned check covers the production capacities of the economic operator or the technical capacity of the service provider and, where necessary, the quality control measures it will take;

7) documents certifying education or professional qualification of personnel of the performer of construction work or the service provider, if education or professional qualification of the personnel is not provided for as one of the tender evaluation criteria;

8) description of the measures that the economic operator is planning to take for the purposes of meeting the environmental protection requirements when performing the procurement contract;

9) information on the average number of employees of the performer of construction work and the service provider per year, and the number of the managerial staff during the last three years;

10) information on tools, installations, and technical equipment available to the performer of construction work and the service provider for the performance of the contract;

11) indication of the lot of the procurement contract which the economic operator intends to assign to a subcontractor;

12) with regard to the products to be supplied:

a) samples, descriptions, or photographs the authenticity of which must be certified if the contracting authority so requests;

b) a certificate of the quality control institution (the competence of which is recognised) which certifies the conformity of products with specific technical specifications or standards.

(4) The economic operator may rely on the technical and professional capacities of other persons if it is necessary for the performance of the relevant procurement contract, regardless of the legal nature of mutual relations thereof. In such case the economic operator shall prove to the contracting authority that it will have the necessary resources at its disposal, by submitting a certification of these persons or an agreement regarding the transfer of the necessary resources into the disposal of the economic operator. In order to certify the professional experience or the availability of the personnel meeting the requirements of the contracting authority, the economic operator may rely on the capacities of other persons only if such persons will perform the construction work or provide services for the execution whereof the relevant capacities are necessary.

(5) In the case of public works contract or public service contract, or if the public supply contract incorporates also the siting or installation of the products, the contracting authority may request that certain critical tasks be performed directly by the tenderer itself or by a member of the association of persons.

(6) In the contract notice or in the invitation to tender, and also in the procurement procedure documents the contracting authority shall determine the documents which the economic operator or candidate submits to certify its conformity with the requirements stipulated by the contracting authority.

[26 April 2018; 30 April 2020]

#### **Section 47. Quality Assurance Standards**

(1) If the contracting authority requests a certificate of an independent authority regarding conformity of an economic operator with the specific quality assurance standards, including provision of accessibility for persons with disabilities, it shall refer to the quality assurance systems which have been approved by authorities accredited in accordance with the procedures laid down in laws and regulations according to the European standards. The contracting authority shall recognise the certificate issued by an authority accredited in accordance with the procedures laid down in laws and regulations of another European Union Member State. If it has been impossible for the economic operator to obtain such certificates by the day of submission of an application or tender for reasons that are not attributable to that economic operator, the economic operator shall submit other evidence that equal quality assurance measures have been taken, and prove that the offered quality assurance measures conform to the requirements of the contracting authority.

(2) [30 April 2020]

(3) Paragraph one of this Section shall only apply to procurements the estimated contract price whereof is equal to or exceeds the contract price thresholds determined by the Cabinet.

[30 April 2020; 16 March 2023]

#### **Section 48. Environmental Management Standards**

(1) If the contracting authority requests a certificate of an independent authority regarding conformity of an economic operator with the environmental management standards or environmental management systems, it shall

refer to the Eco-Management and Audit Scheme (EMAS) or other systems which have been recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, or other environmental management standards that conform to the European or international environmental management system standards and have been approved by authorities accredited in accordance with the procedures laid down in laws and regulations. The contracting authority shall recognise the certificate issued by an authority accredited in accordance with the procedures laid down in laws and regulations of another European Union Member State. If it has been impossible for the economic operator to obtain such certificates by the day of submission of an application or tender for reasons that are not attributable to that economic operator, the economic operator shall submit other evidence of equivalent measures which should be ensured according to the environmental management system or standard required by the contracting authority.

(2) [30 April 2020]

(3) Paragraph one of this Section shall only apply to procurements the estimated contract price whereof is equal to or exceeds the contract price thresholds determined by the Cabinet.

[30 April 2020]

#### **Section 49. European Single Procurement Document**

(1) The contracting authority shall accept the European Single Procurement Document as a preliminary evidence of the conformity with the requirements for selection of tenderers and candidates laid down in the contract notice or the procurement procedure documents. If the economic operator has chosen to submit a European Single Procurement Document in order to confirm its conformity to the requirements for the selection of tenderers or candidates specified in the contract notice or procurement procedure documents, it shall also submit this document for each person on whose capacities it relies to confirm that the qualification thereof conforms to the requirements specified in the contract notice or procurement procedure documents, and for the subcontractor indicated by it the value of the construction work to be performed or services to be provided by which amounts to at least EUR 10 000. The association of economic operators shall submit a separate European Single Procurement Document regarding each member thereof.

(2) The economic operator may submit to the contracting authority the European Single Procurement Document which has already been submitted in another procurement procedure, provided that it certifies that the information contained therein is correct.

(3) A contracting authority is entitled to ask the tenderer and candidate at any moment during the procurement procedure to submit all or part of the documents certifying the conformity with the requirements for selection of tenderers and candidates laid down in the contract notice or the procurement procedure documents. The contracting authority shall not request such documents and information which is at its disposal or available in public databases.

(4) The procedures for use of the European Single Procurement Document in the procurement procedures shall be determined by the Cabinet. Sample forms of the European Single Procurement Document shall be determined by the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document.

[3 March 2022]

#### **Section 50. Tender Security and Performance Bond**

(1) The contracting authority is entitled to request that the tenderer submits or pays in a tender security and performance bond. The contracting authority shall specify in the procurement procedure documents the types, amount, and time limits of the tender security and performance bond, and also the provisions for submission and issue, payment and disbursement thereof.

(2) The amount of the tender security shall be determined commensurately, taking into account the estimated contract price of the relevant procurement and the subject-matter of the procurement contract, but not more than two per cent of the estimated contract price.

(3) The time limit of the tender security shall be determined commensurately, taking into account the complexity of the relevant procurement and the estimated time limit for evaluation of tenders, but it may not exceed six months counting from the day when tenders were opened.

(4) An economic operator is entitled to submit the tender security and performance bond as a bank guarantee, insurance policy or, if the contracting authority has provided for such an option in the procurement procedure documents, as payment of a sum of money in the account indicated by the contracting authority.

(5) The tender security shall be in effect for the shortest of the following time limits, except for the case referred to in Paragraph seven of this Section:

1) within the minimum time limit of validity of the tender security specified in the procurement procedure documents;

2) if it has been specified in the procurement procedure documents that the tenderer to whom the procurement contract has been awarded submits a performance bond prior to conclusion of the procurement contract - until the day when the selected tenderer submits such performance bond;

3) until the conclusion of the procurement contract.

(6) The provider of security shall disburse to the contracting authority or the contracting authority shall deduct the amount of the tender security paid in by the tenderer if:

1) the tenderer withdraws its tender during the period of validity of the tender security;

2) the tenderer to whom the procurement contract has been awarded has not submitted the performance bond provided for in the procurement procedure documents and the procurement contract to the contracting authority within the time limit stipulated by the contracting authority;

3) the tenderer to whom the procurement contract has been awarded does not sign the procurement contract or framework agreement within the time limit stipulated by the contracting authority.

(7) If it has been laid down in the procurement procedure documents and the procurement contract that the tenderer whose tender has been selected in accordance with the tender selection criterion submits a performance bond after conclusion of the contract, the tender security in relation to such person shall be in effect until the day when it submits such performance bond.

[26 April 2018]

#### **Section 51. Tender Evaluation Criteria**

(1) The contracting authority shall award the procurement contract to the tenderer whose tender has been evaluated as the most economically advantageous.

(2) The most economically advantageous tender shall be determined according to the following:

1) the price. In such case, the purchase price of goods, services, or construction work shall be evaluated;

2) the costs. In such case, the efficiency approach shall be applied, for example, by evaluating the costs of the life cycle;

3) the price referred to in Clause 1 or the costs referred to in Clause 2 of this Paragraph and the quality criteria related to the subject-matter of the procurement contract. If the price or costs are fixed in accordance with laws and regulations, the contracting authority shall only evaluate the quality criteria. In laying down the quality criteria related to the subject-matter of the procurement contract, the following shall be taken into account:

a) the quality, including technical merit, aesthetic and functional characteristics, accessibility, conformity with universal design, social and environmental protection requirements, innovative characteristics and trading conditions;

b) management structure of the performance the procurement contract and qualification and experience of the staff involved, if the qualification and experience of the staff involved can have a significant impact on the quality of performance of the procurement contract;

c) the after-sale services and technical assistance, the delivery provisions (such as delivery date, delivery process, and delivery period or period of completion of delivery).

(3) Quality criteria are linked to the subject-matter of the procurement contract if they relate to the construction work, supply or services at any stage of their life cycle, and also the factors involved in the process of performance of the construction work, production or trade of the products or provision of services, or any other process in a stage of their life cycle, even if such factors are not directly linked to the subject-matter of the procurement contract (for example, compliance with environmental protection requirements or social criteria during the provision of service, production of the product or performance of the construction work).

(3<sup>1</sup>) The contracting authority is not entitled to use only price for comparison and evaluation of tenders if the procurement contract is concluded for the following:

1) design. In such case, in addition to the price, the contracting authority shall evaluate at least the criteria related to the qualification and experience of the managerial staff, if such qualification requirements have not been brought forward, or the use of construction information modelling, or energy efficiency of the tendered solutions;

2) combined design and construction work. In such case, in addition to the price, the contracting authority shall

evaluate at least the criteria related to the qualification and experience of the managerial staff, if such qualification requirements have not been brought forward, or the use of construction information modelling, or energy efficiency of the tendered solutions;

3) electricity-consuming goods or products (in a public supply contract). In such case, in addition to the price, the contracting authority shall evaluate at least the criteria related to the electricity consumption of goods or products during the expected useful life thereof;

4) road transport vehicles. In such case, in addition to the price, the contracting authority shall take into account at least the conditions of Section 54 of this Law, except for the case where the contracting authority purchases a road transport vehicle to achieve the objectives specified in Section 54, Paragraph four of this Law.

(4) Except for the cases referred to in Paragraph 3.<sup>1</sup> of this Section, the contracting authority is entitled to use only price for comparison and evaluation of tenders if the procurement is carried out in accordance with the procedures laid down in Section 9 or 10 of this Law or if the prepared technical specification is detailed and other criteria are not relevant to the selection of the tender.

(5) The contracting authority shall determine such tender evaluation criteria as are not restricting the competition and are objectively comparable and evaluable.

(6) The contracting authority shall indicate in the procurement procedure documents all tender evaluation criteria in the order of importance thereof, the values of the criteria and, where appropriate, spread of values, and also the selection algorithm of a tender in accordance with these criteria and shall describe how each of the evaluation criteria indicated will be applied.

(7) The contracting authority shall indicate in the procurement procedure documents the decisive tender selection criterion according to which it will select the tender, if, prior to taking a decision on award of the procurement contract, it would detect that the score of at least two tenders is identical. The contracting authority is entitled to set as the decisive tender selection criterion such criterion which describes the conformity of the economic operator to the social protection requirements, including that the selected tender has been submitted by the economic operator being the member of the organisation of employers of national level and has concluded a collective agreement with the trade union which is the member of the trade union of a national level (if the tender has been submitted by the partnership or association of persons, the collective agreement must be concluded with each member of the partnership and each participant of the association of persons).

[26 April 2018; 24 March 2022; 16 March 2023]

## **Section 52. Life-cycle Costs**

(1) Life-cycle costs shall fully or partially cover the following costs over the life cycle of a product, service or construction work:

1) costs borne by the contracting authority or other users, such as:

a) costs relating to acquisition;

b) costs of use (for example, consumption of energy and other resources);

c) maintenance costs;

d) end of life costs (for example, collection and regeneration costs);

2) the costs incurred during the life cycle of the product, service or construction work and related to the environmental impact (such as the cost of emissions of greenhouse gases and of other pollutant emissions, costs of measures oriented towards mitigation and adaptation to climate change), if they may be expressed in monetary terms and verified.

(2) The contracting authority shall indicate in the procurement procedure documents the method for calculating the life-cycle costs and the data to be provided by the tenderers required for performance of the calculation.

(3) The methodology for the calculation of the costs related to environmental impact shall conform to the following conditions:

1) it is based on objectively verifiable and non-discriminatory criteria;

2) it is accessible to all interested persons;

3) the data necessary for calculations are at disposal of the economic operators, including at the disposal of the economic operators registered in the country other than the European Union Member State but which is a contracting party to the Agreement on Government Procurement of the World Trade Organisation or other international agreements binding on the European Union, or are easily accessible.

### **Section 53. Abnormally Low Tender**

(1) If a tender for a specific public works, supply, or service contract appears to be abnormally low, the contracting authority shall request the tenderer to provide an explanation of the price or costs proposed, and also information regarding the average hourly tariff rates in profession groups of employees of the tenderer and the subcontractors indicated in its tender.

(2) The explanation may specifically relate to:

- 1) the costs of the production process, construction method or of the services to be provided;
- 2) the technical solutions chosen and any exceptionally favourable conditions available to the tenderer for the execution of construction work, the supply of the products or provision of services;
- 3) the qualities and originality of the construction work, products or services proposed;
- 4) compliance with obligations laid down in the laws and regulations governing the fields of environmental, social, and labour law, and labour protection, and collective agreements;
- 5) the obligations towards subcontractors;
- 6) the aid for commercial activity received by the tenderer.

(3) The contracting authority shall, upon consultation with the tenderer, assess the explanations provided by it.

(4) The contracting authority shall reject the tender as abnormally low, if the provided explanation does not satisfactorily account for the low level of price or costs proposed by the tenderer, or if the price or costs do not cover the costs related to compliance with obligations laid down in the laws and regulations governing the fields of environmental, social, and labour law, and labour protection, and collective agreements.

(5) If the contracting authority establishes that a tender is abnormally low because the tenderer has received aid for commercial activity, the tender may be rejected after consultations with the tenderer only on the basis of the fact that the tenderer is unable to prove, within a reasonable time period stipulated by the contracting authority, that the received aid for commercial activity is compatible with the internal market within the meaning of Article 107 of the Treaty on the Functioning of the European Union. If the contracting authority rejects a tender due to this reason, it shall inform the European Commission and the Procurement Monitoring Bureau of the rejection of the tender and the reason for rejection.

(6) The contracting authority as well as the economic operators shall, in accordance with the procedures stipulated by the Cabinet, obtain from the State Revenue Service the information regarding themselves referred to in Paragraph one of this Section as regards the average hourly tariff rates in profession groups of employees in respect of a person registered or permanently residing in Latvia, using the information system determined by the Cabinet. The contracting authority is entitled to receive the abovementioned information from the State Revenue Service without asking consent of the tenderer and the subcontractors indicated in the tender thereof.

(7) The Cabinet shall determine:

- 1) the information system where the information referred to in Paragraph one of this Section is to be obtained from the State Revenue Service, and also the procedures for maintaining and using such system;
- 2) the objective of processing and scope of the information to be verified and referred to in Paragraph one of this Section;
- 3) the procedures by which the information system referred to in Clause 1 of this Paragraph shall receive information from the information system maintained by the institution referred to in Paragraph six of this Section and process it.

[3 March 2022]

### **Section 54. Special Rules for Procurements in the Field of Road Transport**

(1) The contracting authority, when organising procurement of road transport vehicles of category M and N as defined in Article 4(1)(a) and (b) of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (hereinafter - Regulation No 2018/858), shall take into consideration the impact of their operation on energy and the environment and, for that purpose, shall assess at least the energy consumption and the amount of emissions of carbon dioxide, nitrogen oxides, non-methane hydrocarbons, and particulate matter.

(2) [2 September 2021]

(3) [2 September 2021]

(4) When organising procurement of road transport vehicles, the contracting authority shall ensure that:

1) in each procurement in which it is planned to purchase road transport vehicles of category M<sub>1</sub>, M<sub>2</sub>, or N<sub>1</sub> at least the percentage of clean road transport vehicles specified in this Law is purchased;

2) in each procurement in which it is planned to purchase road transport vehicles of category N<sub>2</sub> or N<sub>3</sub> at least the percentage of clean road transport vehicles specified in this Law is purchased;

3) in each procurement in which it is planned to purchase class I or class A road transport vehicles of category M<sub>3</sub> at least the percentage of clean road transport vehicles specified in this Law is purchased, and at least half of the purchased clean class I and class A road transport vehicles of category M<sub>3</sub> are such class I and class A road transport vehicles of category M<sub>3</sub> that meet the definition of a zero-emission heavy duty vehicle.

(5) A ministry, as the leading (highest) institution in the relevant sector of public administration, or a local government may determine by a decision that it itself, the subordinate institutions determined thereby, or capital companies may, as contracting authorities, purchase a lower percentage of clean road transport vehicles or not purchase them at all. In such a case, the ministry or local government shall ensure that it itself, the subordinate institutions determined thereby, or capital companies, as contracting authorities, jointly purchase at least the percentage of clean road transport vehicles specified in this Law within a certain period of time.

(6) The requirements referred to in Paragraph four of this Section shall also be applicable to public service contracts covered by CPV codes 60112000-6, 60130000-8, 60140000-1, 90511000-2, 60160000-7, 60161000-4, 64121100-1, and 64121200-2 if the expected contract price is equal to or higher than the contract price thresholds stipulated by the Cabinet.

(7) The requirements of this Section shall not be applicable to the procurement of the road transport vehicles referred to in Article 2(2)(a), (b), (c), and (d), Article 2(3)(a), (b), and (c) and Annex I, Part A, points 5.2, 5.3, 5.4, 5.5, and 5.7 of Regulation No 2018/858.

*[26 April 2018; 2 September 2021 / See Paragraphs 17 and 18 of Transitional Provisions]*

### **Section 55. Special Rules with Respect to Energy Efficiency**

(1) When organising procurements of products or services the estimated contract price whereof is equal to or exceeds the contract price thresholds determined by the Cabinet, the institutions of direct administration shall purchase only the products and services with high energy-efficiency level. The institution of direct administration may purchase products or services of a lower energy-efficiency level, taking into account the considerations linked to profitability, technical suitability and sustainability.

(2) The Cabinet shall determine the requirements to be specified in the procurements organised by the institutions of direct administration with respect to the energy efficiency of the products and services.

(3) If the service provider, for the purposes of provision of the relevant service forming the basis for the conclusion of the public service contract, acquires the products not subject to the requirements laid down in Paragraph two of this Section, then it shall not be mandatory to set the requirements with respect to the energy efficiency of the service.

(4) If the institution of direct administration purchases a set of products subject to the laws and regulations specified in the requirements referred to in Paragraph two of this Section regarding labelling of the products related to the consumption of energy and other resources, and such laws and regulations determine the labelling requirements for the set of products in question, then the requirements may be set with respect to the combined energy efficiency of the products and not to the energy efficiency of each separate product. In such case, the institution of direct administration shall purchase the set of products meeting high energy-efficiency level in accordance with the provisions of the laws and regulations regarding the labelling of the products related to consumption of energy and other resources.

(5) The institutions of direct administration shall fulfil the obligation specified in Paragraph one of this Section by incorporating the energy efficiency requirements in the technical specification or other procurement procedure documents. The contracting authority, when evaluating the submitted tenders, may grant points within the scope of the evaluation criteria by evaluating the energy consumption during the lifetime of the product or service or the conformity thereof to a possibly higher energy-efficiency class.

(6) The rules laid down in this Section shall not apply to procurements in the field of construction work.

## **Chapter VI**

### **Application of the Framework Agreement, Dynamic Purchasing System,**

## Electronic Auction, and Electronic Catalogues

### Section 56. Framework Agreement

(1) In order to conclude a framework agreement, the contracting authority shall observe the procurement procedures provided for in this Law in all stages up to the conclusion of a procurement contract within the scope of a framework agreement. The contracting authority shall determine the participants of the framework agreement, taking into account the specified tender evaluation criteria.

(2) Procurement contracts shall be concluded within the scope of the framework agreement in accordance with the provisions of Paragraphs five, six, and seven of this Section. This procedure shall only apply to such contracting authorities and economic operators which have been specified as participants in the provisions of the framework agreement on the date of conclusion thereof. Only such contracting authorities which are indicated in the contract notice, invitation to submit an application or in the procurement procedure documents shall be specified as the participants of the framework agreement.

(3) When concluding the procurement contracts within the scope of the framework agreement, the parties shall not make substantial amendments to the provisions of the framework agreement, particularly in the cases provided for in Paragraph five of this Section.

(4) The framework agreement shall be concluded for a period of time up to four years, except for the cases when a longer period of time is necessary due to objective reasons (particularly, if it is required by the subject-matter of the contract). The contracting authority shall not use the framework agreement in order to restrict competition.

(5) If the framework agreement is concluded with one economic operator, procurement contracts within the scope of this agreement shall be concluded in accordance with the provisions of the framework agreement. In order to conclude these procurement contracts, the contracting authority may consult with the economic operator in writing, if necessary, requesting that the tender be supplemented.

(6) If the framework agreement is concluded with more than one economic operator, the specific procurement contracts within the scope of the framework agreement shall be concluded in one of the following ways:

1) following the provisions of the framework agreement and without re-evaluating the tender, if all the necessary conditions for the provision of the construction work, services, and supplies concerned and the objective conditions for determining which of the economic operators shall perform them are provided for in the provisions of the framework agreement;

2) following the provisions of the framework agreement, inter alia, also with respect to the parts of the framework agreement, and without re-evaluating the tender or with re-evaluating the tender, if all the necessary conditions for the provision of the construction work, services, and supplies concerned are provided for in the provisions of the framework agreement and the cases and provisions for direct conclusion of procurement contracts and cases for re-evaluating the tenders are determined;

3) evaluating the tenders, if all the necessary conditions for the provision of the construction work, services, and supplies concerned are not provided for in the provisions of the framework agreement.

(7) If all the necessary conditions are not provided for in the provisions of the framework agreement and the tenders have to be re-evaluated, these provisions shall be supplemented on the basis of the same provisions (if necessary, regulated in more detail) or other provisions in accordance with the technical specifications of the framework agreement in accordance with the following procedure:

1) in order to conclude the specific procurement contract, the contracting authority shall consult in writing with the economic operators which are capable of implementing the procurement contract concerned;

2) the contracting authority shall determine a time limit which is sufficient for the submission of the relevant tender, taking into account such factors as the complexity of the subject-matter of the procurement contract and the time required for the preparation of tenders;

3) the tenderers shall submit a tender in writing and the contracting authority shall not open them until the expiry of the time limit determined for the submission;

4) the contracting authority shall conclude the specific procurement contract with the tenderer that has submitted the most appropriate tender on the basis of the tender evaluation criteria provided for in the framework agreement.

### Section 57. Dynamic Purchasing System

Procurements within the dynamic purchasing system shall be subject to a restricted procedure. The Cabinet shall determine the rules and procedures for the application of the dynamic purchasing system.

## Section 58. Application of Electronic Auctions

(1) In case of an open procedure, restricted procedure, and competitive procedure with negotiation, the contracting authority may decide that the selection of a tender shall be preceded by an electronic auction if the procurement procedure documents, in particular the technical specifications, can be prepared with precision. An electronic auction may also be organised prior to the selection of a tender within the scope of the framework agreement in accordance with Section 56, Paragraph six, Clauses 2 and 3 of this Law, and also prior to the selection of a tender within the scope of the dynamic purchasing system.

(2) An object of an electronic auction may be:

1) the price or the price and the new values of the features of the tenders indicated in the procurement procedure documents, if the tender evaluation criterion is ratio of the price or cost-effectiveness and the quality criteria linked to the subject-matter of the procurement contract, or the lowest cost using a cost-effectiveness approach;

2) the price, if the tender evaluation criterion is solely the price.

(2<sup>1</sup>) Public works contracts or public service contracts whose subject-matter is intellectual work (such as the designing) shall not be the object of electronic auctions.

(3) If the decision is taken to hold an electronic auction, the contracting authority shall indicate it in the contract notice.

(4) If an electronic auction is held, the procurement procedure documents, in addition to other information, shall include also the following:

1) the characteristics of the objects of electronic auction, provided that such characteristics are quantifiable, and the value thereof can be expressed in figures or percentages;

2) any thresholds (which may be submitted and modified) taking into account the technical specifications of the subject-matter of the procurement contract;

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

4) the relevant information concerning the organisation of the electronic auction;

5) the conditions to be complied with by the tenderers within the electronic auction and, in particular, the minimum differences which will, where appropriate, be required;

6) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

(5) Prior to the commencement of an electronic auction, the contracting authority shall make a full initial evaluation of the tenders in accordance with the specified tender evaluation criteria.

(6) The contracting authority shall concurrently invite all tenderers which have submitted admissible tenders to submit new prices or prices and values by electronic means. The invitation shall contain all the necessary information on the individual connection to the electronic equipment being used in the auction and shall state the date and time when the electronic auction will be initiated. The electronic auction may take place in a number of successive phases. It shall not be initiated earlier than two working days after sending of the invitation to participate in this auction.

(7) A summary of the evaluation of tenders shall be appended to the invitation and the invitation shall include the mathematical formula or algorithm to be used in the electronic auction which reflects the notional values of all criteria and which, taking into account the initially specified proportion of criteria, shall determine the re-ranking of positions, using the newly submitted values and prices or only prices. Except for the case where the tender is evaluated on the basis of price alone, the referred to formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the contract notice or in the procurement procedure documents. If the numeric values assigned to the criteria are specified within a certain range, they shall be expressed to a specified value. If variants of tenders are authorised, a separate formula shall be provided for each variant.

(8) Throughout each phase of an electronic auction the contracting authority shall continuously communicate information to all tenderers to enable them to ascertain their relative rankings at any moment. The contracting authority may, where this is provided for in the procurement procedure documents, communicate also information on other prices or values submitted. The contracting authority may also at any time announce the number of participants in the particular phase of the auction, however, it is not entitled to disclose the identities of the participants.

(9) The contracting authority shall close an electronic auction (observing one or several conditions):

1) at the previously indicated date and time;

2) after receipt of the final bid, if the time indicated in the invitation to auction has expired and no new bid is placed during this period;

3) if all of the previously indicated phases in the auction have been completed.

(10) If the contracting authority wishes to close the auction in accordance with the provisions of both Clause 2 and Clause 3 of Paragraph nine of this Section, it shall indicate the time for each phase of the auction in the invitation to auction.

(11) When the electronic auction is completed, the contracting authority, using the results of this auction, shall select a tender in accordance with the specified tender evaluation criteria.

[26 April 2018]

### **Section 59. Application of Electronic Catalogues**

(1) If it is provided that the tenders will be submitted by using only electronic means of communication, the contracting authority may require the tender to be presented in the form of an electronic catalogue or to include an electronic catalogue in the tender. If the tenders are accepted or required in the form of an electronic catalogue, the contracting authority shall indicate it in the contract notice. The contracting authority shall indicate in the procurement procedure documents all the necessary information for the receipt of electronic documents in accordance with Section 36 of this Law, inter alia, concerning the necessary form, the electronic equipment to be used, the technical connection arrangements, and specifications for the catalogue.

(2) A candidate or tenderer shall create an electronic catalogue in accordance with the requirements laid down in the procurement procedure documents. Tenders in the form of an electronic catalogue may be accompanied by other documents completing the tender.

(3) The contracting authority may provide that the re-evaluation of tenders will take place on the basis of updated catalogues, provided that a framework agreement has been concluded with more than one economic operator and the tenders had been submitted in the form of electronic catalogues by using one of the following procedures:

1) the contracting authority shall invite the tenderers to resubmit their electronic catalogue which is adapted to the requirements of the procurement contract in question;

2) the contracting authority shall notify tenderers that it intends to create from the submitted electronic catalogues the tenders adapted to the requirements of the procurement contract in question in accordance with the methodology for creation of the tenders as specified in the framework agreement, and shall specify the date and time of creation of the tenders and shall notify tenderers of the rights to express objections against the creation of such tenders and shall allow for an adequate period for expression of objections.

(4) The contracting authority shall use the procedure referred to in Paragraph three, Clause 1 of this Section, if the tenderer objects against the use of the procedure referred to in Paragraph three, Clause 2 of this Section.

(5) The contracting authority shall notify the tenderer of the created tender and the content thereof and shall allow for an adequate period for expression of objections or approval of the tender.

(6) The contracting authority may provide that within the dynamic purchasing system the tenders for a specific procurement contract shall be presented in the form of an electronic catalogue. If the procedure referred to in Paragraph three, Clause 2 of this Section is used within the scope of the dynamic purchasing system, the contracting authority shall attach to the request for participation in the dynamic purchasing system an electronic catalogue meeting the requirements determined in the procurement procedure documents to be completed by the candidates after the contracting authority has informed of the use of the procedure referred to in Paragraph three, Clause 2 of this Section.

## **Chapter VII Conclusion and Performance of the Procurement Contract**

### **Section 60. Procurement Contract**

(1) A procurement contract shall determine the legal relations between the contracting authority or contracting authorities and an economic operator or economic operators. A procurement contract may determine the legal relations between the contracting authority or contracting authorities and an economic operator or economic operators, and subcontractors.

(2) When preparing the procurement contract, the contracting authority shall take into account the requirements of the laws and regulations with respect to the construction work, supplies and services included in the subject-matter of the procurement and shall specify in the procurement contract:

- 1) the name of the contracting authority;
- 2) the name of the economic operator;
- 3) the subject-matter of the procurement, the scope thereof, the quality requirements and other necessary information;
- 4) the contract price and the manner of payment thereof, and also, if provided by the contracting authority, manner of payment for subcontractors in the case referred to in Section 63 of this Law;
- 5) the time limit, location, and conditions for the performance of the procurement contract;
- 6) liability of the contracting parties for the losses caused and the failure to perform the procurement contract;
- 7) the procedures for the replacement of the subcontractors and staff specified in the tender and attraction of new subcontractors and staff in accordance with the provisions of Section 62 of this Law;
- 8) the procedures for amending the procurement contract and the procedures by which the withdrawal from the procurement contract shall be permissible;
- 8<sup>1</sup>) the condition that in case the economic operator or - if the contracting authority has provided for the direct payments to the subcontractors in accordance with Section 63, Paragraph five of this Law - the subcontractor submits an electronic invoice, it shall conform to the laws and regulations regarding the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling. In accordance with the laws and regulations regarding the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling, additional key elements to be mandatorily indicated in the electronic invoice may be specified in the procurement contract.

9) other rules.

(3) The contracting authority is entitled to provide for special performance conditions of the procurement contract mainly with respect to economic and social circumstances, innovations or environmental protection requirements, provided that such provisions are not contrary to the directly applicable legal acts of the European Union in the abovementioned fields and are indicated in the technical specifications or the contract notice, or the procurement procedure documents and are linked to the subject-matter or the relevant procurement contract. The contracting authority, when preparing the procurement contract, may use the guidelines for performance of procurements and conclusion of contracts, and also the standard form contracts developed by branch experts or organisations. When concluding the procurement contract, the commensurate observance of the rights and legal interests of the contracting parties shall be ensured.

(4) A procurement contract shall be concluded for a time period not longer than five years. The contracting authority is entitled to conclude a procurement contract for a longer period of time if any of the following conditions exists:

1) it is provided for in another law;

2) it is substantially necessary for ensuring the performance of the procurement contract due to technical or economic circumstances directly related to the subject-matter of the procurement contract. In such case prior to commencing the procurement, the contracting authority, which is an institution of direct administration, must receive a permit of the Cabinet and the contracting authority, which is an institution of indirect administration, - a permit of the body of the relevant derived public entity.

(5) In the cases referred to in Paragraph four of this Section, the contracting authority shall indicate the justification in the contract notice, the contract notice in relation to social and other special services, or the notice on the planned contract for the existence of such circumstances which authorise the conclusion of the procurement contract for a longer period of time.

(6) A procurement contract or framework agreement shall be concluded not earlier than on the next working day after the end of the waiting period, if a complaint regarding violations of the procurement procedure has not been submitted to the Procurement Monitoring Bureau in accordance with the procedures laid down in Section 68 of this Law.

(7) The waiting period referred to in Paragraph six of this Section shall be:

1) 10 days after the day when the information referred to in Section 37, Paragraph two of this Law has been sent to all the tenderers electronically by using a secure electronic signature, or attaching a scanned document to the electronic mail, by fax or handed over in person, and one additional working day;

2) 15 days after the day when the information referred to in Section 37, Paragraph two of this Law has been sent, if it has been sent by post to at least one tenderer, and one additional working day.

(8) If the tenth day referred to in Paragraph seven, Clause 1 and the fifteenth day referred to in Clause 2 of this Section is Saturday, Sunday or statutory public holiday, a waiting period shall be extended for one working day.

(9) A procurement contract or a framework agreement may be concluded without complying with Paragraph six of this Section if:

1) the procurement contract is awarded to the sole tenderer and there are no candidates which would be entitled to submit a complaint in accordance with the procedures laid down in Section 68, Paragraph two of this Law;

2) the procurement of the social and other special services referred to in Annex 2 to this Law is being organised due to extraordinary circumstances unforeseen by the contracting authority;

3) the negotiated procedure is being applied;

4) the contract is concluded within the scope of a framework agreement in accordance with Section 56 or 59 of this Law;

5) the contract is concluded within the scope of the dynamic purchasing system in accordance with Section 57 of this Law.

(10) Not later than within 10 working days following the day when the procurement contract, the framework agreement or the amendments thereof come into effect, the contracting authority shall post on its buyer profile the following, in conformity with the requirements of commercial secret protection laid down in laws and regulations and ensuring the accessibility during the entire term of the procurement contract or framework agreement, but not less than the storage period for the procurement documentation specified in Section 40, Paragraph five of this Law:

1) the procurement contract or the framework agreement;

2) a procurement contract concluded on the basis of the framework agreement or within the scope of the dynamic purchasing system. If procurement contracts within the scope of the framework agreement or dynamic purchasing system have been concluded in the electronic environment according to the rules for establishing the dynamic purchasing system or of the framework agreement and are stored in the State electronic information system, the procurement contract or amendments thereto need not be posted on the buyer profile;

3) if the procurement contract is made of provisions of a standard contract which is publicly available and protected by copyright - an indication to these provisions of a standard contract, and also the documents which are a part of the procurement contract and with which the relevant provisions of a standard contract are amended or supplemented;

4) amendments to the documents referred to in Clauses 1, 2, and 3 of this Paragraph, and the justification for amendments referred to in Section 61, Paragraphs two and three of this Law.

(11) If procurement is carried out by the central purchasing body, it shall agree with the contracting authorities for the needs of which the procurement is carried out who will post the documents referred to in Paragraph ten of this Section on the buyer profile. If the contracting authorities fail to agree with the central purchasing body, the central purchasing body shall post the documents referred to in Paragraph ten of this Section on its buyer profile.

*[26 April 2018; 14 February 2019; 21 February 2019; 24 March 2022; 5 October 2023]*

### **Section 60.<sup>1</sup> Contract Register**

The Procurement Monitoring Bureau shall, within one working day after publishing the contract award notice, the contract award notice in relation to social and other special services, the informative contract award notice, the notice on changes during the term of the contract, or the notice on the performance of the contract, make or supplement respectively an entry in the Contract Register on the concluded procurement contract, the framework agreement, or amendments thereto and the performance of the contract with the information indicated in the relevant notice.

*[5 October 2023]*

### **Section 61. Amendments to the Procurement Contract or the Framework Agreement**

(1) Amendments to the procurement contract or the framework agreement shall be permissible, if they do not alter the overall nature of the procurement contract or the framework agreement (type and purpose specified in the procurement procedure documents) and meet one of the following instances:

1) amendments are non-substantial;

2) amendments are substantial and are introduced only in the cases referred to in Paragraph three of this Section;

3) amendments are introduced in the case referred to in Paragraph five of this Section, irrespective of whether they

are substantial or non-substantial.

(2) Amendments to a procurement contract or framework agreement shall be substantial in any of the following cases:

1) the amended provisions of the procurement contract or the framework agreement, had they been part of the initial procurement procedure documents, would have allowed for submission of different tenders or participation or selection of other candidates or tenderers in the procurement procedure;

2) the economic balance (for example, risk allocation and the means compensating it) provided for in the procurement contract or the framework agreement is changed in the interests of the tenderer selected within the procurement procedure;

3) the subject-matter of the procurement contract is extended to such supplies, services, or construction work which are not provided for in the initially concluded procurement contract or framework agreement;

4) the tenderer (contracting party) selected within the procurement procedure is replaced by another economic operator.

(3) Substantial amendments to the procurement contract or the framework agreement shall be permissible in the following cases:

1) the procurement procedure documents and the procurement contract or the framework agreement clearly and unequivocally provides for a possibility of amendments, the cases when amendments are permissible, the scope and essence of amendments. Such provisions on amendments may refer to the revision of the contract price, exercise of the use of options, and also other aspects of the performance of the procurement contract or the framework agreement;

2) the contracting authority needs additional construction work, services, or supplies to perform the initial procurement contract or framework agreement which were not included in the initial procurement, and a change of the economic operator would cause a significant increase in costs, and it cannot be performed due to economic or technical reasons such as interchangeability or interoperability with the equipment, services, or installations purchased under the initial procurement, or the change of the economic operator would cause significant inconveniences;

3) the amendments to the procurement contract are necessary due to such reasons which the contracting authority could not foresee in advance;

4) the tenderer selected in the procurement procedure (the contracting party) is replaced by another economic operator in accordance with the provisions of the laws and regulations in the field of commercial law regarding reorganisation of merchants and transfer of undertaking, and such economic operator conforms to the qualification requirements laid down in the contract notice or procurement procedure documents, and the reasons for exclusion laid down in Section 42, Paragraph two of this Law are not applicable thereto.

(4) The increase of contract price set as the sum of the monetary values of all successive amendments may not exceed 50 per cent of the initial contract price of the procurement contract with respect to each case referred to in Paragraph three, Clauses 2 and 3 of this Section.

(5) Amendments to the procurement contract or the framework agreement shall be permissible, if the value of the amendments to the procurement contract or the framework agreement determined as the sum of monetary value of all consecutively made amendments (without taking into account the value of amendments made in accordance with Paragraph three, Clauses 1, 2, and 3 of this Section) does not concurrently reach:

1) the contract price thresholds determined by the Cabinet;

2) 10 per cent of the initial contract price of the procurement contract or the framework agreement in case of a public supply and public service contract and 15 per cent of the initial contract price of the procurement contract or the framework agreement in case of a public works contract.

(6) If the procurement contract provides for the indexation of the contract price, the initial contract price of the procurement contract or the framework agreement referred to in Paragraphs four and five of this Section shall be the contract price which has been indexed.

(7) The contracting authority shall publish the modification notice during the term of the contract in accordance with Section 33 of this Law.

(8) The procurement procedures laid down in this Law shall be applicable to the amendments to the procurement contract and the framework agreement which do not correspond to the cases referred to in Paragraph one of this Section.

[26 April 2018; 24 March 2022; 3 March 2022; 5 October 2023]

## **Section 62. Change of the Staff and Subcontractors Involved in the Performance of a Procurement Contract and Attraction of the new Staff and Subcontractors**

(1) The tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) is not entitled to change the staff and subcontractors specified in the tender, and also to involve additional staff and subcontractors in performance of the procurement contract without coordination with the contracting authority. The contracting authority may ask for the opinion of the staff and subcontractors regarding the reasons for change. The contracting authority may provide in the procurement contract or the provisions of the framework agreement that the tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) has an obligation to coordinate with the contracting authority the involvement of additional staff in the performance of the procurement contract.

(2) The change of the staff specified in the tender shall only be permissible in accordance with the procedure and in the cases specified in the procurement contract or the framework agreement. The contracting authority shall not agree to the change of the staff specified in the tender in cases laid down in the procurement contract or the framework agreement and in cases when the offered staff does not meet the requirements specified for the staff in the procurement procedure documents or it does not have at least the same qualification and experience as the staff that has been evaluated when determining the most economically advantageous tender.

(3) The contracting authority shall not agree to the change of the subcontractor specified in the tender, if any of the following conditions applies:

1) the tendered subcontractor does not meet the requirements specified for the subcontractor in the procurement procedure documents;

2) the subcontractor on whose capacities the selected tenderer has relied upon to confirm that the qualification thereof conforms to the requirements laid down in the contract notice or procurement procedure documents is replaced and the tendered subcontractor does not have at least the same qualifications to which the tenderer selected in the procurement procedure has referred to in confirming the conformity thereof to the requirements laid down in the procurement procedure, or it corresponds to the reasons for exclusion of tenderers referred to in Section 42, Paragraph two of this Law;

3) the tendered subcontractor the value of the constructions works to be performed or the services to be provided of which is at least EUR 10 000 conforms to the reasons for exclusion of tenderers referred to in Section 42, Paragraph two of this Law;

4) as a result of the change of the subcontractor, there would be such amendments made in the tender of the tenderer, which, had they been initially included therein, would have influenced the selection of the tender in accordance with the tender evaluation criteria specified in the procurement procedure documents.

(4) The contracting authority shall not agree to the attraction of a new subcontractor in case, if such changes, had they been made in the initial tender, would have influenced the selection of the tender in accordance with the tender evaluation criteria specified in the procurement procedure documents.

(5) In verifying conformity of the new subcontractor, the contracting authority shall apply the provisions of Section 42 of this Law and carry out verification of the reasons for exclusion on the day when the contracting authority decides to authorise the economic operator to change the subcontractor or to attract a new subcontractor to ensure performance of the contract. The time limits referred to in Section 42, Paragraph four, Clauses 2, 3, and 4 of this Law shall be counted from the day when the request for the change of a subcontractor is submitted to the contracting authority.

(6) The contracting authority shall, within as short period of time as possible, but not later than within five working days after it has received all information and documents necessary for taking of a decision in accordance with the provisions of this Section, take a decision to permit or refuse the change of the staff or subcontractors of the tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) or attraction of new subcontractors in the performance of the procurement contract.

[3 March 2022]

## **Section 63. Subcontractors**

(1) In order to ascertain that an economic operator will be able to perform a procurement contract, the contracting authority is entitled to request that the tenderer indicate in its tender those parts of the procurement contract which it will transfer to subcontractors for performance, and also all anticipated subcontractors.

(2) The contracting authority shall request the tenderer to indicate in its tender all those subcontractors the value of the construction work to be performed or the services to be provided by which is at least EUR 10 000, and the lot of the procurement contract to be transferred for performance to each such subcontractor.

(3) The total value of the construction work to be performed or the services to be provided by the subcontractor shall be determined, taking into account the value of the construction work to be performed or services to be provided by the subcontractor and by all associate undertakings thereof within the scope of the relevant procurement. For the purposes of this Section, the associate undertaking shall be considered to be the capital company in which, in accordance with the laws and regulations governing the status of group of companies, the subcontractor has a decisive influence, or which has a decisive influence in the subcontractor, or a capital company in which another company has the decisive influence and which concurrently has a decisive influence in the relevant subcontractor.

(4) In the case of public service contract, if the services are provided at a facility of the contracting authority, and in the case of public works contract, the contracting authority shall request that after the award of the procurement contract and at the latest when the performance of the procurement contract commences, the tenderer submit a list of subcontractors (if any) involved in the construction work or service provision, indicating the name, contact details and a person with the right of representation of subcontractors, insofar as such information is known. The list shall also specify the subcontractors of the subcontractors of the economic operator. The contracting authority shall require the economic operator to notify the contracting authority of any changes to this information during the performance of the procurement contract, and also to supplement the list with information on any subcontractor which it later involved in the performance of construction work or provisions of services.

(5) The contracting authority may provide in the procurement procedure documents that in case of public works contract, upon request of a subcontractor, the payments for the services, supplies or construction work provided by the subcontractor to the economic operator who has accepted them and the term for payment whereof is past due, if the contracting authority has failed to disburse the entire contract price due to the economic operator, shall be transferred by the contracting authority, on the basis of an invoice submitted by the subcontractor, directly to the subcontractor and the next payment to the economic operator shall be reduced by the relevant amount. Prior to the payment of the invoice of the subcontractor, the contracting authority shall inform the economic operator of such request and shall allow it to express an opinion on the justification of the request. The procedures for making payments and exchanging information with the economic operator and subcontractors thereof shall be provided for by the contracting authority in the procurement contract.

(6) The procedures laid down in Paragraphs one and five of this Section shall be without prejudice to the issues related to the liability of the economic operator for the performance of the procurement contract.

[3 March 2022]

#### **Section 64. Early Termination of a Procurement Contract**

(1) The contracting authority is entitled to unilaterally withdraw from the procurement contract prior to the expiry of the term thereof, by sending a written notice to the economic operator in the cases provided for in the procurement contract and in the following cases:

1) substantial amendments have been made to the procurement contract which are not permissible in accordance with Section 61, Paragraph one of this Law;

2) the procurement contract has not been concluded in accordance with the provisions specified in the procurement procedure documents, or substantial provisions of the draft procurement contract contained in the procurement procedure documents have been amended;

3) at the time of awarding the procurement contract award, the economic operator has been subject to any of the reasons for exclusion referred to in Section 42, Paragraph two of this Law and should have been excluded from the procurement procedure;

4) the procurement contract should not have been awarded to the economic operator due to a serious infringement of the obligations provided for in the Treaty on European Union, Treaty on the Functioning of the European Union and this Law which has been detected by the Court of Justice of the European Union in accordance with the procedures laid down in Article 258 of the Treaty on the Functioning of the European Union.

(2) In the event of an early termination of the procurement contract in cases referred to in Paragraph one of this Section, the contracting authority shall pay for the construction work and supplies actually performed and the services actually provided by the economic operator. The contracting authority and the economic operator shall agree upon the amount and procedures for payment.

[3 March 2022]

## **Chapter VIII Procurement Monitoring Bureau**

### **Section 65. Legal Status of the Procurement Monitoring Bureau**

(1) The Procurement Monitoring Bureau is an institution of direct administration under the supervision of the Ministry of Finance, operating in accordance with this Law, the By-laws of the Procurement Monitoring Bureau, and other laws and regulations.

(2) The operation of the Procurement Monitoring Bureau is financed from the State budget.

(3) The Procurement Monitoring Bureau is functionally the highest institution in relation to the implementation of the function referred to in Section 66, Paragraph one, Clause 2 of this Law.

#### **Section 66. Functions of the Procurement Monitoring Bureau**

(1) The Procurement Monitoring Bureau shall have the following functions:

1) to monitor the conformity of the procurement procedures, design contests referred to in Paragraph one of Section 8 of this Law and the procurements specified in Section 10 of this Law to the requirements of laws and regulations;

2) to examine complaints regarding infringements of the procurement procedures, design contests referred to in Paragraph one of Section 8 of this Law and the procurements referred to in Section 10 of this Law;

3) to provide methodological assistance and consultations, and to organise training for contracting authorities, product vendors, lessors, performers of construction work, and service providers regarding the application of the laws and regulations governing public procurement;

4) to examine administrative violation cases in the field of public procurements and public and private partnership and to impose administrative sanctions;

5) to ensure entering and updating of information in online repository of certificates (e-Certis);

6) other functions laid down in laws and regulations.

(2) The Procurement Monitoring Bureau has the following rights:

1) to request and receive free of charge complete information on any procurement and concluded contract;

2) to cooperate with foreign authorities and non-governmental organisations;

3) to invite independent procurement specialists and experts;

4) to call on the competent authorities to provide their opinions;

5) to request the contracting authority to provide information regarding the market investigation conducted thereby if it is necessary for the examination of submissions or for the provision of an opinion when performing *ex-ante* control of the procurement procedure.

[24 March 2022 / See Paragraph 22 of Transitional Provisions]

#### **Section 67. Complaint Examination Commission**

(1) Complaints regarding infringements of the procurement procedure shall be examined by the complaint examination commission (hereinafter also - the commission) consisting of three members and established by the Procurement Monitoring Bureau. Members of the commission shall be the officials of the Procurement Monitoring Bureau. The chairperson of the commission shall conform to the criteria referred to in Paragraph two of this Section, and at least one more member of the commission shall have an academic or a second level higher vocational education in law. In order to examine complaints, the Procurement Monitoring Bureau may invite a procurement specialist or expert.

(2) The work of the commission shall be managed by the chairperson of the commission conforming to the following criteria:

1) he or she has an academic or a second level higher vocational education in law or management, or economics;

2) he or she has at least one-year experience in examination of complaints regarding infringements of the procurement procedure.

(3) A person who has previously provided consultations regarding a procurement referred to in a complaint or is interested in being awarded the rights to conclude the procurement contract or framework agreement or is connected to the submitter of the complaint or another tenderer, may not be a member of the commission, specialist or expert. Prior to examination of the complaint, all members of the commission, the specialist and expert shall sign a respective certification. Within the meaning of this Section, a member of the commission, specialist and expert is connected to the submitter of the complaint or another tenderer, if he or she is:

1) a relative of the owner or official of a legal person - submitter of the complaint or another tenderer;

2) a relative of the natural person - submitter of the complaint or another tenderer;

3) the current or former employee, official or owner of a legal person - submitter of the complaint or another tenderer - who has discontinued employment relations or ownership relations with the submitter of the complaint or another tenderer within a period of time, which is less than 24 months, or a relative of such persons.

(4) The commission shall take a decision by voting. When taking a decision, the members of the commission shall be independent and subject only to the law. A specialist and an expert shall participate in the meetings of the commission without the voting rights and shall express an independent professional opinion to the commission regarding the facts established during examination of the complaint or provide a statement regarding questions asked by the commission.

## **Chapter IX**

### **Procedures for Examination of Complaints Regarding Infringements of the Procurement Procedure**

#### **Section 68. Right to Submit a Complaint Regarding Infringements of the Procurement Procedure**

(1) A person who is or has been interested in being awarded a procurement contract or a framework agreement, or who is qualifying for procurement contract award and who, in relation to the specific procurement procedure to which this Law applies, believes that his or her rights have been infringed upon or infringement of these rights is possible, and it may be caused by a potential infringement of the legal acts of the European Union or other laws and regulations, is entitled to submit a complaint regarding the provisions for selection of candidates or tenderers, technical specifications and other requirements which relate to the specific procurement procedure, or regarding the activities of the contracting authority or the procurement commission during the course of the procurement procedure. Within the meaning of this Chapter, the procedures for carrying out the procurement referred to in Section 10 of this Law and the design contest shall also be regarded as the procurement procedures.

(2) A complaint regarding the infringements referred to in Paragraph one of this Section (except for the cases referred to in Paragraph three of this Section) may be submitted to the Procurement Monitoring Bureau until the conclusion of procurement contract or framework agreement in the following time periods:

1) within 10 days after the day when the information referred to in Section 37 of this Law has been sent to the relevant person in electronic form, using a secure electronic signature or attaching a scanned document to the electronic mail, or by fax or handed over in person;

2) within 15 days after the day when the information referred to in Section 37 of this Law has been sent to the relevant person by post;

3) within 10 days after the day when the notice referred to in Section 30, Paragraph one of this Law has been published on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union if the notice has been sent to the Publications Office of the European Union for publication in the Official Journal of the European Union.

(3) A complaint regarding the requirements included in the procurement procedure documents may be submitted in the following time periods:

1) at least seven days prior to the expiry of the term for submission of tenders - in relation to the requirements contained in the open procedure rules and the contract notice;

2) at least four working days prior to the expiry of the term for submission of applications - in relation to the requirements included in a restricted procedure regulations for the selection of candidates and in the contract notice, in the documents of the competitive dialogue and in the contract notice, or in the documents of a competitive procedure with negotiation and in the contract notice, or the documents of an innovation partnership procedure and in the contract notice;

3) at least four working days prior to the expiry of the term for submission of tenders - in relation to the requirements included in an invitation to the restricted procedure, competitive dialogue, competitive procedure with negotiation, or innovation partnership procedure;

4) at least seven days prior to the expiry of the term for submission of designs - in relation to the requirements included in the design contest regulations and the design contest notice;

5) at least two working days prior to the expiry of the term for the submission of applications or tenders - in relation to the requirements included in the procurement documents in the case of the procurement referred to in Section 10 of

this Law.

(4) A complaint may be submitted to the Procurement Monitoring Bureau by delivering it in person or sending it by post, fax, or electronically attaching to the electronic mail message or sending a document to the official electronic address which has been signed with secure electronic signature, or a scanned document. A complaint shall be deemed submitted to the Procurement Monitoring Bureau within the term specified in Paragraphs two and three of this Section if it has been received at the Procurement Monitoring Bureau:

1) on the final day of the term at the latest, if sent by fax or electronically, using secure electronic signature or attaching a scanned document to the electronic mail message;

2) on the final day of the term at the latest, within the office hours of the Procurement Monitoring Bureau, if sent by post or delivered in person.

(5) A complaint shall be submitted in writing and shall include the following information:

1) the name and address of the submitter of the complaint;

2) the name and address of the contracting authority regarding which the complaint has been submitted;

3) the title of the procurement procedure and the procurement identification number;

4) the facts regarding which the complaint is being submitted, indicating the infringement;

5) the legal basis for the complaint;

6) the claim of the submitter of the complaint.

(6) The Procurement Monitoring Bureau shall, within one working day after the complaint regarding infringements of the procurement procedure has been received, post information to this effect on its website, indicating the submitter of the complaint, the contracting authority and the procurement procedure the lawfulness whereof is contested by the submitter of the complaint, and also shall inform the contracting authority of the initiation of an administrative case by sending a notice regarding the received complaint and a copy of the complaint to the fax number or electronic mail address indicated by the contracting authority, and the contracting authority shall not conclude a procurement contract or framework agreement until a decision of the commission on the results of examination of the complaint or termination of the administrative case is received.

(7) If a complaint regarding the requirements specified by the open procedure regulations or the contract notice, or an invitation to tender in the restricted procedure has been submitted, the contracting authority shall act in accordance with the procedure stipulated by the Cabinet.

(8) If a complaint regarding the activities of the contracting authority in relation to the lawfulness of the procurement procedure is submitted and a complaint regarding the same procurement procedure has already been submitted by another submitter of the complaint, but it has not been examined yet, such complaints may be combined and examined together.

(9) The submitter of the complaint is entitled to revoke the complaint submitted in writing, at any time, until the commission has not taken a decision on the relevant complaint.

[26 April 2018; 24 March 2022; 5 October 2023]

#### **Section 69. Leaving Complaint Unexamined**

(1) The Procurement Monitoring Bureau is entitled to leave a complaint unexamined in any of the following cases:

1) the complaint does not conform to the requirements of Section 68, Paragraph one, two, three or five of this Law;

2) a complaint has already been submitted and examined with respect to a procurement procedure for the same subject-matter and on the same grounds;

3) the information included in the complaint is evidently insufficient to satisfy the claim of the submitter of the complaint, or the complaint is evidently inadmissible on its merits;

4) in the case referred to in Section 70, Paragraph four of this Law.

(2) The decision may be appealed to a court in accordance with the procedures laid down in the Administrative Procedure Law. Appeal of the decision shall not suspend the operation thereof.

#### **Section 70. Deposit**

(1) When submitting a complaint in accordance with the procedures laid down in Section 68 of this Law, a deposit shall be paid in or submitted.

(2) The submitter of the complaint is entitled to pay in the deposit as the sum of money or submit it in the form of a bank guarantee or insurance policy.

(3) A deposit shall comprise 0.5 per cent of the estimated contract price, however not exceeding EUR 15 000 in case of the public works contract and EUR 840 in case of the public service contract or supply contract. If it is not possible to determine the estimated contract price or it is not specified in the procurement procedure documents, in case of the public works contract the deposit shall be EUR 3 400, but in case of the public service contract and supply contract - EUR 840.

(4) Following the receipt of the complaint the Procurement Monitoring Bureau shall, within one working day, verify the fact of receipt or submission of a deposit payment. Where the payment of the deposit is not received or submitted, the Procurement Monitoring Bureau is entitled to leave a complaint unexamined.

(5) The Procurement Monitoring Bureau shall repay the deposit payment or return the deposit to the submitter of the complaint within five working days after:

1) the day of revocation of the complaint, if the submitter of the complaint has revoked the complaint prior to the examination thereof in the commission, on the basis of the fact that the contracting authority has eliminated the infringements specified in the complaint;

2) the receipt of the true copy of the court judgment, if the court by the final judgment assigns to repay the paid-in deposit payment to the submitter of the complaint;

3) the decision on leaving the complaint unexamined has been communicated;

4) the decision to prohibit the contracting authority to conclude the procurement contract or the framework agreement or to cancel the decision of the contracting authority regarding the termination of the procurement procedure has come into effect.

(6) This Section shall not be applicable if the complaint contests the lawfulness of the termination of the procurement procedure or the requirements prescribed by the procurement procedure documents.

(7) The procedures for the payment or submission and repayment or return of the deposit shall be determined by the Cabinet.

#### **Section 71. Examination of a Complaint**

(1) The commission shall examine a complaint within one month after receipt thereof in the Procurement Monitoring Bureau. If due to objective reasons it is not possible to observe this time limit, the commission may extend it by notifying the submitter of the complaint, the tenderer whose tender has been selected in accordance with the specified tender evaluation criteria (hereinafter - the participants) and the contracting authority thereof.

(2) Upon examining a complaint regarding infringements of the procurement procedure, the commission may, by a decision thereof:

1) allow to conclude a procurement contract or framework agreement and to leave the requirements specified in the procurement procedure documents or the decision of the contracting authority or the procurement commission in effect, if the complaint is not justified or is justified, however, the infringements established by the commission cannot affect the decision on awarding of the procurement contract;

2) prohibit concluding the procurement contract or framework agreement, if the contracting authority has not complied with the requirements specified in Section 37 of this Law;

3) prohibit concluding the procurement contract or framework agreement and cancel the requirements specified in the procurement procedure documents or the decision of the procurement commission in full or any part thereof, if the complaint is justified and the infringements established by the commission can affect the decision on awarding of the procurement contract;

4) leave the decision of the contracting authority or the procurement commission on termination or suspension of the procurement procedure in effect, if the complaint is not justified;

5) cancel the decision of the procurement commission on termination or suspension of the procurement procedure, if the complaint is justified.

(3) In the cases referred to in Paragraph two, Clauses 2, 3, and 5 of this Section the commission may take the decision on measures for elimination of the infringements established. The commission may assign the contracting authority to suspend the procurement procedure only in case if it is not possible to otherwise eliminate the infringements of the procurement procedure committed by the contracting authority.

(4) If during examination of a complaint the commission establishes that the complaint should be left unexamined,

it may take the decision on termination of the administrative case. If the submitter of the complaint withdraws a complaint, the relevant administrative proceedings shall be considered terminated.

(5) The Procurement Monitoring Bureau shall invite the participants to the complaint examination meeting by publishing an invitation on its website at least three working days in advance. The invitation shall be considered notified on the next working day of publication thereof on the website of the Procurement Monitoring Bureau. If the electronic mail address to which an invitation can be sent has been notified by participants to the Procurement Monitoring Bureau, the Procurement Monitoring Bureau shall send the information on the complaint examination meeting to the participants also by electronic mail not later than on the day when the invitation is published on the website of the Procurement Monitoring Bureau.

(6) The commission shall hear the opinion of all participants present. After hearing the participants, it shall continue work without the presence of the participants.

(7) The commission shall evaluate a complaint on the basis of the facts referred to by the submitter thereof and participants, the explanations of the contracting authority and the opinion or statement of the expert. If the participants have not arrived to the complaint examination meeting, the commission shall examine the complaint on the basis of the facts available thereto. The commission shall take a decision and, within three working days after taking thereof, shall prepare it and post it on the website of the Procurement Monitoring Bureau. The decision shall be considered notified on the next working day of publication thereof on the website of the Procurement Monitoring Bureau.

(8) The following information shall be indicated in the decision of the commission:

- 1) the justification for the establishment of the commission;
- 2) the members of the commission and the expert who has participated in the meeting of the commission;
- 3) representatives of the submitter of the complaint, the contracting authority, and other participants who have participated in the meeting of the commission;
- 4) the identification number of the procurement procedure regarding which the complaint has been submitted;
- 5) the facts regarding which the complaint has been submitted, and the claim of the submitter of the complaint;
- 6) the most important arguments of the submitter of the complaint and the contracting authority;
- 7) the justification of the decision;
- 8) the legal norms applied;
- 9) the duty imposed on the contracting authority and the term for the performance thereof, if the commission takes the decision on measures for elimination of the infringements established;
- 10) a prohibition or a permission for the contracting authority to conclude a procurement contract;
- 11) where and in what term this decision may be appealed.

(9) If the commission has decided regarding the measures for elimination of the infringements established, the contracting authority shall eliminate the infringements, take a decision, and notify regarding the amendments to the procurement procedure documents, and submit the amendments thereto or notify of the procurement procedure results. The decision shall be published in accordance with the procedures laid down in Section 34 of this Law, and also all information on taking of the decision and elimination of the violations established by the commission shall be sent to the Procurement Monitoring Bureau. In such case the procurement contract shall be concluded in conformity with the provisions of Section 60, Paragraph six of this Law.

#### **Section 72. Appealing a Decision of the Commission**

(1) A decision of the commission may be appealed in the District Administrative Court in accordance with the procedures laid down in the Administrative Procedure Law. The matter shall be heard by the court in the composition of three judges.

(2) A ruling of the District Administrative Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Supreme Court.

(3) The appeal of the decision of the commission shall not suspend the operation thereof.

## **Chapter X**

### **Recognition of a Procurement Contract or Framework Agreement as Invalid, Amending or Repealing the Provisions Thereof or Reduction of the Term of a**

## Procurement Contract or Framework Agreement

### **Section 73. Submission of an Application and Examination of a Matter Regarding Recognition of a Procurement Contract or Framework Agreement as Invalid, Amending or Repealing the Provisions Thereof or Reduction of the Term of a Procurement Contract or Framework Agreement**

(1) An application regarding recognition of a procurement contract or framework agreement as invalid, amending or repealing of the provisions thereof, or reduction of the term of a procurement contract or framework agreement may be submitted by the persons referred to in Section 68, Paragraph one of this Law in the cases referred to in of Section 74, Paragraph one of this Law.

(2) The application shall be submitted to the District Administrative Court which shall examine the case in the composition of three judges. The examination of the application and the case shall be subject to the norms of the Administrative Procedure Law, inter alia, the norms regarding examination of the public law contract in the court, insofar as it is not laid down otherwise in this Law.

(3) An application in relation to the violations referred to in Section 74, Paragraph one of this Law may be submitted within the following time limits:

1) within six months after the day of conclusion of the procurement contract or framework agreement, except for the cases referred to in Clause 2, Sub-clauses "a" and "b" of this Paragraph;

2) within 30 days after the day when:

a) such notice regarding the award of the procurement contract has been published on the website of the Procurement Monitoring Bureau or the Official Journal of the European Union, where the procurement contract price is equal to or higher than the contract price thresholds specified by the Cabinet, where the contracting authority has included a justification for the decision to award the procurement contract or framework agreement without publishing a contract notice;

b) the contracting authority has informed the relevant tenderer regarding conclusion of the procurement contract or framework agreement, indicating the information referred to in Section 37, Paragraph two, Clause 1 or 2 of this Law thereto, or the relevant candidate regarding conclusion of the procurement contract or framework agreement, indicating the reasons for rejecting the application submitted thereby. The abovementioned shall also apply to the cases provided for in Section 74, Paragraph one, Clauses 5 and 6 of this Law.

(4) Concurrently with submission of an application or during examination of a case, the applicant may, in the cases and in accordance with the procedures laid down in the Administrative Procedure Law, request that an interim measure is applied.

(5) A ruling of the District Administrative Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Supreme Court.

(6) If an application regarding recognition of the procurement contract or framework agreement as invalid, amending or repealing the provisions thereof or reduction of the term of the procurement contract or framework agreement is based on the case not referred to in Section 74 of this Law, the claim shall be brought to the court of general jurisdiction in accordance with the procedures laid down in the Civil Procedure Law.

### **Section 74. Cases when a Procurement Contract or Framework Agreement may be Recognised as Invalid, the Provisions Thereof may be Amended or Repealed or the Term of a Procurement Contract or Framework Agreement may be Reduced**

(1) The court may recognise the procurement contract or framework agreement as invalid, amend or repeal the provisions thereof or reduce the term of the procurement contract or framework agreement in any of the following cases:

1) the procurement contract or framework agreement has been concluded without applying the procurement procedures specified in Section 8, Paragraph one of this Law or the procedures for carrying out of procurement referred to in Section 10 of this Law if the contracting authority had to apply it;

2) the procurement contract or framework agreement has been concluded, by unjustly awarding the procurement contract or framework agreement, without publishing a contract notice on the website of the Procurement Monitoring Bureau or the Official Journal of the European Union, if the procurement contract price is equal to or higher than the contract price thresholds specified by the Cabinet;

3) the procurement contract or framework agreement has been concluded without conforming to the term determined in Section 60, Paragraph six of this Law;

4) the procurement contract or framework agreement has been concluded, violating the prohibition determined in

Section 68, Paragraph six of this Law to conclude the procurement contract or framework agreement;

5) the procurement contract has been concluded, without complying with the requirements of Section 56, Paragraph six of this Law, if the contract price of the specific procurement contract is equal to or higher than the contract price thresholds specified by the Cabinet;

6) the procurement contract has been concluded, without complying with the procedures laid down in the Cabinet regulations governing the establishment and operation of the dynamic purchasing system, if the contract price of the specific procurement contract is equal to or higher than the contract price thresholds specified by the Cabinet.

(2) In the cases referred to in Paragraph one, Clause 1 or 2 of this Section a procurement contract or framework agreement shall not be recognised as invalid, the provisions thereof shall not be amended or repealed, the term of a procurement contract or framework agreement shall not be reduced, even though the law has been violated, if all of the following conditions are concurrently present:

1) the contracting authority has published the notice referred to in Section 30, Paragraph one of this Law;

2) the procurement contract or framework agreement has been concluded at least 10 days and additionally one working day after the day when the notice referred to in Section 30, Paragraph one of this Law has been published on the website of the Procurement Monitoring Bureau or in the Official Journal of the European Union, if the contract price of the procurement is equal to or higher than the contract price thresholds specified by the Cabinet;

3) the prohibition specified in Section 68, Paragraph six of this Law to conclude a procurement contract or framework agreement has been complied with.

(3) In the cases referred to in Paragraph one, Clause 5 or 6 of this Section a procurement contract shall not be recognised as invalid, the provisions thereof shall not be amended or repealed, the term thereof shall not be reduced, even though the law has been violated, if all of the following conditions are concurrently present:

1) the contracting authority has informed the tenderers in accordance with Section 37 of this Law;

2) the specific procurement contract has been concluded in compliance with the time limit determined in Section 60, Paragraph six of this Law;

3) the prohibition determined in Section 68, Paragraph six of this Law to conclude a procurement contract has been complied with.

[26 April 2018]

### **Section 75. Court Judgment Regarding a Procurement Contract or Framework Agreement**

(1) If a court establishes that a procurement contract or framework agreement has been concluded, violating the norms of this Law, and concludes that the application should be satisfied, it shall, in compliance with the conditions of this Law, select itself one of the following types of judgment:

1) recognise the procurement contract or framework agreement as invalid from the moment of conclusion thereof;

2) amend or repeal the provisions of the procurement contract or framework agreement. When adopting such judgment, a court shall, in addition, reduce the term of the procurement contract or framework agreement;

3) reduce the term of the procurement contract or framework agreement.

(2) A court, when selecting one of the types of the judgment referred to in Paragraph one of this Section, shall not be bound by the subject-matter of the application indicated by the applicant and the limits of the claim.

(3) A court, when selecting the type of the judgment referred to in Paragraph one, Clause 1 or 2 of this Section, shall evaluate which type of the judgment is sufficiently commensurate, effective and preventive in the particular case in order to ensure that the contracting authority would not commit the infringements of this Law in future. A court shall make the judgment referred to in Paragraph one, Clause 3 of this Section only in the cases referred to in Paragraphs four and five of this Section.

(4) A court shall not make the judgment referred to in Paragraph one, Clause 1 or 2 of this Section if it is essential for the public interests to preserve the consequences caused by the procurement contract or framework agreement. Financial consequences (for example, costs due to delay of performance, change of the contractor, sanctions or other legal liabilities) shall not be deemed per se sufficient grounds for not making the judgment referred to in Paragraph one, Clause 1 or 2 of this Section.

(5) If the procurement contract or framework agreement has been concluded without conforming to the time limit specified in Section 60, Paragraph six of this Law or in violation of the prohibition specified in Section 68, Paragraph six of this Law to conclude a procurement contract or framework agreement and it is established that the procurement procedure, until taking of the decision on determination of the winner, has been performed in accordance with the

requirements of this Law, or the abovementioned decision has not affected the chances of the tenderer who has submitted an application to be awarded with the procurement contract, the court shall give the judgement referred to in Paragraph one, Clause 2 or 3 of this Section.

(6) When making any of the judgments referred to in Paragraph one, Clauses 1 and 2 of this Section, a court shall take the decision on validity of such procurement contracts which have been concluded on the basis of the relevant framework agreement.

(7) A court shall send a true copy of the court judgment to the Procurement Monitoring Bureau and the Ministry of Finance.

[26 April 2018]

## **Chapter XI Compensation for Losses**

### **Section 76. Compensation for Losses**

(1) Losses caused within the scope of administrative proceedings shall be compensated in accordance with the laws and regulations governing the administrative procedure and the procedures for compensation for losses caused by State administration institutions. Cases on compensation for losses shall be examined by the District Administrative Court under the court proceedings in the composition of three judges.

(2) If compensation is requested concurrently with the claim provided for in Section 73 of this Law, a court shall adjudge it by examining the relevant application and making any of the judgments referred to in Section 75, Paragraph one of this Law. The burden of proof regarding existence of such losses and the amount of compensation shall lie with the applicant. Following the day when the judgment enters into effect, the compensation for such losses may be requested in accordance with the civil law procedures.

(3) Upon submitting a complaint to the Procurement Monitoring Bureau in accordance with Section 68 of this Law, the compensation for losses is not requested. Compensation for losses caused by the contracting authority may be requested concurrently with submitting an application to a court or addressing the contracting authority in accordance with the laws and regulations governing the compensation for losses caused by State administration institutions.

## **Chapter XII Statistical Reports and Administrative Cooperation**

### **Section 77. Statistical Reports**

The contracting authority shall, by 1 April every year, submit statistical reports to the Procurement Monitoring Bureau in accordance with the procedures stipulated by the Cabinet. The Cabinet shall determine the content of the statistical reports.

### **Section 78. Online Repository of Certificates**

The contracting authorities can use online repository of certificates (e-Certis) in order to obtain information on the certificates and other documents to be issued by the competent authorities to the economic operators registered (permanently residing) in a European Union Member State.

### **Section 79. Administrative Cooperation for Ensuring Exchange of Information**

To reach the aim of this Law, the responsible authorities of Latvia shall cooperate with and consult the responsible authorities of other European Union Member States in order to obtain and clarify the necessary information on the documents issued by the European Union Member States and the content thereof.

## **Chapter XIII Other Provisions**

### **Section 80. Procedures for Executing the Decision on the Prohibition to Hold the Office of a Public Official**

[5 December 2019 / See Paragraph 15 of Transitional Provisions]

### **Section 81. Application of the Works Contract Vocabulary**

If the CPV data of the procurement vocabulary referred to in Annex 1 to this Law differ from the NACE

nomenclature which is specified in Commission Regulation (EC) No 29/2002 of 19 December 2001 amending Council Regulation (EEC) No 3037/90 on the statistical classification of economic activities in the European Community, the relevant CVP nomenclature shall be applied.

#### **Section 82. List of Low-tax or Tax-free Countries or Territories Not Considered to Be Offshore**

The Procurement Monitoring Bureau shall compile and publish on its website the list of those low-tax and tax-free countries and territories which are not considered to be offshore within the meaning of Section 1, Clause 3.<sup>1</sup> of this Law.

[26 April 2018]

#### **Section 83. Electronic Invoices**

The contracting authority shall accept the electronic invoice conforming to the laws and regulations regarding the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling, and, if it is provided for in the procurement contract, shall include additional elements according to the abovementioned laws and regulations. The Cabinet shall determine the applicable standard of an electronic invoice and the specifications for the use of its key elements and the procedures for its handling.

[21 February 2019 / See Paragraph 14 of Transitional Provisions]

### **Chapter XIV**

## **Administrative Offences in the Field of Public Procurement and Competence within the Administrative Offence Proceedings**

[5 December 2019 / The Chapter shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

#### **Section 84. Unlawful Conclusion of a Contract**

(1) For conclusion of a procurement contract or a framework agreement or for performance of any other such transaction which corresponds to the nature of the procurement contract or framework agreement, unless the procurement procedure laid down in this Law or other procedures for the contract awarding laid down in this Law which had to be applied are applied, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(2) For conclusion of a procurement contract or a framework agreement if inappropriately selected procurement procedure or other procedures for the contract awarding laid down in this Law have been applied, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(3) For conclusion of a procurement contract or a framework agreement if the notice specified in this Law has not been published on the website of the Procurement Monitoring Bureau and in the Official Journal of the European Union, provided that it should have been published on both websites upon commencement of the procurement, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(4) For the activities referred to in Paragraph one, two, or three of this Section if the contract price of the concluded procurement contract or framework agreement or of other transaction performed is EUR 145 000 or more, a fine from seventy to four hundred units of fine and a prohibition to exercise rights - a prohibition to hold such offices for the time period from one to two years the duties of which include taking of decisions in the field of public procurements and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts - shall be imposed.

[5 December 2019 / Section shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

#### **Section 85. Failure to Comply with the Provisions for the Prevention of a Conflict of Interests**

(1) For the failure to ensure signing of the confirmation specified in this Law on non-existence of such circumstances due to which it could be considered that the person preparing the procurement procedure documents, members of the procurement commission, the secretary of the procurement commission, or experts are interested in the selection or activity of a particular candidate or tenderer or are related to a particular candidate or tenderer, a warning or fine from fourteen to seventy units of fine shall be imposed.

(2) For the failure to comply with the prohibition specified in this Law in respect of the officials and employees of the contracting authority who are preparing the procurement procedure documents, members of the procurement commission, the secretary of the procurement commission, and experts to represent the interests of a candidate or tenderer, and also for the failure to comply with the prohibition to be related to a candidate or tenderer, a fine from fourteen to one hundred and forty units of fine shall be imposed.

[5 December 2019; 3 March 2022]

**Section 86. Failure to Comply with the Provisions for the Exclusion of Candidates and Tenderers, Requirements for Their Selection and Requirements of Technical Specifications**

(1) For the failure to comply with the provisions for the exclusion of candidates and tenderers laid down in this Law if the candidate or tenderer has been unjustifiably excluded or has not been unjustifiably excluded from the participation in the procurement and it has affected the decision on the results of candidate selection or the decision on awarding the contract, a fine from fourteen to seventy fine units shall be imposed.

(2) For the failure to comply with the requirements for the selection of candidates and tenderers or the requirements of technical specifications laid down in the procurement procedure documents if the application of the candidate or tenderer has been unjustifiably rejected or unjustifiably recognised as non-complying with the requirements laid down in the procurement procedure documents and it has affected the decision on the results of candidate selection or the decision on awarding the contract, a fine from fourteen to seventy fine units shall be imposed.

[5 December 2019 / Section shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

**Section 87. Failure to Comply with the Provisions for the Conclusion of Procurement Contract and Framework Agreement and Making Amendments Thereto**

(1) For conclusion of a procurement contract or a framework agreement if the waiting period specified in this Law has not been complied with, however it should have been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(2) For conclusion of a procurement contract or a framework agreement if the prohibition specified in this Law to conclude a procurement contract or a framework agreement after the Procurement Monitoring Bureau has received a submission on violation of the procurement procedure, or the prohibition specified by the submission examination commission of the Procurement Monitoring Bureau to conclude the relevant procurement contract or framework agreement has not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(3) For conclusion of a procurement contract or a framework agreement if the provisions provided for in the procurement procedure documents are not included or different provisions are included therein and if such possibility has not been provided for in the procurement procedure documents in accordance with the requirements of this Law or other provisions for amending a procurement contract and a framework agreement laid down in this Law have not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(4) For making amendments to a procurement contract or the text of a framework agreement if the provisions for amending a procurement contract or a framework agreement laid down in this Law have not been complied with, a fine from fourteen to two hundred and forty units of fine shall be imposed.

(5) For the activities referred to in Paragraph one, two, three, or four of this Section if the contract price of the concluded procurement contract or framework agreement or the total contract price of amendments is EUR 145 000 or more, a fine from seventy to four hundred units of fine and a prohibition to exercise rights - a prohibition to hold such offices for the time period from one to two years the duties of which include taking of the decisions in the field of public procurements and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts - shall be imposed.

[5 December 2019 / Section shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

**Section 88. Failure to Provide Documents and Information**

(1) For the failure to comply with the provisions included in this Law and the laws and regulations issued on the basis of this Law during preparation of applications, tenders, or designs in respect of ensuring the accessibility of procurement procedure documents, the issue of procurement procedure documents, or the provision of additional information, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(2) For the failure to comply with the procedures by which candidates, tenderers, and participants to a design contest are to be informed of the results of a procurement, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(3) For the failure to comply with the requirements in respect of issue of the minutes of the procurement commission, and also for the failure to comply with the requirements of a decision or procurement procedure, and the requirements for the preparation, publishing, or issue of the report on design contest, a warning or a fine from fourteen to seventy units of fine shall be imposed.

(4) For the failure to publish the procurement contract, framework agreement, or amendments thereof, a warning or a fine from fourteen to seventy fine units shall be imposed.

(5) For the failure to submit a statistical report within the time period specified in this Law or for the submission of an incomplete report, a warning or a fine from fourteen to seventy fine units shall be imposed.

[5 December 2019 / Section shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

### **Section 89. Competence within the Administrative Offence Proceedings**

Administrative offence proceedings for the offences referred to in Sections 84, 85, 86, 87, and 88 of this Law shall be conducted by the Procurement Monitoring Bureau.

[5 December 2019 / Section shall come into force on 1 July 2020. See Paragraph 15 of Transitional Provisions]

### **Section 90. Procedures for the Execution of the Decision to Prohibit the Exercise of the Right to Hold Offices**

(1) The Procurement Monitoring Bureau shall, within one working day after the decision in an administrative offence case has been communicated to the person upon whom a prohibition to exercise the rights has been imposed - a prohibition to hold offices the duties of which include taking of the decisions in the field of public procurement and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, inform all the authorities known to the Procurement Monitoring Bureau in which the relevant person holds such office, and also the higher authorities of such authorities (except for the case when there is no higher authority or the Cabinet is the higher authority) or owners or holders of capital shares, if the relevant authority is a capital company, of the decision taken.

(2) The Procurement Monitoring Bureau shall, within three working days after receipt of the information regarding the fact that the decision in the administrative offence case in which a prohibition to exercise the rights has been imposed - the prohibition to hold such offices the duties of which include decision-making in the field of public procurements and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, has entered into effect, send the relevant information to the authorities referred to in Paragraph one of this Section, and also publish in the publication management system the given name, surname, personal identity number (if there is none, the date and country of birth) of the person held administratively liable and the time period for execution of the penalty. The abovementioned information shall be available in the publication management system for the users registered therein for the performance of the duties specified in the law until the day when the enforcement of the penalty ends.

(3) The authority in which the person upon whom a prohibition to exercise the rights has been imposed - the prohibition to hold offices the duties of which include taking of the decisions in the field of public procurement and public-private partnership or conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts, holds such offices, has an obligation to ensure that after entering into effect of the decision in the administrative offence case the relevant person does not hold such offices, does not take the decisions, and does not conclude contracts.

[5 December 2019; 3 March 2022]

## **Transitional Provisions**

1. With the coming into force of this Law, the Public Procurement Law (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2006, No. 10; 2007, No. 6; 2009, No. 17; *Latvijas Vēstnesis*, 2010, No. 91, 2012, No. 24, 109; 2013, No. 129, 183, 194; 2014, 175, 204; 2015, No. 107, 242; 2016, No. 52, 95) is repealed.

2. If the procurement or the procurement procedure has been announced or the decision on commencement of the procurement or the procurement procedure, if it is not required to announce the procurement or the procurement procedure, has been taken prior to the day of coming into force of this Law, then the procurement or the procurement procedure shall be completed, including contested or appealed, in accordance with the provision of the Law which had been in force on the day of announcement of the relevant procurement or the procurement procedure or taking of the decision on commencement thereof, except for the provisions included in Section 28, Paragraph two, Section 29, Section 30, Paragraph one and Section 31, Paragraph two of this Law. The concluded framework agreements shall be administered in accordance with the provisions of the Law which had been in force on the day of announcement of the relevant procurement or the procurement procedure, as a result whereof the framework agreement has been concluded.

3. Section 39, Paragraph one of this Law shall be applied:

1) with respect to the procurement procedures carried out by the central purchasing bodies, where the estimated contract price is equal to or higher than the contract price thresholds specified by the Cabinet - starting from 18 April 2017;

2) with respect to the procurement procedures, where the estimated contract price is equal to or higher than the

contract price thresholds specified by the Cabinet - starting from 1 October 2017;

3) with respect to the procurement procedures, where the estimated contract price is less than the contract price thresholds specified by the Cabinet - starting from 1 April 2018;

4) with respect to the procurements referred to in Sections 9 and 10 of this Law - starting from 1 January 2019, insofar as not prescribed otherwise in Sub-clauses 5 and 6 of this Clause;

5) with respect to the procurements referred to in Sections 9 and 10 of this Law which are carried out by derived public entities and their institutions - starting from 1 October 2019;

6) with respect to the procurements referred to in Sections 9 and 10 of this Law, which are carried out by legal persons governed by private law - starting from 1 July 2020.

*[20 September 2018]*

4. *[30 April 2020]*

5. Section 18, Paragraph one of this Law shall be applicable from 1 June 2017.

6. The Procurement Monitoring Bureau shall publish in the publication management system the information referred to in Section 80, Paragraph three of this Law on all decisions in the administrative offence cases in the field of public procurements and public-private partnership, where the prohibition is imposed to hold the offices of a public official, which have entered into effect and the execution whereof has not been terminated.

7. If a decision in the administrative violation case in the field of public procurements and public and private partnership, where the prohibition is imposed to hold the offices of a public official, has been communicated to a person who has been held administratively liable prior to coming into force of this Law, and it has not yet come into force, the Procurement Monitoring Bureau shall fulfil the duty referred to in Section 80, Paragraph one of this Law with respect to such decision by 10 March 2017.

8. The contracting authorities shall submit the statistical reports for 2016 by applying the Cabinet Regulation No. 121 of 1 March 2016, Regulations Regarding the Templates for Official Statistical Forms in the Field of Procurement and the Procedures for Submitting and Completing the Forms.

9. The amendment to Section 1, Clause 23 of this Law shall come into force on 1 January 2019.

*[26 April 2018]*

10. The conditions for exclusion of the candidates or tenderers referred to in Section 9, Paragraph eight, Clause 5 and Section 42, Paragraph one, Clauses 12, 13, and 14 of this Law shall not apply to such procurements or such procurement procedures which were commenced or announced prior to the day of coming into force of these norms.

*[26 April 2018]*

11. The amendment to this Law regarding the new wording of Section 42, Paragraph one, Clause 1, Sub-clause "d" shall come into force on 1 January 2019.

*[20 September 2018]*

12. The requirements referred to in the second sentence of Section 9, Paragraph twenty and the second sentence of Section 10, Paragraph one of this Law for the procurements with respect to the security services covered by CPV code 79710000-4 shall not be applicable to these procurements if they have been commenced or announced prior to the coming into force of the relevant norms.

*[14 February 2019]*

13. Amendments to this Law regarding the new wording of Section 60, Paragraph ten shall not apply to the procurement contracts, the framework agreement or their amendments concluded before the day of coming into force of this norm, and they are to be stored in the buyer profile in accordance with the provisions of Section 60 which were in force before the day of coming into force of the new wording of Paragraph ten of this Section. Amendments to the procurement contract or a framework agreement made after the day of coming into force of the new wording of Section 60, Paragraph ten, and also the procurement contract concluded on the basis of a framework agreement which is concluded before the day of coming into force of the relevant amendments, are to be posted in the buyer profile together with the basic text of the relevant procurement contract or framework agreement.

*[14 February 2019]*

14. The institutions of direct administration shall apply Section 60, Paragraph two, Clause 8.<sup>1</sup> and Section 83 of this Law to the payment of such procurement contracts for which the procurement or the procurement procedure has been announced or the decision on commencement of the procurement or the procurement procedure, if it is not

required to announce the procurement or the procurement procedure, has been taken starting from 18 April 2019, but the other contracting authorities - starting from 18 April 2020.

[21 February 2019]

15. Amendment to this Law which provides for the replacement of the words "prohibition to hold the office of public official" with the words "prohibition to exercise rights - a prohibition to hold such offices the duties of which include taking decisions in the field of public procurements and public-private partnership or the conclusion of procurement contracts, framework agreements, partnership procurement contracts, or concession contracts" in Clause 25 of Section 1, amendment regarding the new wording of Section 24, Paragraph one, amendment regarding the deletion of Section 80, and Chapter XIV shall come into force concurrently with the Law on Administrative Liability.

[5 December 2019]

16. From 1 January 2026, a clean road transport vehicle, in accordance with Section 1, Clause 32.<sup>1</sup>, Sub-clause "a" of this Law, shall be considered a road transport vehicle of category M<sub>1</sub>, M<sub>2</sub>, or N<sub>1</sub> with tailpipe emissions of zero CO<sub>2</sub> g/km.

[2 September 2021]

17. The percentage of clean road transport vehicles in each procurement of road transport vehicles as specified in Section 54, Paragraph four of this Law shall be as follows:

1) from the date of coming into force of the relevant provision until 31 December 2025 - 22 per cent for road transport vehicles of category M<sub>1</sub>, M<sub>2</sub>, or N<sub>1</sub>;

2) from 1 January 2026 until 31 December 2030 - 22 per cent for road transport vehicles of category M<sub>1</sub>, M<sub>2</sub>, or N<sub>1</sub>;

3) from the date of coming into force of the relevant provision until 31 December 2025 - 8 per cent for road transport vehicles of category N<sub>2</sub> or N<sub>3</sub>;

4) from 1 January 2026 until 31 December 2030 - 9 per cent for road transport vehicles of category N<sub>2</sub> or N<sub>3</sub>;

5) from the date of coming into force of the relevant provision until 31 December 2025 - 35 per cent for class I and class A road transport vehicles of category M<sub>3</sub>;

6) from 1 January 2026 until 31 December 2030 - 50 per cent for class I and class A road transport vehicles of category M<sub>3</sub>;

7) from 1 January 2031, the percentage of clean road transport vehicles specified in Sub-clauses 2, 4, and 6 of this Clause shall apply for each five-year period.

[2 September 2021]

18. The requirements referred to in Section 54, Paragraphs four, five, six, and seven of this Law shall apply to procurements or procurement procedures which have been announced or, if the procurement or procurement procedure is not to be announced, the decision to start the procurement or procurement procedure has been taken starting from the day of coming into force of these legal provisions.

[2 September 2021]

19. If the procurement or procurement procedure has been announced or the decision to commence procurement or procurement procedure where the procurement or procurement procedure need not be announced is taken until 31 December 2022, the procurement or procurement procedure shall be completed, including contested or appealed, in accordance with the provisions of this Law which were in force on the day of announcing the relevant procurement or procurement procedures or on the day of taking the decision to commence it.

[3 March 2022]

20. The contracting authority shall make an entry in the Contract Register regarding such procurement contract and framework agreement which have been concluded starting from 1 January 2023.

[3 March 2022]

21. If candidates or tenderers are verified in the procurement procedure in respect of their conformity to the exclusion provisions after establishing the dynamic purchasing system, and also subcontractors are verified in the procurement or procurement procedure in respect of their conformity to the exclusion provisions after conclusion of the contract, the abovementioned verification shall be conducted in accordance with the provisions of this Law which are in force on the day of conducting the verification.

[3 March 2022]

22. Paragraph 19 of these Transitional Provisions shall not be applicable to the provisions included in Section 9, Paragraph eighteen, Section 39, Paragraph four, Section 60, Paragraph ten, Clause 2, Section 66, Clauses 4 and 5, Section 68, Paragraph four of this Law.

[24 March 2022]

23. Section 20, Paragraph 9.<sup>1</sup> of this Law shall come into force on 28 June 2025. The requirements of Section 20, Paragraph 9.<sup>1</sup> of this Law shall not apply to the procurements and procurement procedures which have been announced or for which the decision on commencement of the procurement or procurement procedure, if it is not required to announce the procurement or procurement procedure, has been taken until 27 June 2025.

[16 March 2023 / Section 20, Paragraph 9.<sup>1</sup> shall be included in the wording of the Law as of 28 June 2025]

24. Section 9, Paragraph 6.<sup>1</sup> of this Law shall be applicable from 1 July 2024. The requirements of Section 9, Paragraph 6.<sup>1</sup> of this Law shall not apply to the procurements which have been announced until 30 June 2024.

[5 October 2023]

## Informative Reference to European Union Directives

[21 February 2019; 2 September 2021; 16 March 2023]

This Law contains norms arising from:

- 1) Council Directive 89/665/EC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;
- 2) 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;
- 3) 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;
- 4) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- 5) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC;
- 6) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;
- 7) Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement;
- 8) Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles;
- 9) Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

This Law shall come into force on 1 March 2017.

The Law has been adopted by the *Saeima* on 15 December 2016.

President R. Vējonis

Rīga, 29 December 2016

## Works Contract Vocabulary

Classification of Economic Activities in the European Union (NACE)					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and construction work, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: 1) demolition of buildings and other structures; 2) clearing of building sites; 3) earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.; 4) site preparation for mining: overburden removal and other development and preparation of mineral properties and sites. This class also includes: 1) building site drainage; 2) drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: 1) drilling of production oil or gas wells, see 11.20; 2) water well drilling, see 45.25; 3) shaft sinking, see 45.25; 4) oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	This class includes: 1) construction of all types of buildings, construction and civil engineering constructions; 2) bridges, including those for elevated highways, viaducts, tunnels and subways; 3) long-distance pipelines, communication and power lines; 4) urban pipelines, urban communication and power lines; 5) ancillary urban work; 6) assembly and erection of prefabricated constructions on the site. This class excludes: 1) service activities incidental to oil and gas extraction, see 11.20; 2) erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28; 3) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23; 4) building installation, see 45.3;	45210000 Excluding: 45213316 45220000 45231000 45232000

			5) building completion, see 45.4; 6) architectural and engineering activities, see 74.20; 7) project management for construction, see 74.20.	
	45.22	Erection of roof covering and frames	This class includes: 1) erection of roofs; 2) roof covering; 3) waterproofing.	45261000
	45.23	Construction of highways, roads, airfields and sport facilities	This class includes: 1) construction of highways, streets, roads and other vehicular and pedestrian ways; 2) construction of railways; 3) construction of airfield runways; 4) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations; 5) painting of markings on road surfaces and car parks. This class excludes: preliminary earth moving, see 45.11	45212212 and DA03 45230000 Excluding: 45231000 45232000 45234115
	45.24	Construction of water projects	This class includes: 1) construction of waterways, harbour and river works, pleasure ports (marinas), locks, etc.; 2) construction of dams and dykes; 3) dredging; 4) subsurface work.	45240000
	45.25	Other construction work involving special trades	This class includes: 1) construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment; 2) construction of foundations, including pile driving; 3) water well drilling and construction, shaft sinking; 4) assembly of non-self-manufactured steel elements; 5) steel bending; 6) bricklaying and stone setting; 7) scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms; 8) erection of chimneys and industrial ovens. This class excludes: renting of scaffolds without assembly and dismantling, see 71.32	45250000 45262000
	45.3	Building installation		45300000
	45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: 1) electrical wiring and fittings; 2) telecommunications systems; 3) electrical heating systems; 4) residential antennae; 5) fire alarms; 6) burglar alarm systems; 7) lifts and escalators; 8) lightning conductors etc.	45213316 45310000 Excluding: 45316000
	45.32	Insulation work activities	This class includes: installation of thermal, sound or vibration	45320000

			insulation in buildings or other construction projects. This class excludes: waterproofing, see 45.22		
		45.33	Plumbing	This class includes installation in buildings or other construction projects of: 1) plumbing and sanitary equipment; 2) gas fittings; 3) heating, ventilation, refrigeration or air-conditioning equipment and ducts; 4) sprinkler systems. This class excludes: installation of electrical heating systems, see 45.31	45330000
		45.34	Other building installation	This class includes: 1) installation of illumination and signalling systems for roads, railways, airports and harbours; 2) installation in buildings or other construction projects of fittings and fixtures not elsewhere classified	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: 1) installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials; 2) interior completion (ceilings, wooden wall coverings, movable partitions, etc.). This class excludes: laying of parquet and other wood floor coverings, see 45.43	45420000
		45.43	Floor and wall coverings	This class includes laying, tiling, hanging or fitting in buildings or other construction projects of: 1) ceramic, concrete or cut stone floor or wall tiles; 2) parquet and other wood floor coverings, carpets and linoleum floor coverings; 3) rubber or plastic floor coverings; 4) terrazzo, marble, granite or slate floor or wall coverings; 5) wallpaper.	45430000
		45.44	Painting and glazing	This class includes: 1) interior and exterior painting of buildings; 2) painting of civil engineering structures; 3) installation (glass, mirrors, etc.). This class excludes: installation of windows, see 45.42	45440000
		45.45	Other building completion	This class includes: 1) installation of private swimming pools; 2) steam cleaning, sand blasting and similar activities for building exteriors; 3) other building completion and finishing work not elsewhere classified. This class excludes: interior cleaning of buildings and other	45212212 and DA04 45450000

			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 an operator), see 71.32 45500000

Public Procurement Law  
**Annex 2**

### Social and other special services

No.	Description	CPV code
1.	Health, social and related services	75200000-8, 75231200-6, 75231240-8, 79611000-0, 79622000-0 (supply services of domestic help personnel), 79624000-4 (supply services of nursing personnel), 79625000-1 (supply services of medical personnel), from 85000000-9 to 85323000-9, 98133100-5, 98133000-4, 98200000-5, 98500000-8 (private households with employed persons), from 98513000-2 to 98514000-9 (manpower services for households, agency staff services for households, clerical staff services for households, temporary staff for households, home-help services and domestic services)
2.	Administrative, social, educational, health care and cultural services	85321000-5, 85322000-2, 75000000-6 (administration, defence and social security services), 75121000-0, 75122000-7, 75124000-1, from 79995000-5 to 79995200-7, from 80000000-4 (education and training services) to 80660000-8, from 92000000-1 to 92700000-8, 79950000-8 (exhibition, fair and congress organisation services), 79951000-5 (seminar organisation services), 79952000-2 (event services), 79952100-3 (cultural event organisation services), 79953000-9 (festival organisation services), 79954000-6 (party organisation services), 79955000-3 (fashion shows organisation services), 79956000-0 (fair and exhibition organisation services)
3.	Compulsory social security services	75300000-9
4.	Benefit services	75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1
5.	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services	98000000-3, 98120000-0, 98132000-7, 98133110-8, 98130000-3
6.	Religious services	98131000-0
7.	Hotel and restaurant services	From 55100000-1 to 55410000-7, from 55521000-8 to 55521200-0, 55521000-8 (catering services for private households), 55521100-9 (meals-on-wheels services), 55521200-0 (meal delivery service), 55520000-1 (catering services), 55522000-5 (catering services for transport enterprises), 55523000-2 (catering services for other enterprises or other institutions), 55524000-9 (school catering services); 55510000-8 (canteen services), 55511000-5 (canteen and other restricted-clientele cafeteria services), 55512000-2 (canteen management services), 55523100-3 (school-meal services)
8.	Legal services	From 79100000-5 to 79140000-7, 75231100-5
9.	Other administrative services and government services	From 75100000-7 to 75120000-3, 75123000-4, from 75125000-8 to 75131000-3
10.	Provision of services to the community	From 75200000-8 to 75231000-4

11.	Prison related services, public security and rescue services, provided that they are not excluded in accordance with Section 3, Paragraph one, Clause 10 of this Law	From 75231210-9 to 75231230-5, from 75240000-0 to 75252000-7, 794300000-7, 98113100-9
12.	Investigation and security services	From 79700000-1 to 79721000-4 (investigation and security services, security services, alarm-monitoring services, guard services, surveillance services, tracing system services, absconder-tracing services, patrol services, identification badge release services, investigation services and detective agency services) 79722000-1 (graphology services), 79723000-8 (waste analysis services)
13.	International services	98900000-2 (services provided by extra-territorial organisations and bodies) and 98910000-5 (services specific to international organisations and bodies)
14.	Postal services	64000000-6 (postal and telecommunications services), 64100000-7 (post and courier services), 64110000-0 (postal services), 64111000-7 (postal services related to newspapers and periodicals), 64112000-4 (postal services related to letters), 64113000-1 (postal services related to parcels), 64114000-8 (post office counter services), 64115000-5 (mailbox rental), 64116000-2 (post-restante services), 64122000-7 (internal office mail and messenger services)
15.	Miscellaneous services	50116510-9 (tyre-remoulding services), 71550000-8 (blacksmith services)

Public Procurement Law  
Annex 3

## International Conventions in Social and Environmental Fields

[3 March 2022]

1. Forced Labour Convention, 1930 (ILO Convention No. 29).
2. Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87).
3. Right to Organise and Collective Bargaining Convention, 1949 (ILO Convention No. 98).
4. Equal Remuneration Convention, 1951 (ILO Convention No. 100).
5. Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105).
6. Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111).
7. Minimum Age Convention, 1973 (ILO Convention No. 138).
8. Vienna Convention for the Protection of the Ozone Layer, 1985, and its Montreal Protocol on Substances that Deplete the Ozone Layer, 1987.
9. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989 (Basel Convention).
10. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 10 September 1998 (UNEP/FAO) (PIC Convention) and its three regional protocols.
11. Worst Forms of Child Labour Convention, 1999 (ILO Convention No. 182).
12. Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), 22 May 2001.

<sup>1</sup> The Parliament of the Republic of Latvia

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