

# Law on Public Procurement

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## CHAPTER ONE

### COMMON PROVISIONS

#### Title I

#### Purpose

##### Article 1.

This Law provides the terms and procedure governing public procurement.

##### Article 2.

The purpose of this Law is to ensure greater efficiency in the use of Budget or public funds by:

1. Transparency.
2. Effective disbursement controls.
3. Competitive environment.
4. Incentives for economic development.

#### Title II

### Subject-Matter of Public Procurement

##### Article 3.

- (1) The subject-matter of public procurement shall be:
1. Works, including:
    - a. engineering;
    - b. performance of separate or turn-key construction or installation work;
    - c. vertical or horizontal extensions or rehabilitation or reconstruction of buildings;
    - d. supply, installation or deinstallation of process equipment related to works.
  2. Supplies by:
    - a. purchase of goods;
    - b. purchase or lease, operating or financing, of machinery, installations or turn-key equipment.
  3. Services related to:
    - a. maintenance, repairs or capital improvement of buildings, machinery or installations;
    - b. placement of works into service;
    - c. demolition of buildings or other structures;
    - d. road, air or water transport;
    - e. telecommunications;
    - f. insurance;
    - g. hardware or software research and development;
    - h. accounting or auditing;
    - i. research;
    - j. management or consultancy;
    - k. all phases of construction planning, including zoning plans and land surveys, feasibility studies and construction drawings;
    - l. marketing, advertising and public opinion surveys;
    - m. real property management and maintenance;

- n. publishing, circulation and printing, including the printing of securities, sample document forms, registered forms bearing serial numbers or such as may be used in the collection of government revenue or contain tax information or have face value;
  - o. legal counselling;
  - p. domestic waste disposal or cleaning or green space maintenance or other common improvements in inhabited places;
  - q. further training or retraining;
  - r. security and security systems;
  - s. financial services, save those provided by the National Bank of Bulgaria and those related to the management of Government debt.
- (2) Public procurement contracts shall be made for adequate consideration and shall be executed in writing under the terms and procedure herein provided by and between principal and contractor for any subject-matter under paragraph 1.

### **Title III**

#### **Parties to Public Procurement**

##### **Article 4.**

For the purposes of public procurement, any of the following may act as principal:

1. Government agencies, municipal Mayors, higher academic establishments, or other authorities or organisations, such as have powers to obligate Consolidated Government Budget funds, including:
  - a. Health insurance or pension funds.
  - b. Non-profit organisations.
2. Non-profit organisations established by one or several government agencies and/or local authorities.
3. Business corporations which carry on any one or several of the following activities, including such activities carried on under a concession or government licence:
  - a. operation of public utility networks for the production, transmission or distribution of drinking water, electricity, gas or district heating, including supply to such networks;
  - b. exploitation of oil, gas or coal deposits or other solid fuel deposits;
  - c. operation of airports or seaports or river-ports or other carrier terminals;
  - d. operation of public transport networks;
  - e. operation of telecommunication networks or supply of telecommunication or postal services, or of automated public service networks.

##### **Article 5.**

- (1) Any Bulgarian or foreign natural or legal person, or any combination thereof, may participate in a public procurement procedure as prospective contractor.
- (2) The contractor in public procurement must be registered as trader within the meaning of the Commerce Law or be engaged in a liberal profession.

### **Title IV**

#### **Scope**

##### **Article 6.**

This Law shall not apply to such public procurement as may be:

1. related to national defence or security and shall be the subject of state secrecy or the completion of which may be subject to special security arrangements in accordance with the existing legislation;
2. provided for by international agreement and governed by the terms and procedure thereof;
3. governed by such terms and procedure as an international organisation may define;
4. the subject of a contract whereunder the contractor would also be the principal within the meaning of Article 4, item 3.

#### **Article 7.**

(1) The provisions of this Law shall apply in any case to public procurement in excess of the following values net of value added tax as at the date of announcement of the procurement procedure:

1. in respect of works under Article 3, para 1, item 1 - above BGN 600,000;
2. in respect of supplies under Article 3, para 1, item 2, - above BGN 50,000;
3. in respect of services under Article 3, para 1, item 3 - above BGN 30,000.

(2) Where the subject of a public procurement contract is the supply of both goods and services, this Law shall apply if the total contract value exceeds the one specified in para 1, item 2 above.

(3) Public procurement contracts may not be split with a view to avoiding the application of this Law, nor, in particular, may such contracts for phased construction projects be split where, upon the completion of any intermediate phase, the facility is incapable of being certified for occupancy or operation as a structure or installation of any autonomous business or technical utility.

(4) The terms and procedure governing public procurement of any value below the limits under Article 7 shall be provided by an Ordinance of the Council of Ministers, providing in particular such measures as may ensure and encourage the participation in such public procurement of small and medium-sized enterprises.

### **Title V**

#### **Contract Value Determined**

#### **Article 8.**

(1) The value of public procurement contracts shall be determined as follows:

1. in respect of works, to include the value of all related supplies of goods and services;
2. in respect of an operating lease, for the full life of the lease;
3. in respect of a financing lease, for the full life of the lease plus an estimate of the scrap value of assets;
4. in respect of periodic supplies of goods or services, on the basis of the actual costs under similar contracts made in the previous fiscal year as adjusted, where reasonably possible, for any planned changes in quantity or cost;
5. in respect of contracts of indefinite duration, on the basis of a monthly payment multiplied by 48;
6. in respect of insurance services, on the basis of the full amount of the insurance premium;
7. in respect of financial services, to include all fees, commissions and interest, and any other compensation;
8. in respect of a contract calling, among other things, for the delivery of project documentation, to include the compensation for such documentation and all charges payable.

(2) The selection of any particular valuation method may not be used to avoid the application of this Law.

### **CHAPTER TWO**

#### **COMMON RULES OF PROCEDURE**

#### **Title I**

#### **Principles**

#### **Article 9.**

Public procurement shall be governed by the procedure laid down in this Law in accordance with the following principles:

1. Public access and transparency.
2. Free and fair competition.
3. Equal participation opportunities for all.

4. Confidentiality of any company information provided and of the proposals made by the prospective contractors.

**Article 10.**

- (1) By 31 January of each year, the principals in public procurement shall deliver to the Official Gazette for publication information about their planned public procurement requests for the year, where the total value of such requests is equal to, or higher than, BGN 1,000,000, so that prospective contractors may be informed accordingly.
- (2) The notice concerning public procurement plans for the year must set out separately such planned procurement of works, supplies, and services.
- (3) The fact of such publication shall not in itself constitute a binding commitment on the part of the principal to conduct the requisite public procurement procedure.
- (4) The principal may commence a public procurement procedure for any item not included in the notice of planned public procurement requests for the year, provided however that the procedure shall not commence earlier than one month after the publication of a supplemental notice.

**Article 11.**

- (1) The Minister of Public Administration shall create a Public Procurement Register.
- (2) The principals in public procurement shall deliver all the public procurement information to the administration of the Council of Ministers for entry on the Public Procurement Register.
- (3) The Public Procurement Register shall be open to the public.

**Article 12.**

- (1) All actions such as the principal may address to the prospective contractors shall be in writing.
- (2) Notice of the principal's decisions, such as shall be subject to notification, shall be delivered to the prospective contractors in person against a signed acknowledgement of receipt or by registered mail against such acknowledgement.

**Title II**

**Rules of Procedure**

**Article 13.**

- (1) Public procurement contracts shall be awarded by an open or closed bidding procedure or by direct negotiation.
- (2) Under the open award procedure, the principal shall publish an open invitation to quote to all who may be interested.
- (3) Under the closed award procedure, proposals may only be submitted by such prospective contractors as the principal, after a pre-qualification process, may expressly invite in writing.
- (4) Under the direct negotiation procedure, the principal shall award the contract upon successful completion of negotiations with one or several prospective contractors, such as the principal may select.
- (5) Once a particular type of procedure has been announced in any particular case, it may not be replaced with another, unless it has been completed without the conclusion of a contract.

**Article 14.**

Except as otherwise provided in this Law, the principal shall award all public procurement contracts by the open procedure.

**Article 15.**

The principal shall elect to award by the closed procedure where:

1. in view of the specific character of the subject of procurement, it is only capable of being performed by a limited number of contractors; or
2. the subject of procurement is of a complex technical nature, so as to require successive technical or technological specifications to be defined in the course of contract performance; or

3. the open procedure initially announced had been terminated or completed without the conclusion of a contract.

#### **Article 16.**

The principal may only elect to award by direct negotiation where:

1. the subject of procurement entails scientific research, experimentation or survey; and the results thereof are incapable of being applied to any mass production or as proof of product marketability; or
2. there is a need for accident or disaster prevention or relief, or there is a threat to human health and life or of considerable damage or loss of property; or
3. the subject of procurement concerns supplemental supply by an existing contractor not later than six months after the award of the main contract and provided that all of the following conditions are met:
  - a. the original contract had been awarded by the open or the closed bidding procedure and the principal had in its invitation to quote set out the likelihood of supplemental procurement;
  - b. the change of supplier would entail the purchase of goods of different technical characteristics, such as might result in a lack of compatibility or in technical difficulties of operation or maintenance;
  - c. for the purposes of such supplemental procurement, the unit prices under the main contract are preserved, allowing for the officially reported rate of inflation;
  - d. the total value of such supplemental procurement does not exceed twenty per cent of the value under the main contract; or
4. the subject of procurement concerns a recurrence of service or the supply of supplemental service by an existing contractor not later than one year after the award of the main contract and provided that all of the following conditions are met:
  - a. the original contract had been awarded by the open or the closed bidding procedure and the principal had in its invitation to quote set out the likelihood of supplemental procurement;
  - b. for the purposes of such supplemental procurement, the unit prices under the main contract are preserved, allowing for the officially reported rate of inflation;
  - c. the total value of such supplemental procurement does not exceed twenty per cent of the value under the main contract; or
5. awarding the contract to another would result in infringement upon copyright or other intellectual property rights; or
6. the public procurement contract for supplies is to be concluded with a business corporation in liquidation or under proceedings in bankruptcy pending or declared bankrupt; or
7. the subject goods or services are on a schedule such as the Council of Ministers may approve in pursuance of Article 22, item 1 of the Law on Protection, Rehabilitation and Social Integration of Disabled Persons.

### **Title III**

#### **Public Procurement Contract**

#### **Article 17.**

- (1) The principal shall conclude a public procurement contract, in accordance with the Commerce Law or the Law on Obligations and Contracts, with the prospective contractor to whom it is awarded.
- (2) The public procurement contract shall include all terms and conditions contained in the proposal of the prospective contractor to whom it is awarded.
- (3) The principal shall conclude the contract under para 1 within one month of the announcement of its award decision.
- (4) The principal shall deliver information concerning each public procurement contract so concluded to the Minister of Public Administration for entry on the Public Procurement Register not later than fourteen days from the date of contract signature.

#### **Article 18.**

The public procurement contract may not be concluded:

1. prior to the expiration of the time limit set for any complaints against the principal's award decision; or
2. in the event of a complaint filed against the principal's award decision, prior to the issuance of a decision on such complaint; or
3. if the prospective contractor to whom the contract is awarded fails, before signature of the contract, to show documentary evidence of registration in pursuance of Article 5, para 2.

#### **Article 19.**

The parties to a public procurement contract may not amend the contract unless such circumstances arise as render the original contract prejudicial to the legitimate interests of any one of the parties.

#### **Article 20.**

The principal may terminate a public procurement contract if circumstances arising after its conclusion render the principal incapable of performing on its obligations thereunder. In such case, the principal shall owe to the contractor compensation for damages incurred in respect of the contract.

### **Title IV Determination of Public Procurement Award Procedure**

#### **Article 21.**

- (1) The principal shall terminate a public procurement award procedure where:
  1. in an open or closed bidding procedure, fewer than three proposals have been submitted; or
  2. none of the proposals submitted conforms to the principal's prior announced terms and conditions; or
  3. the top three ranking prospective contractors successively refuse to conclude a contract; or
  4. no real competition exists; or
  5. the grounds upon which the procedure had commenced cease to exist due to any material change of circumstances, including the lack of available project funding, for such reasons as the principal could not have reasonably foreseen or caused.
- (2) The principal shall not have the duty to set out the grounds under para 1, item 5 in its announcement of the terms and conditions for the procedure.

### **Title V Decision to Commence Public Procurement Award Procedure**

#### **Article 22.**

- (1) The decision to commence an award procedure shall set out:
  1. The subject of public procurement.
  2. The legal and factual grounds for commencement.
  3. The type of procedure.
  4. The term and place of contract performance.
  5. The restrictions on contract performance, if any.
  6. The qualification requirements to prospective contractors.
  7. Quality requirements.
  8. The quotation pricing method and terms of payment.
  9. The firm proposal period.
  10. The type and amount of participation deposit.
  11. The criteria for proposal rating and the weighting method for the purposes of the composite proposal rating.
  12. The place, date and hour of proposal review and rating.
- (2) The principal may also set out in its decision any additional performance requirements, such as:

1. relating to the solution of environmental issues, unemployment, job creation for the disabled, preference for local resources and materials;
  2. relating to national security, defence, and public order;
  3. relating to preference for small and medium sized enterprises as subcontractors.
- (3) The principal may establish any one of the following compensation methods in respect of contract performance:
1. Cash payment.
  2. Operation of the subject property transferred to the contractor, where the contract is for works.
  3. Other adequate consideration, such as may be provided by statute.

## **CHAPTER THREE**

### **COMMON TERMS AND CONDITIONS OF PARTICIPATION IN PUBLIC PROCUREMENT AWARD PROCEDURES**

#### **Title I Requirements to Prospective Contractors**

##### **Article 23.**

Any person which meets the principal's prior announced requirements may participate in a public procurement award procedure.

##### **Article 24.**

- (1) No such person may participate in a public procurement award procedure as:
1. has been declared bankrupt or is the subject of pending proceedings in bankruptcy; or
  2. has been sentenced for fraudulent bankruptcy; or
  3. is in liquidation; or
  4. has had its right to carry on business activities revoked; or
  5. has any outstanding financial obligations to the Treasury under an effective instrument issued by a competent authority or any such obligations to an insurance fund; or
  6. has been convicted of, and effectively sentenced for, crimes against property or the economy, unless subsequently rehabilitated.
- (2) The condition under para 1, item 6 shall concern the managers or members of the managing bodies of the prospective contractor.
- (3) The particulars under para 1, item 1, 2, 3 and 5 shall be verified by documentary evidence issued by the appropriate competent authority, and those under para 1, item 4 and 6, by declaration.
- (4) The conditions under para 1, item 1 and 3 shall not apply in the circumstances under Article 16, item 6.

#### **Title II Proposal**

##### **Article 25.**

- (1) In its proposal, every prospective contractor shall follow precisely the terms and conditions set out by the principal.
- (2) Within the time-limit set for submission of proposals in an open bidding procedure, every prospective contractor may modify, supplement or withdraw its proposal.

##### **Article 26.**

- (1) Each prospective contractor in a public procurement award procedure shall have the right to submit one proposal only.
- (2) No person which, subject to its prior consent, is designated as subcontractor in a prospective contractor's proposal may submit its own independent proposal.

#### **Article 27.**

- (1) The proposal shall set out the following:
  1. Documentary evidence of the prospective contractor's legal registration.
  2. Evidence of the prospective contractor's good business standing.
  3. Performance term and price quotation.
  4. Evidence of the technical feasibility of performance.
  5. The names of subcontractors if any. Proposed subcontractors must meet all the requirements as the prospective contractor.
  6. Documentary evidence of participation deposit paid.
  7. Copies of the prospective contractor's annual balance sheet and profit-and-loss account for the previous year, except that this requirement shall not apply to newly-registered entities and members of the professions.
  8. Certificates from the appropriate competent authorities concerning the absence of any of the circumstances under Article 24, para 1, item 1, 2, 3 and 5.
  9. Declaration concerning the absence of any of the circumstances under Article 24, para 1, item 4 and 6.
- (2) Where the prospective contractor is an unincorporated group of persons, the documents under para 1 shall be filed by each legal or natural person which is a member of the group.
- (3) The proposal shall be delivered in a sealed non-transparent envelope by the prospective contractor or by its authorised representative in person or by registered mail with acknowledgement of receipt.
- (4) Upon delivery, a serial number and the date and hour of delivery shall be inscribed on the envelope and these particulars shall be recorded in an in-register and the bearer shall be issued with the appropriate acknowledgement.
- (5) The principal may require that the price quotation be delivered in a separate sealed envelope marked with the words "Price Quotation".
- (6) The principal shall not accept for filing any proposal delivered after the deadline. The principal shall not accept for filing any proposal delivered in an open or torn envelope. Such proposal shall be returned immediately to the prospective contractor and the fact shall be duly recorded in the register.

#### **Article 28.**

- (1) The prospective contractor in a public procurement award procedure shall state in its proposal whether it intends to use any subcontractors.
- (2) The cost involving subcontractors may not exceed thirty per cent of the total price quoted.
- (3) The cost involving subcontractors may reach up to fifty per cent of the total price quoted where the prospective contractor is a foreign natural or legal person or any group thereof, but provided that the proposed subcontractors shall be Bulgarian natural or legal persons.

#### **Article 29.**

- (1) The proposals shall be deemed firm proposals binding the prospective contractors to their respective proposed terms and conditions for a period such as the principal shall set in calendar days.
- (2) The above period shall be the same for all prospective contractors. It may be extended for the top three ranking proposals until the conclusion of the procurement contract, but in no case by more than ninety calendar days.

### **Title III Participation Deposit**

#### **Article 30.**

Every prospective contractor shall make a deposit for the purposes of participating in the public procurement award procedure. The form and amount of such deposit shall be established by the principal as a percentage of contract value, but in no case may the amount be smaller than one per cent.

### **Article 31.**

The deposit shall be made in any one of the following forms:

1. Bank guarantee.
2. Pledge of government securities or other securities listed for trading on the official stock exchange market of market value equal to the deposit amount established by the principal.
3. Cash.

### **Article 32.**

The principal shall have the right to retain the deposit if the prospective contractor:

1. withdraws its proposal after the deadline set for submission; or
2. files a complaint against the award decision, until the dispute is resolved by the court; or
3. is awarded but fails to perform on its obligation to conclude the public procurement contract.

### **Article 33.**

(1) The deposits made by any other than the top three ranking prospective contractors shall be released by the principal within three business days after the expiration of the complaints period against the decision under Article 45, para 1. The deposits of all prospective contractors shall be released within the above period in the event of termination of the award procedure.

(2) The deposits made by the top three ranking prospective contractors shall be released within three business days after the conclusion of the public procurement contract.

(3) The deposit made by the prospective contractor with whom the principal concludes the public procurement contract shall be transformed into a contract performance bond and shall be released upon the completion of the contract.

(4) Upon release of the deposits under paras 1, 2 and 3, the principal shall not pay any interest on the deposit amounts for the time it had lawfully held those amounts.

## **CHAPTER FOUR**

### **OPEN PROCEDURE**

#### **Title I**

#### **Invitation to Quote in an Open Procedure**

### **Article 34.**

(1) The invitation to quote in an open public procurement procedure shall set out:

1. The name, address, and telephone number of the principal.
2. The principal's decision to commence the procedure.
3. The place, time, price and payment method for receipt of the bidding documents.
4. The place and deadline for submission of proposals.

(2) The invitation to quote in an open public procurement procedure shall be sent simultaneously to the Official Gazette and to the Public Procurement Register not later than forty-five calendar days before the date set for the conduct of the open procedure.

(3) The time limit under para 2 may be reduced to thirty calendar days if the principal had included the particular subject of public procurement in its notice of planned public procurement for the year under Article 10.

(4) The Official Gazette shall publish the invitation in its Public Procurement Bulletin not later than five calendar days after it is delivered to it.

(5) Having sent it to the Official Gazette, the principal shall cause the invitation to be published also in one local or national daily newspaper. This publication shall set out the date on which the invitation was sent to the Official Gazette.

(6) Where no proposal is submitted or fewer than three proposals are submitted within the period under para 2, the principal may extend the deadline for submission of proposals by not more than thirty days.

(7) Each change in the submission deadline shall be published in pursuance of para 4, and the prospective contractors who have announced their intention to submit or have already submitted proposals shall be notified of such change in writing.

**Title II**  
**Preparation of the Open Procedure**

**Article 35.**

- (1) The principal shall prepare and conduct the open public procurement award procedure.
- (2) The principal shall be responsible for receiving and keeping the proposals.
- (3) The principal shall keep the entire documentation relating to each public procurement procedure for a period of three years after the completion of the relevant contract.

**Article 36.**

- (1) The bidding documents for the open public procurement procedure shall contain all data, instructions and requirements necessary for the preparation of proposals.
- (2) The participants shall acquire the bidding documents under para 1 at such price as the principal shall determine.
- (3) The bidding documents for the open public procurement procedure shall contain:
  1. The decision to commence the procedure.
  2. Full description of the subject of procurement.
  3. Technical performance requirements. These requirements may not include or refer to suppliers, goods, materials or services, such as relate to any particular company, patent, utility model, trademark or designation of origin.
  4. Plans and other necessary documentation in the case of public procurement of works.
  5. Sample proposal form.
  6. Draft public procurement contract.
- (4) The principal shall be responsible for the content of the open procedure bidding documents.

**Title III**  
**Open Public Procurement Procedure Committee**

**Article 37.**

- (1) The open public procurement award procedure shall be conducted by a special committee appointed by the principal who shall also designate its chairperson.
- (2) The committee shall consist of a minimum of three members of whom at least one shall be a qualified lawyer and the rest shall be persons of sufficient professional competence and experience in accordance with the type and subject of public procurement.
- (3) The principal may also hire outside experts from the list under Article 55, para 2 as committee members or consultants.
- (4) The principal shall appoint the committee upon the expiration of the deadline for proposal submission and shall announce its membership on the date set for proposal review and rating.
- (5) The principal shall pay the compensation of committee members and all expenses relating to the committee's work.

**Article 38.**

- (1) No person may serve as committee member or consultant such as:
  1. has a gainful interest in the performance of the public procurement contract; or
  2. is a related person within the meaning of the Commerce Law to any prospective contractor in the open public procurement procedure or any of its proposed subcontractors or any member of their managing or supervising bodies; or
  3. has taken part in the preparation of the open award procedure and/or, where the subject of public procurement is works, the planning process; or
  4. is a member of the principal's managing bodies.
- (2) The committee members and consultants shall not divulge any of the particulars which may come to their knowledge in connection with their service on the committee.
- (3) Every member or consultant shall, upon his appointment to the committee, file with the principal a declaration concerning its status under paras 1 and 2.

**Title IV**  
**Review, Rating and Ranking of Proposals**

#### **Article 39.**

- (1) The committee shall commence its work upon receipt from the principal of the list of prospective contractors and the proposals submitted.
- (2) Prospective contractors participating in the procedure may attend the opening of the proposals by the committee.
- (3) The committee shall open the envelopes in order of filing and shall inspect the proposals' conformity to the prior announced terms and conditions.
- (4) The committee shall have the right at any time to verify the facts and data presented by the prospective contractors as well as the right to require that additional evidence in support of such facts and data be produced within such time as it may prescribe.

#### **Article 40.**

- (1) The committee shall bar from further participation in the open procedure any prospective contractor who:
  1. fails to present any of the required documents under Article 27, para 1; or
  2. is incapable of participating in any public procurement award procedure due to any of the circumstances under Article 24, para 1; or
  3. submits a proposal which is incomplete or is otherwise not in conformity with the principal's prior announced requirements.
- (2) The prospective contractors shall have the duty to notify the principal, within seven days of occurrence, of each and every change of the circumstances under para 1, item 2 occurring in the course of the open procedure.

#### **Article 41.**

- (1) Having reviewed the proposals, the committee shall proceed to rate them in accordance with the announced criteria.
- (2) The following main rating criteria shall be used:
  1. Highest overall economic benefit; or
  2. Lowest price quoted.
- (3) The proposal of any prospective contractor which qualifies under Article 21, para 3 of the Law on Protection, Rehabilitation and Social Integration of Disabled Persons shall be deemed to be of the lowest price quoted, provided that the price quoted by such prospective contractor shall not exceed by more than 10 per cent the lowest price quoted by another prospective contractor.
- (4) All other things being equal, preference shall be given to prospective contractors which propose to subcontract small or medium sized enterprises registered as such under the relevant legislation.

#### **Article 42.**

- (1) If any of the prices quoted appear to be unreasonably low, before excluding such proposals from further participation, the committee shall require a detailed written justification of those prices from the respective prospective contractors. The committee shall set a reasonable time for submission of such justifications, but not shorter than three business days from the date of delivery of the request for justification.
- (2) The committee may accept such written justification and allow the proposal to be rated if the justification sets out objective factors, such as relating to:
  1. a creative method of organising the contract performance; or
  2. particular technical solutions; or
  3. extremely favourable conditions available to the prospective contractor; or
  4. economies to be realised in contract performance.
- (3) If the prospective contractor concerned fails to submit a written justification of its price quotation within the prescribed time or if the committee finds in its discretion that the justification so offered is not objective, the proposal concerned shall be excluded from further participation in the award procedure.
- (4) The committee's decision to accept the written justification or to exclude the proposal from further participation shall be notified without delay to the prospective contractor concerned.

#### **Article 43.**

The committee shall rank three of the prospective contractors whose proposals are consistent in the highest degree with the principal's prior announced requirements.

#### **Article 44.**

(1) The committee shall draw up a statement of the review, rating and ranking of the proposals which shall set out:

1. The members of the committee.
2. The list of proposals admitted for review and rating.
3. The list of proposals excluded from review in pursuance of Article 40 and 42, para 3.
4. The opinions of any consultants involved in the committee's work.
5. The results of the review and rating of the proposals.
6. The participants ranked.

(2) If any member of the committee dissents from the common opinion, this shall be recorded in the statement with such member's written explanation of reasons.

(3) The statement shall be signed by all members and shall be delivered, together with the entire documentation gathered in the course of the open award procedure, to the principal.

(4) By the delivery of its statement, the committee's work shall be concluded.

(5) Upon request by any prospective contractor participating in the procedure, the principal shall provide it with access to the committee's statement.

#### **Article 45.**

(1) The principal shall announce by its decision the top three rankings and shall award the contract to the first-ranking prospective contractor not later than three business days after the conclusion of the committee's work.

(2) The decision under para 1 made by a principal under Article 4, item 2 and 3 shall constitute private administrative instruments within the meaning of Article 2 of the Law on Administrative Procedure.

(3) The principal shall notify the prospective contractors in writing of the proposal rating results.

#### **Article 46.**

(1) The principal shall conclude a public procurement contract with the prospective contractor to whom it has awarded the contract.

(2) If the prospective contractor to whom it is awarded refuses to conclude the contract, the principal shall offer the contract to the runner-up; and if the latter refuses to conclude the contract, to the third-ranking prospective contractor.

### **CHAPTER FIVE**

#### **CLOSED PROCEDURE**

##### **Title I Pre-Qualification**

#### **Article 47.**

(1) The invitation to participate in the pre-qualification of participants in a closed public procurement award procedure shall set out:

1. The name, address, and telephone number of the principal.
2. The principal's decision to commence the public procurement procedure.
3. The place and time for filing of the pre-qualification participation request.
4. The pre-qualification criteria.

(2) The invitation to participate in the pre-qualification of participants in a closed public procurement award procedure shall be sent and published in accordance with the provisions of Article 34, paras 4, 5 and 6 not later than fifteen calendar days before the date set for the pre-qualification procedure.

(3) Any change in the deadline for filing of the pre-qualification participation requests shall be published in accordance with para 2 above, and the participants who have already filed such requests shall be notified of such change in writing.

#### **Article 48.**

(1) The principal shall conduct the pre-qualification with a view to inviting such participants only to the closed award procedure which are financially and technically capable of performing the procurement contract.

(2) Anyone interested in the procurement project may file for participation in the pre-qualification procedure.

(3) The pre-qualification participation request shall contain:

1. Documentary evidence of the participant's legal registration.
2. Evidence of the participant's good business standing.
3. Copies of the participant's annual balance sheet and profit-and-loss account for the previous year, except that this requirement shall not apply to newly-registered entities and members of the professions.
4. Evidence of the technical feasibility of contract performance.
5. Certificates from the appropriate competent authorities concerning the absence of any of the circumstances under Article 24, para 1, items 1, 2, 3 and 5.
6. Declaration concerning the absence of any of the circumstances under Article 24, para 1, items 4 and 6.

(4) Where the participant is an unincorporated group of persons, the documents under para 3 shall be filed by each legal or natural person who is a member of the group.

(5) The request shall be delivered in a sealed non-transparent envelope by the participant or by its authorised representative in person or by registered mail with acknowledgement of receipt.

(6) Upon delivery, a serial number and the date and hour of delivery shall be inscribed on the envelope and these particulars shall be recorded in an in-register and the bearer shall be issued with the appropriate acknowledgement.

(7) During the pre-qualification phase, the principal may not request nor may any participant make a proposal.

#### **Article 49.**

(1) The pre-qualification of participants for the closed procedure shall be done by a committee as appointed by the principal in accordance with the provisions of Chapter Four, Title III.

(2) The committee shall review the pre-qualification requests filed and shall advise the principal to invite to the closed procedure the participants which meet, in the highest degree, the principal's prior announced requirements. The pre-qualification shall be based on the participants' financial and technical capability of performing the procurement contract.

(3) The principal shall designate the participants to be invited to quote in the closed public procurement award procedure and shall send its decision to the Public Procurement Register within seven business days.

(4) The principal shall send simultaneously to all participants so designated written invitations to quote in the closed procedure. The principal's invitation to quote shall set out the place, time, price and method of payment for receipt of the bidding documents for the closed procedure.

(5) Within seven days of receipt of the above invitation, each participant shall confirm in writing its intention to take part in the closed procedure. The failure to confirm shall be deemed to be a refusal to participate in the procedure.

### **Title II Closed Procedure Conducted**

#### **Article 50.**

(1) The principal shall conduct the closed public procurement award procedure if not fewer than three participants confirm the invitation to quote. Otherwise, the principal shall terminate the procedure and shall notify the participants accordingly in writing.

(2) The deadline for submission of proposals may not be shorter than twenty calendar days from the date of receipt of the invitation to quote.

(3) The time limit under para 2 may be reduced to ten calendar days if the principal had included the particular subject of public procurement in its notice of planned public procurement for the year under Article 10 or in the event of extreme urgency.

(4) The proposals shall be reviewed and rated by the pre-qualification committee in accordance with the provisions of Chapter Four, Title IV.

#### **Article 51.**

To any matters not provided for in this Chapter the corresponding provisions relating to the open award procedure shall apply.

### **CHAPTER SIX**

#### **DIRECT NEGOTIATION**

#### **Article 52.**

(1) The direct negotiation procedure shall commence with the principal's invitation addressed to such prospective contractor(s) as the principal may select.

(2) The invitation shall set out the same as under Article 34, para 1.

(3) The principal shall set the deadline for proposal submission, which cannot be shorter than fifteen calendar days.

(4) In the course of the negotiation, the principal shall proceed from its own best interest.

#### **Article 53.**

To any matters not provided for in this Chapter the corresponding provisions relating to the open award procedure shall apply.

### **CHAPTER SEVEN**

#### **AUTHORITIES**

##### **Title I**

#### **Public Procurement Register**

#### **Article 54.**

The Minister of Public Administration shall:

1. issue an ordinance concerning the maintenance of the Public Procurement Register;
2. provide guidelines concerning the application of this Law;
3. organise the training of experts in the field of public procurement;
4. approve sample document forms for the purposes of the public procurement procedures;
5. co-ordinate among the principals under Article 4, item 1 for the purposes of this Law;
6. instruct the competent authorities concerning the conduct of inspections for the purposes of this Law;
7. represent the Republic of Bulgaria before international organisations in the field of public procurement.

#### **Article 55.**

(1) For the purposes of this Law, the Minister of Public Administration shall be assisted by a special unit within the administration of the Council of Ministers.

(2) The special unit under para 1 shall maintain the Public Procurement Register which shall contain:

1. The decisions to commence public procurement procedures.
2. The invitations to quote in public procurement procedures.
3. Information concerning the public procurement contracts concluded.
4. The list of persons whom principals can hire as outside experts.
5. Annual ratings of best business entities by industry.
6. The cases of precedent in the application of this Law.

- (3) The list under item 4 shall be prepared, maintained and updated with the assistance of the relevant industry associations or organisations.
- (4) The annual ratings under item 5 shall be prepared and sent to the Minister of Public Administration by the relevant industry associations or organisations.

## **Title II Complaints and Review**

### **Article 56.**

- (1) Any participant in a public procurement procedure under this Law may file a complaint under the Law on Administrative Procedure concerning non-compliance with the established procedure.
- (2) The complaint shall be filed with the principal within seven days of announcement of the decision under Article 45, para 1.

### **Article 57.**

- (1) Review concerning the application of this Law shall be exercised by the Chamber of Auditors and by the authorities of the State Financial Control.
- (2) In any particular case, the Minister of Public Administration can request the authorities of the State Financial Control to exercise their powers under para 1.

## **CHAPTER EIGHT**

### **ADMINISTRATIVE ACTION**

#### **Article 58.**

- (1) The statements whereby offences shall be established for the purposes of this Law shall be drawn up by officers of the State Financial Control.
- (2) The relevant penal orders shall be issued by the Minister of Finance or by the Minister of Public Administration, in the cases under Article 57, para 2, or by such officers as the Minister of Finance or of Public Administration, as the case may be, may designate.
- (3) The establishment of offence and the issuance, appeal and enforcement of penal orders shall be governed by the Law on Administrative Violations and Penalties.

#### **Article 59.**

Grave offences under this Law, such as do not constitute a criminal offence, shall be punishable by fine in an amount not to exceed one half of one per cent of the relevant contract value, but not smaller than BGN 1000.

#### **Article 60.**

- (1) principal within the meaning of this Law who fails to comply with the requirement to conduct the public procurement award procedure provided hereunder shall be punishable by fine in an amount not exceed five per cent of the relevant contract value, but not smaller than BGN 5000.
- (2) The fine shall be issued within six months from the date on which the offence had been established, but not later than three years from the date of commission.

#### **Article 61.**

A principal who fails to perform the actions prescribed by the review authorities shall be punishable by fine in an amount from BGN 200 to 1000.

#### **Article 62.**

- (1) An officer who fails to provide, within the time limit prescribed, any such evidence or information concerning the award or performance of a public procurement contract as may be requested from him shall be punishable by fine in an amount from BGN 50 to 250.
- (2) Also punishable as under para 1 shall be any officer who fails, without any valid reason, to promptly refer a complaint to the competent authority or court.

### Article 63.

The fines under Articles 61 and 62 shall be issued within three months of the establishment of offence. If the same offence is committed repeatedly within any year, the fine shall be equal to double the amount otherwise provided.

#### ADDITIONAL PROVISION

§ 1. Within the meaning of this Law:

1. *engineering* is the implementation of works on a turn-key basis or the performance of more than one of the following: feasibility study, planning and design, organisation of works, implementation of works, supply and installation of machinery and equipment, preparation for, and placement of, works into service;
2. *rehabilitation* is a construction activity related to the restoration, reconstruction, expansion or modernisation of any part of an element of road, transport, telecommunications, energy, water, sewer or irrigation infrastructure;
3. *domestic waste disposal* is the collection, temporary storage, treatment and landfill disposal of domestic waste, and activities related to the reuse or recycling of such waste, including the generation of energy or other products;
4. *Consolidated Government Budget* funds include subsidies from the Central Government Budget, funds from off-budget accounts, and transferred budget revenue of non-profit organisations;
5. *prospective contractor* in a public procurement award procedure is a Bulgarian or foreign natural or legal person, or any group thereof, such as:
  - a. has purchased bidding documents for participation in a public procurement award procedure;
  - b. meets the principal's announced qualification requirements;
  - c. submits a proposal for participation in the announced procedure;
6. *public procurement award procedure* includes all actions of the principal such as lead to the conclusion of a contract by and between principal and contractor;
7. *group* is the grouping of two or more Bulgarian or foreign natural or legal persons for the object of participating in a public procurement award procedure but without any particular legal form of organisation;
8. *related undertaking* is any undertaking over the management or activities of which the principal has direct or indirect control;
9. *[proposal of] highest overall economic benefit* is [the proposal of] highest conformity to the principal's prior announced criteria of quality, technical characteristics, aesthetic and functional features, technical support or warranty customer service, completion term, price and method of payment;
10. *price quoted* is the price quoted by a *prospective contractor* in a public procurement award procedure in consideration for contract performance;
11. *bidding documents* is the set of documents prepared by the principal in accordance with its requirements relating to the procurement;
12. *evidence of good business standing* includes references from former principals, if the *prospective contractor* has participated in previous public procurement procedures, or from permanent business associates;
13. *evidence of technical feasibility* shall be provided in any one or several of the following forms depending on the type, nature, size, and purpose of the subject of public procurement:
  - a. evidence of the prospective contractor's general and special educational qualifications and/or those of its management, and in particular, those of the person or persons immediately responsible for contract performance;
  - b. a list of the main assignments performed during the last year, including prices, completion terms, and customers;
  - c. a statement of the machinery, equipment and other technical facilities available to the prospective contractor for the purposes of contract performance.
14. *performance proposal* is the detailed description of the proposed organisation, manner and term of contract performance.
15. *no real competition* exists where the prices quoted and the other proposed terms and conditions are the same.

## **TRANSITIONAL AND CONCLUDING PROVISIONS**

**§ 2.** Hereby repealed are:

1. The Law on Government and Municipal Procurement (OG No. 9/1997).
2. Article 38 of the Law on Restriction of Harmful Waste Impact on the Environment (OG No. 86/1997).
3. Article 70, items 4, 5 and 7 of the Law on Municipal Property (OG No. 44/1996, with all subsequent amendments No 104/1996, No 55/1997, No 22 and 93/1998, No 23/1999).

**§ 3.** Article 7 of the Law on Official Gazette (OG No 89/1995, with all subsequent amendments No 92/1995; supplements No 123/1997) is hereby amended as follows:

1. The following para 2 is inserted:

“(2) There shall be created in the unofficial section the heading Public Procurement Bulletin where there shall be published:

1. principals’ notices concerning planned public procurement for the current year in pursuance of Article 10 of the Law on Public Procurement;
  2. he invitations to quote in public procurement award procedures;
  3. he list of persons whom principals may hire as outside experts.”
2. The existing paras 2 and 3 are hereby renumbered 3 and 4 respectively.

**§ 4.** In §3a of the Transitional and Concluding Provisions of the Law on Concessions (OG No. 92/1995, with all subsequent amendments, No16/1996 -Ruling No 2 of the Constitutional Court from 1996; No 44/1996, Nos 61 and 123/1997, No 93/1998 and No 23/1999), the words “Law on Government and Municipal Procurement” are hereby replaced with the words “Law on Public Procurement”.

**§ 5.** In §17 of the Transitional and Concluding Provisions of the Law on Transformation and Privatisation of State-Owned and Municipal-Owned Enterprises (OG No. 38/1992, with all subsequent amendments No 51/1994, Nos 45, 57 and 109/1995; Nos 42, 45, 68 and 85/1996; No 86/1996; Nos 55, 61, 89, 98 and 122/1997, No 39/1998; No 41/1998; No 70/1998, No 12/1999, No 47/1999 - Ruling No 8 of the Constitutional Court from 1999), the words “Law on Government and Municipal Procurement” are hereby replaced with the words “Law on Public Procurement”.

**§ 6.** (1) The provisions of the Law on Government and Municipal Procurement, hereby repealed, shall continue to apply to such government or municipal procurement procedures as may be pending or in which a contract award decision has been made at the time when this Law shall enter into force.

(2) Where a decision to commence a procurement procedure has been made under Article 38 of the Law on Restriction of Harmful Waste Impact on the Environment or under Article 70, items 4, 5 and 7 of the Law on Municipal Property at the time when this Law shall enter into force, the procedure so commenced shall be completed under the now existing provisions.

**§ 7.** This Law is addressed to the Council of Ministers for implementation.

This Law was passed by the 38th National Assembly on 9 June 1999 under the official seal of the National Assembly.

Yordan Sokolov,  
Chairman of the National Assembly  
38095