

L A W ON PUBLIC PROCUREMENT

I. GENERAL PROVISIONS

1. Subject of the Law, Covered parties, Exemptions, Procedure types

Subject of the Law

Article 1

This Law shall govern: the conditions, manner and procedure of procurement of goods and services and awarding work assignments (hereinafter: public procurement), protection of rights in the public procurement procedures and other issues of relevance for public procurement.

Application

Article 2

This Law shall apply to:

- 1) state administration bodies, local self-government units, public services and other beneficiaries of the Budget of Montenegro, that is the Budget of the local self-government unit and other public funds performing tasks of public interest;
- 2) business organizations and legal entities performing tasks of public interest:
 - where the state, or a local self-government unit possesses over 50% of the shares or stake in that business organization or legal entity; or
 - where more than half the members of that business organization or legal entity's managing body are representatives of the state administration body or the local self-government body; or
 - where the representatives of the state administration body or the local self-government body authority have more than half the votes in the managing body of that business organization or legal entity;
 - where the body referred to in item 1 of this paragraph supervises the operation of that business organization, or legal entity.
- 3) business organizations, legal entities, entrepreneurs and natural persons for procurement of goods, services and awarding work assignments that are funded by more than 50% from the Budget of Montenegro, local self-government unit and other public funds or by the funds of the business organization or the legal entity referred to in item 2 of this paragraph;
- 4) procurement of goods and services and awarding work assignments for operations in areas of water management, energy, mining, telecommunications, postal services and transport, when these operations are performed in accordance with provisions of Articles 108 to 113 of this Law.

By the way of exception to paragraph 1 item 1 of this Article, for diplomatic and consular missions of Montenegro abroad, military-diplomatic representatives and units of the army of Montenegro in the international forces and peacekeeping missions as well as for other activities performed abroad, the types of public procurement procedures as well as the manner of their conducting shall be regulated by the regulations of the Government of Montenegro (hereinafter: the Government).

An administrative authority responsible for public procurement activities (hereinafter referred to as: competent public authority) shall prepare a list of covered parties referred to in paragraph 1 of this Article (hereinafter: contracting authorities).

The newly established contracting authority is obliged to submit an application to the competent public authority in purpose of its inclusion into the List of contracting authorities, no later than 30 days from the date on which it acquired the status of a contracting authority.

The list of covered parties referred to in paragraph 4 of this Article shall be published at the public procurement portal of the competent state authority (hereinafter: public procurement portal).

The list of covered parties shall be updated within three days as of the day of submission of the application referred to in paragraph 4 of this Article.

The contracting authorities are obliged to implement this Law even in the cases when they are not included in the List referred to in paragraph 4 of this Article.

Exemptions from the Law

Article 3

Provisions of this Law shall not apply to:

- 1) procurement procedures conducted in accordance with special international organization's procedure, on basis of an international agreement or treaty concluded with that international organization;
- 2) procurement procedures conducted in accordance with special rules on basis of an international agreement or treaty concluded between Montenegro and one or more countries for a project that shall be conducted or used jointly by contractual parties;
- 3) services provided by business organizations or legal entities performing activities of public interest, in accordance with the Law;
- 4) procurement aimed at protection and recovery from catastrophes and major disasters – state of emergency;
- 5) confidential procurement, in accordance with the Law;
- 6) contracts for the procurement of weapons, ammunition and other supplies needed for the defence and security of Montenegro;
- 7) procurement aimed at the acquisition, development, production or co-production of program material, intended for radio or television broadcasting;
- 8) procurement of arbitration, amicable dispute resolution and notary services;
- 9) procurement of financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise funds, capital and services of the Central Bank of Montenegro;
- 10) procurement relating to the labor relations;
- 11) procurement of services related to employment;
- 12) procurement of election materials.

This Law shall not apply to the process of granting concessions and privatisation of the economy, as well as the sale and renting of land, existing buildings or other real estate or the rights deriving from them.

Meaning of terms

Article 4

Particular terms used in this Law shall have the following meaning:

- 1) **state administration bodies** are: Parliament of Montenegro, President of Montenegro, Government of Montenegro (hereinafter: Government), Constitutional Court of Montenegro, Protector of Human Rights and Freedoms, Public Prosecution Office, ministries and other administrative bodies, courts, Central Bank of Montenegro, State Audit Institution and other services founded by the State of Montenegro;
- 2) **bodies of local-self government units are:** Municipal Assembly, Assembly of the Capital City and the Old Royal Capital, President of Municipality, Mayor of the Capital City and the Old Royal Capital, local administration and other bodies and services established by the local self-government unit;
- 3) **public services** are: University of Montenegro, public enterprises, that is, business organizations and other legal persons performing affairs of public interest, public and other institutions, state funds and other entities and organizations performing public competences established by the state of Montenegro, or a local self-government unit;
- 4) **public procurement contract** is a contract concluded between a contracting authority and a bidder in accordance with the conducted public procurement procedure, whose subject is the procurement of goods, provision of services or performance of works, with a certain price;
- 5) **bidder** shall mean a business organization, a legal entity, an entrepreneur or other natural person, submitting the offer in a public procurement procedure, individually or as a group of bidders in a joint bid, as well as a submitter of an application for pre-qualification in the first phase of restricted public procurement procedure who has qualified for submission of the bid in the second phase of the restricted procurement procedure;
- 6) **requirement** shall mean the contracting authority's request that has to be fully complied with in the bid;
- 7) **contract notice** is an invitation for submission of bids in a public procurement procedure that is published on the Public procurement portal, and these are: invitation to public tender in an open procedure, invitation for pre-qualification, invitation to public tender by negotiation, a contest and a request for submission of bids in a shopping method;
- 8) **invitation to tender** is an invitation not published on the Public procurement portal, submitted directly to the bidders by the contracting authority thereby requesting submission of their bids in a public procurement procedure, that is: request for submission of bids in second phase of a restricted procedure, invitation to tender by negotiation, request for submission of bids for framework agreement and request for submission of bids for provision of consultant services;
- 9) **criterion** shall mean a measure used for evaluating bids;
- 10) **application for qualification** shall mean a request of an interested person to participate in the first phase of the restricted procedure - pre-qualification, and it shall be accompanied by the necessary documentation;
- 11) **electronic bid** shall mean any bid or part of a bid which a bidder delivers to the contracting authority in the electronic form;
- 12) **unforeseen events** are natural disasters, fires, technical-technological disasters, damage to equipment and machines, chemical, biological, nuclear or radiological contaminations, epidemic outbreaks, epizooties, epiphytities and other accidents.

2. Principles of public procurement

Principle of cost-effective and efficient use of public funds

Article 5

A contracting authority shall ensure that the public procurement procedure is conducted and the selection of bids made in a cost-effective manner with rational use of public funds.

Principle of Ensuring Competition among the Bidders

Article 6

The contracting authority shall undertake any necessary actions to ensure fair competition among potential bidders, in accordance with the law.

A contracting authority may not limit competition among the bidders; in particular, a contracting authority may not prevent any bidder from participating in public procurement by unjustified use of the negotiated procedure or by using discriminatory requirements or criteria, or measures favouring individual bidders.

Principle of Transparency of Public Procurement Procedure

Article 7

Transparency of the procedures shall be ensured by publishing public procurement plans, notices of public competition, decisions of candidates' qualifications, decisions on the selection of the best bid, decisions on suspension of a public procurement procedure, public procurement contracts, changes or addenda to the plan, notice or contract, as well as by undertaking other actions and measures.

A bidder who participated in the public procurement procedure shall have the right to review the data concerning the conducted public procurement procedure, in manner prescribed by this law.

Principle of Equality of Bidders

Article 8

The contracting authority shall ensure an equal treatment of all bidders in all phases of the public procurement procedure.

3. Protection of Data, Keeping Records of the Procedure and Establishing Communication

Protection of Data

Article 9

A contracting authority shall:

- 1) keep as confidential all data contained in bids that are designated as confidential by a special regulation and designated as such in the bid by the bidder;
- 2) refuse to disclose information that would entail a breach of confidentiality of data received in a bid;
- 3) keep the names of bidders and applicants, as well as bids and applications, as a trade secret until the expiry of the time limit determined for bid or application opening.

The price and other information from the bid that are of significance for applying the criteria elements and bid ranking shall not be deemed confidential.

Determination of Confidentiality

Article 10

A contracting authority may require in the tender documents the protection of confidentiality of the information it places at the bidders' disposal.

A person who has received data referred to in paragraph 1 of this Article shall observe their confidentiality irrespective of the degree of confidentiality stipulated.

Language in Public Procurement Procedure
Article 11

A contracting authority shall prepare tender documents and conduct the procedure in the Montenegrin language, as well as in other languages which are in official use in Montenegro, in accordance with the Constitution and the Law.

A contracting authority may also prepare a contract notice, an invitation to tender and tender documents in a foreign language commonly used in international trade.

A bidder shall submit his bid in the language used in the tender documents referred to in paragraph 1 of this Article, that is, in the language specified by the contracting authority in the contract notice, invitation to tender and tender documents.

A Bid in a Foreign Language
Article 12

A contracting authority may allow bids to be partly submitted in a foreign language, especially in the section regarding technical characteristics, quality and technical documentation.

In the case referred to in paragraph 1 of this Article, the contracting authority shall specify which part of a bid may be submitted in a foreign language and which foreign language is to be used.

In the event of dispute, the Montenegrin version of tender documents shall prevail.

Currency
Article 13

The estimated value of public procurement and the offered price shall be stated in euros.

Manner of Conducting a Public Procurement
Article 14

A public procurement may be conducted in written or electronic form.

Communication and exchange of information between a contracting authority and a bidder, may be realized electronically, by fax or by other means of communication according to the contracting authority's choice.

The means of communication chosen shall be generally available and thus they shall not restrict bidders' access to information.

Communication referred to in paragraphs 2 and 3 of this Article shall be realized in a way that can prove that the information was sent or received.

A contracting authority may determine in the contract notice, the invitation to tender or tender documentation that the written acts and information may be submitted via fax, provided that the receipt of the latter would be confirmed by mail or by electronic means by the established deadline.

The manner of submission of bids (in written or electronic form) shall be determined in the contract notice, invitation to tender and tender documents.

4. Anti-corruption Rule and Prevention of Conflict of Interest

Anti-corruption Rule
Article 15

A contracting authority shall reject, or refuse, a bid if it finds or reasonably suspects that a bidder has given, offered or alluded to, directly or indirectly, a gift or some other benefit to a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of the contract notice, invitation to tender and tender documents, a person participating in planning the public procurement or some other person in order to influence them in order to discover confidential information or influence the contracting authority's action.

A contracting authority shall also reject, or refuse a bid if it finds or reasonably suspects that a bidder has threatened, directly or indirectly, to a public procurement officer, a member of the Committee for opening and evaluation of bids, a person who participated in the preparation of the contract notice, invitation to tender and tender documents, a person participating in planning the public procurement or some other person in order to discover confidential information or influence the contracting authority's action.

A contracting authority shall record cases referred to in paragraphs 1 and 2 of this Article, make an official note thereof, submit a report to the competent state authorities which will take necessary measures in accordance with the law and immediately notify the competent body.

The manner of keeping the records referred to in paragraph 3 of this Article, as well as their contents shall be determined by a regulation adopted by the state administration body in charge of financial affairs (hereinafter: the Ministry).

Rule of Prevention of Conflict of Interest

Article 16

Participants in the public procurement procedure shall take any necessary actions to prevent existence of a conflict of interest.

Public procurement officer, members of the Committee for opening and evaluation of bids, persons participating in preparation of the contract notice, invitation to tender and tender documents, persons participating in planning the public procurement and other persons participating, directly or indirectly, in the public procurement procedure, shall notify the contracting authority with no delay, of the actual or potential existence of a conflict of interest.

Participants in the public procurement procedure referred to in paragraph 2 of this article may not enter into employment with the bidder to whom the public procurement contract was awarded by a contracting authority with which the persons referred to in paragraph 2 of this article or the legal persons related to them were employed, for at least two years after the public contract was concluded.

The conflict of interest exists if the person referred to in paragraph 2 above:

- 1) is the bidder itself, sub-contractor, the bidder's legal representative or attorney;
- 2) is a relative in the straight line of kinship, or in the lateral line of kinship up to the fourth degree, or is a marital or extra-marital mate or in-law up to the second degree, regardless of whether the marriage is terminated or not;
- 3) is a guardian, adopter or adoptee of the bidder, or of his legal representative or attorney;
- 4) is a shareholder or member of management bodies of the bidder;
- 5) has direct or indirect interest in the public procurement procedure;
- 6) is directly or indirectly involved in other circumstances causing a doubt about such person's impartiality.

A person who has prepared the contract notice, invitation to tender and tender documents and has any impact on the implementation of the public procurement procedure may not act as a bidder or sub-contractor and may not cooperate with the bidder in preparing the bid.

The head of the contracting authority, or a responsible person of the contracting authority and the persons, who, on behalf of the contracting authority, perform some of the activities related to a public contract, shall submit a written statement on existence or non-existence of the conflict of interest referred to in paragraph 3 above. The statement referred to in paragraph 5 of this Article shall make an integral part of the public procurement documentation.

In the case of existence of some of the cases referred to in paragraph 3 above, or if the person referred to in paragraph 5 of this Article fails to submit the statement, such person shall be excluded from the public procurement procedure.

In case that the requests or tenders that the contracting authority has received during the tendering procedure cause or may cause any conflict of interest, the contracting authority shall take necessary actions to eliminate such conflict of interest, in accordance with the law.

Prevention of the Conflict of Interest on the Side of the Bidder

Article 17

The conflict of interest on the side of the bidder or the sub-contractor exists if the authorized person of the bidder or the sub-contractor is:

- 1) a legal representative or attorney of the contracting authority;
- 2) a relative in the straight line of kinship of the person referred to in Article 16 paragraph 2 of this Law, or in the lateral line of kinship up to the fourth degree, or is a marital or extra-marital mate or in-law up to the second degree, regardless of whether the marriage is terminated or not;
- 3) a guardian, adopter or adoptee of the person referred to in Article 16 paragraph 2 of this Law, of his legal representative or attorney;
- 4) a shareholder or member of management bodies of the contracting authority;
- 5) a person who has direct or indirect interest in the public procurement procedure, which enables personal acquisition of property or some other kind of benefit, by exerting influence on the decision-making process; and
- 6) is directly or indirectly involved in other circumstances causing a doubt about such person's impartiality.

A responsible person within the bidder or the sub-contractor shall submit a written statement on existence or non-existence of the cases referred to in paragraph 1 above.

The statement referred to in paragraph 2 of this Article shall make an integral part of the public procurement documentation.

In the case of existence of conflict of interest or if the responsible person of the bidder or the subcontractor fails to submit the statement referred to in paragraph 2 above, such person shall be excluded from the public procurement procedure.

Nullity of the Procedure and Keeping the Records of Conflict of Interest

Article 18

The public procurement procedure conducted with existence of conflict of interest shall be declared null and void.

The contracting authority is obliged to keep records on cases of existence of conflict of interest referred to in Articles 16 and 17 of this Law and, without any delay, to notify thereof the competent state authority.

5. Tasks of a Competent State Authority

Competences

Article 19

A competent state authority shall perform the following administrative and associated technical tasks in the public procurement area and these are as follows:

- 1) to monitor implementation of the public procurement system;
- 2) to monitor the compliance of the legislation regulating the public procurement system with EU legislation, to prepare technical basis, to initiate and participate in preparation of the public procurement regulations;
- 3) to give approval to contracting authorities on fulfilment of conditions for conducting certain public procurement procedure in the cases envisaged by this Law;
- 4) to provide advisory assistance upon contracting authority's request;
- 5) to organize and conduct professional development and advanced training of the human resources in charge of performing public procurement tasks;
- 6) to organize professional exam for performing tasks in the area of public procurement;
- 7) to establish and maintain the Public Procurement Portal for the purpose of ensuring transparency of public procurement;
- 8) to publish public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favorable bid, decisions on suspension of public procurement procedure, decisions on annulment of public procurement procedure, public procurement contracts, changes or amendments of public procurement plans, contract notices, decisions and contracts, as well as of other acts in accordance with this Law;
- 9) to prepare and publish a List of contracting authorities on the Public Procurement Portal;
- 10) to encourage the conducting of public procurement in electronic form;
- 11) to pursue cooperation with international organizations, institutions and specialists in the field of public procurement;
- 12) to prepare and submit to the Government annual reports on the public procurement, carried out in the previous year;
- 13) to prepare and publish a list of bidders on the basis of decisions on selection of the most favourable bid;
- 14) to prepare and publish a common public procurement vocabulary on the Public Procurement Portal;
- 15) to perform inspection control;
- 16) to issue publications and other technical literature;
- 17) to perform other tasks, in accordance with the Law.

II. CONDITIONS AND MANNER OF CONDUCTING PUBLIC PROCUREMENT PROCEDURE

1. Types of Procedures, Value Scales, Merge Procurement

Types of Procedures

Article 20

Public procurement procedures for goods, services or works are as follows:

- 1) open procedure;
- 2) restricted procedure;
- 3) negotiated procedure with prior publication of a contract notice;
- 4) negotiated procedure without prior publication of a contract notice
- 5) framework agreement;
- 6) consulting services;
- 7) contest;
- 8) shopping method;
- 9) direct agreement.

*Value Scales***Article 21**

The public procurement procedure shall be determined according to the estimated value of the public procurement which is classified into the following value scales:

- I Value scale – in cases when the estimated value of the public procurement is up to EUR 5,000, the contracting authority shall perform the direct agreement;
- II Value scale – in cases when the estimated value of the public procurement exceeds EUR 5,000 up to EUR 25,000 for procurement of goods or services, or when the estimated contract value exceeds EUR 5,000 up to EUR 50,000 for procurement of works, the contracting authority shall perform the shopping method;
- III Value scale - in cases when the estimated value of the public procurement exceeds EUR 25,000 for procurement of goods or services, or when the estimated contract value exceeds EUR 50,000 for procurement of works, the contracting authority shall perform some of the procedures listed in Article 20 items 1 to 7 of this Law.

For public procurement with estimated value within Value scales I and II, the procedures listed in Article 20 items 1 to 7 of this Law may be applied.

*Open Public Procurement Procedure***Article 22**

The open public procurement procedure is a procedure wherein all interested persons may submit bids according to requirements specified in the contract notice for the open procedure and tender documents.

*Restricted Public Procurement Procedure***Article 23**

The restricted public procurement procedure shall be conducted in two phases. In the first phase a contracting authority recognizes applicants' qualifications on the basis of previously determined requirements in the invitation for pre-qualification. In the second phase the contracting authority invites the qualified candidates to submit their bids.

In case that at least three applicants are not qualified in the first phase of the procedure, it shall be suspended.

The contracting authority shall make, within time limit specified in the invitation for pre-qualification, a decision on the qualification of the candidates, with a rationale.

The contracting authority shall publish the decision referred to in paragraph 5 on the Public Procurement Portal and submit it to the applicants within five days from the day of its adoption.

The bids may be submitted only by the qualified candidates in the second phase of the procedure referred to in paragraph 3 of this Article within the time limit determined in the request for submission of bids in accordance with tender documents.

*Negotiated Procedure with Prior Publication of a Contract Notice***Article 24**

The negotiated procedure with prior publication of invitation to tender by negotiation may be conducted in the following cases:

- 1) when in an open public procurement procedure or in the second phase of a restricted public procurement procedure no acceptable bids have been

- submitted, provided that the originally defined subject of public procurement and the contents of tender documents have not been altered;
- 2) when, due to the nature of goods, services or works or the risks relating to the specific public procurement, it is not possible to determine the estimated value of the public procurement;
 - 3) for the purposes of research, testing or development, without making of any profit or compensation of the expenses incurred.

The contracting authority shall specify the subject and manner of negotiation in the invitation to tender by negotiation and tender documents.

In order to ensure the selection of the most favorable bid, the contracting authority shall negotiate with the bidders about the submitted bids and draw up a record on the negotiating process.

During the negotiations, the contracting authority shall ensure an equal treatment of the bidders and is not allowed to disclose the data and information which would provide advantage to certain bidders.

Negotiated Procedure without Prior Publication of a Contract Notice

Article 25

The negotiated procedure without prior publication of invitation to tender by negotiation may be conducted in the following cases:

- 1) for public works contracts, public supply contracts and public service contracts:
 - when, in at least two open, or restricted public procurement procedures, no acceptable bids have been submitted, provided that the originally defined subject of public procurement the contents of tender documents have not been altered, in which case the contracting authority is obliged to include in negotiated procedure all the bidders who submitted their bids in the open or restricted procedure;
 - when, for technical or artistic reasons related to the subject-matter of a contract, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular bidder;
 - when, for reasons of extreme urgency with an aim of removal and prevention of danger brought about by unforeseen events, the removal of consequences of these unforeseen events, as well as due to other unforeseen events on which the contracting authority cannot or was not able to influence, the contracting authority is not able to comply with the time limits stipulated by this Law.
- 2) for public supply contracts:
 - when the products involved are manufactured purely for the purpose of research, experimentation, study or development, provided that it is not a quantity (serial) production intended to make profits or to recover research and development costs;
 - for additional deliveries during performance of contractual obligations by the bidder to whom the contract has been already awarded in accordance with this Law, which are intended either as a partial replacement of normal products, materials or installations or as the extension of existing products, materials or installations where a change of supplier, or supplies would result in technical difficulties in operation and maintenance, provided that the total value of all additional deliveries may not exceed 15% of the total value of the contract originally concluded;

- for the public procurement of goods offered and purchased on commodity exchanges;
 - for purchases of goods under particularly advantageous conditions from a supplier undergoing bankruptcy or liquidation process, in accordance with the law;
- 3) for public service contracts which are parts of the follow-up to the service procured by a design contest, and the contract is concluded with the successful candidate or one of the successful candidates, provided that the contracting authority invites all successful candidates to participate in the negotiations;
- 4) for public works contracts and public service contracts:
- not included in the contract concluded after the public procurement procedure was conducted, but which, due to unforeseeable circumstances, have become necessary to the provision of the services or works described therein, when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, provided that the contract, whose aggregate value may not exceed 15% of the amount of the concluded contract, is concluded with the bidder whose contract is still in force; and
 - for works or services consisting in the repetition of similar services or works assigned to the original service provider or contractor, and when the possibility of procurement of these works or services in accordance with the subject-matter of the procurement for which the contract was concluded on basis of the conducted open or restricted procedure, is specified in the contract notice, provided that the aggregate value of the contract for additional services or works may not exceed 15% of the amount of the awarded contract and that there have not passed three years since the basic contract was concluded.

The contracting authority shall specify the subject and manner of negotiation in the invitation to tender by negotiation and tender documents.

In order to ensure the selection of the most favorable bid, the contracting authority shall negotiate with the bidders about the submitted bids and draw up a record on the negotiating process.

During the negotiations, the contracting authority shall ensure an equal treatment of the bidders and is not allowed to disclose the data and information which would provide advantage to certain bidders.

The form of the records referred to in Article 24 paragraph 3 and in paragraph 3 of this Law and paragraph 3 of this Article shall be determined by the Ministry.

Framework Agreement **Article 26**

The framework agreement may be concluded after completing open or restricted public procurement procedure.

The contracting authority shall be entitled during the whole contracted period to conclude individual contracts, with respect to each of the conditions determined by the framework agreement.

The framework agreement may be concluded if at least one of the following conditions is met:

- a) when the subject-matter of the contract are daily services or consumer goods;
- b) when the subject-matter of the contract are goods or services where the price and delivery terms are frequently altered;
- c) when the subject-matter of the contract are regular repairs or maintenance works;

- d) when, by awarding several equal contracts, the procurement costs are reduced.

Once a framework agreement has been concluded, its provisions may not be altered. The framework agreement may be concluded for a period up to 4 years.

The contracting authority shall select the most favourable bid on basis of terms and criteria laid down in the framework agreement.

Contracts based upon a framework agreement concluded with several bidders, of which there must be at least three in number, may be awarded either:

- 1) without public competition, by application of the terms laid down in the framework agreement, or
- 2) by public competition where not all the terms are laid down in the framework agreement, or, if necessary, by formulating the terms more precisely, and other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:
 - for every contract to be awarded, contracting authorities shall address in writing the bidder with a request for submission of bids;
 - contracting authorities shall fix a time limit for submission of bids, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in the bids;
 - bids shall be submitted in writing;
 - contracting authorities shall make a decision on selection of the most favourable bid and conclude a contract with the bidder on the basis of the award criteria set out in the specifications of the framework agreement.

Consulting Services

Article 27

A contracting authority may deliver a request for submission of bids for providing the consulting services directly to the bidders, in the following cases:

- 1) if the consulting service that is the subject-matter of procurement may be provided by a limited number of bidders, and in that case the request shall be sent to all such bidders;
- 2) when the time and costs necessary for assessment of large number of bids are disproportionate to the value of the service that is subject-matter of the public procurement, provided that the request was sent to a sufficient number of bidders (at least three) in order to secure competition.

The criteria for selection of the most favourable bid for provision of consulting services are based in particular on:

- 1) qualifications, experience, professional and managerial abilities of the bidders and persons that will be involved in provision of the services;
- 2) the offered price, including potential incidental and related expenses;
- 3) the effects of transfer of technology, knowledge and development of managerial and professional skills;
- 4) other circumstances, depending on nature of the consulting service.

The form of the request for submission of bids for providing the consulting services shall be determined by the Ministry.

Design Contest

Article 28

A public procurement procedure by design contest (hereinafter: contest) may be conducted for services in the field of urban planning, architecture, construction, engineering, science, culture, design and data processing.

The contest may be conducted individually or as an integral part of another public procurement procedure for procurement of services, where a contract shall be concluded with the winner of the contest, or with one of the winners of the contest.

The winner or the winners of the contest may be awarded a prize in accordance with the terms envisaged by the contest.

In a public procurement procedure conducted by a contest, a project, plan or design shall be selected by an independent jury.

The jury shall be composed exclusively of natural persons who are not related to the participants in the contest.

If the contracting authority demands from participants in a contest particular professional qualifications or experience, at least a third of the members of the jury must have at least the same qualifications or experience.

Plans, projects and designs shall be submitted to the contracting authority anonymously, in a manner stipulated by the contest.

The jury shall be autonomous in its decisions and consider anonymous plans, projects or designs.

The criteria for selection of the most advantageous bid shall be based upon the following:

- 1) qualifications, experience, professional abilities of bidders and other persons that will be included in provision of service;
- 2) effects of transfer of technology, knowledge and professional skills development;
- 3) other circumstances, depending on nature of the contest.

The form of the contest shall be determined by the Ministry.

Shopping method

Article 29

The public procurement procedure by shopping method shall be conducted by the public procurement officer on basis of requests for submission of bids published on the Public Procurement Portal.

The time limit for submission of bids for the shopping method is at least twelve days from the date of publication of requests referred to in paragraph 1 of this Article.

The bidders who received the requests referred to in paragraph 1 of this Article may submit only one bid each, and the bids could not be altered.

The bids shall be open publicly.

The opening of bids may be conducted in presence of authorized representatives of the bidders who must show their authorization letter signed by the bidder.

The public procurement officer shall make minutes on the public opening of bids, which shall be signed by the present authorized representatives of the bidders.

A copy of the minutes, after they are signed, shall be delivered to all present authorized representatives of the bidders.

The minutes shall be delivered within three days from the day of the opening of bids to those bidders who were not present at the public opening of bids.

In the public procurement procedure conducted by shopping method, the bidder must meet the compulsory requirement for participation in the public procurement procedure that it was registered for performing the function which is a subject-matter of the public procurement, as its basic function.

The decision on selection of the most favourable bid by shopping method shall be made by application of the lowest offered price criterion.

The public procurement procedure by shopping method may be conducted no more than once a year for the same subject-matter of public procurement.

The form of the request referred to in paragraph 1 of this Article shall be determined by the Ministry.

Direct Agreement
Article 30

Direct agreement represents an immediate arrangement between a contracting authority and a bidder regarding the terms of a public procurement.

The total annual value of public procurement of a contracting authority conducted by direct agreement may not exceed:

- 10% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority does not exceed EUR 200,000;
- 9% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 200,000 to EUR 500,000;
- 8% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority amounts from EUR 500,000 to 800,000;
- 7% of its total annual executed public procurement budget in the previous year, provided that the budget of that contracting authority exceeds EUR 800,000.

A direct agreement shall be concluded by the head, or the responsible person of the contracting authority.

Prior Approval
Article 31

The contracting authority shall, before commencing a public procurement procedure, obtain prior approval from the competent administrative authority on the fulfilment of conditions for carrying out the procedures referred to in Articles 24 to 27 of this Law.

The request for obtaining the approval referred to in paragraph 1 of this Article shall be submitted in writing and it shall contain: legal grounds, subject-matter of public procurement, estimated value of public procurement, position of that item in the public procurement plan, source or manner of provision the financial funds, reasons and rationale of the choice of that method of procurement as well as the evidence on fulfilment of the conditions for conducting the proposed procedure.

The contracting authority shall, upon request of the competent state authority, supplement the request referred to in paragraph 2 of this Article within a specified time that does not exceed eight days from the date of receipt of the request for supplement.

The competent state authority shall decide upon the contracting authority's request, without conducting an examination procedure, within eight days from the day of receipt of the acceptable request.

The approval referred to in paragraph 1 of this Article shall be valid until the end of a current budget or financial year.

In case that the competent state authority fails to decide upon the request within the time limit specified in paragraph 4 of this Article, the contracting authority may conduct the public procurement procedure without the approval of the competent state authority.

A complaint against the act of a competent state authority referred to in paragraph 4 of this Article, can be filed with the Ministry.

*Performance of a Public Procurement Procedure
by another Contracting Authority*
Article 32

A contracting authority may, simultaneously with making decision on commencing and conducting a public procurement procedure, authorize another contracting authority, with the consent of the latter, to conduct a public procurement procedure on its behalf and for his account, or to undertake certain actions in that procedure.

Consolidation of Public Procurement

Article 33

The Government may stipulate by its regulations that the specific public procurement procedures for the needs of the administrative bodies and public services shall be conducted by a specific contracting authority, while the local self-government unit, in the regulations of the competent local self-government unit may designate the contracting authority that will conduct the public procurement procedures for its needs.

2. Types of Subject of a Public Procurement Contract

Procurement of Goods

Article 34

The subject of a contract on public procurement of goods shall be:

- 1) the purchase of goods;
- 2) the renting of goods;
- 3) the leasing of goods (with or without the option to buy).

Public procurement contract for goods may also include the provision of services if they are necessarily related to delivery of those goods (installation, transport, insurance or other services defined by the contracting authority).

Procurement of Works

Article 35

The subject of a contract on public procurement of works shall be:

- 1) the design and execution of works;
- 3) execution of works on construction, adaptation, reconstruction and maintenance of a facility.

Procurement of Services

Article 36

The subject of a contract on public procurement of services shall be the following services: services in the area of transport, financial services, computer services, services in the area of education and science, research services, accounting and audit services, consulting services, architectural services, technical supervision, catering services, health services, social services, etc.

As contract of public procurement of services shall also be deemed any public procurement contract whose subjects are:

- 1) services and goods if the estimated value of the services exceeds the estimated value of the goods included in this contract;
- 2) the services and works that are necessary for the provision of the service that is the subject of the contract if the estimated value of the services exceeds the estimated value of the works included in this contract.

3. Initiation of Procedure and Subject of Public Procurement

Conditions for Initiation of a Procedure

Article 37

A contracting authority may initiate the public procurement procedure if funds for that particular procurement contract have been allocated by the budget or in some other manner in accordance with the law and if such procurement is envisaged by the annual procurement plan of the contracting authority.

*Public Procurement Plan***Article 38**

The contracting authority shall adopt and submit to the competent state authority a public procurement plan, so that it could be published on the Public Procurement Portal, by not later than 31 January of the current budget or financial year.

The public procurement plan referred to in paragraph 1 of this Article shall contain:

- 1) details on the contracting authority;
- 2) title and the subject of public procurement;
- 3) estimated value of public procurement for each individual subject of public procurement and
- 4) denotation of a budget position, or of the position in a financial plan at which the budget or plan marked the funds allocated for the public procurement.

The modifications or addenda of public procurement plan may be conducted no later than 15 days before commencing a public procurement procedure, except in case of the budget revision.

The Ministry shall give its approval to the public procurement plans of the Budget of Montenegro beneficiaries, with exception of the Parliament of Montenegro and the bodies of judicial power, and the competent authority of a local self-government unit shall give the approval to the public procurement plan of the local self-government bodies.

The public procurement plan shall be signed by head of the contracting authority, or the responsible person of that contracting authority.

The form of the public procurement plan shall be determined by the Ministry's regulations.

*Allocation of Funds for Public Procurement***Article 39**

If a public procurement procedure lasts for several years, the liabilities that will become due in the following years must be stipulated in the amounts provided for by the regulations governing budget execution for each particular year.

By way of exception to paragraph 1 of this Article, a contracting authority may commence a public procurement procedure even when the funds in whole are not allocated for that procurement, in the following cases:

- 1) when the public procurement is used also to obtain funds for performance of a public procurement contract;
- 2) when, during the course of the public procurement procedure requiring payment in years to come, it is necessary to obtain a specific consent, that is, the approval by the competent authority in accordance with the regulations governing the budget;
- 3) when the public procurement procedure ends by conclusion of a framework agreement, that does not imply contractual obligation.

*Decision on initiating the procedure***Article 40**

The public procurement procedure is initiated by a decision on initiating the procurement procedure which shall include:

- 1) details of the contracting authority;
- 2) reference number of the public procurement in the records;
- 3) the subject, procedure type and time limit for carrying out the procurement procedure,
- 4) estimated value of the public contract,
- 5) source of funds allocated for the public contract and conditions and method of payment of the contracted obligations;
- 6) the position in the public procurement plan;
- 7) rationale;
- 8) other data of relevance for that public contract.

The decision referred to in paragraph 1 of this Article shall be made by head of the contracting authority, or the responsible person of the contracting authority.

Determining the Subject of Public Procurement

Article 41

The subject of public procurement shall be determined by the contracting authority in accordance with the Common Procurement Vocabulary.

The subject of public procurement determines type of goods, services or works in relation to their technological and functional characteristics, purpose and nature.

The subject of procurement must be described in a complete, clear and intelligible manner, in a way allowing submission of suitable bids according to the type, quality and prices, as well as other required qualities and conditions.

The description of the subject of procurement shall include the data on quantities, place of execution, time limits for execution or special requirements in terms of manner of execution of the subject of public procurement, relevant to for execution of the subject of public procurement, and thereby for the preparation of a bid, including also the circumstances of relevance for the environmental protection, energetic efficiency or social requirements.

Determining the Subject of Public Procurement by Lots

Article 42

Subject of public procurement may be determined according to technology, type, quantity, place and time of delivery.

In case that the contracting authority determines a subject of procurement by lots, all lots of that subject must be stated in the contract notice, invitation to public tender and in tender documents, upon which the bidder must be allowed to submit the bids for the individual lots.

Common Public Procurement Vocabulary

Article 43

The Common Procurement Vocabulary – CPV is a nomenclature of goods, services and works which is used in a public procurement procedure.

The subject of public procurement shall be determined by using terminology and phrases established by a unique vocabulary of public procurement.

The Common Procurement Vocabulary shall be published on the Public Procurement Portal.

4. Estimated Value of Public Procurement

Determining the Estimated Value of Public Procurement

Article 44

The contracting authority shall, in the public procurement plan, decision on commencing and conducting a public procurement procedure, contract notice, invitation to public tender, tender documents and decision on selection of the most favourable bid, state the estimated value of public procurement.

The estimated value of public procurement shall be expressed in Euros, with VAT included.

Upon determining the estimated value of public procurement, the contracting authority shall include only the costs necessary for execution of the public supply contract, public service contract or public works contract.

The contracting authority shall comply with the conditions and methods of public procurement prescribed by this Law according to the established values and it may not, during the budget or financial year, divide the subject of public procurement which represents a whole, in purpose of avoiding application of this Law and the prescribed public procurement procedure.

Determining the Estimated Value of Public Procurement of Goods

Article 45

The basis for calculating the estimated public procurement value shall be determined in the following manner:

1) in the case of contracts for sale, rental or lease and when the contract term is a period of 12 months or less, the total estimated contract value for its full duration shall be taken into account, whereas when the contract term is longer than 12 months, the total contract value shall include the estimated value for the first 12 months and the estimated value for the residual period until the time limit expiry;

2) in the case of the contract referred to in paragraph 1 item 1 of this Article being concluded for an indefinite period, as well as in the event of uncertainty regarding the term for which the contract is concluded, the monthly estimated value of the contract multiplied by 48 shall be used.

In the case of periodic contracts, as well as contracts that are to be extended after the expiry of a certain time limit, the estimated public procurement value shall be determined on the basis of the actual aggregate value of similar contracts concluded over the previous budget year or in the course of the previous 12 months, adjusted for anticipated changes in the quantity or value of the goods whose procurement is the subject of the contract.

Determining the Estimated Value of Public Procurement of Services

Article 46

When calculating the estimated value of public procurement of services, a contracting authority shall include all the expenses concerning such service incurred by the bidder.

The following amounts shall be taken into account by the contracting authority when calculating the estimated value:

1) for insurance services - the premium amount, as well as other types of payments charged in connection with the service;

2) for banking and other financial services (except for loan-related services) – fees, commissions, as well as other types of payments charged in connection with the service;

3) for loan-related services, amount of the loan with interest rate, fees and costs arisen from approval and implementation of a loan agreement, valuation of movable and immovable property, insurance premiums or other fees related to assets securing the loan, costs of registration with the competent authority, cost of

obtaining extracts from the register of real estate and other costs related to the loan-related services;

3) for architectural services, industrial design, spatial planning and the like – the fee or commission.

If a contracting authority cannot determine the estimated service value due to the contract term length, the service value shall be determined in the manner prescribed by Article 45, paragraph 1 of this Law.

Determining the Estimated Value of Public Procurement of Works

Article 47

The estimated value of public procurement of works shall be determined on basis of an appropriate technical documentation that contains the bill of quantities or calculation of the works value.

When determining the estimated value of public procurement of works, a contracting authority shall include in the works value the value of all the goods and services necessary for the execution of the works contract.

Determining the Estimated Value of Public Procurement by Lots

Article 48

In cases when the subject of public procurement is divided into lots, the estimated value of that public procurement shall be stated separately for each lot, and the total estimated value of the public procurement by lots shall be the sum of the values of all the lots for the period for which the contract is concluded.

5. Determining Technical Elements of Public Procurement

Tender Documents

Article 49

Tender documents, in accordance with the procedure type, or the subject of public procurement shall contain in particular:

- 1) name/title of the contracting authority;
- 2) description of subject of public procurement;
- 3) source of financing;
- 4) estimated value of the public contract expressed in Euros;
- 5) the procedure type chosen and indication of whether the conclusion of framework agreement is envisaged;
- 6) technical characteristics (specifications), quantity and description of goods, services or works, manner of executing control and quality assurance, time limit for contract execution, place of execution or of goods delivery, and other characteristics depending on the subject of public procurement;
- 7) technical documentation and plans, or documents on solvency of the contracting authority in the case of the public procurement of a loan as financial service;
- 8) conditions that must be fulfilled by a bidder for participation in the public procurement procedure and evidence that these conditions are fulfilled;
- 9) the minimum and maximum time limit that can be offered and the manner of stating that time limit;
- 10) content of the bid, title and head office, or name and address of the bidder, period of validity of the bid and an instruction to bidders on how to prepare, mark and submit their bids, or a form of the bid, with

- specifically stated price structure form, with an instruction how to complete it;
- 11) statement of a possibility of submissions of bids by lots;
 - 12) statement of a possibility of submissions of alternative bids;
 - 13) criterion for selection of the most favorable bid, and manner of evaluation of criteria and sub-criteria;
 - 14) obligation of providing assets of financial securing of the bid;
 - 15) place, date and time of submission of bids;
 - 16) place, date and time of opening of bids;
 - 17) time limit for adopting decision on selection of the most favourable bid;
 - 18) requirement in term of use of language in the bid;
 - 19) instruction on legal remedy.

Attachments of tender documents, in accordance with the procedure type, or the subject of procurement are the following:

- 1) contract notice, or invitation to tender;
- 2) form of the statement declaring that the bidder accept the requirements contained in the contract notice, invitation to public tender and tender documents;
- 3) statement of existence, or non-existence of conflict of interest;
- 4) draft contract, except in case of procurement of loan-related service when tender document contain contracting authority's request for loan on basis of which the bidder shall submit draft contract;
- 5) list of sub-contractors;
- 6) statement of the contracting authority about the regular payment of due public procurement liabilities;
- 7) form for establishing professional-technical capacity, staff capacity and references.

Tender documents may also contain other elements which are, considering the subject of public procurement, necessary for preparation of bid.

Tender documents for the first phase of a restricted procedure shall contain in particular:

- 1) invitation for submission of application;
- 2) instruction for applicants on how to prepare their applications;
- 3) the application form and an instruction on how to prove the applicants' qualifications.

The contracting authority shall mark by ordinal numbers each page and the total number of pages of tender documents.

The instructive forms for preparation of tender documents referred to in paragraphs 1, 2 and 4 of this Article shall be determined by the Ministry.

Technical Characteristics or Specifications

Article 50

Technical characteristics or specifications, in accordance with the subject of public procurement, constitute an obligatory part of the tender documents.

A contracting authority shall define the technical characteristics or specifications:

- 1) with reference to technical regulations;
- 2) with a reference to the standards applied in Montenegro which are in compliance with the EU standards, and in case that such technical regulations and standards do not exist, the contracting authority shall refer to the EU standards or internationally recognized standards, technical regulations or rules;

- 3) in the form of desired functional characteristics or requirements for the contract execution, which must be precise and clear so that the bidders could prepare their bids accordingly.

When defining technical characteristics or specifications in tender documentation, contracting authority shall, in accordance with the Law, prescribe mandatory compliance to technical standards of accessibility for disabled persons.

The technical characteristics or specifications, in accordance with the technical regulations, shall determine the form of technical-technological advantages or functional characteristics that include or may include a program or degree of environmental protection, requirements related to energetic efficiency and social requirements.

With reference to the requirements of the technical characteristics or specifications established in tender documents, the bidders may offer solutions equivalent to those prescribed by the standards by providing adequate proof of equivalence.

Use of Technical Characteristics or Specifications

Article 51

A contracting authority may not use or refer to technical characteristics or specifications, any particular trade mark, patent, type, nor specific origin or production, if such a designation could favor a certain bidder or might unjustifiably eliminate other bidders.

Where the contracting authority is unable to give a description of the subject of the contract in the tender documents using characteristics or specifications which are sufficiently intelligible to bidders, the indication of elements such as trademarks, patents, type or manufacturer must be accompanied by the words "or equivalent".

Content of Technical Characteristics or Specifications

Article 52

Technical characteristics or specifications shall determine conditions and requirements related to the quality, performance, safety or dimensions of the material, product, good, or service, for the purpose of providing quality assurance, terminology, designations, testing and test methods, packing, marking and labeling.

In the case of public procurement of civil works, technical specifications may also include regulations concerning designs and cost calculation, test, inspection and takeover requirements, as well as techniques or method of construction.

Essential Requirements and Compensations for Use of Patents

Article 53

The contracting authority shall specify in tender documents essential requirements which are not included in technical rules and standards that are in force, and which relate to security and other circumstances of public interest.

The contracting authority may state in tender documents that the bidder shall pay the compensation for use of patents, as well as the liability for violation of protected intellectual property rights.

Purchase and Assumption of Tender Documents

Article 54

Since the day of publication of the contract notice, or delivery of invitation to tender, the contracting authority shall allow the interested party to review and take over the tender documents.

The contracting authority shall, no later than two days from the date of receipt of the request referred to in paragraph 1 of this Article, deliver the tender documents in accordance with the contract notice or invitation to public tender.

The interested party shall compensate to the contracting authority the costs of the purchase of tender documents which include only the costs of copying and delivery.

Evidence on payment of the costs referred to in paragraph 3 of this Article shall be furnished along with the request for purchase of tender documents.

In case that the evidence on payment of the costs of purchase of tender documents does not accompany the request for purchase of tender documents, the contracting authority shall reject a request submitted by interested party.

The bid submitted by the person who did not purchase nor assumed the tender documents in accordance with this Law, shall be rejected.

Changes and Amendments to Tender Documents

Article 55

The contracting authority may change or amend the tender documents, on condition that such amendments are made available to interested bidders who have purchased the tender documents on the same day, but not later than 15 days before the expiry of the time limit for the submission of bids.

In case of changes, or amendments of tender documents result in substantial change of the tender documents (content of the subject of procurement, participation conditions, criteria or sub criteria for selection of the most favourable bid), the time limit for submission of bids shall be extended for at least 15 days.

Notification on changes or amendments of tender documents shall be published in the same manner in which the contract notice was published.

Clarification of Tender Documents

Article 56

The party which assumed the tender documents is entitled to request clarification of tender documents.

The contracting authority shall, no later than three days from receipt of the request referred to in paragraph 1 of this Article, furnish explanation to all interested parties who have taken over the tender documents, without stating any data on submitter of the request.

The explanation referred to in paragraph 2 of this Article shall be considered an integral part of tender documents.

Means of Financial Securing - Guarantees

Article 57

The contracting authority may establish, in the contract notice, invitation to tender and tender documents, the obligation of submitting a bid guarantee for the purpose of protection from trivial tenders, the performance guarantee, the advance payment guarantee or other guarantee aimed at the protection from breach of the contract.

The contracting authority shall, for the public procurement with estimated value that exceeds EUR 300,000 establish an obligation in the contract notice, invitation to tender and tender documents of submitting a bid guarantee for the purpose of protection from trivial tenders, the performance guarantee, the advance payment guarantee or other guarantee aimed at the protection from breach of the contract.

The bid guarantee shall not be for more than 2% of the public contract value, and the performance guarantee shall not exceed 10% of the contract value.

The contracting authority shall activate the means of financial securing given with the bid in case that the bidder, after expiry of the time limit for submission of bids,

changes, supplements or revokes its bid or if it does not sign the contract after its bid was selected as the most favourable one.

The contracting authority shall return the bid guarantee to the bidder, within 15 days from the day of finality of decision on selection of the most favourable bid.

6. Performance of the Public Procurement Tasks, Training and Education

Public Procurement Officer

Article 58

A public procurement officer can only be a person with a university degree employed by the contracting authority and who passed the professional exam for performing the public procurement tasks (hereinafter: professional exam).

The public procurement officer shall have the following duties: to prepare the public procurement plan; to prepare text of the decision on initiating public contract procedure; to prepare request for submission of bids by shopping method; to give tender documents to interested parties; to perform professional and administrative tasks in the conduct of the public contract procedure; to carry out the procedure of awarding public contracts by shopping method; to keep documentation; to maintain records of public contracts and prepare and submit reports on completed contracts to the head of a body, or to the responsible person of the contracting authority.

The contracting authority shall deliver to the competent state authority the act on appointment of the person for performance of tasks referred to in paragraph 2 of this Article.

The List of public procurement officers shall be published at the Public Procurement Portal by the competent state authority.

Commission for Opening and Evaluation of Bids

Article 59

The public procurement procedure shall be conducted by the Commission for the opening and evaluation of bids appointed by the contracting authority simultaneously with the adoption of decision on initiating the procurement procedure.

The Commission referred to in paragraph 1 of this Article shall be consisted of an odd number of members.

At least one member of the Commission for the opening and evaluation of bids shall be a graduated lawyer.

Specialists with expertise in the area which is the subject of public contract shall be appointed as members of the Commission for the opening and evaluation of bids.

At least one member of the Commission must be employed with the contracting authority.

The Commission for the opening and evaluation of bids may be appointed for the period of 1 year.

The Commission for the opening and evaluation of bids shall: prepare tender documents and text of the contract notice or invitation to tender, give explanations of the text of the contract notice or invitation to tender and tender documents, carry out the public opening of bids as well as public opening of requests for qualification, perform review, assessment and comparison of bids, draw up report on the opening and evaluation of bids, draw up a report on the public procurement procedure and propose to the contracting authority the decision on the most favourable bid.

Professional Examination

Article 60

Public procurement officers, the employees of the competent state authority or commission in charge of control of public procedure who perform the administrative tasks and other related professional tasks, shall pass the professional examination for performing the public procurement tasks.

The professional examination referred to in paragraph 1 of this Article may be taken by other persons, in accordance with this Law.

The right to take the professional examination referred to in paragraph 1 above, shall be acquired after conducting a program of professional training and education.

Program and manner of taking the professional examination referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Professional Training and Education

Article 61

The persons referred to in Article 60 paragraph 1 of this Law shall attend professional trainings and education.

The professional training and education in area of public procurement shall be conducted on basis of program for professional training and education.

The professional training and education shall be organized and conducted by the competent state authority.

The professional training and education in accordance with the program referred to in paragraph 2 of this Article may be organized and conducted by the competent state authority for persons employed with bidders as well as for other persons.

The program for professional training and education in the area of public procurement shall be determined by the competent state authority.

7. Transparency of Public Procurement

Publication and Delivery

Article 62

The contracting authority shall publish the contract notice on the Public Procurement Portal.

The invitation to tender shall be delivered directly to bidders.

Contract Notice Content

Article 63

The contract notice or invitation to tender shall contain: data about the contracting authority, the type of the public procurement procedure, the subject-matter of the contract, estimated value of the contract, conditions for participation and evidence on suitability of bidders submitted in accordance with the Law, criteria and sub criteria for evaluation of bids, time and place for the review of tender documents, the price of purchase of tender documents, language of the bid, time limit and place for the submission of bids and for the public opening of bids, time limit for making decision on the selection of the most favourable bid, conclusion of a framework agreement, as well as the name of contact person that will supply additional information and other data relevant for conducting the public procurement procedure.

The competent state authority, in the phase of preparation of the notices referred to in Article 62 of this Law shall provide expert instructions on how to ensure their conformity with conditions prescribed by this Law.

The notices referred to in Article 62 of this Law shall be published and submitted in the forms that shall be determined by the Ministry.

Changes of the Contract Notice
Article 64

The published contract notice or a delivered invitation to tender may be changed or amended no later than seven days before expiry of time limit for submission of bids. In case that the changes and amendments of the notices referred to in paragraph 1 of this Article substantially alter the content of the subject-matter of public procurement, conditions for participation, criteria or sub-criteria for evaluation of the bids, the contracting authority shall extend the time limit for duration of the invitation to tender for at least 10 days from the day of publication or delivery of changed or amended notices.

The changes and amendments of the notices shall be published on the Public Procurement Portal.

The changes and amendments of the notices shall be delivered to the bidders no later than within 48 hours since they have been made.

8. Conditions for Participation in a Public Procurement Procedure

Mandatory Conditions
Article 65

In order to participate in a public procurement procedure, the bidder must fulfil the following mandatory conditions:

- 1) that it was registered for performing the activity which is the subject-matter of the public procurement, as its principal or prevailing activity;
- 2) that it possesses a valid permit (licence or other act) for performing the activity that is the subject-matter of the public procurement, in accordance with the Law;
- 3) that it duly paid all its obligations arising from taxes and contributions in accordance with the Law or the regulation of a foreign country if its head office is in that country;
- 4) that during the period of two years before publication of the contract notice or delivery of invitation to tender it has not been convicted in a criminal proceeding nor subjected to the prohibition of further conduct of business that is related to the felony.

The conditions referred to in paragraph 1 of this article shall not apply to natural persons: artists, scientists and cultural workers.

Evidence on Fulfilment of the Mandatory Conditions
Article 66

The fulfilment of the conditions referred to in Article 65 paragraph 1 of this Law shall be determined on the basis of the following:

- 1) evidence on registration from the register of the competent authority;
- 2) permit, licence, approval or other act in accordance with the Law;
- 3) a certificate from the state authority in charge of tax affairs that the bidder duly paid all its obligations arising from taxes and contributions for the period of 90 days before the date of public opening of bids,;
- 4) a certificate, or other act by the competent state authority based on the data from the criminal records.

The evidence on fulfilment of conditions referred to in paragraph 1 item 4 of this Article for participation in a public procurement procedure may not be older than six months on the day of public opening of bids.

Optional Conditions
Article 67

A contracting authority, in addition to mandatory conditions for participation in public procurement procedure, may envisage in the contract notice, invitation to public tender and tender documents that the bidder must prove that it also fulfils optional conditions related to:

- 1) economic-financial capacity and/or
- 2) technical and/or professional and staffing abilities.

Proofs of Economic-financial Capacity
Article 68

A bidder shall demonstrate the compliance with the conditions related to the economic-financial capacity by providing the following proofs:

- a report on accounting and financial statement - balance sheet and income statement with an opinion of an authorized auditor in accordance with the law governing accounting and auditing for not longer than the previous two financial years, or for the period since the registration;
- the appropriate excerpt obtained from bank, certificate or statement on financial capacity of the bidder or, if necessary, proof on insurance for damage caused by a relevant occupational risk.

Proofs of Technical and/or Professional and Staffing Abilities in the Public Procurement Procedure of Goods
Article 69

In a public procurement procedure of goods, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important goods delivered, over a period of previous two or three years, together with the amounts, dates and lists of recipients, accompanied by documents in the form of a certificate of performed deliveries issued by the buyers or, if such certificates cannot be obtained for the reasons beyond the bidders' control, only the bidders' statement on the performed deliveries stating also the reasons why the certificates could not be provided;
- 2) a description of the technical equipment, measures for ensuring the quality control system, measures for ensuring environmental protection system, protection at work, if the subject of procurement is food – a certificate on the food safety, and if the subject of procurement is information technology – a system for information systems' security management;
- 3) statement on the technicians and other experts involved, and manner of their engagement and provision of adequate working conditions;
- 4) samples, descriptions and/or photographs of the products to be supplied, the authenticity of which must be certified by the bidder, if the contracting authority so requests;
- 5) other certificates or attests issued by official quality control bodies or agencies of recognized competence, attesting the conformity of products clearly identified by references to specifications or standards;
- 6) a statement on any intention and subject of subcontracting.

*Proofs of Technical and/or Professional and Staffing Abilities in the Public
Procurement Procedure of Services*
Article 70

In a public procurement procedure of services, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important services provided over a period of previous two years, together with the amounts, dates and lists of recipients, accompanied by certificates of provided services issued by the recipients or, if such certificates cannot be obtained for the reasons beyond the bidders' control, only the bidders' statement on the provided services stating also the reasons why the certificates could not be provided;
- 2) statement on educational and professional qualifications of the bidder, that is, the qualifications of the management staff and in particular the qualifications of the persons responsible for providing the services in question;
- 3) statement on the technicians and other experts involved, and manner of their engagement and provision of adequate working conditions;
- 4) a statement of the bidder regarding the annual average number of staff and on the number of persons performing managerial functions in previous three years;
- 5) a statement on technical equipment and technical capacities at the bidder's disposal for provision of the services in question and established system for the quality control, environmental protection system, protection at work, if the services are in the area of food – a system of the food safety, or if the subject of procurement is information technology – a system for information systems' security management;
- 6) a statement on any intention and subject of subcontracting.

In case that the services to be provided are complex, or if, exceptionally, they are provided for special purposes, a proof shall be checking of the technical equipment and capacity of the bidder and, if necessary, its study and research capacities, as well as description of the measures for quality control conducted by the contracting authority or, on its behalf, by the competent authority of the state in which the bidder was registered.

*Proofs of Technical and/or Professional and Staffing Abilities in the Public
Procurement Procedure of Works*
Article 71

In a public procurement procedure of works, a bidder shall demonstrate the compliance with the conditions related to technical and professional and staffing abilities by providing one or more following proofs:

- 1) a list of the most important works performed over a period of previous two to five years, along with the time limits for performance of those works, together with the amounts, times and locations of performance, and, where necessary, on the request of the contracting authority, the appropriate certificates issued by a competent state authorities or competent local self-government bodies;
- 2) statement on educational and professional qualifications of bidders, the qualifications of the management staff and in particular the qualifications of the persons responsible for performing the works in question;
- 3) statement on the technicians and other experts involved, particularly those in charge of the quality control and manner of their engagement;
- 4) a statement regarding the annual average number of staff and on the number of persons performing managerial functions in previous three years;

- 5) a statement on technical equipment and technical capacities at the bidder's disposal for performance of the works in question;
- 6) a statement on any intention and subject of subcontracting or engagement of subcontractors.

Determining the Moment of Fulfilment of Conditions

Article 72

The bidder must fulfil the mandatory and optional conditions at the moment of opening of the bid, or the application.

Validity of Proofs from Foreign Countries

Article 73

In case that a contracting authority requires the proofs on fulfilment of quality standards (certificates, or licences and other acts on quality compliance) it shall, in accordance with the Law, accept as equivalents the certificates issued by authorized bodies of the European Union member states or other countries.

A contracting authority shall accept the proof on fulfilment of quality standards in other form, in case that the bidder provides a proof that it has no possibility or right to request the proofs referred to in paragraph 1 of this Article.

If the seat of the bidder is located in another country, the documents proving the fulfilment of conditions referred to in Articles 65 and 67 of this Law must be certified by the competent authority of the country where the bidder is seated (administrative or judicial body, or Chamber of Economy) or by the embassy of that country in Montenegro.

Form of Submission of Proofs

Article 74

Proofs of fulfilment of conditions for participation in a public procurement procedure shall be submitted in original, certified copy or in electronic form in accordance with the contract notice, invitation to tender and tender documents.

9. Bid

Content of the Bid

Article 75

In order to participate in a public procurement procedure, a bidder shall submit a bid in accordance with the contract notice, invitation to tender and tender documents.

During the time envisaged for submitting bids, a bidder may change and amend the bid or desist from the same in the form of a written statement.

Amendments to or desistance from the bid shall be submitted by the bidders in the same way as the bid.

In case of desistance from the bid, a contracting authority shall return it unopened to the bidder.

Manner of Preparation of the Bid

Article 76

A bidder shall make sure that the bid is bound, that each page of the bid is marked by an authorized person.

The bid and all documents submitted along with the bid shall be bound with a red tape into one whole and sealed by sealing wax in a manner that no individual page or

annex cannot be subsequently inserted, removed or substituted without visibly damaging the pages or the seal.

The envelope shall contain indication of name and address of the contracting authority provided in the contract notice, invitation to public tender and tender documents, a reference number of the contract notice or invitation to tender and a text with an indication: "Do not open before the public opening of bids."

On the back side of the envelope it is necessary to indicate the title and head office, or name and address of the bidder so that the bid contained in the envelope could be returned unopened to the bidder in case it is established that the bid was not submitted in a timely manner.

Submission of a Bid by Lots

Article 77

A bidder may submit the bid for one or more lots provided that the bid refers to at least one lot.

The bidder shall indicate in the bid whether the bid refers to the procurement as a whole or to certain lots.

In case that the bidder submits the bid for all the lots, the bid must be submitted in a manner that each individual lot could be evaluated separately.

Timely Bid

Article 78

Timely bid shall be considered the one submitted within the time limit stated in the contract notice, invitation to tender and tender documents.

The bid may be delivered in person or in electronic form, or in some other appropriate manner.

Contracting authority shall indicate on the bid the date, hour and minute of its receipt and issue the certificate on receipt to the bidder.

The bid received after expiry of the time limit referred to in paragraph 1 of this Article shall be considered as an untimely one.

Contracting authority shall adopt a conclusion on rejection of the bid referred to in paragraph 4 of this Article and return it to the bidder unopened.

Submission of a Joint Bid

Article 79

A bid may be submitted by a group of bidders (joint bid) having an unlimited joint liability for the bid and the obligations derived from public procurement contract.

In the case referred to in paragraph 1 of this Article, a group of bidders shall submit along with their bid a certificate on joint application determining the leading bidder – the bearer of the bid, regulating mutual rights and duties of the bidders, percentage of their share in offering the goods, services or works according to their types.

The bidders shall state in their joint bid the names and adequate professional qualifications of the persons who will be responsible for contract execution

Conditions for Submission of a Joint Bid

Article 80

Each bidder from a group of bidders must individually fulfill the mandatory conditions referred to in Article 65 items 1, 3 and 4 of this Law.

The mandatory condition referred to in Article 65 item 2 of this Law must be fulfilled only by the bidder participating in a joint bid who was, by the agreement on joint application, designated to execute that part of the subject-matter of public procurement for which the Law stipulated a mandatory permit (license or some other act).

Conditions referred to in Article 67 of this Law for participation in a public procurement procedure as a member of a joint bid, the bidders shall fulfill jointly and they may use capacities of other bidders who are members of the joint bid.

A bidder who submitted its bid individually may not at the same time participate in a joint bid or as a subcontractor to another bidder.

Participation of Sub providers and/or Subcontractors

Article 81

If the bidder states in the bid that he intends to entrust the partial execution of the procurement to a sub provider or a subcontractor, he shall list in the bid the names of the sub providers or subcontractors with their closer details (name, address, procentual participation etc.).

The participation of all sub providers and subcontractors in the execution of the public contract may not exceed 30% of the total value of the bid.

The bidder shall allow the contracting authority, upon the latter's request, access to the documents pertaining to sub provider or a subcontractor, for the purpose of establishing the compliance with the conditions for participation in a public procurement procedure.

The bidder shall be fully liable to the contracting authority for the procurement contract performance, irrespective of the number of sub providers or subcontractors.

Alternative Bid

Article 82

A contracting authority may prescribe in the contract notice, invitation to public tender and tender documents a possibility of submitting alternative bids, provided that the economically most advantageous bid criterion was determined as the criterion for evaluation of the bids.

Bid Validity Period

Article 83

Bid validity period shall be determined by a contracting authority in tender documents.

Bid validity period may not be shorter than 60 days from the date of public opening of the bids.

After expiry of the bid validity period a contracting authority may request in written form an extension of the bid validity period from the bidder until a certain time limit.

In case that the bidder rejects a request to extend the bid validity period or does not extend the validity period of the means of financial securing, it will be considered to have desisted from the bid.

Any bidder, who accepts the request for extension of the bid validity period, may not alter the bid and it shall extend the validity period of the means of financial securing.

A Bid Price

Article 84

A bidder shall submit a bid with price in Euros and with separately expressed VAT.

The offered price shall include all expenses and discounts to the total offered price with separately expressed VAT, in accordance with the Law.

A bid price shall be written in figures and words, and in case of their discrepancies, the price expressed in words shall prevail.

A bid price shall be expressed for the whole subject matter of procurement or, when the subject of procurement is divided into lots, for each individual lot of public procurement.

Abnormally Low Price

Article 85

If the most favourable bid price is at least 30% lower than the average offered price of all acceptable bids, contracting authority shall request an explanation from the bidders. The explanation referred to in paragraph 1 of this Article may refer to, in particular:

- 1) austerity measures in construction method, technical solutions or production process;
- 2) exceptionally favourable conditions available to bidder for execution of the contract;
- 3) originality of the goods, works or services offered by the bidder;
- 4) compliance with the rules referring to protection upon employment and working conditions, applied at the place of performance of works, provision of services or delivery of goods;
- 5) possibility that the bidder receives state aid (subsidies).

The bidder shall provide the explanation referred to in paragraph 1 of this Article within a time limit no longer than eight days as of the day of submitting the request.

The contracting authority shall, upon receiving the explanation, check the relevant integral elements of the bid that could be relevant to the bid price referred to in paragraph 1 of this Article, and if it establishes that these elements are not justified, the bid shall be rejected.

Abnormally Short Period

Article 86

If the period for the execution of works, the provision of services or delivery of goods from the most favourable bid is considerably shorter than the minimum period stated in the contract notice, invitation to tender and tender documentation, the contracting authority shall reject such bid as incorrect one.

If the period for the execution of works, the provision of services or delivery of goods from the most favourable bid is considerably shorter than the average offered period stated in other bids, the contracting authority shall request a thorough explanation of all its integral parts which it considers as relevant to the offered period.

The bidder shall provide the explanation referred to in paragraph 2 of this Article within a time limit no longer than eight days as of the day of submitting the request.

The contracting authority shall, upon receiving the explanation, check the relevant integral elements of the bid referred to in paragraph 2 of this Article, and if it establishes that these elements are not justified, the bid shall be rejected

10. Time Limits in Public Procurement Procedure

Time Limit for Bid Submission

Article 87

A contracting authority shall set a deadline for bid submission in the contract notice, invitation to public tender and in the tender documents.

Setting the time limit referred to in paragraph 1 of this Article shall mean setting the date and hour by which bids may be submitted.

Calculation of Time Limits

Article 88

The time limit for the submission of bids shall be calculated from the first day following the day of publication of the contract notice, or as of the delivery of invitation to tender.

Sundays and public holidays do not obstruct the beginning and the course of the time limits.

In case that the last day of the time limit is Sunday or a public holiday or some other non- working day of the contracting authority, the time limit shall expire upon expiry of the following working day.

Appropriateness of Time Limits

Article 89

The time limit for submission of bids must be appropriate to the time necessary for preparation of the acceptable bid.

In case that the preparation of the bid requires review of comprehensive tender documents or comprehensive technical characteristics or specifications, site visits or the like, the contracting authority shall envisage the extension of the time limit.

Time Limit for Submission of Bids in Open Procedure

Article 90

Time limit for submitting bids in open procedure may not be shorter than 37 days as of the day of publication of the contract notice on the Public Procurement Portal.

The contracting authority may shorten the time limit referred to in paragraph 1 of this Article, for reasons of urgency, but it may not be shorter than 22 days as of the day of publication of the contract notice for the open procedure on the Public Procurement Portal.

Time Limits for Submission of Bids in Restricted procedure and Negotiated Procedure

Article 91

Time limit for submitting applications for prequalification in the restricted procedure (the first stage), may not be shorter than 37 days as of the day of publication of invitation for prequalification on the Public Procurement Portal.

Time limit for submitting bids for the participation in the restricted procedure (the second stage) may not be shorter than 22 days as of the day of sending invitation to tender to qualified applicants.

Time limit for submission of bids in negotiated procedure with or without prior publication of contract notice, with exception of cases referred to in Article 25 item 1 subparagraph 3 of this Law, may not be shorter than 22 days as of the day of publication of the contract notice on the Public Procurement Portal, or the day of delivery of the invitation to tender by negotiation to the bidders.

11. Criteria for Selection of the Most Favourable Bid

*Establishing and Description of Criteria and Sub criteria***Article 92**

A contracting authority shall establish criteria, and sub-criteria for the selection of the most favourable bid in the contract notice, invitation to tender and in tender documents.

Criteria and sub-criteria referred to in paragraph 1 above shall be expressed in words and the maximum number of points that can be awarded on the basis of each individual criterion and sub-criterion.

Criteria and sub-criteria must not be discriminatory and they should be logically linked to the content of the subject of public procurement.

Criteria and sub-criteria must be described in a clear and intelligible manner.

Upon assessment and evaluation of bids, contracting authority shall apply only those criteria and sub-criteria contained within the contract notices referred to in paragraph 1 of this Article and tender documents.

A contracting authority shall determine in tender documents the methodology for award of points for the sub-criteria referred to in Article 95 paragraph 1 items 2 to 12 of this Law.

*Types of Criteria***Article 93**

The criteria for selection of the most favourable bid shall be:

- 1) the lowest price offered or
- 2) the economically most favourable bid.

The contracting authority shall make the selection among the criteria referred to in paragraph 1 of this Article, depending on procedure type and subject public procurement.

*The Lowest Offered Price Criterion***Article 94**

The selection of the most favourable bid applying the lowest offered price criterion shall be based upon the lowest price as a sole criterion.

*The Economically Most Favourable Bid Criterion***Article 95**

The most favourable bid criterion is based upon the following sub-criteria depending on the subject-matter of public procurement, in particular:

- 1) the lowest price offered;
- 2) delivery period or period of completion of services or works;
- 3) quality;
- 4) current maintenance costs;
- 5) cost effectiveness;
- 6) technical and technological advantages;
- 7) program and degree of environmental protection, or energy efficiency;
- 8) after-sale service and technical assistance;
- 9) warranty period, the type and quality of warranties and guaranteed value;
- 10) obligations concerning spare parts;
- 11) post-warranty maintenance;
- 12) aesthetic and functional characteristics.

A contracting authority shall make the selection between submitted bids applying the most favourable bid criterion in a way that it shall rank them on basis of the sub criteria and number of points determined for these sub criteria.

A contracting authority shall determine the value of points for each sub-criterion respectively, on basis of which the most favourable bid shall be selected, so that the total number of points shall be 100.

A contracting authority shall make the selection between submitted bids applying the most favourable bid criterion in a way that it shall evaluate them on basis of the total number of awarded points, that is, the sum of the points determined for each individual sub criterion.

The conditions for participation of bidders in a public procurement procedure may not be established as the sub-criteria for selection of the most favourable bid.

Methodology of expressing criteria into an appropriate number of points, as well as a method of comparison and evaluation of bids, shall be prescribed by the Ministry.

The Lowest Offered Price Sub Criterion

Article 96

The lowest offered price sub criterion determined for a public procurement of goods or works shall be the prevailing sub criterion for ranking of bids, and it shall be established in proportion with the number of points determined by other selected sub criteria in such a way as to determine at least 50 points for this sub criterion.

Upon selection of the most favourable bid criterion for a public procurement of services, a contracting authority shall determine the proportion of the number of points amongst the selected sub-criteria in such way as to determine at least 40 points for this sub-criterion.

12. Public Opening of Bids

Receipt and Recording of Bids

Article 97

A contracting authority shall, on each received envelope containing a bid, mark the date and time and hour of receipt of the bid by the order of their receipt and issue a certificate on receipt of the bid.

Time of receipt of an electronically submitted bid shall be recorded by confirmation of receipt of electronic bid, without any delay, in accordance with regulations on electronic trade and electronic signature.

The information on received bids may not be disclosed.

A contracting authority shall ensure secrecy of the bids, until public opening of the bids.

A contracting authority shall preserve the bids in a manner that they may not be available to unauthorized persons.

Public Opening of Bids

Article 98

Bids shall be opened publicly, at the latest 1 hour after the expiry of time limit for submission of bids.

The opening of bids may be attended by authorized representatives of bidders after they have enclosed their authorizations signed by responsible persons.

The public opening of bids commences by establishing the number of submitted bids according to the order of reception, including changes or amendments, or withdrawal of the bids, timeliness of the bids and name or title of the bidder.

The bidder who revokes its bid, or withdraws its bid, shall not be entitled to attend the procedure of public opening of bids.

The Commission for the opening and evaluation of bids shall, in the procedure of public opening of bids, keep minutes of the procedure, indicating the following data:

- 1) place, date and hour of public opening of bids;
- 2) names of Chairman and members of the Commission for the opening and evaluation of bids;
- 3) names of the present bidders, or their authorized representatives, with reference numbers and dates of issuance of their authorization letters;
- 4) title or name of the bidder not attending the public opening of bids;
- 5) order of opening of the bids and data contained in the bids along with the enclosed documents;
- 6) subject-matter of procurement;
- 7) objections, proposals and suggestions of bidders' authorised representatives; and
- 8) other data of relevance to the procedure of opening of bids.

The minutes must be signed by members of the Commission for the opening and evaluation of bids and the present authorized representatives of bidders.

A copy of the minutes, after it is signed, shall be handed to all present bidders, or their authorized representatives.

If any of the bidder's authorized representatives refuse to sign the minutes, the reasons of the refusal shall be stated in the minutes.

Contracting authority shall send to bidders who did not attend the public opening of bids the minutes of opening of bids within 3 days as of the day of termination of the procedure for opening of bids.

The more detailed content and form of the minutes referred to in paragraph 5 of this Article shall be determined by the Ministry.

Valid Bid
Article 99

A valid bid shall be the bid which fully meets all conditions required by the text of the contract notice, invitation to public tender and tender documents.

Invalid Bid
Article 100

A bid shall be invalid:

- 1) when it is not in harmony with the conditions required in the text of the contract notice, invitation to public tender and in tender documents;
- 2) when it is not accompanied by the documents required in the text of the contract notice, invitation to public tender and in tender documents;
- 3) when it does not contain bid guarantee defined in the text of the contract notice, invitation to public tender and in tender documents;
- 4) when it does not contain evidence on suitability required in the text of the contract notice, invitation to public tender and in tender documents;
- 5) when bidders have not submitted the evidence on joint participation and appointed joint bid bearer;
- 6) when it does not clearly state the price, only a statement that there will be offered a price which will be lower than the lowest offered price by certain percentage or amount ;
- 7) when it does not state the total price in accordance with this Law;
- 8) when there is an established a calculation error of the offered price in an amount higher, or lower than 3% of the bid value;
- 9) when the bidder does not give or refuses to give requested explanation;
- 10) when the amount of the offered price exceeds the estimated value of public procurement.

Bids referred to in paragraph 1 of this Article shall be rejected, with written statement of the reasons for their rejection.

13. Review, Assessment and Evaluation of Bids

Review and Assessment of Validity of Bids

Article 101

Review, assessment and evaluation of validity of bids shall be carried out by the Commission for the opening and evaluation of bids at a closed session.

The bids shall be assessed by checking whether the content of the bid is in accordance with the conditions set out in the contract notice, invitation to tender and tender documents.

The Commission for the opening and evaluation of bids may, during the procedure of assessment of validity of bids, require explanations from the bidders for purposes in order to remove doubts about the validity of bids.

The explanation of the bid may not be a means of change or amendment of the bid.

In case that the bidder does not provide the explanation referred to in paragraph 4 of this Article within eight days from the day of delivery of the request, the bid shall be rejected as invalid.

During the procedure of review and assessment of validity of bids, a contracting authority may, upon request of the Commission referred to in paragraph 1 of this Article, engage experts for provision of professional assistance for assessment and evaluation.

The bids assessed as invalid ones, shall be rejected.

Evaluation of Bids

Article 102

The Commission referred to in Article 101 of this Law shall start the evaluation procedure after assessment of validity of bids.

Each member of the Commission for the opening and evaluation of bids shall conduct separate evaluation of valid bids on basis of the criteria or sub criteria determined in the contract notice, invitation to public tender and tender documents.

On basis of evaluation referred to in paragraph 2 of this Article, the Commission shall determine the average number of points awarded to each bid and establish a ranking list in descending order.

The Minutes of Review, Assessment and Evaluation of Bids

Article 103

The Commission for the opening and evaluation of bids shall keep the minutes on the review, assessment and evaluation of bids which, in particular, shall contain:

- 1) number of the public procurement procedure;
- 2) procurement subject matter;
- 3) name and address of head offices of the bidders who submitted their bids, by the order from the minutes on public opening of bids;
- 4) assessment of validity of submitted evidence for each of the bids;
- 5) opinions of the experts engaged for provision of professional assistance;
- 6) explanation for rejection or refusal of the bids;
- 7) bid price for subject matter of the contract, i.e. for lots;
- 8) criteria and number of points awarded to each bidder for each established criterion and sub-criterion, with the explanation for awarded number of points;
- 9) comparative survey of the evaluation and analysis of bids;

- 10) explanation on the selection of the most favourable bid;
- 11) explanation of the decision on annulment of public competition;
- 12) date of the minutes and signatures of all Commission members.

The members of the Commission for the opening and evaluation of bids who do not agree with the final report of the Commission for the opening and evaluation of bids, shall present their opinions in form of a written statement enclosed with the text of the minutes of review, assessment and evaluation of bids.

On basis of the minutes referred to in paragraph 1 of this Article, a report on a public procurement procedure shall be drawn up and delivered to the head, or responsible person of the contracting authority, with a proposal for selection of the most favourable bid.

The more detailed content and the form of the minutes of review, assessment and evaluation of bids and the form of the report on public procurement procedure shall be prescribed by the Ministry.

Selection between Equal Bids

Article 104

If two or more bids have an equal number of points on basis of criteria and sub criteria for selection of the most favourable bid, the contracting authority shall summon the bidders whose bids have equal number of points and make a selection by drawing lots.

The drawing of the lots referred to in paragraph 1 of this Article shall be conducted by the Chairman of the Commission for the opening and evaluation of bids.

14. Decision Making and Public Contract

Decision on Cancellation of Public Procurement Procedure

Article 105

A public procurement procedure shall be cancelled in following cases:

- 1) when no bid and/or no acceptable bid has been submitted;
- 2) when, before the expiry of the time limit for submitting bids, a contracting authority finds it necessary to change substantially tender documents;
- 3) when the need ceases for public procurement subject matter and when public procurement is not going to be repeated during the budget or financial year;
- 4) when the amount of all offered prices exceeds the estimated value of public procurement.

Contracting authority shall, in cases of cancellation referred to in paragraph 1 items 2 and 3 of this Article, to reimburse expenses to bidders incurred by the bid submittal and these costs shall be: the amount paid for the purchase of tender documents, the amount paid for certification of the evidence on suitability and the costs of financial securing of the bid - guarantees.

Contracting authority shall deliver the decision on cancellation of public procurement procedure, with a rationale, to the bidders no later than three days from the day of making that decision, and publish it on the Public Procurement Portal.

Decision on Selection of the Most Favourable Bid

Article 106

A contracting authority shall pass a decision on selection of the most favourable bid within the time limit stipulated in the contract notice, invitation to public tender and tender documents.

The decision on selection of the most favourable tender shall be passed by the head, or a responsible person of the contracting authority, on proposal of the Commission for the opening and evaluation of bids.

The decision on selection of the most favourable bid must have a rationale.

Contracting authority shall submit the decision from paragraph 1 above to all bidders within three days as of the day of making the decision and publish it on the Public Procurement Portal.

The decision on selection of the most favourable bid made without previously conducted public procurement procedure, since the contracting authority had the obligation to conduct the procedure pursuant to this Law, shall be declared null and void.

The form of the decision on selection of the most favourable bid shall be determined by the Ministry.

Public Procurement Contract

Article 107

Contracting authority concludes a public contract with the bidder whose bid has been selected as the most favourable one.

Public procurement contract must be in accordance with the conditions stated in the contract notice, invitation to public tender, tender documents and decision on selection of the most favourable bid.

The price determined in a public procurement contract may not exceed the price determined by the decision on selection of the most favourable bid.

The public procurement contract shall not be concluded before the expiry of the time limit for receiving objections (a standstill period), and adoption of a decision on the filed complaint, unless provided otherwise by this Law.

A bidder referred to in paragraph 1 of this Article shall sign a public procurement contract no later than eight days from the date of receipt of the contract, and return the signed contract to the contracting authority within the same period with a guarantee regarding a good contract performance.

In case that a bidder referred to in paragraph 1 of this Article does not sign the contract and does not submit a guarantee regarding a good contract performance, the contracting authority may conclude a contract with the next bidder in ranking, provided that the difference in price does not exceed 10% compared to the previously selected bid or annul the public procurement procedure.

A contracting authority shall submit the concluded public procurement contract to the competent state authority, within three days from the date of conclusion, for the purpose of its publication on the Public Procurement Portal.

III. PUBLIC PROCUREMENT IN THE WATER MANAGEMENT, ENERGY, MINING, TELECOMMUNICATIONS, POSTAL AND TRANSPORT SECTORS

1. Covered Parties

Contracting Authorities

Article 108

Contracting authorities of public procurement in the water management, energy, mining, telecommunications, postal and transport sectors shall be the contracting authorities referred to in Article 2 of this Law and the entities referred to in Article 109 of this Law, when procuring goods, services or works necessary for the performance of the activities referred to in Article 110 of this Law.

*Holders of Special and Exclusive Rights***Article 109**

If, in accordance with the Law, special or exclusive rights have been granted to a person other than the contracting authority referred to in Article 2 of this Law to perform the activities referred to in Article 110 of this Law, the holder of such a right shall be obligated, when procuring goods, services or works necessary for the performance of such activities, to act like a contracting authority under the provisions of this Law.

A special or exclusive right referred to in paragraph 1 of this Article shall be any right granted by the competent state authority or a local self-government unit, to a limited number of entities to perform the activities referred to in Article 110 of this Law in a certain geographical area.

2. Subject of Public Procurement and Exemptions*Subject of Public Procurement***Article 110**

The subject of public procurement contracts in the water management, energy, mining, telecommunications, postal and transport sectors for the purposes of this Law shall be the procurement of goods, services and works necessary for:

1) construction, maintenance, supply and exploitation of facilities for the production, transport or transmission and distribution of potable water, electricity, gas and heat;

2) exploration for or production of oil and gas (hydrocarbons), exploration for or extraction of coal and other solid fuels;

3) construction, maintenance and utilization of telecommunications networks and facilities and provision of telecommunication services;

4) construction, maintenance and utilization of facilities used in postal transport;

5) construction, maintenance and utilization of facilities used in air, sea, lake, river and railway transport, as well as regular urban and suburban passenger transport in road transport that is performed by buses.

The subject of public procurement in the energy sector shall also be the procurement of electricity, oil and gas.

*Public Procurement that are not Considered to be Procurement in**Water Management and Energy Sectors***Article 111**

A public procurement in the water management and energy sectors for the purposes of this Law shall not be considered to be any procurement of goods, services and works for:

1) production of potable water or electricity if:

- a person other than the contracting authority referred to in Article 2 of this Law pumps potable water or produces electricity, and the consumption of these goods is necessary for the performance of this person's activities not specified in paragraph 1 of the Article 110 of this Law;

- the supply of a public network depends solely on the personal consumption of a person other than the contracting authority referred to in Article 2 of this Law and if this consumption does not exceed 30% of the total production of potable water or electricity on the part of that person, taking into consideration the average over the last three years, including the current year;

2) production of gas or heat if:

- the production of gas or heat by a person other than the contracting authority referred to in Article 2 of this Law is an unavoidable consequence of the performance of this person's activities not specified in paragraph 1 of the Article 110 of this Law;

- the supply of a public network is intended solely for the purpose of economic exploitation of such production and does not exceed 20% of the total annual income of a person other than the contracting authority referred to in Article 2 of this Law, taking into consideration the average for the last three years and the current year.

Other Procurements

Article 112

The subject of public procurement in the water management sector shall also be the procurements connected with:

- 1) hydraulic engineering projects, irrigation or land melioration, provided that over 20% of the total quantity of water provided through these projects, by irrigation or land drainage is to be used as potable water;
- 2) filtration and drainage of rainwater and waste water.

Contracts in the Water, Energy, Mining, Telecommunications and Transport Sectors not Subject to this Law – Exemptions from the Application of this Law

Article 113

The provisions of this Law shall not apply to public procurement contracts in the water management, energy, mining, telecommunications and transport sectors in the following cases:

1) when a contracting authority involved in the construction, maintenance and operation of telecommunications networks and facilities and provision of telecommunications services conducts a procurement procedure whose sole purpose is to enable it to provide one or more of telecommunications services, provided that another person may freely offer its services in the same geographic area and under the same conditions;

2) when a contracting authority awards a contract for potable water purchase;

3) when a contracting authority that is a rate-based customer concludes an electricity procurement contract;

4) when a contracting authority transports oil or natural gas, or transmits or distributes electricity through the systems where only one bidder exists;

5) when a contracting authority responsible for supplying rate-based customers with electricity, upon the previously obtained approval of the state authority in charge of energy, procures the missing quantities of electricity determined by the Energy Balance Sheet of Montenegro for the purposes of supplying these customers, for balancing of the system and the system services directly from the electricity producer;

6) when a contracting authority organizes a public contest for purposes not specified in Article 110 of this Law;

7) when an economic operator founded by several contracting authorities performs procurement from its founders for the purposes of performing the activities referred to in Article 110 paragraph 1 of this Law;

8) when a contracting authority, as a related entity for the purposes of the law regulating the corporate income tax, or the law regulating the personal income tax, performs procurement from an entity to which it is related, provided that in the previous three years the contracting authority generated at least 80% of the average total revenue for the entity with which it is related.

IV. PUBLIC PROCUREMENT IN ELECTRONIC FORM

1. Conditions and Manner of Conducting

Manner of Conducting **Article 114**

To conduct the electronic system of public procurement, the contracting authority must provide the following:

- 1) communication, exchange and storage of information, in such a manner as to ensure data integrity and bid confidentiality;
- 2) protection of the data contained in the bid before expiration of the time limit for their opening;
- 3) that information related to specific requirement regarding the electronic submission of bids be made available to all bidders and candidates.

Electronic Form of Writings **Article 115**

When a public contract procedure is conducted in electronic form, the review of tender documents, modifications of and additions to tender documents, submission of suitability evidence, bidders' clarification, and other communication and information shared between the contracting authority and bidders, or candidates, shall be performed through the electronic system of public procurement.

Bid in Electronic Form **Article 116**

A bidder may submit its bid in electronic form only if the possibility of electronic submission of bids was envisaged in the contract notice, invitation to public tender and tender documents.

A bid in electronic form must be signed by an advanced electronic signature.

A bid in electronic form must have a time stamp in accordance with the law regulating the electronic signature.

The more detailed manner of conducting public contract procedure in electronic form shall be prescribed by the Ministry with consent of the state authority competent for the information society affairs.

V. PUBLIC PROCUREMENT RECORDS AND REPORTING

1. Records, Reporting and Documentation Keeping

Record on Public Procurement Procedures **Article 117**

Contracting authorities shall:

- 1) keep records on conducted public procurement procedures;
- 2) keep records on concluded public procurement contracts.

The records referred to in paragraph 1 of this Article shall contain in particular: reference number of public procurement, type of public procurement procedure, subject of public procurement, time limits for making decisions in the procedure, number of submitted, valid, refused or rejected bids, and date and reference number of decisions on selection of the most favourable bid.

The more detailed content, manner of keeping and form of records referred to in paragraph 2 of this Article shall be determined by the Ministry.

Reporting
Article 118

A contracting authority shall, by 28 February of the current year at the latest, submit to the competent state authority the report on conducted public procurement procedures and on public contracts concluded in the previous year.

The report referred to in paragraph 1 of this Article shall be submitted both in written and in electronic form.

The competent state authority shall prepare an annual report on conducted public procurement procedures and on public contracts concluded in the previous year and submit it to the Government by 31 May of the current year at the latest.

The content and form of the report referred to in paragraph 1 of this Article shall be determined by the Ministry.

Preservation of Records
Article 119

A contracting authority shall preserve the documents regarding a public procurement procedure for at least five years, in accordance with the Law.

Exceptionally, a contracting authority shall preserve the documents regarding a public procurement procedure for contracts of contracted value not exceeding EUR 15 000 for three years, in accordance with the Law.

VI. PROTECTION OF RIGHTS IN THE PUBLIC PROCUREMENT PROCEDURE

1. Procedure for protection of the rights and responsibilities for decision making

Ensuring of legal protection
Article 120

Protection of rights of the participants in a public procurement procedure and public interest, at all stages of a public procurement procedure, shall be provided in the manner and under the conditions laid down in this Law.

Subsidiary application of the provisions of the Law on Administrative Procedure
Article 121

In the procedure of protection of rights, the provisions of the law which regulates the general administrative procedure shall apply accordingly, unless it has been regulated otherwise by this Law.

Initiation of the procedure of legal protection
Article 122

Procedure for the protection of rights shall be initiated by lodging an appeal to the State Commission for Control of Public Procurement Procedures (hereinafter referred to as: State Commission).

The appellant shall submit a copy of the appeal referred to in paragraph 1 of this Article to the contracting authority, the proof of which must be submitted to the State

Commission within three days from the day of submission of the appeal to the contracting authority.

The appeal may be lodged against:

- 1) content and manner of publication of contract notice;
- 2) content of invitation to tender;
- 3) content, clarification and availability of tender documents to interested parties;
- 4) procedure of public opening of bids, content of the minutes of public opening of bids;
- 5) decision on rejection of the bid;
- 6) decision on dismissal of the bid;
- 7) procedure of evaluation of the bids;
- 8) decision on selection of the most favorable bid;
- 9) decision on suspension of the public procurement procedure;
- 10) decision on annulment of the public procurement procedure.

The appeal shall be lodged within 10 days from the day of publication of the contract notice, or the day of delivery of invitation to tender, assuming or purchase or refusal to clarify the tender documents, public opening of bids, receipt of the conclusion or decision made by the bidder, or interested party or failure of the contracting authority to act, by which the rights of the bidder or the interested party in the public procurement procedure have been violated.

In case that in the appeal procedure it was decided in favor of the appellant, the fee referred to in paragraph 3 above shall be returned to the appellant.

The appellant who failed to lodge the appeal within the time limit referred to in paragraph 4 of this Article in case referred to in paragraph 3 items 1, 2, 3 and 4 of this Article, shall have no right to lodge the appeal in the later stage of the proceedings.

The contracting authority shall notify all participants in the public procurement procedure about the lodged appeal, within three days as of the day of receipt of the appeal.

Active legitimation in the procedure

Article 123

An appeal may be lodged by the bidders and other interested persons.

The interested person from paragraph 1 of this Article is a person who has submitted the request to have insight into tender documents, or has purchased it, as well as a person who has proved to have suffered or might have suffered the damage because of the decision, action or failure of contracting authority to act, i.e. because of the violation of the provisions of this Law.

Legal consequences of the submission of the complaint

Article 124

An appeal submitted in a good time shall terminate all further activities of the contracting authority in the procedure of public procurement, until the decision is made in respect of submitted appeal.

Exceptionally from paragraph 1 of this Article, State Commission may approve the continuation of the public procurement procedure, upon request of the contracting authority, in case that the contracting authority would suffer significant material damage caused by suspension of the procurement procedure that would be disproportionate to the value of the public contract or if the interest of Montenegro would be jeopardized and in the case referred to in Article 25 item 1 sub paragraph 3 of this Law.

The request referred to in paragraph 2 of this Article may be submitted within five days as of the day of receipt of the appeal.

The State Commission shall decide upon the submitted request referred to in paragraph 2 of this Article within three days as of the day of submission of request. In case that the State Commission adopts the request referred to in paragraph 2 of this Article, the contracting authority shall notify all participants in the procedure within three days as of the day of submission of the decision.

Content of Appeal

Article 125

An appeal shall contain, in particular:

- 1) details of the appellant (title and head office, or name and address);
- 2) name and address of the contracting authority;
- 3) number and date of publication of the contract notice with subject of procurement;
- 4) number and date of delivery of the invitation to public tender with subject of procurement;
- 5) number and date of decision on selection of the most favorable bid, the annulment and other contracting authority's decisions;
- 6) reasons for lodging of the appeal with explanation;
- 7) proposal of evidence;
- 8) appeal application; and
- 9) signature of the authorized person.

An appellant shall, along with the appeal, enclose the evidence on payment of the reimbursement for the procedure costs.

The reimbursement referred to in paragraph 2 of this Article shall be paid by the appellant in amount of 1% of the estimated value of the public procurement, provided that that amount may not exceed EUR 8 000.

The reimbursement for the procedure costs shall be revenue of the Budget of Montenegro.

The appellant, whose seat is outside the territory of Montenegro, shall appoint a commissioner for receipt of writings on the Montenegrin territory, or to determine another manner of submission of writings which shall not delay the submission procedure.

Treatment of Irregular Appeal

Article 126

In case that the appeal contains a formal deficiency that prevents acting upon the appeal or if the appeal is unintelligible or incomplete, the State Commission shall, within no longer than five days from the receipt of the appeal, request from the appellant to remove those deficiencies and determine a time limit for the correction.

If the appellant, within the prescribed time limit, does not correct its appeal, the State Commission shall dismiss the appeal by its decision.

Manner of Submitting an Appeal

Article 127

An appeal shall be submitted directly or by registered letter mail, as well as in electronic form.

Action of a Contracting Authority on Submitted Appeal

Article 128

A contracting authority shall, within eight days from the day of receipt of the appeal, submit to the State Commission the following:

- 1) response to the appeal, with declaration on the appeal statements;

- 2) acts and documents relative to the public procurement with a list of appendixes;
- 3) original bids submitted;
- 4) other proofs relevant for decision making upon the appeal.

Powers of Contracting Authority Regarding the Submitted Appeal

Article 129

If a contracting authority establishes that the appeal is partly or in whole justified, it may annul the decision or substitute it with another decision; correct the performed actions in accordance with the request contained in the appeal or annul the public procurement procedure and inform all the participants of the procedure thereof.

An appeal may be lodged to the State Commission against the decision referred to in paragraph 1 of this Article.

A contracting authority, which used its powers referred to in paragraph 1 of this Article, shall immediately inform the State Commission thereof, and submit to the State Commission the original of the new decision with the proof that it has been distributed to all participants in the public procurement procedure.

Annulment of a Procedure due to Non-submission of Proofs

Article 130

In case that a contracting authority does not act in accordance with the Article 128 of this Law and does not submit acts and documents within 15 days from the day of submitting the appeal to the contracting authority, the State Commission may make a decision on annulment of the public procurement procedure.

Time Limits for Decision Making

Article 131

The State Commission must adopt a decision in respect of submitted appeal within 15 days from the day of receipt of the files and complete documentation on the public procurement procedure.

The time limit referred to in paragraph 1 above, may be extended for no more than 10 days in case there is a need for engagement of experts, obtaining opinions from the competent authorities and when the documents regarding the public procurement procedure are comprehensive, and the submitter of the complaint and contracting authority shall be informed thereof.

The State Commission shall submit the decision referred to in paragraph 1 of this Article, within three days as of the day of its adoption to the appellant and contracting authority and publish it on its internet page.

State Commission Decision-Making

Article 132

The State Commission shall decide on appeal by conclusion or decision.

The State Commission may, by means of a conclusion:

- 1) dismiss an appeal, if the appeal is unlawful, untimely and lodged by unauthorised person;
- 2) deter further procedure, by receiving a written notice from the appellant on abandonment of the lodged appeal.

The State Commission may, by means of a decision:

- 1) reject the appeal as groundless;

- 2) adopt the appeal as grounded and annul the public procurement procedure and the adopted decision, point to the contracting authority to the irregularities made and order conducting of a new procedure and making of a decision or undertaking of necessary measures aimed at elimination of such irregularities.

The State Commission shall explain its decision.

Contracting authority shall act in accordance with the State Commission's decision, and notify the State Commission thereof within the time limits determined by the State Commission.

If the State Commission determines that contracting authority has not implemented its decision within the determined time limit, it shall inform the Government of Montenegro or local self-government unit thereof, and propose initiation of a proceeding for determining liability.

Rules on providing evidence

Article 133

In the appeal procedure the parties shall present all the facts that their requests are based on and propose evidences which confirm the facts.

In the procedure of legal protection contracting authority shall prove the existence of facts and circumstances on the basis of which certain actions have been undertaken in the procedure and decisions, which are subject of the appeal, made.

In the procedure of legal protection the appellant shall prove or make the existence of facts probable, as well as the reasons for the violation of the public procurement procedure or substantive law, as indicated in the appeal.

Substantial Violations of the Law

Article 134

Substantial violations of the law in public procurement procedure shall be:

- 1) carrying out a public procurement procedure without making a decision to initiate and carry out a public procurement procedure;
- 2) non-compliance of tender documents and other documents for public competition with the law, which led to or might have led to discrimination of bidders or limitation of market competition;
- 3) non-compliance of tender documents and the contract notice, that is, the invitation to tender in respect of requirements for the participation in the procedure;
- 4) publication of the contract notice, decision on the selection of the most favorable bid and the publication of the contract on public procurement which are not pursuant to this Law;
- 5) if a decision has been made by unauthorized body of the contracting authority;
- 6) failures related to the procedure of opening of bids and they refer to lack of data on the participants in the procedure, offered price and other data of importance for the propriety of the bid;
- 7) failures made in the procedure of review, assessment, comparison and evaluation of bids, and particularly the lack of reasons and evidences on the basis of which the decision has been made;
- 8) if the provisions of this Law on the use of the language and writing standards have been violated;
- 9) the selection of the bid whose price is higher than the estimated value of the public procurement;
- 10) the selection of the bid which is not the most favorable one and
- 11) the selection of an invalid bid as the most favorable one.

Limits of Action of the State Commission

Article 135

The State Commission shall make decisions within the limits of the filed appeal.
The State Commission, ex officio, shall decide upon the relevant infringements referred to in Article 134 of this Law, regardless of the part of the public procurement procedure that has been the subject of the appeal.

*Judicial Protection***Article 136**

The decision made by the State Commission shall be final.
An administrative dispute may be launched against the decision of the State Commission.
The judicial protection procedure is of an urgent nature.

2. Organization and Status of State Commission*Independence of State Commission***Article 137**

The State Commission shall be an autonomous and independent legal entity.
Any form of influence over the work of the State Commission shall be forbidden.
Any use of public authorities, media or public appearance for the purpose of influencing the course and the outcome of the procedure before State Commission shall be forbidden.
The State Commission has its stamp, in accordance with the Law.
The funds for the work of State Commission shall be allocated in the Budget of Montenegro.

*Composition and Manner of Appointment of State Commission***Article 138**

The State Commission shall have a president and four members performing their functions as a profession.
President and members of the State Commission may not perform any other public duty, nor perform any other activity professionally.
President and members of the State Commission shall be appointed by the Government, on basis of a public contest.
For the president of the State Commission appointment eligible may only be a law school graduate with bar examination passed and with no less than eight years of work experience, or at least five years of the experience in public procurement area.
For a member of the State Commission appointment eligible may only be a law school graduate who passed civil service exam, with no less than five years of work experience, or at least five years of the experience in public procurement area.
The president and members of the State Commission shall be appointed for a period of five years and may be reappointed.

*Responsibilities and Authorizations of the State Commission***Article 139**

The State Commission shall:

- 1) review complaints which have been made in public procurement procedures and make decisions in respect of them;

- 2) examine in the appeal proceedings the regularity of application of this Law and propose and undertake remedy measures for identified irregularities in public procurement procedures;
- 3) decide on requests of the contracting authorities whether to proceed with public procurement procedure when the appeal has been lodged in accordance with this Law;
- 4) decide on the requests in respect of the costs of the appeal proceedings;
- 5) monitor the execution of decisions in accordance with Article 132 paragraph 5 of this Law and undertake measures stipulated by the Law;
- 6) perform control over public procurement procedures whose value exceeds EUR 500 000;
- 7) cooperate and exchange information in the area of public procurement with the competent authorities of other countries;
- 8) adopt rules of procedure;
- 9) perform other duties, in accordance with this Law.

Method of Work of the State Commission

Article 140

President of the State Commission shall represent the State Commission and shall manage its work.

The State Commission shall decide on appeals and other matters within its jurisdiction by majority vote of all its members.

Meetings of the State Commission shall not be public.

Method of work of the State Commission shall be in more details regulated by the Rules of Procedure.

Legal Department of the State Commission

Article 141

The State Commission has legal department that performs professional and administrative-technical tasks necessary for the work of the State Commission.

The head of the Legal department is the Secretary of the State Commission.

The Secretary of the State Commission shall be responsible to the President and Members of the State Commission for his/her work and the work of the Legal department.

The Secretary of the State Commission shall be appointed by the State Commission, at proposal of the President of the State Commission.

The Secretary of the State Commission may only be a law school graduate who passed civil service exam, with no less than five years of work experience in public procurement area.

The organization and job systematization of the Legal department of the State Commission shall be regulated by the act on internal organization and systematization which is passed by the State Commission, with the Government's consent.

The regulations on civil servants and state employees shall be applied to the staff of the Legal department of the State Commission.

Article 142

The State Commission shall submit to the Parliament for adoption an annual report for the previous year, no later than 30 June of the current year.

Term of Office and Release from Duty

Article 143

The term of office of the President and the Member of the State Commission shall cease in the following circumstances:

- 1) upon termination of office;
- 2) upon personal request;
- 3) upon removal from office.

The President and the Member of the State Commission shall be removed from office:

- 1) if convicted of a criminal act to effective prison term for the period of no less than six months or if convicted of a criminal act making them unworthy for performance of the function;
- 2) if, by a legally-binding decision, he/she has been deprived of the work capability;
- 3) if he/she performs other public duty or performs other activity professionally;
- 4) if the annual report referred to in Article 142 is not adopted;
- 5) if he/she is not capable of performing his/her duties in the course of a six months period;
- 6) if he/she does not perform his/her official duties, or if he/she performs these duties in a negligent, untimely or reckless manner.

3. Control of Public Procurement Procedures

Subject of Control

Article 144

A contracting authority shall, in the public procurement procedure whose value exceeds EUR 500 000, within five days from the day of publication of decision on the most favorable bid, submit to the State Commission the complete documentation related to the public procurement procedure for the purpose of control over that public procurement procedure.

The control referred to in paragraph 1 of this Article shall be performed by the State Commission during the period of 30 days from the day of submission of the documents related to conducting of the public procurement procedure.

If the appeal has been submitted against decision on selection of the most favorable bid, it shall be decided upon both control referred to in paragraph 1 above and the appeal by a same decision.

In case that, during the performance of the control, the State Commission establishes that the public procurement procedure was conducted in a manner contrary to the provisions of this Law, it may annul the public procurement procedure and the adopted decisions partly or in a whole, indicate to the contracting authority on the irregularities committed and order conducting of a new procedure and decision-making or undertaking necessary measures for removing of the said irregularities.

In the control procedure, the provisions of this Law regulating the procedure of the State Commission's deciding upon appeals shall be applied accordingly.

The public procurement contract may not be concluded before adoption of the decision by the State Commission in the control procedure.

The public procurement contract concluded contrarily to paragraph 6 of this Article shall be null and void.

Omission of the Time Limit

Article 145

If against the decision on selection of the most favorable bid no appeal has been submitted, and the control has not been performed within 25 days from the day of

expiry of the time limit for submission of appeals, it shall be considered that the public procurement procedure was conducted in accordance with the Law.

Judicial Protection

Article 146

Against the decision by the State Commission adopted during performance of revision referred to in Article 143 of this Law, and administrative dispute may be launched.

The procedure referred to in paragraph 1 of this Article is of an urgent nature.

VII. INSPECTION CONTROL

1. Authorized Persons and Subject of inspection Control

Public Procurement Inspector

Article 147

The inspection control over application of this Law and regulations passed upon basis of this Law shall be performed by the competent state authority.

The tasks of inspection control referred to in paragraph 1 of this Article shall be performed by public procurement inspectors, in accordance with this Law and the law governing the inspection control.

Subject of Inspection Control

Article 148

An authorized public procurement officer shall perform inspection control in particular in relation to:

- 1) regularity of conducting of public procurement procedures whose value is from EUR 3 000 to EUR 500 000 ;
- 2) timeliness of submission and publication of public procurement plans, contract notices, decisions made in public procurement procedures and public procurement contracts;
- 3) timeliness and correctness of preparing and submission of public procurement reports;
- 4) fulfillment of conditions for performance of tasks of the public procurement officers;
- 5) regularity of preparation and keeping of the records on public procurement;
- 6) keeping of the documents related to public procurement procedures.

Inspection control referred to in paragraph 1 item 1 of this Article shall be performed as of the day of publication of the decision on the most favorable bid, decision on suspension of the public procurement procedure or decision on annulment of the public procurement procedure, until the public procurement contract is concluded.

In case that, during the performance of the inspection control, a public procurement inspector finds that an appeal has been lodged against the decision referred to in paragraph 2 of this Article and that the time limit for lodging an appeal has not expired, the inspection control procedure shall be suspended.

VIII. PENALTY PROVISIONS

1. Misdemeanour Liability

Offences

Article 149

A pecuniary fine ranging from EUR 2 000 to EUR 20 000 shall be imposed on a legal person for an infringement:

- 1) if it fails to keep specific records regarding violation of anti-corruption rules, to make an official note thereof or to submit a report to the competent state authorities for the purpose of undertaking measures in accordance with the Law and if it fails to notify the competent authority (Article 15 paragraph 3);
- 2) if it fails to record the cases of existence of conflict of interest referred to in Articles 16 and 17 of this Law and notify the competent authority without any delay (Article 18 paragraph 2);
- 3) if it fails to publish on the Public procurement Portal and to submit to the applicants the decision on selection of the qualified candidates with a rationale within five days as of the day of its adoption (Article 23 paragraphs 5 and 6);
- 4) if it fails to observe the conditions and manner of conducting a public procurement procedure laid down by this Law and, during a budget or financial year, split the subject of procurement that is a whole, with an intention of avoiding the application of this Law and the prescribed public procurement procedure (Article 44 paragraph 4);
- 5) if it fails to submit to the competent state authority the decision on appointment of the person for the performance of tasks of a public procurement officer (Article 58 paragraph 3);
- 6) if it fails to publish a contract notice on the Public Procurement Portal (Article 62 paragraph 1);
- 7) if it fails to publish changes and amendments to the contract notice on the Public Procurement Portal (Article 64 paragraph 3);
- 8) if it fails to publish on the Public Procurement Portal and to submit to the bidders the decision on suspension of public procurement procedure within no longer than three days as of the day of its adoption (Article 105 paragraph 4);
- 9) if it fails to publish on the Public Procurement Portal and to submit to the bidders the decision on selection of the most favourable bid (Article 106 paragraphs 1 and 4);
- 10) if it adopts the decision on selection of the most favourable bid without previously conducted public procurement procedure, although there was an obligation of conducting it (Article 106 paragraph 5);
- 11) if it fails to submit the public procurement contract to the competent authority within three days as of the day of its conclusion, for the purpose of its publication on the Public Procurement Portal (Article 107 paragraph 7);
- 12) if it does not keep records on the conducted public procurement procedures (Article 117 paragraph 1 item 1);
- 13) if it does not keep records on the concluded public procurement contracts (Article 117 paragraph 1 item 2);
- 14) if it fails to submit the report on the conducted public procurement procedures and the concluded public procurement contracts no later than 28 February of the current year for the previous year (Article 118 paragraph 1);
- 15) if it does not keep the documents related to the public procurement procedures for at least five years (Article 119 paragraph 1);
- 16) if it does not keep the documents related to the public procurement procedures for a procurement whose value is up to EUR 15 000 for at least three years (Article 119 paragraph 2).

For an infringement referred to in paragraph 1 of this Article a responsible person of the legal person, the state authority or the local self-government unit shall be fined by pecuniary fine ranging from EUR 250 to EUR 2 000.

For an infringement referred to in paragraph 1 of this Article an economic operator shall be fined by pecuniary fine ranging from EUR 500 to EUR 6 000.

IX. TRANSITIONAL AND FINAL PROVISIONS

Commenced Procedures

Article 150

A public procurement procedure commenced before this Law enters into force shall be conducted in accordance with the regulations based on which it has been initiated.

Continuance of the State Commission's Operation

Article 151

The Commission for control of public procurement procedures and the Secretary of the Commission for control of public procurement procedures, appointed in accordance with the effective Public Procurement Law ("Official Gazette of Montenegro", No: 46/06) shall continue their operations until appointment of the President and members, that is, the appointment of the Secretary of the State Commission, in accordance with this Law.

The appointment of the President and members, that is, the appointment of the Secretary of the State Commission shall be conducted within 90 days as of the day of entering into force of this Law.

Time Limit for Passing the Professional Exam

Article 152

The employees who have worked on the public procurement system tasks, as well as the public procurement officers shall be obliged to take a professional examination referred to in Article 60 of this Law within one year as of the day this Law enters into force.

Secondary Legislation

Article 153

The secondary regulations that based on the authorizations established by this Law shall be passed within six months from the day this Law enters into force.

The secondary regulations passed on basis of the Public Procurement Law ("Official Gazette of Montenegro", No: 46/06) shall be applied until the secondary regulations referred to in paragraph 1 of this Article enter into force.

Termination of Effect

Article 154

As of the day of start of implementation of this Law, the Public Procurement Law ("Official Gazette of Montenegro", No: 46/06), as well as the provisions of the Article 181 of the Law on Energy ("Official Gazette of Montenegro", No: 28/10) shall cease to apply.

Entering into Force

Article 155

This Law shall enter into force on the eighth day from the day of its publication in the "Official Gazette of the Republic of Montenegro", and it shall be applied as of 1 January 2012.