

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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THE PUBLIC PROCUREMENT ACT (ZJN-3)

Chapter One GENERAL PROVISIONS

1.1. Subject matter of the Act

Article 1

(Subject matter of the Act and transposed EU directives)

(1) This Act establishes rules on the procedures for procurement by contracting authorities with respect to contracts and design contests.

(2) This Act shall transpose the following EU directives into the legislation of the Republic of Slovenia:

– Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65; hereinafter: Directive 2014/24/EU);

– Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243; hereinafter: Directive 2014/25/EU);

– Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395 30.12.1989, p. 33), as last amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1); and

– Council Directive 92/13/EEC of 25 February 1992 co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14), as last amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

1.2. Definitions

Article 2

(Meaning of terms used in this Act)

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

1. "public contract" shall mean a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as its object the execution of works, the supply of products or the provision of services;

2. "public works contract" shall mean a public contract having as its object one of the following:

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a) the execution, or both the design and execution, of works related to one of the activities from the List of Activities in the Field of Works, which is Annex II to Directive 2014/24/EU and Annex I to Directive 2014/25/EU (hereinafter: the List of Activities in the Field of Works);

b) the execution, or both the design and execution, of a work;

c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

3. "a work" shall mean the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

4. "public supply contract" shall mean a public contract having as its object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may also include siting and installation operations;

5. "public service contract" shall mean a public contract having as its object the provision of services other than those referred to in point 2 of this paragraph;

6. "economic operator" shall mean any natural or legal person or group of such persons, including any temporary association of undertakings, which offers the execution of works, the supply of products or the provision of services on the market or in procurement procedures;

7. "tenderer" shall mean an economic operator that has submitted a tender;

8. "candidate" shall mean an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

9. "procurement document" shall mean any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procurement procedure, including the contract notice, the prior or periodic information notice, where such is used as a means of calling for competition, the technical specifications, the descriptive document, proposed contract conditions, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations, and any additional documents and procurement documents;

10. "centralised purchasing activities" shall mean activities conducted on a permanent basis in one of the following forms:

a) the acquisition of supplies and/or services intended for several contracting authorities;

b) the awarding of contracts or the conclusion of framework agreements for works, supplies or services intended for several contracting authorities;

11. "ancillary purchasing activities" shall mean activities consisting in the provision of support to the purchasing activities of the contracting authority, in particular in the following forms:

a) technical infrastructure enabling the contracting authority to award public contracts or to conclude framework agreements for works, supplies or services;

b) advice on the conduct or design of public procurement procedures;

c) preparation and management of public procurement procedures on behalf and for the account of the contracting authority concerned, except in the case of centralised purchasing activities;

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12. "central purchasing body" shall mean a contracting authority providing centralised purchasing activities and ancillary purchasing activities;

13. "procurement service provider" shall mean a public or private body which offers ancillary purchasing activities on the market;

14. "written" or "in writing" shall mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted or stored by electronic means;

15. "electronic means" shall mean electronic equipment for the processing, including digital compression, and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

16. "life cycle" shall mean all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance, and end of service or utilisation;

17. "design contest" shall mean a procedure that enables the contracting authority to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

18. "innovation" shall mean the implementation of a new or significantly improved product, service or process, inter alia production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, with, for example, the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;

19 "label" shall mean any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

20. "label requirements" shall mean the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

21. "procurement in the general field" shall mean a procurement of supplies, services and works other than the procurement of supplies, services and works in the infrastructure field;

22. "procurement in the infrastructure field" shall mean procurement by contracting authorities exercising one or more of the activities in the water, energy, transport and postal services sectors referred to in Articles 13 to 19 of this Act of supplies, services or works for the performance of these activities;

23. "technical specifications" shall mean one of the following:

a) in the case of public works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply so that it fulfils the use for which it is intended by the contracting authority; these characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; they also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction, and all

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other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

b) in the case of public supply or service contracts, a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service, and conformity assessment procedures;

24. "standard" shall mean a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, but with which compliance is not compulsory, and which is one of the following:

a) "international standard" shall mean a standard adopted by an international standardisation organisation and made available to the general public;

b) "European standard" shall mean a standard adopted by a European standardisation organisation and made available to the general public;

c) "national standard" shall mean a standard adopted at the level of a particular country by a national standardisation organisation and made available to the general public;

25. "European Technical Assessment" shall mean the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5), as last amended by Commission Delegated Regulation (EU) No. 574/2014 of 21 February 2014 amending Annex III to Regulation (EU) No. 305/2011 of the European Parliament and of the Council on the model to be used for drawing up a declaration of performance on construction products (OJ L 159, 28.5.2014, p. 41);

26. "common technical specification" shall mean a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No. 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12), as last amended by Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (OJ L 189, 27.6.2014, p. 164);

27. "technical reference" shall mean any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs;

28. "public procurement portal" shall mean the information portal of the ministry responsible for public procurement, managed by Javno podjetje Uradni list Republike

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Slovenije, d.o.o., where contracting authorities publish directly information notices, procurement documents and other documents required to be published on the public procurement portal under this Act;

29. "admissible tender" shall mean a tender which is submitted by a tenderer in respect of which there are no grounds for exclusion and which meets the selection criteria, which meets the needs and requirements of the contracting authority set out in the technical specifications and the procurement documents, which was received in due time, regarding which there is no evidence of collusion or corruption, which has not been found by the contracting authority to be abnormally low, and whose price does not exceed the contracting authority's budget;

30. "third country" shall mean a country that is not a Member State of the European Union or a signatory to the Agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3).

(2) For the purposes of Article 27 of this Act, the terms used herein shall have the following meanings:

1. "public communications network" shall mean an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services which enable the transfer of information between network termination points;

2. "electronic communications service" shall mean a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;

3. "audiovisual media service" shall mean a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 1; hereinafter: the TFEU) which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks. It shall also apply to an audiovisual commercial communication.

4. "media service provider" shall mean the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

5. "programme" and "programme material" shall mean a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports coverage programmes, situation comedies, documentaries, children's programmes, original drama, and radio programmes and radio programme materials.

1.3. Principles of procurement

Article 3

(Principles on which public procurement is based)

(1) The organisation, development and implementation of the public procurement system shall be based on the principle of the free movement of goods, the principle of freedom of establishment and the principle of freedom to provide services, which derive from the TFEU, and with the principles of economy, efficiency and effectiveness, competition among

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tenderers, transparency of public procurement, equal treatment of tenderers, and proportionality.

(2) In the performance of public contracts, economic operators shall comply with applicable obligations in the fields of environmental, social and labour law established by EU law, regulations in force in the Republic of Slovenia, collective agreements, or by international environmental, social and labour law provisions. A list of international social and environmental conventions is provided in Annex X to Directive 2014/24/EU and Annex XIV to Directive 2014/25/EU.

Article 4 (Principles of economy, efficiency and effectiveness)

Contracting authorities shall award public contracts in such a way as to ensure the economical and efficient use of public funds and an effective realisation of their goals defined in compliance with regulations governing the use of the budget and other public funds.

Article 5 (Principle of competition among tenderers)

(1) A public contract shall not unduly restrict competition among tenderers.

(2) In a procurement procedure, the contracting authority shall not restrict possible tenderers by choosing a type of procedure or performance thereof that is contrary to this Act and shall carry out the procurement procedure in compliance with relevant regulations on the protection and/or restriction of competition.

(3) The contracting authority may not request a tenderer to hire any particular subcontractor for the performance of the contract nor to perform any other activity, such as export of certain goods or services.

Article 6 (Principle of transparency of procurement procedures)

(1) Tenderers shall be selected in a transparent manner and in compliance with the prescribed procedure.

(2) Procurement procedures under this Act shall be public, which shall be ensured by free-of-charge publication of contract notices on the public procurement portal or on both the public procurement portal and in the Official Journal of the European Union.

Article 7 (Principle of equal treatment of tenderers)

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

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

Article 8 (Principle of proportionality)

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

1.4. Liable parties

Article 9 (Contracting authorities)

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

a) authorities of the Republic of Slovenia;

b) authorities of self-governing local communities;

c) other bodies governed by public law;

č) public undertakings which pursue one or more activities in the field of infrastructure;

d) entities that are not referred to in points a) to č) of this paragraph but pursue one or more activities in the field of infrastructure, operating on the basis of special or exclusive rights granted by a competent authority of the Republic of Slovenia.

(2) An association formed by one or several contracting authorities referred to in the preceding paragraph shall also be considered a contracting authority.

(3) "Body governed by public law" shall mean a body that has all of the following characteristics:

a) it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, an industrial or commercial character being deemed to be a characteristics of an entity that operates with other entities on the market under conditions of free competition by carrying out economic activities aimed at supplying products or services to private or public economic operators;

b) it has legal personality; and

c) it is financed, to more than 50%, by state or local authorities or by other bodies governed by public law or which are subject to management supervision by such authorities or bodies or have an administrative, managerial or supervisory board more than half of whose members are appointed by state or local authorities or by other bodies governed by public law.

(4) A public fund, a public agency, a public institute and a public utility institute shall be considered bodies governed by public law.

(5) "Public undertaking" shall mean any undertaking over which the contracting authorities referred to in point a), b) or c) of paragraph 1 of this Article may exercise, directly or indirectly, a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it. A dominant influence on the part of the contracting authorities referred to in point a), b) or c) of paragraph 1 of this Article shall be presumed in any of the following cases in which those authorities:

a) directly or indirectly hold the majority of the undertaking's subscribed capital;

b) directly or indirectly control the majority of the votes attaching to shares issued by the undertaking; or

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c) can directly or indirectly appoint more than half of the undertaking's administrative, management or supervisory body.

(6) "Special or exclusive rights" shall mean rights granted by a competent authority of the Republic of Slovenia by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 13 to 19 of this Act to one or more entities and which substantially affects the ability of other entities to carry out such activity. Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights. Such procedures include:

– procurement procedures with a prior call for competition in conformity with the law governing public-private partnerships and concessions, the law governing public procurement in the fields of defence and security, or this Act;

– procedures pursuant to other legal acts listed in the List of Union Legal Acts (Annex II to Directive 2014/25/EU).

(7) An indicative list of contracting authorities shall be annexed to a decree setting out an indicative list of contracting authorities and mandatory information to be included in notices, which is issued by the Government of the Republic of Slovenia (hereinafter: the Government) pursuant to this Article and Article 52 of this Act.

(8) In case of doubt as to whether an entity meets the conditions for a contracting authority under this Act, such an entity may file a request with the ministry responsible for public procurement to determine its status as a contracting authority. The ministry responsible for public procurement may, *ex officio*, determine an entity's status as a contracting authority. Any appeal against the ministry's decision shall be decided upon by the Government. In the decision-making procedure concerning the status as a contracting authority, the law governing the general administrative procedure shall apply.

Article 10 (Economic operators)

(1) Contracting authorities shall not reject economic operators solely on the grounds that, under the law of the Republic of Slovenia, economic operators are required to be either natural or legal persons if such economic operators are entitled to provide the relevant service under the law of the Member State in which they are established.

(2) In the case both of public service and public works contracts and of public supply contracts covering in addition services or siting and installation operations, legal persons may be required by the contracting authority to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the public contract.

(3) Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting authorities to have a specific legal form in order to submit a joint tender or a joint request to participate.

(4) Contracting authorities may specify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability, provided that this is proportionate and is justified by objective reasons.

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(5) Any conditions for the performance of a public contract by such groups of economic operators which are different from those imposed on individual participants in the contract award procedure shall be proportionate and shall be justified by objective reasons.

(6) Notwithstanding paragraphs 3, 4 and 5 of this Article, contracting authorities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that this is necessary for the satisfactory performance thereof.

Article 11 **(Conditions relating to the GPA and other international agreements)**

In the award of a public contract which has as its subject-matter procurement covered by the Agreement on Government Procurement, concluded within the World Trade Organisation (hereinafter: the GPA), or by any other binding agreement of the European Union or the Republic of Slovenia, contracting authorities shall accord the economic operators of third countries treatment equal to that accorded to economic operators of EU Member States.

Article 12 **(Application of rules on public procurement in the general and infrastructure fields)**

(1) The provisions of this Act shall apply to all contracting authorities, regardless of the field of procurement, unless a particular provision of this Act provides that it shall apply only to the general field or the infrastructure field.

(2) In addition to provisions that apply regardless of the field of procurement, the rules on public procurement in the infrastructure field shall apply to the awarding of public contracts by a contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act if the supplies, services or works involved are procured for the purpose of carrying out one or more activities referred to in Articles 13 to 19 of this Act. In all other cases, the rules on public procurement in the general field shall apply.

(3) In addition to provisions that apply regardless of the field of procurement, the rules on public procurement in the infrastructure field shall apply to the award of public contracts by a contracting authority referred to in points č) or d) of paragraph 1 of Article 9 of this Act only if the supplies, services or works involved are procured for the purpose of carrying out one or more activities referred to in Articles 13 to 19 of this Act. In the procurement of other supplies, services or works, the contracting authority does not have to comply with the rules on public procurement.

1.5. Activities in the infrastructure field

Article 13 **(Gas and heat)**

(1) As far as gas and heat are concerned, the rules on public procurement in the infrastructure field shall apply to the following activities:

- a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
- b) the supply of gas or heat to such networks.

(2) The supply, by a contracting authority referred to in points č) or d) of paragraph 1 of Article 9 of this Act, of gas or heat to fixed networks which provide a service to the public

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shall not be considered to be an activity referred to in the preceding paragraph where the following conditions are met:

a) the production of gas or heat by that contracting authority is the unavoidable consequence of carrying out an activity other than those referred to in the preceding paragraph or in Articles 14, 15 or 16 of this Act; and

b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the contracting authority's turnover on the basis of the average for the preceding three years, including the current year.

(3) For the purposes of this Article, "supply" shall include generation or production and wholesale and retail sale, with the exception of the production of gas in the form of extraction.

Article 14 (Electricity)

(1) As far as electricity is concerned, the rules on public procurement in the infrastructure field shall apply to the following activities:

a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

b) the supply of electricity to such networks.

(2) The supply, by a contracting authority referred to in points c) or d) of paragraph 1 of Article 9 of this Act, of electricity to fixed networks which provide a service to the public shall not be considered to be an activity referred to in the preceding paragraph where the following conditions are met:

a) the production of electricity by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in the preceding paragraph or in Articles 13, 15 or 16 of this Act; and

b) the supply to the public network depends only on the contracting authority's own consumption and has not exceeded 30% of the contracting authority's total production of energy, on the basis of the average for the preceding three years, including the current year.

(3) For the purposes of this Article, "supply" shall include generation or production and wholesale and retail sale.

Article 15 (Water)

(1) As far as water is concerned, the rules on public procurement in the infrastructure field shall apply to the following activities:

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

b) the supply of drinking water to such networks.

(2) The rules on public procurement in the infrastructure field shall also apply to contracts or design contests awarded or organised by contracting authorities which pursue one or more activities referred to in the preceding paragraph and which are connected with one of the following:

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a) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations;

b) the disposal or treatment of sewage.

(3) The supply, by a contracting authority referred to in points č) or d) of paragraph 1 of Article 9 of this Act, of drinking water to fixed networks which provide a service to the public shall not be considered to be an activity within the meaning of paragraph 1 of this Article where the following conditions are met:

a) the production of drinking water by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 13, 14 or 16 of this Act; and

b) the supply to the public network depends only on the contracting authority's own consumption and has not exceeded 30% of the contracting authority's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

(4) For the purposes of this Article, "supply" shall include generation or production and wholesale and retail sale.

Article 16 (Transport services)

(1) The rules on public procurement in the infrastructure field shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by rail, automated systems, tramway, trolley bus, bus or cable car.

(2) As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of the Republic of Slovenia or of a self-governing local community. Such conditions include the routes to be served, the capacity to be made available or the frequency of the service.

Article 17 (Ports and airports)

The rules on public procurement in the infrastructure field shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports or maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Article 18 (Postal services)

(1) The rules on public procurement in the infrastructure field shall apply to activities relating to the provision of:

a) postal services;

b) services other than postal services where such services are provided by a contracting authority which also provides postal services within the meaning of point (b) of paragraph 2 of this Article and provided that the conditions set out in paragraph 1 of Article 30 of this Act are not satisfied in respect of the services referred to in point (b) of paragraph 2 of this Article.

(2) For the purposes of this Act, the following terms shall have the following meanings:

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a) "postal item" shall mean an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include, for example, books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

b) "postal services" shall mean services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within and services falling outside the scope of the universal services laid down by the law governing postal services;

c) "services other than postal services" shall mean services provided in the following areas:

– mail service management services, in particular services both preceding and subsequent to despatch, including mailroom management services;

– services concerning postal items not included in point a) of this paragraph, such as direct mail bearing no address.

Article 19

(Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels)

The rules on public procurement in the infrastructure field shall apply to activities relating to the exploitation of a geographical area for the purpose of:

a) extracting oil or gas;

b) exploring for, or extracting, coal or other solid fuels.

1.6. Specific situations

Article 20

(Procurement involving aspects of defence or security)

(1) The subject-matter of procurement under this Act shall include supplies, services or works in the fields of defence and security to which the law governing public procurement in the fields of defence and security does not apply.

(2) Notwithstanding the preceding paragraph, this Act shall not apply to the procurement of supplies, services or works in the fields of defence and security in the following cases:

a) if public contracts are awarded in the scope of a research and development-based co-operation programme with the participation of at least two Member States with a view to developing a new product and, if appropriate, also with a view to developing the later stages in the entire life cycle of such a product. When the co-operation programme is implemented exclusively by the Member States, the participating Member States shall, upon the completion of the programme, report on the share of expenses for research and development in the overall cost of the programme and the anticipated amount of the contracts for each Member State and send the cost-sharing agreement among the Member States to the European Commission;

b) if public contracts are awarded in a third country, including civil contracts which are carried out while Slovenian troops are on a mission outside the European Union, if due to operational requirements the contracts must be awarded to economic operators established in the area of military activities or operations;

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c) if contracts are awarded by the Government to the government of a Member State or a third country in connection with:

- the supply of military or sensitive equipment;
- sensitive works;
- sensitive services;
- works or services directly associated with military or sensitive equipment;
- works or services for specific military purposes;

č) if public contracts are intended for carrying out intelligence or counterintelligence activities defined by the law governing public procurement in the fields of defence and security;

d) if the implementation of public procurement procedures or design contests under this Act would result in the communication of information the disclosure of which would be contrary to the essential security interests of the Republic of Slovenia;

e) if the protection of the essential security interests of a Member State cannot be guaranteed by less restrictive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority makes available in a contract award procedure or design contest as provided for in this Act;

f) if the awarding and performance of the public contract or design contest are marked with a security classification in accordance with the regulation governing the protection of classified information or must be accompanied by special security measures in accordance with the regulations in force in the Republic of Slovenia, provided that the Republic of Slovenia has determined that the essential interests concerned cannot be guaranteed by less restrictive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting authority makes available in a contract award procedure or design contest as provided for in this Act;

g) to public contracts and design contests involving defence or security aspects which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Act established by any of the following:

– an international agreement or arrangement, concluded in conformity with the Treaty on European Union (OJ C 326, 26.10.2012, p. 1; hereinafter: the TEU) and the TFEU between the Republic of Slovenia and any other Member State and one or more third countries or subdivisions thereof and covering supplies, services or works intended for the joint implementation or exploitation of a project by signatories to this international agreement or arrangement;

– an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of the Republic of Slovenia, a Member State or a third country;

or

- an international organisation;

h) to public contracts and design contests involving defence or security aspects which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by this organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international

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organisation or international financing institution, the contracting authority and the organisation or institution shall agree on applicable procurement procedures.

(3) All agreements or arrangements referred to in the first indent of point g) of the preceding paragraph shall be communicated by the Republic of Slovenia to the European Commission, which may consult with the Advisory Committee on Public Procurement.

1.7. Scope

Article 21 (Thresholds for the application of this Act)

(1) This Act shall apply to procurements with a value net of value-added tax (hereinafter: VAT) estimated to be equal to or greater than the following thresholds:

a) in the general field:

– EUR 20,000 for public supply or service contracts or design contests;

– EUR 40,000 for public works contracts;

– EUR 750,000 for public service contracts for services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU (hereinafter: social and other specific services), with the exception of services which are covered by CPV code 79713000-5.

b) in the infrastructure field:

– EUR 50,000 for public supply or service contracts or design contests;

– EUR 100,000 for public works contracts;

– EUR 1,000,000 for public service contracts for social and other specific services, with the exception of services which are covered by CPV code 79713000-5.

(2) As regards contracts with a value estimated to be less than the thresholds referred to in the preceding paragraph, the contracting authority shall be obliged to comply with the principles of economy, efficiency and effectiveness and the principle of transparency in accordance with this paragraph. The contracting authority shall keep a record of the awarding of these contracts which is to include an indication of the subject-matter and value of the public contract, net of VAT, and shall report information regarding these contracts in accordance with Article 106 of this Act. The contracting authority shall annually, by the last day of February, publish on its website or on the public procurement portal a list of public contracts awarded in the previous year with a value estimated to be less than the thresholds referred to in the preceding paragraph and with a value equal to or greater than EUR 10,000 net of VAT, describing the subject-matter and indicating the type of subject-matter, the value of the awarded contract net of VAT and the name of the economic operator which was awarded the contract.

Article 22 (Thresholds for publication)

(1) Notices regarding public contracts whose value, net of VAT, is equal to or greater than the values referred to in paragraph 1 of the preceding Article shall be published by the contracting authority on the public procurement portal.

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(2) Notices regarding public contracts whose value, net of VAT, is equal to or greater than the following values shall be published by the contracting authority on the public procurement portal and in the Official Journal of the European Union:

a) in the general field:

– EUR 134,000 for public supply or service contracts awarded by a contracting authority referred to in point a) or b) of paragraph 1 of Article 9 of this Act, for design contests organised by such a contracting authority, and for public supply contracts for products listed in Annex III to Directive 2014/24/EU if such contracts are awarded by a contracting authority referred to point a) or b) of paragraph 1 of Article 9 of this Act operating in the field of defence;

– EUR 207,000 for public supply or service contracts awarded by a contracting authority referred to in point c) of paragraph 1 of Article 9 of this Act, for design contests organised by such a contracting authority, and for public supply contracts for products not listed in Annex III to Directive 2014/24/EU if such contracts are awarded by a contracting authority referred to points a) or b) of paragraph 1 of Article 9 of this Act operating in the field of defence;

– EUR 5,186,000 for public works contracts;

– EUR 750,000 for public service contracts for social and other specific services, with the exception of services which are covered by CPV code 79713000-5;

b) in the infrastructure field:

– EUR 414,000 for public supply or service contracts and design contests;

– EUR 5,186,000 for public works contracts;

– EUR 1,000,000 for public service contracts for social and other specific services, with the exception of services which are covered by CPV code 79713000-5.

(3) When the European Commission announces changes to thresholds for publication referred to in the preceding paragraph, the ministry responsible for public procurement shall publish the new European thresholds on its website within ten days of such an announcement. Notwithstanding the preceding paragraph, contracting authorities shall comply with the changed thresholds from 1 January following their announcement.

Article 23

(Contracts subsidised or co-financed by contracting authorities)

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

a) public works contracts in the general field which are subsidised directly or co-financed to more than 50% by contracting authorities referred to in points a), b) and c) of paragraph 1 of Article 9 of this Act, which must comply with rules on public procurement when awarding contracts in the general field, and the estimated value of which, net of VAT, is equal to or greater than EUR 5,186,000, where those contracts involve one of the following activities:

– civil engineering activities as listed in Annex II to Directive 2014/24/EU;

– building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;

b) public service contracts in the general field which are connected with public works contracts referred to in the preceding point and are subsidised directly or co-financed to more than 50% by contracting authorities referred to in points a), b) and c) of paragraph 1 of Article

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9 of this Act, which must comply with rules on public procurement when awarding contracts in the general field, and the estimated value of which, net of VAT, is equal to or greater than EUR 207,000.

(2) This Act shall also apply to public supply and service contracts in the general field which are subsidised or co-financed to more than 50% by contracting authorities referred to in points a), b) and c) of paragraph 1 of Article 9 of this Act, which must comply with rules on public procurement when awarding contracts in the general field, in association with societies, institutions or institutes, provided that the estimated value of the supply or service contracts, net of VAT, is equal to or greater than EUR 40,000.

(3) In the award of contracts referred to in points a) and b) of paragraphs 1 and 2 of this Article, contracting authorities shall ensure compliance with the provisions of this Act where they do not themselves award the subsidised or co-financed contract or where they award such a contract for and on behalf of other entities.

Article 24 **(Methods for calculating the estimated value of procurement)**

(1) The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

(2) Where the contracting authority provides for prizes or payments to candidates or tenderers, it shall take these into account when calculating the estimated value of the procurement.

(3) Where a contracting authority is composed of separate operational units, account shall be taken of the total estimated value of contracts for all the individual operational units. Where a separate operational unit is independently responsible for its procurement or certain categories thereof, the value may be estimated at the level of the unit in question. An operational unit is considered to be independently responsible for its procurement if it exercises its rights and assumes its responsibilities independently.

(4) The choice of the method used to calculate the estimated value of a procurement shall not be made by the contracting authority with the intention of putting the estimated value outside the scope of this Act. The contracting authority shall not subdivide a procurement into several procurements with the effect of preventing it from falling within the scope of this Act unless justified by objective reasons.

(5) The estimated value shall be valid at the moment at which the contract notice or a periodic information notice which is used as a means of calling for competition or a notice on the existence of a qualification system is sent or, in cases where a call for competition is not foreseen, at the moment at which the contracting authority commences the procurement procedure, for example by contacting economic operators in relation to the procurement. The method of calculating the estimated value of a contract, including all quantity and price parameters, shall be shown in the procurement documents kept by the contracting authority.

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

(7) In the case of innovation partnerships, the value to be taken into consideration by the contracting authority shall be the maximum estimated value, net of VAT, of the research and

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development activities to take place during all stages of the envisaged partnership and of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

(8) With regard to public works contracts, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority where these are necessary for executing the works.

(9) Where a proposed execution of works or a proposed provision of services or a proposed acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate estimated value of the lots is equal to or exceeds a threshold laid down in paragraph 1 of Article 21 of this Act, the contracting authority shall apply this Act to the awarding of each lot. Where the aggregate estimated value of the lots is equal to or exceeds a threshold laid down in paragraph 2 of Article 22 of this Act, the contracting authority shall apply the provisions of this Act that apply to public contracts with an estimated value that is equal to or greater than the value referred to in paragraph 2 of Article 22 of this Act to the awarding of each lot.

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

a) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or the financial year, taking account of any changes in quantity or value which might occur in the course of the 12 months following the initial contract; or

b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if it is longer than 12 months.

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

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

b) in the case of contracts the term of which cannot be precisely defined, the monthly value multiplied by 48.

(12) In the case of public service contracts, the basis for calculating the estimated contract value shall be the following:

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

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

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

(13) In the case of public service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

a) in the case of fixed-term contracts where that term is less than or equal to 48 months, the total value for their full term;

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b) in the case of contracts the term of which cannot be precisely defined or contracts with a term greater than 48 months, the monthly value multiplied by 48.

Article 25 (Mixed procurement)

(1) Public contracts which have as their subject-matter two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject-matter of the contract in question.

(2) Mixed contracts consisting partly of social and other specific services and partly of services other than social and other specific services may be awarded in accordance with the chapter on social and other specific services, provided that the value of services other than social and specific services is less than the thresholds referred to in paragraph 1 of Article 21 of this Act. In the case of mixed contracts consisting partly of services and partly of supplies, the main subject-matter shall be determined in accordance with which of the estimated values of the relevant services or supplies is the highest.

(3) In the case of contracts which have as their subject-matter procurement covered by other legal regimes, contracting authorities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities choose to award separate contracts for separate parts, the decision as to which legal regime applies to such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(4) Where contracting authorities choose to award a single contract, this Act, unless otherwise specified in Article 26 hereof, shall apply to the ensuing mixed contract irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

(5) In the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with this Act, provided that the estimated value of the part of the contract which constitutes a contract covered by this Act is equal to or greater than the thresholds referred to in paragraph 1 of Article 21 hereof.

(6) Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

(7) Notwithstanding paragraphs 3, 4, 5 and 6 of this Article, in the case of public contracts intended to cover activities in the general and infrastructure fields, contracting authorities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting authorities choose to award separate contracts, the decision as to which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned. The decision on whether to award a single contract or to award a number of separate contracts shall not, however, be made with the purpose of putting the contract or contracts beyond the scope of application of this Act or the law governing concessions.

(8) Where the contracting authority chooses to award separate contracts, a contract which is intended to cover activities in the general and infrastructure fields shall be subject to the rules applicable to the activity for which the contract is principally intended.

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(9) Where the contracting authority chooses to award separate contracts, the following shall apply to a contract which is intended to cover activities in the general and infrastructure fields for which it is objectively impossible to determine for which activity the contract is principally intended:

a) the contract shall be awarded without the application of the provisions governing the infrastructure field if one of the activities for which the contract is intended is subject to the aforementioned provisions and the others are not;

b) the contract shall be awarded by application of the provisions governing the infrastructure field if one of the activities for which the contract is intended is subject to the aforementioned provisions and the others are subject to the law governing concessions;

c) the contract shall be awarded in compliance with the provisions governing the infrastructure field if one of the activities for which the contract is intended is subject to the aforementioned provisions and the others are subject neither to this Act nor to the law governing concessions.

Article 26

(Mixed procurement covering several activities and involving aspects of defence or security)

(1) This Article shall apply to mixed contracts which have as their subject-matter procurement covered by this Act and procurement covered by the law governing procurement in the fields of defence and security.

(2) Where the different parts of a given contract are objectively separable, contracting authorities may choose to award separate contracts for the separate parts or to award a single contract.

(3) Where contracting authorities choose to award separate contracts for separate parts, the decision as to which legal regime applies to such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(4) Where the contracting authority chooses to award a single contract, the contract may be awarded in accordance with the law governing procurement in the fields of defence and security, provided that the awarding of a single contract is justified for objective reasons.

(5) The decision to award a single contract shall not be taken for the purpose of excluding contracts from the application of either this Act or the law governing procurement in the fields of defence and security.

1.8. Exceptions to the application of this Act

Article 27 (Exceptions)

(1) This Act shall not apply to:

1. public contracts and design contests which permit the contracting authorities operating in the field of public communications networks to provide or exploit public communications networks or to provide one or more public communications services;

2. public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Act established by any of the following:

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a) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the TFEU and the TEU, between the Republic of Slovenia and any other Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by the signatories thereto; or

b) an international organisation;

3. public contracts and design contests which the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by that organisation or institution; in the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable procurement procedures;

4. public service contracts for:

a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

b) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services that are awarded by audiovisual or radio media service providers or contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers;

c) arbitration and conciliation services;

č) any of the following legal services:

– legal representation of a client by a lawyer in an arbitration or conciliation held in the Republic of Slovenia, a Member State, a third country or before an international arbitration or conciliation instance, or in judicial proceedings before the courts, tribunals or public authorities of the Republic of Slovenia, a Member State or a third country, or before international courts, tribunals or institutions;

– legal advice given in the preparation of any of the proceedings referred to the preceding indent of this point or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer;

– document certification and authentication services which must be provided by notaries;

– legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Republic of Slovenia or a given Member State or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

– other legal services which, in the Republic of Slovenia or other Member State, are connected, even occasionally, with the exercise of official authority;

d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

e) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

f) employment contracts;

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g) civil defence, civil protection and danger prevention services that are provided by non-profit organisations or associations and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8; 98113100-9 and 85143000-3, except for patient transport ambulance services;

h) public passenger transport services by rail or underground;

i) political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6 when awarded by a political party in the context of an election campaign;

5. public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU;

6. public service contracts for research and development services which are covered by CPV codes 773000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5, unless both of the following conditions are fulfilled:

– the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and

– the service provided is wholly remunerated by the contracting authority;

7. public contracts and design contests that are awarded by a contracting authority which provides postal services within the meaning of point b) of paragraph 2 of Article 18 of this Act, to contracts awarded for the pursuit of the following activities:

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

b) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by point 4.d) of this paragraph and including in particular postal money orders and postal giro transfers;

c) philatelic services; or

č) logistics services, in particular services combining physical delivery or warehousing with other non-postal functions;

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

9. public contracts awarded in the infrastructure field for purposes of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or lease the subject of such contracts and that other entities are free to sell or lease it under the same conditions as the contracting authority;

10. public contracts and design contests in the infrastructure field awarded by contracting authorities for purposes other than the pursuit of activities as described in Articles 13 to 19 of this Act or for the pursuit of such activities in a third country in conditions not involving the physical use of a network or geographical area within the European Union;

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11. public contracts in the infrastructure field for the purchase of water if awarded by contracting authorities engaged in one or both of the activities relating to drinking water referred to in paragraph 1 of Article 15 of this Act;

12. public contracts in the infrastructure field awarded by contracting authorities themselves active in the energy sector by being engaged in an activity referred to in paragraph 1 of Article 13, paragraph 1 of Article 14 or Article 19 of this Act for the supply:

– of energy;

– of fuels for the production of energy;

13. public contracts awarded by a contracting authority to a legal person governed by private or public law where the conditions referred to in Article 28 of this Act are fulfilled;

14. public contracts awarded to an affiliated undertaking or a joint venture or to a contracting authority forming part of a joint venture where the conditions referred to in Article 29 of this Act are fulfilled.

Article 28

(Public contracts between entities within the public sector)

(1) This Act shall not apply to public contracts awarded by a contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act to a legal person governed by private or public law where all of the following conditions are fulfilled:

a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority;

c) there is no direct private capital participation in the controlled legal person; and

č) the value of the subject-matter of the procurement is equal to or lower than the price of such subject-matter on the market.

(2) A contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person which is itself controlled in the same way by the contracting authority.

(3) Paragraph 1 of this Article shall also apply where a controlled legal person which is a contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act awards a public contract to a contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act which is its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being awarded the public contract.

(4) A contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act which does not exercise control over a legal person governed by public law as referred to in paragraph 1 of this Article may nevertheless award a contract to that legal person without applying this Act where the following conditions are fulfilled:

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a) the contracting authority exercises jointly with other contracting authorities referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act a control over that legal person which is similar to that which it exercises over its own departments;

b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and

c) there is no direct private capital participation in the controlled legal person.

(5) Contracting authorities referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act shall be deemed to exercise joint control over a legal person where the following conditions are fulfilled:

a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act. Individual representatives may represent several or all of the participating contracting authorities;

b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and

c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(6) This Act shall not apply to a contract or a framework agreement concluded exclusively between two or more contracting authorities referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act where the following conditions are fulfilled:

a) the contract establishes or implements co-operation between the participating contracting authorities referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

b) the implementation of that co-operation is governed solely by considerations relating to the public interest;

c) the participating contracting authorities perform on the open market less than 20% of the activities that are the subject of the co-operation; and

č) the value of the subject-matter of the procurement is equal to or lower than the price of such subject-matter on the market.

(7) For the determination of the percentages of activities referred to in point b) of paragraph 1, point b) of paragraph 4 and point c) of paragraph 6 of this Article, account shall be taken of the average total turnover or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act with respect to services, supplies and works for the three years preceding the contract award.

(8) Where, because of the date on which the relevant legal person or contracting authority referred to in points a), b) or c) of paragraph 1 of Article 9 of this Act was established or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity-based measure such as costs, is either not available for the preceding three years or is no longer relevant, it shall be sufficient for the legal person to show that the measurement of the activity is credible, particularly by means of business projections.

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(9) In all cases where a public contract is awarded pursuant to this Article, the person or entity to whom the contract has been awarded shall comply with the provisions of this Act when procuring the relevant supplies, services or works even if that person or entity is not itself a contracting authority.

Article 29

(Contracts awarded to an affiliated undertaking or a joint venture or to a contracting authority forming part of a joint venture)

(1) Notwithstanding the preceding Article and provided that the conditions referred to in paragraph 2 of this Article are met, this Act shall not apply to public contracts in the infrastructure field awarded by any of the following:

- a) a contracting authority to an affiliated undertaking, or
- b) a joint venture, formed exclusively by a number of contracting authorities for the purpose of carrying out activities described in Articles 13 to 19 of this Act, to an undertaking which is affiliated with one of these contracting authorities.

(2) The exceptions referred to in the preceding paragraph also apply to service, supply and works contracts provided that at least 80% of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services, works and supplies provided by that undertaking, derives from the provision of services, works or supplies to the contracting authority or to other undertakings with which it is affiliated.

(3) For the purposes of this Article, "affiliated undertaking" shall mean any undertaking the annual accounts of which are consolidated with those of the contracting authority in accordance with the requirements of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19; hereinafter: Directive 2013/34/EU), as last amended by Council Directive 2014/102/EU of 7 November 2014 adapting Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, by reason of the accession of the Republic of Croatia (OJ L 334, 21.11.2014, p. 86).

(4) In the case of contracting authorities which are not subject to Directive 2013/34/EU, "affiliated undertaking" shall mean any undertaking that:

- a) may, whether directly or indirectly, be subject to a dominant influence by the contracting authority;
- b) may exercise a dominant influence over the contracting authority; or
- c) in common with the contracting authority, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which govern it.

(5) Where, because of the date on which an affiliated undertaking was established or commenced activities, the turnover information is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in paragraph 2 of this Article is credible, in particular by means of business projections.

(6) Where more than one undertaking affiliated with the contracting authority with which they form an economic group provides the same or similar services, supplies or works, the

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above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(7) Notwithstanding the preceding Article and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting authorities which form it will be part thereof for at least the same period, this Act shall not apply to contracts in the infrastructure field awarded by any of the following:

a) a joint venture, formed exclusively by a number of contracting authorities for the purpose of carrying out activities referred to in Articles 13 to 19 of this Act, to one of those contracting authorities, or

b) a contracting authority to such a joint venture of which it forms part.

(8) In all cases where a public contract is awarded pursuant to this Article, the person or entity to whom the contract has been awarded shall comply with the provisions of this Act when procuring the relevant supplies, services or works, even if that person or entity is not itself a contracting authority.

(9) Contracting authorities shall notify to the European Commission, if so requested, the following information:

a) the names of the undertakings or joint ventures concerned;

b) the nature and value of the contracts involved;

c) proof that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting authority complies with the requirements of this Article.

1.9. Specific situations

Article 30

(Activities in the infrastructure field directly exposed to competition and rules relating thereto)

(1) This Act shall not apply to public contracts in the infrastructure field intended to enable the performance of an activity referred to in Articles 13 to 19 of this Act if the Republic of Slovenia or the contracting authorities having made the request pursuant to this Article can demonstrate that, in the Republic of Slovenia, the activity is directly exposed to competition on markets to which access is not restricted. This Act shall also not apply to design contests that are organised for the pursuit of such an activity in a given geographical area. The activity concerned may form a part of a larger sector or be exercised only in certain parts of the Republic of Slovenia. The competition assessment shall be made in the light of the information available to the European Commission and, for the purposes of this Act, shall be without prejudice to the application of competition law. Such an assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of paragraph 3 of this Article.

(2) For the purposes of the preceding paragraph, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions of the TFEU relating to competition. Such criteria may include the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or demand side, prices, and the

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actual or potential presence of more than one supplier of the products or provider of the services in question.

(3) The geographical reference market for which exposure to competition is assessed shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas, in particular because conditions of competition are appreciably different in those areas. The assessment shall take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas, and of substantial price differences.

(4) For the purposes of paragraph 1 of this Article, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the legislation listed in the List of Union Legal Acts, which is Annex III to Directive 2014/25/EU.

(5) If free access to a given market cannot be presumed, it must be demonstrated that access to the market in question is free de facto and de jure.

(6) If a contracting authority which carries out one of the activities referred to in Articles 13 to 19 of this Act considers that a given activity is directly exposed to competition on the market, it may submit a request to the European Commission to establish that this Act does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity. The contracting authority shall attach to its request the opinion of an authority responsible for the protection of competition. Such a request may also be submitted by the ministry responsible for public procurement.

(7) The request referred to in the preceding paragraph shall include the following:

- the activities considered by the contracting authority or the ministry to be directly exposed to competition;
- facts and evidence that substantiate the aforementioned claim;
- an indication of the provisions of laws, implementing regulations, and other regulations or agreements relating to the fulfilment of conditions set out in this paragraph.

(8) The authority responsible for the protection of competition shall provide its opinion within 30 days of receipt of a written invitation to provide its opinion.

(9) This Act shall cease to apply to public contracts and design contests intended to enable a given activity to be carried out if the European Commission:

- has adopted a decision on the application of paragraph 1 of this Article within the time limit set out in Annex IV to Directive 2014/25/EU, or
- has not decided on the application within the stated time limit.

(10) When an activity in the Republic of Slovenia is already the subject of a procedure under this Article, before the expiry of the period opened in respect of the first request, further requests concerning the same activity in the Republic of Slovenia shall not be considered as new procedures and shall be treated in the context of the first request.

Article 31 **(Reserved contracts)**

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(1) Contracting authorities may reserve the right to participate in public procurement procedures to sheltered workshops and employment centres as defined by the law on vocational rehabilitation and employment of disabled persons and to social enterprises and enterprises with social content as defined by the law on social entrepreneurship. In the case of a reserved public contract pursuant to this Article, an economic operator may subcontract part of a public contract solely to sheltered workshops and employment centres as defined by the law on vocational rehabilitation and employment of disabled persons and to social enterprises and enterprises with social purpose as defined by the law on social entrepreneurship.

(2) The contracting authority which intends to reserve a contract to undertakings referred to in the preceding paragraph shall indicate this in the procurement documents.

Article 32

(Joint procurement by the Government and centralised purchasing activities)

(1) Contracting authorities may acquire supplies or services from a central purchasing body.

(2) Contracting authorities may acquire works, supplies or services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems or qualification systems operated by a central purchasing body, or by using a framework agreement concluded by a central purchasing body to the extent provided for in paragraph 4 of Article 48 of this Act. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities, this shall be mentioned in the invitation to take part in the procurement procedure setting up that dynamic purchasing system.

(3) A contracting authority shall be deemed to have fulfilled its obligations pursuant to this Act where it acquires supplies, services or works by using contracts awarded by a central purchasing body, by using a dynamic purchasing system or qualification system operated by the central purchasing body, or by using a framework agreement concluded by the central purchasing body. Nevertheless, the contracting authority concerned shall be responsible for fulfilling the obligations pursuant to this Act in respect of the parts it conducts itself, such as:

a) awarding a contract under a dynamic purchasing system which is operated by a central purchasing body;

b) conducting a reopening of competition under a framework agreement which has been concluded by a central purchasing body;

c) pursuant to points a) or b) of paragraph 7 of Article 48 of this Act, determining which of the economic operators, parties to the framework agreement, shall perform a given contract under a framework agreement that has been concluded by a central purchasing body.

(4) All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 37 of this Act.

(5) A contracting authority may, without applying the procedures provided for in this Act, award a service contract for the provision of centralised purchasing activities to a central purchasing body. Such public service contracts may also include the provision of ancillary purchasing activities.

(6) The Government may decide that ministries, bodies affiliated to ministries, government services and administrative units perform certain specific procurements jointly if such joint

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procurement increases the economy and efficiency of the use of budgetary funds and does not reduce market competition. The Government shall, as and when required, decide that public institutes established by the Republic of Slovenia engage in joint procurement, particularly in the case of procurement in the fields in which these public institutes carry out their activities. Joint public procurement by the Government shall be performed by a central purchasing body.

(7) In a decision determining a jointly awarded contract, the Government shall at least specify the type of supplies or services, the period of time for which the contract is being awarded and the time schedule for the performance of the contract.

(8) The Government shall issue a decree specifying the subject-matter of the joint procurement, the central purchasing body that is to perform the joint procurement, the joint procurement procedure, and determining in more detail exceptions to joint procurement and other rules relating to joint procurement.

Article 33 (Occasional joint procurement)

(1) Two or more contracting authorities may agree to act jointly in the award of certain public contracts. A certain public contract may be awarded jointly on the basis of an authorisation given by one or more contracting authorities.

(2) Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting authorities participating in joint procurement, they shall be jointly responsible for fulfilling their obligations pursuant to this Act. This also applies in cases where one contracting authority manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities.

(3) Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities participating in joint procurement, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority shall have sole responsibility for fulfilling its obligations pursuant to this Act in respect of the parts it conducts in its own name and on its own behalf.

Article 34 (Procurement involving contracting authorities from different Member States)

(1) Notwithstanding Article 28 of this Act, contracting authorities from different Member States may act jointly in the award of public contracts by using one of the means provided for in this Article. However, contracting authorities shall not use the provisions of this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with EU law to which they are subject in the Republic of Slovenia.

(2) Contracting authorities may act jointly in the award of public contracts by central purchasing bodies located in another Member State only if they also procure centralised purchasing activities from them.

(3) The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State in which the central purchasing body is established. These provisions shall also apply to the following:

- a) the award of a contract under a dynamic purchasing system;
- b) a reopening of competition under a framework agreement;

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c) pursuant to points a) or b) of paragraph 7 of Article 48 of this Act, determining which of the economic operators, parties to the framework agreement, shall perform a given contract.

(4) A contracting authority may jointly with other contracting authorities from other Member States award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also award individual contracts based on the framework agreement or on the dynamic purchasing system. Unless the individual elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting authorities shall conclude an agreement that determines:

a) the responsibilities of the parties and the relevant applicable national provisions;

b) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(5) In the cases referred to in the preceding paragraphs, the participating contracting authority is responsible for the regularity of the awarding procedure. A contracting authority is deemed to have fulfilled its obligations pursuant to this Act when it purchases works, supplies or services from a contracting authority which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in point a) of the preceding paragraph, the participating contracting authorities may allocate specific responsibilities among themselves and determine the applicable provisions of the national law of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded public contracts.

(6) Where several contracting authorities from different Member States have set up a joint entity, including European groupings of territorial co-operation under Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial co-operation (OJ L 210, 31.7.2006, p. 19), as last amended by Regulation (EU) No. 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No. 1082/2006 on a European grouping of territorial co-operation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJ L 347, 20.12.2013, p. 303), or other entities established under Union law, the participating contracting authorities shall, by way of a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

a) the national provisions of the Member State where the joint entity has its registered office;

b) the national provisions of the Member State where the joint entity is carrying out its activities.

(7) The agreement referred to in the preceding paragraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

Article 35 (Confidentiality)

(1) Unless otherwise provided for by this or any other Act, the contracting authority shall not disclose information forwarded to it by an economic operator and designated by that

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economic operator as a trade secret as prescribed by the law governing companies. The contracting authority shall provide for the protection of information which is considered to be personal data or classified information in accordance with the provisions of the law governing the protection of personal data and classified information respectively.

(2) Notwithstanding the preceding paragraph, the specification of the supplies, services or works tendered and the quantities indicated in the specification, the price per unit, the value of individual items and the total tender value, and all data that affected the tender classification under other criteria shall be public information.

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

(4) All the procurement documents shall be public after the decision on the contract award becomes final unless they contain trade secrets, classified information or personal data. The provisions of the law governing access to public information shall not apply before this date.

(5) The contracting authority, after having made a full evaluation of all the tenders and after the publication of the contract award notice, shall enable access to the tender of the selected tenderer only to tenderers which submitted an admissible tender. If the contracting authority has not made a full evaluation of tenders, it shall enable access to all tenderers. Where a tenderer has requested access to the tender of the selected tenderer within three working days of the publication of the contract award notice, the contracting authority shall enable the tenderer such access not later than within three working days of receipt of the request, except to parts which, subject to the provisions of this Article, constitute a trade secret or contain classified information in accordance with the law governing access to classified information or personal data protected in accordance with the law governing personal data protection. In the procedure for the awarding of a low-value contract, a tenderer may request access to the tender of the selected tenderer within two working days of the publication of the contract award notice, and the contracting authority shall enable such access no later than within two working days of receipt of the request. Such access shall be free of charge. However, the contracting authority may charge the tenderer material costs for the transmission of a transcript, copy or electronic record of the information requested.

(6) The contracting authority may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authority makes available throughout the procurement procedure.

Article 36 **(Language used in the procurement procedure)**

(1) The procurement procedure shall be conducted in the Slovenian language. The contracting authority may stipulate in the procurement documents that tenderers may submit their tenders, in part or in full, in a foreign language, particularly in those parts which relate to technical characteristics and quality and technical documentation, such as prospectuses, promotional, technical and other materials. In exceptional cases, where the Slovenian terminology in a specific technical field is not specific enough, or where this is required by the subject-matter of the contract, the contracting authority may draw up all or part of the procurement documents in a foreign language. Where the contracting authority allows tenderers to submit part of the tender documents in one of the official languages of the European Union or any other foreign language, it shall specify which part of the tender may be drawn up in a foreign language and in which foreign language.

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

(3) In all issues of dispute, the tender in, or its official translation into, the Slovenian language shall take precedence; where the documents or a part thereof are in a foreign language only, the language concerned shall take precedence.

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

Article 37 **(Rules applicable to communication)**

(1) All communication and information exchange under this Act, in particular electronic submission of tenders, shall be performed using electronic means of communication in accordance with the requirements of this Article. The tools and devices to be used for communicating by electronic means, along with their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

(2) Notwithstanding the preceding paragraph, contracting authorities shall not be obliged to require electronic means of communication in the tender submission process in the following situations:

a) where due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available programs;

b) where the programs supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available program or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;

c) where the use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities;

č) where the procurement documents require the submission of physical or scale models which cannot be submitted by electronic means.

(3) In respect of communications for which electronic means of communication are not used pursuant to the preceding paragraph, communication shall be carried out by post or other suitable carrier or by a combination of post or other suitable carrier and electronic means.

(4) Notwithstanding paragraph 1 of this Article, contracting authorities are not obliged to require electronic means of communication in the tender submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of particularly sensitive information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access in accordance with paragraph 9 of this Article.

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(5) A contracting authority which requires, in accordance with paragraph 2 of this Article, means of communication other than electronic means in the tender submission process shall indicate in the individual report referred to in Article 105 of this Act the reasons for this requirement. Where applicable, the contracting authority shall indicate in the individual report the reasons why the use of means of communication other than electronic means has been considered necessary in the application of the preceding paragraph.

(6) Notwithstanding the preceding paragraphs of this Article, oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. The essential elements of a procurement procedure include the procurement documents, requests for participation, confirmations of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

(7) In all communication, exchange and storage of information, contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They may examine the content of tenders and requests to participate only after the time limit set for submitting them has expired and after the opening of such tenders and requests.

(8) Contracting authorities may, where necessary, require the use of a particular electronic tool in respect of a public works contract or design contest. If a contracting authority requires the use of such a tool and this tool is not generally available, the contracting authority shall offer an alternative means of access.

(9) Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations:

a) where they offer unrestricted and full direct access free of charge by electronic means to such tools and devices from the date of publication of the notice in accordance with Annex VII to Directive 2014/24/EU or from the date when the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;

b) where they ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or

c) where they support an alternative channel for electronic submission of tenders.

(10) Contracting authorities shall provide tools and devices for the electronic receipt of tenders, requests to participate, and plans and projects in design contests which guarantee, through technical means and appropriate procedures, that:

a) the exact time and date of the receipt of tenders, requests to participate, and the submission of plans and projects can be determined precisely;

b) it may be reasonably ensured that, until the expiry of the set time limits, no-one can have access to data transmitted under these requirements;

c) only authorised persons may set or change the dates for opening data received;

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č) during the different stages of the procurement procedure or of the design contest, access to all data submitted, or to any part thereof, is possible only for authorised persons;

d) only authorised persons may allow access to data transmitted and only after the prescribed date;

e) data received and opened in accordance with these requirements remain accessible only to persons authorised to acquaint themselves with the data;

f) where the access prohibitions or conditions referred to under points b), c), č), d) and e) of this paragraph are infringed or there is an attempt to do so, it may be reasonably ensured that any infringements or attempted infringements are clearly detectable.

(11) Contracting authorities shall accept advanced electronic signatures supported by a qualified certificate where such certificates are provided by a certificate services provider which is on a list of trusted certification service providers and in so doing shall not apply additional requirements that may hinder the use of such signatures by tenderers.

Article 38 (Nomenclatures)

Any references to nomenclatures in the context of public procurement shall be made using the Common Procurement Vocabulary (hereinafter: CPV) as adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (OJ L 340, 16.12.2002, p. 1), as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny – Adaptation to the regulatory procedure with scrutiny – Part Four (OJ L 188, 18.7.2009, p. 14).

Chapter Two RULES APPLICABLE TO THE AWARDING OF PUBLIC CONTRACTS

2.1. Procedures

Article 39 (Choice of procedure)

(1) When awarding public contracts, contracting authorities may, in the manner and under the conditions laid down in this Act, apply the following procedures:

- a) an open procedure;
- b) a restricted procedure;
- c) a competitive dialogue;
- č) an innovation partnership;
- d) a competitive procedure with negotiation;
- e) a negotiated procedure with publication;
- f) a negotiated procedure without prior publication;
- g) a low-value contract procedure.

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(2) In the procedures referred to in the preceding paragraph, except in the procedure referred to in point f) thereof, the contracting authority shall use a contract notice as a means of calling for competition in accordance with Article 56 of this Act.

(3) For public contracts in the infrastructure field, the following may also be used as a means of calling for competition:

a) a periodic indicative notice pursuant to Article 54 of this Act where the contract is awarded by a restricted procedure or a negotiated procedure with publication;

b) a notice on the existence of a qualification system pursuant to Article 55 of this Act where the contract is awarded by a restricted procedure, a negotiated procedure with publication, a competitive dialogue or an innovation partnership.

(4) In the case referred to in point a) of the preceding paragraph, economic operators having expressed their interest in participating in public procurement following the publication of the periodic indicative notice shall subsequently be invited by the contracting authority, by means of an invitation to confirm their interest in accordance with Article 62 of this Act, to confirm their interest in writing.

(5) If the value of the most advantageous admissible tender is equal to or greater than the threshold value beyond which the contract must be published on the public procurement portal or both on the public procurement portal and in the Official Journal of the European Union, and no appropriate call for competition has been made in the procurement procedure, even though such a call should have been made, the contracting authority shall not award a contract using this procedure but shall initiate a new procedure in accordance with the provisions of this Act as appropriate.

Article 40 (Open procedure)

(1) In an open procedure, any interested economic operator may submit a tender in response to a call for competition. The tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(2) The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent for publication.

(3) Where the contracting authority has published a prior information notice or, in the case of procurement in the infrastructure field, a periodic indicative notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the preceding paragraph may be shortened to 15 days, provided that both of the following conditions are fulfilled:

a) the prior information notice or the periodic indicative notice included all the information required for the contract notice, insofar as that information was available at the time of its publication; and

b) the prior information notice or periodic indicative notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.

(4) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph 2 of this Article, the contracting authority may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent for publication.

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(5) The contracting authority may reduce by five days the time limit for receipt of tenders set out in paragraph 2 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.

(6) Notwithstanding paragraph 2 of this Article, contracting authorities may fix a shorter time limit for the receipt of tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.

Article 41 (Restricted procedure)

(1) In a restricted procedure, any interested economic operator may submit a request to participate in response to a call for competition. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(2) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication.

(3) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.

(4) Only those economic operators invited to do so by the contracting authority following its assessment of the information provided in the request may submit a tender. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.

(5) The minimum time limit for receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.

(6) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that the selected candidates have equal time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

(7) Where the contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in paragraph 5 of this Article may be shortened to 10 days, provided that both of the following conditions are fulfilled:

a) the prior information notice included all the information required for the contract notice, insofar as that information was available at the time of its publication; and

b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.

(8) The contracting authority may reduce by five days the time limit for the receipt of tenders set out in paragraph 5 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.

(9) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limits laid down in this Article, the contracting authority may fix the following time limits:

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a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent for publication;

b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent to the selected candidates.

(10) Notwithstanding the preceding paragraphs of this Article, the contracting authority may fix shorter time limits for the receipt of requests to participate and tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.

Article 42 (Competitive dialogue)

(1) The contracting authority may use a competitive dialogue in the following cases:

a) with regard to works, supplies or services fulfilling one or more of the following criteria:

– the needs of the contracting authority cannot be met without the adaptation of readily available solutions;

– they include design or innovative solutions;

– the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity, or the legal and financial make-up or because of the risks attaching to them;

– the contracting authority cannot establish with sufficient precision the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 24 to 27 of paragraph 1 of Article 2 of this Act;

b) with regard to works, supplies or services where, in response to an open procedure, a restricted procedure or a low-value contract procedure, only tenders which do not comply with the procurement documents, which were received late, which have been found by the contracting authority to be abnormally low, which have been submitted by tenderers that do not have the required qualifications or whose price exceeds the contracting authority's budget have been submitted. In the cases referred to in this point, in a competitive dialogue the contracting authority shall not be required to publish a contract notice where it includes in the procedure all of the tenderers which meet the selection criteria, in respect of which there are no grounds for exclusion and which, during the prior open or restricted procedure or low-value contract procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

(2) With regard to public contracts in the infrastructure field, a competitive dialogue may be used regardless of whether or not the conditions referred to in points a) or b) of the preceding paragraph are fulfilled.

(3) In a competitive dialogue, any economic operator may submit a request to participate in response to a contract notice or, in the case of procurement in the infrastructure field, a notice on the existence of a qualification system by accompanying their request with the information for qualitative selection that is requested by the contracting authority.

(4) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication.

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(5) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.

(6) Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue. The contracting authority may limit the number of suitable candidates to be invited to participate in the dialogue. Contracts shall be awarded solely on the basis of the criterion of the best price-to-quality ratio.

(7) The contracting authority shall set out its needs and requirements in the contract notice and shall define these needs and requirements in that notice or in a descriptive document. At the same time and in the same documents, it shall also set out and define the chosen award criteria and set out an indicative timeframe.

(8) With the participants selected in accordance with the provisions of Articles 75 to 81 and Article 89 of this Act, the contracting authority shall open a dialogue the aim of which shall be to identify and define the means best suited to satisfying its needs. During this dialogue, it may discuss all aspects of the procurement with the selected participants.

(9) During the dialogue, the contracting authority shall ensure equality of treatment among all participants and shall not provide information in a discriminatory manner which may give some participants an advantage over others. In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without that candidate's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other candidates.

(10) A competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during a particular stage by applying the award criteria laid down in the contract notice or in the descriptive document. The contracting authority shall indicate whether it intends to use such an option in the contract notice or the descriptive document.

(11) The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs. Having concluded the dialogue and having so informed the participants taking part in the last stage of the dialogue, the contracting authority shall ask each of the latter to submit their final tenders on the basis of the adopted solution or solutions which were presented and specified during the dialogue. Final tenders shall contain all the elements required and necessary for the performance of the project. Those tenders may be clarified, specified and optimised by tenderers at the request of the contracting authority. Such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

(12) The contracting authority shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

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(13) At the request of the contracting authority, negotiations with the tenderer identified by the contracting authority as having submitted the tender presenting the best price-to-quality ratio may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract. This may not have the effect of modifying the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and may not constitute a risk of distorting competition or causing discrimination.

(14) The contracting authority may specify prizes or payments to the participants in the dialogue.

Article 43 (Innovation partnership)

(1) In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice or, in the case of procurement in the infrastructure field, a notice on the existence of a qualification system by accompanying their request with the information for qualitative selection that is requested by the contracting authority.

(2) In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to submit a request to participate in the procedure.

(3) The contracting authority may decide to set up the innovation partnership with one partner or with several partners which will conduct separate research and development activities.

(4) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice is sent for publication.

(5) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication. In any event, this time limit shall not be less than 15 days.

(6) Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. The contracting authority may limit the number of suitable candidates to be invited to participate in the innovation partnership.

(7) In innovation partnerships, contracts shall be awarded on the sole basis of the criterion of the best price-to-quality ratio.

(8) The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the supplies, services or works which result from the innovative development, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.

(9) The innovation partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of remuneration in appropriate instalments.

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(10) Based on these targets, the contracting authority may decide after each stage to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts. In such a case, the contracting authority shall indicate in the procurement documents such possibilities and the conditions for their use.

(11) Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, with the exception of the final tender, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

(12) During such negotiations, the contracting authority shall ensure equality of treatment among all tenderers and shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. The contracting authority shall inform all tenderers invited to participate in the next stage in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements for the public contract. Following such changes, the contracting authority shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(13) Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. The contracting authority shall indicate whether it intends to use such an option in the contract notice, the invitation to confirm interest or the procurement documents.

(14) In selecting candidates, the contracting authority shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(15) Only those economic operators invited by the contracting authority to do so following the assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

(16) In the procurement documents, the contracting authority shall define the arrangements relating to intellectual property rights. In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other partners.

(17) The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different stages, reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works may not be disproportionate in relation to the investment required for their development.

Article 44 **(Competitive procedure with negotiation)**

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(1) Contracting authorities may use a competitive procedure with negotiation only in the case of procurement in the general field and only with regard to the following public contracts:

a) with regard to works, supplies or services fulfilling one or more of the following criteria:

– the needs of the contracting authority cannot be met without the adaptation of readily available solutions;

– they include design or innovative solutions;

– the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;

– the contracting authority cannot establish with sufficient precision the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 24 to 27 of paragraph 1 of Article 2 of this Act;

b) with regard to works, supplies or services where, in response to an open procedure or a restricted procedure or a low-value contract procedure, only tenders which do not comply with the procurement documents, which were received late, which have been found by the contracting authority to be abnormally low, which have been submitted by tenderers that do not have the required qualifications, or whose price exceeds the contracting authority's budget have been submitted. In the case referred to in this point, in a competitive procedure with negotiation, the contracting authority shall not be required to publish a contract notice where it includes in the procedure all of the tenderers which meet the selection criteria, in respect of which there are no grounds for exclusion and which, during the prior open or restricted procedure or low-value contract procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

c) with regard to works, supplies and services the value of which is less than the thresholds referred to in paragraph 2 of Article 22 of this Act.

(2) In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a contract notice. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(3) In the procurement documents, the contracting authority shall identify the subject-matter of the procurement by providing a description of its needs and the characteristics required of the supplies, works or services to be procured and specify the contract award criteria. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

(4) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation to tender was sent to candidates.

(5) Where the contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders referred to in the preceding paragraph may be shortened to 10 days, provided that the following conditions are fulfilled:

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a) all the information required for the contract notice was available at the time of the publication and was included in the prior information notice; and

b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.

(6) The contracting authority may reduce by five days the time limit for the receipt of tenders set out in paragraph 4 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.

(7) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limits laid down in this Article, the contracting authority may fix the following time limits:

a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent for publication;

b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent to the selected candidates.

(8) Notwithstanding the preceding paragraphs of this Article, the contracting authority may fix shorter time limits for the receipt of requests to participate and tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.

(9) Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender. This tender shall be the basis for the subsequent negotiations. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.

(10) Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders referred to in paragraph 15 of this Article and where contracts are awarded on the basis of the initial tenders, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

(11) The contracting authority may award contracts on the basis of the initial tenders without negotiation where it has indicated in the contract notice that it reserves the right to do so.

(12) During the negotiations, the contracting authority shall ensure equality of treatment among all tenderers and shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. All tenderers invited to the next round of negotiations shall be informed by the contracting authority in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements for the public contract. Following such changes, the contracting authority shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(13) In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other candidates or tenderers.

(14) A competitive procedure with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in

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the contract notice or in another procurement document. The contracting authority shall indicate whether it intends to use this option in the contract notice or other procurement document.

(15) When the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers of the final round of negotiations and set a common deadline to submit any new or revised tenders unless it has announced the number of rounds of negotiations in the contract notice or the procurement documents or unless it is negotiating with a single candidate.

(16) After the receipt of final tenders, the contracting authority, in accordance with the provisions of Articles 75 to 81 and Article 89 of this Act, shall verify that they are in conformity with the minimum requirements and shall award the contract on the basis of the award criteria.

Article 45 (Negotiated procedure with publication)

(1) Contracting authorities may use a negotiated procedure with publication only for procurement in the infrastructure field.

(2) In a negotiated procedure with publication, any interested economic operator may submit a request to participate in response to a call for competition. Such a request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(3) The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.

(4) Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.

(5) The time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that all selected candidates have equal time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.

Article 46 (Negotiated procedure without prior publication)

(1) Contracting authorities may use a negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts in any of the following cases:

a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure or a low-value contract procedure for contracts in the general field, or in response to a previously conducted procedure with publication of a call for competition by the contracting authority for contracts in the infrastructure field, provided that the initial conditions of the contract have not been substantially altered and that a report is sent by the contracting

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authority to the European Commission should it so request. A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be excluded on exclusion grounds or because it does not meet the selection criteria. The total price of the final tender quoted during the negotiated procedure may not exceed the price quoted by the same tenderer in the unsuccessful public procurement procedure previously conducted;

b) where a contract in the infrastructure field is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, provided that the award of such a contract does not prejudice the competitive award of subsequent contracts which seek those ends;

c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

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

– competition with regard to the subject-matter of the procurement is absent for technical reasons;

– the protection of exclusive rights, including intellectual property rights. The contracting authority shall not use the negotiated procedure without prior publication pursuant to this point if the subject-matter of the public contract is the practical completion of a project designed by an architect in the prior public procurement procedure and if it intends to include only this architect in the negotiations;

č) if for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedure or competitive procedure with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;

d) if the value of the public contract does not exceed the value beyond which a contract notice must be published in the Official Journal of the European Union, provided that the contract may be executed by a previously identified and final number of qualified tenderers and provided that all tenderers are treated equally.

(2) The contracting authority may only apply the exceptions set out in the second and third indents of point c) of the preceding paragraph when no reasonable alternative or substitute exists and the absence of competition is not the result of an unjustified narrowing down of the elements of the procurement.

(3) A negotiated procedure without prior publication may also be used for public supply contracts:

a) where the product involved is manufactured purely for the purpose of research, experimentation, study or development, provided that contracts awarded pursuant to this point do not include quantity production to establish commercial viability or to recover research and development costs;

b) for additional deliveries by an original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics, which would result in incompatibility or

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disproportionate technical difficulties in operation and maintenance. In the case of contracts in the general field, the duration of such contracts and that of recurrent contracts shall not, as a general rule, exceed three years;

c) for supplies quoted and purchased on a commodity market;

č) for the purchase of supplies on particularly advantageous terms, from either a supplier which is winding up its business activities or the liquidator in an insolvency procedure, by arrangement with creditors or a similar procedure under national laws or regulations;

d) for bargain purchases, where it is possible to award a public supply contract in the infrastructure field by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices.

(4) A negotiated procedure without prior publication may be used for the following public service contracts:

a) for the purchase of services on particularly advantageous terms, from either a supplier which is winding up its business activities, or the liquidator in an insolvency procedure, by arrangement with creditors or a similar procedure under national laws or regulations;

b) where the service contract concerned follows a design contest organised in accordance with this Act, and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest. Where there is more than one winner of the design contest, all winners shall be invited to participate in the negotiated procedure without prior publication.

(5) A negotiated procedure without prior publication may be used for new works or services consisting of the repetition of similar works or services awarded to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with the basic project for which the original contract was awarded pursuant to a procedure in which the contracting authority published a call for competition. The basic contract shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. The contracting authority shall indicate the possible use of this procedure in a call for competition for the original contract and shall take into consideration the total estimated cost of subsequent works or services in calculating the estimated value of the basic contract. For contracts in the general field, this procedure may be used only during the three years following the award of the original contract.

(6) The contracting authority shall indicate and explain reasons for the use of the negotiated procedure without prior publication in its documents.

(7) In the course of the negotiations, the contracting authority shall announce the final round of negotiations in writing in advance unless it has announced the number of rounds in the procurement documents or unless it is negotiating with a single candidate.

(8) In a negotiated procedure without prior publication, only those economic operators invited by the contracting authority may submit a request to participate. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority. The time limit for the submission of a request or tender shall be proportionate to the requirements of the contract and shall be set by the contracting authority.

(9) In the case referred to in point č) of paragraph 1 of this Article, the contracting authority may require the tenderer to demonstrate the fulfilment of all the requirements of the former by means of the European Single Procurement Document (hereinafter: ESPD) or any other

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self-declaration. Notwithstanding Article 89 of this Act, in the case referred to in point č) of paragraph 1 of this Article, the contracting authority shall not be obliged to verify the existence and content of statements provided in the tender unless it doubts the veracity of the tenderer's statements provided in the ESPD. Notwithstanding paragraph 4 of Article 61 and paragraph 3 of Article 74 of this Act, in the case referred to in point č) of paragraph 1 of this Article, the contracting authority shall not be obliged to comply with the time limit for supplying additional information regarding specifications and all additional documents or to extend the time limit for the receipt of tenders.

Article 47 (Low-value contract procedure)

(1) The contracting authority may use a low-value contract procedure for public supply and service contracts with respect to which it is not obliged to send a contract notice to the Publications Office of the European Union, for public works contracts in the general field the value of which is equal to or greater than EUR 40,000 and lower than EUR 500,000, and for public works contracts in the infrastructure field the value of which is equal to or greater than EUR 100,000 and lower than EUR 1,000,000. In a low-value contract procedure, any economic operator may submit a tender in response to a call for competition.

(2) The contracting authority may also include negotiations into a low-value contract procedure. If it decides to do so it shall state that intention in the contract notice and shall conduct negotiations. Article 44 of this Act shall apply, *mutatis mutandis*, to the conduct of negotiations.

(3) In a low-value contract procedure, the contracting authority may require the tenderer to demonstrate the fulfilment of all the requirements of the contracting authority by means of an ESPD or any other self-declaration. Notwithstanding paragraph 2 of Article 89 of this Act, in the low-value contract procedure, the contracting authority shall not be obliged to verify the existence and content of statements provided in the tender unless it doubts the veracity of the tenderer's statements provided in the ESPD. Notwithstanding paragraph 4 of Article 61 and paragraph 3 of Article 74 of this Act, in the low-value contract procedure, the contracting authority shall not be obliged to comply with the time limit for supplying additional information regarding specifications and all additional documents or to extend the time limit for the receipt of tenders.

2.2. Techniques and instruments for electronic and aggregated procurement

Article 48 (Framework agreements)

(1) Contracting authorities may conclude framework agreements, provided that they apply one of the procedures provided for in this Act.

(2) A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

(3) The term of a framework agreement for contracts in the general field and for contracts in the infrastructure field may not exceed four years and eight years respectively, save in exceptional cases duly justified, in particular, by the subject-matter of the framework agreement.

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(4) Contracts based on a framework agreement shall be awarded in accordance with procedures laid down in this Article, which may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

(5) Contracts awarded on the basis of a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 7 of this Article.

(6) Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of contracts, contracting authorities may consult the economic operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

(7) Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for the selection of the economic operator, party to the framework agreement, that shall perform the contract concerned. The contracting authority shall set out the conditions for the selection of economic operators in the procurement documents for the framework agreement;

b) through reopening competition among the economic operators party to the framework agreement where the framework agreement does not set out all the terms governing the provision of the works, services and supplies;

c) partly without reopening competition in accordance with point a) of this paragraph and partly with reopening competition among the economic operators party to the framework agreement in accordance with point b) of this paragraph where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned and where this possibility has been stipulated by the contracting authority in the procurement documents for the framework agreement. The choice of whether a specific contract for the provision of works, supplies or services shall be awarded following a reopening of competition or directly on the terms set out in the framework agreement shall be made by the contracting authority pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement. In the procurement documents, the contracting authority shall also specify which terms may be subject to reopening competition

(8) The possibilities provided for under point c) of the preceding paragraph shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.

(9) The reopening of competition referred to in points b) and c) of paragraph 7 of this Article shall be based on the same terms as applied for the conclusion of the framework agreement, where necessary on more precisely formulated terms, and, where appropriate, on other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:

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a) for every contract to be awarded, the contracting authority shall consult in writing the economic operators party to the framework agreement which are capable of performing the contract;

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

c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for replying to tenderers has expired;

č) the contracting authority shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

Article 49 (Dynamic purchasing system)

(1) Contracting authorities may use a dynamic purchasing system for commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities. The dynamic purchasing system shall be a completely electronic method of procurement and shall be available throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined by the contracting authority on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of specific contracts or to a specific geographic area in which specific contracts will be performed.

(2) In order to procure under a dynamic purchasing system, contracting authorities shall follow the rules of a restricted procedure, excepting those on the time limit for the receipt of requests to participate and the time limit for the receipt of tenders. All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited. Where the contracting authority has divided the system into categories of products, works or services in accordance with the preceding paragraph, it shall specify the applicable selection criteria for each category.

(3) In procurement under a dynamic purchasing system, the following time limits shall apply:

a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent. For public contracts in the infrastructure field, where a periodic indicative notice is used as a means of calling for competition, the time limit for the receipt of requests to participate shall be fixed at no less than 30 days from the date on which the invitation to confirm interest is sent. Once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent, the time limit for the receipt of requests to participate shall no longer apply;

b) the minimum time limit for the receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent to the economic operators included in the system.

(4) All communications in the context of a dynamic purchasing system shall be made by electronic means alone.

(5) For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

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a) publish a call for competition making it clear that a dynamic purchasing system is involved;

b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, along with all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used, and the technical connection arrangements and specifications;

c) indicate any division into categories of products, works or services and the characteristics defining them;

č) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in accordance with Article 61 of this Act.

(6) Contracting authorities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraphs 2 and 3 of this Article. After sending an invitation to tender for the first specific procurement, contracting authorities shall, in accordance with the selection criteria, evaluate the requests to participate within 10 working days of their receipt. That time limit may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to verify whether economic operators meet the selection criteria. As long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authorities may extend the period for the evaluation of requests provided that no invitation to tender is issued during the extended evaluation period. In this case, contracting authorities shall indicate in the procurement documents the length of the extended period that they intend to apply.

(7) Contracting authorities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

(8) Contracting authorities shall invite all participants that have been admitted to the dynamic purchasing system to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 62 of this Act. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting authorities shall invite all participants having been admitted to the dynamic purchasing system for the category corresponding to the specific procurement concerned to submit a tender.

(9) Contracting authorities shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a periodic indicative notice is used as a means of calling for competition, on the basis of the award criteria set out in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, on the basis of the award criteria set out in the invitation to tender. Where appropriate, contracting authorities may formulate more precisely the award criteria in the invitation to tender.

(10) Contracting authorities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated ESDP within five working days from the date on which that request is transmitted.

(11) Contracting authorities shall indicate the period of validity of the dynamic purchasing system in the call for competition. In the event of any changes to the period of validity of the

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dynamic purchasing system, contracting authorities shall publish on the public procurement portal and, if the value of the contract so requires, also in the Official Journal of the European Union one of the following notices:

- a) where the period of validity is changed without terminating the system, the notice used initially as a means of calling for competition for the dynamic purchasing system;
- b) where the system is being terminated, a contract award notice.

(12) Prior to or during the period of validity of the dynamic purchasing system, no charges may be billed by contracting authorities to the economic operators interested in being included in or having been admitted to the dynamic purchasing system.

Article 50 (Electronic auction)

(1) Contracting authorities may use electronic auctions, in which they obtain new prices, revised downwards, or new values concerning certain elements of tenders. For this purpose, contracting authorities shall structure the electronic auction as a repetitive electronic process which takes place after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

(2) Certain public supply, service and works contracts which have as their subject-matter intellectual services, such as the design of works, and which, in accordance with the award criteria, cannot be ranked using automatic evaluation methods, shall not be the subject of electronic auction.

(3) In open or restricted procedures, competitive procedures with negotiation, negotiated procedures with publication or low-value contract procedures, contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision. In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement in accordance with points b) or c) of paragraph 7 of Article 48 of this Act and on the opening for competition of contracts to be awarded under the dynamic purchasing system in accordance with the preceding Article.

(4) An electronic auction shall be based on one of the following elements of the tenders:

- a) solely on prices where the contract is awarded on the basis of price only;
- b) on prices or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-to-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.

(5) Contracting authorities which decide to hold an electronic auction shall state this fact in the contract notice or, where a periodic indicative notice is used as a means of calling for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender. Where a contract is to be awarded through an electronic auction, the procurement documents shall include at least the following information:

- the features the values for which will be the subject of the electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- any limits on the values which may be submitted, as they result from the specifications relating to the subject-matter of the contract;

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- the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- the relevant information concerning the electronic auction process;
- the conditions under which tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

(6) Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them. All tenderers that have submitted admissible tenders shall be simultaneously invited, by electronic means, to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. Notwithstanding the preceding sentence, contracting authorities shall also invite tenderers whose tenders are unacceptable solely because of the tender price exceeding the contracting authority's budget to participate in the auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

(7) The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the criteria and the weighting provided for in paragraph 7 of Article 84 of this Act. The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and new values submitted. This formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender and indicated in the notice used as a means of calling for competition or in other procurement documents, except where the most economically advantageous tender is identified on the basis of price alone. The contracting authority shall reduce any ranges beforehand to a specified value. Where variants are authorised, the contracting authority shall provide a separate formula for each variant.

(8) Throughout each phase of an electronic auction, contracting authorities shall instantaneously communicate to all tenderers at least the information that enables them to ascertain their relative rankings at any moment. They may also, where this has been previously indicated, communicate other information concerning other prices or values submitted. Contracting authorities may also announce the number of participants in a given phase of the auction. In no event, however, may contracting authorities disclose the identities of the tenderers during any phase of an electronic auction.

(9) Contracting authorities shall close an electronic auction in one or more of the following manners:

- a) at the previously indicated date and time;
- b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or
- c) when the previously indicated number of phases in the auction has been completed.

(10) Where the contracting authority intends to close an electronic auction in accordance with point c) of the preceding paragraph, possibly in combination with the arrangements laid

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down in point b) thereof, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(11) After closing an electronic auction, the contracting authority shall award the contract on the basis of the results thereof and in accordance with the award criteria.

(12) Where necessary, the Government shall decide that certain categories of contracting authorities shall award certain contracts via an electronic auction.

Article 51 (Electronic catalogues)

(1) Where use of electronic means of communication is required for the award of public contracts, contracting authorities may require tenders to be presented in the form of an electronic catalogue or to include an electronic catalogue.

(2) Tenders presented in the form of an electronic catalogue may be accompanied by other documents completing them.

(3) Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority.

(4) Electronic catalogues shall comply with the requirements for electronic communication tools and with any additional requirements set by the contracting authority in accordance with Article 37 of this Act.

(5) Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities shall:

a) state this fact in the contract notice or, where a periodic indicative notice is used as a means of calling for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender or the invitation to negotiate;

b) indicate in the procurement documents all the necessary information concerning format, the electronic equipment used, and the technical connection arrangements and specifications for the catalogue.

(6) Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting authorities shall use one of the following methods:

a) they shall invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or

b) they shall notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question, provided that the use of this method has been announced in the procurement documents for the framework agreement.

(7) Where contracting authorities reopen competition for specific contracts in accordance with point b) of the preceding paragraph, they shall notify the tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to

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refuse such collection of information. Contracting authorities shall allow for an adequate period between the notification and the actual collection of information.

(8) Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

(9) Contracting authorities may award contracts under a dynamic purchasing system by requiring that tenders for a specific contract are to be presented in the format of an electronic catalogue. Contracting authorities may also award contracts under a dynamic purchasing system in accordance with point b) of paragraph 6 and paragraph 7 of this Article, provided that the request to participate in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. The catalogue shall be completed subsequently by the candidates when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in point b) of paragraph 6 of this Article.

2.3 Publication and transparency

Article 52

(Types of notices and the form and manner of their publication)

(1) Notices shall be of the following types:

1. a prior information notice or periodic indicative notice;
2. a notice on the existence of a qualification system;
3. a contract notice or design contest notice;
4. a voluntary ex ante transparency notice;
5. a contract award notice or design contest organisation notice;
6. a notice for additional information, information on incomplete procedure or corrigendum;
7. a notice of modification of a contract during its term;

(2) Contracting authorities shall draw up contract notices and send them for publication to the public procurement portal. A notice shall be published in the Official Journal of the European Union by electronic means through the public procurement portal if the contracting authority indicates in the notice that publication in the Official Journal of the European Union is also required. The public procurement portal and the Publications Office of the European Union shall give the contracting authority a confirmation of the receipt of the information sent for publication and of its publication, including mention of the date of that publication, which shall be considered proof of publication; the contracting authority shall keep this confirmation and, where appropriate, provide it as proof.

(3) Contract notices referred to in paragraph 1 of this Article shall be published in full in the Slovenian language. A summary of the important elements of each notice shall be published in other official languages of the European Union. The summary shall be in the format of standard forms laid down by the European Commission pursuant to paragraph 1 of Article 51 of Directive 2014/24/EU and paragraph 1 of Article 71 of Directive 2014/25/EU or, in the case of low-contract value procedures, a standard form laid down by the Government by a decree. Information to be contained in notices referred to in paragraph 1 of this Article is specified in Annex V to Directive 2014/24/EU and Annexes VI, X, XI, XII, XVI, XVIII, XIX and XX to

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Directive 2014/25/EU; information to be contained in notices for low-value contract procedures shall be determined by the Government by a decree.

(4) The costs of publication of such notices on the procurement portal shall be covered from the budget of the Republic of Slovenia and the costs of publication in the Official Journal of the European Union from the budget of the European Union.

(5) The contracting authority may also publish contract notices which are not subject to publication under this Act.

Article 53

(The order of the publication of notices and the information contained therein)

(1) Notices referred to in paragraph 1 of the preceding Article shall be published not later than five days after they are sent for publication by the contracting authority. A notice that is required to be published in the Official Journal of the European Union shall be first published therein. Where the contracting authority has not been notified of the publication in the Official Journal of the European Union within 48 hours of confirmation of the receipt of the notice as referred to in paragraph 1 of the preceding Article, the notice may be published on the public procurement portal before the publication in the Official Journal of the European Union. Before publication in the Official Journal of the European Union, a prior information notice or a periodic indicative notice may be published on the public procurement portal, but only after they have been sent to the Publications Office of the European Union.

(2) Notices published on the public procurement portal shall contain the same information as those published in the Official Journal of the European Union. The notices shall indicate the date of dispatch to the Publications Office of the European Union.

Article 54

(Prior information notice or periodic indicative notice)

(1) Contracting authorities may make known their intentions regarding planned procurements in the general field or the infrastructure field through the publication of a prior information notice or a prior indicative notice.

(2) The period covered by the prior information notice or periodic indicative notice shall be a maximum of 12 months from the date the notice is sent for publication, except in the case of social and other special services, where this period may be longer.

(3) In the award of contracts in the infrastructure field by restricted procedure or negotiated procedure with publication, contracting authorities may make a call for competition by means of a periodic indicative notice.

(4) Where a periodic indicative notice is used as a means of calling for competition, it shall refer specifically to the supplies, works or services that will be the subject of the contract to be awarded. The notice shall indicate that the contract will be awarded by restricted procedure or negotiated procedure with publication and without further publication of the contract notice, inviting interested economic operators to express their interest on the basis of this notice. In this case, the periodic indicative notice shall be sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent by the contracting authority to the relevant candidates.

Article 55

(Notice on the existence of a qualification system)

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(1) Where contracting authorities choose to set up a qualification system in accordance with Article 63 of this Act, they shall publish a notice on the existence of the qualification system, indicating the purpose of the qualification system and how to obtain access to the rules concerning its operation.

(2) Contracting authorities shall indicate the period of validity of the qualification system in the notice on the existence of the system. In the event of any changes to the period of validity of the system, contracting authorities shall publish on the public procurement portal and, if the value of the contract so requires, also in the Official Journal of the European Union one of the following notices:

a) where the period of validity is changed without terminating the system, a notice on the existence of a qualification system;

b) where the qualification system has been terminated, a contract award notice.

Article 56 (Contract notice)

Contract notices may be used as a means of calling for competition in respect of all procedures except a negotiated procedure without prior publication. In respect of contracts in the infrastructure field, contracting authorities may use another type of notice as a means of calling for competition, this in the manner and under the conditions laid down in this Act.

Article 57 (Voluntary ex ante transparency notice)

(1) Contracting authorities shall publish a voluntary ex ante transparency notice when they award contracts by negotiated procedure without prior publication or competitive procedure with negotiation where no notice has been published on the public procurement portal or, if the value of the contract so requires, in the Official Journal of the European Union. A contracting authority shall send the voluntary ex ante transparency notice for publication on the date on which it notifies tenderers of the decision referred to in paragraph 2 of Article 90 of this Act.

(2) A contracting authority may also publish a voluntary ex ante transparency notice within the time limit referred to in the preceding paragraph in other procurement procedures. This notice shall be published on the public procurement portal and, if the value of the contract or the prior publication so requires, also in the Official Journal of the European Union.

Article 58 (Contract award notice)

(1) Not later than 30 days after the conclusion of a contract or a framework agreement, following the decision to award or conclude it, contracting authorities shall send for publication a contract award notice on the results of the procurement procedure.

(2) Where the call for competition for the contract concerned in the infrastructure field has been made in the form of a periodic indicative notice and the contracting authority has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.

(3) Where a contracting authority has concluded a framework agreement in accordance with Article 48 of this Act, it shall not be bound to send a contract award notice for each contract based on that agreement. In this case, it shall group notices of the results of the

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procurement procedure for contracts based on the framework agreement under one contract notice on a quarterly basis and shall send this notice for publication within 30 days of the end of each quarter.

(4) Contracting authorities shall submit a contract award notice for publication within 30 days of the awarding of each contract based on a dynamic purchasing system or they may group notices of the results of the procurement procedure for contracts based on a dynamic purchasing system on a quarterly basis and submit the grouped notices for publication within 30 days of the end of each quarter.

(5) Contracting authorities may withhold from publication certain information on the awarding of a contract or the conclusion of a framework agreement where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

Article 59

(Notice of modification of a contract during its term)

Contracting authorities shall publish a notice of modification of a contract during its term within 30 days of the modification of the contract or of the framework agreement in accordance with Article 95 of this Act.

Article 60

(Notice for additional information, information on incomplete procedure or corrigendum)

(1) Contracting authorities shall publish a notice for additional information, information on incomplete procedure or corrigendum when carrying out a procurement procedure in which a contract notice referred to in point 3 of paragraph 1 of Article 52 of this Act has been published and:

- amending or modifying the procurement documents;
- suspending the procurement procedure or rejecting all tenders, in accordance with Article 90 of this Act; or
- having not received any admissible tenders.

(2) Contracting authorities shall also publish a notice for additional information, information on incomplete procedure or corrigendum when amending or modifying the particulars of the previously published notice referred to in paragraph 1 of Article 52 of this Act.

(3) In the cases referred to in the second or third indents of paragraph 1 of this Article, contracting authorities shall send a notice for additional information, information on incomplete procedure or corrigendum for publication within 48 days of receipt of the decision referred to in paragraphs 1, 2 or 5 of Article 90 of this Act, though not until this decision has become final.

Article 61

(Electronic availability of procurement documents)

(1) Contracting authorities shall, by electronic means, offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Article 52 of this Act or the date on which an invitation to confirm interest was sent to candidates. In the text of the notice or the invitation to confirm interest,

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contracting authorities shall specify the internet address at which the procurement documents are accessible. When, in respect of public contracts in the infrastructure field, a notice on the existence of a qualification system is used as a means of calling for competition, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent.

(2) Where unrestricted and full direct access free of charge by electronic means to the procurement documents or a part thereof cannot be offered for one of the reasons set out in Article 37 of this Act, contracting authorities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned or the part thereof will be transmitted by means other than electronic in accordance with paragraph 4 of this Article. In such a case, contracting authorities shall prolong the time limit for the submission of tenders by five days, except in the cases of duly substantiated urgency in accordance with paragraph 4 of Article 40, paragraph 9 of Article 41 and paragraph 7 of Article 44 or where the time limit is set by mutual agreement in accordance with the law.

(3) Where unrestricted and full direct access free of charge by electronic means to the procurement documents or a part thereof cannot be offered because contracting authorities intend to apply Article 35 of this Act, they shall indicate in the notice or the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the procurement documents which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the procurement documents concerned or the part thereof. In such a case, contracting authorities shall prolong the time limit for the submission of tenders by five days, except in the cases of duly substantiated urgency in accordance with paragraph 4 of Article 40, paragraph 9 of Article 41 and paragraph 7 of Article 44 or where the time limit is set by mutual agreement in accordance with the law.

(4) Provided that it has been requested in good time, contracting authorities shall supply to all economic operators taking part in the procurement procedure additional information relating to the specifications and any supporting documents not later than six days before the expiry of the time limit fixed for the submission of tenders. Where in open procedures or, in the case of public contracts in the general field, restricted procedures, contracting authorities reduce the time limit for the submission of tenders for reasons of urgency, the time limit shall be four days before the expiry of the time limit fixed for the submission of tenders.

Article 62 (Invitation to candidates)

(1) In restricted procedures, innovation partnerships, competitive procedures with negotiation and negotiated procedures with publication, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

(2) Where, in respect of public contracts in the infrastructure field, a periodic indicative notice is used as a means of calling for competition, contracting authorities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

(3) The invitation referred to in paragraphs 1 and 2 of this Article shall include at least the following information:

a) the electronic address at which the procurement documents have been made directly available by electronic means; where unrestricted and full direct access free of charge to the

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procurement documents or a part thereof cannot be offered for the reasons set out in Article 61 of this Act or where the procurement documents have not been made available by means other than electronic, the contracting authority shall attach the procurement documents to the invitation;

b) a reference to the published call for competition;

c) the time limit for the receipt of the tenders, the address to which the tenders must be sent, and the language or languages in which the tenders must be drawn up;

č) in the case of a competitive dialogue, the date and the address set for the start of consultation and the language or languages to be used in the dialogue;

d) a reference to any possible supporting documents to be submitted, either in support of verifiable declarations by the tenderer or to supplement the information;

e) the contract award criteria;

f) the relative weighting of criteria for the awarding of the contract or, where appropriate, the order of importance for such criteria, where they are not given in the contract notice, the invitation to confirm interest, the technical specifications, the descriptive document or the notice on the existence of a qualification system.

(4) In the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in point c) of the preceding paragraph shall not appear in the invitation to participate in the dialogue or to negotiate but shall appear in the invitation to tender.

(5) Where, in respect of public contracts in the infrastructure field, a periodic indicative notice is used as a means of calling for competition, contracting authorities shall invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

(6) In the case referred to in the preceding paragraph, the invitation shall include at least the following information:

a) the nature of the contract and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options, and for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition;

b) the type of procedure: restricted procedure or negotiated procedure with publication;

c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

č) where electronic access to the procurement documents cannot be offered, the address and closing date for the submission of requests for the procurement documents and the language or languages in which they are to be drawn up;

d) the address of the contracting authority;

e) the form of the contract which is the subject of the call for competition: purchase, lease, rental or hire-purchase or any combination thereof;

f) economic and technical conditions, financial guarantees and information required from economic operators;

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g) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the periodic indicative notice or in the technical specifications or in the invitation to tender or to negotiate.

Article 63 (Qualification systems)

(1) In awarding contracts in the infrastructure field, contracting authorities may establish and operate a system of qualification of economic operators. Contracting authorities which establish or operate such a system shall ensure that economic operators are at all times able to request qualification and inclusion in the system.

(2) The qualification system may involve different qualification stages. Contracting authorities shall establish objective rules and criteria for the exclusion and inclusion of economic operators requesting qualification and objective criteria and rules for the operation of the qualification system, covering inscription in the system, periodic updating of the qualifications, if any, and the duration of the system.

(3) Where the criteria and rules referred to in the preceding paragraph include technical specifications, contracting authorities shall apply Articles 68 to 70 of this Act. The criteria and rules may be updated as required.

(4) The criteria and rules referred to in the preceding paragraph shall be made available to economic operators on request. The contracting authority shall communicate any updated criteria and rules to interested economic operators.

(5) Where a contracting authority considers that the qualification system of other contracting authorities meets its requirements, it shall communicate to interested economic operators the names of such other contracting authorities.

(6) Contracting authorities shall keep a written record of qualified economic operators, which may be divided into categories according to the type of contract for which the qualification is valid.

(7) When a call for competition is made by means of a notice on the existence of a qualification system, the contracting authority shall award specific contracts for the works, supplies or services covered by the qualification system by a restricted procedure or negotiated procedure, in which all tenderers and participants are selected among candidates already qualified in accordance with this system.

(8) Any charges that are billed by the contracting authority in connection with requests for qualification or with updating or conserving an already obtained qualification pursuant to the system shall be proportionate to the generated costs.

2.4. Conduct of the procedure

2.4.1. Preparation

Article 64 (Preliminary market consultations)

(1) Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

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(2) For this purpose, contracting authorities may conduct a technical dialogue to seek or accept advice which may be used in the preparation of the procurement documents, provided that such advice or recommendations do not have the effect of preventing or restricting competition and do not result in a violation of the principles of equal treatment of tenderers or the transparency of public procurement.

Article 65 (Prior involvement of candidates or tenderers)

(1) Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority in accordance with the preceding Article or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

(2) Such measures shall include the communication to other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The contracting authority shall only exclude a particular tenderer or candidate from the procurement procedure where there are no other means to ensure compliance with the principle of equal treatment of tenderers. Prior to any such exclusion, the contracting authority shall give candidates or tenderers the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.

(3) The contracting authority shall document the measures taken in the report referred to in Article 105 of this Act.

Article 66 (Initiation of the procedure)

(1) Contracting authorities may initiate a contract award procedure after having calculated the estimated contract value. Contracting authorities may initiate such a procedure by way of a decision on the initiation of the procedure, indicating the source and amount of funds earmarked for the performance of the contract. Where a contracting authority has not adopted a decision on the initiation of the procedure, it shall document the source and amount of funds earmarked for the performance of the contract by other appropriate means before publishing a call for competition or sending an invitation to confirm interest or to negotiate. With regard to the initiation and conduct of the contract award procedure and the performance of the contract, direct and indirect budget users shall also comply with the rules governing public finance.

(2) Contracting authorities may appoint an expert committee to conduct the procurement procedure or a part thereof.

(3) A contracting authority may authorise another contracting authority to conduct the procurement procedure or to make decisions in such a procedure.

(4) Contract award procedures for the needs of subdivisions of a municipality as laid down in the law governing local self-government shall be conducted by the municipality concerned. Notwithstanding paragraph 3 of Article 24 of this Act, for the purposes of calculating the estimated value of contracts, a municipality and its subdivisions shall be deemed to be one operational unit.

Article 67

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(Procurement documents)

(1) Contracting authorities shall publish the procurement documents on or via the public procurement portal, except where they award contracts by negotiated procedure without prior publication or competitive procedure with negotiation in which they apply an exception to the publication of a contract notice in accordance with point b) of paragraph 1 of Article 44 of this Act. The procurement documents shall include at least the information required under this Act and a draft contract. The information provided by the contracting authority to economic operators participating in the procurement procedure shall also be deemed to be part of the procurement documents.

(2) After the expiry of the time limit for the receipt of tenders, contracting authorities shall not be allowed to amend or modify the procurement documents. The information provided by the contracting authority to economic operators on or via the procurement portal shall be deemed to be an amendment to or modification or clarification of the procurement documents if its content implies that such information is to amend or modify the procurement documents or if a clarification is used to eliminate the ambiguity of information.

(3) The contract and the framework agreement signed by the contracting authority and the selected tenderer shall not, in their essential parts, differ from the draft contract in the procurement documents, except where a particular provision of the draft contract has been the subject of negotiation between the contracting authority and the tenderer.

(4) The contract shall include the following:

- the actual value of the entire contract or, in justified cases, where the actual value cannot be established, the estimated value of the contract;
- the period of validity of the contract;
- a provision to the effect that the contract shall terminate if the contracting authority becomes aware that the competent government authority or a court, by way of a final decision, has established that the contractor or its sub-contractor is in breach of labour, environmental or social law provisions.

Article 68 (Technical specifications)

(1) The technical specifications referred to in point 23 of paragraph 1 of Article 2 of this Act shall be set out in the procurement documents. The technical specifications shall lay down the characteristics required of a work, service or supply. These characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of their life cycle even where such factors do not form part of their material substance, provided that they are linked to the subject-matter of the contract and are proportionate to its value and its objectives.

(2) Contracting authorities may also specify in the technical specifications whether the transfer of intellectual property rights will be required.

(3) For all procurement which is intended for use by natural persons, whether the general public or the staff of the contracting authority, the contracting authority shall, except in duly justified cases, draw up technical specifications taking into account accessibility criteria for persons with disabilities or design for all users. Where mandatory accessibility requirements are laid down in a directly applicable legal act of the European Union, the contracting

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authority shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, define technical specifications by reference thereto.

(4) Technical specifications shall afford equal access to the procurement procedure to all economic operators and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(5) The technical specifications may be formulated in one of the following ways:

a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments or the European Assessment Document where it is used as the basis for the issue of a European Technical Assessment, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies, or, when none of these exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of works and use of supplies; each reference shall be accompanied by the words "or equivalent";

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

č) by reference to the technical specifications referred to in point b) of this paragraph for certain characteristics and by reference to the performance or functional requirements referred to in point a) of this paragraph for other characteristics.

(6) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source or to a particular process which characterises the products or services provided by a specific economic operator or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to the preceding paragraph is not possible. Such reference shall also be accompanied by the words "or equivalent".

(7) Where a contracting authority uses the option of referring to the technical specifications referred to in point b) of paragraph 5 of this Article, it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 70 of this Act, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(8) Where a contracting authority uses the option laid down in point a) of paragraph 5 of this Article to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which complies with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body where the specifications defined by that

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standard, approval, common technical specification or technical reference system address the performance or functional requirements laid down by the contracting authority in the procurement procedure.

(9) In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 70 of this Act, that the work, supply or service which complies with the standard meets the performance or functional requirements of the contracting authority.

Article 69 (Labels)

(1) Where contracting authorities intend to purchase works, services or supplies with specific environmental, social or other characteristics, they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:

a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter thereof;

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

c) the label is established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;

č) the label may be obtained by any interested party;

d) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

(2) Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements they are required to meet.

(3) Contracting authorities requiring a specific label shall accept all labels confirming that the works, supplies or services meet equivalent label requirements.

(4) Where an economic operator has no possibility of obtaining the label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier of the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the contracting authority.

(5) Where a label fulfils the conditions referred to in points b), c), č) and d) of paragraph 1 of this Article and also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specifications by reference to the detailed specifications of the label concerned, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Article 70 (Test reports, certification and other means of proof)

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(1) Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with the technical specifications, the contract award criteria, the conditions for participation or the specific conditions for the performance of the contract.

(2) Where contracting authorities require the submission of a certificate issued by a specific conformity assessment body, they shall also accept a certificate issued by an equivalent other conformity assessment body. A conformity assessment body shall be a body that performs conformity assessment activities, including calibration, testing, certification and inspection, and is accredited in accordance with Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 (OJ L 218, 13.8.2008, p. 30).

(3) Contracting authorities shall accept appropriate means of proof other than those referred to in paragraph 1 of this Article, such as a technical dossier of the manufacturer where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1 of this Article, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the technical specifications, the contract award criteria or the contract performance conditions.

(4) Contracting authorities shall, on request, make available to economic operators interested in obtaining a contract the technical specifications regularly referred to in their contracts in the infrastructure field or the technical specifications which they intend to apply to contracts in the infrastructure field for which a periodic indicative notice is used as a means of calling for competition. These specifications shall be made available by electronic means offering unrestricted and full direct access free of charge. Where the specifications are based on documents available by electronic means offering unrestricted and full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

(5) Notwithstanding the above, contracting authorities shall transmit the technical specifications by means other than electronic where unrestricted and full direct access free of charge by electronic means to the procurement documents referred to in the preceding paragraph cannot be offered for one of the reasons set out in Article 37 of this Act, or where unrestricted and full direct access free of charge by electronic means to the procurement documents cannot be offered because contracting authorities intend to apply Article 35 of this Act.

Article 71 **(Conditions including social and environmental aspects)**

(1) Where necessary, the Government shall prescribe that, in procurement procedures for certain specific contracts, contracting authorities take into account social and ethical or environmental aspects and how these aspects are incorporated into the subject-matter of the contract, the technical specifications, the selection criteria, the contract award criteria and the special conditions for the performance of the contract.

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

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Article 72 (Variants)

(1) Contracting authorities may authorise or require tenderers to submit variants. They shall indicate in the contract notice or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender or to negotiate whether or not they authorise or require variants. Where variants are not authorised or required, they shall not be submitted. Variants shall be linked to the subject-matter of the contract.

(2) Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their submission, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

(3) Contracting authorities shall take into account only variants meeting the minimum requirements.

(4) In procedures for awarding public supply or service contracts, contracting authorities that have authorised or required variants shall not reject a variant on the sole basis that it would, if successful, change a public supply contract into a public service contract or vice versa.

Article 73 (Division of contracts into lots)

(1) Where the subject-matter of the public contract so permits and where this adds to the economy and efficiency of the performance of the contract, contracting authorities shall award the contract in the form of separate lots and determine the size and subject-matter of such lots. In so doing, they shall ensure non-discriminatory treatment of economic operators, thus making the contract accessible to a wider circle of economic operators.

(2) Contracting authorities shall state in the contract notice or the invitation to confirm interest or, where a periodic indicative notice is used as a means of calling for competition, in the periodic indicative notice or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender or the invitation to negotiate whether tenders may be submitted for one, for several or for all of the lots.

(3) Even where tenders may be submitted for several or all lots, contracting authorities may limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the notice that is used as a means of calling for competition or in the invitation to confirm interest or in the invitation to tender or to negotiate. In such a case, contracting authorities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

(4) Where more than one lot may be awarded to the same tenderer, contracting authorities may award a contract combining several or all lots where they have specified in the notice used a means of calling for competition or in the invitation to confirm interest or in the invitation to tender or to negotiate that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

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(5) Notwithstanding Article 21 of this Act, contracting authorities may award contracts for certain excluded lots without applying the procedures provided for under this Act, provided that the estimated value of the excluded lots, net of VAT, is less than EUR 80,000 for supplies or services; however, the aggregate value of the lots thus awarded without applying this Act shall not exceed 20% of the aggregate value of all the lots into which the proposed acquisition of similar supplies or the proposed provision of services has been divided.

Article 74 (Setting time limits)

(1) When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account of the complexity of the contract and the time required for drawing up tenders or requests, without prejudice to the minimum time limits set out in Articles 40 to 45 of this Act.

(2) Where tenders can be made only after a visit to the site, where a visit to the site is required or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in Articles 40 to 45 of this Act, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.

(3) Contracting authorities shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

a) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders or, in an open procedure or a restricted procedure with time limits reduced for reasons of urgency, at the latest four days before the expiry of the time limit fixed for the receipt of tenders;

b) where significant changes have been made to the procurement documents after six days before the expiry of the time limit fixed for the receipt of tenders or, in an open procedure or a restricted procedure with time limits reduced for reasons of urgency, after four days before the expiry of the time limit fixed for the receipt of tenders.

(4) The length of the extension shall be proportionate to the importance of the information or change.

(5) Where either the additional information has not been requested in good time or its importance with a view to preparing tenders in response is insignificant, the time limits shall not need to be extended.

2.4.2. Qualitative selection

Article 75 (Exclusion grounds)

(1) Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 77, 79 and 80 of this Act or are otherwise aware, that that economic operator or a person who is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein has been the subject of a conviction by a final judgment containing elements of the following criminal offences

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defined in the Criminal Code (*Uradni list RS* (The Official Gazette of the Republic of Slovenia) No. 50/12 – official consolidated text and 54/15; hereinafter: the KZ-1):

- terrorism (Article 108 of the KZ-1);
- financing of terrorist activities (Article 109 of the KZ-1);
- incitement and public glorification of terrorist activities (Article 110 of the KZ-1);
- conscripting and training for terrorist activities (Article 111 of the KZ-1);
- enslavement (Article 112 of the KZ-1);
- trafficking in human beings (Article 113 of the KZ-1);
- acceptance of a bribe during an election or ballot (Article 157 of the KZ-1);
- violation of the fundamental rights of employees (Article 196 of the KZ-1);
- fraud (Article 211 of the KZ-1);
- unlawful restriction of competition (Article 225 of the KZ-1);
- causing bankruptcy by fraud or careless operations (Article 226 of the KZ-1);
- defrauding creditors (Article 227 of the KZ-1);
- business fraud (Article 228 of the KZ-1);
- fraud affecting the European Union (Article 229 of the KZ-1);
- loan and benefit fraud (Article 230 of the KZ-1);
- fraud in securities trading (Article 231 of the KZ-1);
- deception of purchasers (Article 232 of the KZ-1);
- unauthorised use of another’s mark or model (Article 233 of the KZ-1);
- unauthorised use of another’s patent or topography (Article 234 of the KZ-1);
- forgery or destruction of business documents (Article 235 of the KZ-1);
- disclosure and unauthorised acquisition of trade secrets (Article 236 of the KZ-1);
- information system abuse (Article 237 of the KZ-1);
- abuse of insider information (Article 238 of the KZ-1);
- abuse of a financial instruments market (Article 239 of the KZ-1);
- abuse of a position or trust in a business activity (Article 240 of the KZ-1);
- unauthorised acceptance of gifts (Article 241 of the KZ-1);
- unauthorised giving of gifts (Article 242 of the KZ-1);
- counterfeiting money (Article 243 of the KZ-1);
- fabrication and use of counterfeit stamps of value or securities (Article 244 of the KZ-1);
- money laundering (Article 245 of the KZ-1);
- abuse of non-cash means of payment (Article 246 of the KZ-1);
- use of counterfeit non-cash means of payment (Article 247 of the KZ-1);
- fabrication, acquisition and disposal of instruments of forgery (Article 248 of the KZ-1);

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- tax evasion (Article 249 of the KZ-1);
- smuggling (Article 250 of the KZ-1);
- abuse of an official position or official rights (Article 257 of the KZ-1);
- causing damage to public funds (Article 257a of the KZ-1);
- disclosure of classified information (Article 260 of the KZ-1);
- acceptance of bribes (Article 261 of the KZ-1);
- giving bribes (Article 262 of the KZ-1);
- accepting benefits for illegal intermediation (Article 263 of the KZ-1);
- giving of gifts for illegal intermediation (Article 264 of the KZ-1); or
- criminal association (Article 294 of the KZ-1).

(2) Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 77, 79 and 80 of this Article, that the economic operator has not complied with its obligations relating to the payment of compulsory charges or other pecuniary non-tax liabilities under the law governing financial administration, collected by the tax authority in accordance with the regulations of the country in which it is established or with the regulations of the country of the contracting authority, where those unpaid overdue liabilities total EUR 50 or more as at the date of the submission of the tender or request. An economic operator shall also be considered not to comply with its obligations as referred to in the preceding sentence if, by the date of the submission of the tender or request, it has not submitted all the withholding tax returns for income from the employment relationship for the period of five years preceding the date of the submission of the tender or request.

(3) Notwithstanding paragraphs 1 and 2 of this Article, contracting authorities may, on an exceptional basis, not exclude an economic operator from participation in a procurement procedure where the award of the contract to that economic operator is justified by overriding reasons relating to the public interest such as public health, people's lives or the protection of the environment.

(4) Contracting authorities shall exclude an economic operator from a procurement procedure in any of the following situations:

a) if the economic operator is excluded from contract award procedures on the date of the expiry of the time limit for the submission of tenders or requests due to its inclusion in the register of economic operators with negative references;

b) if, in the three years preceding the expiry of the time limit for the submission of tenders, the economic operator was fined twice, by way of a final decision of the competent authority of the Republic of Slovenia or another Member State or a third country, for a minor offence relating to remuneration for work.

(5) Notwithstanding paragraphs 1, 2 and 4 of this Article, a contracting authority referred to in points č) or d) of paragraph 1 of Article 9 of this Act shall not be obliged to include grounds for exclusion referred to in paragraphs 1, 2 and 4 of this Article in a procurement procedure. Where the contracting authority includes any of those grounds for exclusion in the procurement procedure, it shall state this in the procurement documents or the notice used as a means of calling for competition.

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(6) Contracting authorities may exclude an economic operator from participation in a procurement procedure in any of the following situations, and in the cases referred to in points č), d), g) and h) of this paragraph, they may exclude an economic operator regardless of whether such exclusion was provided for in the procurement documents:

a) where the contracting authority can demonstrate by any appropriate means a violation of obligations referred to in paragraph 2 of Article 3 of this Act;

b) where the economic operator is the subject of insolvency or compulsory winding-up proceedings under the law governing insolvency and compulsory winding-up proceedings or of liquidation proceedings under the law governing companies, where its assets or operations are being administered by a liquidator or by the court, where its business activities are suspended, or where, in accordance with the regulations of another country, it is the subject of proceedings or is in an analogous situation having the same legal effect;

c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct which renders its integrity questionable;

č) where the contracting authority can reasonably conclude that the economic operator has entered into agreements with other economic operators aimed at preventing, restricting or distorting competition. The contracting authority's conclusion referred to in the preceding sentence shall be deemed to be reasonable where the authority responsible for the protection of competition notifies the contracting authority within 15 days following a report by that contracting authority that it will initiate infringement proceedings;

d) where a conflict of interest referred to in paragraph 3 of Article 91 of this Act cannot be effectively remedied by other, less intrusive, measures;

e) where a distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure in accordance with Article 65 of this Act cannot be effectively remedied by other, less intrusive, measures;

f) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive obligation under a prior public contract or a prior concession contract with a contracting authority which led to early termination of that contract by the contracting authority, the claiming of damages from the contracting authority or other comparable sanctions;

g) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the existence of grounds for exclusion or of the fulfilment of the selection criteria, has withheld such information, or is not able to submit the supporting documents required pursuant to Article 79 of this Act;

h) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure, or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or awarding.

(7) Notwithstanding the provisions of point b) of the preceding paragraph, contracting authorities may decide not to exclude from a procurement procedure an economic operator with regard to which the court has adopted a final decision approving the compulsory settlement.

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(8) Contracting authorities shall at any time during the procedure exclude an economic operator where it transpires that, in view of acts committed or omitted, the latter was or is either before or during the procedure in one of the situations referred to in paragraphs 1, 2 or 4 of this Article. Contracting authorities may at any time during the procedure exclude an economic operator where it transpires that, in view of acts committed or omitted, the economic operator was or is either before or during the procedure in one of the situations referred to in paragraph 6 of this Article.

(9) An economic operator which is in one of the situations referred to in paragraph 1 or 6 of this Article may provide evidence to the contracting authority that it has taken sufficient measures to demonstrate its reliability despite the existence of grounds for exclusion. The measures taken shall be deemed to be sufficient where the economic operator has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively co-operating with the investigating authorities, and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct. The contracting authority shall evaluate the measures taken by the economic operator, taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the evidence provided by the economic operator to be sufficient, it shall not, notwithstanding paragraphs 1 and 6 of this Article, exclude the economic operator from the procurement procedure. Where the contracting authority considers the measures to be insufficient, it shall give the economic operator a statement of the reasons for such a decision.

(10) An economic operator which has been excluded by a final judgment or minor offence decision effective in the Republic of Slovenia from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under the preceding paragraph of this Article during the period of exclusion.

(11) Where the duration of the exclusion from procurement procedures has not been set by final judgment for an offence referred to in paragraph 1 of this Article and the contracting authority considers the measures taken by the economic operator pursuant to paragraph 9 of this Article to be insufficient, the contracting authority shall exclude the economic operator from the procurement procedure if five years have not elapsed since the date of conviction by final judgment for an offence referred to in paragraph 1 of this Article. The contracting authority shall exclude the economic operator from the procurement procedure on the grounds referred to in paragraph 6 of this Article if three years have not elapsed since the date of the act or event referred to in paragraph 6 of this Article and the contracting authority considers the measures taken by the economic operator pursuant to paragraph 9 of this Article to be insufficient.

Article 76 (Selection criteria)

(1) Contracting authorities may establish objective rules and criteria for selection which may relate to:

- a) suitability to pursue the professional activity;
- b) economic and financial standing;
- c) technical and professional ability.

(2) Contracting authorities may only impose on economic operators criteria referred to in this Article as requirements for participation. Contracting authorities shall include in

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procurement procedures only those requirements necessary to ensure that a candidate or tenderer has adequate legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract.

(3) With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in the Member State of their establishment. The list of professional or trade registers in EU Member States is provided in Annex XI to Directive 2014/24/EU.

(4) In a procurement procedure for services, insofar as economic operators have to possess a particular authorisation or be members of a particular organisation in order to be able to perform the service concerned in their country of origin, the contracting authority may require them to provide proof that they hold such authorisation or membership.

(5) With regard to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For this purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on their annual accounts showing, among other things, the ratios between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

(6) Where contracting authorities require that economic operators have a minimum yearly turnover, that turnover shall not exceed two times the estimated contract value, except in duly justified cases, such as by reference to special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in Article 105 of this Act.

(7) The ratio between assets and liabilities from the information on the annual accounts of the economic operator concerned may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

(8) Where a contract is divided into lots, this Article shall apply in relation to each individual lot. In the event that the tenderer is awarded several lots to be executed at the same time, the contracting authority may set the minimum yearly turnover that economic operators are required to have for individual groups of lots.

(9) Where contracts based on a framework agreement are to be awarded following a reopening of competition, the required maximum yearly turnover referred to in paragraph 6 of this Article shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time or, where this is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the required maximum yearly turnover shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

(10) With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the

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past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the former has established that the latter has conflicting interests which may negatively affect the performance of the contract.

(11) In procurement procedures for services or works, or for supplies requiring siting or installation work, contracting authorities may evaluate the professional ability of economic operators to provide the service or to execute the installation or the work with regard to their skills, efficiency, experience and reliability.

(12) Contracting authorities shall indicate the required selection criteria, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest or, where a periodic indicative notice is used as a means of calling for competition, in the periodic indicative notice.

Article 77 (Means of proof)

(1) Contracting authorities may require the certificates, statements and other means of proof referred to in this Article as evidence for the absence of grounds for exclusion referred to in Article 75 of this Act and for the fulfilment of the selection criteria in accordance with Article 76 of this Act.

(2) Contracting authorities shall not require means of proof other than those referred to in this Article and in Article 78 of this Act. In the event of their relying on the capacities of other entities, economic operators may use any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal to perform the contract.

(3) Contracting authorities shall accept the following as sufficient evidence that none of the grounds for exclusion referred to in Article 75 of this Act exist:

a) as regards paragraph 1 of Article 75 of this Act, the production of an extract from the relevant register, such as the court register of companies, or, where there is no such register, of an equivalent document issued by a competent judicial or administrative authority in the Republic of Slovenia, another Member State, or the country of origin of the economic operator or the country where the economic operator is established showing that no grounds for exclusion exist;

b) as regards paragraph 2 of Article 75 of this Act and point b) of paragraph 6 of Article 75 of this Act, a certificate issued by a competent authority in the Republic of Slovenia, another Member State or a third country;

c) as regards point b) of paragraph 4 of Article 75 of this Act, the production of an extract from the records of final minor offence decisions kept by a competent authority in the Republic of Slovenia, another Member State or a third country.

(4) Where a Member State or a third country does not issue the documents and certificates referred to in the preceding paragraph, or where these do not cover all the cases specified in paragraphs 1 and 2 and point b) of paragraph 4 and point b) of paragraph 6 of Article 75 of this Act, they may be replaced by a declaration on oath or, in Member States or third countries where there is no provision for declarations on oath, by a declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade organisation in the country of origin of this person or in the country where the economic operator is established.

(5) The Republic of Slovenia shall, where relevant, provide an official declaration stating that the documents or certificates referred to in paragraphs 3 and 4 of this Article are not

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issued or that they do not cover all the cases specified in paragraphs 1 and 2 and point b) of paragraph 6 of Article 75 of this Act and shall make available this official declaration via the e-Certis online repository of certificates.

(6) The economic operator may, as a general rule, provide one or more of the following documents as proof of its economic and financial standing, verified by the contracting authority in accordance with the preceding Article:

a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

b) a presentation of financial statements or extracts from such financial statements where publication of financial statements is required under the regulations of the country in which the economic operator is established;

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

(7) Where, for any valid reason, the economic operator is unable to provide the documents referred to in the preceding paragraph which are requested by the contracting authority, it may prove its economic and financial standing using any other document which the contracting authority considers appropriate.

(8) The economic operator may provide evidence of its technical abilities which are verified by the contracting authority in accordance with the preceding Article by one or more of the following means, in accordance with the nature, quantity or importance, and use of the works, supplies or services:

a) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution and outcome for the most important works. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than five years before will be taken into account;

b) a list of principal deliveries effected or the main services provided in the past three years, including the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;

c) an indication of the technicians or technical bodies to be involved in the performance of the contract, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work, regardless of whether or not they are employed by the economic operator;

č) a description of the technical facilities and measures used by the economic operator for ensuring quality and a description of its study and research capabilities;

d) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

e) where the products or services to be supplied or provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement. The check shall relate to the production capacities of the supplier or the technical capacity of the service provider and, where

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necessary, to the means of study and research which are available to it and the quality control measures it will operate;

f) the educational and professional qualifications of the service provider or contractor or of the undertaking's managerial staff, provided that these are not evaluated as an award criterion;

g) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

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

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

j) an indication of the proportion of the contract which the economic operator may subcontract;

k) with regard to the products to be supplied:

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

– certificates drawn up by official quality control institutes or agencies of recognised competence attesting to the conformity of products clearly identified by references to technical specifications or standards.

(9) Information which is maintained in official records and for which no evidence has been provided by the tenderer may be verified by the contracting authority in a uniform information system, which represents a database containing data on tenderers and their tenders and which is kept by the ministry responsible for public procurement, instead of in the official records, provided that the contracting authority is demonstrably confirmed in this system by the tenderer.

(10) The information included in the uniform information system shall comprise public information from the business register and the current account register, and, subject to the tenderer's agreement, data from the criminal records of individuals, the criminal records of legal entities, tax records, records of insolvency proceedings, the register of economic operators with negative references which show whether a tenderer meets the selection criteria or whether no grounds for exclusion under this Act or under the law governing public procurement in the fields of defence and security exist in respect of the tenderer, and records of the inspectorate responsible for labour. When the system includes personal data, the consent of individuals to whom the data refer shall be required. In the information system, a tenderer may also include other means of proof as evidence of absence of grounds for exclusion referred to in Article 75 of this Act and of fulfilment of the selection criteria, labels specified in Article 69 of this Act, certificates attesting compliance with quality assurance and environmental management standards, and evidence of fulfilment of the technical specifications and the contract award criteria.

(11) The uniform information system shall be used for the collection, processing and storage of information for the purpose of procurement procedures. Contracting authorities shall use such information solely for the purpose of tender verification in accordance with Article 89 of this Act or in accordance with the law governing public procurement in the fields of defence and security; in so doing, they shall, with regard to the grounds for exclusion referred to in Article 75 of this Act or conditions relating to the suitability of candidates or

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tenderers under the law governing public procurement for which an official record is kept, obtain only affirmative or negative information on whether a tenderer meets such conditions. Personal data included in the uniform information system shall be protected in accordance with the law governing personal data protection. Classified information and trade secrets shall be protected in accordance with the law governing classified information and in accordance with the law governing companies. During the period of their storage in the uniform information system, personal data, classified information and trade secrets shall be accessible only to the contracting authority that has obtained them. Such personal data, classified information and trade secrets may only be accessed by persons who are authorised by the contracting authority and conduct or decide on public procurement procedures. The dates of any transmission of information shall be indicated in the system. The information collected shall be stored until the decision on the award of the contract has become final and shall be deleted thereafter.

(12) The minister responsible for public procurement shall define the method of setting up, operating and maintaining the uniform information system referred to in paragraphs 9, 10 and 11 of this Article, the manner and dynamics of obtaining information from official records, and the set of information thus obtained, the method of safeguarding personal data, the method of granting authorisation to access and transmit information, the method of submission of and the set of other means of proof, labels and certificates by the tenderer, and, where appropriate, the method of verifying the existence and content of such means of proof, labels and certificates. With regard to the proposed regulation, the ministry responsible for public procurement shall obtain the consent of the national supervisory authority responsible for the protection of personal data.

Article 78

(Quality assurance standards and environmental management standards)

(1) Where they require the production of certificates drawn up by independent bodies attesting that an economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator, provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(2) Where contracting authorities require the production of certificates drawn up by independent bodies attesting that an economic operator complies with certain environmental management systems or standards, they shall refer to the European Union's Eco-Management and Audit Scheme (EMAS) or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No. 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1), as amended by Council Regulation (EU) No. 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, the

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environment, customs union, external relations, and foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia (OJ L 158, 10.6.2013, p. 1), or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

(3) Where an economic operator demonstrably had no access to such certificates or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

Article 79 (European Single Procurement Document – ESPD)

(1) At the time of submission of requests to participate or of tenders, contracting authorities shall, in replacement of certificates issued by public authorities or third parties, accept the European Single Procurement Document (ESPD), consisting of an updated self-declaration as preliminary evidence confirming that the relevant economic operator fulfils the following conditions:

a) it is not in one of the situations referred to in Article 75 of this Act in which economic operators shall or may be excluded from participation in a procurement procedure;

b) it meets the relevant selection criteria that have been set out pursuant to Article 76 of this Act;

c) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 82 of this Act.

(2) Where the economic operator relies on the capacities of other entities pursuant to Article 81 of this Act, the ESPD shall also contain the information referred to in the preceding paragraph in respect of such entities.

(3) The ESPD shall consist of a formal statement by the economic operator that the relevant grounds for exclusion do not apply and that the relevant selection criteria are fulfilled and shall provide the relevant information as required by the contracting authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide such supporting documents.

(4) Economic operators may reuse an ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct.

(5) The ESPD shall be on a standard form established by the European Commission pursuant to paragraph 2 of Article 59 of Directive 2014/24/EU and shall be provided exclusively in electronic form.

(6) A contracting authority may ask tenderers and candidates at any time during the procedure to submit all or part of the supporting documents in relation to the indications provided in the ESPD where this is necessary to ensure the proper conduct of the procedure.

(7) Before awarding the contract, the contracting authority, except where it awards contracts based on a framework agreement concluded in accordance with paragraph 6 or

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point a) of paragraph 7 of Article 48 of this Act, shall require the tenderer to which it has decided to award the contract to submit up-to-date supporting documents in accordance with Article 77 of this Act and, where appropriate, Article 78 of this Act. The contracting authority may invite economic operators to supplement or clarify the certificates submitted pursuant to Articles 77 and 78 of this Act.

(8) Notwithstanding paragraphs 6 and 7 of this Article, economic operators shall not be required to submit supporting documents or other documentary evidence where and insofar as the contracting authority has the possibility of obtaining the certificates or other relevant information directly by accessing a national database in any Member State that is available free of charge, such as a national procurement register, an electronic register of companies, an electronic document storage system or a prequalification system. Economic operators shall not be required to submit supporting documents where the contracting authority, having awarded the contract or concluded the framework agreement, already possesses these documents and these documents are still valid and prove indications provided in the ESPD.

(9) Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to the preceding paragraph, the ESPD shall also contain the information required for this purpose, in particular the internet address of the database, any identification data and, where applicable, the consent that the contracting authority may obtain the supporting document concerned.

(10) Pursuant to this Article, an authority of the Republic of Slovenia, the contracting authority or other competent entity shall ensure that the national database referred to in paragraph 8 of this Article which may be accessed by contracting authorities under this Act may also be accessed, under the same conditions, by contracting authorities from other Member States.

Article 80 (E-Certis online repository of certificates)

(1) With a view to facilitating cross-border tendering, the European Commission has set up the e-Certis online repository of certificates to be used free of charge by contracting authorities and economic operators; the ministry responsible for public procurement shall ensure that the information concerning certificates and other forms of documentary evidence stored in e-Certis is kept up-to-date.

(2) In procurement procedures, contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered thereby.

Article 81 (Reliance on the capacities of other entities)

(1) With regard to criteria relating to economic and financial standing and to criteria relating to technical and professional ability, an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or criteria relating to relevant professional experience, economic operators may only rely on the capacities of other entities where the latter are to perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that the

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necessary resources will be available to it, for example by delivering a commitment by those entities to that effect.

(2) The contracting authority, in accordance with Articles 77, 79 and 80 of this Act, shall verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion. The contracting authority shall require that the economic operator replaces an entity which does not meet the selection criteria or in respect of which there are compulsory grounds for exclusion. The contracting authority may also require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion.

(3) Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract. Under the same conditions, a group of economic operators may rely on the capacities of participants in the group or of other entities.

(4) In the case of works contracts, service contracts, and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, by a participant in that group.

2.4.3. Reduction of the number of qualified candidates, tenders and solutions

Article 82

(Reduction of the number of qualified candidates to be invited to participate)

(1) In restricted procedures, competitive procedures with negotiation, negotiated procedures with publication, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided that the minimum number of qualified candidates has been determined in accordance with this Article.

(2) The contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply in order to reduce the number of qualified candidates and the minimum and, where appropriate, the maximum number of candidates they intend to invite to participate.

(3) In a restricted procedure, the minimum number of candidates shall be five, and in a competitive procedure with negotiation, a competitive dialogue procedure or an innovation partnership, the minimum number of candidates shall be three. In any event, the number of candidates invited shall be sufficient to ensure genuine competition.

(4) The contracting authority shall invite a number of candidates at least equal to the minimum number referred to in the preceding paragraph. However, where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in paragraph 12 of Article 76 of this Act is below the minimum number, the contracting authority may continue the procedure by inviting all the candidates with the required capabilities. In the context of the same procedure, the contracting authority shall not include economic operators that did not request to participate or candidates that do not have the required capabilities.

Article 83

(Reduction of the number of tenders and solutions)

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Where contracting authorities exercise the option of reducing the number of tenders as referred to in paragraph 14 of Article 44 of this Act or of solutions as referred to in paragraph 10 of Article 42 of this Act, they shall do so by applying the award criteria stated in the procurement documents. The reduced number of tenders or solutions shall be such as to make for genuine competition in the final stage of the negotiations or the dialogue insofar as there are enough tenders, solutions or qualified candidates.

2.4.4 Selection of the most advantageous tender

Article 84 (Contract award criteria)

(1) Contracting authorities shall base the award of public contracts on the most economically advantageous tender.

(2) The most economically advantageous tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach such as life cycle costing, as provided for in this Act, and may include the best price-to-quality ratio, which shall be assessed on the basis of criteria relating to qualitative, environmental or social aspects linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, and trading and its conditions;

b) the organisation, qualifications and experience of staff who are to perform the contract where the quality of the staff assigned can have a significant impact on the level of performance of the contract;

c) after-sales service, technical assistance and delivery conditions such as delivery date or period of completion, delivery process or performance process, and duration of delivery or of works.

(3) The cost element may also take the form of a fixed price or cost on the basis of which economic operators compete on quality criteria only.

(4) In the award of contracts for the development of computer software, for architectural and engineering services, and for translation and advisory services, contracting authorities may not use price only as the sole award criterion.

(5) Contract award criteria shall be non-discriminatory, proportionate and linked to the subject-matter of the contract. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in the specific process of production, provision or trading of those works, supplies or services or a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In cases of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers in respect of the award criteria.

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(7) In the procurement documents, the contracting authority shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where such a tender is identified on the basis of price alone. These weightings may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in descending order of importance.

(8) Tender selection criteria for procurement of foodstuffs shall give preference to foodstuffs covered by quality schemes (e.g. seasonal integrated food production or seasonal organic food production), foodstuffs produced in conformity with national food quality regulations, and foodstuffs that are sustainably produced and processed and are of high quality in terms of freshness or where their transport causes less environmental impact.

Article 85 (Life cycle costing)

(1) Life cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

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

- costs relating to acquisition;
- costs of use, such as consumption of energy and other resources;
- maintenance costs;
- end-of-life costs, such as collection and recycling costs;

b) costs imputed to environmental externalities linked to the product, service or works during their life cycle, provided their monetary value can be determined and verified. Such costs may include the cost of emissions of greenhouse gases and other pollutants and other climate change mitigation costs.

(2) Where the contracting authority assesses the costs using a life cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life cycle costs on the basis of such data.

(3) The method used for the assessment of costs imputed to environmental externalities shall fulfil the following conditions:

a) it is based on objectively verifiable and non-discriminatory criteria and must not unduly favour or disadvantage certain economic operators, in particular where it has not been established for repeated or continuous application;

b) it is accessible to all interested parties; and

c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the European Union is bound.

(4) Whenever a common method for the calculation of life cycle costs has been made mandatory by a legislative act of the European Union listed in the List of Union Legal Acts, which is Annex XIII to Directive 2014/24/EU and Annex XV to Directive 2014/25/EU, or by a regulation of the Republic of Slovenia, the contracting authority shall apply that common method to the assessment of life cycle costs.

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Article 86 (Abnormally low tenders)

(1) Where, for a given contract and in relation to the contract requirements, tenders appear to be abnormally low compared to market prices or there is doubt as to whether the performance of the contract is possible, the contracting authority shall identify whether the tenders are indeed abnormally low and shall require tenderers to explain the price or costs proposed therein. The contracting authority shall also verify whether a tender is abnormally low if the value of the tender is more than 50% lower than the average value of timely tenders received and more than 20% lower than the next-ranked tender, but only provided that at least four timely tenders have been received. Where, in a procurement procedure, the contracting authority verifies the admissibility of all tenders, it shall, in accordance with the preceding sentence, also verify whether a tender is abnormally low compared to the admissible tenders.

(2) Before rejecting an abnormally low tender, the contracting authority shall require the tenderer in writing to provide details of and justification for the elements of the tender which it considers relevant to the execution of the contract or which have an impact on the ranking of the tenders received. These details may relate in particular to:

a) the economics of the manufacturing process, of the services provided or of the construction method;

b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;

c) the originality of the work, supplies or services offered by the tenderer;

č) compliance with obligations referred to in paragraph 2 of Article 3 of this Act;

d) compliance with subcontracting requirements;

e) the possibility of the tenderer obtaining state aid.

(3) The contracting authority shall assess the explanation provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in the preceding paragraph.

(4) The contracting authority shall reject a tender where it has established that it is abnormally low because it does not comply with applicable obligations referred to in paragraph 2 of Article 3 of this Act.

(5) Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, the tender may be rejected on that basis alone only after consultation with the tenderer and where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU. Where the contracting authority rejects a tender in such circumstances, it shall inform the ministry responsible for public procurement and the European Commission thereof.

Article 87 (Tenders comprising products originating in third countries)

(1) The provisions of this Article shall apply to public contracts in the infrastructure field in respect of which tenders are submitted covering products originating in third countries with

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which the European Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings of the European Union to the markets of those third countries and shall be without prejudice to the obligations of the EU or the Republic of Slovenia with respect to third countries.

(2) The contracting authority may reject any tender submitted for the award of a supply contract where the proportion of the products originating in third countries, as determined in accordance with Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1) exceeds 50% of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

(3) Where several tenders are equivalent in terms of the contract award criteria, the contracting authority shall give preference to tenders which may not be rejected pursuant to the preceding paragraph. The prices of those tenders shall be considered equivalent for the purposes of this Article if the price difference does not exceed 3%.

(4) Notwithstanding the preceding paragraph, the contracting authority shall not prefer a tender to another tender where its acceptance would oblige the contracting authority to acquire equipment having technical characteristics different from those of existing equipment, thereby resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

2.4.5 Rules for the award of contracts

Article 88 (Submission and opening of tenders)

(1) The contracting authority shall specify the place, date and hour for the submission of requests to participate and tenders and shall indicate this information in the notice which is used as a means of calling for competition, in the invitation to confirm interest, in the invitation to negotiate or to participate in a dialogue, or in the procurement documents. Where tenders are not submitted within the time limit set for their receipt, such tenders shall be considered to have been submitted late. Such tenders shall be returned to tenderers unopened and marked as late after the completion of the opening of tenders.

(2) Upon receiving a tender, the contracting authority shall mark the date and hour of the receipt thereof. It shall send a confirmation of receipt to the tenderer concerned on request.

(3) Tenderers may withdraw their tenders. When a tender is withdrawn after the expiry of the time limit set for the submission of tenders, the contracting authority shall invoke the tender guarantee provided by the tenderer if such a guarantee was required to be submitted and was indeed submitted during the contract award procedure.

(4) The opening of tenders shall be public, except where contracts are awarded by negotiated procedure without prior publication or competitive procedure with negotiation, in which contracting authorities do not publish a contract notice, in accordance with point b) of paragraph 1 of Article 44 of this Act, and where the contracting authority negotiates with a single tenderer.

(5) The opening of timely tenders shall be performed in the place and at the time specified in the contract notice or, where a prior informative notice or a periodic indicative notice is used as a means of calling for competition, in this notice, or in the procurement documents.

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(6) Minutes of the tender-opening session shall be taken and shall include at least the following:

- the name of the tenderer or, in the case of an anonymous procedure, the code of the tenderer;
- variants, if admitted, or tenders including options;
- tender price.

(7) If the minutes of the opening of tenders are not served on the tenderers' authorised representatives at the tender-opening session, the contracting authority shall send them to all the tenderers concerned no later than within five working days.

Article 89

(Examination and evaluation of tenders and the method of contract award)

(1) The contracting authority shall award contracts on the basis of criteria laid down in accordance with the provisions of Articles 84, 85 and 86 of this Act after it has verified that the following conditions are fulfilled:

a) the tender complies with the requirements and conditions set out in the contract notice and in the procurement documents, taking into account, where applicable, variants referred to in Article 72 of this Act; and

b) the tender comes from a tenderer in respect of which no grounds for exclusion referred to in Article 75 of this Act apply and which meets the selection criteria and, if such have been defined, the rules and criteria referred to in Articles 82 and 83 of this Act.

(2) Before awarding the contract, contracting authorities shall verify the existence and content of data or other information indicated in the tender of the tenderer to which they have decided to award the contract.

(3) Contracting authorities may decide not to award a contract to the tenderer submitting the most economically advantageous tender, regardless of whether such exclusion was envisaged in the procurement documents in accordance with paragraph 6 of Article 75 of this Act, where they have established at any time prior to the issue of the contract award decision that the tenderer concerned is in breach of environmental, social and labour law provisions, provided that three years have not elapsed since the date on which the breach was established.

(4) In open procedures or low-value contract procedures, contracting authorities may decide to rank the tenders according to the criteria and verify whether they meet their requirements regarding the subject-matter of the contract before verifying the absence of grounds for exclusion in respect of the most successful tenderer and the fulfilment of the selection criteria by this tenderer. Where the contracting authority assesses that the subject-matter of a tender does not comply with its requirements, it is not obliged to verify whether grounds for exclusion apply in respect of the tenderer which has submitted such a tender or whether the tenderer fulfils the selection criteria. Where contracting authorities make use of this possibility, they shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria by tenderers whose tenders correspond to the contracting authority's requirements is carried out in an impartial and transparent manner so that no contract is awarded to a tenderer that should have been excluded or that does not meet the selection criteria set out by the contracting authority.

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(5) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous, or where specific documents are missing, contracting authorities may request the economic operators concerned to submit the missing documents or to supplement, correct or clarify the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency. The contracting authority shall require a tenderer to supplement, correct, amend or clarify its tender only where it cannot establish certain facts by itself. Submitting a missing document or supplementing, correcting or clarifying the relevant information or documentation may relate exclusively to elements of the tender the existence of which may be objectively verified before the expiry of the time limit fixed for the submission of requests to participate or tenders. The contracting authority shall exclude an economic operator that fails to submit the missing documents or fails to supplement, correct or clarify the relevant information or documentation.

(6) Except where correcting or supplementing a manifest error, provided that such correction or supplementation does not result in the submission of a new tender, the tenderer may not supplement or correct the following:

- the price per unit, net of VAT, the value per item, net of VAT, the aggregate value of the tender, net of VAT, except where the aggregate value is changed in accordance with paragraph 7 of this Act, or the tender in terms of criteria;

- the part of the tender relating to technical specifications of the subject-matter of the contract;

- those elements of the tender that affect or might affect the classification of the tender in relation to other tenders received by the contracting authority during the procurement procedure.

(7) Notwithstanding the preceding paragraph, only the contracting authority, and subject to the tenderer's written consent, may correct calculation errors identified during the examination and evaluation of tenders. However, the quantity and price per unit, net of VAT, shall remain unchanged. Where the contracting authority, during the examination and evaluation of tenders, finds that a calculation error has occurred due to an incorrect mathematical operation that was set in advance by the contracting authority, the contracting authority, subject to the tenderer's written consent, may correct the calculation error by calculating the value of the tender using the correct mathematical operation and taking into account the prices per unit, net of VAT, and quantities proposed by the tenderer. Notwithstanding the preceding paragraph, the contracting authority, subject to the tenderer's written consent, may correct an erroneous VAT rate.

(8) Notwithstanding paragraph 1 of this Article, for the purpose of selecting participants in procurement procedures in the infrastructure field, the following rules shall apply:

- a) contracting authorities having provided rules and criteria for the exclusion of tenderers or candidates shall exclude economic operators in respect of which grounds for exclusion apply and which do not fulfil the selection criteria;

- b) contracting authorities shall select tenderers and candidates in accordance with objective rules and criteria; and

- c) in restricted procedures, in negotiated procedures with publication, in competitive dialogues and in innovation partnerships, contracting authorities shall, where appropriate, reduce the number of candidates selected pursuant to points a) and b) of this paragraph.

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(9) When a call for competition is made by means of a notice on the existence of a qualification system, and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, contracting authorities shall:

a) qualify economic operators in accordance with Article 75 of this Act;

b) apply to such qualified economic operators those provisions of paragraph 8 of this Article that relate to restricted procedures or negotiated procedures with publication, to competitive dialogues, or to innovation partnerships.

(10) When selecting participants in the infrastructure field for a restricted procedure or a negotiated procedure with publication, a competitive dialogue, or an innovation partnership, in reaching their decision as to qualification or in updating the criteria and rules, contracting authorities shall not:

a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;

b) require tests or evidence which would duplicate objective evidence already available.

(11) Whenever the contracting authority has reason to suspect that, in the procurement procedure, an economic operator has submitted false statements or a forged or altered document as genuine, the contracting authority shall file a motion to the National Review Commission for Reviewing Public Procurement Procedures (hereinafter: the National Review Commission) to initiate a minor offence procedure referred to in point 5 of paragraph 1 or point 1 of paragraph 2 of Article 112 of this Act.

Article 90

(Reaching a decision on the award of a contract; informing candidates and tenderers)

(1) Contracting authorities may suspend the contract award procedure at any time prior to the expiry of the time limit fixed for the submission of tenders. When a contracting authority conducts a procurement procedure with the publication of a contract notice, it shall publish the above decision on the public procurement portal and, if the value of the contract or the prior publication so requires, also in the Official Journal of the European Union. The tenders already submitted shall be returned unopened to the respective tenderers.

(2) Contracting authorities shall, within five days of the completion of verification and evaluation pursuant to the preceding Article, inform each candidate or tenderer of decisions reached concerning the conclusion of a framework agreement, the awarding of a contract, or admittance to a dynamic purchasing system or a qualification system.

(3) A decision referred to in the preceding paragraph shall be reached by contracting authorities no later than 90 days from the expiry of the time limit fixed for the submission of tenders and shall contain the following:

– the reasons for the rejection of the tender of any unsuccessful tenderer, including, for the cases referred to paragraphs 7, 8 and 9 of Article 68 of this Act, the reasons for its decision on non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;

– the characteristics and advantages of the tender selected and the name of the successful tenderer or parties to the framework agreement;

– the reasons for the rejection of the request to participate of any unsuccessful candidate;

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– in the case of negotiations or dialogue, a short description of the conduct and progress of negotiations and dialogue with tenderers.

(4) Contracting authorities may decide to withhold certain information on the contract award referred to in paragraphs 2 and 3 of this Article from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators. However, the contracting authority may not refuse the request of the National Review Commission for disclosure of all information related to the public procurement procedure.

(5) After the expiry of the time limit fixed for the opening of tenders, the contracting authority may reject all tenders at any stage of the procedure. Where the contracting authority has rejected all tenders, it shall inform tenderers or candidates of the reasons for such a decision and of whether it intends to initiate a new procedure. When a contracting authority conducts a procurement procedure with the publication of a contract notice, it shall publish the above decision on the public procurement portal and, if the value of the contract or the prior publication so requires, also in the Official Journal of the European Union. Where the contracting authority rejects all tenders, it may only conduct a new procurement procedure for the same subject-matter of the contract where there has been a significant change in the circumstances due to which all tenders were rejected.

(6) Until the contract award decision becomes final, the contracting authority, having determined the grounds for so doing, may change its decision on its own initiative and replace it with a new decision to address the identified illegality. The contracting authority shall make a new decision in compliance with the provisions of this Article. A contracting authority may change its contract award decision upon receipt of a request for legal protection only if it has decided on a review request beforehand. In this case, the new contract award decision shall be consistent with the decision on the review request. When a contracting authority makes a new contract award decision in accordance with this paragraph, the time limit for exercising the right to legal protection shall run from the date of the service of the new decision.

(7) Contracting authorities which establish and operate a system of qualification in the infrastructure field shall inform applicants of their decision as to qualification within a period of six months. If the decision will take longer than four months from the presentation of an application, the contracting authority shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused. Applicants whose application is refused shall be informed of the refusal decision and the reasons for that decision as soon as possible and no later than 15 days of the date of the refusal decision. Contracting authorities which establish and operate a system of qualification may cancel the qualification of an economic operator only for reasons based on the criteria for qualification. Any intention to cancel the qualification shall be notified in writing to the economic operator at least 15 days before the date on which the qualification is due to end, together with the reason or reasons justifying the proposed action.

(8) After awarding the contract, the contracting authority shall conclude a contract or a framework agreement with the selected tenderer no later than 48 days from the decision becoming final, unless otherwise provided by this or another Act. Once the contract award decision has become final, the contracting authority may withdraw from the tender process before signing the contract on the grounds that it no longer needs or has no funds for the subject-matter of procurement or that it has reasonable cause to suspect that the contents of

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the contract were or could be a result of a criminal offence, or that other extraordinary and unforeseeable circumstances beyond its control have arisen that have rendered the performance of the contract impossible. In the event that the contracting authority withdraws from the tender process, it shall not conclude a contract or a framework agreement with the selected tenderer and shall notify the tenderers or candidates in writing of its decision and the reasons for withdrawing from the tender process.

(9) A contract award decision shall become final on the date when no legal protection can be requested against it.

(10) The contracting authority shall notify tenderers and candidates of all decisions made in accordance with this Article by publishing a signed decision referred to in this Article on the public procurement portal. The contracting authority shall provide reasons for its decision in accordance with the provisions of this Article. The decision shall be deemed to be served on the date of its publication on the public procurement portal. Where the publication of the decision on the public procurement portal can make no reference to a call for competition, the contracting authority shall serve the decision in accordance with the law governing general administrative procedure and, on the date of sending the decision to a tenderer or candidate, shall publish a voluntary ex ante transparency notice on the public procurement portal and, if the value of the contract so requires, also in the Official Journal of the European Union.

(11) In decisions referred to in this Article, contracting authorities shall notify tenderers and candidates of the possibility of legal protection and specify the following:

– where and within what time limit a request for legal protection can be made during the contract award procedure; and

– the level of the fee applicable to legal protection during the contract award procedure, the number of the transaction account to which this fee is to be paid and the reference number to be indicated in this respect, and an indication that the review request is to be accompanied with the proof of payment of the fee.

(12) This Article shall also apply, *mutatis mutandis*, to individual contracts referred to in Articles 48 or 49 of this Act, with the exception of the publication of notices referred to in this Article.

Article 91 **(Preventing conflicts of interest)**

(1) Contracting authorities shall effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) Before awarding the contract, the person conducting the procurement procedure shall notify in writing all persons involved in the preparation of the procurement documents or parts thereof or in the decision-making at any stage of the procurement procedure of which tenderer is to be awarded the contract.

(3) When the person who is conducting the procurement procedure and is involved in the preparation of the procurement documents or parts thereof or in the decision-making at any stage of the procurement procedure is directly or indirectly associated with the selected tenderer in such a way that this person's relationship with the successful tenderer or its private, financial or economic interests could affect the impartial and objective performance of his or her contract-related tasks or cast doubt on his or her objectivity and impartiality, he

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or she shall, as soon as circumstances allow but no later than before the contract is awarded, notify in writing his or her superior or the contracting authority for which he or she performs activities or in any other way participates in the procurement procedure thereof and act in accordance with their instructions. In this case, the head of the contracting authority shall ensure that the tasks are carried out in a lawful and impartial manner.

(4) A direct or indirect relationship with a tenderer referred to in the preceding paragraph shall be deemed to exist if the person referred to in the preceding paragraph is the spouse or extra-marital partner of the tenderer, is its partner with more than a 5% ownership share, is its legal representative or procurator, lives in a registered same-sex civil partnership or shares a home with any of those persons, is related lineally or related collaterally up to three times removed to any of those persons, is a relative by marriage up to twice removed of any of those persons, is the adopter, adoptee, foster carer, foster child of any of those persons, or is in a private business or employment relationship with any of those persons.

(5) When a relationship referred to in paragraph 3 of this Article exists between the selected tenderer and the contracting authority's legal representative, the legal representative shall notify the contracting authority's supervisory body thereof in writing as soon as circumstances allow, but no later than before the award of the contract. In this case, the supervisory body shall ensure that the tasks are carried out in a lawful and impartial manner.

(6) The selected tenderer shall, within eight days of receipt of the contracting authority's invitation, submit information on:

- its founders, partners, shareholders, limited partners or other owners and on their equity interests;
- economic operators which are considered to be its associated companies in accordance with the provisions of the law governing companies.

Article 92 (Standstill period)

(1) Contracting authorities shall not conclude contracts until the contract award decision becomes final and no legal protection can be requested against it, unless:

- they are using a negotiated procedure without prior publication pursuant to point č) of paragraph 1 of Article 46 of this Act; or
- only one tender was received in the procurement procedure.

(2) Where, in the aforementioned procedure, an innovation partnership, a competitive dialogue, a competitive procedure with negotiation, a negotiated procedure with publication or a negotiated procedure without prior publication, the contracting authority receives more than one request to participate, it may apply the exception referred to in the second indent of the preceding paragraph, provided that it had informed the candidates of the reasons for the rejection of the requests to participate before making a contract award decision and that the time limit for exercising the right to legal protection against this decision has expired.

(3) Where contracting authorities do not comply with the standstill period in accordance with paragraph 1 of this Article, they shall state this and the reasons for applying the exception in writing.

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(4) The standstill period does not need to be complied with when contracting authorities award specific contracts based on a framework agreement or under a dynamic purchasing system.

Chapter Three CONTRACT PERFORMANCE

Article 93

(Special conditions for performance of contracts and insurance against risks in procurement procedures)

(1) Contracting authorities may lay down special conditions relating to the performance of a contract and include them in the contract, provided that they are linked to the subject-matter of the contract in accordance with paragraph 5 of Article 84 of this Act and were indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

(2) Contracting authorities may lay down the modalities of a tender guarantee, performance guarantee or warranty guarantee. Where the contracting authority lays down the modalities of such guarantees, they shall be proportionate to the contract in question.

(3) The Government shall prescribe whether particular types of financial insurance are mandatory or admissible with regard to particular types of subject-matter of procurement, financial instruments that are appropriate for such types of financial insurance and their amount and duration, and other requirements relating to risk insurance in procurement procedures to be complied with by contracting authorities.

Article 94

(Subcontracting)

(1) A tenderer may subcontract part of the contract. For the purposes of this Act, a subcontractor shall be an economic operator – a legal or natural person – which supplies goods or services or performs works that are directly linked to the subject-matter of the contract for the tenderer with which the contracting authority has concluded a contract or a framework agreement under this Act.

(2) Where a tenderer intends to perform a public works or service contract by using subcontractors, it shall indicate in its tender the following:

- all the subcontractors it intends to involve and the parts of the contract which it intends to subcontract;
- contact details and legal representatives of the proposed subcontractors;
- completed ESPDs in respect of these subcontractors in accordance with Article 79 of this Act; and
- a subcontractor's request for direct payment where the subcontractor so requires.

(3) In the course of the performance of the works or service contract, the main contractor shall notify the contracting authority of any changes to information referred to in the preceding paragraph and shall, no later than five days of such a change, provide information with respect to any new subcontractors which it intends to subsequently involve in the works or services. Where the main contractor involves new subcontractors, the main contractor's notice shall be accompanied by the information and documents referred to in the second, third and fourth indents of the preceding paragraph.

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(4) The contracting authority shall reject any subcontractor in respect of which there are grounds for exclusion referred to in paragraphs 1, 2 or 4 of Article 75 of this Act, except in the case referred to in paragraph 3 of Article 75 of this Act, and may also reject any subcontractor in respect of which there are grounds for exclusion referred to in paragraph 6 of Article 75 of this Act. The contracting authority may also reject the proposal for replacing a subcontractor or involving a new subcontractor where this might affect the smooth execution or completion of works and where the new subcontractor does not meet the criteria set out by the contracting authority in the procurement documents. The contracting authority shall notify the main contractor of any rejection of a new subcontractor no later than 10 days of receipt of the proposal.

(5) Where, and only where, direct payment is requested by a subcontractor in accordance with and in the manner set out in paragraphs 2 and 3 of this Article, direct payment to such a subcontractor shall be deemed to be mandatory in accordance with this Act and this obligation shall be binding on the contracting authority and the main contractor. Where the tenderer intends to perform a contract by using a subcontractor that requests direct payment in accordance with this Article, the following shall be required:

- the main contractor shall sign a contract authorising the contracting authority to make direct payments to the subcontractor based on an invoice or interim certificate approved by the main contractor;

- the subcontractor shall submit a consent on the basis of which the tenderer's obligations to the subcontractor shall be settled by the contracting authority instead;

- the main contractor's invoice or statement shall be accompanied by the subcontractor's invoices or interim certificates previously approved by the main contractor.

(6) Where direct payment to a subcontractor is not mandatory in accordance with this Article, the contracting authority shall require the main contractor to submit, no later than 60 days of the payment of the final invoice or interim certificate, its written statement and a written statement by the subcontractor that the subcontractor has received payment for the works performed or the services or products supplied that are directly linked to the subject-matter of the contract.

(7) Where the main contractor fails to act in accordance with this Article, the contracting authority shall file a motion to the National Review Commission to initiate a minor offence procedure referred to in point 2 of paragraph 1 of Article 112 of this Act.

(8) The contracting authority may specify in the procurement documents that obligations referred to in this Article are also extended to the following, subject to the application, *mutatis mutandis*, of the provisions of this Article:

- public supply contracts;
- subcontractors of the main contractor's subcontractors or further down a subcontracting chain.

Article 95

(Modification of contracts during their term)

(1) In accordance with this Act, contracts and framework agreements may be modified without a new procurement procedure in any of the following cases:

1. where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which

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may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options and the conditions under which they may be applied; however, they shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

2. for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

- would cause significant inconvenience or substantial duplication of costs for the contracting authority;

3. where the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen and the modification does not alter the overall nature of the contract;

4. where a new contractor replaces the one to which the contracting authority initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in accordance with point 1 of this paragraph;

- universal or partial succession to the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established and complies with quality assurance standards and environmental management standards and to which the initial grounds for exclusion do not apply, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the provisions of this Act;

5. where the modification, irrespective of its value, is not substantial in accordance with paragraph 4 of this Article.

(2) In the cases referred to in points 2 and 3 of the preceding paragraph, any increase in price shall not be higher than 30% of the value of the original contract or framework agreement. Where, in the cases referred to in points 2 and 3 of the preceding paragraph, several successive modifications are made, this limitation shall apply to the cumulative value of the successive modifications. For the purpose of the calculation of the maximum permitted value of modifications in the cases referred to in points 2 or 3 of the preceding paragraph, the updated contract price shall be the reference value where the contract includes a clause on the indexation of financial obligations.

(3) A contracting authority having modified a contract or a framework agreement in the cases referred to in points 2 or 3 of paragraph 1 of this Article shall, no later than 30 days of such modification, publish a notice to that effect on the public procurement portal and, if the value of the contract so requires, also in the Official Journal of the European Union.

(4) A modification of a contract or a framework agreement during its term shall be considered to be substantial where it renders the contract or the framework agreement materially different in character from the one initially awarded or concluded. Notwithstanding the preceding paragraphs of this Article, a modification shall be considered to be substantial where at least one of the following conditions is met:

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a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

c) the modification extends the scope of the contract or framework agreement considerably;

č) where a new contractor replaces the one to which the contracting authority had initially awarded the contract in a case other than that provided for under point 4 of paragraph 1 of this Article.

(5) A new procurement procedure in accordance with this Act shall be carried out by the contracting authority for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for under paragraph 1 of this Article.

(6) Contracting authorities shall document the reasons and justification for modifying a contract or framework agreement in accordance with this Article regardless of any notice on the modification of a contract pursuant to paragraph 3 of this Article. In the case referred to in point 2 of paragraph 1 of this Article, documents relating to a modification of the scope shall include, at least, all the reasons for which additional works, services or supplies are required, reasons for not including additional works, services or supplies in the original contract or framework agreement, and economic and technical reasons for which the replacement of the initial contractor is not possible, and their description or justification, including the extent of inconvenience or the duplication of costs. In the case referred to in point 3 of paragraph 1 of this Article, the documents shall include a description of the modification, the reasons for the modification, and the circumstances due to which the contracting authority could not foresee such modification when awarding the original contract or concluding the framework agreement, along with an explanation as to why the modification does not alter the overall nature of the contract.

Article 96 (Termination of contracts)

Contracting authorities may, regardless of the provisions of the law governing obligations, terminate a contract during the term of the contract or of a framework agreement in the following circumstances:

a) where the contract has been subject to a substantial modification which requires a new procurement procedure;

b) where at the time of the awarding of the contract, the contractor was in one of the situations regarding which it should have been excluded from the procurement procedure by the contracting authority, but the contracting authority was not aware of this fact during the procurement procedure;

c) where the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the TEU, the TFEU and this Act, which has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of the TFEU.

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Chapter Four SOCIAL AND OTHER SPECIFIC SERVICES

Article 97

(Award of contracts for social and other specific services)

(1) Contracts for social and other specific services, with the exception of services covered by CPV code 79713000-5, shall be awarded in accordance with this Chapter where the value of such contracts is equal to or greater than a threshold set out in Article 21 of this Act. Contracting authorities may also award contracts referred to in this Chapter under other appropriate procedures referred to in Article 39 of this Act. Where contracting authorities award contracts referred to in this Chapter under other appropriate procedures, they shall comply with all the provisions of this Act applicable to the selected procedure.

(2) The contracting authority awarding a contract for social and other specific services in accordance with this Chapter shall comply with the principles of procurement, the provisions of this Act relating to the determination of the subject-matter of procurement or to technical specifications, and the rules on the publication of contract notices, and the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users, and innovation. The contracting authority may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-to-quality ratio, taking into account quality and sustainability criteria for social services.

Article 98

(Publication of notices)

(1) Contracting authorities intending to award a contract for social and other specific services shall make known their intention by any of the following means, except where a contract for such services may be awarded under a negotiated procedure without prior publication:

a) by means of a contract notice;

b) by means of a prior information notice or, in the infrastructure field, by means of a periodic indicative notice, which shall be published continuously. The prior information notice or periodic indicative notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing;

c) in the infrastructure field, by means of a notice on the existence of a qualification system, which shall be published continuously.

(2) Contracting authorities that have awarded a public contract for social and other specific services shall make known the results of the procurement procedure by means of a contract award notice. They may, however, group such notices on a quarterly basis. In this case, they shall send the grouped notices within 30 days of the end of each quarter.

(2) The notices referred to in this Article shall be on a standard form and shall be published in accordance with Article 52 of this Act.

Article 99

(Reserved contracts for certain services)

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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(1) Contracting authorities may decide to reserve the right for particular organisations to participate in public procurement procedures exclusively when procuring health, social and cultural services covered under "social and other specific services" by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8.

(2) Where a contracting authority decides to apply this option, an organisation referred to in the preceding paragraph shall fulfil the following conditions:

a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in the preceding paragraph;

b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;

c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles or require the active participation of employees, users or stakeholders; and

č) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

(3) The duration of a contract in accordance with this Article shall not be longer than three years.

(4) Contracting authorities intending to award a contract pursuant to this Article shall indicate this in a notice as referred to in Article 98 of this Act.

Chapter Five RULES GOVERNING DESIGN CONTESTS

Article 100

(Application of the Act in design contests)

(1) The provisions of this Chapter shall apply to:

a) design contests organised as part of a procedure leading to the awarding of a public service contract or, in the case of the design and execution of a work, as part of a procedure leading to the awarding of a public works contract;

b) design contests with prizes or payments to participants.

(2) In the cases referred to in point a) of the preceding paragraph, a threshold referred to in Article 21 of this Act shall refer to the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants. In the cases referred to in point b) of the preceding paragraph, a threshold referred to in Article 21 of this Act shall refer to the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be awarded under paragraph 4 of Article 46 of this Act if the contracting authority has announced its intention to award such a contract in the contest notice.

(3) Contracting authorities referred to in points a), b) and c) of paragraph 1 of Article 9 of this Act shall carry out a design contest in accordance with the provisions of this Chapter:

a) for public service contracts for the design of new public constructions as laid down by regulations governing the construction of buildings in the following cases:

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– for the design of sports and recreation constructions and other leisure constructions in accordance with the uniform classification of types of constructions covered by code 241 as laid down by the decree governing the classification of constructions and the determination of constructions of national importance where the estimated investment value exceeds EUR 500,000;

– for the design of other constructions where the estimated investment value exceeds EUR 2,500,000;

b) for public service contracts for the preparation of expert groundwork for the needs of spatial planning as laid down by the regulations governing spatial planning in the following cases:

– if the planned spatial arrangements cover an area exceeding five hectares and involve areas where the planned land use is subject to change;

– where holding a design contest is mandatory pursuant to a spatial planning document.

Article 101 (Notices)

(1) Contracting authorities that intend to carry out a design contest shall make known their intention by means of a contest notice. Where they intend to award a subsequent service contract pursuant to paragraph 4 of Article 46 of this Act, this shall be indicated in the contest notice.

(2) Contracting authorities that have held a design contest shall publish a notice of the results thereof in accordance with this Act and shall be able to prove its being submitted for publication. Contracting authorities shall not be obliged to release information on the outcome of the contest where such release would impede law enforcement, would be contrary to the public interest, would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers. Contracting authorities shall publish the results of a design contest within 30 days of the closure thereof.

(2) The notices referred to in this Article shall be on a standard form and shall be published in accordance with Article 52 of this Act.

Article 102 (Rules on the organisation of design contests and the selection of participants)

(1) When organising design contests, contracting authorities shall apply procedures which comply with the general provisions of this Act and this Chapter.

(2) The admission of participants to design contests shall not be limited:

a) by reference to the territory or part of the territory of a Member State;

b) on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.

(3) Where contracting authorities restrict design contests to a limited number of participants, they shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Article 103

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(Composition of the jury)

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in the contest, at least half of the members of the jury shall also have that qualification or an equivalent qualification.

Article 104 (Decisions of the jury)

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

(2) The jury shall examine the submitted plans and projects anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury shall record its ranking of projects in a report, signed by its members, made according to the content of each project, along with its comments and any points that may need clarification.

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

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in a minutes in order to clarify any aspect of the projects.

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

Chapter Six REPORTS AND STATISTICS

Article 105 (Individual reports on procedures for the awarding of contracts)

(1) For every contract, except for contracts awarded under a low-value contract procedure, and for every framework agreement, except for contracts awarded on the basis of framework agreements, and every time a dynamic purchasing system and a qualification system is established, contracting authorities shall draw up a written report which shall include at least the following:

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

b) where applicable, the results of the qualitative selection and reduction of numbers pursuant to Articles 82 and 83 of this Act, i.e. the names of the selected candidates or tenderers and the reasons for their selection and the names of the candidates or tenderers excluded and the reasons for their rejection;

c) the reasons for the exclusion of tenders found to be abnormally low;

č) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties and, where known at this point in time, the names of the main contractor's subcontractors, if any;

d) for a competitive procedure with negotiations and competitive dialogue, the circumstances which justify the use of this procedure;

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e) for a negotiated procedure without prior publication, the circumstances which justify the use of this procedure;

f) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system or qualification system;

g) where applicable, the reasons why other means of communication than electronic means have been used for the submission of tenders;

h) where applicable, conflicts of interests detected and subsequent measures taken.

(2) To the extent that the contract award notice contains the information required in the preceding paragraph, contracting authorities may refer to that notice to fulfil the obligations referred to in the preceding paragraph.

(3) Contracting authorities shall document the progress of all procurement procedures, whether or not they are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for a period of at least five years from the date of the issue of the contract decision or for a period of at least two years from the expiry of the contract.

(4) The report, or its main items, shall be communicated to the European Commission or the competent authorities, bodies or institutions on request.

Article 106

(Communication of data on contracts awarded in the previous year)

(1) The data on the contracts awarded with a value equal to or greater than the values referred to in paragraph 1 of Article 21 of this Act and the data on the contracts awarded in accordance with a framework agreement shall be extracted directly from the notices referred to in point 5 of paragraph 1 of Article 52 of this Act, which are published by the contracting authority on the procurement portal in accordance with this Act.

(2) The data on the contracts awarded whose value is less than the values referred to in paragraph 1 of Article 21 of this Act shall be communicated by contracting authorities via an application established for that purpose on the public procurement portal by 28 February of the current year for the previous year.

(3) The data on the contracts awarded with a value equal to or greater than the values referred to in paragraph 2 of Article 22 of this Act shall be extracted by the European Commission directly from notices referred to in paragraph 1 of Article 52 of this Act, which are published by the contracting authority in the Official Journal of the European Union in accordance with this Act.

(4) If notices referred to in paragraph 1 of Article 52 of this Act do not contain all the necessary statistical data or if these data are incorrect, the contracting authority shall, at the request of the ministry responsible for public procurement, supplement these data and communicate them to the ministry within 10 days.

Article 107

(Statistical report)

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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(1) The data on the contracts awarded in the previous year and communicated by contracting authorities to the public procurement portal pursuant to the preceding Article shall be processed and sent to the ministry responsible for public procurement by the public enterprise Javno podjetje Uradni list Republike Slovenije, d.o.o., by 31 May of the current year.

(2) For the purpose of processing the data referred to in the preceding paragraph, Javno podjetje Uradni list Republike Slovenije, d.o.o., shall be granted free access to an extended range of data, in standardised form, from the database of the Business Register of the Agency of the Republic of Slovenia for Public Legal Records and Related Services, which the Agency also makes available to other users at its rates.

(3) The ministry responsible for public procurement shall, not later than by 30 September of the current year, prepare a statistical report on contracts awarded in the Republic of Slovenia using the data on contracts awarded in the previous year and shall submit it to the Government for approval.

(4) The ministry responsible for public procurement shall, by 18 April 2017 and every three years thereafter, send to the European Commission a statistical report on contracts that are to be published in the Official Journal of the European Union if their value is equal to or greater than the values referred to in paragraph 2 of Article 22 of this Act.

Article 108 (Content of the statistical report)

(1) A statistical report as referred to in paragraph 3 of the preceding Article shall include contracts as a share of GDP and expenditure in the national budget and, at least, data on the number and value of the contracts awarded. Where possible, the data shall be divided into the following categories:

- category, activity and size of the contracting authority;
- public procurement procedures applied by contracting authorities;
- techniques and instruments for electronic and aggregated procurement;
- subject-matter of the contract and categories of the CPV nomenclature;
- any social, ethical and environmental aspects taken into account in the award of the contract;
- head office and size of the economic operator to which the contract was awarded;
- contracts that were subcontracted;
- contracts co-financed by European Union funds.

(2) Where contracts were awarded by negotiated procedure without prior publication or competitive procedure with negotiation, the data on the number and value of the contracts awarded shall be further divided according to the circumstances which justify the use of these procedures.

(3) The minister responsible for public procurement shall issue rules on the types and methods of data gathering regarding the contracts awarded in the previous year.

Chapter Seven MINOR OFFENCE AUTHORITY

Article 109

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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(Minor offence authority)

(1) The implementation of this Act shall be supervised by the National Review Commission as a minor offence authority.

(2) Minor offence procedures shall be conducted and decided on by an authorised official of the National Review Commission who meets the conditions laid down in the law governing minor offences and regulations adopted on the basis thereof. The authorised official shall be appointed by the president of the National Review Commission in accordance with the law governing minor offences.

(3) When, in accordance with this Act, the National Review Commission is establishing conditions for the initiation of a minor offence procedure against a contracting authority, tenderer, candidate or subcontractor and their responsible persons or is gathering additional documents and evidence on a possible minor offence committed by a contracting authority, tenderer, candidate or subcontractor and their responsible persons, the contracting authority, tenderer, candidate or subcontractor and their responsible persons shall, at the latest within three working days of the receipt of a written invitation from the National Review Commission, surrender all documents and evidence requested by the National Review Commission therein.

Article 110

(Register of economic operators with negative references)

(1) The ministry responsible for public procurement shall keep a register of economic operators with negative references under this Act, the law governing public procurement in the fields of defence and security, and the law governing the prevention of undeclared work and employment and shall publish this register on its website.

(2) Such a register shall include the following economic operators:

– economic operators which, as tenderers or candidates, committed an offence referred to in points 2 or 5 of paragraph 1 of Article 112 of this Act;

– economic operators which, as subcontractors, committed an offence referred to in point 1 of paragraph 2 of Article 112 of this Act;

– economic operators which, as tenderers, committed an offence referred to in point 2 of paragraph 1 of Article 87 of the Public Procurement for Defence and Security Act (*Uradni list RS*, Nos. 90/12 and 90/14 – ZDU-11);

– economic operators which, as candidates or subcontractors, committed an offence referred to the fifth indent of paragraph 1 of Article 23 of the Prevention of Undeclared Work and Employment Act (*Uradni list RS*, No. 32/14).

(3) The register shall include:

– the full name and registration number of the economic operator;

– the date of entry in the register; and

– the date by which the tenderer shall be excluded from procurement procedures.

(4) The ministry responsible for public procurement shall include such economic operators in the register within three working days of the receipt of a notice referred to in paragraph 7 of Article 112 of this Act. No appeal shall be allowed against inclusion in the register of economic operators with negative references.

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(5) The ministry responsible for public procurement shall delete an economic operator from the register of economic operators with negative references within three working days of the date set out in the third indent of paragraph 3 of this Article.

Chapter Eight PENAL PROVISIONS

Article 111

(Penal provisions for contracting authorities)

(1) A fine of between EUR 25,000 and EUR 100,000 shall be imposed for an offence on a legal person whose accounts show a revenue exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the act governing companies where this person, in its capacity as contracting authority:

1. selects the method of determining the value of the contract for the purpose of avoiding the application of this Act on account of a lower estimated value of the contract (Article 24);

2. awards a contract without prior execution of an appropriate procedure, except where permitted by law (Articles 39 to 47);

3. fails to publish notices referred to in Article 52 of this Act despite being required to do so by this Act;

4. awards a contract or enters into a procurement contract with the tenderer to which grounds for exclusion referred to in paragraphs 1, 2 and 4 of Article 75 of this Act apply;

5. fails to observe a standstill period although required to do so by this Act (Article 92);

6. modifies the contract during its term contrary to this Act (Article 95).

(2) A fine of between EUR 10,000 and EUR 50,000 shall be imposed for an offence on a legal person whose accounts show a revenue exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the act governing companies where this person, in its capacity as contracting authority:

1. fails to observe the time limits for publication and submission of tenders or requests to participate laid down by this Act (Articles 40 to 45, 49, 57 to 60, and 74);

2. formulates contract provisions so that they significantly derogate from the provisions of the procurement documents (Article 67);

3. fails to publish the procurement documents on or via the public procurement portal (paragraph 1 of Article 67);

4. withdraws from the tender process contrary to paragraph 8 of Article 90 of this Act;

5. fails to provide the required statistics or provides false statistics on the contracts awarded (Article 106);

6. fails to surrender documents or evidence to the National Review Commission upon invitation to do so by the latter (paragraph 3 of Article 109).

(3) A fine of between EUR 12,500 and EUR 50,000 shall be imposed on a legal person whose accounts show a revenue of less than EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is not considered to be a medium-sized or large company in accordance with the act governing companies for

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committing an offence referred to in paragraph 1 of this Article in its capacity as contracting authority, and a fine of between EUR 5,000 and EUR 25,000 shall be imposed on such a person for committing an offence referred to in the preceding paragraph in its capacity as contracting authority.

(4) A fine of between EUR 7,500 and EUR 30,000 shall be imposed on a sole trader or a self-employed person for committing an offence referred to in paragraph 1 of this Article in his or her capacity as contracting authority, and a fine of between EUR 3,000 and EUR 15,000 for committing an offence referred to in paragraph 2 of this Article in his or her capacity as contracting authority.

(5) A fine of between EUR 500 and EUR 2,000 shall be imposed on the responsible person of a legal person referred to in paragraphs 1, 2 or 3 of this Article or the responsible person of a sole trader or a self-employed person referred to in the preceding paragraph or the responsible person of a state authority or of a self-governing local community for committing an offence referred to in paragraph 1 of this Article, and a fine of between EUR 100 and EUR 1,000 shall be imposed on such a person for committing an offence referred to in paragraph 2 of this Article.

(6) A fine of between EUR 500 and EUR 2,000 shall be imposed on a person who conducts the procurement procedure, participates in the preparation of the procurement documents or any parts thereof, or makes decisions at any stage of the procurement procedure or on the legal representative of the contracting authority for failing to notify their superiors, the contracting authority or its supervisory body of a relationship or private interest as laid down in Article 91 of this Act.

(7) A secondary sanction of exclusion from procurement procedures, i.e. from conducting, deciding on or otherwise participating in such procedures for three years, shall be imposed under this Act and the law governing public procurement in the fields of defence and security on the responsible person referred to in paragraph 5 of this Article for committing an act that is considered an offence under points 1, 2 or 6 of paragraph 1 of this Article.

(8) A secondary sanction of exclusion from procurement procedures referred to in the preceding paragraph shall be decided by a court in accordance with the law governing minor offences. The court shall send the notice of its decision to the contracting authority at which the person who committed the offence is employed within three working days of the decision becoming final.

Article 112

(Penal provisions for tenderers, candidates and subcontractors)

(1) A fine of between EUR 25,000 and EUR 100,000 shall be imposed for an offence on a legal person whose accounts show a revenue exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the act governing companies where this person, in its capacity as tenderer or candidate:

1. fails to provide information referred to in paragraph 6 of Article 91 of this Act to the contracting authority within the set time limit;

2. fails to submit a statement to the contracting authority in accordance with paragraph 6 of article 94 of this Act despite being invited to do so by the latter;

3. performs a contract by using a subcontractor which has been rejected by the contracting authority in accordance with the provision of Article 94 of this Act;

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4. fails to enter into a contract with the contracting authority notwithstanding the contracting authority's invitation and notwithstanding the fact that there are no objective reasons for not entering into such a contract. Objective reasons shall be considered to be reasons which are beyond the tenderer's control and cannot be foreseen, eliminated and avoided by the tenderer.

5. submits a false statement or a forged or altered document as genuine in its tender or request to participate in accordance with paragraph 6 of Article 94 of this Act;

6. fails to surrender documents or evidence to the National Review Commission upon invitation to do so by the latter (paragraph 3 of Article 109).

(2) A fine of between EUR 25,000 and EUR 100,000 shall be imposed for an offence on a legal person whose accounts show a revenue exceeding EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is considered to be a medium-sized or large company in accordance with the act governing companies where this person, in its capacity as subcontractor:

1. submits a false statement or a forged or altered document as genuine in its tender;

2. fails to surrender documents or evidence to the National Review Commission upon invitation to do so by the latter (paragraph 3 of Article 109).

(3) A fine of between EUR 12,500 and EUR 50,000 shall be imposed on a legal person whose accounts show a revenue of less than EUR 8,800,000 on the balance sheet cut-off date for the last two consecutive financial years or a legal person which is not considered to be a medium-sized or large company in accordance with the act governing companies for committing an offence referred to in paragraph 1 of this Article in its capacity as tenderer or candidate or for committing an offence referred to in the preceding paragraph in its capacity as subcontractor.

(4) A fine of between EUR 7,500 and EUR 30,000 shall be imposed on a sole trader or a self-employed person for committing an offence referred to in paragraph 1 of this Article in his or her capacity as tenderer or candidate or for committing an offence referred to in paragraph 2 of this Article in his or her capacity as subcontractor.

(5) A fine of between EUR 500 and EUR 2,000 shall be imposed on the responsible person of a legal person referred to in paragraph 1, 2 or 3 of this Article or the responsible person of the sole trader or the self-employed person referred to in the preceding paragraph for committing an offence referred to in paragraph 1 of this Article.

(6) A sanction of exclusion from procurement procedures shall be imposed on tenderers or candidates referred to in paragraphs 1, 3 or 4 of this Article or on subcontractors referred to in paragraphs 2, 3 or 4 of this Article for committing an offence referred to in points 2 or 5 of paragraph 1 of this Article or point 1 of paragraph 2 of this Article as follows:

– if the subject-matter of the contract is supplies or services, for a period of three years from the date when the decision on the offence becomes final;

– if the subject-matter of the contract is works, for a period of five years from the date when the decision on the offence becomes final.

(7) A secondary sanction of exclusion from procurement procedures referred to in the preceding paragraph shall be decided by a court in accordance with the law governing minor offences. The court shall notify thereof the ministry responsible for public procurement within three working days of the decision becoming final. The notice shall include the full name and registration number of the tenderer, candidate or subcontractor and the date by which this

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tenderer, candidate or subcontractor should be excluded from public procurement procedures.

Article 113 (Fines in a fast-track procedure)

A fine in an amount exceeding the minimum fine under this Act may be imposed in a fast-track procedure for the offences referred to in this Act.

Chapter Nine GOVERNANCE

Article 114 (Monitoring of the application of public procurement rules)

(1) The ministry responsible for public procurement shall ensure that the public procurement rules are monitored. Where the ministry responsible for public procurement identifies or receives information pointing to specific violations or systemic problems, it shall indicate those problems to the Budget Supervision Office of the Republic of Slovenia, the Court of Audit of the Republic of Slovenia, the National Review Commission, the Slovenian Competition Protection Agency or the Commission for the Prevention of Corruption.

(2) The ministry responsible for public procurement shall, by 18 April 2017 and every three years thereafter, submit to the European Commission a report on the results referred to in the preceding paragraph. The report shall include information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement, and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities. The report shall be public information.

(3) The ministry responsible for public procurement shall ensure that information and guidance on the interpretation and application of EU public procurement law is available free of charge to assist contracting authorities and economic operators in correctly applying these rules and that support is available to contracting authorities with regard to planning and carrying out procurement procedures.

(4) The ministry responsible for the economy shall notify the European Commission of any difficulties which are encountered by Slovenian undertakings in securing the award of service contracts in third countries and which are due to the non-observance of the provisions of international labour law.

Article 115 (Administrative co-operation)

(1) For the purpose of providing mutual assistance and effectively cooperate with one another, the Republic of Slovenia and other Member States shall make available to each other all information relating to the evidence and documents submitted in accordance with paragraphs 8 and 9 of Articles 68, 69 and 70 of this Act, all information relating to the grounds of exclusion referred to in Article 75 of this Act, all information relating to the suitability to pursue the professional activity and the financial and technical capacities of tenderers referred to in Article 76 of this Act, all information relating to the evidence referred to in Article 77 of this Act, information on databases referred to in Article 79 of this Act, all information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in Article 78 of this Act, and information such as that in

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laws, regulations, universally applicable collective agreements and national technical standards relating to the evidence and documents produced in relation to details listed in Article 86 of this Act.

(2) Information referred to in the preceding paragraph shall be exchanged through the Internal Market Information System established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative co-operation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ("the IMI Regulation") (OJ L 316, 14.11.2012, p. 1), as last amended by Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative co-operation through the Internal Market Information System ("the IMI Regulation") (OJ L 159, 28.5.2014, p. 11).

TRANSITIONAL AND FINAL PROVISIONS

Article 116 (Repealed regulations)

(1) On the day of the entry into force of this Act, the Public Procurement Act (*Uradni list RS*, Nos. 12/13 – official consolidated text, 19/14 and 90/14 – ZDU-11) and the following regulations issued on the basis thereof shall cease to be in force:

– The Decree on lists of contracting authorities, construction works, services and certain goods, mandatory information in notices, technical specifications, and requirements for electronic procurement devices (*Uradni list RS*, Nos. 18/07, 80/14 and 87/14 – corr.);

– The Decree on rules and procedures to establish contracting party status pursuant to the Public Procurement Act (*Uradni list RS*, Nos. 58/07 and 96/14);

– The Decision regarding the publication of thresholds for public procurement procedures (*Uradni list RS*, No. 34/08);

– The Rules on the types and method of collection of data on contracts awarded during the preceding year pursuant to the Public Procurement Act (*Uradni list RS*, Nos. 8/09, 3/13 and 3/15).

(2) On the day of the entry into force of this Act, the act regulating public procurement in the water, energy, transport and postal services sectors (*Uradni list RS*, Nos. 72/11 – official consolidated text, 43/12 – Constitutional Court Decision, 90/12, 19/14 and 90/14 – ZDU-11) and the following regulations issued on the basis thereof shall cease to be in force:

– The Rules on the types and method of collection of data on contracts awarded during the preceding year pursuant to the act regulating public procurement in the water, energy, transport and postal services sectors (*Uradni list RS*, Nos. 8/09, 3/13 and 3/15);

– The Decree on rules and procedures to establish contracting party status pursuant to the act regulating public procurement in the water, energy, transport and postal services sectors (*Uradni list RS*, Nos. 58/07 and 96/14);

– The Decree on lists of contracting authorities, Community legislation, lists of construction works and services, on mandatory information in notices, on technical specifications and on requirements for electronic procurement devices (*Uradni list RS*, Nos. 18/07, 12/13 and 83/14).

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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(3) The Decree on green public procurement (*Uradni list RS*, Nos. 102/11, 18/12, 24/12, 64/12, 2/13 and 89/14) shall continue to be in force as a regulation issued pursuant to paragraph 1 of Article 71 of this Act.

(4) The Decree on joint public procurement of the Government of the Republic of Slovenia (*Uradni list RS*, Nos. 36/13, 41/14 and 96/14) shall continue to be in force as a regulation issued pursuant to paragraph 8 of Article 32 of this Act until it is harmonised with this Act.

(5) The Rules on the single information system for public procurement (*Uradni list RS*, Nos. 57/13 and 5/15) shall continue to be in force as a regulation issued pursuant to paragraph 12 of Article 77 of this Act until it is harmonised with this Act.

(6) The Decree on financial collateral in public procurement (*Uradni list RS*, No. 48/14) shall continue to be in force as a regulation issued pursuant to paragraph 3 of Article 93 of this Act until it is harmonised with this Act.

(7) Notwithstanding paragraphs 1 and 2 of this Article, the provisions of the Decree on lists of contracting authorities, construction works, services and certain goods, on mandatory information in notices, on technical specifications and on requirements for electronic procurement devices (*Uradni list RS*, Nos. 18/07, 80/14 and 87/14 – corr.) and of the Decree on lists of contracting authorities, Community legislation, lists of construction works and services, on mandatory information in notices, on technical specifications and on requirements for electronic procurement devices (*Uradni list RS*, Nos. 18/07, 12/13 and 83/14), in the part relating to an indicative list of contracting authorities, shall apply until the entry into force of the decree referred to in paragraph 7 of Article 9 of this Act.

Article 117 (Completion of procedures)

(1) Contract award procedures for which notices were sent for publication prior to the entry into force of this Act shall be carried out in accordance with the current regulations.

(2) Negotiated procedures without prior publication shall be carried out in accordance with the current regulations if the invitation to tender has already been sent.

(3) Contracts awarded under a framework agreement concluded before the entry into force of this Act shall be awarded in accordance with the provisions of this framework agreement. Contracts in the context of a dynamic purchasing system established before the entry into force of this Act shall be awarded under this dynamic purchasing system until the expiry thereof.

(4) Contracts awarded under a qualification system established before the entry into force of this Act shall be awarded under this system until its expiry.

(5) Procedures for establishing the status of a contracting authority shall be carried out pursuant to the current regulations if the request was filed before the entry into force of this Act.

Article 118 (Gradual introduction of e-procurement)

(1) Paragraph 1 of Article 37 of this Act shall be applicable as of 1 April 2018.

(2) Notwithstanding the preceding paragraph, in the cases referred to in Articles 49, 50, 51 and 52 of this Act, paragraph 1 of Article 37 of this Act shall be applicable as of the date of entry into force of this Act.

Besedilo je neuradni prevod Zakona o javnem naročanju (Uradni list RS, št. 91/15) in predstavlja zgolj informativni delovni pripomoček, glede katerih Ministrstvo za javno upravo ne jamči odškodninsko ali kako drugače. V primeru kakršnihkoli sporov se uporabi slovensko besedilo, ki je objavljeno v Uradnem listu RS. Pred uporabo prevoda preverite obstoj morebitnih naknadnih sprememb zakona.

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(3) Notwithstanding paragraph 1 of this Article, a central purchasing body shall start to make use of electronic means of communications for all communication and information exchange as of 1 January 2017.

(4) Until the start of application of paragraph 1 of Article 37 of this Act, contracting authorities shall choose between the following means of communication for all communication and information exchange:

- electronic means in accordance with Article 37 of this Act;
- post or other suitable carrier;
- fax; or
- a combination of these means.

(5) Javno podjetje Uradni list Republike Slovenije, d. o. o, in cooperation with the ministry responsible for public procurement, shall harmonise the content of the notices referred to in Article 52 of this Act and shall ensure the publication of such notices on the public procurement portal as of the date of entry into force of this Act and the publication of decisions in accordance with paragraph 10 of Article 90 of this Act no later than 60 days from the entry into force of this Act. Until then, contract award decisions shall be served in accordance with the law governing administrative procedure.

(6) Javno podjetje Uradni list Republike Slovenije, d.o.o., shall ensure the publication of the list referred to in paragraph 2 of Article 21 of this Act in cooperation with the ministry responsible for public procurement by 1 January 2017.

Article 119 (Regulations based on this Act)

(1) The Government shall issue the decree referred to in Article 9 and paragraph 3 of Article 52 of this Act within 60 days of its entry into force.

(2) The Government shall harmonise the decree referred to in paragraph 8 of Article 32 and paragraph 3 of Article 93 of this Act within 60 days of its entry into force.

(3) The minister responsible for public procurement shall issue the rules referred to in paragraph 3 of Article 108 of this Act within 60 days of its entry into force.

(4) The minister responsible for public procurement shall harmonise the rules referred to in paragraph 12 of Article 77 of this Act within 60 days of its entry into force.

Article 120 (Entry into force)

This Act shall enter into force on 1 April 2016.