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8 January 2007 [shall come into force from 20 February 2007];

16 July 2009 [shall come into force from 13 August 2009];

19 April 2010 (Judgment of the Constitutional Court) [shall come into force from 21 April 2010];

20 May 2010 [shall come into force from 15 June 2010];

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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

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

## Public Procurement Law

### Chapter I General Provisions

#### Section 1. Terms used in this Law

The following terms are used in this Law:

1) **centralised procurement authority** – a commissioning party, which:

a) procures goods and services for the needs of other commissioning parties, or

b) performs procurement procedures for the entering into public works, supply or service contracts or framework agreements for the needs of other commissioning parties;

2) **dynamic procurement system** – a completely electronic process, which is used for purchases that conform to the requirements of the commissioning party and are widely available on the market and which is limited in time and open to all suppliers conforming to the qualification requirements and having submitted an indicative tender conforming to the specifications;

3) **electronic auction** – repeated indication of descending prices or new values of parts of specific tenders by electronic means, which occurs after full evaluation of tenders, thus enabling the ranking of the tenders by such means in a specific order according to the prices or the values of parts of specific tenders. Individual public works contracts or public service contracts, the subject-matter of which is intellectual work (for example, the design), shall not be the object of electronic auctions;

4) **electronic means** – means of electronic communications, which are appropriate for the processing of the data received or sent via the electronic communications network (also for digital compression) and storage thereof, as well as for the transfer of data via the electronic communications network;

4<sup>1</sup>) **procurement identification number** – designation, which includes the abbreviation of the name of the commissioning party (the first capital letters), the relevant year and the procurement sequence number in ascending order. The commissioning party may also indicate other information in the final part of the procurement identification number;

5) **common procurement vocabulary (CPV)** – a nomenclature approved by the European Union, which is applied in public procurement procedures;

<sup>1</sup> The Parliament of the Republic of Latvia

6) **procurement procedure** – a procedure, in accordance with which a commissioning party selects suppliers and awards the right to enter into public works, supply or service contracts;

7) **indicative tender** – a tender, which describes the range of works, goods or services tendered by the tenderer in the dynamic procurement system, however, which is not binding to the tenderer and the commissioning party;

8) **candidate** – a supplier which participates in a closed competition, negotiated procedure or competitive dialogue until the submission of a tender;

9) **contract price** – total payment for the implementation of a contract, including all applicable taxes, except value added tax;

10) **commissioning party** – a State or local government institution, a local government, other derived public person or institution thereof, an association, in which all members are commissioning parties, a foundation, all founders of which are commissioning parties, as well as such legal person governed by private law, which concurrently conforms with the following criteria:

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

b) is subordinate or subject to the decisive influence of a State or local government institution, a local government, other derived public person or institution thereof, or subject to the decisive influence of a legal person governed by private law conforming to these criteria (this influence manifests as the majority of voting rights upon electing the members of the supervisory or executive authority or upon appointment of the administration) or more than 50 per cent of financing for activities of such legal person governed by private law comes from the State, local government, other derived public person, institution thereof or another legal person governed by private law conforming to these criteria;

10<sup>1</sup>) **research and development** – all activities comprising fundamental and industrial research and experimental development;

10<sup>2</sup>) **tender security** – payment of a sum of money provided for in the procurement procedure documents into the account indicated by the commissioning party, bank guarantee or insurance for a specific amount of money, which the tenderer submits together with the tender to the commissioning party as a security for the validity of the tender;

11) **supplier** – a natural person or a legal person, an association of such persons in any combination thereof, which offer on the market to perform works, supply products or provide services accordingly;

12) **purchaser profile** – the website of a commissioning party available to the public on the Internet, where the contracting party inserts advance indicative tender, information regarding subsequent invitations to submit tenders, regarding planned procurements, contracts entered into, suspended procedures, as well as other general information related to procurements;

13) **tenderer** – a supplier, which has submitted a tender or an indicative tender;

14) **public works, supply and service contracts** – procurement contracts, which are entered into in written form in financial interests by and between one or more commissioning parties and one or more suppliers and the subject-matter of which is:

a) for public works contracts – the performance of the works referred to in Annex 1 to this Law or the performance of such works together with building design, or a structure, as well as any other transaction, as a result of which the commissioning party acquires the right to the structure, which has been built in accordance with the requirements specified thereof. A structure within the meaning of this Law is the common result of the works referred to in Annex 1 to this Law, which is sufficient in order for the structure to serve for a specific purpose,

b) for public supply contracts – the purchase, hire-purchase, lease of goods or lease with purchasing rights thereof. A contract, the subject-matter of which is the supply of goods and the insignificant part of which is the process of building-in or installation of the goods, is also regarded as a public supply contract;

c) for public service contracts – the services referred to in Annex 2 to this Law. If the subject-matter of the contract is both goods and the services referred to in Annex 2 to this Law, such contract shall be regarded as a public service contract, if the value of the service in monetary terms exceeds the value of the goods. If the subject-matter of the contract is the services referred to in Annex 2 to this Law and if the performance of the work referred to in Annex 1 to this Law is also included therein, which is the insignificant part of the subject-matter of the contract, such contract shall be regarded as a public service contract;

15) **framework agreement** – such agreement between one or several commissioning parties and one or several suppliers, the objective of which is to determine and characterise the contracts to be entered into within a certain period of time and to provide for the provisions, according to which such contracts will be entered into (especially in relation to the prices and, if necessary, the quantity intended).

*[16 July 2009; 21 June 2012]*

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

The purpose of this Law is to ensure:

- 1) openness of the procurement procedure;
- 2) free competition of suppliers, as well as equal and fair attitude thereto; and
- 3) effective use of State and local government funds, reducing the risk of the commissioning party to the minimum.

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

(1) This Law shall not be applicable if a commissioning party enters into a contract regarding:

1) the purchase or lease of land, existing structure or other immovable property or the acquisition of other rights to such immovable property with any financial resources. This exception shall not apply to financial service contracts, which are related to the purchase or lease of immovable property or the acquisition of other rights to immovable property and which have been entered into before or after entering into of a purchase or lease contract or concurrently with entering into of a purchase or lease contract;

2) the creation, improvement, production or alteration of programme material if it is intended for transmission to be performed by a broadcasting organisation, as well as for the broadcasting time;

3) the services of arbitration and the services, which are provided for the conciliation of parties;

4) financial services within the framework of the management of the monetary policy, the exchange rate policy, national debt management and reserve management or for implementation of such financial management policy, which is related to the issuance, purchase, selling or transfer of other financial instruments to other persons, including the raising of funds or capital, as well as for the services of the Bank of Latvia;

4<sup>1</sup>) a loan from international financial organisations in which Latvia is a member state;

5) services of natural persons in accordance with employment contracts;

6) research and development services, the CPV code of which is from 73000000-2 to 73436000-7, except 73200000-4, 73210000-7 and 73220000-0. Exception of the application of this Law shall not be applicable if the following conditions exist concurrently:

- a) only the commissioning party will benefit from the results of the service provided, using these results only for the needs thereof,
  - b) the commissioning party will fully pay for the service provided;
- 7) the works or supplies performed or services provided by such institution, which concurrently conforms to the following criteria:
- a) it is under complete control of one or several commissioning parties (such control manifests as the right to influence essential objectives and decisions of operation of the institution under control),
  - b) at least 80 per cent of its annual financial turnover consists of the implementation of specific tasks in the interests of the controlling commissioning parties or other commissioning parties, which are controlled by the commissioning parties controlling the institution,
  - c) capital shares or stocks thereof completely belong to the commissioning parties controlling it;
- 8) services, which are provided by another institution or person, which is also the commissioning party within the meaning of this Law and which in accordance with external regulatory enactments has exceptional right to provide the relevant service;
- 9) a procurement in order to ensure the activities referred to in Sections 3, 4, 5, 6 and 7 of the Law On the Procurement of Public Service Providers, in the fields specified in these Sections;
- 10) service and structural concessions in accordance with the law, which regulates the granting of concessions.
- (2) This Law shall not be applicable if contracts are entered into in accordance with the provisions of other procedures and the right to enter therein is awarded:
- 1) in accordance with an international agreement, which, in accordance with the regulatory enactments of the European Union, has been entered into by a European Union Member State with one or several states, which are not European Union Member States, regarding works, supplies or services in connection with the participation of the states having signed the agreement in the implementation of a joint measure or the use of the results thereof. The commissioning party shall notify the European Commission regarding all such agreements;
  - 2) in accordance with an international agreement relating to the deployment of troops and to undertakings of European Union Member States or undertakings of such state, which is not a European Union Member State;
  - 3) in accordance with a particular procedure of any international organisation.
- (3) This Law shall not be applicable if:
- 1) the Cabinet, in accordance with external regulatory enactments, has recognised the information regarding a contract or the implementation thereof as an official secret;
  - 2) the application thereof may cause harm to the protection of substantial interests of the State. The Cabinet shall decide regarding the protection of the substantial interests of the State in each specific case.
- (4) This Law shall not apply upon entering into a procurement contract, the main objective of which is to ensure the public electronic communications networks maintained by the commissioning party or one or several electronic communication services available to the public and provided by the commissioning party. This exemption shall not apply to television and radio broadcasting.
- (5) This Law shall not be applicable if, in accordance with the Law On the Procurement in the Field of Defence and Security, a procurement contract with the following subject-matter is entered into:
- 1) goods which have been developed or adjusted specifically for military needs and are to be used as weapons, ammunition or military equipment, including goods of military

nature referred to in a specific list in accordance with Article 346 of the Treaty on the Functioning of the European Union, and parts and components thereof;

2) goods intended for security purposes, including parts and components thereof, which include, process protected information or are otherwise related to such information;

3) works, goods or services directly related to the goods referred to in Clauses 1 and 2 of this Paragraph in any stage of handling cycle thereof;

4) works or services directly intended for military purposes or for such structures, or the provision of such services, information regarding which is to be protected;

5) works, goods or services, the objective of which is satisfaction of the needs of the unit security of the National Armed Forces (for example, transport, warehouse, health care services, food and works necessary for the needs of security), and the contract is entered into a country, which is not a European Union Member State, in a situation where the troops are stationed outside the territory of the European Union and contracts for ensuring international operations or international training should be entered into with the suppliers, which are operating in the area of such operations or training.

*[16 July 2009; 20 May 2010; 21 June 2012]*

**Section 4.** [1 August 2011]

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

The commissioning party shall not apply the procurement procedures specified in this Law if the contract price is less than 70 000 lats and if the contract is being entered into regarding:

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

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

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

4) [16 July 2009];

5) the procurement in foreign states, which are performed by diplomatic, consular and other missions of the Republic of Latvia, as well as the unit of the National Armed Forces, which participate in international operations and international training;

6) the procurement of goods and services, which are performed by a credit institution for the provision of the activities thereof;

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

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

9) publishing of a scientific publication in a scientific periodical or other scientific publication, and a scientific institution established by the State or institution of higher education, which has been registered in the register of scientific institutions, pays for it or reimburses the scientist for it.

*[16 July 2009; 21 June 2012]*

## **Section 6. Contracts, Implementation of which is Financed by the Commissioning Party by More than 50 Per Cent**

This Law shall be applied for the entering into of contracts, if:

1) the implementation of a works contract is financed by more than 50 per cent from the contract price directly by the commissioning party and the estimated contract price of this contract is equal to or exceeds the contract price margins specified by the Cabinet and if this contract relates to civil engineering works in accordance with Annex 1 to this Law, as well as to building of structures intended for sport, medical treatment and recreation, hospitals, schools, universities and buildings for administrative purposes; or

2) the implementation of a service contract is financed by more than 50 per cent from the contract price directly by the commissioning party and the estimated contract price of this contract is equal to or exceeds the contract price margins specified by the Cabinet and if this contract is associated with a works contract in accordance with Clause 1 of this Section.

## **Section 7. Other Projects Financed by the Commissioning Party**

(1) If the commissioning party finances the implementation of such contract, which is not referred to in Section 6 of this Law, from his or her funds or from the funds of the European Union policy instruments or other foreign financial assistance and national co-financing, the procurement procedures and the procedures for application thereof, as well as persons, which apply these procedures, shall be determined by the Cabinet.

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

*[8 February 2007; 21 June 2012]*

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

(1) The following procurement procedures exist:

- 1) an open competition;
- 2) a closed competition;
- 3) a negotiated procedure;
- 4) a competitive dialogue;
- 5) a design competition.

(2) This Law shall be applied to the procurement procedures referred to in Paragraph one of this Section if the contract price of public supply contracts or of service contracts is 20 000 lats or more and the contract price of public works contracts is 120 000 lats or more. Upon entering into works, supply or service contracts, if their estimated contract price is less than the referred to limits of contract prices, but is 3000 lats or more for supply or service contracts and 10 000 lats or more for works contracts, the commissioning party shall not apply the procurement procedures referred to in Paragraph one of this Section, and the procurement shall be performed in accordance with the procedures specified in Section 8.<sup>1</sup> of this Law.

(2<sup>1</sup>) In the cases specified in Section 16, Paragraphs 2.<sup>1</sup> and 2.<sup>2</sup> of this Law the commissioning party, which is an institution of direct administration, shall not apply the procurement

procedures specified in Paragraph one of this Section and shall not perform procurement in accordance with the procedures specified in Section 8.<sup>1</sup> of this Law, but shall procure goods and services from a centralised procurement authority or with the intermediation thereof.

(3) [16 July 2009]

(4) [16 July 2009]

(5) [16 July 2009]

(6) [16 July 2009]

(7) If a contract is entered into regarding the services referred to in Part B of Annex 2 to this Law, the commissioning party need not apply the procurement procedures specified in this Law, except the requirements provided for in Sections 17, Chapter III, Section 27, Section 30, Paragraphs one, four and six, Section 32, Section 35, Paragraph one and Section 67 of this Law. Prior to the performance of procurement, the commissioning party shall publish a notice regarding the procurement to be performed on the Internet home page thereof, indicate the deadline for the submission of tenders and ensure free and direct electronic access to the procurement documents. The deadline for the submission of tenders shall be determined not less than 10 working days from the day of publishing the notice.

(7<sup>1</sup>) The commissioning party is entitled not to publish the notice referred to in Paragraph seven of this Section regarding the procurement to be performed, if this is not objectively possible for the commissioning party as a result of unforeseen extraordinary circumstances or if due to technical or artistic reasons or due to such reasons, which are related to the protection of exceptional rights, the contract may only be implemented by a specific supplier.

(8) If the subject-matter of a contract is the services referred to both in Part A of Annex 2 and Part B of Annex 2 to this Law, the commissioning party shall apply the procurement procedures referred to in this Law, if the contract price of the services referred to in Part A of Annex 2 to this Law exceeds the contract price of the services referred to in Part B of this Annex. If the contract price of the services referred to in Part B of Annex 2 to this Law exceeds the contract price of the services referred to in Part A of this Annex, the commissioning party shall apply the conditions of Paragraph seven of this Section.

(9) [16 July 2009]

(10) [16 July 2009]

*[8 February 2007; 16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 8.<sup>1</sup> Procurement to which the Procurement Procedures Regulated by this Law shall not Apply**

(1) If the estimated contract price of public supply contracts or service contracts is 3000 lats or more, but less than 20 000 lats and the estimated contract price of public works contracts is 10 000 or more, but less than 120 000 lats, the commissioning party shall perform procurement in accordance with the procedures specified in this Section.

(2) For performing the procurement the commissioning party shall establish a procurement commission consisting of at least three members, ensuring that this commission is competent in the field of the procurement, regarding which a contract is being entered into. The procurement commission, in fulfilling the duties thereof, is entitled to invite experts. The provisions of Section 23, Paragraphs one, two and three of this Law shall apply to the operation of the procurement commission. The procurement commission shall take decisions in accordance with the procedures specified in Section 24, Paragraph one of this Law.

(3) The procurement commission shall determine justified and objective requirements in relation to the tenderers and the subject-matter of the procurement, ensuring that the referred to requirements do not cause unjustified restrictions for competition in the procurement. The procurement commission shall also determine the criteria to be taken into account in order to select the economically most advantageous tender from the corresponding tender. It shall not be allowed to request that a work, which has been prepared for the particular procurement and

which is a copyright object or is regarded as partial implementation of the service, is included in the composition of the tender.

(4) The commissioning party shall publish a notice regarding the planned contract on the Internet home page of the Procurement Monitoring Bureau, specifying such deadline for the submission of tenders which is not less than 10 days (excluding State official holidays) from the day when the notice regarding the planned contract was published on the Internet home page of the Procurement Monitoring Bureau. The commissioning party shall publish the requirements specified in accordance with Paragraph three of this Section on the Internet home page thereof in relation to the tenderers and the subject-matter of the procurement, placing these requirements not later than the notice regarding the planned contract is published on the Internet home page of the Procurement Monitoring Bureau, and ensure free and direct access thereto.

(5) Upon submitting a tender, the tenderer shall append a certification where it shall be indicated that the following conditions do not exist in relation thereto:

1) insolvency proceedings thereof have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor), economic activity thereof has been suspended or discontinued, proceedings regarding bankruptcy thereof have been initiated or it will be liquidated by the anticipated final term of implementation of the contract;

2) it has tax debts in Latvia and a country where it is registered or permanently residing (if it is not registered in Latvia or permanently residing in Latvia), including debts of State social insurance contributions, in total exceeding 100 lats in each country.

(5<sup>1</sup>) The commissioning party shall exclude the tenderer from further participation in the procurement, as well as shall not review the tender of the tenderer, if it establishes the conditions referred to in Paragraph five, Clause 1 or 2 of this Section.

(5<sup>2</sup>) After expiry of the deadline for the submission of tenders the procurement commission shall evaluate the submitted tenders and select one or several tenders in compliance with the requirements and criteria referred to in Paragraph three of this Section. Prior to taking a decision on the results of procurement, the procurement commission shall request a statement issued by a competent authority of Latvia or a foreign competent authority (if the tenderer is not registered in Latvia or permanently residing in Latvia) from the tenderer, which should be awarded the right to enter into the contract, certifying that insolvency proceedings have not been declared in relation to the tenderer and it is not in liquidation stage, and it does not have tax debts, including debts of State social insurance contributions, in total exceeding 100 lats. The commissioning party shall determine a term for the submission of such documents of not less than 10 working days, and these documents shall be accepted and recognised, if they have been issued not more than one month prior to the day of submission. The commissioning party need not request such documents if the relevant information may be obtained in public databases or online information systems managed by the relevant competent authorities. If the commissioning party obtains the necessary information directly from the competent authority, in databases or from other sources, the relevant tenderer is entitled to submit a statement or other document regarding the relevant fact, if the information previously obtained from the commissioning party does not conform to the current situation.

(5<sup>3</sup>) The procurement commission shall recognise a tenderer as the winner in the procurement which has been selected in compliance with Paragraph 5.<sup>2</sup> of this Section. In addition all rejected tenderers and the reasons for rejection thereof, the contract prices tendered by all tenderers and the comparative advantages of the tenderer determined as the winner shall be indicated in the decision by which the winner is determined.

(6) The commissioning party shall enter into a procurement contract with the tenderer selected by the procurement commission. The commissioning party is entitled to discontinue the procurement and not to enter into a contract if such action has an objective justification.



(7) The commissioning party shall, within three working days after taking of the decision, inform all tenderers regarding the tenderer or tenderers selected in the procurement. The commissioning party shall, within three working days after receipt of a request of the tenderer, issue or send the decision referred to in Paragraph 5.<sup>3</sup> of this Section to the tenderer, as well as ensure free and direct electronic access to the decision referred to in Paragraph 5.<sup>3</sup> of this Section on the Internet home page thereof.

(8) Not later than five working days after entering into the contract, the commissioning party shall publish an informative notice regarding the entered into contract on the Internet home page of the Procurement Monitoring Bureau.

(9) The commissioning party is entitled not to apply the provisions of this Section if the contracts referred to in Sections 3, 4 and 5 of this Law are being entered into.

(10) The commissioning party is entitled not to apply the provisions of Paragraph four of this Section if the contract is being entered into regarding the services referred to in Part B of Annex 2 to this Law or the procurement conforms to the conditions of the last sentence of Section 62, Paragraph one, Clause 1 or of Section 63 of this Law, as well as in case where a procurement has been performed before in accordance with the procedures of this Section and tenders not corresponding to the requirements specified in the procurement documents have been submitted therein, provided that the provisions of the procurement contract do not differ significantly from the requirements necessary for implementation of the contract provided for in the previously performed procurement and only such tenderers are invited to submit tenders in this procurement, which were not excluded in the previously performed procurement in accordance with the provisions of Paragraph 5.<sup>1</sup> of this Section and conform to the stipulated qualification requirements.

(11) The commissioning party shall prepare a notice regarding the planned contract and an informative notice regarding the entered into contract and publish it, using the electronic means available on the Internet home page of the Procurement Monitoring Bureau for the preparation and submission of the referred to notices.

(12) The Cabinet shall determine the content of the notice referred to in Paragraph four of this Section and of the informative notice referred to in Paragraph eight and the procedures for the preparation of such notices.

(13) A tenderer, which has submitted a tender in a procurement, to which the provisions of this Section apply, and which deems that the rights thereof have been violated or a violation of such rights is possible, is entitled to appeal the decision taken in the Administrative District Court in accordance with the procedures specified in the Administrative Procedure Law. A judgment of the Administrative District Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Senate of the Supreme Court. Appeal of the decision shall not suspend the operation thereof.

*[16 July 2009; 20 May 2010; 21 June 2012]*

## **Section 9. Determination of the Estimated Contract Price**

(1) The estimated contract price shall be determined in order to select the method of procurement.

(2) The estimated contract price shall be determined as the total planned payment by the commissioning party for implementation of the contract, which the supplier may receive from the commissioning party and other persons. The commissioning party, when planning the total payment, shall take into account any selection opportunity and any supplements to the contract, all taxes to be paid in relation to the contract (except value added tax), as well as the value of prizes and payments if the commissioning party intends to award prizes or to disburse payments to the candidates, tenderers, participants of a competitive dialogue or participants of a design competition.

(3) The estimated contract price shall be determined prior to submission of the notice regarding the contract for publication, or, if submission of such notice for publication is not necessary, prior to the commencement of the procurement procedure.

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

(5) The estimated contract price of public works contracts shall be the total value of all works or structures, including the contract price of the supplies or services necessary for the implementation of the contract and which are intended to be performed or provided by the commissioning party to the provider of works. The commissioning party shall not add the estimated contract price of the supplies and services, which are not necessary for the implementation of the specific public works contract, to the estimated contract price of the public works contract, if thus the application of the requirements of this Law may be avoided to the relevant supply or service contracts. The procedures for determination of the estimated contract price for a works contract shall be determined by the Cabinet.

(6) If the possible subject-matter of a public works or service contract may be divided into parts, when entering concurrently into contracts for each of the parts, the estimated contract price shall be determined as the total amount of all the parts. The commissioning party shall apply the requirements of this Law to each part, if the total amount of the parts is equal to or exceeds the contract price margins referred to in Section 8 of this Law. The commissioning party is entitled to apply such conditions of procurement procedures, which would relate to the estimated contract price for the parts in accordance with Section 8 or 8.<sup>1</sup> of this Law, if the total estimated contract price of the relevant parts is less than 20 per cent of the total estimated contract price of all parts. If the total estimated contract price of such parts is less than 10 000 lats for works contracts and less than 3000 lats for service contracts, the commissioning party is entitled not to apply this Law in relation to such parts.

(7) If similar goods are intended to be procured, when entering concurrently into several public supply contracts so that they are contracts concerning parts, the estimated contract price shall be determined as the total amount of all parts. The commissioning party shall apply the requirements of this Law to each part, if the total amount of the parts is equal to or exceeds the contract price margins referred to in Section 8 of this Law. The commissioning party is entitled to apply such procurement procedure, which would relate to the estimated contract price for the parts in accordance with Section 8 or 8.<sup>1</sup> of this Law, to those parts, for which the estimated contract price is less than the contract price margins specified by the Cabinet, if the total estimated contract price of the relevant parts is less than 20 per cent of the total estimated contract price of all parts. If the total estimated contract price of such parts is less than 3000 lats, the commissioning party is entitled not to apply this Law in relation to such parts.

(8) The estimated contract price for public supply contracts providing for lease, leasing with the right of pre-emption and hire-purchase shall be determined as follows:

1) in the case of fixed-term contracts:

a) if the term is less than or equal to twelve months – as the total contract price for the term of the contract;

b) if the term is longer than twelve months – as the total contract value for the term of the contract, taking into account the residual value;

2) in the case of contracts without a fixed term or the contracts, the term of which cannot be defined – as the estimated monthly payment multiplied by 48.

(9) If public supply or purchase contracts are regularly entered into or if the term of the contract is extended in a specific period of time, the estimated contract price shall be determined as follows:

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

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

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

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

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

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

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

1) for contracts with a fixed term, which is less than or equal to 48 months – as the total contract price for the term of the contract;

2) for contracts without a fixed term or with a term exceeding 48 months – as the estimated monthly payment multiplied by 48.

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

[16 July 2009; 20 May 2010; 21 June 2012]

## **Section 10. Contract Price Margins**

The contract price margins referred to in Section 6, Section 9, Paragraphs six and seven, Section 25, Paragraph one, Clauses 1, 2 and 3, Section 28, Paragraph three, Section 29, Paragraphs two, three, four, five, six and seven, Section 83, Paragraph two, Clause 3, Section 85.<sup>1</sup>, Paragraph three, Clause 2, Sub-clause “a”, Section 85.<sup>2</sup>, Paragraph one, Clauses 2, 5 and 6 and Paragraph two, Clause 2, Section 87, Paragraph one, Clause 1, Sub-clauses “a” and “b” of this Law shall be determined by the Cabinet on the basis of the international commitments of the European Union in relation to the contract price margins, which must be observed by the commissioning party. The Cabinet shall determine the referred to contract price margins at least once in every two years within one month after the European Commission has announced the relevant contract price margins in the *Official Journal of the European Union*.

[20 May 2010; 21 June 2012]

## **Section 11. General Conditions in Relation to a Supplier**

(1) The commissioning party shall not reject a candidate, a tenderer or a participant of a design competition if it does not have the specific legal status in accordance with the regulatory enactments of Latvia, however, it is entitled to perform works, supply goods or provide services in accordance with the regulatory enactments of the European Union Member State where it has been founded. The commissioning party shall also not restrict the participation in the procurement procedure with a reference to any territory of the State or part thereof.

(1<sup>1</sup>) The commissioning party shall request only such information or documents from the candidate, the tenderer or the participant of a design competition, which are necessary for verification of the conformity of the qualification and tenders, as well as for the selection of a tender in accordance with the criterion specified for the selection of tender.

(2) If a public works or service contract is being entered into or if a public supply contract also includes the process of building-in or installation of a product, the commissioning party may request that the tenderer indicates in the tender or the candidate indicates in the application regarding the participation in the procurement procedure, the persons responsible for the implementation of the specific contract and the professional qualifications thereof.

(3) Supplier associations may submit tenders or apply as candidates. The commissioning party is not entitled to put forward a claim for these associations to get organised in a specific legal status so that they would submit a tender as a tenderer or an application regarding the participation in the procurement procedure – as a candidate. However, the commissioning party may request that the association, in relation to which a decision has been taken to enter into a contract, establishes in accordance with a specific legal status, if this is necessary for successful implementation of the contract provisions.

(4) If a supplier, its employee or the person indicated in the tender of the supplier has participated in any previous stage of the relevant procurement project or in the development of the procurement procedure documents, the supplier is not entitled to participate in the next stages of the same project or in the relevant procurement procedure if the referred to conditions provide the supplier with advantages in this procurement procedure, thus restricting the competition. Stages of a procurement project shall mean several successively performed procurements, which ensure the achievement of a unified end result.

(5) The commissioning party, having established the conditions referred to in Paragraph four of this Section, prior to the potential rejection of a candidate or a tenderer, shall allow it to prove that there are no conditions, which would provide this candidate or tenderer any advantages in the relevant procurement procedure, thus restricting the competition.

*[16 July 2009; 21 June 2012]*

## **Section 12. Confidentiality**

(1) The commissioning party may impose requirements for the protection of such information, which it has transferred to suppliers together with technical specifications, as well as during the procurement procedure.

(2) Upon notification regarding the entering into of a contract and informing the candidates and tenderers, the commissioning party is not entitled to reveal information, which has been transferred thereto by other suppliers as a commercial secret or confidential information.

(3) *[16 July 2009]*

*[16 July 2009]*

## **Section 13. Conditions in Relation to the Agreement on Government Procurement of the World Trade Organisation**

The commissioning party shall apply at least as favourable conditions to those suppliers from third countries (countries, which are not European Union Member States) as those from the European Union Member States, to which the agreement on government procurement of the World Trade Organisation is applicable.

## **Section 14. Privileged Contracts**

(1) If the subject-matter of an intended contract allows it, the commissioning party is entitled to reserve the opportunity of participating in procurement procedures only for those candidates or tenderers, which mainly (more than 50 per cent of the average number of employees per year) employ disabled persons, which cannot be employed in normal conditions.

(2) When applying Paragraph one of this Section, reference to this Section shall be made in the notice regarding the contract.

### **Section 15. Awarding Special or Extraordinary Rights to a Subject which is not the Commissioning Party**

If the commissioning party awards special or extraordinary rights for the implementation of public service activities to a subject, which is not regarded as a commissioning party, it shall determine that, when entering into supply contracts with third persons, the relevant subject shall observe the non-discrimination principle on the basis of nationality.

### **Section 16. Procurement Conducted by Centralised Procurement Authorities**

(1) The commissioning party may procure goods and services from a centralised procurement authority or receive works, supplies and services with the intermediation thereof.

(2) In cases when the commissioning party procures works, goods or services from the centralised procurement authority or with the intermediation thereof, it shall be considered that it has applied the requirements of this Law if the centralised procurement authority, when performing the relevant procurements or organising the relevant procurement procedures, has applied the requirements of this Law.

(2<sup>1</sup>) In cases specified by the Cabinet, institutions of direct administration shall mandatorily procure goods and services from the centralised procurement authorities specified by the Cabinet or with their intermediation, if the relevant goods or services are in the group of goods or services specified by the Cabinet and their contract price within a 12-month period in the relevant group of goods or services is 100 lats or more.

(2<sup>2</sup>) The Cabinet, in accordance with Paragraph 2.<sup>1</sup> of this Section, shall determine:

1) the cases when the commissioning party (institution of direct administration) shall mandatorily procure goods or services from centralised procurement authorities or with their intermediation;

2) the groups of goods and services;

3) the relevant centralised procurement authorities and the conditions for the use of the services provided thereby.

(3) The commissioning party need not apply the requirements of this Law if the procurement for the needs thereof is conducted by a centralised procurement authority, which is located in another European Union Member State and, when conducting the relevant procurement, it applies the requirements of such regulatory enactments, which conform to the law of the European Union in the field of public procurement.

(4) The centralised procurement authority may perform procurements and organise procurement procedures for the needs of the commissioning parties of other European Union Member States. In such case the centralised procurement authority shall apply the requirements specified in this Law.

*[20 May 2010; 2 February 2012]*

## **Chapter II. Rules for Technical Specifications and Documents of the Procurement Procedure**

### **Section 17. Technical Specifications**

(1) Technical specifications shall be included in the documents of a procurement procedure. Technical specifications shall ensure equal opportunities for all tenderers and shall not create unjustified restrictions for the competition in procurement procedures.

(2) Technical specifications for public works contracts is a summary of technical descriptions, which determines the requirements of the commissioning party in relation to materials, products, technical equipment or objects and which characterise materials, products, technical equipment or objects so that, upon acquisition thereof, they would conform to the purposes intended by the commissioning party. These descriptions shall include environmental protection provisions, design requirements (also requirements in relation to availability to disabled persons), requirements for conformity assessment and implementation, safety rules, quality assurance system, terminology, measurements, symbols, testing rules and methods, pre-packaging, labelling, manufacturing processes and methods. Technical specifications shall also include rules regarding work completion tests and work acceptance, requirements in relation to methods and technology for performance of works and other technical rules which the commissioning party has provided for works or the structure at large, or for materials and objects, which are intended to be used in the structure. The amount of works shall be determined in accordance with the technical project and shall be included in the list of the amount of works.

(3) Technical specifications for public supply and service contracts shall determine the requirements brought forward for the necessary supplies and services. Public service contracts shall, in addition, determine the objective, methods and resources to be used (if necessary), as well as the end result of services. In technical specifications for public supply and service contracts technical descriptions shall be included in addition, which include such requirements specified by the commissioning party in relation to the product or service as the level of quality, environmental protection provisions, construction requirements (also requirements in relation to availability to disabled persons), performance requirements, requirements for product use, safety rules, measurements, terminology, symbols, testing rules and methods, requirements in relation to the product name, under which it is sold, the packaging and labelling, instructions for user, manufacturing processes and methods, as well as the conformity assessment methods.

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

1) with reference to the technical specifications referred to in Paragraphs two and three of this Section and to the standards in the following order: the European standards adapted in the status of Latvian national standard, common technical specifications, other international standards, as well as other technical reference systems established by the European standardisation institutions, or if the standards referred to do not exist, then in the following order: the Latvian national standards, the national technical approvals or the national technical specifications. Each reference shall include the words “*vai ekvivalents*” [or equivalent];

2) in determining the functional requirements or performance requirements, the requirements for environmental protection may also be included. The requirements shall be precisely defined so that the tenderer might ascertain the subject-matter of the contract, and the commissioning party – compare tenders;

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

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

(5) If the commissioning party prepares the technical specification in accordance with Paragraph four, Clause 1 of this Section, it shall not reject a tender because the products or services tendered do not conform to the standards or technical specifications specified in the reference, if the tenderer can prove by means of the documentation of the manufacturer or an attestation issued by a competent institution regarding test results, that the tender is equivalent

and satisfies the requirements of the commissioning party defined in the technical specification.

(6) If the commissioning party prepares the technical specification by specifying the functional requirements or performance requirements, it shall not reject tenders, which comply to the European standards adapted in the status of Latvian national standard and European technical approvals, common technical specifications, other international standards, other technical reference systems established by European standardisation institutions, Latvian national standards or other technical reference systems, if these standards, technical specifications or reference systems determine the same functional or performance requirements, which have been set out by the commissioning party. In such case the tenderer shall prove in its tender by means of the documentation of the manufacturer or an attestation issued by the competent institution regarding the test results that the tendered building works, goods or services, which conform to the standards previously referred to, satisfy the functional requirements or performance requirements specified by the commissioning party.

(7) If the commissioning party determines the requirements for environmental protection as the functional requirements or performance requirements in accordance with Paragraph four, Clause 2 of this Section, it may apply detailed specifications, which are defined with European, multi-national or any other eco-labelling, or parts of specifications, if:

1) these specifications are sufficient in order to describe products or services which are the intended subject-matter of the contract;

2) the requirements for eco-labelling have been prepared on the basis of scientific information;

3) the eco-labelling has been approved, using procedures in which any interested organisations – State institutions, consumers, manufacturers, distributors and environmental organisations – may participate; or

4) the specifications defined by the eco-labelling are available to all interested persons.

(8) When applying Paragraph seven of this Section, the commissioning party may indicate that it assumes that the products or services, which have an eco-label, conform to the requirements indicated in the technical specifications and procedural documents. As another proof of conformity, the commissioning party shall accept the documentation of the manufacturer or an attestation issued by a competent institution regarding the test results.

(9) Technical specifications shall be prepared, taking into account the rules of availability to disabled persons, if it is necessary for a specific project.

(10) If it is not decisive for the existence of the subject-matter of the contract, technical specifications need not specify a specific origin, special process, brand, patents or specific types of products, which create advantages or a reason for rejection of certain suppliers or products. Such reference may be included in exceptional cases if it is not possible to prepare a sufficiently precise and clear description of the subject-matter of the contract in accordance with Paragraphs four and five of this Section. In such case the reference shall be used together with the words “*vai ekvivalents*” [or equivalent].

## **Section 18. Accessibility of Technical Specifications**

(1) The commissioning party, upon the request of interested suppliers, shall issue to them technical specifications, which are regularly used in public works, supply or service contracts, or technical specifications which it is preparing to apply to contracts, regarding which the advance informative notice has been published.

(2) If technical specifications are prepared on the basis of documents, which are available to the interested suppliers, the commissioning party shall refer to these documents.

## **Section 19. Variants of Tenders**

- (1) If the criterion for tender selection is the economically most advantageous tender, the commissioning party may consider the option of submitting variants of tenders.
- (2) In the notice regarding the contract, the commissioning party shall indicate whether the submission of variants of tenders is allowed. Without such indication the submission of variants shall not be allowed.
- (3) The commissioning party shall indicate the level of minimum requirements in the procurement procedure documents for variants and specific requirements for indicating variants in a tender.
- (4) The commissioning party shall only review those variants of tenders, which conform to the minimum level of requirements specified thereby.
- (5) If it is intended to enter into a public supply or service contract in procurement procedures and the commissioning party has allowed the submission of variants of tenders in accordance with Paragraph two of this Section, it shall not reject a variant of a tender only on the basis of the fact that in case of tender selection a public service contract shall be entered into instead of a public supply contract or a public supply contract – instead of a public service contract \.

## **Section 20. Contracts of Sub-contractors**

- (1) In order to ascertain that a supplier will be able to implement a procurement contract, the commissioning party is entitled to request that the tenderer indicates those parts of the contract in the tender, which it will transfer to sub-contractors for implementation, as well as any anticipated sub-contractors.
- (2) In case of a public works and service contract the commissioning party shall request that the tenderer indicates all sub-contractors in the tender, the value of the works to be performed or services to be provided by which is 20 per cent from the total value of the procurement contract, and the part of the works or service contract to be transferred for implementation to any such sub-contractor.
- (3) The commissioning party shall provide for the procedures of changing the sub-contractors, as well as the procedures, by which new sub-contractors shall be involved in the implementation of the contract in compliance with the provisions of Section 68 of this Law, in the notice regarding the contract or in the procurement procedure documents, as well as in the provisions of the procurement contract or framework agreement.
- (4) If in case of a works contract the tenderer selected in the procurement procedure has intended to transfer a part of the procurement contract, the value of which is at least 50 per cent of the total value of the procurement contract, for implementation to a sub-contractor and the contract price of the procurement contract to be entered into is 3 000 000 lats or more, the tenderer selected in the procurement procedure and the relevant sub-contractor shall enter in the procurement contract or framework agreement as an association of suppliers, specifying the liability of each participant.
- (5) The total value of the works to be performed or the services to be provided by the sub-contractor shall be determined, taking into account the value of the works to be performed and the services to be provided by the sub-contractor and all undertakings related thereto within the scope of the relevant procurement. Within the meaning of this Section a capital company, in which in accordance with the Group of Companies Law the sub-contractor has a decisive influence or which has a decisive influence in the sub-contractor, or a capital company, in which another capital company has a decisive influence, which concurrently has a decisive influence in the relevant sub-contractor, shall be considered as the related undertaking.
- (6) Within the meaning of this Section, as well as Sections 35, 39 and 68 of this Law the sub-contractor is a person engaged or hired by the tenderer or a sub-contractor thereof, which performs works or provides services necessary for the implementation of a public works or



service contract entered into with the commissioning party regardless of whether the person performs works or provides services to the tenderer or another sub-contractor.  
[21 June 2012]

## **Section 21. Provisions for Implementation of a Contract**

The commissioning party is entitled to provide for special provisions for implementation of a contract mainly in connection with social circumstances or requirements of environmental protection, observing the condition that these Regulations are not in contradiction with European Union law and are indicated in technical specifications or in the notice regarding the contract.

## **Chapter III. Procurement Commission**

### **Section 22. Establishment of the Procurement Commission**

(1) The commissioning party shall establish a procurement commission for the performance of the procurement procedures referred to in Section 8, Paragraph one, Clauses 1, 2, 3 and 4 of this Law and for the performance of the procurements referred to in Paragraph seven thereof.

(2) When establishing the procurement commission, it shall be ensured that this commission is competent in the field of the procurement, regarding which a contract is being entered into. The procurement commission, upon performing its duties, is entitled to invite experts.

(3) The commissioning party shall establish a procurement commission, which consists of at least three members. If the estimated contract price of a procurement exceeds 500 000 lats, the commissioning party shall establish a procurement commission, which consists of at least five members.

[21 June 2012]

### **Section 23. Basic Operating Principles of the Procurement Commission**

(1) Members of the procurement commission and experts shall not be allowed to represent the interests of a candidate or tenderer, as well as may not be connected to the candidate or tenderer. Within the meaning of this Paragraph, a member of the commission and an expert is connected to a candidate or tenderer if he or she is:

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

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

3) a relative of a natural person – candidate, tenderer or sub-contractor.

(2) The connection of members of the procurement commission and experts with a candidate or tenderer shall also apply to cases when the candidate or tenderer is an association of persons, members of which are natural persons or legal persons, with which the member of the commission or the expert has the connection referred to in Paragraph one, Clauses 1, 2 and 3 of this Section.

(3) Members of the procurement commission and experts shall sign a statement that there are no such circumstances, due to which it might be regarded that they are interested in selecting or activities of a particular candidate or tenderer or that they are connected to them within the meaning of Paragraph one of this Section.

(4) The procurement commission shall ensure the development of procurement procedure documents, record the progress of the procurement process and shall be responsible for the course of the procurement procedure.

(5) The procurement commission shall select candidates and evaluate tenderers and the tenders submitted thereby in accordance with this Law, the procurement procedure documents, as well as other regulatory enactments. The decision of the procurement commission is binding to the commissioning party if a procurement contract is being entered into.

(6) The chairperson of the procurement commission shall organise and manage the work of the commission, determine the place, time and agenda of the commission meetings, convene and chair the commission meetings.

## **Section 24. Procedures for Taking of Decisions of the Procurement Commission**

(1) The procurement commission shall take decisions at meetings. The procurement commission shall have a quorum if at least two thirds, but not less than three members of the members of the commission attend a meeting. The procurement commission shall take decisions with a simple majority of votes. In the event of a tied vote of the members of the procurement commission, the chairperson of the commission shall have the deciding vote.

(2) If the criterion for the selection of a tender is the most economically advantageous tender, each member of the procurement commission shall evaluate the tender individually according to all evaluation criteria indicated in the procurement procedure documents. The tender, which upon summarisation of individual evaluations has achieved the highest evaluation, shall be recognised as the most economically advantageous tender.

## **Chapter IV. Provisions for Announcement and Observation of Openness**

### **Section 25. Advance Informative Notice**

(1) At least once a year the commissioning party shall publish an advance informative notice in accordance with the provisions of Section 28 of this Law or shall publish it in the profile of the purchaser. The publication of the referred to notice shall be mandatory, if the commissioning party uses the reduced time limits for the submission of tenders in accordance with Section 29, Paragraph eight of this Law, except cases when a negotiated procedure is applied without prior publication of a notice regarding the contract. The following shall be indicated in an advance informative notice shall set out:

1) for public supply contracts – the total estimated contract price of such contracts or framework agreements, which the commissioning party intends to enter into during the subsequent 12 months regarding a specific [with a reference to the common procurement vocabulary (CPV)] group of products, if the total estimated contract price of these contracts and framework agreements is equal to or exceeds the contract price margins specified by the Cabinet;

2) for public service contracts – the total estimated contract price of such contracts or framework agreements, which the commissioning party intends to enter into during the subsequent 12 months regarding a specific service category in accordance with Part A of Annex 2 to this Law, if the total estimated contract price of these contracts and framework agreements is equal to or exceeds the contract price margins specified by the Cabinet;

3) for public works contracts – a general description of such contracts or framework agreements, which the commissioning party intends to enter into during the subsequent 12 months if the estimated contract price of these contracts or framework agreements is equal to or exceeds the contract price margins specified by the Cabinet.

(2) The commissioning party shall publish an advance informative notice regarding public supply and service contracts in accordance with the provisions of Section 28 of this Law or shall publish it in the profile of the purchaser immediately after acceptance of the proposed annual budget.

(3) The commissioning party shall publish an advance informative notice regarding public works contracts in accordance with the provisions of Section 28 of this Law, or publish it in the profile of the purchaser as soon as a decision is taken on the necessity to perform a procurement procedure or to enter into a public works contract or a framework agreement.

(4) The commissioning party, which publishes an advance informative notice in the profile of the purchaser, shall submit a notice to the Procurement Monitoring Bureau regarding the profile of the purchaser in accordance with Section 28 of this Law.

*[16 July 2009]*

### **Section 26. Notice regarding Contract, Simplified Notice regarding Contract and Notice Regarding Amendments, Termination or Discontinuation of the Procurement Procedure**

*[16 July 2009; 21 June 2012]*

(1) If the commissioning party applies an open or closed competition, a negotiated procedure (except Section 63 of this Law) or a competitive dialogue, it shall publish a notice regarding the contract.

(2) For establishment of the dynamic procurement system the commissioning party shall publish a notice regarding the contract. Within the framework of the dynamic procurement system, when inviting to submit a tender, the commissioning party shall publish a simplified notice regarding the contract.

(3) If the commissioning party makes amendments to procurement procedure documents or extends the time periods specified for the submission of applications and tenders, terminates or discontinues the procurement procedure or does not establish a dynamic procurement system, it shall publish a notice regarding amendments, termination or discontinuation of the procurement procedure.

(4) If the procurement procedure is terminated or discontinued or a dynamic procurement system is not established, the commissioning party shall, within as short period of time as possible, but not more than three working days after sending of the information referred to in Section 32, Paragraph three of this Law to candidates or tenderers, submit a notice regarding amendments, termination or discontinuation of the procurement procedure for publication. If tenders or applications have not been submitted for the particular procurement procedure, a notice regarding amendments, termination or discontinuation of the procurement procedure shall be submitted for publication within three working days after a decision has been taken on termination or discontinuation of the procurement procedure or on non-establishment of a dynamic procurement system.

(5) The commissioning party shall publish a notice regarding amendments, termination or discontinuation of the procurement procedure only if it has published advance notice regarding the contract.

*[16 July 2009; 21 June 2012]*

### **Section 27. Notice Regarding the Results of a Procurement Procedure**

(1) The commissioning party shall, within as short period of time as possible, but not later than within three working days after informing the tenderers in accordance with Section 32, Paragraph two of this Law, submit a notice regarding the results of a procurement procedure for publication, if a decision on entering into a procurement contract or framework agreement has been taken. The provisions of this Paragraph shall not apply to procurement contracts, which are entered into within the scope of a framework agreement.

(2) Upon taking a decision within the framework of the dynamic procurement system, the commissioning party shall submit a notice regarding the results of a procurement procedure in relation to each contract within three working days after taking of the decision. This condition need not be applied if the commissioning party combines notices regarding the results of a procurement procedure within the framework of one quarter. Such combined notices regarding the results of a procurement procedure shall be submitted for publication within three working days after the end of each quarter.

(3) If the subject-matter of a contract is the services referred to in Part B of Annex 2 to this Law, the commissioning party shall indicate in the notice regarding the results of a procurement procedure whether it agrees to complete publication of this notice. If the commissioning party agrees to partial publication of the notice, the Procurement Monitoring Bureau shall publish the name of the commissioning party, the subject-matter of the contract and the date when the notice was published.

*[16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 27.<sup>1</sup> Voluntary Notice Regarding the Results of a Procurement**

(1) The commissioning party may submit a voluntary notice regarding the results of a procurement for publication in the cases referred to in Section 3, 4 or 5 or in the cases referred to in Section 8, Paragraph seven or Section 63 of this Law in addition to submitting the notice referred to in Section 27, Paragraph one for publication.

(2) A voluntary notice regarding the results of a procurement shall be published so that the interested persons could contest the justification of such procurement, which, because of an error by the commissioning party, has been performed without applying a corresponding procurement procedure and without publishing a notice regarding the contract, and in order to concurrently eliminate the consequences referred to in Section 85.<sup>3</sup>, Paragraph one of this Law.

*[20 May 2010; 21 June 2012]*

### **Section 28. Publication of Notices**

(1) The content of and the procedures for preparation of the notice referred to in Section 25, Paragraphs one and four, Section 26, Section 27, Paragraph one, Section 27.<sup>1</sup>, Section 75 and Section 79, Paragraph seven of this Law shall be determined by the Cabinet. If the commissioning party publishes the advance informative notice referred to in Section 25, Paragraph one of this Law on the purchaser profile, the sample notice form shall be determined by Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

(2) The commissioning party shall prepare and submit the relevant notice referred to in Paragraph one of this section to the Procurement Monitoring Bureau for publication, using the electronic means available on the Internet home page of the Procurement Monitoring Bureau for the preparation and submission of the referred to notices. The Procurement Monitoring Bureau shall, within three working days after receipt of the notice referred to in Paragraph one of this Section, examine the conformity of the content thereof with the requirements of this Law and shall insert it on the Internet home page of the Procurement Monitoring Bureau.

(3) If the estimated contract price is equal to or exceeds the contract price margins specified by the Cabinet, the Procurement Monitoring Bureau shall send notices for publication in the Official Journal of the European Union and concurrently insert them on the Internet home page of the Procurement Monitoring Bureau.

(4) Information regarding a contract or a framework agreement, the publication of which might delay the application of the Law or restrict competition among suppliers, or harm justified commercial interests (public or private) of suppliers, need not be published.

(5) The commissioning party also has the right to publish notices in the Official Journal of the European Union and insert them on the Internet home page of the Procurement Monitoring Bureau if this Law does not impose an obligation to publish such notices.

*[16 July 2009; 20 May 2010]*

## **Section 29. Deadlines for Submission of Applications or Tenders**

(1) The commissioning party, when determining the deadlines for submission of applications or tenders, shall take into account the level of complexity of the potential contract and the time period, which is necessary for preparation of tenders, as well as the restrictions of the time periods specified in this Law.

(2) The deadline for the submission of tenders in an open competition shall not be less than 52 days after publication of the notice regarding the contract on the Internet home page of the Procurement Monitoring Bureau, if the estimated contract price for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet. The deadline for the submission of tenders shall not be less than 30 days after publication of the notice regarding the contract on the Internet home page of the Procurement Monitoring Bureau, if the estimated contract price for public works, supply and service contracts is less than the contract price margins specified by the Cabinet.

(3) The commissioning party may make amendments to the procurement procedure documents if thus technical specifications or other requirements are not changed significantly. If amendments have been made to the procurement procedure documents and half of the time period referred to in Paragraph two of this Section has passed, or more, the deadline for the submission of tenders after publication of a notice regarding amendments on the Internet home page of the Procurement Monitoring Bureau shall be not less than 26 days, if the estimated contract price for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet. If the estimated contract price for public works, supply and service contracts is less than the contract price margins specified by the Cabinet, the deadline for the submission of tenders shall be not less than 15 days from the day when the notice regarding amendments is published on the Internet home page of the Procurement Monitoring Bureau.

(4) The deadline for the submission of applications in a negotiated procedure, publishing a notice regarding the contract beforehand, as well as in a closed competition and a competitive dialogue shall not be less than 37 days after publication of the notice regarding the contract on the Internet home page of the Procurement Monitoring Bureau, if the estimated contract price for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet. If the estimated contract price for public works, supply and service contracts is less than the contract price margins specified by the Cabinet, the deadline for the submission of applications shall be not less than 25 days from the day when the notice regarding the contract is published on the Internet home page of the Procurement Monitoring Bureau.

(5) The commissioning party may make amendments to the procurement procedure documents if thus qualifications or other requirements are not changed significantly. If amendments are made to the procurement procedure documents and half of the time period referred to in Paragraph four of this Section has passed, or more, the deadline for the submission of applications after publication of a notice regarding amendments on the Internet home page of the Procurement Monitoring Bureau shall be not less than 21 days, if the estimated contract price for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet. If the estimated contract price for public

works, supply and service contracts is less than the contract price margins specified by the Cabinet, the deadline for the submission of applications shall be not less than 13 days from the day when a notice regarding amendments is published on the Internet home page of the Procurement Monitoring Bureau.

(6) The deadline for the submission of tenders in a closed competition shall not be less than 40 days after sending of an invitation to submit tenders to the selected candidates, if the estimated contract price for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet. If the estimated contract price for public works, supply and service contracts is less than the contract price margins specified by the Cabinet, the deadline for the submission of tenders shall be not less than 25 days from the day when the invitation is sent.

(7) The commissioning party is entitled to extend the specified deadlines for the submission of applications and tenders by publishing a notice regarding amendments, termination or discontinuation of the procurement procedure. If the estimated contract price for public works, supply and service contracts is equal to the contract price margins specified by the Cabinet or more, the minimum deadline, by which the commissioning party is entitled to extend the deadline for the submission of applications or tenders, shall be seven days. Extension of such deadline shall not be regarded as amendments to the procurement procedure documents within the meaning of Paragraphs three and five of this Section.

(8) If the commissioning party has published an advance informative notice, the minimum deadline for the submission of tenders in an open and closed competition shall be 36 days from the day when the notice of an open competition regarding a contract has been published on the Internet home page of the Procurement Monitoring Bureau, and an invitation to submit tenders in a closed competition has been sent to candidates. In case of urgency, if it has arisen due to circumstances beyond the control of the commissioning party, the minimum deadline shall be 22 days. In such case the commissioning party shall keep all documents, which justify the reduction of the deadline.

(9) The minimum deadlines for the submission of tenders referred to in Paragraph eight of this Section shall be specified if the advance informative notice contains all the information intended in a notice regarding the contract, insofar as it was available at the time of publication, and as well as if such advance informative notice or a notice regarding the purchaser profile, which has been submitted in accordance with Section 25, Paragraph four of this Law, has been published on the Internet home page of the Procurement Monitoring Bureau for not less than 52 days and not more than 12 months before the day when the notice regarding the contract is published on the Internet home page of the Procurement Monitoring Bureau.

(10) If notices regarding the contract are prepared and sent to the Official Journal of the European Union electronically, using the electronic document receipt system of the Official Journal of the European Union, the deadline for the submission of applications to an open competition referred to in the first sentence of Paragraph two and Paragraph eight of this Section and the deadline for the submission of applications to a closed competition, a negotiated procedure and a competitive dialogue referred to in the first sentence of Paragraph four of this Section, may be reduced by seven days.

(11) If the commissioning party ensures free and direct electronic access to the procurement procedure documents and all additional documents necessary, the deadline for the submission of tenders referred to in Paragraphs two and six of this Section may be reduced by five days. The notice shall specify the Internet address where the referred to information is available. The reduction of the deadline referred to in this Paragraph may be added to the reduction of the deadline referred to in Paragraph ten of this Section.

(12) If for some reason technical specifications and other documents or additional information are not available or are requested, however, are not issued within the time periods provided for in Section 30 of this Law or if tenders may only be prepared after examination of the

contract implementation site or familiarisation with additional procurement procedure documents in person, the commissioning party shall extend the deadline for the submission of tenders, giving the suppliers an opportunity to find out all the information which is necessary for the preparation of tenders.

(13) If the commissioning party applies a negotiated procedure, publishing an advance notice regarding the contract, or organises a closed competition and in case of absolute necessity it is not possible to observe the deadlines referred to in this Paragraph, the commissioning party may specify:

1) the deadline for the submission of applications, which is not less than 10 days from the day when a notice regarding the contract has been published on the Internet home page of the Procurement Monitoring Bureau or, if specified by this Law, sent to the Official Journal of the European Union for publication, using the electronic document receipt system of the Official Journal of the European Union. If the notice regarding the contract is sent to the Official Journal of the European Union for publication, without using the electronic document receipt system of the Official Journal of the European Union, the deadline for the submission of applications shall be not less than 15 days; or

2) in a closed competition – the deadline for the submission of tenders, which is not be less than 10 days from the day when an invitation to submit a tender has been sent to selected candidates.

*[16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 30. Access to Procurement Procedure Documents, Issuance Thereof and Provision of Additional Information**

(1) The commissioning party shall ensure free and direct electronic access to procurement procedure documents and all additional necessary documents, as well as an opportunity for the interested suppliers to become acquainted on site with the procurement procedure documents, starting from the time of the announcement of the relevant procurement procedure. If the interested supplier requests to issue the procurement procedure documents in printed form, the commissioning party shall, within three working days after receipt of the request for these documents, send issue them to the interested supplier, provided that the request for documents has been submitted in due time prior to the deadline for the submission of tenders.

(2) If the interested supplier has requested additional information in due time regarding the requirements for selection of candidates, the commissioning party shall provide it within as short period of time as possible, but not later than four days before the end of the deadline for the submission of tenders.

(3) If the interested supplier has requested additional information in due time regarding the requirements included in the procurement procedure documents in relation the preparation and submission of tenders or selection of candidates, the commissioning party shall provide it within five days, but not later than six days before the end of the deadline for the submission of tenders. If the candidate has requested the referred to additional information in the case referred to in Section 29, Paragraph thirteen, Clause 2 of this Law in due time, the commissioning party shall provide it within as short period of time as possible, but not later than four days before the end of the deadline for the submission of tenders.

(4) The commissioning party shall send additional information to the supplier, which asked the question, and shall concurrently insert this information on the Internet home page where the procurement procedure documents are available, indicating also the question asked.

(5) If the commissioning party has made amendments to the procurement procedure documents, it shall, not later than a day after a notice regarding amendments, termination or discontinuation of the procurement procedure has been submitted to the Procurement

Monitoring Bureau for publication, insert information regarding the amendments on the Internet home page where these documents are available.

(6) The procurement procedure documents shall be accessible freely and free of charge. If the interested supplier wishes to receive the procurement procedure documents in printed form, the commissioning party may request payment which does not exceed the actual costs for copying and sending documents.

*[20 May 2010; 21 June 2012]*

### **Section 31. Invitation to Submit a Tender, to Participate in a Competitive Dialogue or Negotiations**

(1) In case of a negotiated procedure, with publication of an advance notice regarding the contract, as well as in case of a closed competition and a competitive dialogue, the commissioning party shall concurrently invite in writing all the selected candidates to submit tenders or to participate in a competitive dialogue or negotiations.

(2) The amount of procurement, technical specifications and other necessary documents or also the Internet address where these documents are accessible shall be indicated in the invitation, if the commissioning party ensures free and direct electronic access to the procurement procedure documents and all additional documents necessary.

(3) At least the following information shall be included in the invitation to submit tenders or to participate in a competitive dialogue or negotiations:

1) a reference to the published notice regarding the contract;

2) the deadline for the submission of tenders, the address to which tenders shall be sent and the language or languages in which a tender shall be submitted, and in case of a negotiated procedure – also information regarding the time and place of commencement of negotiations;

3) in case of a closed competition – the requirements for the documentation and submission of a tender, the type of financial tender, the date, time and place of opening of the tenders, as well as information regarding the tender security, if any provided for in accordance with Section 52 of this Law;

3<sup>1</sup>) in case of a competitive dialogue – information regarding the time and place for commencement of the competitive dialogue, as well as the language or languages intended to be used;

4) *[21 June 2012]*;

5) if necessary, a reference to any additional documents to be submitted in order to examine the submitted confirmations in accordance with Section 37 of this Law or supplement the documents containing the information indicated in the referred to Section. Such additional documents shall be requested in conformity with the provisions of Sections 41 and 42 of this Law;

6) in case of the economically most advantageous tender – the evaluation criteria and their proportion in sequence of significance thereof, if it has not been specified in the notice regarding the contract;

7) the draft procurement contract or framework agreement and other necessary information regarding the procurement subject-matter;

8) if the subject-matter of the procurement is insurance services and the commissioning party uses services of an insurance broker – the firm name of the insurance broker and the total amount of the insurance indemnity paid by the insurer to the broker.

(4) If a competitive dialogue is applied, the information referred to in Paragraph three, Clauses 2, 4 and 7 of this Section shall be included not in the invitation to participate in the competitive dialogue, but in the invitation to submit a tender sent in the case referred to in Section 64.<sup>2</sup>, Paragraph eight of this Law.

*[16 July 2009; 12 June 2012]*



## **Section 32. Procedures by which Candidates and Tenderers shall be Informed Regarding Results**

(1) The commissioning party shall, within three working days, concurrently inform all candidates regarding the decision taken in relation to the results of candidate selection (also the reasons for rejecting the application submitted by the rejected candidate shall be indicated to the rejected candidate) or tenderers regarding inclusion in the dynamic procurement system (also the reasons for rejecting the indicative tender submitted by the rejected tenderer shall be indicated to the rejected tenderer). The commissioning party shall notify all candidates or tenderers regarding the time period in which the person, taking into account the time period determined in Section 83, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding violations of the procurement procedure. Within the meaning of this Section it shall be deemed that information has been handed over to all candidates or all tenderers concurrently if information has been handed over to them in one day.

(2) The commissioning party shall, within three working days, concurrently inform all tenderers regarding the decision taken in relation to entering into a procurement contract or framework agreement. The commissioning party shall notify the name of the selected tenderer or the names of participants of the framework agreement, indicating:

1) to the rejected candidate the reasons for rejecting the tender thereof, but in the cases determined in Section 17, Paragraphs five and six of this Law shall justify the decision on non-conformity to equivalence or the decision on non-conformity of the relevant tender with the functional requirements or performance requirements;

2) to the tenderer which has submitted a conforming tender, the nature and relative advantages of the tender selected, if the economically most advantageous tender has been set as the criterion for selection of the tender;

3) the time period in which the tenderer, taking into account the time period specified in Section 83, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding violations of the procurement procedure.

(3) If the procurement procedure is terminated or suspended or the dynamic procurement system is not established, the commissioning party shall, within three working days, concurrently inform all candidates or tenderers regarding all reasons due to which the procurement procedure is terminated or discontinued or the dynamic procurement system is not established. The commissioning party shall inform all candidates or tenderers regarding the time period in which the person, taking into account the time period specified in Section 83, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding violations of the procurement procedure.

(4) The commissioning party, upon informing regarding the results, is entitled not to reveal specific information, if it may harm the interests of the public or if thus the lawful commercial interests of the supplier or provisions of fair competition would be violated.

(5) The commissioning party shall send information regarding the results by post, fax or electronically, using secure electronic signature, or shall hand it over in person.

(6) The commissioning party, upon informing regarding the results, shall keep evidence regarding the date and type of sending or handing over of information.

*[20 May 2010]*

## **Section 33. Exchange of Information**

(1) An exchange of information between the commissioning party and suppliers shall take place by post, fax, electronically (in accordance with the provisions referred to in Paragraphs

five and six of this Section), by telephone (in the cases specified in Paragraph eight, Clauses 1 and 2 of this Section), depending on the choice of the commissioning party.

(2) The commissioning party shall choose such means for the exchange of information, which are generally accessible, in order not to hinder the access by the supplier to the procurement procedure. The commissioning party shall choose such method of sending the documents referred to in this Law, which ensures as quick receipt of information by the addressee as possible.

(3) The exchange and storage of information shall be carried out in such a way as to protect the data included in tenders and applications and that the commissioning party might examine the content of tenders and applications only after the deadline for the submission of tenders or applications.

(4) The commissioning party shall not provide information regarding the existence of other tenders or applications from the day of submission of tenders or applications until the time of opening thereof. During the period of evaluation of tenders and applications until the notification of results, the commissioning party shall not provide information regarding the evaluation process.

(5) If electronic means are used for the exchange of information, such means shall be chosen, which are publicly accessible and compatible with generally used products of information and communication technologies, thereby avoiding the possibility of discriminating suppliers on these grounds.

(6) The provisions of Section 34 of this Law shall be applied to electronic equipment, which is used for the receipt and sending of tenders and applications.

(7) If tenders and applications are submitted electronically, the candidates or tenderers shall submit the certificates, confirmations and other documents provided for in Sections 39, 40, 41, 42, 43 and 44 of this Law by the end of the deadline for the submission of tenders or applications, if these documents are not in electronic form.

(8) The following provisions shall be observed in sending applications:

1) applications for participation in procurement procedures may be sent in writing or notified by telephone;

2) if an application is notified by telephone, a written confirmation shall be submitted prior to the end of the deadline for the submission of the application; and

3) the commissioning party may request that applications, which are sent by fax, be confirmed by post or electronically, if necessary, in order to give them lawful force (if it is necessary as legal means of proving). The commissioning party shall include any such requirement, as well as the deadline for sending of a confirmation in the notice regarding contract.

### **Section 34. Requirements for Electronic Receipt of Documents**

The following provisions shall be observed in using electronic equipment, by which tenders and applications, as well as plans and projects are received in procurement procedures:

1) all interested suppliers have access to the information regarding the specifications relating to the electronic submission of tenders and applications;

2) an electronic signature is used pursuant to the requirements of the Electronic Documents Law;

3) the date and time when tenders and applications, as well as plans and projects are to be submitted may be defined;

4) the commissioning party ensures that nobody is able to access the information submitted prior to the end of the specified deadline;

5) it is possible to determine a violation in case one has violated the prohibition referred to in Clause 4 of this Section;

- 6) only authorised persons have an opportunity to determine or change the time for opening the documents received;
- 7) the documents or a part thereof submitted during several stages of the procurement procedure are accessible after activities performed simultaneously by authorised persons;
- 8) the submitted documents may be accessed only on a specific date after activities performed simultaneously by authorised persons; and
- 9) the submitted and opened documents remain accessible only to those authorised persons who have been granted such access.

### **Section 35. Documentation and Notification of the Procurement Procedure**

- (1) The commissioning party shall ensure the documentation of each stage of the procurement procedure, the documentation of the procurement referred to in Section 8, Paragraphs seven and 7.<sup>1</sup> of this Law, as well as shall document a procurement procedure, which is taking place, using electronic means.
- (2) A procurement procedure notice is a report, which shows the progress of the procurement procedure. The notice shall be prepared for each procurement procedure after taking of a decision on the results of this procedure.
- (3) The minutes, which show the progress of individual stages of the procurement procedure, the notice, the procurement procedure documents, except tenders, shall be generally accessible information.
- (4) At least the following information shall be included in the notice regarding a procurement procedure:
  - 1) the name and address of the commissioning party, the procurement identification number, the type of the procurement procedure, as well as the subject-matter of the contract, framework agreement or dynamic procurement system;
  - 2) the date when a notice regarding the contract and an advance informative notice has been published on the Internet home page of the Procurement Monitoring Bureau;
  - 3) the composition and justification for the formation of a procurement commission;
  - 4) the qualification requirements specified for candidates and tenderers, the criterion for the selection of a tender, as well as the evaluation criteria and their proportion according to the sequence of significance thereof, if the economically most advantageous tender has been specified as the selection criterion of tenders;
  - 5) the deadline for the submission of tenders and applications, as well as justification for the reduction of the deadline, if the commissioning party reduces the deadline in accordance with Section 29, Paragraphs eight, ten, eleven and thirteen of this Law;
  - 6) the names of the suppliers, which have applied for candidate selection, and the names of the tenderers, which have submitted tenders, as well as the prices tendered;
  - 7) the location, date and time for the opening of tenders and applications;
  - 8) the name of the tenderer (or tenderers) with whom it has been decided to enter into a procurement contract, the contract price, as well as a summary of the evaluation of tenders and justification for the selected tender, if the economically most advantageous tender has been specified as the selection criterion for tenders;
  - 9) the names of the persons, which have been selected in accordance with the rules for candidate selection and invited to submit tenders, as well as the justification of the relevant decisions;
  - 10) information (if any) regarding the part of the contract or framework agreement, which the selected supplier has planned to transfer to sub-contractors. In case of a public works and service contract the sub-contractors, which have been indicated by tenderers and the value of the works to be performed or services to be provided by which is 20 per cent of the total value of the procurement contract or more, as well as the part of the works or service

contract to be transferred for performance to such sub-contractors shall be indicated in the report;

11) the justification of the decision on the rejected candidates or tenderers, as well as regarding tenders not conforming to the procurement procedure documents;

11<sup>1</sup>) the justification referred to in Section 54, Paragraph three or Section 56, Paragraph eight of this Law;

12) the justification of the decision, if the commissioning party has taken a decision to suspend the procurement procedure;

13) the justification for rejecting a tender, if the commissioning party has recognised the tender as unjustifiably low;

14) if a negotiated procedure is applied – the justification for the application of the procedure in accordance with Sections 62 and 63 of this Law;

15) if a competitive dialogue is applied – the justification for application of the procedure in accordance with Section 64.<sup>1</sup>, Paragraph one of this Law.

(5) The commissioning party shall prepare a notice not later than the day when the notice regarding the results of the procurement procedure is submitted for publication. The notice, on the basis of a request, shall be issued within two working days.

(6) The commissioning party shall send a notice to the European Commission, if it is requested by the Commission.

*[16 July 2009; 20 May 2010; 21 June 2012]*

## **Section 36. Storage of Procurement Procedure Documents**

The commissioning party shall store all the originals of the documents referred to in Section 35, Paragraph three of this Law, as well as the tender originals for 10 years after entering into of a procurement contract, entering into a framework agreement or establishment of a dynamic procurement system.

## **Chapter V. Selection of Candidates and Tenderers and Selection of Tender**

### **Section 37. Selection of Candidates and Tenderers, Conformity Check and Selection of Tenders**

(1) The commissioning party shall select candidates and tenderers in accordance with the qualification requirements specified in Sections 40, 41, 42, 43 and 44 of this Law, shall check the conformity of tenders with the requirements specified in the procurement procedure documents and select a tender or tenders in accordance with the specific tender selection criterion.

(2) The commissioning party may specify the minimum conformity level for the requirements referred to in Sections 41 and 42 of this Law. The amount of requirements, as well as the requested minimum level of capability for the implementation of the particular contract shall be determined commensurate to the subject-matter of the contract. The requirements for such minimum level of conformity shall be included in the notice regarding the contract (if such information is provided for by the relevant notice form), as well as in the procurement procedure documents.

(3) Statements and other documents, which are issued by competent authorities in the cases referred to this Law, shall be accepted and recognised by the commissioning party if they have been issued not earlier than one month prior to the day of submission.

(4) If the commissioning party obtains the necessary information regarding the candidate or tenderer directly from the competent authority, databases or other sources, the relevant candidate or tenderer is entitled to submit a statement or another document regarding the

relevant fact, if the information acquired by the commissioning party does not conform to the actual situation.

(5) If the commissioning party has a reason to doubt the authenticity of the document copy submitted, it shall request that the candidate or tenderer present the original document or submit an attested copy of the document.

(6) If a negotiated procedure with advance publication of a notice regarding the contract, or closed competition or competitive dialogue is applied, the commissioning party may estimate the number of candidates beforehand, which will be invited to participate in negotiations, to submit tenders or to participate in the competitive dialogue, if a sufficient number of appropriate candidates is available. In the notice regarding the contract (if such information is provided for by the relevant notice form), as well as in the procurement procedure documents, the commissioning party shall indicate the objectives and non-discriminatory criteria or provisions, which it has decided to apply, as well as the minimum and, if necessary, maximum number of candidates, which it intends to invite.

(7) If Paragraph six of this Section is applied, the commissioning party shall invite at least five candidates in case of a closed competition. If a negotiated procedure with advance publication of a notice regarding the contract or a competitive dialogue is applied, the commissioning party shall invite at least three candidates. In any case, a sufficiently large number of candidates shall be selected in order to ensure the competition.

(8) If Paragraphs six and seven of this Section are applied, the commissioning party shall invite a specific number of candidates, which shall not be less than is the number of candidates intended in the notice regarding the contract. If the number of such candidates, which conform to the qualification requirements, is less than the number specified, the commissioning party is entitled to continue the procurement procedure by inviting the selected candidates to submit a tender. The commissioning party is not entitled to invite such suppliers, which have not submitted applications or do not conform to the determined requirements.

*[16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 38. Termination and Discontinuation of a Procurement Procedure**

*[20 May 2010]*

(1) If tenders or applications have not been submitted for the particular procurement procedure or if the tenders submitted do not conform to the requirements specified in the procurement procedure documents or the candidates do not conform to the qualification requirements to be met, the commissioning party shall take a decision to terminate the procurement procedure, send the information referred to in Section 32, Paragraph three of this Law to all candidates or tenderers and, in accordance with Section 26, Paragraph four of this Law, submit a notice for publication regarding amendments, termination or discontinuation of the procurement procedure.

(2) The commissioning party shall take a decision to discontinue the procurement procedure in the case referred to in Section 54, Paragraph two and Section 56, Paragraph seven of this Law. In other cases the commissioning party may, at any time, discontinue the procurement procedure if it has an objective justification. Upon discontinuing the procurement procedure, the commissioning party shall send the information referred to in Section 32, Paragraph three of this Law to all candidates or tenderers and, in accordance with Section 26, Paragraph four of this Law, submit a notice regarding amendments, termination or discontinuation of the procurement procedure for publication, in which the conditions that were the basis for discontinuation of the procedure shall be indicated.

(3) If the commissioning party has taken a decision to terminate the procurement procedure, it, in accordance with Section 62, Paragraph one, Clause 1 or Section 63, Paragraph one,

Clause 1 of this Law, may apply a negotiated procedure. If the procurement procedure is discontinued, it may not be resumed.

*[16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 39. Provisions for Exclusion of Candidates and Tenderers**

(1) The commissioning party shall exclude a candidate or tenderer from further participation in a procurement procedure, as well as shall not review the tender of a tenderer in any of the following cases:

1) a candidate, a tenderer or a person, having the right to represent the candidate or tenderer or to take a decision or supervise in relation to this candidate or tenderer, has been found guilty of committing a criminal offence of evading payment of taxes and payments equivalent thereto, criminal offences of corruptive nature, fraudulent activities in the field of finances, laundering of criminal proceeds or participation in a criminal organisation by such a judgement of a court or a punishment prescription of a prosecutor that has entered into effect and is non-disputable and not subject to appeal;

2) a candidate or a tenderer, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of a significant violation of employment rights which means:

a) employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;

b) employment of one person without entering into a written employment contract if it is determined repeatedly within a period of one year, or employment of two or more persons simultaneously without entering into a written employment contract;

3) a candidate or tenderer, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of violation of competition rights manifested as a vertical agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, except for the case when the relevant authority, upon determining violation of competition rights, has released the candidate or tenderer from a fine;

4) insolvency proceedings have been declared for the candidate or tenderer, the economic activity of the candidate or tenderer has been suspended or discontinued, legal proceedings have been initiated regarding the bankruptcy of the candidate or tenderer or it is determined that the candidate or tenderer will be wound up until fulfilment of the expected expiry date of the contract;

5) if a candidate or tenderer has tax debts in Latvia and a country where it is registered or permanently residing (if it is not registered in Latvia or is not permanently residing in Latvia), including debts of mandatory State social insurance contributions in total exceeding 100 lats in each country;

6) [2 February 2012];

7) [2 February 2012];

8) [2 February 2012];

9) [2 February 2012];

10) a candidate or tenderer has provided false information for the evaluation of qualification thereof or has not provided the requested information at all;

11) the provisions referred to in Clauses 1, 2, 3, 4, 5 and 10 of this Paragraph shall be applied to the sub-contractor indicated by the tenderer, the value of the works to be performed or the services to be provided by which is at least 20 per cent of the total value of the procurement contract, a member of the partnership, if the candidate or tenderer is a partnership, and the person the candidate or tenderer refers to in order to certify that the

qualification thereof complies with requirements specified in the notice regarding the contract or procurement procedure documents.

(2) [2 February 2012]

(3) If a bailout or similar set of measures is applied within insolvency proceedings of a candidate, a tenderer or a person referred to in Paragraph one, Clause 11 of this Section oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, the commissioning party may decide on non-exclusion of the relevant candidate or tenderer from the procurement procedure in accordance with Paragraph one, Clause 4 of this Section by assessing potential economic risks and taking into account the subject-matter of the contract.

(4) The exclusion conditions referred to in Paragraph one, Clauses 1, 2 and 3 of this Section shall not be applied to the candidate, the tenderer and the person referred to in Paragraph one, Clause 11 of this Section if:

1) three years have passed from the day when the judgement of a court, the punishment prescription of a prosecutor or a decision taken by another competent authority on violations referred to in Paragraph one, Clause 1 and Clause 2, Sub-clause "a" of this Section became non-disputable and not subject to appeal till the day when the application or tender was submitted;

2) 18 months have passed from the day when the judgement of a court or a decision taken by another competent authority on violations referred to in Paragraph one, Clause 2, Sub-clause "b" of this Section became non-disputable and not subject to appeal till the day when the application or tender was submitted;

3) 12 months have passed from the day when the judgement of a court or a decision taken by another competent authority on violations referred to in Paragraph one, Clause 3 of this Section became non-disputable and not subject to appeal till the day when the application or tender was submitted.

(5) If the commissioning party is not able to obtain the information referred to in Paragraph one, Clauses 4 and 5 of this Section from public databases, it shall request the candidate or tenderer to submit the following:

1) a statement issued by a competent authority that certifies that insolvency proceedings have not been initiated regarding the candidate or tenderer and the person referred to in Paragraph one, Clause 11 of this Section and they are not in the winding up stage;

2) a statement issued by the State Revenue Service that certifies that the candidate or tenderer and the person referred to in Paragraph one, Clause 11 of this Section (regardless of whether they are registered in Latvia or permanently residing in Latvia) have no debts of taxes administered by the State Revenue Service in Latvia, including debts of mandatory State social insurance contributions in total exceeding 100 lats in each country;

3) a statement that a tenderer or candidate registered in a foreign country (permanent place of residence) and the person referred to in Paragraph one, Clause 11 of this Section (if they are registered in a foreign country or permanently residing in a foreign country) have no tax debts in the relevant foreign country, including debts of mandatory State social insurance contributions in total exceeding 100 lats.

(5<sup>1</sup>) The commissioning party shall not request the documents referred to in Paragraph five of this Section, if the relevant information is available in public databases or online information systems managed by the relevant competent authorities.

(6) [2 February 2012]

(7) [2 February 2012]

(8) In an open competition the commissioning party shall request that the statements referred to in Paragraph five of this Section are submitted only by such tenderer, which according to other requirements specified in the notice regarding the contract or the procurement procedure documents and the selected criteria for selection of tender should be awarded the right to enter

into a contract. The commissioning party shall determine the deadline of not less than 10 working days for the submission of the documents referred to in Paragraph five of this Section. If the relevant tenderer does not submit the documents referred to in Paragraph five of this Section within the specified deadline, the commissioning party shall exclude it from participation in the procurement procedure.

(9) In order to evaluate the candidate, the tenderer and the person referred to in Paragraph one, Clause 11 of this Section, the commissioning party shall obtain information from the State Labour Inspectorate regarding whether the candidate or tenderer and the person referred to in Paragraph one, Clause 11 of this Section has been punished in Latvia or a foreign country for such violations of employment rights, which are related to employment of persons without entering into a written employment contract.

(10) If such documents, by which a supplier may certify that the conditions indicated in Paragraph one of this Section do not apply to him or her and the persons referred to in Paragraph one, Clause 11 of this Section, are not issued or they are not sufficient to certify that the conditions indicated in Paragraph one of this Section do not apply to the supplier and the person referred to in Paragraph one, Clause 11 of this Section, the referred to documents may be replaced with an oath or, if regulatory enactments of the relevant country do not provide for giving of an oath, with a certification of the supplier itself or the person referred to in Paragraph one, Clause 11 of this Section to the competent executive authority or judicial authority, a sworn notary or a competent organisation in the relevant sector in the country of registration (permanent residence) thereof.

*[20 May 2010; 2 February 2012; 21 June 2012]*

#### **Section 40. Conformity for the Performance of Professional Activities**

(1) The commissioning party may request evidence that the relevant supplier is registered, licensed or certified in accordance with the requirements of regulatory enactments of the relevant country.

(2) In case of a public service contract, insofar as the suppliers have to be specially authorised or have to be members of a specific organisation so that they might provide the particular service in the relevant country, the commissioning party may request evidence regarding such authorisation or participation.

*[16 July 2009]*

#### **Section 41. Economic and Financial Situation**

(1) A supplier may attest the conformity of the economic and financial situation thereof with the requirements to be met mainly by submitting the following documents:

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

2) a financial report or an extract from the financial report; and

3) a certification regarding the total financial turnover thereof or, if necessary, the financial turnover, which relates to a specific procurement, but not more than regarding three previous years.

(2) *[16 July 2009]*

(3) The supplier may rely on the capacity of other entrepreneurs if it is necessary for the implementation of the particular contract, regardless of the legal nature of mutual relations thereof. In such case the supplier shall prove to the commissioning party that it will have the necessary resources at the disposal thereof, by submitting an attestation of these entrepreneurs or an agreement regarding co-operation for the implementation of the particular contract.

(4) In the notice regarding the contract (if such information is provided for in the relevant notice form) or in an invitation to submit a tender, as well as in the procurement procedure



documents the commissioning party shall determine which of the documents referred to in Paragraph one of this Section or other documents it selects.

(5) If, due to substantiated reasons, the supplier is unable to submit the documents requested by the commissioning party, it is entitled to attest its economic or financial situation with any other documents if the commissioning party considers these appropriate.

*[16 July 2009; 21 June 2012]*

## **Section 42. Technical and Professional Abilities**

(1) The technical and professional abilities of a supplier shall be evaluated and checked in accordance with the provisions of Paragraphs two and three of this Section.

(2) The conformity of the technical and professional abilities of the supplier with the nature, quantity and level of significance of work, supply or service may be attested with the following:

1) information regarding the works performed by appending statements and references regarding the implementation of the most significant work during not more than the five preceding years. Information regarding the amount of the relevant works, structure types, time periods of implementation and location, as well as whether all work has been performed in conformity with the relevant regulations and dutifully completed shall be included in the these statements. If necessary, the commissioning party of the relevant works shall submit such statement directly to the commissioning party;

2) information regarding the most significant supplies performed or services provided during not more than three preceding years, indicating amounts, time and recipients (public persons or private persons). The references of purchasers or attestations of suppliers shall be appended to the information;

3) information regarding technical personnel or institutions, which are responsible for the quality control, but, if works are to be performed, regarding technical personnel or institutions, which will be involved in the performance of works;

4) a description regarding technical equipment and resources which are used by the supplier of goods or the provider of services for ensuring of quality;

5) an inspection, which is performed by the commissioning party or a State competent authority on behalf of a supplier of goods or a provider of services, if the goods to be supplied or services to be provided are complicated in nature or if these goods or services are intended for a special purpose. The referred to inspection shall relate to the production capacity of the supplier of goods or the technical capacity of the provider of services and, if necessary, to measures for ensuring the quality control, which it will perform;

6) documents attesting the education or professional qualification of the performer of works or managerial staff of the provider of services, particularly regarding persons, which are responsible for the management of works or the provision of services;

7) for public works and service contracts – a description, indicating measures for ensuring the requirements of environmental protection, which the supplier is capable of implementing, when implementing the contract;

8) information regarding the average number of employees of the performer of works and the provider of services and the number of the managerial staff during the last three years;

9) information regarding tools, equipment and technical installations, which are available to the performer of works and the provider of services for the implementation of the contract;

10) a reference to the part of the contract, which the performer of works and the provider of services has intended to transfer to sub-contractors;

11) in relation to the goods to be supplied:

a) samples, descriptions and photographs, the authenticity of which shall be attested if it is requested by the commissioning party,

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

(3) The supplier may rely on the capacity of other entrepreneurs if it is necessary for the implementation of the particular contract, regardless of the legal nature of mutual relations thereof. In such case the supplier shall prove to the commissioning party that it will have the necessary resources at the disposal thereof, by submitting an attestation of these entrepreneurs or an agreement regarding the transfer of the necessary resources into the disposal of the supplier.

(4) The commissioning party shall indicate information regarding which attestations referred to in Paragraph two of this Section must be submitted by the supplier, in the notice regarding the contract or, if such information is not provided for by the relevant notice form, in the relevant procurement procedure documents.

*[16 July 2009]*

### **Section 43. Quality Assurance Standards**

If the commissioning party requests that the quality system of a supplier be inspected, it shall refer to the quality assurance systems, which conform to specific European certification standards and which have been certified by the relevant institutions, which conform to European certification standards. The commissioning party shall recognise equivalent certificates, which have been issued by institutions in other European Union Member States, as well as accept other evidence submitted by the supplier regarding quality assurance measures.

### **Section 44. Environmental Management Standards**

The ability of a supplier to implement the measures referred to in Section 42, Paragraph two, Clause 7 of this Law may be attested as follows:

- 1) by registering in the Environmental Management and Audit System (EMAS);
- 2) with a certificate of the competent authority of Latvia or another European Union Member State, which attests the conformity thereof with European or international environmental management system standards; or
- 3) with an equivalent assessment regarding the conformity of the activities thereof with the environmental protection requirements, which in Latvia conform to the environmental management systems referred to in Clause 1 or 2 of this Section.

*[16 July 2009]*

### **Section 45. Additional Documents, Additional Information and Samples of Goods**

(1) If the commissioning party establishes that the information included in the documents submitted in compliance with the provisions of Sections 39, 40, 41, 42, 43 and 44 of this Law is unclear or incomplete, it shall request that the supplier or the competent authority explains or supplements the information included in the documents. The commissioning party shall determine the deadline for the submission of the necessary information commensurately with the time period necessary for the preparation and submission of such information.

(2) If the commissioning party, in accordance with Paragraph one of this Section, has requested to explain or supplement the submitted documents, but the candidate or tenderer has not complied in compliance with the requirements specified by the commissioning party, the commissioning party does not have a duty to repeatedly request that the information included in the documents is explained or supplemented.

(3) During the course of evaluation of tenders the commissioning party is entitled to request that the information included in the technical and financial tender is explained, as well as samples of goods offered are submitted, if they are necessary for the conformity assessment of goods and the tenderer is not able to prove the conformity of goods with the documents available thereto. The commissioning party shall not request samples of such goods, which are to be adjusted or manufactured during implementation of the contract in compliance with the requirements thereof, if such samples are not available to the supplier prior to entering into the procurement contract, as well as samples, submission of which causes incommensurate expenditure for the supplier.

*[21 June 2012]*

#### **Section 46. Criteria for Selection of Tenders**

(1) The criteria for selection of tenders shall be as follows:

1) the economically most advantageous tender, in which such factors are taken into account as the deadlines for the implementation of supplies or a contract, operational costs and other costs, the effectiveness thereof, the quality of works, goods or services, the aesthetic and functional description, observation of the environmental requirements, technical advantages, accessibility of spare parts, safety of supplies, the price and other factors associated with the subject-matter of a contract, which must be specifically expressed and objectively comparable or assessable;

2) the tender with the lowest price.

(2) The commissioning party shall select the economically most advantageous tender as the criterion for the comparison and evaluation of tenders, but in case when the commissioning party considers it more effective to select the tender with the lowest price and the technical specification prepared by the commissioning party is detailed, the commissioning party is entitled to use the criterion – the tender with the lowest price – for the comparison and evaluation of tenders.

(3) In case the economically most advantageous tender is selected, the commissioning party shall indicate in the notice regarding the contract or the procurement procedure documents all evaluation criteria in the order of significance thereof, the proportion and numerical value of the criteria, as well as shall indicate in the procurement procedure documents the selection algorithm of a tender in accordance with these criteria and a description of how each evaluation criteria indicated will be evaluated. The numerical value granted to criteria may be indicated in the specific range.

(4) If the commissioning party, prior to taking a decision on entering into the procurement contract, establishes that the evaluation of the tender according to the selected tender selection criterion is identical, it shall select the tender submitted by the supplier, which employs at least 20 convicted persons in places of imprisonment.

*[16 July 2009; 21 June 2012]*

#### **Section 46.<sup>1</sup> Special Provisions for Procurement in the Field of Road Transport**

(1) In organising a procurement of road transport vehicles, the commissioning party shall take into account the impact of their use on the energy industry and environment and for this purpose shall evaluate at least the energy consumption and the amount of emissions of carbon dioxide, nitrogen oxides, non-methane hydrocarbons and solid particles.

(2) The Cabinet shall determine the categories of such road transport vehicles, in procurements of which the requirements of this Section shall be applied, as well as the methodology for the calculation of the costs of use of road transport vehicles.

(3) The commissioning party shall fulfil the requirements of Paragraph one of this Section in one of the following ways:

1) requirements in relation to energy consumption and the amount of emissions of the substances referred to in Paragraph one of this Section, as well as, if necessary, other impacts on environmental aspects shall be included in technical specifications;

2) factors of the impact of use on the energy industry and environment shall be evaluated, specifying the criteria for evaluation of tenders in accordance with Section 46 of this Law. The commissioning party is entitled to express and evaluate the referred to factors in monetary terms, using the methodology specified by the Cabinet for the calculation of the costs of use of road transport vehicles.

*[20 May 2010; 21 June 2012]*

## **Section 47. Application of Electronic Auctions**

(1) If the technical specifications may be defined very precisely, then in case of open and closed competitions, as well as if a negotiated procedure is applied with advance publication of a notice regarding the contract, the commissioning party may decide to apply an electronic auction prior to the selection of a tender. An electronic auction may also be organised prior to the selection of a tender within the scope of a framework agreement in accordance with Section 65, Paragraph seven of this Law, as well as within the scope of a dynamic procurement system prior to the selection of a tender in accordance with Section 66 of this Law.

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

1) the price or the price and the new value of the characteristics referred to in the technical specification, if the selection criteria of a tender is the economically most advantageous tender; or

2) only the price, if the selection criteria of a tender is the lowest price.

(3) If a decision is taken on organisation of an electronic auction, the commissioning party shall indicate it in the notice regarding the contract.

(4) If an electronic auction is being organised, the following shall be indicated in addition to other information in the procurement procedure documents:

1) characteristics of the object of the electronic auction, if these characteristics are quantifiable and their value is expressed in figures or per cent;

2) any limits on the values (which may be submitted and changed), taking into account the technical specifications of the subject-matter of the contract;

3) the information, which will be conveyed to tenderers during the auction and, if necessary, when this information will be conveyed;

4) the information required, which concerns the organisation of the electronic auction;

5) the provisions, which the tenderers must comply with when bidding on the electronic auction, particularly in relation to the minimum steps of the auction, which will be requested, if necessary;

6) the information required in relation to the electronic equipment used and the specifications and organisation of the connection.

(5) Prior to the commencement of an electronic auction, the commissioning party shall perform a complete initial evaluation of tenders in accordance with the specified tender selection criterion.

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

(7) If it is intended to select the economically most advantageous tender, a summary of the evaluation of tenders shall be appended to the invitation. The mathematical formula or algorithm to be used in the electronic auction shall be included in the invitation, which reflects the notional values of all criteria and which, taking into account the initially specified proportion of criteria, shall determine the re-ranking of positions, using the newly submitted values and prices or only prices. If variants are permitted, a separate formula shall be specified for each variant.

(8) During any phase of an electronic auction the commissioning party shall continuously communicate information to all tenderers, which allows them to ascertain their relative rankings at any time. The commissioning party may also provide information regarding other prices or values tendered, if it is provided for in the procurement procedure documents. The commissioning party may also at any time announce the number of participants of the auction in the particular phase of the auction, however, is not entitled to disclose the identities of the participants.

(9) The commissioning party shall terminate the electronic auction (observing one or several conditions):

- 1) on the date and time, which is specified in the invitation to auction;
- 2) after receipt of the final bid, if the specified time has passed since the invitation to auction and a new bid during this period is not placed;
- 3) if all phases referred to in the invitation have been completed.

(10) If the commissioning party wishes to terminate the auction, observing both the provisions of Paragraph nine, Clauses 2 and 3 of this Section, it shall indicate the time for each phase of the auction in the invitation.

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

(12) The commissioning party is not entitled to use the electronic auction in order to restrict or avoid competition or to change the subject-matter of the procurement, which is specified in the notice regarding the contract and in the procurement procedure documents.

#### **Section 48. Tender of Unjustifiably Low Cost**

(1) If a tender for a specific public works, supply or service contract is unjustifiably low, the commissioning party shall, prior to the potential rejection of this tender, request in writing a detailed explanation regarding the significant conditions of the tender.

(2) The detailed explanation may relate in particular to:

- 1) the costs of the manufacturing process, the methods of works or of the services to be provided;
- 2) the technical solutions selected and especially favourable conditions for the performance of works, supply of goods or provision of services, which are available to the tenderer;
- 3) the features and originality of the tendered works, goods or services;
- 4) the labour protection provisions and the conformity of working conditions with the location where buildings works are performed, goods supplied or services provided; and
- 5) the possibility of the tenderer to obtain aid for commercial activities.

(3) The commissioning party, upon consultation with a tenderer, shall evaluate all the factors referred to in Paragraph two of this Section.

(4) If the commissioning party establishes that the tender is unjustifiably low because the tenderer has received State aid, the tender may be rejected following consultations with the tenderer, only on the basis of the tenderer being unable to prove within a reasonable period of time specified by the commissioning party, that the received aid for commercial activities is lawful. If the commissioning party rejects the tender due to this reason, it shall inform the

European Commission and the Procurement Monitoring Bureau regarding the rejection of the tender and the reason for rejection.

**Section 49.** [16 July 2009]

## **Chapter VI. Application of Open and Closed Competitions**

### **Section 50. Open and Closed Competition**

(1) An open competition is a procurement procedure in which all interested suppliers are entitled to submit tenders.

(2) A closed competition is a procurement procedure in which all interested suppliers may request the right to participate, however, tenders may only be submitted by those candidates, which are invited by the commissioning party.

(3) If the commissioning party chooses to apply an open competition, creating a dynamic procurement system, it shall apply the regulations of Section 66 and not the provisions of this Chapter.

*[16 July 2009]*

### **Section 51. Open Competition Regulations and Candidate Selection Regulations**

(1) Prior to the publication of a notice regarding the contract, the open competition regulations shall be prepared. The following shall be included in the regulations:

1) general information:

a) the identification number of the procurement,

b) the name, address and other details of the commissioning party;

c) the location, date, time and procedure for the submission and opening of tenders,

d) [21 June 2012],

e) tender security, if any provided for in accordance with Section 52 of this Law,

f) the requirements in relation to the documentation and submission of a tender, the type of financial tender, as well as information regarding the language or languages, in which the tender is to be submitted;

g) other information;

2) information regarding the subject-matter of the procurement:

a) the description and amount of the subject-matter of the procurement,

b) the technical specifications,

c) the time and location of the implementation of the contract,

d) other information regarding the subject-matter of the procurement;

3) the requirements, which are specified in accordance with Section 39 of this Law, as well as the information to be submitted, which is necessary in order to evaluate the tenderer in accordance with the Section referred to;

4) the requirements in relation to the capacity of a tenderer to perform professional activities, the economic and financial situation and the technical and professional abilities of the tenderer in accordance with the requirements specified in Sections 43 and 44 of this Law, as well as the information to be submitted, which is necessary in order to evaluate the tenderer in accordance with the requirements referred to;

5) the selection criteria and evaluation criteria of a tender in accordance with Section 46 of this Law, as well as a reference whether the tenderer may submit variants of tenders in accordance with Section 19 of this Law;

6) the draft of the procurement contract or the framework agreement;

7) if the subject-matter of the procurement is insurance services and the commissioning party uses services of an insurance broker – the firm name of the insurance broker and the total amount of the insurance indemnity paid by the insurer to the broker.

(2) Prior to the publication of the notice regarding the contract, the commissioning party shall prepare the candidate selection regulations for a closed competition. The following shall be included in the regulations:

- 1) the name, address and other details of the commissioning party;
- 2) the identification number of the procurement;
- 3) the subject-matter of the procurement;
- 4) the location, date and time of the submission and opening of tenders;
- 5) the requirements, which are specified in accordance with Section 39 of this Law, as well as the information to be submitted, which is necessary in order to evaluate the tenderer in accordance with the Section referred to;

- 6) the requirements in relation to the capacity of a candidate to perform professional activities, the economic and financial situation and the technical and professional abilities of the candidate in accordance with the requirements specified in Sections 43 and 44 of this Law, as well as the information to be submitted, which is necessary in order to evaluate the candidate in accordance with the requirements referred to;

- 7) the methodology of the candidate evaluation system if Section 37, Paragraph six of this Law is being applied;

- 8) other information regarding the selection of candidates.

*[16 July 2009; 21 June 2012]*

## **Section 52. Tender Security**

(1) The commissioning party is entitled to request that the tenderer submits or pays in a tender security. The commissioning party shall specify the types of the tender security, the amount and time period, as well as the provisions for submission and issue, payment and disbursement thereof in the procurement procedure documents.

(2) The amount of the tender security shall be determined commensurately, taking into account the estimated contract price of the relevant procurement and the subject-matter of the contract, but not more than two per cent of the estimated contract price and not more than 10 000 lats.

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

(4) A supplier is entitled to submit the tender security as a bank guarantee, insurance policy or, if the commissioning party has provided for such an opportunity in the procurement procedure documents, as payment of a sum of money in the account indicated by the commissioning party.

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

- 1) until the minimum period of validity of the tender security specified in the procurement procedure documents;

- 2) if it has been specified in the procurement procedure documents that the tenderer whose tender has been selected in accordance with the tender selection criterion submits a contract security prior to entering into the contract – until the day when the selected tenderer submits such contract security;

- 3) until the entering into the procurement contract.

(6) If it has been specified in the procurement procedure documents and the procurement contract that the tenderer whose tender has been selected in accordance with the tender

selection criterion submits a contract security after entering into the contract, the tender security in relation to such person shall be in effect until the day when it submits such contract security.

(7) The provider of security shall disburse to the commissioning party or the commissioning party shall deduct the amount of the tender security paid in by the tenderer, if:

1) the tenderer withdraws his or her tender during the period of validity of the tender security;

2) the tenderer whose tender has been selected in accordance with the tender selection criterion has not submitted the contract security provided for in the procurement procedure documents and the procurement contract to the commissioning party within the time period specified by the commissioning party;

3) the tenderer whose tender has been selected in accordance with the tender selection criterion does not sign the procurement contract or framework agreement within the time period specified by the commissioning party.

*[21 June 2012]*

### **Section 53. Opening of Applications in a Closed Competition**

(1) At the time and place specified in the candidate selection regulations, the commissioning party shall organise the opening of applications. The opening of applications shall be open.

(2) Applications shall be opened in the order of submission thereof. After opening of applications, the commissioning party shall name the candidate and the date and time of submission of the application.

### **Section 54. Selection of Candidates in a Closed Competition**

(1) After expiry of the deadline for the submission of applications, candidates shall be selected in accordance with the qualification requirements specified in the candidate selection regulations, as well as in accordance with the methodology of the candidate evaluation system, if Section 37, Paragraph six of this Law is applied.

(2) If only one candidate conforms to all the requirements for the selection of candidates specified in the candidate selection regulations or the notice regarding the contract, the commissioning party shall take a decision to discontinue the procurement procedure, except the case referred to in Paragraph three of this Section.

(3) In the case referred to in Paragraph two of this Section the commissioning party need not discontinue the procurement procedure if it may justify that the number of suppliers corresponding to the requirements for the selection of candidates operating in the particular market is insufficient. In such case the commissioning party shall indicate this justification in the report on the procurement procedure, in addition including a justification that the requirements for the selection of candidates are objective and commensurate.

*[21 June 2012]*

### **Section 55. Meeting of Interested Suppliers, Submission and Opening of Tenders in an Open and Closed Competition**

(1) If the commissioning party has intended to organise a meeting of the interested suppliers, the location and time thereof shall be indicated in the open competition regulations or in the invitation to a closed competition. The supplier has the right to suggest that a meeting of the interested suppliers is organised. The commissioning party shall organise a meeting of the interested suppliers if, not more than 20 days prior to the day of opening of tenders, it has received a proposal of at least two interested suppliers to organise a meeting of the interested suppliers. A meeting shall be organised not later than 10 working days prior to the opening of



tenders and information regarding the meeting shall be inserted on the Internet home page of the commissioning party at least five working days in advance. The commissioning party shall provide additional information and reply to questions asked during the meeting. The proceedings of the meeting shall be recorded in minutes.

(2) A supplier shall submit a tender and tender security (if such is provided for), which has been prepared and documented in accordance with the requirements specified, in the time and location indicated in the open competition regulations or in the invitation to a closed competition.

(3) If it is necessary to observe a commercial secret in relation to the subject-matter of a procurement or individual parts thereof, the supplier shall indicate it in his or her tender.

(4) The commissioning party shall open the submitted tenders immediately after expiry of the deadline for the submission of tenders in the location and time indicated in the open competition regulations or in the invitation to a closed competition, except the case referred to in Section 83, Paragraph 5.<sup>1</sup> of this Law. The commissioning party shall organise a meeting for the opening of tenders. The opening of tenders shall be open.

(4<sup>1</sup>) If in the case referred to in Section 83, Paragraph 5.<sup>1</sup> of this Law the complaints examination commission (Section 82) takes the decision referred to in Section 84, Paragraph two, Clause 1 of this Law or the administrative case is terminated, the commissioning party shall publish information on the Internet home page thereof regarding the location and time of opening of tenders, as well as inform the tenderers thereof at least three working days in advance. If the commission takes the decision referred to in Section 84, Paragraph two, Clause 3 or Paragraph three of this Law, the commissioning party shall not open the submitted tenders and shall issue or send them back to the tenderers.

(5) Tenders shall be opened in the order of submission thereof, naming the tenderer, the time of the submission of the tender, the price tendered and other information, which characterises the tender. Upon the request of participants of the meeting, the commissioning party shall present a financial tender in which the price tendered is indicated in accordance with the type of financial tender requested. If the subject-matter of a procurement has been divided into several parts and their number is unreasonably large, the commissioning party need not name the price tendered for each part, but may copy and issue a copy of the financial tender, in which according to the requested form of the financial tender the price tendered for each part is indicated, to each participant of the meeting where tenders are opened, ensuring that information, which is not generally accessible, is not disclosed.

*[20 May 2010; 21 June 2012]*

## **Section 56. Course of Tender Evaluation, Decision Making and Notification of Competition Results in an Open and Closed Competition**

(1) In an open competition, the commissioning party shall select tenderers in accordance with the qualification requirements to be met, shall check the conformity of tenders with the requirements specified in the open competition regulations and select a tender or tenders in accordance with the selected selection criterion of a tender.

(2) The commissioning party shall check the conformity of tenders in a closed competition with the requirements specified in the invitation to a closed competition and shall select a tender or tenders in accordance with the selected selection criterion of a tender.

(3) During evaluation of tenders, the commissioning party shall check that there are no arithmetical mistakes in the tender. If the commissioning party establishes such mistakes, it shall correct them. The commissioning party shall notify a tenderer whose mistakes have been corrected, regarding the correction of mistakes and the amended tender amount. When evaluating a financial tender, the commissioning party shall take corrections into account.

(4) If, in accordance with the open competition regulations or the invitation to a closed competition, the subject-matter of a procurement is divided into parts, the commissioning

party shall take a decision to enter into a procurement contract regarding each part individually. The commissioning party may submit a notice regarding the results of the procurement procedure for publication individually in relation to each part.

(5) If the tenderer selected declines from entering into a procurement contract with the commissioning party, the commissioning party shall take a decision to enter into a contract with the next tenderer, which has tendered the lowest price or the economically most advantageous tender, or suspend the competition, without selecting any tender. If a decision is taken to enter into a contract with the next tenderer, which tenders the lowest price or the economically most advantageous tender, but it declines to enter into contract, the commissioning party shall take a decision to suspend the procurement procedure, without selecting any tender.

(6) Prior to taking a decision on entering into a contract with the next tenderer, which has tendered the lowest price or the economically most advantageous tender, the commissioning party shall evaluate whether it is not to be regarded as one market participant together with the initially selected tenderer, which declined from entering into a procurement contract with the commissioning party. If necessary, the commissioning party is entitled to request confirmation from the next tenderer and, if necessary, evidence that it is not to be regarded as one market participant together with the initially selected tenderer. If the next tenderer is regarded as one market participant together with the initially selected tenderer, the commissioning party shall take a decision to suspend the procurement procedure, without selecting any tender.

(7) If only one tenderer conforms to all the requirements for the selection of tenderers specified in the open competition regulations or the notice regarding the contract, the commissioning party shall take a decision to discontinue the procurement procedure, except the case referred to in Paragraph eight of this Section.

(8) In the case referred to in Paragraph seven of this Section the commissioning party need not discontinue the procurement procedure if it may justify that the number of suppliers corresponding to the requirements for the selection of tenderers operating in the particular market is insufficient. In such case the commissioning party shall indicate this justification in the report on the procurement procedure, in addition including a justification that the requirements for the selection of tenderers are objective and commensurate.

*[16 July 2009; 20 May 2010]*

## **Chapter VII. Application of a Negotiated Procedure and Competitive Dialogue**

*[16 July 2009]*

### **Section 57. Application of Price Quotations**

*[16 July 2009]*

### **Section 58. Course of Price Quotations if Informative Notice regarding Price Quotation has been Published**

*[16 July 2009]*

### **Section 59. Course of Price Quotations if an Informative Notice Regarding Price Quotation has not been Published**

*[16 July 2009]*

### **Section 60. Decision on Price Quotation Results**

*[16 July 2009]*

### **Section 61. Negotiated Procedure**

A negotiated procedure is a procurement procedure, in which the commissioning party consults with the suppliers of its choice and negotiates the terms of the contract with one or several of them.

## **Section 62. Application of a Negotiated Procedure with Advance Publication of Notice Regarding the Contract**

(1) The commissioning party may apply a negotiated procedure with advance publication of a notice regarding the contract, if:

1) in an open or closed competition or in a competition dialogue tenders not conforming to the requirements specified in the procurement procedure documents have been submitted or if candidates or tenderers do not conform to the qualification requirements proposed by the commissioning party and the provisions of the procurement contract do not significantly differ from the requirements necessary for the implementation of the contract provided for the previously published relevant procurement procedure. The commissioning party need not publish the notice regarding the contract if it only invites all those tenderers to negotiations, which have not been excluded from the previously published relevant procurement procedure in accordance with the provisions of Section 39 of this Law and conform to the qualification requirements to be met;

2) the subject-matter of the procurement is such services, particularly the services and intellectual services (for example, designing) referred to in Annex 2, Category 6 to this Law, the nature of which does not allow the requirements necessary for the implementation of the contract to be precisely estimated, and therefore it is not possible to select the most appropriate tender in an open or closed competition; or

3) the subject-matter of the contract is works and they are performed for the purposes of science, research or innovation without the aim of making a profit or recovering the costs associated thereto.

(1<sup>1</sup>) If the commissioning party applies a negotiated procedure in accordance with Paragraph one, Clause 2 of this Section, it shall indicate a justification for selecting the negotiated procedure in the notice regarding the contract or, if it is not possible, the justification shall be inserted on the Internet home page thereof not more than a day after the notice regarding the contract has been published.

(2) A candidate shall submit an application within the time period specified in the notice regarding the contract, which includes the information provided for in the notice regarding the contract and in the procurement procedure documents. The commissioning party shall select candidates in accordance with the specific qualification requirements and invite the selected candidates to commence negotiations. The commissioning party shall agree regarding a deadline for the submission of tenders with all candidates, which will be determined in the notice, however, if agreement cannot be reached, this deadline shall be determined as not less than 10 days.

(3) In the cases specified in Paragraph one of this Section the commissioning party shall discuss the submitted tenders with the tenderers in order to co-ordinate them with the requirements, which are referred to in the notice regarding the contract and other procurement procedure documents, and to select the most conforming tender in accordance with the previously specified selection criterion for a tender.

(4) During negotiations, the commissioning party shall ensure an equal attitude towards all tenderers, guaranteeing all with equal access to information regarding the procurement. The commissioning party shall not create favourable conditions for any tenderer.

*[16 July 2009; 21 June 2012]*

### **Section 63. Application of a Negotiated Procedure without Publication of a Notice Regarding the Contract**

(1) The commissioning party may apply a negotiated procedure for public works, supply and service contracts without advance publication of a notice regarding the contract, if:

1) tenders or applications for the selection of candidates have not been submitted for an open or closed competition published in advance. In such case the commissioning party is not entitled to significantly change the intended requirements necessary for the implementation of a contract in a previously announced open or closed competition. Upon the request of the European Commission, the commissioning party shall send the notice thereto;

2) due to technical or artistic reasons or due to reasons connected with the protection of exclusive rights, the contract may only be entered into with a specific supplier;

3) a situation has arisen for the commissioning party as a result of unforeseeable extraordinary circumstances, in which due to urgency it not possible to apply an open competition, a closed competition or a negotiated procedure with advance publication of the notice regarding the contract. The referred to circumstances, which justify an extraordinary situation, shall not be allowed to be dependent on the activities of the commissioning party.

(2) The commissioning party may apply a negotiated procedure for public supply contracts without advance publication of a notice regarding the contract, if:

1) the goods required are specially made for research and tests. This norm shall not apply to the manufacturing of goods in order to research sales thereof or to the covering of costs for research and tests;

2) the commissioning party needs additional supplies from the initial supplier (manufacturer) of goods in order to supplement or partly change the goods or equipment already at the disposal thereof because, upon selecting another supplier (manufacturer) of goods, the commissioning party should have to procure goods, which would differ technically from those goods already at the disposal thereof and such difference would cause difficulties associated with the maintenance and operation of the goods or equipment. The period of validity of such contract, as well as a repeated contract shall not exceed three years;

3) the subject-matter of the contract is the supply of such goods, which are quoted and which the commissioning party purchases on the commodity market;

4) there is an opportunity of purchasing goods on the basis of particularly advantageous provisions from the manufacturer of goods, which, when terminating its commercial activities, organises a sale, or from liquidators or administrators, which organise an auction of the property of a bankrupt merchant in accordance with regulatory enactments.

(3) In addition to the cases referred to in Paragraph one of this Section, the commissioning party may apply a negotiated procedure without advance publication of a notice regarding the contract to public service contracts, which are entered into with the winner or any of the winners of a design competition if the design competition has been organised in accordance with the requirements of this Law. If several winners are specified in the design competition, all winners shall be invited to negotiations.

(4) In addition to the cases referred to in Paragraph one of this Section the commissioning party may apply a negotiated procedure without advance publication of a notice regarding the contract to public works and service contracts, if:

1) the commissioning party requires additional works or services, which were not initially included in the contract or building project, however, which have become necessary for the implementation of the contract previously entered into, due to unforeseen circumstances, and the following conditions are observed:

a) the total contract price in additional procurement contracts does not exceed 50 per cent of the contract price of the contract previously entered into,

b) the necessary additional works are performed or services provided by the implementer of the contract previously entered into,

c) additional works or services cannot be technically or economically separated from the works or services provided for in the contract previously entered into, without causing significant difficulties to the commissioning party, or also the additional works or services are significantly necessary for the implementation of the contract previously entered into, even though it is possible to separate them from the implementation of the works or provision of services provided for in this contract;

2) the subject-matter of the contract is repeated performance of works or provision of services provided for in the contract previously entered into as a result of an open or closed competition, which are entrusted to the implementer of this contract, and the repeatedly necessary works or services conform to the existing project at the basis of the contract previously entered into. This condition shall apply to cases when the commissioning party, upon announcing the procurement procedure in the notice regarding the contract for the first project and determining the estimated contract price, has intended a repeated entering into of the contract and the total estimated value of the works or services. A negotiated procedure may be applied within three years from entering into the initial contract.

(5) If the commissioning party applies a negotiated procedure in accordance with Paragraph one, Clause 2 or 3, Paragraph two or Paragraph four, Clause 1 of this Section, it shall insert a justification of selecting the negotiated procedure on the Internet home page thereof not later than on the day when an invitation to participate in negotiations has been sent to suppliers.

*[16 July 2009; 21 June 2012]*

#### **Section 64. Co-ordination of the Application of a Negotiated Procedure**

(1) If the commissioning party selects to apply a negotiated procedure in accordance with Paragraph one, Clause 2, Paragraph two, Clauses 1 and 2, as well as Paragraph four of Section 63 of this Law, prior to the application of this procedure it shall send the justification for the selection of the negotiated procedure to the Procurement Monitoring Bureau.

(2) The Procurement Monitoring Bureau shall, within three working days from the date of the receipt of the justification referred to in Paragraph one of this Section, evaluate it and send an answer in writing to the commissioning party regarding whether it is allowed to apply a negotiated procedure.

*[20 May 2010]*

#### **Section 64.<sup>1</sup> Application of a Competitive Dialogue**

(1) A competitive dialogue is a procurement procedure, which the commissioning party is entitled to apply if the procurement contract is entered into within the framework of a public-private partnership and the contract is considered to be particularly complex.

(2) All the interested suppliers may request the right to participate in a competitive dialogue. The commissioning party shall consult with the selected suppliers in order to develop alternative solutions corresponding to the requirements, on the basis of which the selected candidates shall be invited to submit tenders.

(3) A contract shall be considered as particularly complex within the meaning of Paragraph one of this Section if at least one of the following criteria exists:

1) the commissioning party cannot objectively prepare technical specifications conforming to the requirements thereof in accordance with Section 17, Paragraph four, Clauses 2, 3 and 4 of this Law and it cannot select the most corresponding tender in an open or closed competition;

2) the commissioning party cannot objectively specify the legal or financial solution of the project.  
*[16 July 2009]*

## **Section 64.<sup>2</sup> Process of a Competitive Dialogue**

(1) If the commissioning party applies a competitive dialogue, it shall determine the economically most advantageous tender as the selection criterion.

(2) The commissioning party shall publish a notice regarding the contract in accordance with Section 28 of this Law. The commissioning party shall indicate the needs and requirements thereof in the notice regarding the contract or the procurement procedure documents.

(3) The commissioning party shall, after expiry of the deadline for the submission of applications, select candidates in accordance with Sections 37, 38, 39, 40, 41, 42, 43, 44 and 45 of this Law. The commissioning party is entitled to discuss all the aspects related to the contract with the selected candidates, which are invited to participate in a competitive dialogue in accordance with Section 31 of this Law.

(4) During the procedure the commissioning party shall ensure equal treatment to all candidates. The commissioning party shall not create more favourable conditions for any candidate.

(5) The commissioning party shall not disclose the solutions tendered by the candidates or other information, which is a commercial secret or other information of limited access, to other candidates without their consent.

(6) The commissioning party is entitled to specify that the procedure will take place in several consecutive stages with the purpose of reducing the number of solutions to be discussed in the procedure. In such case it shall apply the evaluation criteria specified in the notice regarding the contract or the procurement procedure documents. If the commissioning party selects the process of the procedure in stages, information thereof shall be indicated in the notice regarding the contract or the procurement procedure documents.

(7) The commissioning party shall continue dialogue until the time when such solution or solutions (comparing them, if necessary) are developed, which conform to the needs specified by the commissioning party.

(8) The commissioning party shall close the procedure and inform the candidates thereof, send them an invitation to submit a tender on the basis of the solution or solutions, which were developed and updated during the procedure. The commissioning party shall indicate in the invitation that all the elements necessary for the implementation of the project and included in the solution developed should be included in the tender.

(9) The commissioning party shall agree with all candidates regarding the deadline for the submission of tenders, which shall be determined in the invitation, however, if an agreement cannot be reached, the deadline shall be determined as not less than 30 days.

(10) The tenderer is entitled to explain, update the tender and to perform final co-ordination upon the request of the commissioning party. Such explaining, updating, co-ordination and provision of additional information shall not cause changes in the main conditions, which are included in the tender or invitation to submit a tender and thus may restrict the competition and promote discrimination.

(11) The commissioning party shall evaluate the tenders received on the basis of the evaluation criteria specified in the notice regarding the contract or the procurement procedure documents and shall select the economically most advantageous tender.

(12) The commissioning party is entitled to award prizes and payments for participation of a competitive dialogue to the participants of the competitive dialogue.

*[16 July 2009]*

## **Chapter VIII. Application of Framework Agreement and Dynamic Procurement System**

### **Section 65. Framework Agreements**

(1) In order to enter into a framework agreement, the commissioning party shall observe the procurement procedures provided for in this Law in all stages up to the entering into of a contract within the scope of a framework agreement. The commissioning party shall determine the participants of the framework agreement, taking into account the specified selection criteria of a tender.

(2) Contracts shall be entered into within the scope of the framework agreement in accordance with the provisions of Paragraphs five, six and seven of this Section. This procedure shall only apply to such commissioning parties and suppliers, which have been specified as participants in the provisions of the framework agreement on the date of entering into thereof. Only such commissioning parties, which are indicated in the notice regarding the contract or in the procurement procedure documents, shall be determined as the participants of the framework agreement.

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

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

(5) If the framework agreement is entered into with one supplier, contracts within the scope of this agreement shall be entered into in accordance with the provisions of the framework agreement. In order to enter into these contracts, the commissioning party may consult with the supplier in writing, if necessary, requesting that the tender is supplemented.

(6) If the framework agreement is entered into with several suppliers, the number thereof shall not be less than three, if a sufficient number of suppliers operates in the particular market, which conform to the qualification requirements to be met, or if it is possible to receive a sufficient number of conforming tenders.

(7) If the framework agreement is entered into with several suppliers, the specific contracts within the scope of the framework agreement shall be entered into, applying the provisions of the framework agreement and without re-evaluating the tenders. If all the necessary conditions are not provided for in the provisions of the framework agreement and the tenders have to be re-evaluated, these provisions shall be supplemented on the basis of the same provisions (if necessary, more precisely regulated) or also other provisions in accordance with the specifications of the framework agreement in accordance with the following procedure:

1) in order to enter into the specific contract, the commissioning party shall consult in writing with the suppliers, which are capable of implementing this contract;

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

3) a tenderer shall submit a tender in writing and the content thereof shall remain confidential until the end of the deadline specified for the submission; and

4) the commissioning party shall enter into the specific contract with the tenderer, which has submitted the most conforming tender on the basis of the selection criterion of a tender, which is specified in the specifications of the framework agreement.

*[16 July 2009]*

## **Section 66. Dynamic Procurement System**

(1) All tenderers, which conform to the qualification requirements to be met and have submitted an indicative tender conforming to the procurement procedure documents, shall be included in the dynamic procurement system. Tenderers may at any time supplement the indicative tenders if they conform to the specifications. The commissioning party throughout the whole period of the system activity from the establishment thereof until the entering into contracts, shall only use electronic means in accordance with the provisions of Section 33, Paragraphs two, three, five and six of this Law.

(2) In order to establish a dynamic procurement system, the commissioning party shall:

1) publish a notice regarding the contract indicating that a dynamic procurement system is being established;

2) indicate in the procurement procedure documents the nature of the procurements intended within the scope of the system, as well as the necessary information regarding the system itself, the electronic equipment to be used, the connection conditions and specifications;

3) during the entire period of the system operation (commencing with publication of the notice regarding the contract) offer unlimited, direct and complete access to the procurement procedure documents, using electronic means. The commissioning party shall indicate the Internet address in the notice where such documents are accessible.

(3) During the entire period of operation of the dynamic procurement system, the commissioning party shall give the opportunity to any supplier to submit an indicative tender and to be included in the system in accordance with the provisions of Paragraph one of this Section. The indicative tender shall be evaluated within 15 days from the date of submission thereof. The commissioning party may extend the time period for evaluation of indicative tenders, if during this period of time no invitations to submit tenders have been sent within the scope of the system. The commissioning party shall immediately inform a tenderer regarding the inclusion thereof in the dynamic procurement system or regarding rejection of the indicative tender.

(4) The commissioning party shall invite the submission of tenders for each specific contract within the scope of the dynamic procurement system. Prior to sending an invitation the commissioning party shall publish a simplified notice regarding the contract in accordance with Section 28 of this Law, inviting all interested suppliers to submit indicative tenders in accordance with Paragraph three of this Section. The deadline for the submission of indicative tenders shall be determined as not less than 15 days from sending of the simplified notice regarding the contract to the Official Journal of the European Union or publication thereof on the Internet home page of the Procurement Monitoring Bureau. The commissioning party shall not commence the evaluation of tenders until the evaluation of the indicative tenders, which are received within the deadline specified, has been completed.

(5) The commissioning party shall invite all suppliers included in the dynamic procurement system to submit tenders, indicating the deadline for the submission of tenders, for the entering into each specific contract within the scope of the dynamic procurement system. The commissioning party shall enter into a contract with the supplier, which has submitted the most appropriate tender in accordance with the selection criterion of a tender and the evaluation criteria, which are specified in the notice regarding the establishment of the dynamic procurement system. If necessary, the commissioning party may clarify these criteria in the invitation.

(6) The time period for operation of a dynamic procurement system shall not exceed four years.

(7) It is prohibited to use the dynamic procurement system in order to restrict competition.



(8) The commissioning party shall not accept payment from the interested suppliers regarding the inclusion thereof in the dynamic procurement system, as well as from the participants of this system.

(9) [16 July 2009]

[16 July 2009]

## **Chapter IX. Procurement Contract Provisions**

### **Section 67. Procurement Contract**

(1) A procurement contract shall determine the legal relations between the commissioning party or commissioning parties and a supplier or suppliers.

(2) The commissioning party shall prepare a procurement contract specifying:

- 1) the name of the commissioning party;
- 2) the name of the supplier;
- 3) the subject-matter of the procurement, the amount thereof, the quality requirements and other necessary information;
- 4) the contract price and the procedures for payment thereof;
- 5) the time period, location and conditions for implementation of the contract;
- 6) liability of the contracting parties for failure to implement the contract;
- 7) the procedures for amending the contract and the procedures by which withdrawal from the contract shall be permitted; and
- 8) other provisions.

(3) A procurement contract shall be entered into for a time period not longer than five years. The commissioning party is entitled to enter into a procurement contract for a longer period of time if any of the following conditions exists:

- 1) it is provided for in another law;
- 2) it is substantially necessary for ensuring the implementation of the contract due to technical or economic circumstances directly related to the subject-matter of the contract. In such case prior to commencing the procurement the commissioning party, which is an institution of direct administration, must receive a permit of the Cabinet and the commissioning party, which is an institution of indirect administration, – a permit of the body of the relevant derived person governed by public law.

(3<sup>1</sup>) In the cases referred to in Paragraph three of this Section the commissioning party shall indicate in the notice regarding the results of a procurement procedure a justification for existence of such conditions, which give the right to enter into a procurement contract for a longer period of time.

(4) A procurement contract or a framework agreement shall be entered into no sooner than on the next working day following the end of the waiting period, if a complaint regarding violations of the procurement procedure has not been submitted to the Procurement Monitoring Bureau in accordance with the procedures specified in Section 83 of this Law.

(5) The waiting period referred to in Paragraph four of this Section shall be:

- 1) 10 days after the day when the information referred to in Section 32, Paragraph two of this Law has been sent to all tenderers by fax or in electronic form, using secure electronic signature, or handed over in person, and one additional working day;
- 2) 15 days after the day when the information referred to in Section 32, Paragraph two of this Law has been sent, if it has been sent by post to at least one tenderer, and one additional working day.

(6) A procurement contract or a framework agreement may be entered into without complying with Paragraph four of this Section if:

1) the only tenderer has been awarded the right to enter into the contract and there are no candidates, which would be entitled to submit a complaint in accordance with the procedures specified in Section 83 of this Law;

2) the procurement of services of Part B of Annex 2 to this Law is being organised as a result of extraordinary circumstances unforeseen by the commissioning party;

3) a negotiated procedure is being applied in accordance with Section 63 of this Law without publishing a notice regarding the contract;

4) the contract is entered into within the scope of a framework agreement in accordance with Section 65 of this Law;

5) the contract is entered into within the scope of the dynamic procurement system in accordance with Section 66 of this Law.

*[16 July 2009; 20 May 2010; 21 June 2012]*

### **Section 67.<sup>1</sup> Amending of a Procurement Contract or Framework Agreement**

(1) Only non-essential amendments to a procurement contract or framework agreement shall be admissible. Essential amendments shall be made only in the cases referred to in Paragraph two of this Section.

(2) Essential amendments to a procurement contract or framework agreement shall be admissible in any of the following cases:

1) the procurement contract or framework agreement clearly and unequivocally provides for a possibility of amendments, the cases when amendments are admissible, the amount and essence of amendments;

2) in accordance with the conditions of Section 63 of this Law regarding amendments to a contract a negotiated procedure has been applied, without publishing an advance notice regarding the contract;

3) the tenderer selected in the procurement procedure (the contracting party) is substituted with another one in compliance with the provisions of the regulatory enactments in the field of commercial law regarding reorganisation of merchants and transition of an undertaking.

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

1) the amended provisions of the procurement contract or framework agreement, if they had been intended in the procurement procedure documents, would allow the submission of different tenders, or participation or selection of other candidates and tenderers in the procurement procedure;

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

3) the subject-matter of the procurement contract includes supplies, services or works not provided for in the initially entered into procurement contract or framework agreement; or

4) the tenderer selected in the procurement procedure (the contracting party) is substituted with another supplier.

*[21 June 2012]*

### **Section 68. Change of the Staff and Sub-contractors Involved in Contract Implementation**

(1) The tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) is entitled to change the staff and sub-contractors, as well as to involve additional staff and sub-contractors in implementation of the contract without co-

ordination with the commissioning party, except the cases referred to in Paragraphs two and four of this Section.

(2) After entering into the contract the staff of the tenderer selected in the procurement procedure, which has been involved thereby in implementation of the contract, regarding which it has provided information to the commissioning party and the conformity of the qualification of which with the requirements brought forward has been assessed by the commissioning party, as well as the sub-contractors on whose abilities it has relied on to certify that the qualification thereof conforms to the requirements specified in the notice regarding the contract and the procurement procedure documents, shall be changed only with a written consent of the commissioning party, complying with the conditions provided for in Paragraph three of this Section.

(3) The commissioning party shall not agree to the change of the staff referred to in Paragraph two of this Section and sub-contractors, if any of the following conditions exists:

1) the staff or sub-contractor tendered by the supplier does not conform to those requirements specified in the notice regarding the contract and the procurement procedure documents, which apply to the staff or sub-contractors of the supplier;

2) the sub-contractor on whose abilities the tenderer selected in the procurement procedure has relied on to certify that the qualification thereof conforms to the requirements specified in the notice regarding the contract and the procurement procedure documents, is changed and the tendered sub-contractor does not have at least the same qualification on which the tenderer selected in the procurement procedure has referred to certifying the conformity thereof to the requirements specified in the procurement procedure;

3) the tendered sub-contractor conforms to the conditions for exclusion of candidates and tenderers referred to in Section 39, Paragraph one of this Law. In examining the conformity of the sub-contractor, the commissioning party shall apply the provisions of Section 39, Paragraphs three, four, five, nine and ten of this Law. The deadlines referred to in Section 39, Paragraph four of this Law shall be counted from the day when a request regarding change of the staff or sub-contractor was submitted to the commissioning party.

(4) The tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) shall perform the change of sub-contractors referred to in Section 20, Paragraph two of this Law, to which the provisions of Paragraph two of this Law do not apply, as well as subsequent involvement of sub-contractors corresponding to the referred to criteria in implementation of the contract if the tenderer selected in the procurement procedure (the party to the procurement contract or framework agreement) has notified the commissioning party thereof and has received a written consent of the commissioning party for the change of the sub-contractor or involvement of a new sub-contractor in the implementation of the contract. The commissioning party shall agree to the change of the sub-contractor or to the involvement of a new sub-contractor in the implementation of the contract if the conditions for exclusion of candidates and tenderers referred to in Section 39, Paragraph one of this Law do not apply to the tendered sub-contractor, which shall be verified by the commissioning party in conformity with the provisions of Paragraph three, Clause 3 of this Section.

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

*[21 June 2012]*

## **Section 69. Information Regarding Accessibility to Procurement Contracts**

The following information included in a procurement contract shall be available to the public:

- 1) the name of the commissioning party;
- 2) the name of the supplier;
- 3) the subject-matter of the procurement, the amount, price and description thereof in such amount as is indicated in the notice;
- 4) the procedures for payment;
- 5) the time period and location of implementation of the contract;
- 6) liability of the contracting parties for failure to implement the contract; and
- 7) the procedures by which contract amendments shall be made, as well as the procedures by which withdrawal from a contract shall be permitted.

## **Chapter X. Application and Course of a Design Competition**

### **Section 70. General Provisions of a Design Competition**

(1) A design competition is a procurement procedure, which gives the commissioning party an opportunity to acquire a design (plan or project) that has been recognised by a jury commission as the best in a competition with or without awarding of prizes, mainly in the field of city and any other territory planning, architecture, building or data processing (including a State information system).

(2) Information regarding a design competition shall be accessible to all interested parties expressing a wish to participate in the relevant competition.

### **Section 71. Contract Price Margins of a Design Competition**

(1) A design competition shall be applied if the estimated contract price is 20 000 lats or more.

(2) The provisions of this Chapter shall relate to design competitions:

- 1) in which awards and payments for participants are intended; and
- 2) which are organised as a part of the procurement procedure of a public service contract.

(3) In the cases specified in Paragraph two, Clause 1 of this Section, the estimated contract price shall be determined, taking into account the potential awards and payments for participants. In the cases specified in Paragraph two, Clause 2 of this Section the estimated contract price shall be determined, taking into account the total amount of the awards and payments, as well as in accordance with the estimated contract price of a public service contract to be entered into in Section 63, Paragraph three of this Law if the commissioning party has specified in the notice regarding the design competition that such contract will be entered into.

*[16 July 2009]*

### **Section 72. Jury Commission and Responsible Secretary**

(1) In order to professionally evaluate the submitted designs, the commissioning party shall establish a jury commission with consisting of at least three members. The jury commission shall be independent when taking decisions and expressing opinions.

(2) The commissioning party shall elect a responsible secretary who ensures the course of the design competition and is responsible for ensuring the anonymity of the submitted designs

and identification codes of the participants until the end of the evaluation of designs. The responsible secretary shall not be a member of the jury commission.

(3) The jury commission shall be composed exclusively of natural persons who do not represent the interests of participants. If any specific professional qualification is requested of competition participants, at least one third of the members of the jury commission shall need to have the same or equivalent professional qualification.

### **Section 73. Exchange of Information in a Design Competition**

(1) The information exchange in a design competition shall take place in accordance with the provisions of Section 33, Paragraphs one, two and five of this Law.

(2) The exchange and storage of information shall be performed so as to ensure that all data transmitted by the participants to the commissioning party during the course of the competition are protected, and the jury commission shall become acquainted with the content of the designs only after the expiry of the deadline for the submission thereof.

(3) Information, which relates to specifications and which is necessary for presentation of designs with the aid of electronic means, including encryption, shall be available to the interested persons. Equipment intended for the electronic receipt of the designs shall conform to the requirements of Section 34 of this Law.

### **Section 74. Design Competition Regulations**

(1) Prior to a design competition the commissioning party shall ensure the development of design competition regulations.

(2) The following shall be included in the design competition regulations:

- 1) general information:
  - a) identification number,
  - b) name, address and other details of the commissioning party,
  - c) the place, deadline and procedures for the submission of a design and disclosure of the identification code, observing the regulation of Sections 76 and 77 of this Law,
  - d) other information;
- 2) description and objectives of the project;
- 3) the composition of the design to be submitted (drawings, models, explanatory memorandum), the scale and level of development of the drawings or drafts, as well as the requirements specified for the explanatory memorandum;
- 4) the requirements for the professional qualification of participants, if any;
- 5) the requirements specified for the documentation of the design and disclosure of identification code;
- 6) evaluation criteria for designs;
- 7) the number and value of prizes, the payments, if any, and the principle of division thereof, as well as information in accordance with Section 79, Paragraph nine of this Law, if such information is necessary;
- 8) the time period, in which additional questions may be asked regarding the design competition regulations;
- 9) the procedures by which the designs, which are not awarded, may be received after notification of the results of the design competition;
- 10) a reference whether the winners of prizes have the right to enter into additional contracts, as well as the number of winners to be invited to a negotiated procedure;
- 11) the composition of the jury commission.

(3) The design competition regulations shall be issued in a time and place, which is indicated in the notice regarding the design competition.

(4) The materials necessary for work (topographical plan, situation plan, technical regulations, photographs and other materials) shall be appended to the design competition regulations.  
*[16 July 2009]*

### **Section 75. Notice Regarding a Design Competition**

The commissioning party, which wishes to organise a design competition, shall publish a notice thereof. The notice regarding a design competition shall be published in accordance with Section 28 of this Law.

### **Section 76. Deadline for Submission of Designs**

(1) The deadline for the submission of designs shall be determined in the notice regarding a design competition in accordance with the requirements of Section 29, Paragraph two of this Law.

(2) When determining the deadline for the submission of designs, the commissioning party shall take into account the level of complexity of the project and the time period, which is necessary for the preparation of a design.

### **Section 77. Submission of Designs**

(1) In order to ensure the anonymity of participants, the designs and materials attached thereto shall be submitted in a sealed form, marked with an identification code. Within the meaning of these Regulations, the identification code shall mean an aggregation of letters or words, which does not identify the participant and which is used in order to ensure anonymity.

(2) The design and disclosure of the identification code shall be submitted in an anonymous form at the place, within the deadline and according to the procedures specified by the design competition regulations. Disclosure of the identification code shall be submitted concurrently with the design in a separate sealed envelope.

(3) The name of the competition, identification number, as well as the words “Devīzes atšifrējums” [Disclosure of the identification code] shall be indicated on the sealed envelope containing the disclosure of the identification code. The author of the design shall not be indicated on the envelope.

(4) No labelling shall be allowed on the submitted design or materials attached thereto that may in any way identify the participant. If such labels are established on the submitted sealed envelopes, they shall be returned unopened to the submitter.

(5) The disclosure of the identification code shall contain information regarding the relevant design author or authors.

(6) The responsible secretary shall register the contact persons, which submit the designs, and the designs received in the order of submission thereof and shall ensure storage of the designs.  
*[16 July 2009]*

### **Section 78. Design Evaluation**

(1) After expiry of the deadline for the submission of designs the responsible secretary shall organise the work of the jury commission.

(2) The jury commission shall evaluate the submitted designs in accordance with the evaluation criteria specified in the design competition regulations and observe anonymity until the taking of a decision. If the jury commission establishes labels on the design or the materials attached thereto, which might in any way identify the participant, it shall exclude the design from further evaluation, indicating this in the opinion of the jury commission.

- (3) The jury commission shall compile the results of the design competition, take a decision on the best designs, nominate these for awarding, decide the division of the awarded places, as well as prepare recommendations for further use of the designs.
- (4) The jury commission may take a decision on the award of several first places. If the jury commission does not recognise any design as implementable, it shall not award the first place.
- (5) The jury commission shall prepare an opinion containing:
- 1) information regarding the designs evaluated;
  - 2) the evaluation of the jury commission regarding each design;
  - 3) a decision on awarding of prizes if such is provided for in the design competition regulations;
  - 4) a recommendation addressed to the commissioning party regarding further use of a design.
- (6) The jury commission shall give the opinion to the responsible secretary.
- [16 July 2009]*

### **Section 79. Notification of Results**

- (1) The responsible secretary shall notify the location, date and time of the meeting for opening the disclosure of identification codes to all contact persons, which were registered in accordance with Section 77, Paragraph six of this Law. Such information shall be sent not later than five working days prior to the meeting.
- (2) The opening of the disclosure of identification codes shall be open.
- (3) The responsible secretary shall call out the identification codes of the winner and the winners of awarded places. Afterwards he or she shall open the disclosure of these identification codes and call out the winner and the winners of awarded places.
- (4) The responsible secretary shall prepare a design competition notice, to which the opinion of the jury commission referred to in Section 78, Paragraph five of this Law is attached, containing at least the following:
- 1) the description and objective of the project;
  - 2) name, address and other details of the commissioning party;
  - 3) information regarding participants, which participated in the design competition;
  - 4) information regarding the winners, as well as the decision on awarding of prizes, if it is provided for in the design course regulations.
- (5) The commissioning party shall issue a design competition notice upon the request. The commissioning party shall store the design competition notice for 10 years after taking of a decision on the results of the design competition.
- (6) The commissioning party shall, within three working days after the meeting for opening the disclosure of the identification codes, inform concurrently all participants of the design competition regarding the decision taken in relation to the results of the design competition and indicate the deadline, by which the person, in accordance with Section 83, Paragraph two, Clause 1 or 2 of this Law, may submit a complaint to the Procurement Monitoring Bureau regarding violations of the procurement procedure. In informing the participants of the design competition, the commissioning party shall comply with the requirements of Section 32, Paragraphs four, five and six of this Law.
- (7) The commissioning party shall, within as short period of time as possible, but not more than three working days after the informing referred to in Paragraph six of this Law of participants of the design competition, submit a notice regarding the results of the design competition for publication in accordance with Section 28 of this Law. The commissioning party shall not publish information regarding the results of the design competition, the publication of which delays the application of law, harms lawful commercial interests of suppliers or free competition among service providers.

(8) The copyright of participants in relation to the participation in further development of designs and further use of designs shall be observed in accordance with the Copyright Law.

(9) Prizes shall be issued within the time period specified in the design competition regulations. The awarded designs shall pass to the ownership of the commissioning party, unless otherwise specified by the design competition regulations. The participant shall retain copyright in accordance with the Copyright Law.

*[16 July 2009; 20 May 2010]*

## **Chapter XI. Procurement Monitoring Bureau**

### **Section 80. Legal Status of the Procurement Monitoring Bureau**

(1) The Procurement Monitoring Bureau is a State direct administration institution supervised by the Ministry of Finance and operating in accordance with this Law, the by-law of the Procurement Monitoring Bureau and other regulatory enactments.

(2) The operations of the Procurement Monitoring Bureau are financed from the State budget.

(3) The Procurement Monitoring Bureau is functionally the highest authority in relation to implementation of the function referred to in Section 81, Clause 7 of this Law.

*[20 May 2010]*

### **Section 81. Functions of the Procurement Monitoring Bureau**

The Procurement Monitoring Bureau shall have the following functions:

1) to monitor the conformity of the procurement procedures with the requirements of the law;

2) in conformity with its competence to co-operate with relevant foreign authorities;

3) to request and receive free of charge complete information regarding a procurement at any stage of the procurement procedure;

4) to invite independent procurement specialists and experts;

5) to compile and analyse statistical information regarding procurements in the State, as well as to prepare reports regarding these;

6) to provide methodological assistance and consultations, and to organise training for commissioning parties, sellers of goods, lessors, performers of works and providers of services;

7) to examine complaints regarding violations of the procurement procedure;

8) to publish the notices specified in this Law on the Internet home page of the Procurement Monitoring Bureau, send them for publication in the Official Journal of the European Union, as well as send information to the European Commission, which has been requested thereby;

9) perform other functions prescribed by regulatory enactments.

### **Section 82. Complaints Examination Commission**

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



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

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

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

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

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

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

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

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

*[20 May 2010; 21 June 2012]*

## **Chapter XII. Procedures for Examination of Complaints Regarding Violations of the Procurement Procedure**

### **Section 83. Right to Submit a Complaint Regarding Violations of the Procurement Procedure**

(1) A person who is or has been interested in acquiring the right to enter into a procurement contract or a framework agreement or who is qualifying for winning and who, in relation to the specific procurement procedure, to which this Law applies, regards that his or her rights have been infringed upon or infringement of these rights is possible, which is caused by a potential violation of regulatory enactments of the European Union or other regulatory enactments, is entitled to submit a complaint regarding the provisions for selection of candidates or tenderers, technical specifications and other requirements, which relate to the specific procurement procedure, or regarding the activities of the commissioning party or the procurement commission during the course of the procurement procedure. Within the meaning of this Chapter, the application of the requirements provided for in Section 8, Paragraph seven of this Law shall also be regarded as the procurement procedure.

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

1) within 10 days from the day when the information referred to in Section 32 or Section 79, Paragraph six of this Law has been sent to the relevant person by fax or in electronic form using a secure electronic signature, or handed over in person;

2) within 15 days from the day when the information referred to in Section 32 or Section 79, Paragraph six of this Law has been sent to the relevant person by post;

3) within 10 days from the day when the notice referred to in Section 27.<sup>1</sup>, Paragraph one of this Law has been published on the Internet home page of the Procurement Monitoring Bureau or in the Official Journal of the European Union, if the contract price of the procurement is equal to the contract price margins specified by the Cabinet or higher.

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

1) not more than 10 days prior to the expiry of the deadline for the submission of tenders – in relation to the requirements included in the open competition regulations and the notice regarding the contract;

2) not more than four working days prior to the expiry of the deadline for the submission of tenders – in relation to the requirements include in a closed competition regulations for the selection of candidates and in the notice regarding the contract, as well as in the documents of a negotiated procedure with advance publication of the notice regarding the contract, or in documents of a competitive dialogue and the notice regarding the contract;

3) not more than four working days prior to the expiry of the deadline for the submission of tenders – in relation to the requirements included in an invitation to a closed competition, negotiated procedure or competitive dialogue;

4) not more than 10 days prior to the expiry of the deadline for the submission of designs – in relation to the requirements included in the design competition regulations and the notice regarding a design competition;

5) not more than two working days prior to the expiry of the deadline for the submission of tenders – in relation to the requirements included in procurement documents in the case referred to in Section 8, Paragraph seven of this Law.

(3<sup>1</sup>) A complaint may be submitted to the Procurement Monitoring Bureau by handing it over in person or sending by post, fax or in electronic form using a secure electronic signature. A complaint shall be deemed submitted to the Procurement Monitoring Bureau within the deadline specified in Paragraphs two and three of this Section if it has been received at the Procurement Monitoring Bureau:

1) not later than on the last day of the deadline, if it has been sent by fax or in electronic form using a secure electronic signature;

2) not later than on the last day of the deadline during the working hours of the Procurement Monitoring Bureau, if it has been sent by post or handed over in person.

(4) A complaint shall be submitted in writing and shall include the following information:

1) the name and address of the submitter of the complaint;

2) the name and address of the commissioning party, regarding which the complaint has been submitted;

3) the facts, regarding which the complaint is being submitted, indicating the violation;

4) the legal basis for the complaint;

5) the claim of the submitter of the complaint.

(5) The Procurement Monitoring Bureau shall, within one working day after the complaint regarding violations of the procurement procedure has been received, insert information about it on the Internet home page thereof, indicating the submitter of the complaint, the commissioning party and the procurement procedure, the lawfulness of which is contested by the submitter of the complaint, as well as inform the commissioning party regarding initiation of an administrative case, by sending a notice regarding the received complaint and a copy of the complaint to the fax number or electronic mail address indicated by the commissioning

party, and the commissioning party shall not enter into a procurement contract or framework agreement until a decision of the commission on the results of examination of the complaint or termination of the administrative case is received.

(5<sup>1</sup>) If a complaint regarding the requirements included in the open competition regulations or the notice regarding the contract, or an invitation of the closed competition to submit tenders has been submitted, the commissioning party shall publish information on the Internet home page thereof regarding cancellation of the meeting for opening of tenders and shall not open the submitted tenders in conformity with Section 55, Paragraph 4.<sup>1</sup> of this Law.

(6) If a complaint regarding activities of the commissioning party in relation to the lawfulness of the procedure is submitted and a complaint regarding the same procurement procedure has already been submitted by another submitter of the complaint, but it has not been examined yet, such complaints may be combined and examined together.

(7) The submitter of a complaint is entitled to revoke the complaint submitted, in writing, at any time, while the commission has not taken a decision on the relevant complaint.

*[20 May 2010; 21 June 2012]*

### **Section 83.<sup>1</sup> Complaints Dismissed without Examination**

(1) The Procurement Monitoring Bureau is entitled to dismiss a complaint without examination, if any of the following criteria exist:

1) the complaint does not conform to the requirements of Section 83, Paragraph one, two, three or four of this Law;

2) if a complaint has already been submitted and examined with respect to a procurement procedure for the same subject-matter and on the same grounds; or

3) the information included in the complaint is evidently insufficient to satisfy the requirements of the submitter or the complaint is evidently inadmissible according to substance.

(2) A decision may be appealed in court in accordance with procedures specified in law. The appeal of the decision shall not suspend the operation thereof.

*[16 July 2009; 20 May 2010]*

### **Section 83.<sup>2</sup> Security of Complaints**

*[20 May 2010]*

### **Section 84. Examination of Complaints**

(1) The commission shall examine a complaint within one month after receipt thereof in the Procurement Monitoring Bureau. If due to objective reasons it is not possible to observe this time period, the commission may extend the time period, notifying the submitter of the complaint and the commissioning party thereof.

(2) In examining a complaint regarding violations of the procurement procedure, the commission may, by a decision thereof:

1) allow to enter into a procurement contract or framework agreement and to leave the requirements specified in the procurement procedure documents or the decision of the commissioning party or the procurement commission in effect, if the complaint is not justified or is justified, however, the violations established by the commission cannot affect the decision on awarding of the procurement right;

2) prohibit entering into the procurement contract, if the commissioning party has not complied with the requirements specified in Section 32 or Section 79, Paragraph six of this Law;

3) prohibit entering into the procurement contract or framework agreement and revoke the requirements specified in the procurement procedure documents or the decision of the

commissioning party or the procurement commission completely or in some part thereof, if the complaint is justified and the violations established by the commission can affect the decision on awarding of the procurement right;

4) leave the decision of the commissioning party or the procurement commission on termination or discontinuation of the procurement procedure in effect, if the complaint is not justified;

5) revoke the decision of the commissioning party or the procurement commission on termination or discontinuation of the procurement procedure, if the complaint is justified.

(3) In the cases referred to in Paragraph two, Clauses 2, 3 and 5 of this Section the commission may take a decision on the measures for elimination of the violations established. The commission may assign the commissioning party to discontinue the procurement procedure only in case if it is not possible to otherwise eliminate the violations of the procurement procedure committed by the commissioning party.

(3<sup>1</sup>) If during examination of a complaint the commission establishes that the complaint should be left without examination, it may take a decision on termination of the administrative case. If the submitter withdraws a complaint, the relevant administrative proceedings shall be considered as terminated.

(4) The commission shall invite to the meeting dedicated to examination of a complaint the submitter of the complaint, the commissioning party, the tenderer (hereinafter – participants) whose tender has been selected in accordance with the tender selection criterion specified. The commission shall invite participants to the meeting dedicated to examination of the complaint at least three working days before the meeting.

(5) The commission shall hear the opinion of all participants present. After hearing the participants, the commission shall continue work without the presence of the participants.

(6) The commission shall evaluate a complaint on the basis of the facts referred to by the submitter thereof and participants, the explanations of the contracting party and the opinion or statement of the expert. If participants do not attend the examination of the complaint, the commission shall examine the complaint on the basis of the facts available thereto. The commission shall take a decision and, within three working days, send it to the submitter of the complaint, the commissioning party, as well as other participants, which have participated in the meeting dedicated to examination of the complaint.

(7) The following information shall be indicated in the decision of the commission:

1) the justification for the creation of the commission;  
2) the members of the commission and experts who have participated in the meeting of the commission;

3) representatives of the submitter of the complaint, the commissioning party and other participants who have participated in the meeting of the commission;

4) the identification number of the procurement procedure, regarding which the complaint has been submitted;

5) the facts, regarding which the complaint has been submitted, and the claim of the submitter of the complaint;

5<sup>1</sup>) the submitter of the complaint and the most important arguments of the commissioning party;

6) the justification of the decision;

7) the legal norms applied;

8) the duty delegated to the commissioning party and the deadline, within which it must be fulfilled if the commission takes a decision on measures for elimination of the violations determined;

9) a prohibition or a permission for the commissioning party to enter into a procurement contract; and

10) where and within what time period such decision may be appealed.

(8) If the commission has decided regarding measures for elimination of the violations determined, the commissioning party shall eliminate the violations, take a decision and notify regarding the results of the procurement procedure. The decision shall be published in accordance with the procedures specified in Section 28 of this Law, as well as all information regarding taking of the decision and elimination of the violations determined by the commission shall be sent to the Procurement Monitoring Bureau. In such case the procurement contract shall be entered into observing the conditions of Section 67, Paragraph four of this Law.

(9) [16 July 2009]

[16 July 2009; 20 May 2010; 21 June 2012]

## **Section 85. Appealing a Decision of the Commission**

(1) A decision of the commission may be appealed in the Administrative District Court in accordance with the procedures prescribed by the Administrative Procedure Law. The matter shall be reviewed by the court in the composition of three judges.

(2) A decision of the Administrative District Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Senate of the Supreme Court.

(3) The appeal of a decision of the commission shall not suspend the operation thereof.

[20 May 2010; 21 June 2012]

## **Chapter XII<sup>1</sup>. Recognition of a Procurement Contract or Framework Agreement as Invalid, Amending or Repealing of the Provisions Thereof or Reduction of the Term of Operation of a Contract or Framework Agreement**

[20 May 2010]

### **Section 85.<sup>1</sup> Submission of an Application and Examination of a Case Regarding Recognition of a Procurement Contract or Framework Agreement as Invalid, Amending or Repealing of the Provisions Thereof or Reduction of the Term of Operation of a Contract or Framework Agreement**

(1) The persons referred to in Section 83, Paragraph one of this Law may, in the cases provided for in Section 85.<sup>2</sup>, Paragraph one of this Law, submit an application regarding recognition of a procurement contract or framework agreement as invalid, amending or repealing of the provisions thereof or reduction of the term of operation of a contract or framework agreement.

(2) An application shall be submitted to the Administrative District Court, which shall adjudicate the case in the composition of three judges. The norms of the Administrative Procedure Law, including norms regarding the adjudication of a public law contract in a court, shall be applied to examination of the application and the case, insofar as it has not been specified otherwise in this Law.

(3) An application in relation to the violations referred to in Section 85.<sup>2</sup>, Paragraph one of this Law may be submitted within the following deadlines:

1) within six months after the day when the procurement contract or framework agreement was entered into, except the cases referred to in Clause 2, Sub-clauses “a” and “b” of this Paragraph;

2) within 30 days after the day when:

a) such notice regarding the results of the procurement procedure has been published on the Internet home page of the Procurement Monitoring Bureau or the Official Journal of the European Union, the commissioning party of which has included a justification for the decision to award the right to enter into the

procurement contract or framework agreement without publishing a notice regarding the contract, if the procurement contract price is equal to the contract price margins specified by the Cabinet or higher;

b) the commissioning party has informed the relevant tenderer regarding entering into the procurement contract or framework agreement, indicating the information referred to in Section 32, Paragraph two, Clause 1 or 2 of this Law thereto, or the relevant candidate regarding entering into the procurement contract or framework agreement, indicating the reasons for rejecting the application submitted thereby. The abovementioned shall also apply to the cases provided for in Section 85.<sup>2</sup>, Paragraph one, Clauses 5 and 6 of this Law.

(4) Concurrently with submitting an application or during adjudication of a case the tenderer may, in the cases and in accordance with the procedures specified in the Administrative Procedure Law, request that provisional regulation is applied, specifying a prohibition to perform specific activities related to implementation of the procurement contract or framework agreement as the means for it.

(5) A judgment of the Administrative District Court may be appealed in accordance with cassation procedures in the Department of Administrative Cases of the Senate of the Supreme Court.

(6) If, upon submitting an application regarding recognition of a procurement contract or framework agreement as invalid, amending or repealing of the provisions thereof or reduction of the term of operation of a contract or framework agreement, a case not referred to in Section 85.<sup>2</sup> of this Law is the basis for such application, a claim shall be submitted to a court of general jurisdiction in accordance with the procedures specified in the Civil Procedure Law.

[21 June 2012]

### **Section 85.<sup>2</sup> Cases when a Procurement Contract or Framework Agreement may be Recognised as Invalid, the Provisions Thereof may be Amended or Repealed or the Term of Operation of a Contract or Framework Agreement may be Reduced**

(1) The court may recognise a procurement contract or framework agreement as invalid, amend or repeal the provisions thereof or reduce the term of operation of a contract or framework agreement in any of the following cases:

1) the procurement contract or framework agreement has been entered into without applying the procurement procedures specified in Section 8, Paragraph one of this Law or the procedures for performance of procurement referred to in Section 8, Paragraph seven of this Law if the commissioning party had to apply it;

2) the procurement contract or framework agreement has been entered into, unjustifiably awarding the right to enter a procurement contract or framework agreement without publishing a notice regarding the contract on the Internet home page of the Procurement Monitoring Bureau or in the Official Journal of the European Union, if the procurement contract price is equal to the contract price margins specified by the Cabinet or higher;

3) the procurement contract or framework agreement has been entered into without complying with the deadline specified in Section 67, Paragraph four of this Law;

4) the procurement contract or framework agreement has been entered into, violating the prohibition specified in Section 83, Paragraph five of this Law to enter into a procurement contract or framework agreement;

5) the procurement contract has been entered into without complying with the requirements specified in Section 65, Paragraph seven of this Law, if the contract price of the relevant contract is equal to the contract price margins specified by the Cabinet or higher;

6) the procurement contract has been entered into without complying with the requirements specified in Section 66, Paragraph four or five of this Law, if the contract price of the relevant contract is equal to the contract price margins specified by the Cabinet or higher.

(2) In the cases referred to in Paragraph one, Clause 1 or 2 of this Section a procurement contract or framework agreement shall not be recognised as invalid, the provisions thereof shall not be amended or repealed, the term of operation of a contract or framework agreement shall not be reduced although the law has been violated, if the following conditions exist concurrently:

1) the commissioning party has published the notice referred to in Section 27.<sup>1</sup>, Paragraph one of this Law;

2) the procurement contract or framework agreement was entered into not more than 10 days and additional one working day prior to the day when the notice referred to in Section 27.<sup>1</sup>, Paragraph one of this Law was published on the Internet home page of the Procurement Monitoring Bureau or in the Official Journal of the European Union, if the procurement contract price is equal to the contract price margins specified by the Cabinet or higher;

3) the prohibition specified in Section 83, Paragraph five of this Law to enter into a procurement contract or framework agreement has been complied with.

(3) In the cases referred to in Paragraph one, Clause 5 or 6 of this Section a procurement contract shall not be recognised as invalid, the provisions thereof shall not be amended or repealed, the term of operation thereof shall not be reduced although the law has been violated, if the following conditions exist concurrently:

1) the commissioning party has informed the tenderers in accordance with Section 32 of this Law;

2) the particular contract has been entered into in compliance with the deadline referred to in Section 67, Paragraph four of this Law;

3) the prohibition specified in Section 83, Paragraph five of this Law to enter into a procurement contract has been complied with.

*[21 June 2012]*

### **Section 85.<sup>3</sup> Court Judgment Regarding a Procurement Contract or Framework Agreement**

(1) If a court establishes that a procurement contract or framework agreement has been entered into, violating the norms of this Law, and concludes that the application should be satisfied, it shall, in compliance with the conditions of this Law, by itself select one of the following types of judgment:

1) recognise the procurement contract or framework agreement as invalid from the moment of entering into;

2) amend or repeal the provisions of the procurement contract or framework agreement. By this judgment a court shall, in addition, reduce the term of operation of the procurement contract or framework agreement;

3) reduce the term of operation of the procurement contract or framework agreement.

(2) A court, upon selecting one of the types of the judgment referred to in Paragraph one of this Section, shall not be bound by the subject-matter indicated by the tenderer and the limits of the claim.

(3) A court, upon selecting the type of the judgment referred to in Paragraph one, Clause 1 or 2 of this Section, shall evaluate, which type of the judgment is sufficiently reasonable, effective and preventive in the particular case in order to ensure that the commissioning party would not commit such violations of the law. A court shall make the type of the judgment referred to in Paragraph one, Clause 3 of this Section only in the cases referred to in Paragraphs four and five of this Section.

(4) A court shall not make the judgment referred to in Paragraph one, Clause 1 or 2 of this Section if it is essential for the public interests to preserve the consequences caused by the procurement contract or framework agreement. Financial consequences (for example, costs due to delay of disbursement, change of performer, sanctions or other legal liabilities) per se shall not be deemed as sufficient grounds for not making the judgment referred to in Paragraph one, Clause 1 or 2 of this Section.

(5) If a procurement contract or framework agreement has been entered into without complying with the deadline specified in Section 67, Paragraph four of this Law or violating the prohibition specified in Section 83, Paragraph five of this Law to enter into a procurement contract or framework agreement, and it is established that the procurement procedure until taking of the decision on determination of the winner has been performed in accordance with the requirements of this Law and the referred to decision has not affected the chances of such tenderer to obtain the right to enter into contract who has submitted an application, the court shall make the judgment referred to in Paragraph one, Clause 2 or 3 of this Section.

(6) In making any of the judgments referred to in Paragraph one, Clauses 1 and 2 of this Section, a court shall take a decision on validity of such contracts, which have been entered into on the basis of the relevant framework agreement.

(7) A court shall send a true copy of the court judgment to the Procurement Monitoring Bureau.

## **Chapter XII<sup>2</sup>. Compensation for Losses** *[20 May 2010]*

### **Section 85.<sup>4</sup> Compensation for Losses**

(1) Losses caused within the framework of administrative proceedings shall be compensated in accordance with the Administrative Procedure Law and the Law On Reimbursement of Losses Caused by State Administrative Institutions. Cases regarding compensation for losses shall be adjudicated by the Administrative District Court in accordance with the judicial proceedings in the composition of three judges.

(2) If compensation is requested concurrently with the claim provided for in Section 85.<sup>1</sup> of this Law, a court shall take a decision thereon, examining the relevant application and making any of the judgments referred to in Section 85.<sup>3</sup>, Paragraph one of this Law. The burden of proof regarding existence of such losses and the amount of compensation shall lie with the tenderer. After the day when the judgment entered into effect compensation for such losses may be requested in accordance with civil legal procedures.

(3) In submitting a complaint to the Procurement Monitoring Bureau in accordance with Section 83 of this Law, compensation for losses is not requested. Compensation for losses caused by the commissioning party may be requested concurrently with submitting an application to a court or addressing the commissioning party in accordance with the procedures specified in the Law On Reimbursement of Losses Caused by State Administrative Institutions. The Procurement Monitoring Bureau shall not be liable for the losses caused by the commissioning party.

*[21 June 2012]*

## **Chapter XIII. Statistical Surveys**

### **Section 86. Statistical Surveys**

Each year by 1 April, the commissioning party shall submit statistical surveys to the Procurement Monitoring Bureau in accordance with Section 87 of this Law.

*[16 July 2009]*



## **Section 87. Content of Statistical Surveys**

(1) At least the following information shall be indicated in a statistical survey:

1) the number of the contracts entered into in accordance with this Law and the amount, for which the contracts are entered into, if the estimated contract price:

a) for public works, supply and service contracts is less than the contract price margins specified by the Cabinet;

b) for public works, supply and service contracts is equal to or exceeds the contract price margins specified by the Cabinet;

2) the number of the contracts, which are entered into on the basis of exceptions specified in the Government Procurement Agreement of the World Trade Organisation regarding State contracts, and the total amount, for which the contracts have been entered into;

3) the total amount of the public works, supply and service contracts entered into, the contract price margins of which are equal to or less than those referred to in Section 8.<sup>1</sup> of this Law;

4) [16 July 2009];

5) the amount of the contracts, which are entered into in accordance with Section 8, Paragraphs seven and 7.<sup>1</sup> of this Law.

(2) The information referred to in Paragraph one, Clause 1, Sub-clause “b” of this Section shall be divided into categories:

1) according to the procurement procedures applied;

2) for each procedure according to the categories for works, product groups and service categories in accordance with the procurement vocabulary (CPV); and

3) according to the nationality of the suppliers, with which procurement contracts have been entered into.

(3) If contracts are entered into on the basis of a negotiated procedure, the information referred to in Paragraph one, Clause 1, Sub-clause “b” of this Section shall be divided additionally into categories in accordance with the provisions referred to in Sections 62 and 63 of this Law and the number of contracts and the amount grouped according to the nationality of suppliers shall be included in this information.

(4) Other information shall also be included in the statistical survey, if it is provided for by the Government Procurement Agreement of the World Trade Organisation regarding State contracts, as well as if it is requested by the European Commission.

[16 July 2009; 20 May 2010]

### **Transitional Provisions**

1. With the coming into force of this Law, the Law On Procurement for State and Local Government Needs (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2001, No. 16; 2002, No. 23; 2003, No. 14; 2004, No. 8) is repealed.

2. Announced open or closed competitions, design competitions or negotiated procedures, regarding which a notice has been published on the Internet, as well as an initiated price quotation shall be terminated in accordance with the provisions of the Law, which was in force on the date of the announcement of the relevant procurement procedure.

3. [16 July 2009]

4. [16 July 2009]

5. [8 February 2007]

6. If the data of the common procurement vocabulary CPV referred to in Section 25, Paragraph one, Clause 1, Section 87, Paragraph two, Clause 2 of this Law and in Annexes 1 and 2 to this Law differ from the vocabulary of the UN Central Product Classification (CPC) or the NACE vocabulary, which is specified in Commission Regulation (EC) No. 29/2002 of 19 December 2001 amending Council Regulation (EEC) No. 3037/90 on the statistical classification of economic activities in the European Community, the relevant CPC or NACE vocabulary shall be applied.

7. The Law On Companies of Disabled Societies, to which the Procurement Procedures Prescribed by Law are not Applicable (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2004, No. 20) is repealed.

[8 February 2007]

8. If a procurement procedure regarding the entering into a contract, the subject-matter of which is the services referred to in Annex 2, Part B, Category 24 of this Law, the estimated contract price whereof exceeds 50 000 lats, is announced before the day of the coming into force of the amendment to Section 8, Paragraph seven of this Law, the relevant procurement procedure shall be terminated in accordance with the provisions of this Law, which were in force on the date of the announcement of the relevant procurement procedure.

[8 February 2007]

9. Amendments to this Law in relation to the new wording of Section 67, Paragraph three shall come into force concurrently with the Public and Private Partnership Law.

[16 July 2009]

10. Amendments to Sections 9, 26, 27, 28, 29, 31 and 62, Section 1, Clause 7, the first sentence of Section 32, Paragraph one, Section 25, Paragraph four, Section 37, Paragraphs six and seven, Section 63, Paragraph one, Clauses 1 and 3, Section 71, Paragraph one of this Law, as well as amendments to this Law in relation to Section 1, Paragraph 8, Section 8, Paragraphs one and two and the new wording of the heading of Chapter VII, the exclusion of Section 8, Paragraphs three, four, five, six, nine and ten and Sections 57, 58, 59 and 60 of this Law and the supplementation of this Law with Sections 8.<sup>1</sup>, 64.<sup>1</sup>, 64.<sup>2</sup>, as well as the supplementation of Section 35, Paragraph four with Clause 15, shall come into force on 1 November 2009.

[16 July 2009]

11. Until the day of the coming into force of the amendments referred to in Clause 10 of these Transitional Provisions, the Cabinet shall issue the regulations referred to in Section 8.<sup>1</sup>, Paragraph twelve and the first sentence of Section 28, Paragraph one, which correspond thereto.

[16 July 2009]

12. The amendment to this Law regarding the supplementation thereof with Section 83.<sup>2</sup> shall come into force on 1 September 2009. Until the day of the coming into force of this amendment the Cabinet shall issue the regulations referred to in Section 83.<sup>2</sup>, Paragraph four.

[16 July 2009]

13. The procurement procedures, which have been announced until the day of the coming into force of the relevant amendments to this Law (16 July 2009), shall be terminated in

accordance with the requirements of regulatory enactments, which were in force on the day of the announcement of the relevant procurement procedure.

*[16 July 2009]*

14. Amendments to this Law, which enter into force on 15 June 2010, shall not be applicable to procurement procedures and the procurements referred to in Section 8.<sup>1</sup> of this Law, which have been announced until 14 June 2010, insofar as it has not been determined otherwise in these Transitional Provisions.

*[20 May 2010]*

15. The exclusion conditions referred to in Section 39, Paragraph one, Clause 2, Sub-clauses “a” and “b” of this Law (in the wording that comes into force on 15 June 2010) shall be applicable to the candidate, the tenderer or the person whose opportunities are used as the basis by the candidate or tenderer in order to prove that the qualification thereof conforms to the requirements specified in the notice regarding the contract or the procurement procedure documents, if the relevant violation has been committed or continues after 15 June 2010.

*[20 May 2010]*

16. Section 39, Paragraph one, Clause 5 of this Law (in the wording that comes into force on 15 June 2010) shall also be applicable to those procurement procedures, which have been announced until 14 June 2010, unless the candidate or tenderer has been excluded from participation in the procurement procedure prior to 15 June 2010.

*[20 May 2010]*

17. Section 39, Paragraph one, Clauses 6, 7, 8 and 9, as well as Paragraphs six and seven of this Law shall be applied from 1 October 2010. The Cabinet shall issue the regulations referred to in Section 39, Paragraph two of this Law by 1 August 2010.

*[20 May 2010]*

18. Amendment to this Law regarding supplementation of Section 3 with Paragraph five shall come into force on 1 August 2010.

*[20 May 2010]*

19. The Cabinet shall issue the regulations referred to in Section 4, Paragraph two of this Law by 5 October 2010.

*[20 May 2010]*

20. Section 4 of this Law shall be repealed from 1 August 2011.

*[20 May 2010]*

21. Amendment to the first sentence of Section 28, Paragraph one of this Law regarding supplementation thereof after the figure and words “in Section 27, Paragraph one” with the figure and word “in Section 27”, Section 27.<sup>1</sup> and Section 83, Paragraph two, Clause 3, which regulates voluntary notice regarding the results of procurement, as well as Section 85.<sup>2</sup>, Paragraph two shall come into force on 1 August 2010.

*[20 May 2010]*

22. Until the day when the amendment referred to in Paragraph 21 of these Transitional Regulations to the first sentence of Section 28, Paragraph one of this Law comes into force, the Cabinet shall issue the regulations referred to in the first sentence of Section 28, Paragraph one corresponding thereto.

*[20 May 2010]*

23. Section 46.<sup>1</sup> of this Law shall come into force on 4 December 2010. The Cabinet shall issue the regulations referred to in Section 46.<sup>1</sup>, Paragraph two of this Law by 4 December 2010.

[20 May 2010]

24. Amendment to this Law regarding the new wording of Section 85 shall not apply to cases when applications to a court regarding appeal of the decisions taken by the complaints examination commission of the Procurement Monitoring Bureau have been submitted by 14 June 2010.

[20 May 2010]

25. The application referred to in Section 85.<sup>1</sup>, Paragraph one of this Law may be submitted if the procurement contract or framework agreement has been entered into starting from 15 June 2010.

[20 May 2010]

26. A complaint regarding violations committed during the procurement procedure, within the framework of which a notice regarding the results of the procurement procedure has been published until 14 June 2010, shall be submitted in accordance with Section 83, Paragraph two of this Law (in the wording that was in force until 14 June 2010) regulating the deadlines for the submission of a complaint regarding the possible violations in the procurement procedure. In such procurement procedure a procurement contract or framework agreement shall be entered into in accordance with Section 67, Paragraph four of this Law (in the wording that was in force until 14 June 2010).

[20 May 2010]

27. By 1 August 2010 the Cabinet shall issue the regulations referred to in Section 10 of this Law regarding the contract price margins referred to in Section 6, Section 9, Paragraphs six and seven, Section 25, Paragraph one, Clauses 1, 2 and 3, Section 28, Paragraphs one and three, Section 29, Paragraphs two, three, four, five, six and seven, Section 83, Paragraph two, Clause 3, Section 85.<sup>2</sup>, Paragraph one, Clauses 5 and 6 and Paragraph two, Clause 2, as well as Section 87, Paragraph one, Clause 1, Sub-clauses "a" and "b". Until the day of coming into force of this Regulation, but not later than until 1 August 2010 Cabinet Regulation No. 364 of 2 May 2006, *Regulations regarding the Margins of Public Procurement Contract Prices*, shall be applied in so far as they are not in contradiction with this Law.

[20 May 2010]

28. The Cabinet shall issue the regulations referred to in Section 16, Paragraph 2.<sup>2</sup> of this Law by 1 October 2010.

[20 May 2010]

29. In conformity with the judgment of the Constitutional Court of the Republic of Latvia of 19 April 2010 in case No. 2009-77-01 "On the Conformity of Section 83.<sup>2</sup> and Paragraph 12 of Transitional Provisions of the Public Procurement Law with Sections 1 and 92 of the Constitution of the Republic of Latvia", by which Section 83.<sup>2</sup> of this Law was recognised as not conforming to Section 92 of the Constitution of the Republic of Latvia and invalid from the day when the judgment entered into effect, the Procurement Monitoring Bureau shall:

1) until 1 July 2010 repay the paid complaint security to the submitter of complaint referred to in Section 83 of this Law, if a decision of the complaints examination commission of the Procurement Monitoring Bureau in the relevant case has not been taken until 20 April 2010;

2) within 30 days from the day when the final court adjudication entered into effect, repay the paid complaint security to the submitter of complaint referred to in Section 83 of this Law, if the person has appealed the decision of the complaints examination commission of the Procurement Monitoring Bureau and a court has completely or partially satisfied the application of the person;

3) the paid complaint security shall be transferred into the State budget until 1 July 2010, if the complaints examination commission of the Procurement Monitoring Bureau has taken a decision, by which the complaint of the submitter has been recognised as unjustified, except the case when the person has appealed the decision of the complaints examination commission of the Procurement Monitoring Bureau;

4) within 30 days from the day when the final court adjudication entered into effect, transfer the paid complaint security into the State budget if a court has rejected the application of the person.

*[20 May 2010]*

30. Amendments regarding the new wording of Section 3, Paragraph one, Clause 7 of this Law shall come into force on 1 January 2013. The commissioning party shall, from 1 January 2013, shall not continue receipt of goods, services or works from a supplier, whose right to supply goods, provide services or perform works has been awarded applying the exception to application of the law specified in Section 3, Paragraph one, Clause 7 of this Law, if the supplier does not conform to the criteria specified in Section 3, Paragraph one, Clause 7 of this Law (in the wording which comes into force on 1 January 2013).

*[21 June 2012]*

31. The procurement procedures referred to in Section 8, Paragraph one of this Law and the procurements referred to in Paragraph seven thereof, as well as the procurements referred to in Section 8.<sup>1</sup>, which have been announced by publishing a notice regarding the contract, a notice regarding the procurement to be performed or a notice regarding the planned contract accordingly, shall be terminated, including contested or appealed, in accordance with the provisions of this Law, which were in force on the day when the procurement procedure or procurement was in effect.

*[21 June 2012]*

32. Until the time when information regarding immovable property tax debts in Latvia is available gathered together in the public database or online information system managed by the relevant competent authority, the conditions for exclusion of candidates and tenderers referred to in Section 8.<sup>1</sup>, Paragraph five, Clause 2 and Paragraph 5.<sup>2</sup>, as well as Section 39, Paragraph one, Clause 5 of this Law shall not be applied to immovable property tax debts in Latvia.

*[21 June 2012]*

33. Amendment to this Law regarding the new wording of Section 8.<sup>1</sup>, Paragraph thirteen which provides for a possibility to appeal a judgment of the Administrative District Court in the Department of Administrative Cases of the Senate of the Supreme Court, shall not apply to those cases when applications regarding appeal of the decisions taken by the Administrative District Court have been submitted until the day of coming into force of this amendment.

*[21 June 2012]*

34. Amendment to Section 10 of this Law regarding replacing of the figures and words “Section 85.<sup>2</sup>, Paragraph one, Clauses 5 and 6” with the figures and words “Section 85.<sup>1</sup>, Paragraph three, Clause 2, Sub-clause “a”, Section 85.<sup>2</sup>, Paragraph one, Clauses 2, 5 and 6”,

as well as amendments regarding the new wording of Section 85.<sup>1</sup>, Paragraph three and Section 85.<sup>2</sup>, Paragraph one, Clause 2 shall come into force on 1 August 2012. Until the day of coming into force of these amendments the Cabinet shall issue regulations corresponding thereto.

*[21 June 2012]*

35. Amendments to this Law regarding the new wording of the title of Section 26 and Paragraph three, Section 27, Paragraph one and Section 38, Paragraphs one and two and supplementation of Section 26 with Paragraphs four and five, as well as amendment to this Law replacing the words “notice regarding amendments” in the whole Law with the words “notice regarding amendments, termination or discontinuation of the procurement procedure” shall come into force on 1 April 2013.

*[21 June 2012]*

36. The condition of Section 39, Paragraph one, Clause 1 of this Law that the commissioning party shall exclude a candidate or tenderer from further participation in the procurement procedure, as well as shall not examine a tender of the tenderer, if the tenderer or the person referred to in Section 39, Paragraph one, Clause 11 of this Law has been found guilty of committing a criminal offence of evading payment of taxes and payments equivalent thereto, shall be applicable in cases when the relevant criminal offence has been committed or continues after 31 July 2012.

*[21 June 2012]*

37. The conditions for exclusion referred to in Section 39, Paragraph one, Clause 3 of this Law (in the wording which comes into force on 15 June 2010) shall be applicable to the candidate, tenderer or person on whose abilities it has relied on to certify that the qualification thereof conforms to the requirements specified in the notice regarding the contract and the procurement procedure documents, if the relevant offence has been committed or continues after 15 June 2010.

*[21 June 2012]*

38. The provisions of Section 68 of this Law shall be applicable also to the contracts entered into until 31 July 2012, insofar as other conditions for changing the staff and sub-contractors involved in implementation of the contract have not been stipulated in these contracts.

*[21 June 2012]*

39. The Cabinet shall ensure that the information referred to in Section 8.<sup>1</sup>, Paragraph 5.<sup>2</sup>, as well as Section 39, Paragraph one, Clauses 1, 2, 3 and 5 of this Law is available in public database or online in the information systems managed by the relevant competent authorities from 1 January 2014.

*[21 June 2012]*

### **Informative Reference to European Union Directives**

This Law contains legal norms arising from:

1) Council Directive 89/665/EC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;

2) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

3) Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement;

4) Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

5) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;

6) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles;

7) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;

8) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

[20 May 2010; 21 June 2012]

This Law shall come into force on 1 May 2006.

This Law has been adopted by the *Saeima* on 6 April 2006.

Acting for the President,  
Chairperson of the *Saeima*,

I.Ūdre

Riga, 25 April 2006

[16 July 2009]

Public Procurement Law  
Annex 1

**Works Contract Vocabulary**

Classification of Economic Activities in the European Union (NACE)					CPV code
Section F			Construction		
Part	Group	Class	Type of activity	Notes	
45			Construction	This part includes: construction of new buildings and works, restoration work and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of structures; earth moving	This class includes: 1) demolition of buildings and other constructions; 2) clearing of a construction site; 3) earth removal: excavation, levelling and grading of a construction site, trench digging, rock removal, blasting and other works; 4) preparation of the mineral resource extraction site: overburden removal and other preparation works in the locations of mineral deposits and quarries This class also includes: 1) drainage of a construction site; 2) drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes This class excludes: 1) drilling of production oil or gas wells (see 11.20); 2) water well drilling (see 45.25); 3) shaft sinking (see 45.25); 4) oil and gas field exploration, geophysical, geological and seismic surveying (see 74.20)	45120000



	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ol style="list-style-type: none"> <li>1) construction of all types of buildings and civil engineering structures;</li> <li>2) bridges (including those for elevated motorways), viaducts, tunnels and subways: construction of long-distance pipelines, communication and power lines, urban pipelines, urban communication and power lines,</li> <li>other related urban works;</li> <li>assembly and erection of prefabricated constructions on the site</li> </ol> <p>This class excludes:</p> <ol style="list-style-type: none"> <li>1) services incidental to oil and gas extraction (see 11.20);</li> <li>2) erection of complete prefabricated constructions from self-manufactured parts, not of concrete (see parts 20,26 and 28);</li> <li>3) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations (see 45.23);</li> <li>4) building installation (see 45.3);</li> <li>5) building completion (see 45.4);</li> <li>6) architectural and engineering activities (see 74.20);</li> <li>7) project management for construction (see 74.20)</li> </ol>	45210000 (excluding: 45213316, 45220000, 45231000, 45232000)
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>erection of roofs, roof covering, protection against precipitation</p>	45261000
		45.23	Construction of motorways, roads, airfields and sport facilities	<p>This class includes:</p> <ol style="list-style-type: none"> <li>1) construction of motorways, streets, roads and other vehicular and pedestrian ways;</li> <li>2) construction of railways;</li> <li>3) construction of airfield runways;</li> <li>4) construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations;</li> <li>5) marking of roads and car parking spaces</li> </ol> <p>This class excludes:</p> <p>preliminary earth moving (see 45.11)</p>	45212212 and DA03 45230000 (excluding: 45231000, 45232000, 45234115)
		45.24	Construction of water projects	<p>This class includes:</p> <ol style="list-style-type: none"> <li>1) construction of waterways, harbour and river works, quaysides, locks and other constructions;</li> <li>2) construction of dams and dykes;</li> <li>3) dredging;</li> <li>4) underwater work</li> </ol>	45240000
		45.25	Other construction work involving special trades	<p>This class includes construction works of one type, which are common to different kinds of structures and performance of which requires special trades or equipment:</p> <ol style="list-style-type: none"> <li>1) foundation work, including pile driving;</li> <li>2) water well drilling and construction, shaft sinking;</li> <li>3) assembly of industrially manufactured steel elements;</li> <li>4) steel bending;</li> <li>5) bricklaying and stone setting works;</li> <li>6) assembly and dismantling of scaffolds and work platforms, including renting of scaffolds and work platforms;</li> <li>7) construction of chimneys and industrial ovens</li> </ol> <p>This class excludes:</p> <p>renting of scaffolds without assembly and dismantling (see 71.32)</p>	45250000 and 45262000

	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes installation of: 1) electrical wiring and assembly of equipment; 2) telecommunication systems, 3) electrical heating systems, 4) residential antennae, 5) fire alarm systems, 6) security alarm systems, 7) lifts and escalators, 8) installation of lightning conductors and other systems in buildings and structures	45213316 and 45310000 (excluding: 45316000)
		45.32	Insulation work activities	This class includes: installation of thermal, sound or vibration insulation in buildings or other construction projects. This class excludes: waterproofing (see 45.22)	45320000
		45.33	Plumbing	This class includes installation of: 1) plumbing and sanitary equipment, 2) gas fittings, 3) heating, ventilation, refrigeration or air conditioning equipment and ducts, 4) sprinkler systems in buildings and structures This class excludes: installation of electrical heating systems (see 45.31)	45330000
		45.34	Other building installation	This class includes installation of: 1) illumination and signalling systems for motorways, railway, airports and ports; 2) other equipment and auxiliary devices in buildings or structures	45234115, 45316000 and 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: plastering of interior and exterior surfaces of buildings and structures, including plastering with plate or sheet materials	45410000
		45.42	Joinery installation	This class includes: 1) installation of industrially manufactured windows, doors, frames thereof, fitted kitchens, staircases, staircases, shop fittings and other installations, of wood or other material; 2) installation of interior ceilings, wooden wall coverings, movable partitions and completion of other wooden finishing works This class excludes: laying of parquet and other wood floor coverings (see 45.43)	45420000
		45.43	Installation of floor and wall coverings	This class includes laying, tiling, hanging or fitting of: 1) ceramic, concrete or stone floor or wall tiles 2) parquet or other wood floor coverings, 3) soft floor coverings (linoleum, carpet, rubber or plastic coverings), 4) terrazzo concrete, marble, granite or slate floor or wall coverings; 5) wallpaper in buildings or structures	45430000

		45.44	Painting and glazing	This class includes: 1) painting of interior or external surfaces of buildings and structures or technical equipment; 2) installation of glass, mirrors This class excludes: installation of windows (see 45.42)	45440000
		45.45	Other building completion	This class includes: 1) installation of private swimming pools; 2) steam cleaning, sand blasting and similar activities for building exteriors; 3) other building and structure finishing and completion work This class excludes: interior cleaning of interior premises (see 74.70)	45212212 and A04, 45450000
	45.5		Renting of construction or demolition equipment (with operator)		45500000
		45.50	Renting of construction or demolition equipment (with operator)	This class excludes: renting of construction or demolition equipment (without operator) (see 71.32)	45500000

[16 July 2009]

Public Procurement Law  
Annex 2

**Service Contract Vocabulary**  
**Part A**

Category number	Service	CPC code	CPV code
1.	Technical maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except from 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2.	Land transport services, except railway transport services which are included in Category 18, and including services of armoured fitting vehicles, courier services, except postal transport services	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6) and from 64120000-3 to 64121200
3.	Passenger and cargo air transport services, except postal transport services	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), 60500000-3 and from 60440000-4 to 60445000-9
4.	Postal transport services by land and air, except railroad transport services which are included in Category 18	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5.	Electronic communication services	752	From 64200000-8 to 64228200-2, 72318000-7 and from 72700000-7 to 72720000-3

6.	Financial services: insurance services, bank and investment services, except financial services for the conduct of monetary policy, exchange rate policy, within the scope of national debt management and reserve management or for implementation of such financial management policy, which is connected with the issuance, acquisition, sale or transfer of securities or other financial instruments to other persons, including the raising of funds or capital, as well as except the services of the Bank of Latvia. Also excluded: contracts, which are connected with the purchase or lease of land, existing structure or other immovable property or acquisition of other rights to such immovable property with any financial resources; however, this Law shall be applicable to financial service contracts, which are connected with the purchase or lease of immovable property or the acquisition of other rights to immovable property and which are entered into prior to or after entering into of a purchase or lease contract or concurrently with entering into thereof	ex 81, 812, 814	From 66100000-1 to 66720000-3
7.	Services related to computer hardware	84	From 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3) and 79342410-4
8.	Research and development services and services related thereto: only such research and development services, for which only the commissioning party pays for in entirety and uses for its own needs	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9.	Accounting, audit and bookkeeping services	862	From 79210000-9 to 79223000-3
10.	Market and public opinion research services	864	From 79300000-7 to 79330000-6 and 79342310-9, 79342311-6
11.	Management consultancy related thereto, except arbitration services and services, which are provided for the conciliation of the parties	865, 866	From 73200000-4 to 73220000-0, from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7, 98362000-8

12.	Architectural services, civil engineering services and integrated civil engineering services; urban planning and environmental planning services; related scientific and consulting services; technical testing and analysis services	867	From 71000000-8 to 7190000-7 (except 71550000-8) and 79994000-8
13.	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342200-3) and 79342100-4)
14.	Building maintenance services and property management services	874, 82201 to 82206	From 7030000-4 to 70340000-6 and from 90900000-6 to 90924000-0
15.	Printing and publishing services for remuneration or on a contractual basis	88442	From 7980000-2 to 79824000-6 and from 79970000-6 to 79980000-7
16.	Sewage and waste removal services; sanitary and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6, 50243000-0
<b>Part B</b>			
17.	Hotel and restaurant services	64	From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6
18.	Railway transport services	711	From 60200000-0 to 60220000-6
19.	Water transport services	72	From 60600000-4 to 60653000-0 and from 63727000-1 to 63727200-3
20.	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (except 63711200-8, 637127000-0), 63712700-0 and from 63727000-1 to 63727200-3) and 98361000-1
21.	Legal services	861	From 79100000-5 to 79140000-7
22.	Personnel appointment and provision services, except employment contracts	872	From 79600000-9 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9
23.	Investigation and security services, except services of armoured fitting vehicles	873 (except 87304)	From 79700000-1 to 79723000-8
24.	Education and professional training services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25.	Health and social care services	93	79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26.	Recreation, cultural and sporting services	96	From 79995000-5 to 79995200-7 and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9 and 92232000-6)
27.	Other services, except contracts regarding the creation, improvement, directing or transformation of programme material, if it is intended for transmission to be performed by a broadcasting organisation, and contracts regarding the broadcasting time.		