

LAW ON PUBLIC PROCUREMENT¹

I. GENERAL PROVISIONS

Article 1

(1) This Law shall regulate the activities in the procedure for performing public procurements by:

- government bodies and bodies of local government units;
- legal entities established for specific purpose for meeting public interest needs, which do not have economic or profitable character and which are largely financed by the government bodies or the bodies of the local government units or which are subject to control of their operations by the government bodies or the bodies of the local government units or which have more than half of the members of their managing, supervisory or other body appointed by government bodies or the bodies of the local government units;
- public enterprises, joint stock companies and limited liability companies in which the state or local government units have dominant direct or indirect influence through ownership, i.e. if they hold larger equity share in the company, have majority vote of shareholders and appoint more than half of the members of managing or supervisory board of the enterprise and the company;
- civic associations and foundations to which the law grants public authorizations;

(2) This Law shall also regulate the special manner and procedure for performing public procurement by legal entities performing one or several activities in the field of water supply, energy, transport, telecommunications, utilities or public enterprises on the basis of special or exclusive rights granted by competent government bodies or the bodies of the local government units by law.

(3) The lists of entities referred to in paragraphs 1 and 2 of this Article shall be stipulated by the Minister of Finance.

(4) This Law shall also apply to legal entities – investors who were granted direct or indirect subsidies for performing procurement related to works the amount of which exceeds 50% of the value of works by entities referred to in paragraph 1 of this Article.

(5) This Law shall establish and determine the competencies of the Public Procurement Bureau (hereinafter: Bureau).

Definitions

Article 2

(1) The terms used in this Law shall have the following meaning:

1. "Procurer" shall be the entities indicated in Article 1, paragraphs 1, 2 and 4 of this Law;
2. "Public procurement" shall be set of activities performed by the Procurer related to purchase of goods, rendering of services, conducting of construction works;
3. "Group procurement" shall be procurement of interest to more than one Procurer;

¹ "Official Gazette of the Republic of Macedonia", no. 19/2004.

4. "Bidder" shall be any domestic or foreign legal entity or physical person - supplier or provider of goods, services or works that submits a bid;
5. "Candidate" shall be the entity invited by the Procurer to submit a bid;
6. "Goods" shall be movable items of all kinds, including raw materials, intermediate goods, and spare parts, industrial and other plants, industrial or intellectual property rights (patents, licenses, transfer of technology and software programs);
7. "Service" shall be any activity other than goods or works which provide conditions for executing the function or the production;
8. "Equipment" shall be devices for provision of conditions for executing the function and the production process.
9. "Works" shall be all activities related to construction of facilities pursuant to the legal regulations that set forth construction or activities which as whole are sufficient to meet certain economic or technical function;
10. "Bid" shall be a proposal given by a bidder prepared for the Procurer according to its defined request and shall be the basis for concluding a contract for delivery of goods, services or conducting works;
11. "Technical documentation" shall be an elaborate which, from technical point of view, elaborates technological and production and exploitation concept of the goods and services (facilities or investment equipment and devices) and provides the technical solution for the construction, i.e. production. Technical documentation shall contain one or several projects, technical description of equipment, investment, devices, pre-calculation with description of works and conditions;
12. "Technical specification" shall be a technical requirement contained in the tender documentation, defining the characteristics of certain types of works, materials, products or services which would suit the purpose of the Procurer. The technical specifications encompass quality, performance, safety or dimensions, as well as requirements applicable to the material, goods or service regarding the provision of quality, terminology, symbols, testing and methods of testing, interpretation, marking and labeling. For the procurement of works, they include regulations for projection and building, conditions for testing, supervision and accepting construction techniques and methods and other technical conditions the Procurer may prescribe regarding the complete works and materials and parts embedded therein;
13. "Standard" shall be technical specification approved by renowned standardization body for constant and permanent application;
14. "European standard" shall be a standard adopted by the European Standardization Committee (CERN) or by the European Committee for Electro-technical Standardization (Cenelec) as a European standard (EN) or as a harmonization document pursuant to the common rules of these organizations, or by the European Telecommunication Standard Institute (ETSI) according to its own regulations as European Telecommunication Standard (ETS);
15. "Macedonian standard" shall be a standard adopted by body competent for standardization and shall be publicly available.
16. "International standard" shall be a standard adopted by an international standardization organization and it shall be publicly available.
17. "Internal standard" shall be standard of companies, or other legal entities if such standard is not encompassed by Macedonian or international standards.
18. "European technical approval" shall be technical assessment of the appropriateness to use a given product for certain purpose, based on the fulfillment of essential civil works requirements, according to the essential product characteristics and defined conditions for application and usage. It is issued by an authorized body, nominated by the state for that purpose;

19. "Common technical specification" shall be technical specification determined in accordance with the procedures recognized by the EU member states to the end of uniformed application in all member states, published in the Official Journal of the European Communities;
20. "Open invitation" shall be a procedure in which all interested entities may submit bids upon the announced invitation;
21. "Restricted invitation" shall be a procedure in which only the candidates invited by the Procurer may submit bids;
22. "Negotiated procedure" shall be a procedure in which the procurers consult the candidates they have selected and negotiate the procurement conditions with one or several of them;
23. "Tender documentation" shall be documentation prepared by the Procurer in order to enable bidders to submit their bids;
24. "Design contest" shall be the procedure which enables the Procurer to purchase a plan, mainly in the area of physical planning, urban planning, architecture and construction, or to process data, plan or project selected by a jury on the basis of competition with or without the award of prizes;
25. "Public procurement contract" shall be a contract concluded in accordance with the procedure regulated with this Law, in writing, between the Procurer and the Bidder for conducting works, rendering services and delivery of goods;
26. "Public Procurement Committee" shall be a body that implements the public procurement procedures;
27. "Acceptable bid" shall be a bid submitted within the deadline set in the public procurement notice and for which, after the bid opening and on the basis of the bid review and evaluation, it has been concluded that it fully meets all requirements in the tender documentation and tender specifications and meets all criteria, conditions and possible capability requirements;
28. "Framework Agreement" shall be agreement between the procurer and the bearer of the procurement, contractor or service provider (bidders), determining the conditions for successive execution of the procurement within a set period; and
29. "Responsible person" shall be an official heading a state body, mayor of local government unit, manager of legal entity and authorized person of associations of citizens or foundations which are given public authority.

Exceptions

Article 3

- (1) The provisions of this Law shall not apply to public procurement of items concerning state defense and security, and shall be regarded as a secret of the state for purchasing weapons, military equipment and special operational technique pursuant to law.
- (2) The Government of the Republic of Macedonia (hereinafter: the Government) shall pass an act on determining the procurement referred to in paragraph 1 of this Article.
- (3) Regarding the procurement referred to in paragraph 2 of this Article, the Procurers shall inform the Government by the end of January of the current year about their annual procurement plans for the current year.

Article 4

(1) The provisions of this Law shall not refer to public procurement for which funds have been provided by international organizations (donors and lenders), provided that special terms and conditions for procurement are prescribed by them.

Article 5

(1) The provisions of this law shall also not refer to procurement of:

- purchase or rental of land, buildings, or other real estate or rights deriving therefrom, except when provisioning of funds for their purchase or rental is needed (credits and loans);
- financial services related to issue, sale, purchase or transfer of securities or other financial instruments, brokerage services and services rendered by NBRM;
- purchase, development, production or co-production of program materials by radio or TV broadcasters and for broadcasting period of TV and radio programs;
- services for voice telephony, telex, radio telephony, paging and satellite services;
- employment mediation services;
- R&D services, except in cases when the research is used by the procurer for commercial purposes;
- granting concession.

Principle of equal footing of bidders

Article 6

(1) Fair competition, equal and non-discriminatory position of bidders and transparency shall be provided during public procurement.

(2) The procurer must not discriminate in the sense of the nationality of bidders, or country of origin of goods.

Confidentiality of bid data

Article 7

(1) The Procurer shall be obliged to keep confidential all data about the bidders contained in the bids, classified as confidential pursuant to law.

(2) The Procurer shall keep secret the names of the bidders and the submitted bids until the deadline determined for bid opening.

(3) When publishing and submitting the technical specifications to the bidder, the Procurer may request protection by the bidder of the confidential information arising thereunder.

Ban on negotiations

Article 8

(1) Any negotiations between the Procurer and the bidder, during open and restricted invitation, shall be banned, regarding prices and amending submitted bids.

(2) The Procurer may request the bidder to provide explanation of the bid without changing it.

(3) The bidder shall provide the explanation to the Committee and this shall be recorded in the Minutes.

Ban on dividing public procurement and reducing estimated value

Article 9

(1) Public procurement may not be divided into portions nor its estimated value may be reduced for the purposes of avoiding certain procedure determined by this law.

(2) Detailed rules on the estimated value of the procurement shall be stipulated by the Minister of Finance.

II. PUBLIC PROCUREMENT

Planning and providing funds

Article 10

(1) The procurer shall initiate public procurement procedure only if it has previously planned and provided funds in its budget, financial plan or investment program.

(2) If the procurement lasts several years, the liabilities maturing in the following years shall be planned by the procurer in its budget, financial plan or investment program for the respective year.

Planning and determining need for procurement

Article 11

(1) On the basis of determined financing sources, the procurer shall adopt a plan for its overall needs for procurement in the current year per type of products (goods), services and works, setting both the dynamics for realization of the procurements and the public procurement procedure to be used.

(2) The plan referred to in paragraph 1 of this Article shall be developed by the authorized person, i.e. the body in charge of making decisions about the allocation and the usage of Procurer's funds, in accordance with the law.

(3) After adopting the plan, the procurer shall submit it to the Bureau within five days from the day of its adoption. The procurer shall also submit prior (indicative) notice on the public procurement it plans to perform during the year, to the end of its publication on the public procurement website.

(4) The notice referred to in paragraph 3 of this Article shall comprise: data on the procurer, type, quantity of procurement, expected initiation date and approximate deadline for procurement, depending on the type of determined procedures to be used under this law.

(5) The notice referred to in paragraph 3 of this Article shall not be published if the publication of such information prevents the enforcement of the law or it is otherwise against the public

interest or if it would damage lawful commercial interests of procurers or it could deteriorate the competition among bidders.

(6) The Bureau shall check whether the submitted public procurement plan is in accordance with the provisions and the procedures of this law.

(7) The Minister of Finance shall prescribe the format and the contents of the annual public procurement plan.

Decision on public procurement

Article 12

(1) Regarding the public procurement need, the authorized person i.e. the body in charge of making decisions about the allocation and usage of Procurer's funds, shall reach a decision.

(2) The decision for the need for particular procurement shall determine the item (type) and quantity of the procurement, the amount and source of funds necessary for performing the procurement, including the expenses pertaining to taxes, customs, and other public fees, the manner and procedures for performing public procurement, the criteria for selection of the most favorable bidder and the body, i.e. the authorized person for implementation of procedure, as well as whether international tender is needed for the procurement.

(3) Should the value of the procurement of goods and services exceed EUR 400,000 in Denar equivalent, and for works the procurement value of which exceeds EUR 1,000,000 in Denar equivalent, the public procurement procedure shall mandatorily be implemented by announcing an international tender.

(4) Public procurement procedure by announcing an international tender can be implemented for procurements below the amounts set in paragraph (3) of this Article upon assessment by the procurer.

Group procurement

Article 13

(1) Group procurement shall be performed in coordination, through one Procurer acting on behalf of a group of Procurers who need same type of procurement, upon prior concluded agreement for execution of group procurement.

Bid by group of bidders

Article 14

(1) In the procedure for procurement by group of bidders, not necessarily joint in legal form to the end of submitting the bid, the bidders can submit joint bid, signed by all group members or by one member of the group, on the basis of prior written consent for his/her authorization for submission of the joint bid.

(2) Should the group of bidders referred to in paragraph (1) of this Article be selected as bearer of the procurement, the procurement contract shall be signed by all group members or only the authorized member of the group, whereby the procurer may require for them to join in an

adequate legal form. The selected group of bidders shall jointly and severally be responsible for meeting the contractual obligations.

Competence of bidders

Article 15

(1) The procurers in the public procurement procedure should prove their financial and economic capability, professional and technical competence, management capability, experience and reputation and the appropriate personnel necessary to execute (prepare) the procurement.

Storage of documents

Article 16

(1) The Procurer shall keep the documentation produced during public procurement procedure within a period prescribed with the regulations on archive and office operations.

Registry of public procurement procedures

Article 17

(1) The Procurer shall keep registry on public procurement procedures.

(2) The registry shall comprise data on:

- number and date of the procurement decision;
- item and value of procurement;
- type of procurement procedure;
- number of submitted bids and their value;
- number of acceptable bids;
- lowest and highest price of bids;
- criteria applied for the selection;
- decision for selection of the most favorable bidder;
- price of selected bid;
- name, surname and address of selected bidder;
- complaints submitted by bidders;
- outcome of the complaints;
- number, date and value of the concluded contract and Annex to the contract;

(3) The data referred to in paragraph 2 of this Article shall be entered in the registry within 10 days of the date the contract is signed.

(4) The Procurer shall obligatorily submit the data from the registry of performed procurements to the Bureau within 30 days after signing of the contracts.

(5) The Minister of Finance shall prescribe the format and contents of the form and the manner of keeping the registry for the performed procurements at the Procurers referred to in Article 1 of this Law.

Single registry and sub-registries

Article 18

(1) The data referred to in paragraph 2 of Article 15 of this Law shall be entered in the single registry and sub-registries, maintained by the Public Procurement Bureau and shall be published on the public procurement website.

(2) The received data referred to in paragraph 2 of Article 15 of this Law shall be entered in the sub-registry of public procurement:

- for budget users and spending units;
- for users and spending units within the budgets of the extra-budgetary funds;
- for users and spending units within the budgets of local government units;
- for agencies, public institutions and services, other bodies and organizations established by the government;
- for civic associations and foundations; and
- for public enterprises and legal entities operating in the area of water supply, energy, transport, telecommunications and utilities.

(3) Minister of Finance shall prescribe the format and contents of the form and the manner of keeping the single registry referred to in paragraph 1 of this Article.

Currency of bid price

Article 19

(1) The value of procurement in the bid shall be expressed in Denars.

(2) Should foreign legal entity or physical person appear as a bidder, the bid may be expressed in other (convertible) currency, calculated according to the exchange rate list of the National Bank of the Republic of Macedonia (middle exchange rate) used on the bid opening date.

Bodies to perform the procurement procedure

Article 20

(1) Public procurement procedure shall be performed by a standing Public Procurement Committee (hereinafter: Committee), established by the responsible person at the Procurer.

(2) The Committee referred to in paragraph 1 of this Article shall comprise President and at least two members and their deputies recruited from the employees at the Procurer.

(3) In addition to the existing composition of the Committee, depending on procurement nature and specificity, other experts can also be engaged in the operations of the Committee.

(4) Depending on the scope, nature and specificity of the procurement, the Procurers can establish several committees.

(5) The President and the members of the Committee and their deputies shall be appointed for a period of two years, but no longer than two mandates. The responsible person at the Procurer may dismiss the members of the Committee prior to the expiry of their mandate if they act

contrary to the provisions of this law, if they perform the operations assigned to them in non-diligent and non-timely manner, as well as upon their own request.

(6) The President, members of the committee and their deputies are obliged to adhere to the prescribed procedures and deadlines stipulated with this Law.

Conflict of interest

Article 21

(1) It shall be considered that there is conflict of interest at the responsible person, the managing persons and the members and expert members of the Public Procurement Committee at the Procurer, i.e. they may not participate in the public procurement procedure, should they:

- be in marriage, in direct kinship, in indirect kinship up to the second degree, or be related by adoption, guardianship or tutorship with the bidder, its legal proxy or the members of its managing, supervisory or other bodies;
- during the last three years, be employed or be contractors under a tender or be members of the managing bodies of the bidder; or
- be in other legal or actual relationship with the bidder.

(2) The persons acting on behalf of the Procurer and performing procurement in the public procurement procedure shall, after the bid opening, submit written statement on the existence or non-existence of the cases referred to in paragraph 1 of this Article. The signed statements are integral part of the documentation for the respective public procurement.

(3) If there are cases referred to in paragraph 1 of this Article or if the statement referred to in paragraph 2 of this Article is not signed, that person shall be excluded from the public procurement procedure.

(4) The physical person who is the managing person of the bidder cannot personally (directly) be bearer of procurement.

Exclusion of bidder, rejection and cancellation of decision

Article 22

(1) The Procurer shall reject the bidder if he has credible proof (legally binding court ruling) that the bidder gave or promised the employee at the Procurer, gift in pecuniary or non-pecuniary form, offered employment or any other benefit, item or service, as an attempt to influence the further course of the public procurement procedure.

(2) The Procurer shall reject the bid if the bidder offers or gives certain benefits by misinterpretation of facts, thus trying to gain certain advantage over the other bidders.

(3) The Procurer shall be obliged to notify the Public Procurement Bureau in writing, for the purpose of record-keeping, on the rejection of the bid, due to the reasons referred to in paragraph 2 of this Article.

(4) The Procurer shall reject the bid submitted by legal entity or physical person should it had prepared the tender documentation or part of it for its needs.

(5) The Procurer shall nullify the decision on procurement if the circumstances referred to in the previous paragraphs of this Article are disclosed after its adoption.

Conduct of officials

Article 23

(1) The person at the Procurer, being included in the planning, preparation and implementation of the public procurement procedure, as well as in the administration of the implementation of public procurement contracts is obliged to:

- (a) impartially perform his tasks in order to provide the bidders equitable competitive access to the public procurement;
- (b) always act in the interest of and in accordance with the objectives and procedures prescribed in this Law;
- (c) always avoid conflict of interests and inappropriateness in the execution of his tasks and in his conduct;
- (d) not perform and not assist in performing illegal activities, including request and acceptance of inappropriate advantages; and
- (e) keep confidential information he obtains regarding public procurement procedures and the bids.

III. PUBLIC PROCUREMENT BUREAU

Article 24

(1) Public Procurement Bureau shall be a state administrative body within the Ministry of Finance and it shall not have status of a legal entity.

(2) The Bureau shall be responsible for its operations to the Government of the Republic of Macedonia and the Minister of Finance.

Article 25

(1) The Public Procurement Bureau shall be responsible for development of the public procurement system via securing legality, rationality, efficiency and transparency in the implementation of public procurement and shall stimulate the competition and equality of the bidders in the public procurement procedures.

Article 26

(1) Director shall manage with the operations of the Bureau.

(2) The Government of the Republic of Macedonia shall appoint and dismiss the Director upon the proposal by the Minister of Finance for a period of four years.

(3) The Director may also be dismissed before the period referred to in paragraph 2 expires if he/she fails to work pursuant to this law and other laws, resigns or if his/her performance is unsatisfactory.

Article 27

(1) The Director of the Bureau shall manage and represent the Public Procurement Bureau; organize and provide legal and efficient execution of duties and tasks; undertake measures within the competencies of the Bureau pursuant to law.

(2) The Director of the Bureau should have completed higher education in the area of law or economy and at least 5 years working experience.

Article 28

(1) The Bureau shall:

- initiate proposals to the Ministry of Finance for adopting legal and other acts in the area of public procurement;
- monitor and analyze implementation of the laws and other public procurement regulations, public procurement system functioning, and shall initiate modifications for improving the public procurement system;
- provide opinions regarding the provisions and the enforcement of this law;
- advise and/or assist the procuring entities;
- prepare standard tender documentation and standard forms for open and restricted invitation and for negotiated procedure;
- keep, maintain and update single registry and sub-registry on the procurement of the Procurers, and shall make it publicly available through the public procurement website;
- when detecting irregularities in the implementation of the public procurement, undertake measures, immediately informing the Government and the Minister of Finance thereof;
- determine minimum requirements for professional qualifications for the persons performing professional activities for public procurement;
- organize and conduct training for civil servants and other competent persons with respect to public procurement, according to previously adopted programme;
- cooperate with international institutions and other foreign entities with respect to the activities related to public procurement system development;
- realize international cooperation regarding public procurement system and plan and coordinate foreign technical assistance in the area of public procurement;
- submit annual report to the Government on its activities in implementation of the public procurement system and on the functioning of the public procurement system;
- give guidelines and prepare manuals and comments on the public procurement rules and publish bulletin;
- appoint the expert who will check the regularity of the public procurement procedure, upon request by the bidder, for a value exceeding the denar equivalent of EUR 30,000;
- perform other operations pursuant to this law.

(2) The Bureau shall cooperate with the entities referred to in Article 1 of this Law and with companies, professional research institutions or experts in certain areas regarding public procurement.

(3) The Minister of Finance shall prescribe the program and the manner of implementation of the training referred to in paragraph 1, line 9, of this Article.

IV. MANNERS OF IMPLEMENTING PUBLIC PROCUREMENT PROCEDURES

GENERAL PROVISIONS FOR IMPLEMENTING PUBLIC PROCUREMENT PROCEDURES

Types of public procurement procedures

Article 29

(1) Public procurement shall be performed via the following procedures:

- Open invitation for bids;
- Restricted invitation for bids;
- Negotiated procedure; and
- Design contest; and
- Restricted invitation for consultant services.

Manner of publishing the invitation

Article 30

(1) Pursuant to Article 29 of this Law, invitation for bids through open and restricted invitation, design contest and restricted invitation for consultant services shall be mandatorily published by the Procurer in the "Official Gazette of the Republic of Macedonia".

(2) The "Official Gazette of the Republic of Macedonia" is obliged to publish the invitation referred to in paragraph 1 of this Article within 10 days of the day of receipt at the latest.

(3) The invitation referred to in paragraph 1 of this Article can also be published free of charge on the public procurement website of the Bureau within three days after the submission of the electronic version.

(4) Pursuant to Article 12 of this Law, when the procurement is performed via International Competitive Bidding, the procurer shall also publish the Invitation for Bids in the Official Journal of the European Union and in official media in EU non-member states, chosen by the Procurer, if necessary.

(5) In cases when the invitation is not published simultaneously, the deadline in the invitation published in Official Gazette of the Republic of Macedonia shall be valid.

Rules for defining technical elements in public procurement

Article 31

(1) Features of the technical specifications the bidder offers in the procurement bid should be in accordance with the applied standards of the Republic of Macedonia, the EU standards, or by reference to European Technical Approvals or common technical specifications.

(2) The Procurer shall be obliged to accurately determine technical specifications of the item of procurement, prior to the publishing of the invitation.

(3) When submitting technical specification to the bidders, which are contractors or service providers, the Procurers may request from the bidders to protect the confidential character of technical specifications from abuse.

Article 32

(1) Technical specifications shall be compulsory part of the tender documents.

(2) Procurers shall define the technical specifications according to the technical regulations and standards in force in the Republic of Macedonia, the EU and the international standards.

Article 33

(1) Procurers may derogate from Article 32 of this Law in the following cases:

- If the standards, European technical approvals or common technical specifications for the product offered do not include any provision requiring for it to be in compliance with those standards, approvals and common technical specifications;
- If the application of provisions in Article 32 of this Law hinders the application of the initial phase of the mutual recognition of approvals for types of equipment for telecommunication terminals or for standardization in the area of information technology telecommunications or other instruments of the European Union in specific areas of goods and services;
- If the application of such standards, European technical approvals and common technical specifications would commit the Procurer to procure incompatible with the equipment already in use or if that causes disproportional costs or technical difficulties;
- The project has inventive nature for which the European standards, the European technical approvals or the common technical specifications could not be applied.

Article 34

(1) The Procurer, in the open invitation for bids published in the Official Journal of the European Community, in the "Official Gazette of the Republic of Macedonia" or in the tender documentation, as well as in its internal documentation, is obliged to indicate the reasons for acting pursuant to Article 33 of this Law.

(2) In absence of the European standards, European technical approvals or common technical specifications, the technical specifications shall be defined by reference to the Macedonian technical specifications, Macedonian standards and Macedonian approvals for which it is determined that are harmonized with the basic requirements for technical harmonization, referring to the manner and method of calculation and implementation of works and use of materials.

Article 35

(1) When the Procurers require approvals for conforming their compatibility with the quality requirements issued by an authorized body, they should refer to the quality verification system, according to the standards of the Republic of Macedonia, MKS EN ISO-9000, fulfilling the requirements from the Macedonian standards MKS EN-4500.

Contents of the tender documentation

Article 36

- (1) The procurer shall prepare the tender documentation in a way that would enable the bidder to submit proper bid.
- (2) The tender documentation referred to in paragraph 1 of this Article shall be prepared in accordance with the Procurer's needs, harmonized with the prescribed standards and rules for the respective types of procurement of goods, services and works.
- (3) The tender documents shall be available to all interested bidders.
- (4) The Procurer must not specify the given technical features of the item of procurement in precisely determined brand, model or type, origin of production, in tender documentation.
- (5) When the Procurer cannot describe the item of procurement in the tender documentation in a manner to make the specifications understandable for the bidders, the reference to the elements such as trademark, patent, type or producer must be accompanied with the words "or equivalent".
- (6) The tender documentation for the open invitation and for the second phase of the restricted invitation shall contain:
 - 1) Invitation for submission of bids;
 - 2) Instructions to the bidders for preparation of bids;
 - 3) Bid format;
 - 4) Format of the statement with which the bidders accept the terms and conditions under the invitation;
 - 5) Contract model;
 - 6) Type, technical features (specifications), quality, quantity and description of the item of procurement (description of goods, work or services), manner of conducting control and providing quality security, delivery deadline, place of performance or delivery of the item of procurement;
 - 7) Technical documentation and plans;
 - 8) Format for the manner of filling in the invoice;
 - 9) Indication of the types of financial guarantee with which the bidders will guarantee the execution of their obligation (statement for guarantee pursuant to Article 88 of this law).
- (7) The tender documentation may also contain other elements which depending on the item of procurement are necessary for preparation of the bid.
- (8) The tender documentation in the first phase of the restricted invitation for bids shall contain:
 - 1) Invitation for submission of application;
 - 2) Instructions (guidelines) to the bidders for preparation of the application;
 - 3) Application format;
 - 4) Form for determining the qualifications and instructions for the manner of proving qualifications of the bidders.
- (9) The data contained in the tender documentation must be equivalent with the data contained in the invitation.

(10) The Minister of Finance shall prescribe the obligatory elements in the tender documentation.

Insight in and submission of tender documentation

Article 37

(1) After publishing of the open invitation for bids, i.e. in the second phase of the restricted invitation, the Procurer shall provide an insight to all interested bidders in the tender documentation.

(2) The Procurer shall submit the tender documentation to the requesting bidders within three days from the day of receiving the request, and if the notice sets fee for its submission, the tender documentation shall be submitted to the bidders right after the payment of the fee.

(3) Tender documentation fee shall cover only the costs of the procurer for its preparation.

Amendments and modifications to the documentation

Article 38

(1) In cases when the period for reception of bids is fixed and tender documentation has been amended or modified in meantime, the Procurer must such immediately submit such amendments, free of charge, to all bidders who received tender documentation.

(2) In the cases referred to in paragraph 1 of this Article, the Procurers can extend the deadline for submission of bids, should the bidders so request.

(3) After the expiry of the deadline for receipt of the bids, the procurer cannot make amendments and modifications to the tender documentation.

Article 39

(1) The Procurer shall be obliged to answer all additional questions related to the tender documentation the bidders may have, provided the questions are submitted 6 (six) days prior to the final deadline for submission of bids.

(2) The procurer shall answer the questions immediately in writing, and shall distribute the answer immediately and free of charge to all the bidders that took tender documentation, whereby the procurer shall not indicate the name of the bidder that requested clarification.

Documents for financial and economic capability

Article 40

(1) The bidder shall provide and submit the following appropriate documents with the bid as proof of its financial and economic capability:

- proof of solvency from the Central Registry;
- confirmation from the Public Revenue Office for paid taxes, contributions and other public fees; and
- document from the competent court for registered activity (for legal entities);
- license from competent body for operations (for physical persons);

- certificate that no bankruptcy or liquidation procedure has been initiated; and
- certificate that it is not subject to effective court decision for interdiction of its business activities as a preventive measure.

(2) Documents referred to in paragraph 1 of this Article shall not be older than six months, and shall be submitted in original or copy verified by the bidder. If only a copy is submitted, upon request by the Procurer the bidder shall also submit the original document for insight.

(3) The contents of the document on solvency for the domestic bidder shall be prescribed by the Minister of Finance.

(4) The opinion in the document on solvency issued by the Central Registry can be positive or negative. In case of negative opinion by the Central Registry, the Procurer shall exclude the bidder from further participation in the procedure.

(5) Foreign legal entity or physical person appearing as bidder shall submit audit report that should be positive and issued by foreign reputable institution, registered for performing audit. The audit report shall contain data on the overall economic operations of the foreign bidder in the last three years.

Technical capability

Article 41

(1) The technical capability of the bidder can be determined via technical and technological solvency, presented with the following:

- list of main deliveries of goods, works or rendered services in the last three years, including amounts, dates and recipients;
- certificate issued by a procurer for which previous delivery of goods and services was performed in the last three years and five years in the case of execution of works, with which they confirm that the procurement is appropriately, i.e. timely performed in quality manner and with due diligence;
- description of the technical facilities of the bidder, the measures it has undertaken to secure the quality and research facilities;
- statement for technical personnel and other experts working for the bidder and who will be competent for realization of the contract, as well as statement by the persons responsible for quality control;
- samples, description or photos of the product to be procured, the authenticity of which should be confirmed if the Procurer so requests;
- certificates issued by a competent body, organization or any legal entities for quality control to confirm the conformity of the product, i.e. the service with the technical specifications or with the standards requested in the tender documentation;
- report for review in case when the products (services or works) that should be procured are complex or when in exceptional cases they are intended for special purposes. The review is made by representatives of the Procurer or a competent body from the country where the Bidder is seated, on behalf of the Procurer. The review refers to production capacity of the bidder, and when necessary, to its R&D capacity and the manner of quality assurance; and
- catalogues for the basic technical characteristics and guidelines for handling the technical devices and equipment.

(2) The procurer, in the tender documentation and in the invitation, may request specification of the evidence referred to in paragraph 1 of this Article of the technical capability it wants to receive, to the end of determining whether the bidder has the necessary technical and technological solvency and the resources set as minimum criteria for satisfactory performance of the procurement.

(3) The procurer has the right to require on-the-spot checkup of the evidence referred to in paragraph 2 of this Article.

Article 42

(1) If the Bidder is foreign entity, the Procurer shall check whether the evidential documents are issued by the competent authorities from its home country.

Reading of bids

Article 43

(1) The bid opening in the open invitation and in the second phase of the restricted invitation shall be public.

(2) The public bid opening shall commence at the time and place specified in the invitation, but no later than one hour after expiry of the deadline for submitting the documentation.

(3) When reading the bids, besides other data, the following shall be mandatorily read:

- name of the bidder;
- bid price and currency;
- possible discount; and
- offered security.

Persons participating in the public bid opening

Article 44

(1) The Public Bid Opening during open invitation and second phase of restricted invitation shall be done in the presence of all members of the Procurer's Committee and representatives of Bidders.

(2) The representatives of Bidders shall submit to the Committee a written authorization for attending the Public Bid Opening, issued by the Bidder.

Public bid opening

Article 45

(1) When opening the bids, the Committee shall, first and foremost, check whether the documents for economic and financial status are submitted, as well as for the technical capability of the bidder to realize the item of procurement. Their analysis shall be done in the evaluation phase. The Procurer may invite the bidders to supplement or clarify, in writing, the submitted documents within three days if there are deficiencies that do not significantly affect the procedure.

- (2) The Committee shall begin the public bids opening, should it determine that at least two bidders have complete documentation.
- (3) The Procurer may stop the procedure upon the public invitation if there were no proper, appropriate and acceptable bids submitted and shall inform all bidders thereof.

Minutes for the public opening

Article 46

(1) The Committee is obliged to take Minutes for the public opening of bids and shall enter the following data:

- 1) data on the Procurer;
- 2) time and place of the bid opening;
- 3) reference number of the invitation and item of procurement;
- 4) name and surname of the members of Public Procurement Committee and of the authorized representatives of Procurers;
- 5) number of received bids;
- 6) name and address of the bidders, i.e. the code of the bidder if the competition is anonymous according to the order of submission of the bids;
- 7) offered prices and discounts; and
- 8) remarks by the bidders.

(2) The Minutes shall be signed by all members of the Public Procurement Committee.

(3) A copy of the Minutes for the public opening of bids shall be submitted to all bidders who so request, and whose bids are opened at the public bid opening, within 5 days from the day the request for submission of Minutes was received.

(4) The Minister of Finance shall prescribe the procedure for opening the bids in Open Invitation, Restricted Invitation and Negotiated Procedure, and shall prescribe the format of Minutes for public bid opening.

Review, assessment and comparison of bids (evaluation)

Article 47

(1) Prior to reviewing, assessing, and comparing the bids, the Committee shall check the completeness and validity of the documentation for financial, economic and technical capability of the bidders.

(2) The bidders who submitted incomplete and invalid documentation shall be excluded from the procedure and their bids shall not be reviewed.

(3) The review, assessment, and comparison of bids shall be done by the Public Procurement Committee at the Procurer.

(4) During the evaluation of the bids, the Committee shall check their contents, i.e. their properness, appropriateness and eligibility.

(5) The Committee shall reject the improper, inappropriate and unacceptable bids and shall immediately inform the bidders thereof.

(6) The Committee shall evaluate the bids which are fully acceptable according to Article 2, paragraph 1, item 27 of this law and in line with the conditions in the tender documentation and in the invitation.

(7) The evaluation of bids shall be done exclusively in accordance with the criteria listed in the tender documentation.

(8) After the evaluation, the Committee shall rank the bids and prepare a proposal for selection of the most favorable bidder, if there are at least two acceptable bids received.

Exclusion of bidder

Article 48

(1) A bidder shall be excluded from the procedure upon invitation in the following cases:

- a) The Bidder fails to register in the appropriate Court Registry for performing the activity referring to the public procurement,
- b) The physical person - Bidder does not have license by a competent authority for its operations,
- c) Bankruptcy or liquidation procedure is initiated,
- d) It is under an effective court decision for interdiction of its business activities as a preventive measure,
- e) It has outstanding taxes, contributions and other public fees,
- f) It has failed to submit complete documents requested in the invitation,
- g) Submitted documentation for participation after the deadline stipulated in the public invitation.

(2) The provision referred to in paragraphs 1 of this Article shall also apply to persons acting as subcontractors according to Article 49 of this Law.

(3) Criteria or conditions for exclusion of the bidders referred to in paragraph 1 of this Article shall identically apply to foreign bidders that fail to submit identical documents issued by respective domestic or foreign institutions.

Subcontractor

Article 49

(1) The Bidder shall obligatorily submit data about the third party (subcontractor) in the Bid submitted for the Open Invitation for the part of the Bid entrusted for execution to that party via subcontract, otherwise it may not engage a subcontractor.

Criteria for selection of the most favorable bid

Article 50

(1) Depending on the type of procurement, the evaluation criteria for selection of the most favorable Bid may be:

- the lowest price only, or

- the economically most favorable Bid in terms of price, delivery deadline, manner of payment, operating costs, efficiency, quality, esthetic and functional characteristics, technical qualities, warranty and post-warranty period, post-sale maintenance services and provision of technical assistance (spare parts etc.).

(2) The procurer shall set the evaluation criteria to be applied both in the invitation and in the tender documentation, and these criteria may be expressed in points or in monetary terms.

(3) After the publication, i.e., the submission of the invitation, the procurer must not change the criteria, i.e. when making evaluation, the procurer can apply only the criteria published in the invitation and in the tender documentation.

(4) When applying the criteria referred to in paragraph 1, indent 2 of this Article, the Procurer shall, in the invitation, rank all criteria with certain number of points according to the order of their importance, so that their total ranking should be from 1 to 100 points.

(5) The Minister of Finance shall prescribe the methodology for ranking the criteria referred to in paragraph 2 of this Article.

Dividing the procurement in portions **Article 51**

(1) In case when the Procurer gives an option for the procurement to be divided, the bidders shall indicate in their bids whether their bid refers to the entire procurement or only to part of it.

Unusually low price **Article 52**

(1) If a particular Bid price is unusually low and in significant discrepancy to the estimated value of the procurement, the Procurer may not reject such Bid before it requests the Bidder to submit written explanation of the reasons for such Bid price. The Procurer shall take into account the explanations justified on objective grounds, including the cost-efficiency of the method of contract execution or the selected technical solution or exclusively favorable conditions available to the Bidder for performing the procurement or the originality of delivering the item of procurement.

(2) If the Bidder fails to explain in writing the reason for offering the Bid price referred to in paragraph 1 of this Article within 7 days from the date of submission of request, or the Committee does not approve its reasons, its Bid shall be rejected.

(3) The Committee shall inform the Bidder in writing of its exclusion from the selection procedure, supported by elaboration of the reasons for such decision and this information will be included in the documentation of the Open Invitation for Bids.

Report on review, assessment and comparison of bids (evaluation) **Article 53**

(1) The Procurer shall prepare written report for each procurement and it shall contain:

- reference number of the invitation;

- item and value of procurement;
- name and address of the seat of applying bidders, according to the order in the Minutes of the public bid opening;
- analytical review of the requested and submitted evidence referring to the capability of the bidder, evaluation of the capability and eligibility of the bid;
- bid price and discounts;
- criteria and ranking the criteria for determining the most favorable bid in case when, in addition to the price, additional criteria are envisaged in the tender documentation and their evaluation for each bid;
- evaluation and opinion of the experts, in case they were included in the Committee operations;
- ranking list of the bids, depending on the number of given points;
- explanation of the proposal for most favorable bid;
- explanation of the reasons, if the procedure did not result in proposal for most favorable bid; and
- date of the preparation of the report and signature of all Committee members.

(2) The responsible person at the Procurer shall follow the Committee Report that contains the proposal for selection of the most favorable bid, unless it determines that the proposal is prepared contrary to the criteria in the tender documentation.

Decision for selection

Article 54

(1) The decision on selection or non-selection of the most favorable bid, i.e. for cancellation of the invitation shall be reached by the responsible person at the Procurer in writing.

(2) The decision referred to in paragraph 1 of this Article shall contain the number of the invitation and data on the Procurer, the number and the date of the decision for the need of public procurement, data on the public invitation, the manner of procurement and the legal basis for applying the stated manner, the subject to procurement, data on the selected bidder, the reasons for selection or non-selection, i.e. for cancellation of the invitation, guidelines for remedy and signature of the responsible person at the procurer.

(3) The decision referred to in paragraph 1 of this Article shall be submitted to all bidders.

(4) The report of the Committee and the data referring to the review, explanation, assessment, comparison and the proposal for selection, can be submitted for consideration by the bidders after the receipt of the decision for selection of the most favorable bid until the deadline to lodge a complaint expires.

Notification on selection of the most favorable bid

Article 55

(1) The Procurer shall, immediately after the made selection of the most favorable bid, in writing, inform each rejected bidder or candidate about the grounds for non-selection of its bid, as well as about the bearer of the selected most favorable bid.

A. OPEN INVITATION FOR BIDS

Article 56

(1) Open invitation for bids shall mean procurement procedure in which each interested entity can submit a bid in accordance with the previously defined requirements by the Procurer, envisaged in the tender documentation.

Contents of the notice

Article 57

(1) The notice for open invitation for bids shall mandatorily comprise:

- 1) name; address and seat of the Procurer and its telephone and fax numbers;
- 2) reference number of the invitation for bids;
- 3) description of the item of procurement and quantity;
- 4) place of delivery of goods, conduction of works or rendering services;
- 5) indication whether the procurement may be divided in parts, depending on the type of goods, equipment and services;
- 6) place and requirements for issuance of tender documents, including the price and the manner of payment of the amount due in order to receive documentation;
- 7) the deadline for receipt of bids and the address to which they are sent;
- 8) persons authorized to participate at bid opening;
- 9) place, date and time for opening of bids;
- 10) requests for submitting performance securities;
- 11) evidence and documentation that the bidder needs to prove its economic and financial and technical ability;
- 12) bid validity period;
- 13) criteria for selection of the most favorable bidder, i.e. for awarding the contract;
- 14) description of the manner for preparation of the bid, form and contents of the bid;
- 15) other data relevant to the item of procurement.

Deadline for submission of bids

Article 58

(1) The open invitation for bids shall have a deadline for submission of bids set by the Procurer of no less than 52 days from the date of sending the notice for open invitation for bids. In case of shortened procedure, the deadline shall not be set prior to 36 days from the date of sending the notice for open invitation for bids.

(2) The shortened procedure shall be implemented in case when the plan for annual procurement of the bidder is announced at least two months ahead on the website of the Bureau or, when the urgency for procurement requires its carrying out in shorter deadlines than the ones envisaged in the regular procedure.

(3) The Procurer shall determine the final date for reception of bids within the deadlines stipulated in paragraph 1 of this Article. The final date for submission of bids shall be expressed as specific date and time and shall be determined according to the nature of the public procurement, including the reasonable needs of the procurer, the time necessary to prepare the bids, whether foreign bidders are expected and whether the minimum deadlines are in accordance with the commitments assumed by the Government.

(4) If the public invitation for bids has been published in the Official Journal of the EU and other official media outside EU (international tender), the deadline for submission of bids cannot be less than 52 days from the day the invitation was sent to be published.

(5) The Procurer may extend this deadline for submission of bids at least 5 days prior to the expiry of the deadline, in case one or more bidders are unable to submit the bids by the deadline due to objective reasons. If the Procurer accepts the objective reasons, it announces the extension of the deadline in the media in which the tender was published.

(6) In case a particular procurement requires review of extensive technical specification, onsite visits and inspections for the purposes of insight and consultations, these circumstances shall be taken into account to the end of adequate setting of the deadlines referred to in paragraph 1 of this Article, for which the Procurer informs the bidders in writing.

(7) Any bid received by the Procurer after the deadline for submission of bids shall be considered as late bid and returned to the bidder.

B. RESTRICTED INVITATION

Article 59

(1) The procurer shall carry out restricted procedure when, on the basis of announced invitation for economic and financial and technical capability of the applied candidates and on the basis of determined criteria, selects certain number of candidates that, according to his/her assessment, would be capable and qualified to carry out the procurement with certainty.

Phases in the restricted invitation

Article 60

(1) The procurement via restricted invitation shall be carried out in two stages.

(2) With respect to the first stage, the Procurer shall:

- publicly announce invitation to all interested entities to submit requests for participation in the procurement procedure,
- determine their economic and financial and technical ability, and
- select sufficient number of capable candidates, but not less than 3, in order to provide genuine competition.

(3) With respect to the second stage, the Procurer shall send written invitation without public notice to all selected capable candidates to submit bid.

(4) The Procurer shall submit tender documentation to the selected capable candidates, with written invitation.

(5) Only the invited candidates can submit bid.

Contents of the notice for restricted invitation

Article 61

(1) The notice for the restricted invitation for bids shall mandatorily comprise:

- 1) name; address and seat of the Procurer, telephone and fax numbers;
- 2) reference number of the invitation;
- 3) intention of the Procurer to carry out certain type of procurement;
- 4) Proof and documentation the Procurer needs to prove the economic and financial and technical ability;
- 5) deadline for receipt of the requests and the address at which they should be sent;
- 6) minimum criteria on the basis of which the Procurer will estimate the ability for carrying out the procurement.
- 7) the deadline for reaching the decision on qualifications of the applied candidates.

(2) The deadline for submission of the requests in the restricted invitation shall not be shorter than 37 days from the day of announcing the invitation.

Deciding for the competency of candidates in the first stage

Article 62

(1) The Committee shall decide about the competency of candidates on the basis of criteria announced in the invitation.

(2) When deciding about the competency of candidates, the Committee shall not apply discriminatory or other additional financial, technical and administrative conditions not envisaged in the invitation.

(3) The Committee shall exclude the candidate which, according to its estimate, submitted false, inaccurate or incomplete documents for proving its competency and shall immediately notify him/her in writing thereof, with an explanation.

(4) The Commission shall determine a list of economically and financially and technically most capable candidates, the number of which should be sufficient, but not less than 3, to provide genuine competition.

(5) On the basis of the determined list by the Committee, the responsible person at the Procurer shall reach a decision about the candidates to which written invitation for submission of bids will be sent.

(6) The decision referred to in paragraph 5 of this Article shall be submitted within 3 months from the day of submission of the requests.

(7) If the Procurer estimates that reaching decision about the capability of the candidates requires longer deadline than the one referred to in paragraph 6 of this Article, than within 30 days from the day of submission of the requests, shall notify all candidates about the reasons for extension of the deadline.

(8) Within 10 days of the day the decision was reached, the Procurer shall notify all candidates that submitted bids with an explanation of the reasons for the decision.

(9) The dissatisfied candidates shall have the right to complaint.

Deciding for selection in the second stage

Article 63

(1) The Procurer shall submit written invitation for submission of bids to the candidates determined with the decision referred to in Article 62 paragraph 5, which shall contain:

- address of the Procurer;
- reference to the announced Invitation;
- subject of the procurement;
- contents of the Bid;
- criteria for selection of the most favorable Bidder and their rating;
- deadline for submission of bid;
- time and place of providing the tender documentation and the amount and conditions of payment; and
- the place, date and time of the Public Bid Opening.

Deadline for receipt of bids

Article 64

(1) The deadline for accepting of Bids determined by the Procurer shall be no sooner than 40 days from the mailing date of the written invitation. In case of an emergency, the deadline for accepting the bids shall not be set prior to 30 days from the mailing date of the written invitation.

Article 65

(1) The Procurer shall select the most favorable candidate on the basis of the criteria determined in the written invitation referred to in Article 63 of this Law.

C. PROCUREMENT BY NEGOTIATED PROCEDURE

Article 66

(1) The procurement by negotiated procedure shall be exceptional procedure and can be applied only in limited cases envisaged by this Law, and upon prior consent by the Bureau.

(2) Prior consent shall be requested with written request indicating the reasons and the explanation for the need for such manner of procurement, proof for fulfilling the conditions for applying this manner of procurement, the value of the procurement and other procurement-related data.

(3) The Bureau may request the Procurer to supplement his/her request and to submit other documentation within certain deadline.

(4) The Bureau shall respond to the request by the Procurer within 8 days from the day of the receipt of the request, i.e. from the receipt of the supplement to the request and other documentation.

(5) The prior consent for implementing this manner of procurement shall be valid by the end of the current year.

(6) If the Bureau refuses to give prior consent, the Procurer shall be obliged to carry out a procedure with public notice.

Negotiated procedure without previously announcing public invitation

Article 67

(1) Public procurement can be carried out by negotiated procedure in case when:

- after previously conducted two procedures of open or restricted invitation when there were no sufficient number of bids or of appropriate bids, provided the contents of the tender documentation in these invitations is not significantly modified;
- due to technical, intellectual or performance reasons or due to reasons related to protection of exclusive rights registered in the Ministry of Economy or the Chamber of Commerce of the Republic of Macedonia, the procurement can be carried out only by a certain provider of service or performer of works or deliverer of goods;
- due to extreme emergency caused by events the procurer could not predict, nor they should be attributed to him/her as an omission or by events (natural disasters; epidemic, infectious diseases or events caused by force majeure), as a result of which the deadline for open or restricted invitation cannot be adhered to;
- design contest was carried out for selection of most successful bidder;
- the Procurer must receive additional deliveries by the original bidder due to partial replacement of usual goods or installation; expansion of the existing goods or installations where the change of the bidder would oblige the Procurer to buy material having different technical features, resulting in incompatibility or disproportional technical difficulties in the functioning or maintenance;
- due to unpredicted circumstances, it is necessary to perform indispensable additional works not included in the contract under consideration or concluded, provided that:
 - a) it is impossible for the additional works to be technically or economically separated from the main contract without bigger problems for the Procurer, and
 - b) additional works, although separable from the performance of the main contract, are necessary for its later stages, i.e. its performance.

(2) The total amount of the procurement awarded for additional works referred to in paragraph 1, indents 4 and 5 of this Article, shall not exceed 20% of the amount in the main agreement and the duration of this procurement as well as of the extended procurement shall not exceed 3 years.

D. DESIGN CONTEST

Article 68

- (1) The Procurer shall carry out the procurement of project or plan in the field of physical and urban planning, architecture, civil engineering and data processing on the basis of carried out design contest.
- (2) The Procurer shall be obliged to announce the design contest pursuant to Article 30 of this Law.
- (3) The design contest shall contain especially the following: name of the Procurer, project description, deadline for receipt of the project, place to submit the project, criteria for selection of the best project, and if necessary, indication of the expert qualifications of the candidates expected to prepare the project, the names of the jury, data on possible prizes and other information determined by the Procurer.
- (4) Participation at the design contest shall be anonymous.
- (5) The number of the candidates who applied at the design contest shall provide proper competition and shall not be less than 3.
- (6) The project or the plan shall be selected by independent jury, comprising exclusively physical persons who are independent from the participants in the design contest and who cannot participate in the design contest.
- (7) When the participants in the design contest are required to have special qualifications, at least one third of the members of the jury shall possess the same or expert qualifications as the candidates.
- (8) The jury shall be independent in deciding when selecting the best project, on the basis of the criteria determined in the design contest.
- (9) The procurer shall publicly announce in the media the result from the carried out design contest as well as the data on the participant whose project is selected.

D. RESTRICTED INVITATION FOR CONSULTANT SERVICES

Restricted invitation for consultant services

Article 69

- (1) Restricted invitation for bids for consultant services shall refer to intellectual services (studies, projects, research and examination, experiments, study analysis (industrial), copyrights), which lead to selection of a capable candidate in certain area.
- (2) Restricted invitation for bids for consultant services shall determine the subject of the service referred to in paragraph 1 of this Article, the conditions (criteria) to be met by the authors - contest candidates, etc.
- (3) Restricted invitation for bids for consultant services shall be implemented according to the procedures for restricted invitation pursuant to this Law.

Article 70

- (1) Bidders of intellectual services shall submit in their Bids projects, studies, works, patents, licenses etc., with which they prove their competence and ability to carry out the consultant service subject of procurement.
- (2) If consultant services have level of confidentiality, they shall be marked with the level of confidentiality and accompanied by security measures.

Article 71

- (1) Bids for consultant services shall be reviewed by the jury determined by the Procurer which is established as a jury. One third of the jury members shall be selected from outside from the area of the required service and they have consultative voice.
- (2) The jury can interview each Bidder of intellectual services whereby each Bidder - candidate may additionally specify and complete or modify its proposal.
- (3) The Bidders - candidate shall attach to the Bid the request for remuneration, i.e. the service price which should be elaborated and must not disclosed.
- (4) The Procurer may reduce the remuneration, i.e. the price may if the service is not performed in a quality manner.
- (5) The jury shall prepare minutes and elaborated opinion and shall submit them to the Procurer.

E. LOW-VALUE PROCUREMENT

Article 72

- (1) The Procurer can carry out low-value procurement for purchase of goods, services and works of smaller volume and value during the year, in the amount of up to EUR 3.000 in Denar equivalent, whereby at least three bids should be provided, out of which he/she shall select the most favorable bid.
- (2) The procurer can carry out the procurement referred to in paragraph 1 of this Article only once during the year for certain type or group of goods, services or works.
- (3) The Procurer shall regulate the procurement manners referred to in paragraph 1 of this Article with an internal act.
- (4) The Procurer shall determine, with the act referred to in paragraph 2, the organizational form or person that would be responsible for collecting bids by the candidates, the manner of collecting the bids (in writing, via fax, e-mail, etc.), the manner of execution of the contract, if one was concluded, and the control of its execution, especially within the guarantee period.
- (5) The Procurer shall keep records for the procurement referred to in this Article.

Article 73

- (1) The procurement of foodstuffs, vegetables on the market, office supplies can be carried out only with an invoice, i.e. bill, the amount of which shall not exceed EUR 100 in Denar equivalent on monthly basis.

V. PROCUREMENT AT PUBLIC ENTERPRISES, STATE-OWNED COMPANIES AND COMPANIES PERFORMING ACTIVITIES OF PUBLIC INTEREST IN THE AREA OF WATER ECONOMY, UTILITIES, ENERGY, TRANSPORT AND TELECOMMUNICATIONS

Article 74

(1) During the realization of procurement for their needs, the legal entities in the field of water economy, utilities, energy, transport and telecommunications shall appropriately apply the provisions of this Law.

Article 75

(1) The Procurers referred to in Article 74 of this Law, via open or restricted invitation for bids, shall carry out procurement for realization of their main activity, the estimated value of which is no less than:

a) EUR 100,000 in Denar equivalent – for procurement from bidders with reference to:

- production and transport of: electricity, gas or heating energy, drinking water and utilities;
- supply of drinking water, electricity, gas or heating energy to the appropriate networks;
- waste water removal;
- irrigation and drainage;
- examination and exploitation of oil, gas, coal or other solid fuels;
- construction of air terminals, (river or lake) docks or other transport terminals;
- utilization of networks providing services for: railroad transport, automatic systems, busses and cable cars.

b) EUR 150,000 in Denar equivalent - for procurement from bidders regarding the provision of telecommunication services; and

c) EUR 1,000,000 in Denar equivalent - for procurement from Bidders that provide public works (construction of roads- national and regional, railroads, hydro or thermal power plants, etc.).

(2) When calculating the estimated value of such procurement, insurance services, premium, banking and other financial services, listings, commissions, interests, and other works and services needed for carrying out the procurement are also taken into consideration.

Article 76

(1) When applying procedure with restricted invitation, deciding on the competency of the candidates in the first stage shall be based on the conditions determined in Article 62 of this Law.

(2) These conditions shall be based on an objective need of the Procurer for reducing the number of the registered candidates to a justified level in order to achieve balance between the particular characteristics of the procedure for awarding the procurement contract and the funds. The number of selected candidates shall be taken into account, in order to provide appropriate competition.

(3) The Procurer shall notify the registered Bidders of its decision regarding the qualifications in a reasonable period of time. If the qualification decision cannot be reached within six months from the presentation of the documentation, the Procurer shall, within two months after

submission of the documentation, notify the registered candidates about the reasons justifying the longer period and the date to which his/her bid shall be accepted or rejected.

(4) While deciding on the qualification, the Procurer is not allowed to:

- impose conditions of administrative - technical or financial nature on some candidates, that does not impose on other;
- request evidence that doubles the objective material evidence which are already at their disposal;

(5) The rejected Bidders shall be notified about the reasons for the rejection. The reasons shall be based on the objective qualification conditions referred to in paragraph 1 of this Article.

Article 77

(1) The Procurers referred to in Article 74 of this Law can use negotiated procedure according to the conditions and procedures stipulated in Article 66 of this Law, as well as in the following cases:

- procurement awarded on the basis of framework agreement;
- procurement when there is a possibility for it to be provided by applying some special favorable possibility available only for very short period of time at a price significantly lower than the usual market price; and
- purchase of goods from bearer of procurement, which closes the business activities.

VI. MANNER OF SUBMISSION OF BIDS FOR PROCUREMENT

Article 78

(1) Bids for procurement shall be submitted to the Procurer by mail, in its archives, or directly handed over to the Committee, but at the time and date set for the Public Bid Opening at the latest, determined in the announced invitation.

Article 79

(1) The Bid and all other documentation shall be submitted in a sealed envelope with a notice “do not open” in the upper left corner and the number of the invitation.

(2) The correct address of the Procurer shall be stated in the middle of the envelope.

(3) The envelope must not be marked with any sign, which may identify the sender - the Bidder.

Article 80

(1) The Bid shall be submitted in one original copy that shall be verified and signed (each page) by the responsible person of the Bidder.

(2) The Bid shall contain all data as specified in the Invitation.

(3) The price for the offered goods and services of foreign origin shall compulsory include the amount of the customs and other duties.

VII. SECURITY

Article 81

(1) Regarding procurement executed via open and restricted invitation and negotiated procedure, the value of which exceeds EUR 150,000 in Denar equivalent, the Procurer shall compulsory require from the Bidders to provide security for participation in a form of deposited funds or bank guarantee.

(2) The Procurer shall determine the amount of the security that shall be between 3% and 5% of the total value of the procurement.

(3) The document proving the guarantee shall be part of the Bid.

Article 82

(1) After conclusion of the contract with the most favorable bidder, the Procurer shall be obliged to return the deposited amount of the security to the Bidders participating in the selection of the most favorable Bidder, within 7 days.

Article 83

(1) The security referred to in Article 81 of this Law shall be collected for the benefit of the Procurer if the Bidder has been called to sign a contract after the selection of the most favorable Bidder, and the Bidder refuses to do so, and should the participant in the procedure withdraw the bid after the opening.

VIII. SIGNING CONTRACTS

Article 84

(1) The procurer - budget user and spending unit is obliged to submit written request to the Ministry of Finance for obtaining confirmation for provided financial resources and approval for conclusion of the contract within 5 (five) days after the decision for the most favorable bidder is passed and prior to concluding the contract.

(2) The Ministry of Finance is obliged, within 7 (seven) days from the day of reception of the request, to act upon it and, if the planned funds for the concrete procurement are provided in the Budget of the Republic of Macedonia for the current year, it should issue the confirmation referred to in paragraph 1 of this Article, and if the funds are not provided it should inform the procurer - budget user and spending unit that it may not conclude the contract.

(3) The procurer - budget user and spending unit is obliged, prior to conclusion of the contract, to inform the bidder about the need to obtain confirmation and approval referred to in paragraph 1 of this Article.

- (4) The Bidder is obliged to request a copy of the confirmation and approval referred to in paragraph 1 of this Article prior to the conclusion of the contract.
- (5) Should the contract be concluded contrary to the provisions referred to in paragraphs 1, 2, 3 and 4 of this Article, the contract shall be deemed annulled.
- (6) The procurers are obliged to act pursuant to paragraph 1, 3 and 4 of this Article also in cases of concluding annex to the main contract.

Article 85

- (1) The Procurer shall be obliged within 7 days from the day the decision for selection of the most favorable bid is reached at the latest, to notify the Bidder in writing that he/she has been selected as bearer of the procurement.
- (2) All other Bidders shall be notified in writing about the selection of the most favorable bid according to the procedure and within the deadline referred to in paragraph 1 of this Article, stating the reasons for rejecting their bid, the name of the executor of the procurement and the evaluation of the selected bid
- (3) The contract shall be signed within 7 days from the day of expiry of the deadline for lodging a complaint, i.e. from the day of finality of the decision upon the complaint.
- (4) On behalf of the Procurer the contract shall be signed by the responsible person (official or managing authority) or person authorized by him/her and on behalf of the bearer of the procurement - authorized signatory.
- (5) The procurer shall prepare notice on the concluded contract and publish it on the Public Procurement website within 30 days after signing of the contract referred to in paragraph 4 of this Article.
- (6) The notice referred to in paragraph 5 of this Article shall contain data on the procurer, subject of procurement, applied procedure, selected bidder and the agreed price.

Article 86

- (1) For the purpose of keeping the unique records on public procurement in the Public Procurement Bureau, the entities referred to in Article 1 of this Law are obliged to submit a copy of the concluded public procurement contract, the value of which exceeds EUR 3,000 in Denar equivalent within 15 days from the day of concluding the contract.

Article 87

- (1) The procurement where the subject of procurement is successively delivered, and the selected bearer of the procurement fails to deliver the subject of procurement pursuant to the contract, the Procurer shall cancel the contract and may sign a contract with the second rated Bidder or may carry out new procurement procedure.

Article 88

(1) The contract envisages provision of bank guarantee as an instrument by which the procurer ensures that the bidder will perform the procurement timely, in quality manner and according to the terms and conditions in the contract.

(2) Advance payment shall be done in conditions when goods and services cannot be provided on the market and when that results into a lower sale price.

(3) In the case of entities referred to in Article 1 of this Law the advance payment may not be higher than 20% of the contract value.

(4) Prior to the advance payment referred to in paragraph 3 of this Article, the Procurer shall obligatorily request bank guarantee from the Bidder in the amount of the agreed advance payment.

Article 89

(1) The procurement contracts shall be considered null and void in the following cases:

- if they have been concluded without prior carried out public procurement procedure;
- if the Procurer has carried out public procurement procedure contrary to the requirements determined with this Law or has concluded contract with a bidder who is not selected as bearer of the procurement; and
- if the Procurers made procurements or authorized third person or persons who is not Procurer pursuant to this Law to the end of avoiding its application,
- if the Procurer concludes an agreement without previously providing certificate for provided funds and consent for entering into an agreement.

(2) The contracts referred to in paragraph 1 of this Article shall be declared void by the competent first instance court.

IX. LEGAL PROTECTION IN THE PUBLIC PROCUREMENT PROCEDURE

Article 90

(1) The legal protection for violations of the Law in public procurement procedures shall be provided by surveillance and control based on the principles of legality, urgency, availability, efficiency and two instance principle.

(2) Legal protection shall be provided in all stages of public procurement procedure, and the legal remedies shall be submitted to the Public Procurement Complaint Committee of the Government of the Republic of Macedonia (hereinafter: Complaint Committee).

(3) The legal protection shall provide non-discrimination to persons who have participated in the public procurement procedure and who consider that this Law was breached.

Article 91

(1) Dissatisfied bidders, as well as the persons that took tender documentation, can lodge complaints during the whole procedure about the manner of the work and about the manner of reviewing and evaluating the submitted bids to the Public Procurement Committee.

- (2) Should the Public Procurement Committee estimate that the lodged complaint is justified, it can accept it and correct its work.
- (3) Should the Public Procurement Committee reject the complaint, it shall submit it to the Complaint Committee.
- (4) Complaints can be lodged within 2 days from the day of becoming aware of the violation complained upon.
- (5) The reply upon the lodged complaint shall be provided within 3 days from the day of its lodging, i.e. submission to the Complaint Committee.
- (6) The Public Procurement Committee shall stop its operations until the decision upon the complaint is reached.

Article 92

- (1) The dissatisfied participant with the selection of the most favorable bid, as well as the persons that took tender documentation, may lodge a complaint to the Complaint Committee for exclusion from the first stage at the restricted invitation, from the open invitation for bids within 7 days from the day of receipt of the notification.
- (2) The complaint referred to in paragraph 1 of this Article shall be lodged in two copies, through the committee that has executed the first instance procedure. One copy shall be sent to the Bureau. The complaint shall be sent via registered mail.
- (3) The Committee that executed the first instance procedure shall submit the complaint, together with an explanation upon complaint allegations, and copies of overall documentation for the performed public procurement procedure to the Complaint Committee.
- (4) In case of lodging the complaint, the execution of the decision for the selection of the executor of procurement shall not be valid until decision upon the complaint becomes legally effective.
- (5) In performing its operations, the Complaint Committee shall be obliged to protect the data related to government, military and business secret, and to use the documents in accordance with the degree of their confidentiality.

Article 93

- (1) To the end of protecting the interests of Bidders and providing impartiality in deciding upon complaints, an expert, appointed by the Bureau from the list kept at the Ministry of Finance, shall participate in the observance of the regularity of the public procurement procedure for value exceeding EUR 30,000 in Denar equivalent. The Bidder shall submit request for appointing an expert to the Bureau.
- (2) The list of experts shall be prepared by the Ministry of Finance.
- (3) The expert shall be provided access by the Procurers to the overall documentation, shall review it and shall prepare written opinion within 8 days from the day the complaint has been

lodged with respect to the complaint allegations on the violations during the public procurement procedure and shall submit it to the Complaint Committee.

(4) If the expert estimates that the complaint refers to the proper application of this Law, he/she can offer the Procurer and the complainant, as parties, to participate in the settlement procedure.

(5) Each party shall, in writing, express whether it agrees with the settlement procedure and for the expert to be settler.

(6) If the parties accept the settlement procedure, they shall present in front of the settler their opinion orally and in writing, in order to achieve settlement agreement.

(7) If the parties fail to reach settlement agreement, the complaint, together with the whole documentation and the expert's opinion, shall be submitted to the Complaint Committee.

(8) If the expert referred to in paragraph 1 of this Article fails to prepare an opinion, the Complaint Committee shall make decision without such opinion.

(9) The costs for the audit performed by the expert shall be borne by the entity that requested his/her engagement, while with respect to the settlement procedure, the costs shall be borne by both parties equally.

(10) The manner, terms and conditions and the procedure for selection of experts referred to in paragraph 1 of this Article shall be stipulated by the Minister of Finance.

Article 94

(1) The Complaint Committee shall be obliged to give statement upon the complaint allegations in a period of 15 days from the day of reception of the complaint.

(2) The Committee referred to in paragraph 1 of this Article shall reject the complaint provided the complaint is non-timely, and if not rejected, it shall put the case under resolution procedure.

Article 95

(1) The Complaint Committee shall reject the complaint as unfounded in the following cases:

- when it determines that the procedure preceding the selection of the most favorable bid was carried out pursuant to this Law, or
- when it finds irregularities in the first instance procedure which could not have significantly influenced the decision-making on selection of the most favorable bid.

Article 96

(1) The Complaint Committee shall cancel the decision for selection of the most favorable bid if it determines that:

- the first instance body misevaluated the bids and the enclosed documentation, or
- the first instance body made a selection of the most favorable bid by improper application of the criteria for selection of the most favorable bid.

(2) In case of nullification of the decision for selection of the most favorable bid, the Complaint Committee shall be obliged to refer to the first instance body about the circumstances to be taken into account in the further proceedings. The first instance body shall be obliged to act according to the references and select the most favorable bid in a period of 15 days at the latest, thereby immediately informing the Complaint Committee.

Article 97

(1) The Complaint Committee shall cancel the performed procedure if it determines that the first instance committee improperly applied the provisions of this Law when implementing the procedure.

(2) In case of nullification of the performed procedure, the Complaint Committee shall be obliged to forthwith inform the first instance body and to refer what circumstances should be taken into account in the further proceedings.

Article 98

(1) The Complaint Committee shall inform the complainant and the Committee that performed the first instance procedure about its decision.

(2) The decision of the Complaint Committee shall be final.

(3) After the decision of the Complaint Committee becomes final, the complainant shall have the right to request protection from the competent first instance court.

Article 99

(1) The Complaint Committee shall be independent in performing its operations.

(2) The Complaint Committee shall be composed of a Chairman and 4 members and their deputies representing distinguished experts (attorneys, notaries public, commercial auditors, engineers, etc.), designated and revoked by the Government of the Republic of Macedonia for a period of 2 years, with a right to be re-elected for another 2 years.

(3) Member of the Committee referred to in paragraph 2 of this Article cannot be a person designated by the Parliament of the Republic of Macedonia and by the Government of the Republic of Macedonia.

(4) The person having the same qualifications as a judge in a first instance court shall be selected as Chairman of the Complaint Committee.

(5) The Chairman and a member of the Committee referred to in paragraph 2 of this Article may be revoked prior to the expiration of his/her mandate in the same manner as he/she has been designated only if a sentence has been declared for criminal act against property; unscrupulous and non-timely performance of the operations of the Committee; disclosure of business secret he/she learnt during the operations of the Committee and if he/she submits voluntary written resignation.

(6) The Chairman and the members of the Complaint Committee, as well as their deputies for their activities in the Committee, shall be entitled to allowance determined by the Government of the Republic of Macedonia.

Article 100

(1) The Complaint Committee shall prepare Rules of Procedure for its operations.

Article 101

(1) The Complaint Committee shall work independently and inform the Government of its operations at least twice a year, via preparing reports, published on the web site for public procurement.

X. SUPERVISION

Article 102

(1) The Government, on the basis of the reports by the Bureau, shall inform the Parliament of the Republic of Macedonia once a year on the number and type of implemented public procurement procedures, the amount of funds for public procurement, as well as on the possible problems during the implementation of procurement.

Article 103

(1) The Ministry of Finance and the Bureau shall supervise the implementation of the provisions of this Law.

(2) The inspection supervision shall be carried out through the Central Internal Audit Unit.

(3) The supervision referred to in paragraph 1 of this Article shall be performed in terms of:

- the provision of funds for the public procurement;
- the implementation of the public procurement procedures;
- the organization of the bodies implementing the procurements;
- the records of the procurement;
- the completion of the documentation for the procurement; and
- the realization of the contracts.

Article 104

(1) Should, during the supervision, irregularities and faults be disclosed in the performance of the procurement procedure in progress, a decision shall be reached by the central internal auditor determining the measures and the deadline for their elimination.

(2) In case the stated irregularities and faults, disclosed by the central internal auditor, are not eliminated within the set deadline, suspension of the commenced procurement procedure shall be ordered.

(3) A complaint may be lodged against the decision referred to in paragraph 1 of this Article to the Complaint Committee.

Article 105

(1) Should, during the supervision, be determined that the breach of the procurement procedures resulted in an offense or a criminal act, request for initiation of an offence, i.e. criminal procedure shall be submitted without any delay.

XI. CONTROL OF THE UTILIZATION OF FUNDS

Article 106

(1) Control over the utilization of the procurement funds by the Procurers referred to in Article 1 of this Law shall be performed according to the State Audit Law.

(2) The Bureau shall be informed on the findings of the supervision referred to in Article 103 of this Law.

XII. PENALTY PROVISIONS

Article 107

(1) The legal entity - Procurer, except for the state bodies and local government unit bodies, shall be fined with an amount of Denar 150,000 - 300,000 should it:

- make a decision for public procurement contrary to the provisions of Article 3 (Article 3, paragraphs 1 and 2);
- fail to ensure fair competition for Bidders and equal position of Bidders in the public procurement procedures (Article 6);
- fail to keep Bidders' data confidential (Article 7);
- disclose to third parties technical specifications and information about the price and other market information (Article 8);
- divide or reduce the public procurement (Article 9);
- fail to adopt public procurement plan and determine the dynamics of its realization and fail to submit such plan to the Bureau within the determined deadline (Articles 10 and 11);
- fail to make decision for public procurement (Article 12);
- fail to keep procurement records (registry) (Article 17);
- fail to establish a body to execute the public procurement procedure (Article 20 paragraph 1);
- allow to person contrary to Article 21 of this Law to participate in the public procurement procedure (Article 22);
- fail to reject the Bid in cases referred to in Article 22 (Article 22);
- fail to announce the Invitation for Bids (Article 30);
- fail to submit a copy of the contract to the Public Procurement Bureau within the determined deadline (Article 86).

Article 108

(1) The responsible person of the legal entity shall be fined with an amount of Denar 25,000 - 50,000 should he/she:

- negotiate with the Bidder, disclose to third parties technical specifications, information regarding the price and other market information (Article 8);
- permit participation of members of the Committee and the responsible and the managing persons at the procurer, as well as members of their closer family in the public procurement procedure (Article 21);
- fail to reject the bid if a bidder gives or promised, directly or indirectly, to an employee at the procurer a gift of any form or any kind of service (Article 22);
- fail to prepare the notice for open invitation for bids pursuant to Article 36;
- specify technical features of the item of procurement of precisely determined brand, model or type, production origin etc. in the notice for open invitation for bids and in the bidding documentation (Article 36, paragraph 4);
- determine the deadline for accepting bids for the Open Invitation for Bids contrary to Article 58;
- make a decision for the most favorable bidder without assessing the economic and financial condition and the technical capabilities of the bidder for performing the subject of the Bid (Articles 40 and 41);
- fail to exclude the Bidder from the procedure (Article 48, Article 62 paragraph 3);
- fail to comply with the conditions announced in the Open Invitation for Bids, and the evaluation criteria for selection of the most favorable Bidder (Article 50 and Article 65);
- execute a procurement through restricted invitation for bids without implementing the procedure in stages (Article 60);
- fail to notify all the candidates having submitted economical, financial and technical documentation for the selected most capable candidates for the second stage (Article 62 paragraph 3);
- realize the negotiated procedure contrary to the provisions of Article 66 and Article 67.

Article 109

(1) The official, as well as the Chairman and the member of the Committee and their deputies, shall also be fined with an amount of Denar 25,000 - 50,000 for the violations referred to in Article 108 of this Law, should they fail to adhere to the procedure and the deadlines determined with this Law.

Article 110

(1) The offence procedure referred to in this Law cannot be initiated nor conducted if 3 years elapse from the day the offence has been committed.

(2) The expiry shall be terminated with each process activity undertaken for pursuit of the perpetrator.

(3) After each termination, the expiry shall recommence.

(4) The expiry of the offence pursuit shall occur in any case after expiry of 5 years from the day the offence has been committed.

XIII. TRANSITIONAL AND FINAL PROVISIONS

Article 111

(1) The public procurement procedures which have commenced before the date of coming into force of this Law shall be completed in accordance with the regulations effective prior this Law has entered into force.

Article 112

(1) The Public Procurement Bureau shall be constituted and commence operating by October 31, 2004, at the latest.

Article 113

(1) The bylaws stipulated with this Law shall be adopted within 6 months from the date this Law comes into force, except for the Methodology for stating criteria in monetary terms referred to in Article 50, paragraph 5 of this Law, which shall be adopted within 18 months from the date this Law enters into force at the latest.

Article 114

(1) The day this Law comes into force, the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” no. 26/98, 50/2001, 2/2002 and 24/2003) shall cease to be valid.

Article 115

(1) This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Macedonia”.