

**PUBLIC PROCUREMENT
IN THE WATER, ENERGY, TRANSPORT
AND POSTAL SERVICES ACT (ZJNVETPS)**

Part One

COMMON PROVISIONS

Chapter One

GENERAL PROVISIONS

1.1. Scope of the Act

Article 1

(Subject-matter of the Act)

(1) This Act lays down the mandatory actions required of contracting entities and tenderers in awarding public supply, works and services contracts in the sectors of water, transport and postal services.

(2) This Act transposes into the legal order of the Republic of Slovenia Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134 of 30 April 2004, p. 1, as amended) and Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ L 257 of 1 October 2005, p. 127) (hereinafter: Directive 2004/17/EC).

(3) Should a contracting entity under this Act also be the contracting authority under the Act regulating public procurement, it shall award contracts in the sectors referred to in the first paragraph of this Act in compliance with this Act only.

1.2. Definitions

Article 2

(Terms used in this Act)

The terms used in this Act shall have the following meaning:

1. A "dynamic purchasing system" is a method of awarding public contracts applied under open procedure, and is a completely electronic process. It is used for making commonly used purchases, the characteristics of which, as generally available on the market, fully meet the requirements of the contracting entity. This procedure is limited in duration and open throughout its validity to any tenderer who satisfies the selection criteria and has requested to participate in compliance with the contract documents.

2. An "electronic auction" is a repetitive process within the public procurement procedure, which is conducted by electronic means and in which tenderers present new prices, discounts and/or improved values concerning certain elements of tenders

3. "Electronic means" means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, radio, microwave, optical means or other electromagnetic means.

4. "The Common Procurement Vocabulary (CPV)" adopted by Commission Regulation (EC) No 2151/2003 of 16 December 2003 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) (UL L No 329 of 17. 12. 2003, p. 1, hereinafter: Regulation (EC) No 2151/2002), means an equivalent reference nomenclature applicable to public contracts. The Common Procurement Vocabulary is equivalent to other existing nomenclatures. In the event of varying interpretations of the scope of this Act, owing to possible differences between the nomenclatures, the following shall apply:

– between the Common Procurement Vocabulary and NACE (General Industrial Classification of Economic Activities within the European Communities) included in the list of activities constituting "works" annexed to a Decree adopted by the Government of the Republic of Slovenia (hereinafter: List of Activities Constituting Works), the NACE shall be used;

– between the Common Procurement Vocabulary and CPC (Provisional Central Product Classification) included in the list of services annexed to a Decree adopted by the Government of the Republic of Slovenia (hereinafter: List of Services), the CPC nomenclature shall be used.

5. "Economic operator" covers equally the concepts of supplier, service provider and contractor and may be either a legal or natural person or public law entity or group of such persons that offers the execution of work and/or works, products or services on the market.

6. "Industrial or commercial character" means the characteristics of an entity operating with other entities on the market under conditions of free competition by carrying out economic activities, meaning industrial and other commercial activities, aimed at supplying products or services to private or public economic operators.

7. "Public works contracts" are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities contained in the List of Activities Constituting Works, or a work or the realisation of one of the activities constituting works, which corresponds to the requirements specified by the contracting authority. A "work" means the outcome of the activity within the meaning of this point, which, taken as a whole, has an economic and technical function.

8. "Public supply contracts" are public contracts having as their object the purchase, lease, rental or hire purchase, with or without the option to buy, of products. A public contract having as its object the supply of products and also covering siting and installation operations related to these products and/or their use in accordance with the intended purpose shall be considered a "public supply contract".

9. "Public service contracts" are contracts having as their object the provision of services or the execution of one or more services referred to in the List of Services. A public contract having as its object both products and services referred to in the List of Services shall be considered a "public service contract" if the value of the services in question exceeds that of the products covered by the contract. A public contract having as its object services referred to in the List of Services and including activities referred to in the List of Activities Constituting Works that are only incidental to the principal object of the contract shall be considered a public service contract.

10. A "public undertaking" is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A "dominant influence" on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital;
- control the majority of the votes attaching to shares issued by the undertaking, or
- can appoint more than half of the members (hereinafter: member) of the undertaking's administrative, management or supervisory body.

11. A "candidate" is an entity that, under a restricted procedure, a negotiated procedure or a competitive dialogue and in response to an invitation of the contracting entity, expresses interest in participating.

12. A "framework agreement" is an agreement between one or more contracting entities and one or more tenderers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

13. A "periodic indicative notice" is a notice published by the contracting entity, which provides economic operators with advance general information on contracts to be awarded.

14. "Written" or "in writing" means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It also means information, which is transmitted and stored by electronic means.

15. A "public contract" is a contract for pecuniary interest concluded between one or more tenderers and one or more contracting entities and having as its object the execution of works, the supply of products or the provision of services within the meaning of this Act.

16. A "tenderer" is an economic operator, which is a natural or legal person, offering the execution of works, services and/or supply of products, and has submitted a tender.

17. A "complete tender" is a tender which is submitted on time, is formally complete, acceptable, correct and appropriate.

18. A "formally incomplete tender" is a tender that is incomplete in those elements that have no impact on its classification according to the selection criteria. Where the tender is incomplete in the insubstantial sense, it shall not be considered formally incomplete.

19. A "timely tender" is a tender that is submitted to the contracting entity by the expiration of the deadline for receipt of tenders.

20. An "irregular tender" is a tender which contravenes the rules or where a tender price is manifestly in breach of the rules of fair competition or which does not fulfil the conditions set out in this Act.

21. An "inappropriate tender" is a tender which does not meet the conditions related to the subject-matter of the public contract and therefore does not fully comply with the requirements laid down in the contract documents by the contracting entity.

22. An "inadmissible tender" is a tender quoting the price, which is unacceptably high.

23. A "procurement portal" is the electronic information Web portal of the ministry responsible for finance, where contracting entities publish information notices and contract documents in compliance with this Act.

24. "special or exclusive rights" mean rights granted by a competent authority pursuant to the law and the purpose of which is to limit the exercise of activities defined in Articles 5 to 9 of this Act to one or more entities, and which substantially affect the ability of other entities to carry out such activity. The rights shall not be considered special or exclusive if they have been granted pursuant to the objective, proportional and non-discriminatory criteria enabling stakeholders to fulfil the respective criteria for acquiring these rights.

25. An "open procedure" means a procedure whereby any interested economic operator may submit a tender.

26. A "restricted procedure" means an awarding procedure in which any economic operator may request participation and whereby only those economic operators invited by the contracting entity may submit a tender.

27. A "negotiated procedure" is a procedure leading to the award of the contract, whereby the contracting entity invites economic operators to submit tenders and negotiates the terms of contract with them.

28. A "design contest" is a procedure which enables the contracting entity to acquire, mainly in the fields of urban or spatial and landscape design, architecture, engineering and information technology or data processing, a design or a project selected by a jury after having been competitively judged with or without the award of prizes.

29. "Tender collection procedure" is a public procurement procedure whereby the contracting entity invites tenderers to submit their tenders.

30. "Tender collection procedure" is a public procurement procedure whereby, in the event that there are a sufficient number of economic operators on the relevant market, the contracting entity invites at least three economic operators to tender.

31. An "affiliated undertaking" means an undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the act regulating commercial companies or, in the case of entities not subject to that act, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of point 10 of this Article or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking and/or contracting entity by virtue of ownership, financial participation, or the rules which govern it.

32. A "lot" is a segment of a public contract that constitutes an independent unit and may be awarded separately.

33. A "central purchasing body" is a contracting authority which is authorised by other contracting authorities or by competent government or municipal authorities to perform the following:

- acquire supplies and/or services, or
- carry out the procedure to award a public contract or the procedure of signing a framework agreement for awarding works, supply or services contracts.

34. "Advisory Committee for Public Contracts" is a body of the European Commission (hereinafter: Commission), composed of representatives of the EU Member States, which examines regularly, on the initiative of the Commission or at the request of a Member State, the application of the measures adopted by the Council in the field of public works contracts.

Article 3

(Contracting entities)

(1) For the purpose of this Act:

1. Contracting authorities under this Act shall be:

- authorities of the Republic of Slovenia and of self-governing local communities,
- public funds, public agencies, public institutes,
- public commercial institutions, and
- other bodies governed by public law.

2. A "body governed by public law" under this Act shall be any body:

- a) established for the pursuit of activities in the general interest, not having an industrial or commercial character;
- b) having legal personality; and
- c) financed at more than 50% from the budgets of the authorities of the Republic of Slovenia and of self-governed local communities, or other bodies governed by public law; or subject to management supervision by those bodies; or having a managerial or supervisory board, more than half of whose members are appointed by authorities of the Republic of Slovenia and of self-governed local communities, or by other bodies governed by public law.

(2) The term "contracting authorities" shall also cover associations formed by one or several contracting authorities referred to in the preceding paragraph of this Article.

(3) A list of contracting entities is annexed to a Decree adopted by the Government of the Republic of Slovenia (hereinafter: Government). The ministry responsible for finance shall periodically notify the Commission of any changes to its List of Contracting Entities.

(4) In the event of doubt about whether a person meets the conditions that define a contracting entity under this Act, a person that expresses legitimate interest may file a written request with the ministry responsible for finance that its status of contracting entity be established. Should the person not agree with the decision of the ministry responsible for finance, the Government shall take the final decision. The Government shall lay down the rules and the procedure for establishing the status of a contracting entity by means of a decree.

(5) This Act shall apply to contracting entities:

1. which are public contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 5 to 9 of this Act;
2. which are not public contracting authorities or public undertakings under this Act and have as one of their activities any of the activities referred to in Articles 5 to 9 of this Act or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of the Republic of Slovenia.

Article 4

(Treatment of economic operators)

(1) Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Republic of Slovenia, they would be required to be either natural or legal persons.

(2) Notwithstanding the provisions of the preceding paragraph, the contracting authority may, in the case of public service and public works contracts as well as public supply contracts covering in addition services and/or siting and installation operations, require tenderers, both legal and natural persons, to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

(3) Groups of economic operators may submit tenders or put themselves forward as candidates. The contracting entity may not require these groups to assume a specific legal form; however, the group selected may be required to present a relevant instrument attesting to joint performance of the contract (e.g. a cooperation agreement), to the extent necessary for satisfactory performance of the contract.

(4) In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract he intends to subcontract to third parties and any proposed subcontractors.

(5) The tenderer who was awarded the contract shall remain fully liable to the contracting entity.

(6) In order to ensure financial discipline, the Government shall adopt rules for cases when tenderers perform a contract with subcontractors, providing for a clause in the main contract whereby the principal economic operator authorises the contracting entity to pay directly to subcontractors, on the basis of endorsed invoices or statements. The principal economic operator shall always attach endorsed invoices or status of his subcontractors to his own invoice or statement.

(7) The contracting entity may require the tenderer to include in his tender documents the calculations of costs and revenues in connection with the contract, in particular for contracts performed in cooperation with subcontractors.

1.3. Activities

Article 5

(Gas, heat and electricity)

(1) As far as gas and heat are concerned, this Act shall apply to the following activities:

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

(2) The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of the previous paragraph where:

- a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in the first or third paragraph of this Article or in Articles 6 to 9 thereof; and
- b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

(3) As far as electricity is concerned, this Act shall apply to the following activities:

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

(4) The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of the third paragraph of this Article where:

- a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in the first or previous paragraph of this Article or in Articles 6 to 9; and

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

Article 6

(Water)

(1) This Act shall apply to the following activities:

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

b) the supply of drinking water to such networks.

(2) This Act shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in the previous paragraph of this Article and which

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

b) are connected with the disposal or treatment of sewage.

(3) The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of the first paragraph of this Article where:

a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 5 to 9 thereof; and

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

Article 7

(Transport services)

(1) This Act shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

(2) As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of the Republic of Slovenia, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

(3) This Act shall not apply to contracting entities providing bus transport services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions.

Article 8

(Postal services)

(1) This Act shall apply to activities relating to the provision of postal services or, on the conditions set out under point c) of the second paragraph of this Article, other services than postal services.

(2) For the purpose of this Act:

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

b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. These services comprise:

- "reserved postal services": postal services which are or may be reserved on the basis of the act regulating postal services;

- "universal postal services";

- "other postal services": postal services which may not be reserved on the basis of the act regulating postal services, and

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

- mail service management services (services both preceding and subsequent to despatch, such as "mailroom management services"),

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

- services concerning postal items not included in point a) of this paragraph,

- financial services, as defined in category 6 of the List of Services A annexed to a decree adopted by the Government (hereinafter: List of Services A), and under point b) of the first paragraph of Article 21 of this Act,

- philatelic services, and
- logistics services (services combining physical delivery and/or warehousing with other non-postal functions), on condition that such services are provided by an entity which also provides postal services within the meaning of point (b), first or second indent, and provided that the conditions set out in the first paragraph of Article 31 are not satisfied in respect of the services falling within those indents.

Article 9

(Exploration for, or extraction of, oil, gas, coal or other solid fuels, as well as ports and airports)

This Act shall apply to activities relating to the exploitation of a geographical area for the purpose of:

- a) exploring for or extracting oil, gas, coal or other solid fuels, or
- b) the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Article 10

(Contracts covering several activities)

(1) A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended. However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Act or, where applicable, the act regulating public procurement.

(2) If one of the activities for which the contract is intended is subject to this Act and the other to the act regulating public procurement and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the act regulating public procurement.

(3) If one of the activities for which the contract is intended is subject to this Act and the other is not subject to either this Act or the act regulating public procurement, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Act.

1.4. General principles

Article 11

(Principles of awarding contracts)

The organisation, development and performance of the public procurement system shall be based on the principle of freedom of movement of goods, the principle of freedom of establishment, the principle of freedom to provide services deriving from the Treaty establishing the European community (*Uradni list RS – Mednarodne pogodbe*, No 7/04, hereinafter: Treaty) and on the principles of economy, efficiency and effectiveness, competition among tenderers, transparency of public procurement, equal treatment of tenderers and proportionality.

Article 12

(Principles of economy, efficiency and effectiveness)

(1) The contracting entity shall award public contracts in such a way as to ensure economical and efficient use of public funds and an effective realisation of its goals laid down in internal act of the contracting entity or other programmes.

(2) The contracting entity shall award a public contract in lots where subdivision to lots is possible and where this adds to the economy and efficiency of the public contract, at the same time ensuring non-discriminatory treatment and greater accessibility of such public contract to economic operators.

Article 13

(Principle of competition among tenderers)

(1) In public procurement procedures, the contracting entity shall not restrict competition among tenderers; in particular it shall not restrict possible tenderers by choosing types or procedures and the performance thereof that are contrary to this Act, and shall carry out the public procurement procedure in compliance with relevant legislation on the protection and/or restriction of competition.

(2) The contracting entity may not request the tenderer to hire any particular subcontractor for the performance of the contract, nor to perform any other activity, such as export of certain goods or services, unless otherwise stipulated by a special act or international agreement.

Article 14

(Principle of transparency of public procurement)

(1) Selection of tenderers shall be conducted in a transparent way and in compliance with the prescribed procedure.

(2) Procurement procedures under this Act shall be public, which shall be ensured by free publication of contract notices in respect of the values referred to in Article 17 of this Act, both in the Official Journal of the European Union and on the public procurement portal.

Article 15

(Principle of equal treatment of tenderers)

(1) Contracting entities shall ensure that there is no discrimination between tenderers in any phase of a public procurement procedure and in relation to any element of the tender, taking into consideration mutual recognition and proportionality of the contracting entity's requests in relation to the subject of the contract.

(2) Contracting entities shall exercise due diligence not to create circumstances that would result in territorial, material or personal discrimination of tenderers, discrimination on the grounds of the classification of the tenderer's activity, or any other form of discrimination.

(3) When awarding public contracts that involve the design of works, the selected design engineer may not participate in contests for the execution of works designed by himself, unless he has received written consent from the minister responsible for finance; such consent shall be delivered in cases where the design engineer who is also a tenderer is the owner of a specific technological or construction solution for the project, which because of a resulting lower price or higher quality of the project would represent a competitive advantage not accessible to other tenderers. The minister responsible for finance shall deliver consent within eight days following the receipt of the request by the design engineer.

Article 16

(Principle of proportionality)

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

1.5. Scope of application

Article 17

(Thresholds for publication)

(1) Contracting entities shall send for publication to the Office for Official Publications of the European Communities and the procurement portal contract notices for all public contracts whose value, net of value-added tax (VAT), is equal to or greater than the following thresholds:

- a) EURO 422,000 for public supply and service contracts,
- b) EURO 5,278,000 for public works contracts.

(2) Contracting authorities shall send for publication to the procurement portal contract notices for all public contracts whose value, net of VAT, is equal or greater than the following thresholds:

- 1. for public supply and service contracts: EUR 80,000;
- 2. for public works contracts: EUR 160,000.

(3) In cases where the Commission publishes revisions of the thresholds referred to in this Act, the revised EU thresholds under this Act shall be published in the *Uradni list Republike Slovenije* by the Government of the Republic of Slovenia.

Article 18

(Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems)

(1) The contracting entity shall calculate the estimated value of a public contract on the basis of the total amount payable, net of VAT, which shall include a possible increase in the volume of the contract and any increase of the value of the contract resulting from the selection of the right awarding procedure. Where the contracting authority provides for prizes or payments to candidates or tenderers, it shall take them into account when calculating the estimated value of the contract.

(2) The contracting entity may not circumvent this Act by splitting the subject of the contract or by using special methods for calculating the estimated value of contracts.

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

(4) With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting entities.

(5) The value of supplies or services which are not necessary for the execution of a particular works contract may not be added by the contracting entity to that of the works contract with the result of avoiding application of this Act to the procurement of those supplies or services.

(6) Where the proposed work or purchase of services may result in contracts being awarded in the form of separate lots, account shall be taken of the aggregate estimated value of all such lots. Where the aggregate value of the lots is equal to or greater than the threshold above which the contract notice must be published in the Official Journal of the European Union, the provisions of this Act applicable to contracts the value of which is equal to or greater than the threshold above which the contract notice must be published in the Official Journal of the European Union shall apply to the awarding of each lot. However, the contracting entity may waive the application of the provision regarding publication of the contract notice in the Official Journal of the European Union in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots of the contract as a whole.

(7) where on the basis of information on the acquisition of similar supplies it may be concluded that these are contracts that may be awarded at the same time in the form of separate lots, account shall be taken of the aggregate estimated value of all such lots, taking into consideration the threshold value above which the contract notice must be published in the Official Journal of the European Union. Where the aggregate value of the lots is equal to or exceeds the threshold above which the contract notice must be published in the Official Journal of the European Union, the provisions of this Act applicable to contracts the value of which is equal to or exceeds the threshold above which the contract notice must be published in the Official Journal of the European Union shall apply to the awarding of each lot. However, the contracting entities may waive the application of the provision regarding publication of the contract notice in the Official Journal of the European Union in respect of lots the estimated value of which net of VAT is less than EUR 80 000, provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots as a whole.

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

a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or in the preceding calendar year adjusted to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the calendar year, if the period is not longer than 12 months.

(9) The basis for calculating the estimated value of a contract including supplies and services shall be the total value of the supplies and services, regardless of their respective values. The calculation shall include the value of the siting and installation operations.

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

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

b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

(11) With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall be the following:

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

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

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

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

a) in the case of fixed-term public contracts or contracts the term of which cannot be defined, the monthly value multiplied by 48;

b) in the case of fixed-term contracts or contracts with a term greater than 48 months: the monthly value multiplied by 48.

(13) When the subject matter of a public contract may be maintained, upgraded or serviced only by a person authorised to do so, the estimated value of all relevant elements for a period of five years shall be included in the calculation of the estimated value of the public contract.

1.6. Exceptions in public procurement, not subject to this Act

Article 19

(General exceptions not subject to public procurement)

(1) This Act shall not apply to:

1. to contracts which the contracting entity awards for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity;

2. to contracts which the contracting entity awards for purposes other than the pursuit of their activities as described in Articles 5 to 9 of this Act or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community;

3. public contracts through which classified information is disclosed, when their performance must be accompanied by special security measures in accordance with the law, or when the protection of the essential interests of the Republic of Slovenia so requires, and are stipulated by a regulation of the Government; the contracting entity shall report to the Government on the awarded contracts by the end of February of the current year for the previous year;

4. public contracts governed by different procedural rules relating to procurement and awarded:

a) pursuant to an international agreement concluded in conformity with the EC Treaty between the Republic of Slovenia and one or more third countries and covering supplies, services, works or contests intended for the joint implementation or exploitation of a work by the signatory States or services intended for the joint implementation of a service contract or exploitation of project results by the signatory States; all agreements shall be communicated to the Commission by the ministry responsible for foreign affairs;

b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings in the Republic of Slovenia or a third country;

c) pursuant to the particular procedure of an international organisation;

5. works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in Articles 5 to 9 of this Act (hereto), where those concessions are awarded for carrying out those activities;

6. contracts concluded between one or more contracting entities or one or more economic operators, whose operation is subject to the supervision exercised by contracting authorities, which is comparable to the supervision over internal organisational units of the contracting authority. Economic operators shall also conclude contracts in compliance with the provisions of this Act even if not acting as contracting entities and the tender price being equal to or lower than that on the market.

(2) In cases referred to in Point 1 of Paragraph 1 of this Article the contracting entity shall notify the Commission at its request of all the categories of products or activities which it regards as excluded.

(3) In cases referred to in Point 2 of Paragraph 1 of this Article the contracting entity shall notify the Commission at its request of all activities which it regards as excluded.

(4) In the award of public works contracts whose value does not exceed the value referred to in Paragraph 1 of Article 17 of this Act and where additional works are required, contracting entities may permit the contractor already carrying out works on site, after the confirmation of the scope of works by a person who already exercises supervision over construction works, to begin these works simultaneously with the initiation of the negotiated procedure if the delay in the execution of works due to the implementation of the procedure may incur additional costs on the contracting authority, taking into account that the value of these works may not exceed 10% of the main contract value.

Article 20

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

(1) This Act shall not apply to service, supply or works contracts awarded:

a) by a contracting entity to an affiliated undertaking, or

b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 9 of this Act, to an undertaking which is affiliated with one of these contracting entities, provided that at least 80 % of the average turnover of the affiliated undertaking with respect to services, supplies or works for the preceding three years derives from the provision of such services, supplies or works to undertakings or contracting entities with which it is affiliated.

(2) When an undertaking was created or commenced activities in the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in the previous paragraph is credible, particularly by means of business projections.

(3) Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the percentages from the first paragraph of this Article shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(4) This Act shall not apply to contracts awarded:

a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 5 to 9 of this Act, to one of these contracting entities, or

b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

(5) The Government office responsible for European affairs shall notify to the Commission, at its request, the following information:

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

b) the nature and value of the contracts involved,

c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or the joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

Article 21

(Specific exclusions not subject to public procurement)

(1) This Act shall not apply to public service contracts for:

a) arbitration and conciliation services;

b) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;

c) employment contracts;

d) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on the condition that the service provided is wholly remunerated by the contracting authority (entity);

e) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts relating to contracts of acquisition

or rental, concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act.

(2) This Act shall not apply to service contracts awarded by a contracting entity to an entity which is itself a contracting entity or an association of contracting entities on the basis of an exclusive right which they enjoy pursuant to a published law.

Article 22

(Contracts awarded by certain contracting entities for the purchase of water

and for the supply of energy or of fuels

for the production of energy

This Act shall to apply

a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities referred to in Article 6 of this Act;

b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in Paragraph 3 of Article 5 or Point 9 of Article 9 of this Act.

1.7. Special arrangements in the award of contracts

Article 23

(Reserved contracts)

(1) Where the award of contract is reserved, the contracting entity shall, in compliance with all tender conditions, select a tenderer demonstrating the status of social enterprise or employment centre, pursuant to the provisions of the Vocational Rehabilitation and Employment of Disabled Persons Act (*Uradni list RS*, No 100/05 – official consolidated text, hereinafter: ZZRZI), and whose tender price and/or the economically most advantageous tender shall not exceed 5% of the tender price submitted by the most successful tenderer which is not a social enterprise or employment centre, taking into account that the same conditions referred to in this Article shall be fulfilled by subcontractors.

(2) Where the contracting entity referred to in the preceding paragraph alternatively fulfils the quota, it shall take into account the provisions of Article 64 of the ZZRZI.

(3) A contracting entity which intends to award a public contract under this Article shall so specify in the notice and in the contract documents.

Article 24

(Contracts and framework agreements awarded by central purchasing bodies)

(1) Contracting entities may purchase works and services and supplies from or through a central purchasing body. The central purchasing body may not charge a commission for the carrying out of the awarding procedure.

(2) In the cases referred to in the preceding paragraph the contracting entity is responsible for the regularity of the awarding procedure. Contracting entities shall be deemed to have complied with this Act insofar as the central purchasing body has complied with it.

1.8. Public service contracts

Article 25

(Service contracts from the List of services)

(1) Public contracts having as their subject matter services from the List of services A shall be awarded in accordance with this Act.

(2) Public contracts having as their subject matter services from the List of services B annexed to the decree to be issued by the Government (hereinafter: List of services B) shall be awarded in accordance with the provisions of this Act laying down the subject matter of the contract and/or technical specifications. In the award

of service contracts from the List of services B, the contracting entity shall comply with the rules of this Act concerning the publication of contract notices. In the event of any differences between CPV and CPC nomenclatures, the CPC nomenclature shall apply.

(3) Contracts which have as their subject matter services from the List of services A and the List of services B shall be awarded in accordance with this Act where the value of the services in the List of services A is greater than the value of the services in the List of services B. In other cases, contracts shall be awarded in accordance with the provisions of this Act laying down technical specifications and rules on the publication of contract notices.

1.9. Agreements, concluded within

the World Trade Organisation

Article 26

(Conditions relating to agreements concluded within

the World Trade Organisation)

In the award of public contracts, all economic operators shall be granted the same conditions as those granted to economic operators of third countries, in accordance with the Agreement of Government Procurement (GPA) concluded within the World Trade Organisation.

1.10. Public disclosure and confidentiality

Article 27

(Data protection)

(1) Contracting entities shall ensure that during the contract award procedure all data classified by tenderers as confidential according to the law governing commercial companies remain a trade secret. The data are classified as confidential if regarded as such by the law regulating classified data or any other law.

(2) Without prejudice to the provision of the preceding paragraph, the tender price and, in case of criteria representing the most economically advantageous tender, data indicating the evaluation and/or the classification of the tender within other award criteria shall be disclosed to the public.

(3) Contracting entities shall ensure communications, exchanges and the storage of information in such a way that the integrity and confidentiality of the information are preserved, as well as the confidential treatment of tenders and applications to participate. In submitting technical specifications to tenderers and candidates for the selection of suppliers of goods and service providers and contractors in connection with the award of contracts, contracting entities may require the protection of classified data which they make available to them.

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

(5) Anyone who has received data classified as confidential by the law shall respect the confidential nature of such information according to the classification level.

(6) All documents concerning the contract award procedure shall be public unless they contain trade secrets or classified data as referred to in this Article. After adopting the decision on the award of the contract, the contracting entity shall give a tenderer, at his request, access to other tenders and other documents. The provisions of the law regulating access to information of a public character, concerning insight into contract documents between the time of the opening of tenders and the adoption of the decision on the contract award, shall not apply.

(7) The contracting entity shall enable a tenderer whose tender is subject to access to be present at the consultation of its tender, providing him the possibility to protect its interests.

1.11. Language

Article 28

(Language used in the public procurement procedure)

(1) The public procurement procedure shall be conducted in the Slovene language. The contracting entity may stipulate in contract documents that tenderers may submit their tenders, in part or in full, in a foreign language,

particularly in those parts which relate to technical characteristics, quality and technical documentation, such as prospectus, promotional and technical and other material. In exceptional cases, where the Slovene terminology of a specific technical area is poor, the contracting entity shall also draw up contract documents, or a part thereof, in a foreign language. If the contracting entity allows tenderers to submit part of the tender documents in one of the languages of the European Union or in any other foreign language, it shall specify which part of the tender may be in a foreign language, as well as in which foreign language.

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

(3) In the case of a dispute, the tender or its official translation into the Slovene language shall apply and, where contract documents, or a part thereof, are in a foreign language, the language concerned shall prevail.

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

Chapter Two

RELATIONS WITH THIRD COUNTRIES

Article 29

(Tenders comprising products originating in third countries)

(1) This Article shall apply to tenders covering products originating in third countries with which the European Community has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

(2) A contracting entity may reject any tender submitted in the procedure for awarding supply contracts where the proportion of the products originating in third countries, as determined in accordance with provisions of acts governing

- amending and repealing certain acts in the field of agriculture and forestry,
- customs,
- the transformation of duty-free shops at road border crossings,
- taxes on exported goods,
- implementation of Community customs regulations,
- customs tariff

exceeds 50 % of the total value of the products constituting the tender. Software used in telecommunications network equipment shall be regarded as products.

(3) Where two or more tenders are equivalent in the light of the contract award criteria, preference shall be given to those tenders which may not be rejected pursuant to the preceding Paragraph. Concerning the price criteria, the prices of those tenders shall be considered equivalent if the price difference among tenders does not exceed 3 %. However, notwithstanding the above, a contracting entity shall not prefer one tender to another where its acceptance would oblige it to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, or technical difficulties in operation and maintenance, or disproportionate costs.

(4) The provisions of this Article shall apply only in cases where a third country submits a tender covering products originating in this third country.

Article 30

(Relations with third countries as regards works,

supplies and service contracts)

(1) The Government shall inform the Commission of any encountered by Slovenian undertakings in securing the award of service contracts in third countries.

(2) The Government shall inform the Commission of any difficulties encountered and reported by Slovenian undertakings in securing the award of contracts in third countries, and which are due to the non-observance of the international labour law provisions.

Chapter Three

(Establishing whether a given activity is directly exposed to competition)

Article 31

(Procedures for establishing whether a given activity is directly exposed to competition)

(1) Any entity or entities that carry out activities provided for in Article 5 to 9 of this Act and consider that such activities directly exposed to competition shall submit to the authority responsible for the protection of competition a proposal to launch a procedure for establishing whether a given activity is directly exposed to competition. The Proposal shall contain:

- indication of the activity considered by the entity to be directly exposed to competition,
- facts and evidence that justify the above allegation;
- indication of provisions of laws, implementing and other regulations and agreements concerning compliance with conditions set out in this Paragraph.

The Authority responsible for the protection of competition shall prepare its position regarding the proposal within in 30 days from the receipt of the proposal.

(2) When the authority responsible for the protection of competition considers that in compliance with the preceding Paragraphs 2 and 3 this Act is not applicable to a given activity, it shall notify the Commission and inform it of all relevant facts, and in particular of any provision of the law, implementing or other regulation or agreement concerning compliance with the conditions set out in Paragraph 1 of this Act, where appropriate together with its position.

(3) Contracts intended to enable certain activities to be carried out shall no longer be subject to this Act if the Commission:

- has adopted a Decision establishing the applicability of Paragraph 1 and within the period it provides for, or
- or
- has not adopted a Decision concerning such applicability within that period.

(4) However, where free access to a given market is presumed on the basis of Paragraph 1 of this Article, and where the authority responsible for the protection of competition has established the applicability of Paragraph 1 of this Article, contracts intended to enable a certain activity to be carried out shall no longer be subject to this Act if the Commission has not established by a Decision and within a set time limit that activities provided for in Article 5 to 9 of this Act are directly exposed to competition.

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

Chapter Four

PROCUREMENT PROCEDURES

Article 32

(Types of procedure)

(1) The contracting entity shall award public contracts in accordance with one of the following procedures:

1. open procedure;
2. restricted procedure;
3. negotiated procedure without prior publication of a contract notice;
4. negotiated procedure with prior publication of a contract notice;
5. tender collection procedure with prior publication of a contract notice; and
6. tender collection procedure.

(2) The contracting entity shall award public contracts if:

- a) the value of the subject matter of the public contract:
 - is equal to or greater than EUR 20.000 and less than EUR 80.000 for public supply and service contracts and
 - is equal to or greater than EUR 40.000 and less than EUR 160.000 for public works contracts,
- under the tender collection procedure.

b) the value of the subject matter of the public contract:

- is equal to or greater than EUR 80.000 and less than EUR 422.000 for public supply and service contracts and

- is equal to or greater than EUR 160.000 and less than EUR 844.000 for public works contracts, under the tender collection procedure with prior publication of a contract notice or under any other procedure referred to in Points 1 to 4 of the preceding paragraph.

c) the value of the subject matter of the public contract:

- is equal to or greater than EUR 422.000 for public supply and service contracts and

- is equal to or greater than EUR 844.000 for public works contracts,

under Points 1 to 4 of the preceding paragraph.

(3) Public contracts referred to in Point c) of the preceding paragraph shall be awarded by applying the open or restricted procedure or negotiated procedure with prior publication of a contract notice. In specific cases and circumstances a negotiated procedure, with or without publication of a contract notice may be applied.

(4) Where it has been established any time during the procedure that the value of the public contract exceeds any threshold set in this Act, the contracting entities shall cancel the procedure and initiate a new one in accordance with the provisions of this Act.

(5) The provisions of this Act shall not apply to public contracts the value of which, net of VAT, does not exceed EUR 20 000 for supplies and services and EUR 40 000 for works, net of VAT. Contracting entities shall only be obliged to keep records of contract awards, documenting the subject matter and value of the public contract.

(6) The Government may issue a regulation specifying individual elements in implementing public procurement procedures.

Article 33

(Award of contracts by open procedure)

The open procedure shall be a procedure wherein all parties interested in the public contract award may submit their tenders in accordance with previously defined requirements of the contracting entity specified in contract documents.

Article 34

(Award of contracts by restricted procedure and negotiated procedure with prior publication of a contract notice)

(1) The restricted procedure shall be a procedure for awarding a contract in which the contracting entities in the first phase recognise the qualifications of tenderers on the basis of previously submitted applications, whereas in the second phase they invite all candidates with recognised qualifications to submit tenders.

(2) The negotiated procedure with prior publication of a tender notice shall be a procedure for awarding a contract in which the contracting entities select economic operators or candidates pursuant to the publication of a contract notice, and invite them to negotiate. Negotiations shall be carried out to the extent and in the manner defined in the contract documents.

Article 35

(Award of contracts by negotiated procedure

without prior publication of a contract notice)

(1) A contracting entity may award contracts by negotiated procedure without prior publication of a contract notice:

1. when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or restricted procedure, provided that the initial subject matter of the contract or contents of the contract documents are not substantially altered;

2. for supply contracts when the products involved are manufactured purely for the purpose of research, experimentation, study and development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

3. when, for technical or artistic requirements of the subject matter of the public contract, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular tenderer;

4. insofar as is strictly necessary when, for reasons that could not have been foreseen and cannot in any event be attributable to the conduct of the contracting entities, the public contract must be inevitably awarded and the shortened time limits for the open, restricted or negotiated procedures with publication of a contract notice cannot be complied with;

5. in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

6. for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the tenderer performing such works or services:

– when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting entities, or

– when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;

7. in the case of works contracts, for additional works consisting in the repetition of similar works contained in the original contract, on condition that they are entrusted to the same contractor to whom the contracting entity has awarded an original contract, provided that such works are in conformity with a basic project and/or the original contract awarded according to the open or restricted procedure. The possible use of this procedure shall have already been disclosed during the procedure of the original public contract award and when calculating the estimated contract value, taking into consideration the value of additional works and services.

8. for supplies quoted and purchased on a commodity market;

9. for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Paragraph 2 of Article 38 of this Act is fulfilled;

10. for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;

11. for purchases of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws regulating bankruptcy and liquidation;

12. for public service contracts when the contract concerned follows a design contest and must, under the applicable rules of procedure, be awarded to the winner or to one of the winners of that contest. If there is more than one candidate, all of them must be invited to participate in the negotiations;

13. in the case where during the previously initiated procedure of public procurement the contracting entity cannot award a public contract within the time limit due to a review claim having been lodged and due to the urgency of the contract, on the condition that the value of the contract does not exceed the value referred to in Paragraph 1 of Article 17 and subject to previous approval of the ministry responsible for finance. In such a case, the contracting entity may award the contract only for the period until the contract is concluded on the basis of the initiated procedure.

(2) In cases of public procurement on the basis of the preceding Paragraph, except in the case referred to in Point 1 thereto, the contracting entity shall, prior to initiating the contract award procedure, inform the ministry responsible for finance of the subject matter of the contract, reasons for applying such a procedure, value of the contract, validity of the contract and economic operators to participate in the negotiations, and where appropriate include several economic operators in the negotiated procedure and justify the application of procedures in the case referred to in Points 2 and 3 of Paragraph 1 of this Article. The tender price quoted during the negotiated procedure may not exceed the price quoted by the same tenderer in the unsuccessful public procurement procedure previously conducted.

Article 36

(Tender collection procedure with prior publication of a contract notice)

(1) The contracting entity may provide for the tender collection procedure in one of the following ways:

a) among the received tenders, the most favourable tender is selected, taking into account the conditions and criteria laid down in the published contract notice according to the tender collection procedure or in the contract documents; or

b) the procedure is divided into two stages:

– in the first stage, the contracting entity establishes whether the economic operators which have submitted the applications to participate comply with the conditions specified in the published contract notice according to the tender collection procedure and in the contract documents and, in the second stage, invites them to submit tenders, or

– in the first stage, the contracting entity, on the basis of the received applications, holds a dialogue with the applicants for the purpose of drawing up final contract documents and establishing which of them complies with the specified conditions, while in the second stage, it invites them to submit tenders in accordance with the final contract documents.

c) after the final revision and evaluation of tenders, the contracting entity chooses the most successful tender or tenderer with which it concludes framework agreements.

(2) The contracting entity may include negotiations in the tender collection procedure with the prior publication of a contract notice.

Article 37

(Special methods of public procurement and framework agreement)

(1) Special methods of public procurement shall comprise:

1. a dynamic purchasing system, and
2. electronic auction.

(2) Subject to a prior public procurement procedure, the contracting entity may conclude a framework agreement.

Article 38

(Framework agreement)

(1) Contracting entities may regard a framework agreement as a public contract and award it in accordance with this Act.

(2) Where contracting entities have awarded a framework agreement in accordance with this Act, they may, when awarding contracts based on that framework agreement, use the negotiated procedure without prior publication of a contract notice.

(3) Where a framework agreement has not been awarded in accordance with this Act, contracting entities may not use the negotiated procedure without prior publication of a contract notice.

(4) Contracting entities may not use framework agreements in such a way as to violate the fundamental principles of public procurement.

(5) Contracting entities which have concluded a framework agreement shall, within two months of the conclusion of the framework agreement, publish a contract award notice defined in the List of information to be included in contract notices annexed to a decree issued by the Government (hereinafter: List of information to be included in contract award notices) under conditions to be laid down by the Commission. The contracting entity is not bound to publish a contract award notice at the conclusion of each contract based on the framework agreement.

Article 39

(Dynamic purchasing system)

(1) In order to set up a dynamic purchasing system, the contracting entity shall follow the rules of open procedure in all its phases up to the award of the contracts to be concluded under such system. All tenderers satisfying the selection criteria and having submitted a request in accordance with the contract documents and any possible additional documents shall be admitted to the system; requests may be improved at any time provided that they continue to comply with the contract documents. With a view to setting up the dynamic purchasing system and awarding contracts under that system, contracting entities shall solely use electronic means in compliance with Article 67 of this Act.

(2) For the purposes of setting up the dynamic purchasing system, the contracting entity shall:

a) publish a contract notice indicating clearly that a dynamic purchasing system is involved;

b) indicate in the contract documents also the nature of the purchases envisaged under this system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection appliances and specifications;

c) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the contract documents and to any additional documents, and indicate in the notice the Internet address at which such documents may be consulted.

(3) The contracting entity shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting a request and of being admitted to the system under the conditions referred to in Paragraph 1 of this Article. It shall complete an evaluation within a maximum of 15 days from the date of submission of the request. However, it may extend the evaluation period provided that no invitation to tender is issued in the meantime. The contracting entity shall inform the tenderer at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its request.

(4) Each individual contract must be the subject of an invitation to tender. Before issuing the invitation to tender, the contracting entity shall publish a simplified contract notice inviting all interested economic operators to submit a request within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. The contracting entity may not proceed with tendering until it has completed the evaluation of all the requests submitted by that deadline.

(5) The contracting entity shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each specific contract to be awarded under this system, and set the time limit for the receipt of tenders. It shall award the contract to the tenderer which submitted the best tender, by using the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation.

(6) A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases, for which, however, the contracting entity shall seek the consent of the ministry responsible for finance.

(7) The contracting entity shall publish a notice of the result within two months of the award of each contract or may, however, publish a grouped notice of the contracts awarded on a quarterly basis. In that case, the contracting entity shall publish the grouped notices within two months of the end of each quarter.

Article 40

(Use of electronic auction)

(1) In open, restricted or negotiated procedures with prior publication of a contract notice, the contracting entity may decide that a public contract shall be awarded by electronic auction when the technical specifications of the contract can be established unambiguously and with precision. Under the same circumstances an electronic auction may be held on the reopening of competition among the parties to a framework agreement and on the opening of competition for contracts to be awarded under the dynamic purchasing system. The electronic auction shall be based:

- solely on prices when the contract is awarded to the lowest price tender, or
- on prices and/or on other values of the features of the tenders indicated in the contract documents when the contract is awarded to the most economically advantageous tender.

(2) A contracting entity which decides to hold an electronic auction shall state that fact in the contract notice. The contract documents shall include, *inter alia*, the following details

a) the features of goods and services, the values of which will be the subject of electronic auction, provided that such features are quantifiable and may be expressed in figures or percentages;

b) any limits on the values which may be submitted, as they result from the contract documents relating to the subject matter of the contract;

c) information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

č) relevant information concerning the electronic auction process;

d) conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

e) relevant information concerning the electronic equipment used and the arrangements and technical specifications for the connection with the system to be used.

(3) Before launching an electronic auction, the contracting entity shall make a full initial evaluation of the tenders in accordance with the set award criterion or criteria and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may be conducted in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out

(4) When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of an integral evaluation of the relevant tenderer, carried out in accordance with the criteria provided for in Article 49 of this Act. The invitation shall also indicate the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the

new prices and/or new values submitted. This formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the contract documents; for that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

(5) Throughout each phase of an electronic auction the contracting entity shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It shall also communicate other information concerning other prices or values submitted, provided that this is stated in the contract documents. It may also at any time announce the number of participants in that phase of the auction. In no case, however, may it disclose the identities of the tenderers during any phase of an electronic auction.

(6) An electronic auction may be closed in one or more of the following manners:

a) in the invitation to the electronic auction the contracting entity shall indicate the date and time fixed in advance;

b) in the invitation to the electronic auction the contracting entity shall indicate that the auction will be closed when it receives no further new prices or new values. In that event, in the invitation to the electronic auction the contracting entities shall state the time limit after the lapse of which no new tenders may be submitted and which marks the termination of the electronic auction;

c) when the number of phases fixed in the invitation to the electronic auction has been completed.

(7) When the contracting entity decides to close an electronic auction in accordance with Point c) of the preceding paragraph, possibly in combination with the arrangements laid down in Point b) of the preceding paragraph, the invitation to the auction shall indicate the timetable for each phase of the auction.

(8) After closing an electronic auction the contracting entity shall award the contract on the basis of the results of the electronic auction, which shall be calculated by the criteria published in advance and the weighting fixed to them. Contracting entities may not have improper recourse to electronic auctions nor may it use them in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as defined in the published contract notice and in the contract documents.

(9) If the electronic auction is based on the electronic submission of tenders, the contracting entity shall indicate that in the contract documents and the tenderers must be able to examine the current ranking based on applicable criteria at their first registration in the electronic auction information system.

Chapter Five

GENERAL RULES GOVERNING TECHNICAL

AND OTHER ELEMENTS OF PUBLIC PROCUREMENT

Article 41

(Technical specifications)

(1) The technical specifications referred to in the List of individual technical specifications annexed to the decree to be issued by the Government (hereinafter: List of individual technical specifications) shall be set out in the public contract documentation, such as contract notices, contract documents or additional documents. Whenever possible, technical specifications shall be defined so as to take into account accessibility criteria for people with disabilities or standards for works intended for all users.

(2) Technical specifications shall afford equal access for tenderers and not have the effect of creating obstacles to access to public procurement to competitive economic operators. Technical specifications shall be formulated on the basis of functional requirements of the subject matter of the contract in connection with contracting entities' objective needs and requirements, so that they do not create unjustified restrictions of competition among tenderers.

(3) Notwithstanding the technical rules laid down by the regulations as mandatory, the technical specifications shall be formulated:

a) by reference to technical specifications defined in the List of individual technical specifications and, in order of preference, to Slovenian standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or, when these do not exist, to Slovenian standards, Slovenian technical approvals or Slovenian technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent"; or

b) in terms of performance or functional requirements, which may also include elements relevant to environmental protection. However, such parameters must be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow the contracting entities to award the contract; or

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

d) by referring to the specifications mentioned in Point a) of this paragraph for certain characteristics and by referring to the performance or functional requirements mentioned in Point b) of this paragraph for other characteristics.

(4) Where a contracting entity makes use of the option of referring to the specifications mentioned in Point a) of the preceding paragraph, it cannot reject a tender on the grounds that the products or services tendered for do not comply with the specifications to which it has referred if the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. An appropriate means might constitute a technical dossier of the manufacturer or a test report from a recognised body.

(5) Where a contracting entity uses the option laid down in Point a) of Paragraph (3) of this Article to prescribe regulations in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a Slovene standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by European standardisation bodies, if these specifications address the performance or functional requirements which they have laid down. In his tender the tenderer must prove to the satisfaction of the contracting entity and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority. An appropriate means might constitute a technical dossier of the manufacturer or a test report from a recognised body.

(6) Where the contracting entity lays down environmental characteristics in terms of the performance or functional requirements referred to in Point b) of Paragraph (3) of this Article, it may use the detailed specifications or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the subject matter of the contract;
- the requirements for the label are drawn up on the basis of scientific information;
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

(7) The contracting entity may indicate that the products and services bearing an eco-label are presumed to comply with the technical specifications laid down in the contract documents; it must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

(8) Recognised bodies, within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards. The contracting entity shall accept certificates from recognised bodies established in other Member States, but it may also accept certificates from recognised bodies established in other states.

(9) Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source or a particular process or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis where a sufficiently precise and intelligible description of the subject matter of the contract pursuant to Paragraphs 3 and 4 of this Article is not possible; such reference shall be accompanied by the words "or equivalent".

(10) When functional requirements stated in the technical specifications are specified as a condition, the tenderer shall provide proof to the effect that such requirements have been complied with.

(11) Contracting entities shall make available on request to economic operators interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Paragraphs 1 and 2 of Article 61 of this Act.

(12) Where such technical specifications are based on documents available to interested economic operators, the contracting entity shall merely include a reference to those documents.

Article 42

(Variants)

(1) Where the criterion for award is that of the most economically advantageous tender, the contracting entity may authorise tenderers to submit variants.

(2) The contracting entity shall indicate in the contract notice whether or not it authorises variants: variants shall not be authorised without this indication.

(3) The contracting entity authorising variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

(4) Only variants meeting the minimum requirements laid down by the contracting entity shall be taken into consideration. In procedures for awarding supply or service contracts, contracting entities which have authorised variants may not reject a variant on the sole ground that it would, if successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Article 43

(Conditions including social and environmental aspects)

(1) The Government may prescribe that certain kinds of public procurements and individual products and services must observe environmental technical specifications or environmental selection criteria. At the same time the Government shall define the nature of such criteria and their application.

(2) The contracting entity may also specify other conditions for performance of the contract, which may particularly relate to social and environmental aspects, provided that such conditions comply with regulations and have been stated in the contract notice or in the contract documents.

Article 44

(Obligations relating to taxes, environmental protection, employment protection provisions and working conditions)

(1) A contracting entity may state in the contract documents the body or bodies from which a candidate or a tenderer may obtain appropriate information on obligations relating to taxes, environmental protection, employment protection provisions and working conditions which are in force in the Republic of Slovenia, region or locality in which the works are to be carried out or services are to be provided, and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

(2) A contracting entity which supplies the information referred to in the preceding paragraph shall request the tenderers or candidates in the public procurement procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and working conditions which are in force in the locality where the works are to be carried out or the service is to be provided. The above requirement is not linked to the provision concerning the examination of abnormally low tenders.

Chapter Six

QUALIFICATION ASSESSMENT CRITERIA

AND SELECTION CRITERIA

Article 45

(General provisions)

(1) For the purpose of selecting participants in their award procedures:

a) the contracting entity shall exclude economic operators which do not comply with the rules and do not meet the criteria pursuant to Paragraphs 1, 2 and 4 of Article 48 of this Act,

b) the contracting entity shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to Article 48 of this Act,

c) in restricted procedures and in negotiated procedures with prior publication of a contract notice, the contracting entity shall, where appropriate, reduce in accordance with Article 48 of this Act the number of candidates selected pursuant to Points a) and b) of this Paragraph.

(2) When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are subject to public procurement, contracting entities shall:

a) determine the qualification of economic operators in accordance with the provisions of Article 47 of this Act;

b) apply to such economic operators those provisions of Paragraph 1 that are relevant to restricted or negotiated procedures.

(3) Contracting entities shall confirm that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and that the contract was awarded in compliance with the award criteria laid down in Articles 49 and 50 of this Act.

(4) Notwithstanding other provisions of this Act, the tenderer is not obliged to provide any evidence regarding the data of which an official record is kept by a state authority, local authority or by the holder of public authority; instead of such evidence the tenderer shall make a statement on the data required to be included in the tender. The data available in official records shall be obtained by the contracting entity itself. Personal data shall be obtained subject to the consent of the entity concerned.

Article 46

(Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence)

(1) When selecting participants for a procedure or negotiated procedure, or in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

- a) impose administrative, technical or financial conditions that would discriminate certain economic operators;
- b) require tests or evidence which do not match the objective evidence already available

(2) Where the contracting entities request the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. The contracting entity shall recognise equivalent certificates issued by bodies established in other Member States. It shall also accept other evidence of equivalent quality assurance measures from economic operators.

(3) For works and service contracts, and only in justified cases, the contracting entities may require, in order to verify the economic operator's technical abilities, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. When the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. The contracting entities shall recognise equivalent certificates issued by bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

Article 47

(Qualification system)

(1) Contracting entities may establish and operate a system of qualification. Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

(2) The qualification system may involve different qualification stages. Contracting entities shall operate the system on the basis of objective criteria and rules for qualification that they establish. Where those criteria and rules include technical specifications, Article 41 hereof shall apply. The criteria and rules may be subject to updating, if necessary.

(3) The criteria and rules for qualification referred to in Paragraph 2 of this Article may include the reasons for exclusion listed in Article 42 of the Public Procurement Act (Uradni list RS, No.128/06; hereinafter: ZJN-2). Where the contracting entity is a contracting authority within the meaning of Paragraph 1 of Article 3 hereof, those criteria and rules shall include the reasons for exclusion listed in Paragraph 1 of Article 42 of the ZJN-2.

(4) Where the criteria and rules for qualification referred to in Paragraph 2 of this Article include requirements relating to the economic and financial capacity of the economic operator, the latter may, where necessary, rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case it must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities, confirming that the required resources will be made available to the economic operator, or any other evidence required by the contracting entity. In the case where the economic operator shall fail to present the required evidence, its tender may be rejected. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacity of participants in the group or of other entities.

(5) Where the criteria and rules for qualification referred to in Paragraph 2 of this Article include requirements relating to the technical and/or professional abilities of the economic operator, the latter may, where necessary, rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case it must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities,

confirming that the required resources will be made available to the economic operator, or any other evidence required by the contracting entity. In the case where the economic operator shall fail to present the required evidence, its tender may be rejected. Under the same conditions, a group of economic operators as referred to in Article 4 of this Act may rely on the capacity of participants in the group or of other entities.

(6) The criteria and rules for qualification referred to in Paragraph 2 of this Article shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to the procurement portal and to the economic operators qualified under previous criteria and rules. Where a contracting entity considers that the qualification system of other entities meets its requirements, it shall communicate to interested economic operators the names of those entities.

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

(8) When establishing or operating a qualification system, contracting entities shall in particular observe the provisions concerning notices on the existence of a system of qualification, information to be delivered to economic operators having applied for qualification, selection of participants by means of a notice on the existence of a qualification system as well as the provisions on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

(9) When a contract notice is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates by the contracting entity in accordance with such a system.

Article 48

(Qualification criteria)

(1) When establishing qualification criteria in an open procedure, contracting entities shall ensure that they are objective.

(2) Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria.

(3) In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected must, however, take account of the need to ensure competition.

(4) The criteria set out in Paragraphs 1 and 2 of this Article may include the reasons for exclusion listed in Article 42 of the ZJN-2. Where the contracting entity is a contracting authority within the meaning of Paragraph 1 of Article 3 hereof, those criteria and rules shall include the reasons for exclusion listed in Paragraph 1 of Article 42 of the ZJN-2.

(5) Where the criteria referred to in Paragraphs 1 and 2 of this Article include requirements relating to the economic and financial capacity of the economic operator, the latter may, where necessary, rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case it must prove to the contracting entity that these resources will be available to it, for example by producing an undertaking by those entities, confirming that the required resources will be made available to the economic operator, or any other evidence required by the contracting entity. In the case where the economic operator shall fail to present the required evidence, its tender may be rejected. Under the same conditions, a group of economic operators as referred to in Article 4 of this Act may rely on the capacity of participants in the group or of other entities.

(6) Where the criteria referred to in Paragraphs 1 and 2 of this Article include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case it must prove to the contracting entity that these resources will be available to it, for example by producing an undertaking by those entities, confirming that the required resources will be made available to the economic operator, or any other evidence required by the contracting entity. In the case where the economic operator shall fail to present the required evidence, its tender may be rejected. Under the same conditions, a group of economic operators as referred to in Article 4 of this Act may rely on the capacity of participants in the group or of other entities.

Article 49

(Contract award criteria)

(1) Contracting entities may award contracts either:

a) to the most economically advantageous tender by using various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics,

environmental characteristics, running costs, cost effectiveness, after-sales service and technical assistance, delivery date and delivery period or completion date, or

b) on the basis of the lowest price.

(2) Should the criteria be specified in both the contract notice and contract documents, they should be the same.

(3) In the case of awarding a public contract by using the most economically advantageous tender criteria, contracting entities shall describe and weight each award criterion in the contract notice or in the contract documents. The criteria shall be non-discriminatory and shall be logically related to the subject-matter of the public contract. The criteria may be weighted by determining a maximum range. Where, in the opinion of the contracting entity, weighting is not possible on objective grounds, the contracting entity shall indicate in the contract notice or contract documents or, in the case of competitive dialogue, in the descriptive document, the criteria in descending order of importance.

(4) In the evaluation of tenders, contracting entities shall apply only the criteria indicated in the contract notice or contract documents, as they were described and weighted.

(5) In the case of two or more most economically advantageous tenders, the contracting entity shall select the most advantageous one by also applying predetermined social elements aimed at promoting professional in-service training, creating jobs for the difficult-to-employ and combating unemployment, and shall lay them down in the contract documents.

(6) Should contracting entities award a contract to a most economically advantageous tender by applying different criteria, the price criterion shall be given a weighting of at least 60%.

Article 50

(Abnormally low tenders)

(1) If the contracting entity considers a tender for a given contract to be abnormally low or it is doubtful that the contract could be executed given the supplies, works or services concerned, it shall, before rejecting such a tender, request in writing the details of the predetermined constituent elements of the tender which it considers relevant to the execution of the contract or to the classification of tenders, and require the tenderer to indicate the weighting basis. These details may relate in particular to:

a) the economics of the construction method, the manufacturing process or the service provided;

b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;

c) the originality of the work, supplies or services proposed by the tenderer;

d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

e) the possibility of the tenderer obtaining state aid.

(2) The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied. Where a contracting entity establishes that a tender is abnormally low, the tender can be rejected

(3) Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained state aid, the tender can be rejected on that basis alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the ministry responsible for finance and the Commission of that fact.

Chapter Seven

TIME LIMITS

Article 51

(Time limits for the receipt of requests to participate and receipt of tenders)

(1) When fixing the time limits for the receipt of requests to participate and tenders, contracting entities shall take account in particular of the complexity of the contract, the time required for drawing up tenders and the minimum time limits laid down in this Act.

(2) Where the contract notice is published in the Official Journal of the European Union, the time limit allowed for tender submission shall run from the date on which the contracting entity sent the request for its publication in the Official Journal of the European Union.

Article 52

(Time limit for the receipt of tenders in open procedure)

The time limit for the receipt of tenders shall be not less than 40 days from the date on which the contract notice is sent for publication.

Article 53

(Shortened time limits in open procedure)

(1) If the contracting entities have published a periodic indicative notice, the time limit for the receipt of tenders under the preceding paragraph may be shortened, but not to less than 24 days.

(2) The time limit shall run from the date on which the contract notice is sent for publication in the Official Journal of the European Union.

(3) The shortened time limits under Paragraph 1 hereof shall be permitted, provided that a periodic indicative notice has included all the information required for the contract notice, insofar as that information is available at the time the notice is published and that the periodic indicative notice is sent for publication between 52 days and 12 months before the date on which the contract notice is sent.

Article 54

(Extension of time limits)

If, for whatever reason, the contract documents or additional information, although requested in good time, are not supplied within the time limits set out in this Act, or where it is subsequently established that tenders can be made only after a visit to the site or after on-the-spot inspection of other documents relating to the public contract concerned, the time limits for the receipt of tenders shall be extended, except in the cases of mutual agreements made under Point b) of Article 55 of this Act, so that all economic operators concerned may be aware of all the information needed to produce tenders. Contracting entities shall publish the extended time limits on the procurement portal.

Article 55

(Time limits for the receipt of requests to participate and receipt of tenders)

In restricted procedures and in negotiated procedures with a prior publication of a contract notice:

a) the time limit for the receipt of requests to participate, in response to a contract notice or to an invitation by the contracting entities under Paragraph 4 of Article 87 of this Act, shall, as a general rule, be fixed at no less than 30 days from the date on which the notice or invitation was sent;

b) the time limit for the receipt of tenders, which must be the same for all the candidates, may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;

c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall be more than 19 days from the date on which the invitation to tender was sent.

Article 56

(Shortened time limits)

The effect of the time-limit reductions provided for in Paragraph 1 of Article 53 of this Act may in no case result in a time limit for the receipt of tenders, in response to a contract notice or to an invitation by the contracting entities by means of a periodic indicative notice, of less than 15 days from the date on which the contract notice or invitation is sent.

Chapter Eight

NOTICES

Article 57

(Types of notices)

(1) Notices shall be of the following types:

1. periodic indicative notice,
2. contract notice,
3. contract award notice,
4. contract notice under the tender collection procedure with prior publication of a contract notice,
5. contract award notice under the tender collection procedure with prior publication of a contract notice.

(2) Contracting entities shall send all types of public contract notices for publication to the procurement portal and before that, in respect of the value, also to the Office for Official Publications of the European Communities.

Article 58

(Notices used as a means of publication of a contract notice)

(1) In the case of supply, works or service contracts, contract notices shall be made by:

- a) periodic indicative notice, or
- b) notice on the existence of a qualification system, or
- c) contract notice.

(2) In the case of dynamic purchasing systems, contract notices shall be published by means of a contract notice as referred to in Point c) above, whereas notices for contracts based on such systems shall be published by simplified contract notices as referred to in the List of information to be included in simplified contract notices for use in a dynamic purchasing system, annexed to a decree issued by the Government (hereinafter: List of information to be included in simplified contract notices for use in a dynamic purchasing system).

(3) Where a contract notice is made by means of a periodic indicative notice:

- a) the notice shall refer specifically to the supplies, works or services which will be the subject-matter of the contract to be awarded;
- b) the notice shall indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a contract notice, and invite all the interested economic operators to make their requests for participation in writing; and
- c) the notice may be published in accordance with the Information concerning publication annexed to (hereinafter: Information concerning publication) not more than 12 months prior to the date on which the invitation is sent. Moreover, the contracting entity shall meet the time limits laid down in this Act and its implementing regulations.

Article 59

(Form and manner of publication of notices)

(1) Notices shall be in the format of standard forms and include the information provided for in the Annexes to a decree issued by the Government. Any other information deemed useful by the contracting entity may be included. Contracting entities are bound to use the standard forms set out in Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (OJ L, No. 257 of 1.10.2005, p. 1).

(2) Notices sent for publication to the Office for Official Publications of the European Communities by contracting entities shall be sent electronically through the procurement portal.

(3) Notices shall be published in full in Slovene. A summary of the important elements of each notice shall be published in the other official languages of the European Community.

(4) The costs of publication of such notices on the procurement portal shall be covered by the budget of the Republic of Slovenia, and the costs of publication in the Official Journal of the European Union by the budget of the European Union. The publication arrangements and costs shall also include translation into the other official languages of the European Union.

Article 60

(Publishing sequence rule)

(1) The notices required to be published in the Official Journal of the European Union shall not be published on the procurement portal before they are sent for publication to the Office for Official Publications of the European Communities. The content of a notice published on the procurement portal shall be the same as that published in the Official Journal of the European Union. The notices published on the procurement portal shall indicate the date of their dispatch to the Commission.

(2) The procurement portal and the Office for Official Publications of the European Communities shall give the contracting entity confirmation of the receipt of the information sent for publication, mentioning the date of that publication. Such confirmation shall constitute proof of publication. Contracting entities shall keep evidence of the dates on which notices were sent and, where appropriate, provide them as proof.

Article 61

(Periodic indicative notices and notices on the existence of a qualification system)

(1) Contracting entities shall send the Commission or the procurement portal periodic indicative notices providing:

a) where supplies are concerned, the estimated total value of the contracts or framework agreements by product area which they intend to award over the following 12 months, where the total estimated value is equal to or greater than EUR 750 000. The product area shall be established by the contracting entities by reference to CPV nomenclature;

b) where services are concerned, the estimated total value of the contracts or framework agreements in each of the categories of services from the List of services A which they intend to award over the following 12 months, where such estimated total value is equal to or greater than EUR 750 000;

c) where works are concerned, the common characteristics of the works contracts or the framework agreements which they intend to award over the following 12 months, whose estimated value is equal to or greater than the value specified in Article 17 of this Act.

(2) Notices under Points a) and b) above shall be sent to the Commission or published on the procurement portal as soon as possible after the adoption of the budget. Notices under Points a) and b) above shall be sent to the Commission or published on the procurement portal as soon as possible after the decision approving the plan of the works contracts or the contracts based on framework agreements to be awarded. Contracting entities that publish a periodic indicative notice on the procurement portal shall send a notice of the publication of a periodic indicative notice on the procurement portal to the Commission electronically, in accordance with the format and procedure for sending notices indicated in the Information concerning publication. Periodic indicative notices shall not be published on the procurement portal before the notice of their publication in that form is dispatched to the Commission; the date of dispatch shall be specified. Publication of the periodic indicative notices referred to in Points a), b) and c) above shall be compulsory only where the contracting entities provide for shortened time limits for the receipt of tenders. Periodic indicative notices shall not be used with contracts under the negotiated procedures without prior publication of a contract notice.

(3) Contracting entities may, in particular, publish or arrange for the Commission to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.

(4) Where contracting entities choose to apply a qualification system in accordance with Article 47 of this Act, the system shall be the subject of a notice indicating the purpose of the system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. If the duration of the procedure is shorter, the first notice shall be sufficient.

Article 62

**(Contract notices under the tender collection procedure with prior publication
of a contract notice)**

(1) Contract notices under the tender collection procedure with prior publication of a contract notice shall be sent by contracting entities for publication to the procurement portal.

(2) Contract notices under the tender collection procedure with prior publication of a contract notice referred to in the preceding paragraph shall include the following information:

a) details of the contracting entity;

b) subject-matter of the public contract and, where appropriate, its description;

- c) details of the tender collection procedure with prior publication of a contract notice: whether the contracting entity will use a two-phase procedure, a dialogue with the tenderers in the first phase, or involve negotiations in the procedure;
- d) indication of setting up a dynamic purchasing system, where appropriate;
- e) conditions to be fulfilled;
- f) criteria to be used for comparing tenders;
- g) time limit for the submission of requests and/or tenders;
- h) indication of whether the contract notice acts as contract documents.

Article 63

(Contract award notice)

(1) Contracting entities which have awarded a contract shall, within two months of the award of the contract, publish a contract award notice as referred to in the List of information to be included in contract award notices, under conditions to be laid down by the Commission.

(2) In the case of public contracts for services from the List of services B, the contracting entities shall specify in their notices whether they agree on their publication.

(3) Information provided in accordance with the List of information to be included in contract award notices and marked as not being intended for publication shall be published only in simplified form and in accordance with the Information concerning publication for statistical purposes.

(4) Where contracting entities award a research-and-development service contract which cannot be awarded by way of a negotiated procedure without prior publication of a contract notice, they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with the List of information to be included in contract award notices. Contracting entities shall ensure that any information published under this paragraph is at least as detailed as that contained in the contract notice.

Article 64

(Contract award notices under the tender collection procedure with prior publication of a contract notice)

(1) Contract notices under the tender collection procedure shall be sent by contracting entities for publication on the procurement portal.

(2) The notices referred to in the preceding paragraph shall include the following information:

- a) details of the contracting entity;
- b) subject-matter of the public contract and, where appropriate, its description;
- c) details of the tender collection procedure with prior publication of a contract notice;
- d) criteria used for comparing tenders;
- e) indication of the successful tenderer or party to the framework agreement;
- f) contract value; and
- g) term of the contract.

Article 65

(Non-mandatory publication)

Contracting entities may, in accordance with Articles 63 and 64, also publish contract notices which are not subject to publication under this Act.

Chapter Nine

COMMUNICATION

Article 66

(Rules applicable to communication)

(1) Contracting entities may send all communications and information relating to a public procurement procedure by post, fax or electronic means. In the case of requests to participate, communications and information may also be transmitted by telephone.

(2) The means of communication chosen by contracting entities must be generally available to all economic operators and not restrict their access to the public procurement procedure.

(3) The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

(4) Economic operators shall transmit requests to participate as follows:

a) in writing or by telephone;

b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;

c) contracting entities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation, must be stated by the contracting entity in the contract notice.

Article 67

(Electronic transmission and receipt of tenders)

The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

a) any information regarding the contract documents, necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested economic operators. In addition, devices for the electronic transmission and receipt of tenders and requests to participate shall comply with the Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests which form an annex to a decree to be issued by the Government (hereinafter: Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests);

b) tenderers or candidates shall undertake to submit paper documents, certificates and declarations fulfilling the conditions under Paragraphs 2 and 3 of Article 46, Articles 47 and 48 of this Act, if they do not exist in electronic format, by the expiry of the time limit laid down for submission of tenders or requests to participate.

Article 68

(Information to applicants for qualification, candidates and tenderers)

(1) Contracting entities shall as soon as possible inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which competitive tenders have been submitted or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.

(2) On request from the economic operator, contracting entities shall, as soon as possible, inform:

– any unsuccessful candidate of the reasons for the rejection of his application,

– any unsuccessful tenderer of the reasons for the rejection of his tender, including the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements,

– any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement.

(3) The time taken to do so may under no circumstances exceed 15 days from receipt of the written enquiry. Contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement or on admission to a dynamic purchasing system, referred to in Paragraph 1 above, is to be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

(4) Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months. If contracting entities envisage that the decision will take longer than six months from the presentation of an application, they shall inform the applicant, within two months

of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

(5) Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than 15 days later than the date of the decision. The reasons must be based on criteria for the qualification referred to in Paragraph 2 of Article 48 of this Act.

(6) Contracting entities which establish and operate a system of qualification may revoke the qualification of an economic operator only for reasons based on the criteria for qualification referred to in Paragraph 2 of Article 48 of this Act. Any intention to revoke qualification shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

Article 69

(Information to be stored concerning awards)

(1) Contracting entities shall keep information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- a) the qualification and selection of economic operators and the award of contracts;
- b) the use of procedures without a prior publication of a contract notice;
- c) the non-application of Articles 4, 33 to 35, 41 to 44, 57 to 65 of this Act by virtue of the derogations provided for in Articles 3 and 5 to 10 of this Act as well as in Articles 17 to 24 and 31 of this Act. Contracting entities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

(2) The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

Article 70

(Electronic tenders)

(1) Tenderers may submit their tenders electronically if this is supported by the information system used by the contracting entity.

(2) Contracting entities shall inform tenderers of the possibility of electronic submission of tenders in the contract documents. The information system of contracting entities must ensure a technologically independent receipt of tenders.

(3) The structure of the information system used by contracting entities must enable the opening of and access to tenders only after the time limits set for the receipt of tenders have expired. The information system used by contracting entities must keep track of all activity within the system in the form of electronic evidence prohibiting any later changes.

(4) Electronic tenders must be accompanied by a secure electronic signature based on a qualified certificate.

(5) Electronic tenders must be accompanied by time stamps.

(6) The request of the contracting entity to receive tenders in electronic format shall by no means prevent or restrict competition among tenderers. The information system of the contracting entity must enable sending return receipts for the electronic tenders to the tenderers.

(7) The information system of contracting entities must prevent denial of a tenderer's identity (undeniability).

(8) The information system of contracting entities must enable archiving of electronic tenders in compliance with this Act, with the law governing electronic commerce and electronic signature, and with the law governing the preservation of documentary and archival materials and archives.

Part Two

CONDUCT OF PUBLIC PROCUREMENT PROCEDURES

Chapter One

PROVISIONS COMMON TO ALL PUBLIC PROCUREMENT PROCEDURES WITH THE EXCEPTION OF TENDER COLLECTION PROCEDURE

Article 71

(Technical Commission)

The contracting entity may appoint a Technical Commission to manage a public procurement procedure. A Technical Commission may take part throughout the whole or part of the public procurement procedure.

Article 72

(Technical dialogue)

Before launching a public procurement procedure, the contracting entity may lead a technical dialogue with economic operators to seek or accept advice which may be used in the preparation of the contract documents, provided that such advice or recommendations do not prevent or restrict competition.

Article 73

(Phases of the procedure)

Public procurement procedure shall consist of the following phases, unless otherwise provided in this Act for a particular type of procedure:

1. periodic indicative notice, where appropriate;
2. preparation of contract documents;
3. publication of the contract notice;
4. submission and opening of tenders;
5. examination and evaluation of tenders;
6. contract award decision;
7. publication of the contract award notice.

Article 74

(Preparation of contract documents and draft contract)

(1) Unless otherwise provided in this Act for a particular type of procedure, contract documents shall include the following elements:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. requirements to assess ability and instructions to prove tenderers' ability;
4. general and specific conditions governing the contract;
5. elements for the preparation of a pro-forma invoice with instructions for its completion;
6. financial or other types of insurance, if any.

(2) Taking into account the subject matter of the contract, the contract documents may also include other documents required for the preparation of the tender. Data contained in the contract documents shall be the same as those indicated in the published contract notice. The information provided by contracting entities to economic operators that take part in the contract award procedure shall also be regarded as part of the contract documents.

Article 75

(Publication of the contract notice and contract documents)

The contracting entity is bound to publish contract notices and contract documents, including their amendments, on or through the procurement portal. Access to and examination of contract documents on the procurement portal and their retrieval shall be free of charge. Contracting entities shall enable access to and retrieval of those parts of contract documents which for technological reasons are not accessible on or through the procurement portal.

Article 76

(Amendments and clarifications to contract documents)

(1) After the expiry of the time limit for the receipt of tenders the contracting entity may no longer amend the contract documents.

(2) The contracting entities shall provide additional explanations relating to the contract documents on or through the procurement portal no later than six days before the expiry of the time limit for the submission of offers, provided that the request was issued on time.

Article 77

(Submission of tenders)

(1) Timely submission of tenders means that tenders shall be submitted to the contracting entity within the time limit set for the receipt of tenders.

(2) The date and time of tender submission shall be laid down in the contract notice and contract documents.

(3) Where a tender exceeds the time limit set for the receipt of tenders, such submissions shall be considered late. Such tenders shall be returned to tenderers after the completion of the opening procedure, unopened and marked as late.

(4) Tenders shall be submitted personally, by post, fax, electronic means or any other appropriate means in accordance with the requirements of the contracting entity.

(5) Upon receipt of a tender, the contracting entity shall mark the date and time of the receipt and, at the request of the tenderer, issue an acknowledgement of receipt.

Article 78

(Tenders for lots)

Where the contracting entity allows the submission of tenders for separate lots, the tenderers shall indicate whether the tenders refer to the entire contract or to separate lots only.

Even though a tender is submitted for all lots, it shall be done in such a way as to allow evaluation of separate lots.

After the evaluation of tenders by separate lots and the evaluation of all lots, the contracting entity shall make a contract with one or more tenderers offering the most advantageous tender combination.

Article 79

(Public opening of tenders)

Public opening of tenders shall be held in cases where the estimated value of the public contracts is equal to or greater than the value laid down in Paragraph 2 of Article 17 of this Act.

Article 80

(Tender opening sessions)

(1) Tender opening sessions shall be conducted by the contracting entity. The opening session shall be held at the place and time indicated in the published contract notice and in the contract documents. Minutes of the tender opening session shall be taken. Tenders shall be opened in order of receipt.

(2) Minutes of the tender opening shall indicate the following details:

- name of the tenderer or, in the case of anonymous calls for tender, his code;
- variants, if admitted, or tenders including options;
- tender price and discounts, if any, while other tender details may also be noted in the minutes if so decided by the contracting entity.

(3) If the minutes of the tender opening are not served on the tenderers' authorised representatives at the session, the contracting entity shall pass them on to all the tenderers concerned within a maximum of three working days.

Article 81

(Examination of tender)

(1) The contracting entity shall, prior to the awarding of the contract at the latest, examine the existence and content of data provided in the selected tender and other information provided therein.

(2) Where the contracting entity in the public procurement procedure establishes that the proof submitted by a tenderer in a tender is false and misleading, it is obliged to eliminate the said tenderer from further public procurement procedure. The contracting entity is obliged to notify thereupon the ministry responsible for finance, which keeps records of tenderers with negative references. Such tenderer or subcontractor shall be eliminated from public procurement procedures for a period of three years when the subject matter of the contract is goods or services, or for a period of five years when the subject matter of the contract is works. The ministry responsible for finance shall publish the list of tenderers with negative references on its website.

Article 82

(Admissible amendments to a tender)

(1) Where the contracting entity establishes, either by itself or upon the proposal of an economic operator, that a tender is formally incomplete, it must admit and enable the amendment of such tender. The contracting entity shall require the amendment of a tender from a tenderer only where it cannot examine certain facts by itself. Where the tenderer fails to make appropriate amendments within the time limit set by the contracting entity, the contracting entity shall eliminate such tender.

(2) The tenderer must not change its price and tender in the framework of criteria and that part of the tender relating to technical specifications of the subject matter of public contract, or those elements of the tender which may cause a different classification of its tender in regard to other tenders received by the contracting entity in the public procurement procedure.

Article 83

(Decision on the award of contract)

(1) After the examination and evaluation of tenders, the contracting entity shall decide on the award of contract within a reasonable time limit, which may not exceed 60 days. It shall justify its decision and provide the relevant conclusions and reasons. The contracting entity shall notify the tenderers of its decision in writing by mail, fax or electronic means.

(2) Upon written notification of a tenderer regarding the decision of the contracting entity, submitted within five days after the receipt of the contract award notice, the contracting entity may, after previously establishing validity, amend its decision and adopt a new one pursuant to the provision referred to in the preceding paragraph. The time limit to submit a request for revision shall run from the date of receipt of the new decision on the award of the contract.

(3) Where the decision on the award of the contract does not contain:

- reasons for rejection of the tender of a tenderer which was not selected, and
- the advantages of the accepted tender in relation to a tenderer which was not selected,

a tenderer which was not selected may submit a request to the contracting entity for an additional explanation of the decision on the award of the contract, which must clearly state the subject of the contracting entity's explanation. Such request may be submitted within five days following the receipt of the decision of the contracting entity. Where the request is not reasoned, the contracting entity shall invite the tenderer to amend it in the time limit set by the contracting entity. If the tenderer fails to amend the request, the contracting entity shall reject it. The contracting entity shall send an additional explanation of the decision or a rejection of the request to the tenderer within five days. The time limit to submit a request for revision shall run, pursuant to the law regulating the revision of the procedures to award public contracts, from the date of receipt of the additional explanation of the decision on the award of the contract.

(4) The contracting entity may refuse to provide an additional explanation of its decision, in full or in part, if the disclosure of such information is contrary to the rules, or could disclose a business secret of the tenderer, or if the information provided would affect the rules of fair competition among tenderers or other parties in the procedure according to the provisions of the Data Protection Act. The contracting entity may not refuse to disclose all data related to the public procurement procedure at the request of the Commission responsible for the revision of public procurement procedures.

Article 84

**(Elimination of tenders, suspension of procedure,
rejection of all tenders)**

(1) In the public contract award procedure, the contracting entity shall, after the examination and amendment of tenders pursuant to Article 82 of this Act, eliminate all incomplete tenders.

(2) The contracting entity may suspend the public procurement procedure at any time.

(3) The contracting entity may reject all tenders. Where the contracting entity has rejected all tenders, it shall immediately send written notification to tenderers or candidates of its decision and provide the reasons for having rejected all offers, or of its decision to initiate a new procedure, and notify the government or its supervisory authority. The decision must also be sent for publication on the procurement portal.

(4) In the case of contracts whose value equals or exceeds the value referred to in Paragraph 1 of Article 17 of this Act, the contracting entity shall also notify the Commission and send the decision for publication to the Office for Official Publications of the European Communities.

Chapter Two

SPECIAL PROVISIONS IN PUBLIC PROCUREMENT PROCEDURES

1.1. Special provisions for restricted procedure

Article 85

(Preparation of contract documents and draft contract)

(1) The contracting entity shall prepare separate contract documents for every phase of the procedure. The contract documents for the first phase shall contain the following:

1. invitation to submit a request;
2. instructions to tenderers on the elaboration of the request;
3. indication of the number of candidates to be invited to tender, when applicable;
4. conditions relating to the subject matter of the contract and other conditions to be met by tenderers for the execution of public contract;
5. indication of criteria of selection, where applicable;
6. other.

(2) The contract documents for the second phase shall contain at least:

1. invitation to tender;
2. instructions to tenderers on the elaboration of the tender;
3. general and specific conditions governing the contract;
4. elements for the preparation of a pro-forma invoice with instructions for its completion;
5. description and evaluation of award criteria.

Article 86

(Qualification notice)

The contracting entity shall send a qualification notice or a relevant refusal notice to those economic operators which have submitted a tender.

Article 87

(Invitation to submit a tender)

(1) Where a public contract is awarded under the restricted procedure, the contracting entity shall simultaneously invite all the candidates to submit their tenders. The invitation shall be sent to the candidates in writing.

(2) The invitation to candidates shall contain information on the publication of contract documents.

(3) The same invitation to candidates shall also be used where the contract documents are held by an entity other than the contracting entity responsible for the procurement procedure.

(4) The invitation shall include at least the following information:

- a) where appropriate, the time limit for requesting additional documents, as well as the amount and terms of payment of the sum payable for obtaining such documents;
- b) indication of the deadline for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;
- c) a reference to any published contract notice;
- d) a reference to any possible adjoining documents to be submitted;
- e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of publication of a contract notice;
- f) the relative importance of the contract award criteria, where appropriate, the descending order of importance of such criteria, if they are not given in the contract notice, the notice on the existence of a qualification system or contract documents.

(5) When a call for tender is made by means of a periodic indicative notice, contracting entities shall invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers. This invitation shall include at least the following information:

- a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for such complementary contracts, the nature and quantity and, if possible, the estimated publication dates of future contract notices for works, supplies or services;
- b) type of procedure: restricted procedure;
- c) a reference to any published contract notice;
- d) the address and deadline for the submission of requests for tender documents and the language or languages in which they are to be drawn up;
- e) the address of the entity which is to award the contract and the information necessary for obtaining the contract documents;
- f) economic and technical conditions, financial guarantees and information required from economic operators;
- g) the amount and payment procedures for any sum payable for obtaining contract documents;
- h) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
- i) the contract award criteria and their weighting or, where appropriate, the descending order of importance of such criteria, if this information is not given in the indicative notice or the contract documents or in the invitation to tender or to negotiate.

1.2. Negotiated procedure without prior publication of a contract notice

Article 88

(Preparation of contract documents and draft contract)

(1) The contracting entity may provide that the negotiated procedure shall be conducted in successive phases in order to reduce the number of negotiated solutions by applying selection criteria. The contracting entity shall provide the use and manner of this option in the contract notice or in the contract documents.

(2) Contract documents may include:

1. invitation to submit a tender;
2. instructions to tenderers on the elaboration of the tender;
3. description of the subject matter of the contract and aims to be attained by the contracting entity with the execution of contract;
4. general requirements of the contract;
5. elements for the preparation of a pro-forma invoice with instructions for its completion;

Article 89

(Time limit for the receipt of tender)

The contracting entity shall set the time limit for the receipt of the tender with regard to the reasons for which it may use the negotiated procedure without prior publication of a contract notice and regarding the subject of the contract.

Article 90

(Invitation to negotiate)

(1) After the examination of tenders, the contracting entity shall invite the tenderers meeting the required conditions to negotiate pursuant to Article 87 of this Act.

(2) The contracting entity shall negotiate with tenderers on all conditions for the award of contract defined in the tenders submitted by tenderers in order to adapt these to the requirements provided in the publication or in the contract documents, with the aim of selecting the most advantageous tender by applying predetermined criteria.

(3) In negotiations, the contracting entity shall grant the same treatment to all tenderers. In particular, it must not provide information to the participants in negotiations in a discriminatory manner which may favour certain tenderers.

(4) The contracting entity may provide that the negotiated procedure shall be conducted in several successive phases in order to reduce the number of negotiated solutions by applying selection criteria. The contracting entity shall provide the use and manner of this option in the contract notice or in the contract documents.

(5) When the negotiations are completed, the contracting entity shall request the submission of a final tender from the tenderers in accordance with the results of the negotiations. Where the contracting entity conducts a negotiated procedure in several successive phases, the above shall separately apply to each phase.

Article 91

(Contract award notice)

(1) Where contracting entities award a research-and-development service contract by way of a negotiated procedure without prior publication of a contract notice, they may, in accordance with the List of information to be included in contract award notices, limit the information to be provided about the type and quantity of the services supplied to description "research and development services".

(2) Contracting entities shall ensure that any information published under this Article is at least as detailed as that contained in the contract notice.

1.3. Special provisions for the tender collection procedure with prior publication of a contract notice

Article 92

(Time limits for receipt of tenders)

(1) The time limit for the receipt of tenders must be such as to allow an economic operator to prepare a complete tender.

(2) Where the contracting entity on its own initiative or on the initiative of an economic operator considers it necessary, it shall extend the time limit for the receipt of tenders.

Article 93

(Contract documents)

(1) In the tender collection procedure, the contracting entity shall prepare the contract documents, especially the conditions governing the contract, where and to the extent appropriate, by taking account of the conduct of the procedure.

(2) The contracting entity shall not be obliged to prepare separate contract documents where all necessary information and bases for submitting a tender are provided for in the publication of the contract notice under the tender collection procedure with prior publication of a contract notice.

Article 94

(Documentation of contract award procedure)

(1) Contract award documentation which must be kept by the contracting entity shall include:

- publication of a contract notice or invitation to submit a tender,
- contract documents, where appropriate,
- submitted tenders.

(2) With regard to the method of execution of a contract, the documentation shall also include other documents.

1.4. Special provisions for the tender collection procedure

Article 95

(Tender collection procedure)

The contracting entity shall provide a written and documented explanation of the selection of the most advantageous tender and tenderer by respecting the basic public procurement principles.

Part Three

RULES GOVERNING DESIGN CONTESTS

Article 96

(Scope of application)

(1) In conformity with the provisions of this part of the Act, contracting entities shall organise design contests for contracts whose value, net of VAT, is equal to or greater than EUR 422 000. For the purposes of this paragraph, the value shall refer to the estimated value of the contract, net of VAT, including any possible prizes and/or payments to participants.

(2) The provision of this Article shall apply to all design contests whose total amount of prizes and payments to participants is equal to or greater than EUR 422 000. For the purposes of this paragraph, the value shall refer to the total amount of prizes and payments, including the estimated value of the contracts, net of VAT, which may be awarded later in accordance with negotiated procedures without prior publication, provided the contracting entity does not exclude such an award in the contract notice.

Article 97

(Exclusion from the scope of application)

Provisions of this part of this Act shall not apply to:

1. design contests organised in the same cases as those referred to in Article 25 of this Act for public service contracts, and
2. design contests organised for carrying out the activities for which the Commission adopted the Decision referred to in the third paragraph of Article 31 of this Act.

Article 98

(General provisions)

(1) The contracting entity shall communicate the rules governing the organisation of design contests to all parties interested in participating therein.

(2) The right to participate in a design contest shall not be limited:

- a) to the territory or a part of the territory of a Member State;
- b) on the grounds that the participants must be natural or legal persons pursuant to the legislation of the Member State organising the design contest.

Article 99

(Publications)

(1) Contracting entities which wish to organise a design contest, shall call for competition by means of a design contest notice. A contracting entity which has carried out a design contest shall make the results known by means of a notice. The contract notice shall contain the information referred to in the List of services B, whereas the notice of the results of a design contest shall contain the information referred to in the List of information to be included in the notification of the results of the design contest which is annexed to a decree issued by the Government (hereinafter: List of information to be included in the notification of the results of the design contest).

(2) The contracting entity shall, within two months of the closure of a design contest, forward the results of the design contest to the Commission under the conditions laid down by the Commission.

(3) The provisions of this Act shall apply to all notices relating to design contests.

Article 100

(Means of communication)

(1) The provisions of this Act shall apply to all communications relating to design contests.

(2) The contracting entity must ensure that communication, exchange and storage of information shall be such as to ensure that the integrity of data and the confidentiality of all information communicated by participants in a design contest are preserved. The jury may not ascertain the content of plans and projects before the expiry of the time limit for their submission.

(3) For the devices for the electronic receipt of plans and projects shall be used all information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, and they shall be available to the economic operators concerned. In addition, devices for the electronic receipt of plans and projects shall comply with the requirements of the Requirements concerning the equipment for the electronic receipt of offers, applications and plans and projects in design contests.

Article 101

(Composition of jury)

The jury shall be composed exclusively of natural persons who are independent of the participants in the design contest. The jury shall be composed of a chairperson, alternate chairperson and at least two members. Where the contracting entity requests particular expert skills and experience from the participants in a design contest, at least one-third of the members of the jury must have these or equal skills and experience.

Article 102

(Selection of competitors)

(1) When organising design contests, contracting entities shall apply procedures referred to in this Act.

Where a design contest is restricted to a limited number of participants, the contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Article 103

(Decisions of the jury)

(1) The jury shall be autonomous in adopting its decisions or opinions.

(2) The jury shall examine plans and projects, submitted by the candidates, anonymously and solely on the basis of the criteria indicated in the design contest notice.

(3) In a report signed by its members, the jury shall rank the projects according to the evaluation of merits of each project, together with its remarks, and indicate any points which may need clarification.

(4) The jury must observe the anonymity of participants in the design contest until it has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes in order to clarify any aspects of the projects.

(6) The jury must draw up exhaustive minutes of the dialogue between jury members and candidates.

Part Four

STATISTICS

Article 104

(Statistics)

(1) Contracting entities must report to the ministry responsible for finance on the public contracts awarded in the previous year by the end of February of the current year. On the basis of the reports submitted, the ministry responsible for finance shall prepare a statistical report on awarded public contracts by 30 September of the current year at the latest, and submit it for approval to the Government.

(2) Every year, the Government shall communicate to the Commission a statistical report, broken down by Member State and by category of activity, the total value of the contracts awarded below the thresholds which would be covered by this Act were it not for those thresholds.

(3) The Government shall, in accordance with arrangements laid down by the Commissions, communicate to the Commission no later than by 31 October for the previous year, and by 31 October of the current year, a statistical report on contracts awarded, drafted in connection with the following categories of activities:

- production, transport or distribution of electricity,
- production, transport or distribution of drinking water,
- urban railway, tramway, trolleybus or bus services,
- maritime or inland port or other terminal facilities,
- airport infrastructure.

(4) The statistical report referred to in the preceding paragraph shall contain any other statistical information required under the Agreement on Government Procurement.

(5) The information referred to in the third paragraph of this Article shall not include information concerning contracts for the R & D services listed in category 8 in the List of Services A, for telecommunications services listed in category 5 in the List of Services A whose CPV positions are equivalent to the CPC reference numbers 7524, 7525 and 7526, or for the services listed in the List of Services B.

(6) The reports referred to in the first and second paragraph of this Article shall be drafted in such a way as to ensure that:

- a) in the interest of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;
- b) the confidential nature of the information provided is respected.

(7) The minister responsible for finance (hereinafter: the minister) shall issue the Rules on the types and method of gathering information about awarded public procurement contracts in the previous year.

Part Five

BODY FOR MISDEMEANOURS

Article 105

(Body for misdemeanours)

(1) The body competent for the detection of misdemeanours of contracting entities shall be the National Audit Commission for Auditing of Public Procurement Award Procedures (hereinafter: the National Audit Commission).

(2) Violation procedures shall be led and decided on by an official of the National Audit Commission who meets the conditions stipulated by the General Offences Act and regulations issued on the basis thereof. The official shall be appointed by the chairperson of the National Audit Commission pursuant to the General Offences Act.

Part Six

PENAL PROVISIONS

Article 106

(Penal provisions)

(1) A fine of EUR 5 000 to 350 000 shall be imposed on a contracting entity if:

1. it awards a contract without implementing an appropriate procedure, other than in cases permitted by law (Article 32 of the Act);
2. it fails to observe the time limits for publication and submission of tenders determined in this Act (Articles 51 to 56 of this Act);
3. it establishes selection criteria contrary to this Act (Article 49 of this Act);
4. it chooses the method of determining value in order to avoid the procedure of public contract award for reasons of lower price (Article 18 of this Act);
5. where the criterion for award is that of the most economically advantageous tender, it alters the subject matter of the public contract during the performance of the contract in such a way that the selected tender ceases to be the most economically advantageous tender due to this alteration (Article 49 of this Act);
6. the provisions of the public award contract diverge in their essential elements from the provisions indicated in the contract documents;
7. it awards a public contract to a tenderer from the list of tenderers with negative references (the second paragraph of Article 81 of this Act).

(2) A fine of EUR 2 000 to 12 000 shall be imposed on the person responsible for the contracting entity who has committed an act referred to in the first paragraph of this Article.

Part Seven

TRANSITIONAL AND FINAL PROVISIONS

Article 107

(Conclusion of procedures initiated under the previous Act)

(1) Public contract award procedures whose contract notices were published prior to the entry into force of this Act shall be carried out in accordance with the regulations applicable to date.

(2) The second phase of a restricted procedure or public contract award following a negotiated procedure shall be implemented in compliance with this Act when the contracting entity concerned has not yet supplied the contract documents to the candidates.

Article 108

(Establishment of procurement portal)

(1) Besides the publication of notices in the Official Journal of the European Union, depending on the thresholds, notices concerning design contests shall be published in the *Uradni list Republike Slovenije* pending the establishment of the procurement portal.

(2) The ministry responsible for finance shall ensure the establishment of the procurement portal within six months of the entry into force of this Act.

Article 109

(Publications pending the establishment of the portal)

(1) Pending the establishment of the procurement portal, contracting entities shall observe the following time limits for the receipt of requests to participate and the receipt of tenders:

– in a case referred to in Article 52 of this Act, the minimum time limit for the receipt of tenders shall be 52 days;

– in a case referred to in Article 53 of this Act, the minimum time limit for the receipt of tenders shall be 36 days;

– in a case referred to in item a) in Article 55 of this Act, the minimum time limit for the receipt of requests to participate in response to a contract notice or on the basis of an invitation shall be 37 days from the date on which the notice or invitation was sent;

– in a case referred to in item c) of Article 55 of this Act, the minimum time limit for the receipt of tenders shall be more than 24 days.

(2) Pending the establishment of the procurement portal, notices not transmitted by electronic means in accordance with the format and procedure for transmission indicated in the second paragraph of the Information Concerning Publication shall be published within 12 days following transmission or, in the event of shortened time limits for reasons of urgency, within 5 days following transmission.

(3) The content of notices not transmitted by electronic means in accordance with the format and procedure for transmission indicated in the second paragraph of the Information Concerning Publication shall be limited to approximately 650 words.

Article 110

(Regulations based on this Act)

(1) The minister responsible for finance shall issue the Rules referred to in Article 104 of this Act within 3 months of the entry into force of this Act.

(2) The Government shall issue the regulations referred to in the fourth paragraph of Article 3 and the sixth paragraph of Article 4 of this Act within 3 months of the entry into force of this Act.

(3) The Government shall issue the Regulation referred to in the fourth item of Article 2, third paragraph of Article 3, fourth indent of item c) of the second paragraph of Article 8, second paragraph of Article 25, fifth paragraph 1 of Article 38, first paragraph of Article 41, second paragraph of Article 58, item c) of the third paragraph of Article 58, first paragraph of Article 59, item a) of Article 67 and first paragraph of Article 99 within 15 days of the entry into force of this Act.

Article 111

(Entry into force)

This Act shall enter into force on the fifteenth day after its publication in *Uradni list Republike Slovenije* and shall begin to apply 15 days after its entering into force.

No. 411-07/06-9/1

Done at Ljubljana, 23 November 2006

EPA 1028-IV

President
of the National Assembly
of the Republic of Slovenia
France Cukjati, MD (s)