

Public Procurement Act

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Part One

COMMON RULES

Chapter One

GENERAL DISPOSITIONS

Section I

Purpose and Principles

Article 1. This Act establishes the principles, terms and procedure for the award of public procurements for the purpose of ensuring efficiency in the spending of on-budget and off-budget resources, as well as of the resources associated with the carrying out of relevant public activities specified in the Act.

Article 2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Public procurements shall be awarded according to the conditions and the order of this Act in accordance with the following principles:

1. public openness and transparency;
2. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* free and fair competition;
3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* equality and non-discrimination.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where a contracting authority grants special or exclusive rights to carry out a public service activity to a person other than a contracting authority, the act by which these rights are granted shall provide that, in respect of the supply contracts which it awards to third parties as part of its activities, the person concerned must comply with the principle of non-discrimination on the basis of nationality.

Section II

Public Procurement Subject Matter and Parties

Article 3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
The following shall be subject matter of public procurement:

1. *(Last Amendment - SG No. 33/2012)* supply of goods, performed by means of purchase, rental, lease with or without option to buy, or hire purchase, as well as all preliminary operations as shall be necessary for the actual use of the products, such as installation, testing of machinery and plant, etc.;

2. provision of services;

3. *(Last Amendment - SG No. 40/15.05.2014, in force as of 01.07.2014)* 3. construction, including:

a) execution or design and execution of construction works;

b) execution or design and execution of one or several types of construction and assembly works under Annex 1;

c) execution, by whatever means, of one or several execution of construction works activities in compliance with the requirements of the contracting authority.

(2) *(New - SG No. 33/2012)* The following shall be subject matter of public procurement as well:

1. the supply of military equipment, including any parts, components and/or subassemblies thereof; including equipment included in the list of products related to defense, adopted under Art. 2 (1) of the Export Control on Products Related to Defense and on Dual – Use Items and Technologies Act;

2. the supply of sensitive equipment, including any parts, components and/or subassemblies thereof;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* works, supplies and/or services directly related to the equipment referred to in points 1 and 2 for any and all elements of its life cycle;

4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* works and/or services for specifically military purposes or sensitive works and sensitive services.

Article 4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* The following shall not be subject matter of public procurement:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the acquisition or rental of land, existing buildings or other corporeal immovables, as well as the creation of limited rights in rem, with the exception of the financial services in connection with such transactions;

2. the acquisition, development, production and co-production of programme material by radio and television broadcasters and the provision of broadcasting time;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* financial services with reference to the issuance and transfer of securities or other financial instruments; the services provided by the Bulgarian National Bank; the services provided with reference to the assuming and management of the government debt; the services provided with reference to the management of the single account system and the fiscal reserve account;

4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* the scientific research, including archeological digsites researches, and experimental developments, where the contracting authority wholly remunerates the service but the benefits from the said research and development do not accrue exclusively to the contracting authority in the conduct of its own affairs.

5. *(Last Amendment - SG No. 52/2010)* arbitration and conciliation services;

6. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the employment contracts;

7. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* lending operations for development from and through the Bulgarian Bank, in the cases in which this is provided under international programmes or contracts, or by law.

8. *(Repeal, SG No. 40/13.05.2014, in force as of 13.05.2014)*

Article 5. *(Last Amendment - SG No. 35/15.05.2015, in force as of 15.05.2015)* (1) Depending on the award procedure thereof, public procurements of services shall be grouped into:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* public procurements of services included in Annex 2 hereto, which are awarded according to:

(a) an open or restricted procedure by contracting authorities covered under Items 1 to 4 of Article 7 herein;

(b) an open procedure, a restricted procedure or a negotiated procedure with publication of a contract notice by contracting authorities covered under Items 5 and 6 of Article 7 herein;

2. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* public procurements of services included in Annex 3 hereto, which are awarded according to an open procedure, a restricted procedure or a negotiated procedure with publication of a contract notice;

3. *(New - SG No. 33/2012)* public procurements of services under Art. 3 (2) included in Annex No 5, which are awarded according to a restricted procedure or a negotiated procedure with publication of a contract notice;

4. *(New - SG No. 33/2012)* public procurements of services under Art. 3 (2) included in Annex No 6, which are awarded according to a restricted procedure, negotiated procedure with publication of a contract notice or a negotiated procedure without publication of a contract notice.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* A public procurement, which includes simultaneously any services included in Annexes 2 and 3 hereto, shall be awarded according to the procedure provided for the services whereof the value is higher.

(3) *(New - SG No. 33/2012)* Public procurement including both services under Annexes No 5 and 6 is awarded under the procedure envisaged for the services of higher value.

(4) *(Last Amendment - SG No. 35/15.05.2015, in force as of 15.05.2015)* The public procurements under Par. 1, item 1 and 2 are assigned for a period of up to 5 years. As an exception for services pertaining to granting of bank loans for funding of investment projects or projects and programmes of the European Union, as well as for ESCO contracts services under the Energy Efficiency Act the term may be determined to up to 10 years provided that the contracting authority substantiates this in the resolution for opening of a procedure or in the public procurement announcement.

Article 6. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The following shall be parties to public procurement award procedures: the contracting authorities, the candidates and tenderers, and the suppliers, contractors and service providers.

Article 7. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* The following shall be contracting authorities:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 13.05.2014)* the bodies of State power, the President of the Republic of Bulgaria, the Ombudsman of the Republic of Bulgaria, the Bulgarian National Bank, Supreme Prosecutor and the administrative heads of **the Prosecutor's offices in the country, as well as other institutions of State established by a statutory instrument;**

2. the diplomatic missions and the consular posts of the Republic of Bulgaria abroad, as well as the permanent missions of the Republic of Bulgaria to the international organizations;

3. the bodies governed by public law;

4. the combinations formed by parties referred to in Item 1 or 3;

5. the public undertakings and any combinations thereof, where carrying out one or several of the activities covered under Articles 7a to 7e herein;

6. the merchants and other persons which are not public undertakings, where carrying out one or several of the activities covered under Articles 7a to 7e herein on the basis of special or exclusive rights.

Article 7a. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) The following shall be activities relating to natural gas, heat or electricity:

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: drinking water, electricity, natural gas or heat, or

2. the supply of natural gas, heat or electricity to such networks.

(2) The supply of natural gas or heat to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of natural gas or heat is the consequence of carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b to 7e herein, and

2. supply to the public network is aimed only at the economic exploitation of the production of natural gas or heat, subject to the condition that the amount of the supplies does not exceed 20 per cent of the producer's average annual turnover for the preceding three years, including the current year.

(3) The supply of electricity to networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of electricity is intended for carrying out an activity other than the activities referred to in Paragraph (1) or in Articles 7b to 7e herein, and

2. supply to the public network depends only on the producer's own consumption and has not exceeded 30 per cent of the producer's average annual production for the preceding three years, including the current year.

Article 7b. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) The following shall be activities relating to drinking water:

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 drinking water; or

2. the supply of drinking water to such networks.

(2) The persons which pursue an activity referred to in Paragraph (1) shall also apply the provisions of this Act to any activities relating to:

1. irrigation, land drainage or other hydraulic engineering projects, provided that the volume of water to be used for the supply of drinking water represents more than 20 per cent of the total volume of water made available by such activities, or

2. the disposal or treatment of sewage

(3) The supply of drinking water to fixed networks which provide a service to the public shall not be considered a relevant activity within the meaning given by Paragraph (1) where:

1. the production of drinking water is necessary for carrying out an activity other than the activities referred to in Paragraph (1) or in Article 7a, Articles 7c to 7e herein, and

2. supply to the public network depends only on the producer's own consumption and has not exceeded 30 per cent of the producer's average annual production for the preceding three years, including the current year.

Article 7c. *(Last Amendment, SG No. 52/2010)* (1) *(Last Amendment, SG No. 52/2010)* Activities relating to transport services provision or shall be the operation of networks providing a service to the public in the field of transport by railway, tramway, trolley bus or bus, as well as of automated transport systems or cableway.

(2) Providing bus transport services to the public, where other parties are free to provide such services under the same conditions as the contracting authority, shall not be considered a relevant activity within the meaning given by Paragraph (1) herein.

Article 7d. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) Activities connected with the provision of a universal postal service shall be the services provided for in Article 34 of the Postal Services Act.

(2) The persons carrying out the activities referred to in Paragraph (1) shall apply the provisions of the Act for all the activities thereof.

Article 7e. *(Last Amendment - SG No. 17/06.03.2015 in force as of 06.03.2015)* (1) Activities related to the exploitation of a certain geographical area are:

1. oil or natural gas extraction;

2. prospecting, exploitation or extraction of coal or other solid fuels;
3. exploitation of airports, ports or other terminal facilities which are used upon carriage by air, sea or inland waterways.

Article 8. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(New - SG No. 37/2006, in force as of 01.07.2006)* Contracting authorities shall be obligated to conduct a public procurement award procedure where the grounds provided for in the law exist.

(2) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* Contracting authorities or officials authorized thereby shall organize and conduct the public procurement award procedures and shall conclude public procurement contracts. Authorization may not be used for dividing public procurements for the purpose of avoiding the application of the legal provisions.

(3) *(Last Amendment, SG No. 52/2010)* Where the contracting authority is a collective authority or legal person, the powers referred to in Paragraph (2) shall be implemented by the person who represents the said authority.

(4) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(5) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(6) *(Last Amendment – SG No. 37/2006, in force as of 01.07.2006)* Two or more than two contracting authorities may adopt a decision on conduct of a joint procedure for a public procurement award.

(7) *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* The contracting authorities are obligated to ensure at least one expert, having professional competence related to the subject of the procurement to participate in the preparation of the public procurement award procedure, in the elaboration of the technical specifications, the methodology for offer assessment, in the documentation for participation in the procedure upon criterion economically most favourable offer, as well as in the competition programmes during the project competitions. In case the contracting authority does not have employees who meet the professional competence requirements, it provides external experts from the list under art. 19, para. 2, pt. 8 or others, through commissioning in accordance with this Act. The documents under sentence one are signed by the individuals who have prepared them.

(8) *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* External experts under para. 7 may not:

1. be included in the launching of public procurement award committee, respectively in the jury of a project competition;

2. take part in the public procurement award procedure independently or jointly with other individuals as candidates, participants, members of associations- participants; subcontractors or through linked individuals, unless the documents, in whose preparation they have participated, are changed in such a manner that they do not provide to the

participant information which gives him or her priority over the other participants in the procedure.

Article 8a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) Contracting authorities may receive supplies or services from or through a central **public procurement body**.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **The central public procurement body shall have rights and obligations of a contracting authority for the procedures and** awarding and executing contracts or conclude framework agreements for other contracting authorities.

(3) Where contracting authorities receive supplies or services under Par. (1) it shall be considered that they have observed the provisions of this Act as far as the **central public procurement body has observed such provisions. The central public procurement body and the contracting authorities shall be liable for the legality of the procedure conducted by them.**

(4) **Acting on a motion by the Minister of Economy, the Council of Ministers may establish a public procurement body for the needs of the executive authorities.**

(5) (New, SG No. 40/13.05.2014, in force as of 01.07.2014) The rules for the organisation of the activities and the exercising of the functions of the Central Procurement Authority are settled with the act for its establishment.

Article 8b. *(New - SG No. 93/2011, in force as of 26.02.2012)* **The contracting authorities shall be obliged to adopt by-laws for public procurement assignment, which must contain the order of planning and organization of the procedures and control of the execution of the public procurement contracts.**

Article 9. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Any Bulgarian or foreign natural or legal person, as well as any combination of such persons, may be a candidate or tenderer in a public procurement procedure. The contracting authorities are not entitled the right to require from the associations to have a specific legal form in order to be able to submit a participation application or an offer.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* A candidate or tenderer may not be removed from a public procurement procedure on the grounds of status or

legal form, where such candidate or the members in the union have the right to provide the respective services, supplies or works in the Member State of establishment.

Article 10. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* A public procurement supplier, contractor or service provider shall be a tenderer in a public procurement award procedure wherewith the contracting authority has concluded a public procurement contract.

Article 11. *(Last Amendment, SG No. 52/2010) (1) (Former text of Art. 11, Last Amendment, SG No. 52/2010)* Contracting authorities' resolutions adopted in connection with the public procurement procedures are individual administrative acts which are issued in compliance with the provisions of this Act.

(2) (New , SG No.52/2010) The resolutions under Par. 1 contain:

1. the contracting authority's name;
2. number, date and legal grounds for issuing the act;
3. indication of the type of procedure and subject of the public procurement;
4. administrative part the content of which varies depending on the stage of the procedure;
5. grounds – if required;
6. before which body and within what time limit it can be appealed;
7. the full name and signature of the person issuing the act and designation of the person's capacity.

(3) (New , SG No.52/2010) Upon issuing the resolutions under Par. 1 the contracting authorities are not entitled to allow preliminary execution.

Article 12. *(Last Amendment - SG No. 17/06.03.2015 in force as of 06.03.2015) (1) (Last Amendment - SG No. 33/2012)* In the cases under Art. 3 (1), this Act does not apply to:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* any contracts or the award of a construction concession within the meaning given by the Concessions Act;

2. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* any contracts which the contracting authorities covered under Item 5 or 6 of Article 7 herein conclude in connection with an activity other than the activities covered under Articles 7a to 7c and in Article 7e, or in connection with any such activities which are pursued in a third country and which does not involve the use of a network or geographical area within a Member State of the European Union;;

3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* any supply contracts concluded by a contracting authority covered under Item 5 or 6 of Article 7 herein for purposes of resale or hire of the subject of the contract to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to carry out the said activity under the same conditions [as the contracting authority];

4. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* any contracts for the supply of energy or of fuels for the production of energy, concluded by contracting authorities covered under Item 5 or 6 of Article 7 herein, carrying out an activity under Article 7a herein;

5. *(New - SG No. 37/2006, in force as of 01.07.2006)* any contracts for the supply of water, concluded by contracting authorities covered under Item 5 or 6 of Article 7 herein, carrying out activities under Article 7b herein;

6. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* contracts for services, deliveries or construction, concluded by a contracting authority under art.7,pt.5 or 6 with a linked enterprise, provided at least 80 per cent of its average annual turnover in the last three years comes from the providing of such services, deliveries or construction to linked enterprises;

7. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* any contracts awarded by a joint venture, formed by a number of contracting authorities for the purpose of carrying out an activity covered under Articles 7a to 7e herein, to any of the partners in the said joint venture;

8. *(New - SG No. 37/2006, in force as of 01.07.2006)* any contracts awarded by a partner in a joint venture, formed by a number of contracting authorities for the purpose of carrying out an activity covered under Articles 7a to 7e herein, to the said joint venture, provided that the said joint venture has been formed in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the said joint venture stipulates that the contracting authorities which form it will be part thereof for the same period;

9. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* any service contracts awarded by a contracting authority to another contracting authority referred to in Items 1 and 3 of Article 7 herein or to an association of such contracting authorities which enjoy exclusive rights to provide such services by virtue of a law, a statutory instrument of secondary legislation or an administrative act; the act conferring the exclusive rights shall be issued in compliance with the provisions of the Treaty on the Functioning of the European Union;

10. *(Repeal - SG No. 93/2011, in force as of 26.02.2012);*

11. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* contracts for medical products under Art. 262, (6), pt. 1 of Medicinal Products in Human Medicine Act, medical articles and diet foods for special medical designation, concluded by the National Health Insurance Fund under Art. 45, (15) of the Medical Insurance Act;

12. *(New - SG No. 19/2011, in force as of 09.04.2011)* contracts for activities related to creation of forests, cutting of forests and extraction of wood materials, and for use of forest products different from wood within the meaning of the Forests Act;

13. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* contracts, concluded by contracting authorities under art. 7, pt.1, 3 and 4 with a company or a state enterprise under art. 62, para., 3 of the Commerce Act with reference to which the following requirements are simultaneously met:

a) its capital is entirely state and/ or municipal property or property of a holding company, whose capital is entirely state and/ or municipal property;

b) it is a subject to supervision similar to the one exercised by the contracting authority over its own structure units;

c) at least 80 per cent of its turnover is formed from activities related to ensuring the implementation of functions of the contracting authority;

14. *(New - SG No. 33/2012)* contracts awarded in execution of international agreement signed by the Republic of Bulgaria and a third country in compliance with the Treaty on the Functioning of the European Union and envisaging supplies, services or works intended for joint realization or exploitation by the contracting parties;

15. *(New - SG No. 33/2012)* contracts awarded under specific procedural rules of international organizations.

16. *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* contracts, awarded upon implementation of international contract related to deployment of troops and related to enterprises of a Member State of the European Union or a third country;

17. *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* contracts with a subject of procedural representation and the related legal advice to lawsuits before a judicial, arbitrary or conciliatory authority in the state, in another Member State of the European Union, or in a third country.

18. *(New, SG No. 8/2015)* Services, supply or construction contracts, signed by contracting authorities under Art. 7, Items 1 and 5, related to construction of engineering facilities creating obstacles with the objective to protect the state border.

19. *(New - SG No. 17/06.03.2015 in force as of 06.03.2015)* Insurance contracts covering nuclear damage liability in pursuance of the Vienna Convention on Civil Liability for Nuclear Damage concluded in Vienna on 21 May 1963 (ratified by law- promulgated SG, No 64/1994, amended SG, No 63/ 2002) (promulgated SG, No 76/ 1994, amended SG, No 91/ 1994) and the Safe Use of Nuclear Energy Act.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the cases under Item 6 of Paragraph (1), where the turnover of the affiliated undertaking is not available for the

preceding three years because of the date on which the said undertaking was created or commenced activities, it will be sufficient for the business projections of the said undertaking to show that at least 80 per cent of the average annual turnover thereof is to derive from the provision of supplies, services or works to affiliated undertakings.

(3) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where more than one undertaking affiliated with the contracting authority provides the same or similar services, supplies or works, the percentage referred to in Item 6 of Paragraph (1) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(4) *(New - SG No. 93/2011, in force as of 26.02.2012)* In the cases under Item 13 of Paragraph (1), where the turnover of the company is not available because of the date on which the company was created or commenced activities, it will be sufficient for the projects of the company to envisage that its annual turnover is to be generated by the services provided to the contracting authorities.

(5) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* The methodology for specifying the cost of the contracts under para. 1, pt. 13 is specified with the regulation for the implementation of the Act.

(6) *(Former Par. 5, SG No. 40/13.05.2014, in force as of 01.07.2014)* In cases where one of the conditions under Item 13 of Paragraph (1) stops to exist the contracting authority has the obligation to terminate the contract within one month term.

(7) *(Former Par. 6, SG No. 40/13.05.2014, in force as of 01.07.2014)* Contracting authorities shall notify the Public Procurement Agency when requested thereby of:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the cases where to the exceptions covered under Item 2 of Paragraph (1) are applied;

2. the subject of the contracts referred to in Item 3 of Paragraph (1);

3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the name of the affiliated undertaking, the subject matter and the value of the contract, as well as the proofs of existence of circumstances referred to in Items 6, 7 and 8 of Paragraph (1) in the cases where the said exceptions apply.

(8) *(Former Par. 7, SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases under pt. 14 of Par. (1), the contracting authorities notify the Public Procurement Agency of the contracts concluded within seven days.

Article 13. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) In the cases under Art. 3 (1), this Act does not apply to contracts:

1. awarded under specific procedural rules:

a) pursuant to an international agreement or arrangement concluded by the Republic of Bulgaria alone or jointly with one or more Member States of the European Union, and one or more third countries;

b) of an international organization purchasing for its purposes, or to contracts which must be awarded in accordance with those rules.

2. the award of which is related to supply of information the disclosure of which is contrary to the essential interests of state security pursuant to Art. 346 of the Treaty on the Functioning of the European Union;

3. awarded for the purposes of intelligence activities;

4. awarded in the framework of a cooperative program based on research and development, conducted jointly by at least two Member States of the European Union for the development of a new product and, where applicable, the later phases of all or part of the life-cycle of this product;

5. awarded in a third country carried out when forces are deployed outside the territory of the European Union where operational needs require them to be concluded with economic operators located in the area of operations;

6. awarded by the Council of Ministers to another government and related to:

a) the supply of military equipment or sensitive equipment,

b) works and services directly linked to equipment under letter (a), or

c) works and services specifically for military purposes, or sensitive works and sensitive services;

7. for financial services, with the exception of insurance services;

8. awarded pursuant to international agreement or arrangement related to deployment of forces or provision of military forces or police contingents for international missions and training exercises.

9. (New, SG No. 40/13.05.2014, in force as of 01.07.2014) assigned by a contracting authority under art. 7, pt. 1, 3 or 4 to a company or a state enterprise under art. 62, para., 3 of the Commerce Act with reference to which the following requirements are simultaneously met:

a) its capital is entirely state and/ or municipal property or property of a holding company, whose capital is entirely state and/ or municipal property;

b) it is a subject to supervision similar to the one exercised by the contracting authority over its own structure units;

c) at least 80 per cent of its turnover is formed from activities related to ensuring the implementation of functions of the contracting authority;

(2) Upon the conclusion of a cooperative program under Par. (1), pt. 4 the Bulgarian participant shall indicate to the European Commission the share of research and development expenditure relative to the overall cost of the program, the cost-sharing agreement, as well as the intended share of purchases per Member State of the European Union, if any.

(3) Acting on a motion by the Minister of Defense, Minister of Economy, Minister of Interior and Minister of Finance, the Council of Ministers adopts regulations on:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* criteria and procedure for defying identification of essential national interests in security and defense within the meaning of Art. 346 of the Treaty on the Functioning of the European Union, and

2. terms and procedure for contracting execution of investment projects for acquisition and and/or modernization of armaments and equipment for the military forces in cases under Par. (1), pt. 6;

3. terms and procedure for conclusion of compensatory (offset) agreements – in the cases under Par. (1), pt. 2.

(4) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* The methodology for specifying the cost of the contracts under para. 1, pt. 9 is specified with the regulation for the implementation of the Act.

Article 13a. *(New - SG No. 33/2012)* Contracting authorities shall not have the right to apply the grounds under Arts. 4, 12 and 13 with the purpose to circumvent the law.

Article 14. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 33/2012)* The procedures under this Act, shall be applied mandatorily upon award of public procurements under Art. 3 (1) which have the following values, net of value added tax:

1. *(Last Amendment - SG No. 33/2012)* in respect of construction works: higher than BGN 264 000 and, where the place of performance of the procurement is outside Bulgaria, higher than BGN 1,650,000;

2. *(Last Amendment - SG No. 33/2012)* in respect of supplies, services and design contests - higher than BGN 66 000, and, where the place of performance of the procurement is outside Bulgaria, higher than BGN 132 000.

(2) *(New - SG No. 33/2012)* Where public procurements fall under Art. 3 (2) the contracting authorities shall apply the procedures envisaged by this Act in cases of the following values without VAT included:

1. for works – equal or higher than BGN 4 000 000;

2. for supplies, services or design contests - equal or higher than BGN 400 000.

(3) *(Former text of par. (2), Last Amendment - SG No. 33/2012)* The contracting authorities may apply the simplified rules under this Act where public procurements under Art. 3 (1) have the following values, net of value added tax:

1. *(Last Amendment - SG No. 33/2012)* in respect of construction works: higher than BGN 264 000 and up to BGN 2 640 000 and, where the place of performance of the procurement is outside Bulgaria, higher than BGN 1 650 000 and up to BGN 6 600 000;

2. *(Last Amendment - SG No. 33/2012)* in respect of supplies, services and design contests - higher than BGN 66 000, and, where the place of performance of the procurement is outside Bulgaria, higher than BGN 132 000 up to the respective threshold envisaged in Art. 45c (2).

(4) *(Former text of par. (3), Last Amendment - SG No. 33/2012)* The contracting authorities may not apply the procedures under Art. 3 (1) but they have the obligation to **apply the terms and conditions of Chapter Eight "A" where public procurements have the following values, net of value added tax:**

1. *(Last Amendment - SG No. 33/2012)* in respect of construction works: from BGN 60 000 to BGN 264 000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 670 000 to BGN 1 650 000;

2. *(Last Amendment - SG No. 33/2012)* in respect of supplies and services - from BGN 20 000 to BGN 66 000 and, where the place of performance of the procurement is outside Bulgaria, from BGN 66 000 to BGN 132 000.

(5) *(Former text of par. (4), Last Amendment - SG No. 33/2012)* The contracting authorities have no obligation to apply the procedures under this Act or the terms and conditions of Chapter Eight A for public procurements under Art. 3 (1) having the following values, net of value added tax:

1. *(Last Amendment - SG No. 33/2012)* in respect of construction works: less than BGN 60 000 and, where the place of performance of the procurement is outside Bulgaria, less than BGN 670 000;

2. *(Last Amendment - SG No. 33/2012)* in respect of supplies and services - less than BGN 20 000 and, where the place of performance of the procurement is outside Bulgaria, less than BGN 66 000;

3. *(Last Amendment - SG No. 33/2012)* in respect of design contests - less than BGN 66 000.

(6) *(Former text of par. (5), Last Amendment - SG No. 33/2012)* In the cases under Items 2 and 3 of Paragraph (5) the contracting authorities need not sign a written contract and may prove their expenditures with documents verifying payments made.

(7) *(New - SG No. 33/2012)* The contracting authorities do not apply the procedures under this Act or the terms and conditions of Chapter Eight A for public procurements under Art. 3 (2) having the values below those indicated in Par. (2), but they have the obligation to sign a written contract.

Article 14a. *(Last Amendment - SG No. 33/2012)* **(1) Where the public procurement is for services and includes constructions works related to the principal object of the public procurement, the public procurement shall be awarded as one for services.**

(2) In case that the public procurement includes both supply of goods and services the procedure related to one with higher value shall apply.

(3) *(Last Amendment - SG No. 33/2012)* Where the contracting authorities under Art. 7, Items 1 - 4 fund with more than 50% construction contracts, the persons receiving financing and awarding contracts have the obligation to observe the provisions of this Act as contracting authorities, provided that the total value of the contract (VAT excluded) equal or higher than BGN 2 640 000.

(4) *(Last Amendment - SG No. 33/2012)* Where the contracting authorities under Art. 7 Items 1 - 4 fund with more than 50% a service contracts related to a construction contracts, the persons receiving financing and awarding the service contracts have the obligation to observe the provisions of this Act as contracting

authorities, provided that the total value of the contract (VAT excluded) is equal or higher than BGN 391 160.

(5) In the cases under Pars. (3) and (4) the contracting authorities have the duty to control the persons receiving financing to comply with the law.

Article 15. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The expected value of a public procurement shall be fixed as of the date of the decision to initiate a public procurement award procedure.

(2) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* For the purpose of determining the order of public procurement assignment, its value shall be calculated as follows:

1. *(Last Amendment – SG No. 37/2006, in force as of 01.07.2006)* with regard to a supply contract for the lease, rental with or without option to buy, as well as for hire purchase, where the term of the said contract:

(a) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* is one year or less: the total contract value for the duration of the contract;

(b) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* is more than one year: the total contract value for the duration of the contract, including the estimated residual value of the procurement;

(c) *(New - SG No. 37/2006, in force as of 01.07.2006)* is not fixed or cannot be defined: the monthly value multiplied by 48;

2. with regard to regular supply and/or service contracts, on the basis of:

(a) the total actual value of similar contracts, concluded over the previous fiscal year and adjusted for anticipated changes in quantity or value of the relevant supply or service; or

(b) the total estimated value of the supply and/or the services during the twelve months following the first delivery or service or for the duration of the supplies and/or services, where the said duration is greater than twelve months;

3. *(Last Amendment - SG No. 33/2012)* with regard to a supply, service and/or work contract providing for options: the maximum permitted total value, including use of the option clauses or renewals;

4. with regard to a service contract which does not indicate a total price:

(a) if the term of the contract is fixed at four years or less: the total contract value for the duration of the contract;

(b) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* if the term of the contract cannot be fixed in advance or the term of the contract is greater than four years: the value of the monthly installment multiplied by 48;

5. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* with regard to an insurance service contracts the insurance premium payable and other forms of remuneration;

6. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* with regard to a financial service contract: the price of the service, inclusive of fees, commissions or interest and other forms of remuneration;

7. with regard to a service contract preceded by a design contest, as well as with regard to design contests followed by a service contract, the value shall be calculated on the basis of the price of the service and the total value of the contest prizes and other payments to participants in the contest;

8. with regard to a works contract: on the basis of the value of construction and supply of all goods and provision of all services for execution of the works, where provided by the contracting authority;

9. with regard to a design contest: the value of the procurement shall include the total value of the contest prizes and other payments to participants in the contest;

10. *(New - SG No. 37/2006, in force as of 01.07.2006)* with regard to a framework agreement or a dynamic purchasing system: on the basis of the maximum estimated value, net of value added tax, of all the contracts envisaged to be concluded for the total term of the said agreement or system.

(3) *(Last Amendment - SG No. 33/2012)* For the purpose of calculating the value of a public procurement, account shall be taken of all payments, net of value added tax, to the supplier, contractor or service provider of the public procurement, including any form of options provided for and any renewal of the service or work under Item 9 of Article 90 (1), Item 8 of Article 103 (2) and Item 12 of Article 119c (3) herein.

(4) *(Last Amendment - SG No. 33/2012)* Where a public procurement is subdivided into several lots, each one the subject of a contract, the value of the procurement shall equal the sum total of the values of all lots. Where the aggregate value of the lots is equal to or exceeds the thresholds fixed under Pars. (1), (2), (3) or (4) of Article 14, the procedure applicable to the total value of the procurement shall be complied with upon award of the procurement for each lot.

(5) The selection of a method for calculation of the public procurement contract value may not be used with the intention of avoiding the application of this Act.

(6) It shall be inadmissible to split up a public procurement with the intention of circumventing the application of this Act, even in stage-by-stage construction, where the completed stage cannot be granted a use permit as a self-contained building work.

(7) *(New - SG No. 37/2006, in force as of 01.07.2006)* When calculating the value of a works contract, it shall be inadmissible to include supplies or services which are not necessary for executing the said contract.

Section III

Types of Procedure

Article 16. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Public procurements under Article 14 (1) shall be awarded by means of conduct of an open procedure, a restricted procedure, a competitive dialogue and negotiated procedures.

(2) *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

(3) *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

(4) An open procedure shall be a procedure whereby all interested parties may submit a tender.

(5) A restricted procedure shall be a procedure whereby only qualified candidates invited by the contracting authority may submit a tender.

(6) *(New - SG No. 37/2006, in force as of 01.07.2006)* A competitive dialogue shall be a procedure in which any interested party may request to participate and whereby the contracting authority conducts a dialogue with the qualified candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting the requirements of the contracting authority, and on the basis of which the contracting authority invites the candidates with suitable alternatives to tender.

(7) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The negotiated procedures shall be:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* a negotiated procedure with publication of a contract notice, whereby the contracting authority conducts negotiation for determination of the terms of the contract with one or more qualified participants selected by the contracting authority;

2. a negotiated procedure without publication of a contract notice, whereby the contracting authority conducts negotiations for determination of the terms of the contract with one or more specific persons.

(8) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authorities covered under Items 1 to 4 of Article 7 herein shall make a decision on the award of a public procedure according to an open and restricted procedure wherever the conditions for conduct of a competitive dialogue or negotiated procedures do not exist.

Article 16a. *(New - SG No. 37/2006, in force as of 01.07.2006)* A design contest shall be a procedure whereby the contracting authority acquires a plan or design selected by an independent jury after being put out to competition with or without the award of prizes.

Article 16b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Contracting authorities may select a supplier, contractor and service provider of a public procurement according to an open or restricted procedure or a negotiated procedure with publication of a contract notice in the cases referred to in Item 1 of Article 84 herein by means of using an electronic auction, as well as in the cases referred to in Article 93b (3) and Article 93i herein, when the technical specifications of the public procurement can be established with precision.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Public procurements of services and works, having as their subject-matter intellectual performances, such as the design of schemes for dementional development, of structural plans and of works, may not be the object of an electronic auction.

(3) The decision to hold an electronic auction shall be stated in the contract notice.

(4) An electronic auction may not be used if it prevents, restricts or distorts competition, nor can it be used to change the subject matter of the procurement as put up for tender in the published contract notice and as designed in the specification.

(5) The terms and procedure for use of electronic auctions shall be regulated by the Regulations for Application of this Act.

Article 16c. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) The contracting authorities are entitled the right to request that the technical offers are submitted in the form of an electronic catalogue, in the case the subject of the procurement is delivery of goods which are standardized or with reference to which it is possible new own standards to be developed or established.

(2) The electronic catalogues are prepared by the participants upon observance of the normative requirements for the electronic documents internal revenue, as well as of all additional requirements for performance of a public procurement with a subject under para. 1 and in compliance with the technical specifications and the form, specified by the contracting authority.

(3) The technical offers, submitted in the form of an electronic catalogue may be accompanied by other documents which supplement them.

(4) The use of an electronic catalogue, as well as the requirements to it are specified by the contracting authority in the public procurement announcement and may not be a technical impediment for participation in the procedure.

(5) The procedure for electronic procedures through electronic catalogues is specified with the regulation for the implementation of the Act.

Article 16d. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) In case the subject of the procurement is included in the list under art. 30 of Integration of Persons with Disabilities Act, the contracting authorities are obligated to announce that the procurement is designed for implementation by specialised enterprises or cooperatives of people with disabilities.

(2) The contracting authority is obligated to set in a lot any goods or services, which are included in the list under para. 1 and is part of the subject of the public procurement, and to announce that this lot is designed for implementation by specialised enterprises or cooperatives of people with disabilities.

(3) The contracting authorities are entitled the right to specify public procurements whose performance is only within the scope of creation of safeguarded jobs programmes.

(4) In the cases under para. 1- 3 in the announcement is included information indicating that:

1. the public procurement/ lot is for participation of only specialised enterprises or cooperatives of people with disabilities, or

2. the procurement performance is only within the scope of creation of safeguarded jobs programmes.

(5) In the cases under para. 1 and 2:

1. the selection criteria specified by the contracting authorities are not applied with reference to candidates and participants that are specialised enterprises or cooperatives of people with disabilities, as well as associations in which only such people participate;

2. in the candidate or the participant presentation which is included in the application, respectively in the offer, is included a declaration with which it is declared whether the candidate or the participant, respectively any of the association participants, is registered in the Register of the specialised enterprises and cooperatives of people with disabilities kept by the Agency for People with Disabilities or in equivalent register of a Member State of the European Union.

(6) In the cases under para. 1 and 2, when in the procedure participate one or more than one specialised enterprise or cooperative of people with disabilities which are registered in the register under para. 5, pt. 2, and/ or their associations, and the offers of these persons meet the requirements of the contracting authority, the offers of the other candidates are not considered and are not assessed.

(7) In case the candidate or the participant has indicated that subcontractors are to be used, the requirement for registering in the Register of the specialised enterprises and cooperatives of people with disabilities kept by the Agency for People with Disabilities or in equivalent register of a Member State of the European Union is also applied with reference to the specified subcontractors.

Chapter Two

AUTHORITIES. PUBLIC PROCUREMENT REGISTER. BUYER'S PROFILE

(Name amended, SG No. 40/13.05.2014, in force as of 01.10.2014)

Section I

Authorities

Article 17. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The Minister of Economy shall implement the State policy in the sphere of public procurement.

Article 18. *(Last Amendment - SG No. 38/2012, in force as of 01.07.2012)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* There shall be established a **Public Procurement Agency with the Minister of Economy, hereinafter referred to as "the Agency,"** to assist the said Minister in the implementation of the state policy in the sphere of public procurement.

(2) The Agency shall be a legal person with a head office in Sofia.

(3) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The support of the agency shall be formed by budget proceeds

(4) *(Repealed - SG No. 38/2012, in force as of 01.07.2012).*

(5) *(Repealed - SG No. 38/2012, in force as of 01.07.2012).*

(6) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The operation, structure, organization of work and staff size of the Agency shall be determined by Rules of Operation adopted by the Council of Ministers.

Article 19. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The Agency shall be managed and represented by an Executive Director, who shall be appointed by the Minister of Economy.

(2) The Executive Director of the Agency shall perform the following functions:

1. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* issue methodological directions for uniformity of practice on the application of this Act and of the acts of secondary legislation thereto related;

2. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* issue opinions upon questions from contracting authorities;

3. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* alert the competent authorities so as to exercise control over compliance with the Act;

4. *(Last Amendment – SG No. 52/2010)* appeals before the Competition Protection Commission against contracting authorities' resolutions which have permitted violations when conducting a procedure of public procurement assignment established by the European Commission until conclusion of the contract and indicated in the notification under Art. 122p, Par. 1;

5. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* elaborate drafts of statutory instruments and give opinions on international treaties in the sphere of public procurement;

6. keep a Public Procurement Register;

7. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* maintain lists of contracting authorities covered under Article 7 herein and notify the European Commission of any changes in the said lists;

8. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* prepares, maintains and updates a list of external experts participating in the preparation and conducting of public procurements award procedures

9. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* elaborate standard forms for documents to be published in the Public Procurement Register;

10. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* coordinate the activity related to training of parties to public procurement;

11. *(Effective as of 06.04.2004)* participate in the international cooperation of the Republic of Bulgaria with organizations in other countries in the sphere of public procurement;

12. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* submit an annual report on the operation of the Agency to the Minister of Economy;

13. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* collect and summarize the case law on application of this Act and carry out monitoring of public procurement;

14. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* pursue cooperation in the sphere of public procurement with other authorities as well as branch organizations;

15. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* shall provide summarized information from the Public Procurement Register on the webpage of the agency;

16. *(New - SG No. 37/2006, in force as of 01.07.2006)* assist the process of public procurement award by electronic means;

17. *(Last Amendment - SG No. 33/2012)* notify the European Commission of all international contracts referred to in Item 14 of Article 12 (1) herein;

18. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* upon request, transmit the information referred to in Article 12 (7) herein to the European Commission;

19. *(Last Amendment- SG No. 52/2010)* transmit annual statistical reports to the European Commission, sends to the European Commission annual statistical reports as well as the enforced judgments under Art. 121b, Par. 3 and the rulings under Art. 122d, Par. 4 of the Competition Protection Commission connected with them.

20. *(New - SG No. 37/2006, in force as of 01.07.2007)* notify the European Commission of any difficulties, in law or in fact, encountered in connection with participation of Bulgarian persons in public procurement award procedures for services in third countries;

21. *(New - SG No. 37/2006, in force as of 01.07.2007)* notify the European Commission of any difficulties, in law or in fact, encountered in connection with participation of Bulgarian persons in public procurement award procedures in third countries which are due to non-observance of the international labour law provisions;

22. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* exercises preliminary control over public procurement procedures:

a) financed entirely or partially by resources from the European funds as follows:

aa) for construction at a price equal to or exceeding BGN 2 640 000;

bb) for delivery or service at a price equal to or exceeding the respective price specified in art. 45c, para.2;

b) for construction under art. 3, para. 1, pt. 3 financed by budget resources outside those under letter "a" at a price equal to or exceeding BGN 9 779 000;

23. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* popularize good practices in the sphere of public procurements including those related to environmental, social and innovation requirements;

24. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* exercises preliminary control on the decisions for initiation of negotiation procedures without announcement on the basis of art. 90, para. 1, pt. 3- 9 and pt. 12, when the following conditions are simultaneously met:

a) they are issued by contracting authorities under art. 7, pt. 1- 4;

b) the procurements are at a price under art. 14, para. 1.

25. *(New – SG No. 94/2008, in force since 01.01.2009)* shall maintain a list of persons for whom non-performance of a public procurement contract has been ascertained by virtue of an effective court resolution;

26. *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(3) *(Last Amendment - SG No. 33/2012)* In connection with the execution of the powers thereof, the Executive Director of the Agency shall have the right to require the necessary information from public-procurement contracting authorities and to approve model documents.

(4) Contracting authorities shall be obligated to provide the information required under Paragraph (3) within a time limit set by the Executive Director of the Agency.

(5) *(Last Amendment - SG No. 33/2012)* The directions under Par. (2), pt. 1 shall be mandatory for the controlling authorities under Art. 123 (1) in case that they have been coordinated with them in advance. The terms and conditions for coordination shall be established with the Rules on application of this Act.

(6) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The contracting authorities shall electronically submit to the executive director of the agency the resolutions under Par. 2, Subpar. 25 within 14 days as of their date of effectiveness.

(7) *(New - SG No. 37/2006, in force as of 01.07.2006)* The standard forms referred to in Item 9 of Paragraph (2) shall be endorsed by the Minister of Economy and shall be promulgated in the State Gazette.

(8) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The following is to **be published on the Agency's website:**

1. the information under Par. (2), Items 1, 6 - 8, 12, 13 and 25;
2. the approved forms under Par. (2), Items 9;
3. the Common Procurement Vocabulary (CPV) adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV);
4. other information as envisaged by the Rules on application of this Act.

Article 20. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) In the list under art. 19, para. 2, pt. 8 are included individuals who have professional competence related to the objects and subjects of the public procurements and:

1. are nominated by professional associations and organisations in the respective field or by authorities under art. 19, para. 2- 4 of the Administration Act by specifying their professional competence or

2. have independently submitted a registration application to which they have enclosed proof for their professional competence.

(2) The scope of professional competence and the presence of access to classified information permission in accordance with the requirements of the Classified Information Protection Act are indicated with reference to each of the individuals in the list.

(3) The procedure for preparation and maintenance of the list is specified in the regulation for implementation of the Act.

Article 20a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
The preliminary control under Art. 19 (2), Item 22 covers:

1. public procurement announcement;

2. the decision for initiating a restricted procedure under Art. 76 (3), negotiated procedure with publication of notice or competitive dialogue procedure;

3. tenders evaluation methodology – in case that the criteria is economically most beneficial proposal.

4. (New, SG No. 40/13.05.2014, in force as of 01.07.2014) the motives for the specified selection criteria and the compliance of the criteria with the requirements of art. 25, para. 5-7.

(2) For the purposes of the preliminary control, the contracting authority shall send the draft documents under Par. (1) to the Agency prior to the opening of the procedure.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within fourteen days after reception of the drafts under Par. (2), the Agency shall prepare an opinion on the compliance with the requirements of this Act and send it to the contracting authority. In cases of incompliance the opinion shall include recommendations or specific instructions.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Simultaneously with sending of the decision for initiation of public procurement procedure and the contract notice for publication in the register, the contracting authority sends to the Agency the approved methodology for assessment of the tenders – where the criteria is most economically beneficial proposal. In case that the contracting authority does not comply with the recommendations or the specific instructions in the opinion under Par. (3) it may attach written reasons as well.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within ten days after the publication of the documents under Par. 1. Items 1 and 2, the Agency carries out evaluation of their compliance with the recommendations or the specific instructions made and issues a final report on legality.

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within the time limits of Par. (5) the report shall be sent by the contracting authority to the controlling **bodies under Art. 123 (1), in the cases under Art. 19 (2), pt. 22, l. „a"** - and to the authorities responsible for managing and spending the funds under the respective program.

(7) The preliminary control under Arts. 76 (3) and 86 (3) is finalized with the opinion under Par. (3).

(8) The exchange of information with regard of the preliminary control shall be regulated by the Rules on application of this Act.

Article 20b. *(New – SG No. 94/2008, in force as of 01.01.2009)* (1) For the purpose of exercising control under Art. 19, Par. 2, Subpar. 24, the contracting authorities shall be obliged to send to the agency the resolutions for opening of the procedures and the invitation ratified by them, as well as proofs related to the selection of the relevant procedure.

(2) The terms and conditions for exercising control under Par. 1 shall be determined by the regulation for application of the act.

Section II

Public Procurement Register

Article 21. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) There shall be established a Public Procurement Register.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* In the register is gathered and kept information related to the public procurements for the purpose of ensuring publicity and transparency with reference to the process of their award and performance. The Public Procurement Register shall be open to public inspection.

(3) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The contracting authorities shall be obliged to submit to the executive director of the agency the information designated for the Public Procurement Register, in Bulgarian language.

(4) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The executive director of the agency shall determine by virtue of an ordinance the electronic format and the technical requirements towards the information under Par. 3. The ordinance shall be published on the agency website.

(5) *(New – SG No. 94/2008, in force as of 01.01.2009)* Information submitted in violation to the ordinance under Par. 4 shall not be published in the register and shall be deemed unsent.

(6) *(New – SG No. 94/2008, in force as of 01.01.2009)* The terms and conditions of operation of the register shall be determined by the regulation for application of the act.

Article 22. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The Public Procurement Register shall contain:

1. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* decisions for opening amendment and termination of public procurement procedures;

2. the notices envisaged for entry into the Register;
3. the information on public procurement awards;
4. *(New – SG No. 94/2008, in force as of 01.01.2009)* information about the executed public procurement contracts;
5. *(New - SG No. 93/2011, in force as of 26.02.2012)* information on the development of the procedure in cases of appeals;
6. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* any other information as shall be specified with law or in the Regulations for Application of this Act.

Article 22a. *(New- SG No. 93/2011, in force as of 26.02.2012)* (1) The entry of facts in the register shall be denied where:

1. the information is submitted not in the standard form for the respective type of contracting authority;
2. not all of the mandatory fields of the standard form are filled out;
3. the information is not submitted in compliance with the Rules on application of this Act;
4. there are discrepancies in the information contained in documents related to one and the same public procurement.

(2) The contracting authority shall be notified of the denial under Par. (1) within five days after submission of information in the Agency.

Section III

(New, SG No. 40/13.05.2014, in force as of 01.10.2014)

Buyer's Profile

Art. 22b. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) The contracting authorities are obligated to maintain a buyer's profile which is a separate part of their web page or of another internet address with ensured publicity.

(2) Without infringing applicable restrictions with reference to announcement of commercially sensitive information and the competition rules, in the buyer's profile, in the form of electronic documents, are published:

1. preliminary announcements;

2. the decisions for initiation of the procedures and the public procurement announcements;
3. the documentations for participation in the procedures;
4. the decisions for a change in the cases under art. 27a, para. 1 and the changed participation documentation;
5. the clarifications related to the participation documentations;
6. the invitations for presentation of offers upon limited procedure, competitive dialogue and agreement with negotiation;
7. the written statements and reports, along with their appendixes, of the procedures conducting commissions;
8. the decisions for performance of the procedures under art. 38;
9. information with reference to the dates and the reasons for release or keeping of participation guarantees of the candidates or participants in each award of public procurement procedure;
10. the public procurement contracts along with the mandatory appendixes to them;
11. the contracts with the subcontractors and the additional agreements related to them;
12. the frame agreements along with the mandatory appendixes to them;
13. the additional agreements for alteration of the public procurement contracts;
14. information about the date, reasons and the amount of each payment made with reference to the public procurement contracts and the subcontracts, including about the advance payments;
15. information about the date and the reasons for ending or termination of the contracts;
16. information about the dates and the reasons for the release, use or retaining of the guarantees for the implementation of each contract;
17. the public invitations under art. 101b along with their appendixes;
18. the internal rules under art. 8b;
19. the positions of the executive director of the inquiry agency of the contracting authority;
20. the approved by the executive director of the inquiry agency of the contracting authority expert positions after the preliminary control over a specific award of public

procurement procedure, and when the contracting authority does not accept any of the recommendations- the reasons for this, too.

21. any other useful general information such as contact person, telephone and fax number, postal and e-mail address and other documents and information, specified with the internal rules under art. 22d.

(3) In the documents under para. 2 which are published in the buyer's profile is deleted the information with reference to which the participants have enclosed a confidentiality declaration under art. 33, para. 4, as well as the information which is protected by law. On the place of the deleted information are indicated the legal grounds for the deletion.

(4) Unless otherwise provided for in this Act, the documents under para. 2 which are published in the Public Procurements Register or on the Public Procurement Portal and the participation documentations are published in the buyer's profile on the first business day following the date of their sending to the Agency. The contracts, the additional agreements and the documents related to the implementation of the contracts are published within 30 days after:

1. the conclusion of the contracts and the additional agreements;
2. the payment; with reference to contracts and periodic delivery of goods, the information about the payments made is published in a summarised way until the 20th day of the month following the month of the payment;
3. the guarantee release;
4. the contracting authority's receipt of the subcontract and an additional agreement to it.
5. the elaboration of the respective another document.

(5) The documents and the information under para.2, related to the particular public procurement, are specified in a separate section in the buyer's profile which is an electronic notice with a separate identification number and date of creation. The separate section is maintained in the buyer's profile within one year after:

1. the end or the termination of the procedure- when there is no contract;
2. the performance of all contract- related obligations, respectively all obligations under the contracts in the frame agreement.

(6) Outside the cases under para.5, the documents and the information under para. 2 are maintained in the buyer's profile as follows:

1. under pt. 1- one year after the publication in the buyer's profile;
2. under pt. 18- one year after their amendment or repeal;
3. under pt. 19 and 21- always with the respective update.

Art. 22c. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) A hyperlink to the separate section in the buyer's profile in which are contained the documents and the information for the particular procurement is shown to the unique number of each public procurement in the Public Procurements Register.

(2) The contracting authorities send to the Agency the information for the hyperlink address along with the initiation of the procedure decision.

Art. 22d. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) The contracting authorities set internal rules for maintenance of the buyer's profile, including for certifying the publication date of the electronic documents published in it, under the terms and procedure specified in the Electronic Management Act.

(2) With the internal rules is specified the procedure under which the documents are sent to the Public Procurements Register and are published in the buyer's profile in the cases specified in this Act.

Part Two

PUBLIC PROCUREMENT AWARD

Chapter Three

COMMON RULES FOR PUBLIC PROCUREMENT AWARD

Section I

Prior Information Notice

Article 23. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Contracting authorities shall dispatch a prior information notice of all public procurement award procedures which they envisage initiating during the next succeeding twelve months to the Agency for entry into the Public Procurement Register and shall publish such prior information notice on the buyer profile:

1. *(Last Amendment – SG No. 52/2010)* for supply of goods and for services under Item 1 of Article 5 (1) herein, differentiated by category, where the total value, net of value added tax, for the relevant category of goods or services, is greater than BGN 450,000;

2. *(Last Amendment - SG No. 33/2012)* for works, where the total value of the procurement, net of value added tax, is equal or higher than BGN 2 400 000 and where the procurement is under Art. 3 (2) - equal or higher than BGN 4 000 000;

3. *(New - SG No. 33/2012)* for supply of goods under Art 3 (2) and services pt. 3 of Article 5 (1) herein, differentiated by category, where the total value, net of value added tax, for the relevant category of goods or services, is equal or higher than BGN 1 000 000.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* When publishing prior information notices on the buyer profile, contracting authorities shall send the Agency, electronically, a communication in an endorsed standard form. Prior information notices may not be published on the buyer profile before the date of dispatch of the said communication.

(3) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the case of supplies and services, the notices referred to in Paragraph (1) and the communication referred to in Paragraph (2) must be dispatched on or before the 1st day of March.

(4) *(Last Amendment - SG No. 33/2012)* The contracting authorities have the obligation to dispatch prior notices only in cases where they intend to apply the shorter time limits under Art. 64 (2), Art. 81 (2) and Art. 104 (1).

(5) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* In the cases under Par. 1, Subpar. 1, the category of goods shall be determined by the contracting authorities in accordance with the nomenclature of the Common Procurement Vocabulary, and the category of services – **in accordance with Annex № 2.**

(6) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Publication of a prior information notice shall not bind the contracting authority to conduct the relevant public procurement award procedures.

Article 24. *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Section II

Decision to Initiate Public Procurement Award Decision and Contract Notice

Article 25. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contracting authority shall adopt a decision to initiate a public procurement award procedure, whereby the said authority shall approve the contract notice and the contract documents. Any such decision and notice shall be dispatched to the Agency for entry into the Public Procurement Agency on an electronic data medium as well.

(2) A contract notice shall include at least the following information:

1. name, address, telephone and facsimile numbers and electronic mail address of the contracting authority, and contact person;

2. type of procedure;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* subject, object and prognoses value of procurement as well as quantity or scope, including such information about lots;

4. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* the code under the Common Procurement Vocabulary (CPV);

5. place and time limit for performance of the procurement;

6. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* the selection criteria, when the contracting authority sets such, including a requirement under art. 49 and/ or minimal requirements for economic and financial status of the candidate or the participant and/ or his or her technical capacities and/ or qualification, as well as indication of the documents proving them;

7. terms and amount of the participation guarantee and of the contract performance guarantee;

8. terms and method of payment;

9. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* term of validity of the bid proposals for an open procedure;

10. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* the assessment criteria; in case of the criterion is the economically most beneficial proposal – also the indices for a comprehensive assessment, with their relative importance and their arrangement in a descending order of significance, if due to objective reasons their relative importance cannot be indicated;

11. *(New - SG No. 37/2006, in force as of 01.07.2006)* indication of the possibility of submitting variants in the tenders;

12. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* indication of the possibility of the tenderers tendering for one, for several or for all the lots, where the subject of the procurement is subdivided into lots;

13. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* address wherefrom the contract documents can be requested and the final date for making such a request, the price and method of payment of the price to be paid for such documents;

14. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* address whereat requests or tenders must be received, and time limit for the receipt thereof;

15. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* the place and date of opening of the bid proposals or of the applications for participation;

16. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* date of publication of the prior information notice referred to in Article 23 herein, if any;

17. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* date of dispatch of the notice.

(3) In the notice, the contracting authority may furthermore provide for:

1. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) the possibility of holding an electronic auction;

2. (*Amended and supplemented, SG No. 37/2006*) a requirement to establish a legal person where the tenderer which has been selected as supplier, contractor or service provider is a combination of natural and/or legal persons; the newly established legal person shall be bound by the tender submitted by the combination;

3. (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) opportunity for placing of offers for one or more than one of the nomenclatures in the lots included in the subject of the public procurement- upon award of public procurement for delivery of medicinal products under the Medicinal Products in Human Medicine Act or the Medical Devices Act;

4. (*Repeal- SG No. 94/2008, in force as of 01.01.2009*).

(4) (*New - SG No. 37/2006, in force as of 01.07.2006*) In restricted procedures, negotiated procedures with publication of a contract notice and competitive dialogue procedures, contracting authorities may limit the number of candidates which will be invited to tender, to negotiate or to conduct a dialogue, provided a sufficient number of suitable candidates is available. In such cases, the notice shall indicate objective and non-discriminatory criteria or rules that contracting authorities intend to apply, the minimum number of candidates which will be invited and, at the discretion of the contracting authority, the maximum number as well.

(5) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) No terms or requirements offering an advantage or unjustifiably restricting the participation of any parties in the public procurements may be included by contracting authorities in the decision, notice, or documents and which are not consistent with the subject and the quantity or the size of the public procurement.

(6) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The selection criteria under para. 2, pt. 6 and the documents proving the compliance with them must correspond to and be in compliance with the object, subject, price, complexity as well as with the quantity or the size of the public procurement and the purpose of the construction, deliveries or the services. Selection criterion may also be experience in the respective sphere, but no conditions or requirements are applied with reference to the performance of only public procurements or the performance of strictly indicated programmes or projects or to the specifying of financial resources or a specified number implemented contracts with specified indication of their subjects and others, if such conditions or requirements are in violation with reference to a condition under para.5. In case the public procurement has lots, the selection criteria for each lot must correspond to the listed characteristics for the respective lot.

(7) (*New - SG No. 93/2011, in force as of 26.02.2012*) The selection criteria referred to in Item 6 of Paragraph (2) determined by the contracting authority shall be the same for all participants in the procedure.

(8) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) Upon participation of associations which are not legal entities, the correspondence with the selection criteria is proved by one or more than one of the participants in the association. In

the cases under art. 49, the registration requirement is proved by the association participant who is going to perform the respective activity.

(9) *(New - SG No. 93/2011, in force as of 26.02.2012)* The indicators of the comprehensive assessment under Par. (2), Item, 10, must be related to the subject of the public procurement.

(10) *(Former Par. (7), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* When the selected criterion is the economically most beneficial proposal the contracting authorities shall not be entitled to include selection criteria as indices for assessment of the tender.

(11) *(New - SG No. 93/2011, in force as of 26.02.2012)* When determining the time limit under Par. (2), Item 14, the contracting authority must take into account the complexity of the public procurement and the time necessary for preparation of the application for participation or tenders.

Article 26. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In the notice referred to in Article 25 herein, the contracting authority may furthermore establish additional requirements for the performance of the public procurement related to environmental protection, unemployment and creation of jobs for persons with disabilities, while complying with the requirements referred to in Article 25 (5) herein.

(2) *(New - SG No. 33/2012)* In cases of public procurements under Art. 3 (2) the contracting authorities may in addition to the requirements under Par. (1) envisage special requirements for execution of the public procurement, related to subcontractors or requirements intended to ensure security for classified information and/or security of supplies.

(3) *(Former text of Par. (2) - SG No. 33/2012)* In the cases under Paragraph (1), upon preparing the tender the tenderers shall indicate, inter alia, the way of fulfilment of the additional requirements.

Article 26a. *(Last Amendment - SG No. 33/2012)(1)* Upon assignment of a public procurement for delivery of motor vehicles indicated in Appendix № 3a, the contracting authorities are obliged to take into consideration the energy aspects and the environmental impact for the entire operational period of the motor vehicle which include at least the following requirements towards:

1. energy consumption, and
2. carbon dioxide (CO₂) emissions, and
3. nitrogen oxide (Nox) emissions, non-methane hydrocarbons (NMHC) and dust particles.

(2) The contracting authorities apply the requirements under Par. 1:

1. by indicating as technical specifications in the public procurement documentation, or
- 2. as indices under the assessment criteria "most economically profitable proposal".**

(3) (Last Amendment - SG No. 33/2012) In the cases under Par. 2, pt. 2, where the aspects and impact under Par. (1) are represented in monetary value, a method of calculation of the costs for energy consumption, carbon dioxide emissions, nitrogen oxides, non-methane hydrocarbons and dust particles throughout the whole operational life of the motor vehicle is applied.

(4) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) The contracting authorities are not obliged to comply with the requirements under Par. 1 where:

1. the public procurement refers to delivery of motor vehicles which are not subject to obligatory approval of their type or to individual approval according to a regulation of the Minister of Transport, Information Technologies and Communications, adopted on the grounds of Art. 138 (4) of the Road Traffic Act, or

2. (Last Amendment - SG No. 33/2012) the public procurement is of value under Art. 14 (3).

Article 27. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*)

(1) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) Contract notices of values under the thresholds envisaged in Art. 45c (2) shall be prepared in a model form affirmed under the terms and conditions of Art. 19 (7).

(2) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) After publication of the announcement in the Public Procurements Register, the contracting authority sends to the mass media a communication about the public procurement. Any such advertisement shall state, at a minimum, the subject matter of public procurement and the date of the announcement of the notice in the Public Procurement Register, and may not contain any information which was not included in the said notice.

Article 27a. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) (1)

(*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) The contracting authority may on its own initiative or upon a signal for irregularity amend once the notice and/or the documentation of the public procurement in order to ensure legality of the procedure, remove omissions or obvious factual errors.

(2) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) Any person may submit proposal for amendment in the notice and/or the documentation within ten days after publication of the notice on opening of the procedure.

(3) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) The changes under para. 1 are made through a decision for a change within 14 days after the publication of the announcement in the Public Procurements Register. The decision and the changed documents are published in the buyer's profile on the first business day following the date of their sending to the Agency.

(4) The amendment decision of the contracting authority may not amend the activities and/or the supplies subject of the procurement.

(5) The decision under Par. (3) sets a new time limit for submission of tenders or applications for participation, which cannot be shorter than the initially announced one.

(6) The contracting authority is not obliged to set a new time limit under Par. (5) where the amendments do not affect the selection criteria, tender requirements or carrying out of the procurement.

(7) After expiration of the term under par. (3) the contracting authorities publish a decision on amendment only in case of extension of the time limits initially announced for the procedure.

(8) The contracting authority has the obligation to extend the announced time limits for the procedure:

1. where it is found that the initially announced time period is insufficient for preparation of the tenders, including due to necessity of review of additional documents or inspection of the site of the performance;

2. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014*) in the cases under Art. 29 (3).

(9) The contracting authority may extend the announced time limits for the procedure where:

1. no application or tenders have been submitted within the initial time limit or only a single application or tender has been submitted;

2. this is necessary as a result of appeal procedures;

3. (*New - SG No. 33/2012*) the time period under Art. 51 (3) is insufficient.

(10) With the publication of the amendment decision in the Public Procurement Register all persons interested are considered notified.

Article 27b. (*New - SG No. 93/2011, in force as of 26.02.2012*) (1) Art. 27a does not apply in the cases under Arts. 76 (3) and 86 (3).

(2) In the cases under Par. (1) the contracting authority may publish an amendment decision in the Public Procurement Register extending the initial deadlines for submission of applications where:

1. no application has been submitted within the initial time limit or only a single application has been submitted;

2. this is necessary as a result of appeal procedures.

Section III

Contract Documents

Article 28. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)

The contract documents for participation in a public procurement award procedure must contain:

1. the decision to initiate a public procurement award procedure;
2. the contract notice;
3. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* a complete description of the subject of procurement, including such information about lots;
4. the technical specifications;
5. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* the minimum requirements to be met by the variants and the specific requirements for the presentation thereof, where the contracting authority authorizes variants, and in the cases under art. 25, para. 3, pt. 3- and the minimum requirements towards the offers which are related to the part of the nomenclatures in the lots;
6. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the development-project designs, where required upon a public procurement of works;
7. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* the methods for arrival at the integral evaluation of the tender, where the criterion of the most economically advantageous tender applies;
8. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* a standard form of the tender, as well as directions for drawing up of the tender;
9. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the draft of a contract.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The methodology for determining the offers complex assessment includes the complex assessment indicators, their relative weight and exact instructions for determining the assessment with reference to each indicator. In the methodology, in compliance with the technical specifications, might also be set the minimum and maximum allowable values of the quantitative indices. In the the cases under art. 25, para. 3, pt. 3 with the methodology in compliance with the technical specifications is also specified the way of assessment of the offers which are placed for a part of the nomenclatures for the lots.

(3) *(New - SG No. 94/2008, in force as of 2009)* The contracting authority shall apply the methodology under Par. 1, Subpar. 7 with respect to all bid proposals, admitted for evaluation, without any modifications thereof.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Recommended offer sample forms and the appendixes to them are specified with the regulation for the implementation of the Act.

(5) *(New - SG No. 33/2012)* A contracting authority may state in the contract documents, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force in the Member State or third country 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.

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The documentation for participation is published in the buyer's profile on the first business day, following the date of publication of the announcement.

(7) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority is not entitled the right to set a requirement the documentation for participation to be received on the spot and is obligated to submit the documentation to any person who has requested this, including to send it to him or her at his or her expense. In these case the contracting authority is entitled the right to require from the persons payment for the documentation, and the price is specified in the announcement and cannot be higher than the actual expenses for its printing and copying.

(8) *(Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)*

(9) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases under art. 27a, para. 1, the contracting authority gratuitously submits the changed information to the persons who have purchased the documentation prior the issuance of the decision for a change.

Art. 28a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) In the cases in which the criterion for assessment is the economically most favourable offer:

1. Through the selected indices and their approximate weight, a determination of the offer which offers the best proportion between quality and price must be ensured in the complex assessment;

2. with the assessment indices are independently assessed the characteristics of the subject of the public procurement with reference to quality, price, technical advantages, aesthetic and functional characteristics, characteristics related to the environmental protection, current expenses, cost-effectiveness, service maintenance and technical support, delivery date and delivery period or a period for implementation and others; upon award of procurements under art. 3, para. 2 may be included and indices such as expenses during the product life cycle, delivery security, interoperability, operating characteristics and others;

3. with reference to public procurements for construction with the assessment indices may be assessed characteristics such as:

a) the quality or the technical indices of the construction products, construction and assembly works or of the construction site, or

b) the quality of the offered technologies and/ or organisation of the execution of the construction or the separate construction or assembly works.

(2) The approximate weights of the assessment indices may be determined:

1. with the particular values within the total assessment, or

2. through arranging in descending order according to their significance- in the cases when due to objective reasons it is impossible pt. 1 to be applied.

(3) The directions for determining the assessment under each index must:

1. give the opportunity for assessment of the level of execution, offered in each offer, in accordance with the subject of the public procurement and the technical specifications;

2. give opportunity for objective comparison and assessment of the technical offers in the offers;

3. provide to the candidates and the participants enough information about the rules which are to be applied upon determining the assessment under each index, and:

a) with reference to the quantity- determinative indices are specified values in numbers or per cents and the way for their calculation is indicated;

b) with reference to the qualitative indices, which are quantitatively non-determinative, is specified the way for their assessment by the commission with a specific value through an expert assessment.

(4) The inclusion of assessment indices which are not directly linked to the subject of the procurement, as well as of indices which account the time for making a payment to the contracting authority(deferred payment) is not permitted.

(5) Upon public procurement with a subject of design and execution of construction, the assessment indices include characteristics under para. 1, pt.2 with reference to both the design and the execution of the construction.

Article 29. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1)
The persons may request in writing from the contracting authority clarifications on the documentation for participation within 10 days, and with reference to procurements under art. 14, para. 3- within 7 days prior the expiry of the term for offers or applications receipt.

(2) The clarifications under para. 1 are published in the buyer's profile within 4 days after the receipt of the request. If the persons have indicated an electronic address, the clarifications are sent to it on the day of their publication in the buyer's profile. In the clarifications is not given information about the persons who have requested them.

(3) In case from the publication of the clarifications from the contracting authority to the expiry date for offers or offers receipt there are fewer than 6 days, and in the cases under art. 14, para. 3- fewer than three days, the contracting authority is obligated to extend the expiry date for offers and offers receipt.

(4) In the cases under para. 3, the decision for a change is published in the buyer's profile on the day of its sending for publication in the Public Procurements Register. As of the day of publication in the buyer's profile to the expiry date for placing of offers there may not be fewer than 6 days, and in the cases under art. 14, para.3- fewer than three days.

Section IV

Technical Specifications

Article 30. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 33/2012)* The contracting authority shall give the technical specifications in the contract documents, defining the specifications by reference to:

1. indicating in order of preference:

a) Bulgarian standards transposing European standards;

b) European technical approvals;

c) common technical specifications;

d) Bulgarian standards transposing international standards;

д) other international standards;

e) other technical reference systems established by the European standardization bodies, or, where these do not exist, other national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products;

f) technical specifications stemming from industry and widely recognized by it;

g) the national "defense standards" and defense materiel specifications similar to those standards;

2. terms of performance or functional requirements, which must be sufficiently precise to allow determination of the subject-matter of the contract; the functional requirements may include environmental characteristics;

3. terms of performance or functional requirements by reference to the technical specifications under point 1 as a means of presuming conformity with such performance or functional requirements;

4. specifications mentioned in point 1 for certain characteristics, and the performance or functional requirements mentioned in point 2 for other characteristics.

(2) *(New - SG No. 33/2012)* Every reference to a specific standard, specification, technical approval or other technical reference under Par. (1), pt. 1 shall be followed by the **expression "or equivalent"**.

(3) *(Former text of Par. (2), Last Amendment - SG No. 33/2012)* In the cases referred to in point 2 of Paragraph (1), where the contracting authority has laid down environmental protection requirements, the contracting authority may use specifications or parts thereof as defined by European or national eco-labels, or by any other eco-label, which simultaneously meet the following conditions:

1. *(Last Amendment - SG No. 33/2012)* the specifications are appropriate to define the characteristics of the goods or services;

2. *(Last Amendment - SG No. 33/2012)* the requirements for the marking are drawn up on the basis of scientific information;

3. *(Last Amendment - SG No. 33/2012)* the eco-marking are adopted using a procedure in which all stakeholders: State bodies, consumers, manufacturers, distributors and environmental organizations, can participate;

4. are accessible to all interested parties.

(4) *(Former text of Par. (3), Last Amendment - SG No. 33/2012)* The contracting authority may indicate that the products and services bearing the eco-marking are presumed to comply with the technical specifications laid down in the contract documents for participation in a public procurement award procedure.

(5) *(Former Par. (4), Last Amendment - SG No. 33/2012)* In the cases covered under Paragraph (3), the contracting authority shall accept any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognized body.

Article 31. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Classified information is not included in the technical specifications. The presence of classified information and information for the place of its receipt are specified in the documentation for participation. The persons may be given the information under the terms and procedure of the Classified Information Protection Act.

(2) *(Last Amendment - SG No. 33/2012)* The candidates or tenderers, including their subcontractors, shall have no right to disclose the information referred to in Paragraph (1).

Article 32. *(Last Amendment - SG No. 33/2012)* (1) The technical specifications must afford the candidates or tenderers equal access to participation in the procedure and must not unjustifiably hinder competition.

(2) *(Last Amendment - SG No. 33/2012)* The technical specifications must not be defined by reference to a specific make, source, a particular process, trade mark, patent, type, a specific origin or production with the effect of favouring or eliminating certain persons or certain products. Such reference shall be permitted on an exceptional basis, where a precise and intelligible description of the subject of the procurement according to the procedure established by Article 30 (1) and Article 33 herein is not possible, and any such reference shall mandatorily be accompanied by the words "or equivalent".

Article 33. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 33/2012)* In the cases covered under pt. 1 of Article 30 (1), the contracting authority may not exclude a tender on the grounds of non-conformity of the products or services tendered to the technical specifications defined by the said authority, provided that the tenderer prove in the tender, with relevant means, satisfying the contracting authority, that the solution proposed thereby complies in equivalent manner with the requirements defined in the said technical specifications.

(2) *(Last Amendment - SG No. 33/2012)* In the cases covered under Article 30 (1) herein, where the technical specification are defined through terms of performance or functional requirements, the contracting authority may not exclude a tender which conforms to a Bulgarian standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference established by a European standardization body, if the tenderer proves in the tender, with every relevant document, that the said standardizations are related to the requirements defined by the contracting authority.

(3) *(Last Amendment - SG No. 33/2012)* In the cases covered under Paragraphs (1) and (2), an appropriate means for proving equivalence in satisfaction of requirements defined in technical specifications, are a technical dossier from the manufacturer or a test report from a recognized body.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Upon submission of the tender, the tenderer may designate which part of the said tender is of a confidential nature and may impose requirements of non-disclosure of the said part on the contracting authority.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority shall have no right to disclose any information made available thereto by candidates and tenderers, which has been designated as confidential by the said candidates and tenderers in respect of technical or trade secrets, with the exception of the cases under Article 44 herein.

Article 33a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Former Art. 33a, SG No. 40/13.05.2014, in force as of 01.07.2014)* Contracting authorities shall accept certificates from recognized bodies.

(2) The contracting authority is entitled the right to require the authorisational letter for the particular procurement, when there is an authorisational letter from the producer which certifies rights for representation and trade on the territory of the entire country.

Section V

Examination, Evaluation and Ranking of Tenders

Article 34. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) The contracting authority shall appoint a commission for the conduct of a public procurement procedure, designating the composition of the said commission and substitute members.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* In the commission must be included at least one qualified lawyer, and at least half of the rest of the members must be persons who have professional competence related to the subject of the procurement. The commission consists of an odd number of members- at least five, and in the cases under art. 14, para. 3- at least three.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* A contracting authority which does not have employees who meet the professional competence requirements under para. 2, provides an external expert from the list under art. 19, para. 2, pt. 8 or others, through commissioning, in accordance with this act. Upon award of public procurements for construction equal to or exceeding BGN 9 779 000, the contracting authorities include as a member of the commission at least one external expert who is included in the list under art. 19, para. 2, pt. 8. In the cases under sentence two, the choice of an external expert is made by drawing lots, and all experts with professional competence linked to the subject of the procurement are included. The lot is organised by the agency under procedure, specified in the regulation for the implementation of the Act.

(4) *(New - SG No. 33/2012)* Where public procurements contain or require classified information, members of the commission may be only persons having clearance to access classified information under the Protection of Classified Information Act.

(5) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* In case of open procedure the commission is appointed after the term for receiving the offers, and in cases of restricted procedure or competitive dialogue, or contracting procedure – after expiration of the term for submission of the applications for participation.

(6) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall give the commission a time limit for completion of the work thereof which must take account of the specifics of the public procurement and may not exceed the period of offers validity.

(7) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* All expenses **related to commission's activity are paid by the contracting authority.** For participation in the **commission's work its members receive remuneration determined in the appointment order,** save in cases where the law provides otherwise, as well as mission trip money – for trip, everyday needs and accommodation.

Article 35. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Eligibility for appointment as members of or consultants to the commission shall be limited to persons who declare that they:

1. have no material interest in the award of the public procurement to a particular candidate or tenderer;

2. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* **are not "connected"** to any candidate or tenderer in the procedure or to any subcontractor named by any such candidate or tenderer, or to any members of the management or supervisory bodies thereof.

3. *(New - SG No. 94/2008, in force as of 01.01.2009)* have no private interest within the meaning of the Prevention and Identification of Conflict of Interests Act.

4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* have not participated in the drawing up of the technical specifications in the offer assessment methodology as external experts.

(2) The members of the commission and the consultants shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with the work thereof on the commission.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The members of the committee and the consultants shall submit to the contracting authority a declaration of conformity of the circumstances under Par. 1 and for compliance with the requirements under Par. 2 after the receipt of the list of applicants or participants and at every stage of the procedure, when the change in the declared circumstances occurs or is found out.

Article 36. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* (1) The commission shall make decisions by a majority of the members thereof. Should any member of the commission dissent from a decision adopted, the said member shall sign the memorandum with a dissenting opinion and shall set forth the justification thereof in writing.

(2) Should, for any valid reason, any member of the commission be unable to perform the duties thereof and may not be replaced by a substitute member, the contracting authority shall issue an order designating a new member.

(3) *(Repeal– SG No. 94/2008, in force as of 01.01.2009).*

Article 36a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)*(1) **The contracting authorities or persons authorized under Art. 8(2) have the power to control the work of the commission on conducting the procedure before adopting the respective decisions.**

(2) While exercising the control under par. (1), the contracting authority examines only the content of the protocols prepared by the commission on the compliance with the legal requirements and the announced conditions of the public procurement.

(3) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) In case that the control under Par. (1) finds irregularities in the commission's work, which can be corrected without termination of the procedure, the contracting authority issues written direction on the corrections to be made in term of 5 days from the introduction of the protocol.

(4) The directions of the contracting authority under Par. (3) are mandatory for the commission. The actions undertaken and the decisions made in execution of the directions are entered in a protocol and in case of disagreement dissenting opinions are attached to it.

Article 37. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) (1) (Redesignated from Article 37 and amended, SG No. 37/2006)* The contracting authority shall select the supplier, contractor or service provider of the public procurement on the basis of evaluation of the tenders under one of the following criteria as indicated in the notice:

1. the lowest price tendered;
2. the most economically advantageous tender.

(2) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) Upon public procurements under art. 3, para. 1 which have as a subject design and execution of construction, as well as upon design competitions, the criterion for the lowest price cannot be used.

(3) (Last Amendment - SG No. 93/2011, in force as of 26.02.2012) The criteria under Par. 1 shall apply to evaluation of tender, which:

1. meet the requirements set out in advance by the contracting authority, and

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* are submitted by participants for whom the circumstances under Art. 47, Par. 1 and 5 are available and the circumstances under Art. 47, Par. 2, indicated in the announcement, and which meet the selection criteria defined by the contracting authority

(4) (New - SG No. 37/2006, in force as of 01.07.2006) Where the criterion for evaluation of the tenders is the most economically advantageous tender and the contracting authority has indicated in the notice that the said authority authorizes the submission of variants, all variants submitted which meet the stated requirements referred to in Item 5 of Article 28 (1) herein shall be subject to evaluation.

(5) (New - SG No. 37/2006, in force as of 01.07.2006) In the cases referred to in Paragraph (4), the tenderer shall enter the ranking solely with the variant which has been ranked highest.

Article 38. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The procedures under this act are performed by virtue of a decision on:

1. appointment of a contractor under a public procurement contract, including under a contract concluded by means of application of a framework agreement, a dynamic delivery system or a preliminary selection system;

2. conclusion of a framework agreement;

3. *(Repeal- SG No. 93/2011, in force as of 26.02.2012);*

4. rating of participants and/or granting of awards and/or other payments in a project competition;

5. termination of the procedure.

Article 39. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall terminate a procedure by a justified decision in the cases where:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* not a single offer, application for participation or competition design has been filed, there is no candidate or participant who meets the requirements under art. 47- 53a, or not a single participant for negotiation has taken part;

2. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* none of the tenders or projects is responsive to the terms and conditions as announced in advance by the contracting authority;

3. all tenders, which are responsive to the terms and conditions as announced in advance by the contracting authority, exceed the financial resources which the said authority can ensure;

4. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the participants ranked highest and second highest decline to conclude a contract;

5. *(Last Amendment - SG No. 33/2012)* the necessity to conduct the procedure is eliminated as a result of a material change in circumstances or an impossibility to ensure financing for performance of the procurement for any reasons which the contracting authority could not have foreseen;

6. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* irregularities are detected in the initiation and conduct of the procedure which cannot be cured without change of the terms whereunder the procedure has been announced;

7. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* a public procurement contract is not concluded by reason of existence of any of the grounds covered under Article 42(1).

(2) *(New - SG No. 94/2008, in force as of 01.01.2009)* The contracting authority may terminate the procedure by virtue of a substantiated resolution, when:

1. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* only one tender or application for participation or project is submitted;

2. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* only one applicant or participant which meets the requirements of Art. 47 - 53a or only one tender or project meets the requirements set out in advance by the contracting authority;

3. *(New - SG No. 93/2011, in force as of 26.02.2012)* the participant ranked highest:

a) refuses to sign the contract, or

b) does not comply with a requirement under Art. 42 (1), or

c) does not comply with the requirements under Art. 47 (1) and (5) or the requirements under Art. 47 (2) when included in the notice;

4. *(New - SG No. 33/2012)* ground envisaged under Art. 79 (9), pt. 2, Art. 83d (8), pt. 2 and Art. 88 (8), pt. 2 are present.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within three days after adoption of the decision under para. 1 or 2, the contracting authority sends the decision, within the same day, to all candidates or participants, publishes it in the buyer's profile and sends a copy of the decision to the executive director of the agency.

(4) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* In the cases referred to in Item 3 of Paragraph (1), the contracting authority shall mandatorily include in the decision the lowest price tendered and may not conclude a contract of the same subject at a price equal to or greater than the price specified in the decision upon conduct of a successive procedure within the same year.

(5) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* Upon termination of the public procurement award procedure under points 3, 5 and 6 of Subparagraph (1) or (2), the contracting authority shall reimburse the candidates or tenderers for the expenses incurred thereby on purchase of the contract documents within fourteen days after the decision referred to in Subparagraph (1) or (2).

(6) *(New - SG No. 93/2011, in force as of 26.02.2012)* Where the initially announced procedure has been terminated, the contracting authority may initiate a new public procurement procedure with the same subject matter solely if the decision on termination has entered into force.

Article 40. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In cases envisaged in Art. 39 (1), Items 4, 5 and 7, and 39 (2), Item 3, the contracting authority may revoke its decision selecting a contractor after its entry into force and before conclusion of contract, and issue a decision terminating the procedure.

Section VI

Public Procurement Contract

Article 41. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The contracting authority shall conclude a written public procurement contract with the tenderer who or which has been selected as supplier, contractor or service provider as a result of the procedure conducted. The mandatory minimum content of the contracts and the recommended offer sample forms and the appendixes to them are specified with the regulations for implementation of the Act.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority has the duty to sign public procurement contract that corresponds to the project included in the documentation, supplemented with all proposals contained in the tender of the participant on the basis of which the said participant has been selected as contractor.

(3) *(Last Amendment – SG No. 52/2010)* The contracting authority is not entitled to enter into a contract prior to the expiration of a **14-day's term as of notification of the** interested applicants and/or interested participants about the resolution for appointment of a contractor.

(4) *(Last Amendment – SG No. 52/2010)* The contracting authority concludes the contract within one month following the enforcement of the resolution for appointment of a contractor or of the ruling rejecting the preliminary execution of such a decision, but not prior to the expiration of the term under Par. 3.

(5) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority is not entitled to enter into a contract with the selected contractor prior to enforcement of all resolutions under the procedure, save in cases where preliminary execution has been allowed.

(6) *(Former par. (5) – SG No. 52/2010)* It shall be inadmissible to conclude public procurement contracts of indefinite duration.

Article 41a. *(New– SG No. 52/2010)* The contracting authority may enter into a public procurement contract prior to the expiration of the term under Art. 41, Par. 3, when:

1. the contractor is selected as a result of an agreement procedure without publication and there is only one participant invited to it;

2. the selected contractor is the only interested participants and no other applicants are available;

3. the contract is concluded on the grounds of a framework agreement with one participant.

Article 41b. *(Last Amendment - SG No. 33/2012) (1) (Last Amendment - SG No. 33/2012)* Invalid towards the persons under Art. 122i, Par. 1 are contracts and framework agreements concluded:

1. (New - SG No. 93/2011, in force as of 26.02.2012) without public procurement award procedure despite the existence of conditions for its implementation;

2. *(Last Amendment - SG No. 33/2012)* in case of an unlawful application of the grounds of Art. 4, Art. 12, Par. 1, Art. 13, Par. 1, Art. 90, Par. 1, Art. 103, Par. 2 or Art. 119c, Par. 3;

3. *(Former Item 2 - SG No. 93/2011, in force as of 26.02.2012)* Prior to enforcement of **any of the contracting authority's resolutions issued in connection with the procedure and a violation is ascertained which has affected the opportunity of:**

a) **an interested person to submit an application for participation or a bid;**

b) an interested applicant to submit a bid;

c) an interested applicant or participant to take part in the selection of a contractor.

(2) *(Last Amendment - SG No. 33/2012)* The contract or the framework agreement preserves its validity when there is an effective ruling under Art. 122d, Par. 4.

Article 41c. *(Last Amendment - SG No. 33/2012) (1) (Last Amendment - SG No. 33/2012)* The contracting authority may publish a notice for voluntary transparency when **applying Art. 4, Items 2, 4 и 5, Art. 12 (1),** Items 2 - 9, 11-15, Art. 13 (1), Art. 90 (1), Art. 103 (2) or Art. 119c (3).

(2) The notice for voluntary transparency is an individual administrative act containing at least:

1. name of and data on the contracting authority;

2. description of the subject of the contract which the contracting authority intends to conclude;

3. reasons for application of the grounds under Par. (1);

4. name of and data on the contractor selected.

(3) The notice under Par. (1) is prepared in Bulgarian language under a template introduced by the Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005 (OJ, L221/1 of 28 August 2011), **hereinafter referred to as "Implementing Regulation (EU) No 842/2011".**

(4) When using a voluntary transparency notice the contracting authority sends it for publication to the Public Procurement Register and in case of procurement value equal or exceeding the threshold specified in Art. 45c (2) also to the Official Journal of the European Union.

(5) In the cases under Art. 41b (1), Item 2, the contract remains effective if concluded after the entry into force of the notice for voluntary transparency and the contracting authority has observed the terms and conditions of Pars. (1) through (4).

Article 42. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment – SG No. 52/2010)* A public procurement contract shall not be concluded with a tenderer selected as supplier, contractor or service provider, who or which, upon signature of the said contract:

1. fails to present documentary proof of registration in compliance with the requirement established by Item 2 of Article 25 (3) herein;

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* fails to fulfil the obligation referred to in Article 47 (10) herein;

3. fails to present the contract performance guarantee as determined.

4. *(New – SG No. 52/2010)* fails to perform the relevant registration, fails to present a document or fails to perform any other requirement necessary for the execution of the procurement in compliance with a specific normative or administrative act and is imposed by the contracting authority upon opening of the procedure.

(2) *(Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)*

Art. 42a. *(New - SG No. 40/13.05.2014, in force as of 13.05.2014)* The monetary receivables under the public procurement contracts and the subcontracts are transferable, may be pledged and enforcement may be performed.

Article 43. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The parties to a public procurement contract may not amend the said contract.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* An amendment to a public procurement contract shall be made with additional agreement to the contract and admissible on an exceptional bases:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* where, for reasons of unforeseen circumstances it is necessary:

a) to amend the deadlines in the contract, or

b) to partially amend the activities within the subject matter of the public procurement for construction or services, provided it is to the interest of the contracting authority and does not increase the value of the contract, or

c) (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) complete or partial exchange of goods included in the subject of the delivery procurement, including their elements, components or parts, in the cases in which this is in the contracting authority interest, does not lead to the increase of the value of the contract and the substituting goods correspond to the requirements of the technical specifications and have technical advantages and/ or better functional characteristics in comparison with the substituted goods, or;

d) (*Former l. "c", SG No. 40/13.05.2014, in force as of 01.07.2014*) to decrease the total value of the contract to the interest of the contracting authority as a result of decrease in the contracted prices, quantities or elimination of activities, or;

2. (*Repeal - SG No. 93/2011, in force as of 26.02.2012*);

3. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) in the event of state regulated prices, when the subject of the public procurement is an activity the price of which is subject to state regulation and the term of execution exceeds 12 months, or

4. (*New - SG No. 93/2011, in force as of 26.02.2012*) where an increase of the price is necessary as a result of the adoption of new rules – up to the amount directly caused by the new rules, or

5. (*New - SG No. 93/2011, in force as of 26.02.2012*) where the period of a contract for supply or service with periodic or continuous execution has been extended, in case that the following conditions are simultaneously met:

a) the contracting authority has opened a procedure with the same subject for a following period not later than six months prior to expiration of the contract and no contractor has been selected as a result of the procedure;

b) the term of the contract is extended until selection of new contractor but for no more than six months;

c) interruption of the supply or service will create significant difficulties for the contracting authority;

6. (*New - SG No. 33/2012*) in contracts under Art. 3 (2) of value exceeding BGN 50 000 000, where circumstances that could not be envisaged as of the moment of conclusion of the contract have appeared and where as a result of such circumstances the contract affects the legally recognized interests of one of the parties.

(3) (*New - SG No. 94/2008, in force as of 01.01.2009*) The price modification on the grounds of Par. 2, Subpar. 3 shall be permissible to the amount of the actual increase in the costs of the contractor, as a result of modification of the state regulated price.

(4) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The contracting authority is entitled the right to terminate a public procurement contract if, as a result of unforeseen circumstances, it is unable to fulfill its obligations. In these cases the

contracting authority owes the contractor an indemnity for the suffered damages from the termination of the contract in accordance with what has been settled in it.

(5) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority and the contractor may terminate the public procurement contract under terms and procedure specified in the contract.

(6) *(Former Par. 5, SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority has the obligation to terminate contract concluded on the basis of a framework agreement which has been declared null and void under Art. 41b (1).

(7) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* Upon reorganisation of the contractor in compliance with the legislation of the country in which it has been established, the contracting authority concludes a contract for continuation of the public procurement contract with a grantee. A contract for continuation of a public procurement contract is concluded with a grantee with reference to whom the circumstances under art. 47, para. 1 and 5, the circumstances under art. 47, para. 2 indicated by the contracting authority and the requirements related to the selection criteria are not at hand. No changes in the public procurement contract may be made with the contract with the grantee. In case upon the reorganisation, the enterprise of the initial contractor is not folded, it is jointly responsible with the new contractor- grantee.

(8) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* Upon the reorganisation of the contractor, if the grantee does not meet the requirements under para. 7, sentence two, the public procurement contract is terminated by law, and the contractor, respectively the grantee, owes indemnity under the general claim procedure.

Article 44. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The contracting authority shall be obligated to dispatch information on each public procurement contract as concluded of framework agreement as concluded to the Agency for entry into the Public Procurement Register not later than 30 days from conclusion of any such contract or framework agreement.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The information referred to in Paragraph (1) must be based on the standard form referred to in Item 7 of Article 19 herein. The information contains data, specified by the regulation for the implementation of the Act, including about the persons who have placed offers, and when associations have participated in the procedure- and for the members of the association.

(3) *(Last Amendment - SG No. 33/2012)* Any information referred to in Paragraph (1), whereof the disclosure conflicts with a law or with the public interest, shall not be entered into the Public Procurement Register. In such a case, the contracting authority shall justify this to the Agency.

(4) *(New - SG No. 37/2006, in force as of 01.07.2006)* Any information which, according to the standard form referred to in Article 19 (7) herein, is not intended for publication, shall be used for statistical purposes.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The information on contracts concluded on the basis of a dynamic purchasing system may be sent on a quarterly basis. In such case, the contracting authority must send the information within 30 days after the end of each quarter.

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Contracting authorities shall be obligated to send the Agency information on each contract concluded on the basis of a framework agreement within 30 days after the conclusion of any such contract.

(7) *(Last Amendment - SG No. 33/2012)* The contracting authorities may publish information about concluded contracts in the cases when they apply:

1. Art. 4, pts., 2, 4 and 5, Art. 12 (1), pts. 2 - 9, 11-15, provided that the contracts have values exceeding the minimum thresholds under Art. 14 (4);

2. Art. 13 (1), provided that the contracts have the values envisaged in Art. 14 (2).

(8) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The information under Par. 7 is prepared in compliance with the relevant template under Art. 19, Par. 7 and is sent for entry into the Public Procurement Register within 7 days as of conclusion of the contract. The contracting authorities must indicate in the information the reasons for the application of the respective grounds.

(9) *(New - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities send information to the Agency within one month after finalization or termination of a public procurement contract.

(10) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Not later than 31 March of the year following the reported year, the contracting authorities send summarized information in a standard form approved by the Executive Director of the Agency, for all funds spent in relation to public procurements under:

1. *(New - SG No. 40/13.05.2014, in force as of 01.10.2014)* Art. 3 (1), when they are public procurements in the values by Art. 14 (4) and (5).

2. *(New - SG No. 40/13.05.2014, in force as of 01.10.2014)* Art. 3 (2), when they are public procurements under the values by Art. 14 (2).

Article 45. Any unregulated matters in connection with the conclusion, performance and termination of public procurement contracts shall be governed by the provisions of the Commerce Act and of the Obligations and Contracts Act.

Section VII

(New - SG No. 40/13.05.2014, in force as of 01.07.2014)

Subcontract

Art. 45a. *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contractors conclude subcontracts with the subcontractors specified in the offer. The conclusion of a subcontract does not exonerate the contractor from his or her responsibility for execution of the public procurement contract.

(2) The contractors are not entitled the right to:

1. conclude a subcontract with a person with reference to whom a circumstance under art. 47, para. 1 or 5 is at hand;

2. assign the performance of one or more than one of the activities included in the subject of the public procurement contracts to persons who are not subcontractors;

3. substitute a subcontractor indicated in the offer, except for the cases when:

a) a circumstance under art. 47, para. 1 or 5 arises for the proposed subcontractor;

b) the proposed subcontractor ceases to meet the normative requirement for performance of one or more than one of the activities included in the subcontract;;

c) the subcontract is terminated through the fault of the subcontractor, including in the cases under para. 6.

(3) Within three days after concluding a subcontract or an additional agreement related to it, or a contract by virtue of which a subcontractor indicated in the offer is replaced, the contractor sends an original copy of the contract or the additional agreement to the contracting authority along with proof that the prohibition under para. 2 is not infringed.

(4) The subcontractors are not entitled the right to reassign one or more than one of the activities which are included in the subject of the subcontract.

(5) The delivery of goods, materials and equipment necessary for the implementation of the public procurement, when such delivery does not include assembly, as well as concluding a contract for services which are not part of the subject of the public procurement contract, respectively of the subcontract, is not considered a violation of the prohibition under para. 2, pt. 2 and under para. 4.

(6) The contractor is obligated to terminate a subcontract if, during its execution a circumstance under art. 47, para. 1 or 5 arises, as well as when upon violation of the prohibition under para. 4, within 14 days after finding out. In these cases a new subcontract is concluded upon compliance with the conditions and the requirements under para. 1 - 5.

Art. 45b. *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contracting authority accepts the execution of an activity from the public procurement contract with reference to which it has concluded a subcontract in the presence of the contractor and the subcontractor.

(2) Upon acceptance of the respective work, the contractor may present to the contracting authority proof that the subcontract is terminated or that the work or part of it is not performed by the subcontractor.

(3) The contracting authority makes the final payment under a public procurement contract with reference to which there are concluded subcontracts, after receiving proof by the contractor that he or she has paid to the subcontractor all works performed under para. 1.

(4) Paragraph 3 is not applied in the cases under para. 2.

Section VIII

(Former Section VII - SG No. 40/13.05.2014, in force as of 01.07.2014)

Sending information to the European Commission

Article 45c. *(Former Art. 45a - SG No. 40/13.05.2014, in force as of 01.07.2014) (1) (Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities shall be obliged to send for publication, not only to the Public Procurement Register but also in the Official Journal of the European Union, the following documents:

1. *(Last Amendment – SG No. 52/2010)* preliminary announcements or notifications for **publications of preliminary announcements in the buyer's profile** - in public works for construction;

2. preliminary announcements - invitations;

3. announcements for opening of procedures;

4. *(New - SG No. 93/2011, in force as of 26.02.2012)* information on amendments in the notice and/or documentation;

5. *(Former Item 4 - SG No. 93/2011, in force as of 26.02.2012)* information about concluded contracts or framework agreements;

6. *(Former Item 5 - SG No. 93/2011, in force as of 26.02.2012)* information about conducted project competitions;

7. *(Former Item 6 - SG No. 93/2011, in force as of 26.02.2012)* simplified public procurement announcements within the frameworks of the dynamic delivery systems.

(2) *(Last Amendment - SG No. 33/2012)* The documents under Par. (1) are sent where:

1. contracting authorities under Art. 7, pt. 1 which are central units of the Executive or their combinations and contracting authorities under Art. 7, pts. 2 and 4 award public procurements of values (VAT excluded) equal or exceeding:

a) BGN 9 779 000 for construction works;

b) BGN 254 254 for supplies, services under Annex No 2 and design contests;

c) BGN 391 160 - for services under Annex No 2 of Category 8, telecommunication services of Category 5, equivalent Ref. No under CPV 7524, 7525 and 7526, services under Annex No 3, as well as design contests related to such services;

2. contracting authorities under Art. 7, pt. 1, which are territorial units of the Executive or their combinations, award public procurements of values (VAT excluded) equal or exceeding:

a) BGN 9 779 000 for construction works;

b) BGN 391 160 - for supplies, services and design contests;

3. contracting authorities under Art. 7, pt. 1, carrying out activities in the field of defense, award public procurements of values (VAT excluded) equal or exceeding:

a) BGN 9 779 000 for construction works;

b) BGN 391 160 - for supplies and BGN 254 254 for supplies under Annex No 4;

4. contracting authorities carrying out activities in the field of defense, which are central units of the Executive, award public procurements of values (VAT excluded) equal or exceeding:

a) BGN 254 254 for services under Annex No 2 and design contests;

b) BGN 391 160 - for services under Annex No 2 of Category 8, telecommunication services of Category 5, equivalent Ref. No under CPV 7524, 7525 and 7526, services under Annex No 3, as well as design contests related to such services;

5. contracting authorities carrying out activities in the field of defense, which are territorial units of the Executive, award public procurements under Art. 3 (1) for services or design contest, of values (VAT excluded) equal or exceeding BGN 391 160;

6. contracting authorities under Art. 7, pts. 5 or 6, award public procurements under Art. 3 (1) of values (VAT excluded) equal or exceeding:

a) BGN 9 779 000 for construction works;

b) BGN 782 320 - for supplies, services and design contests;

7. contracting authorities under Art. 7, award public procurements under Art. 3 (2) of values (VAT excluded) equal or exceeding:

a) BGN 9 779 000 for construction works;

b) BGN 782 320 - for supplies, services and design contests;

(3) (*Last Amendment - SG No. 33/2012*) In the cases under Art. 14a (3), the documents under Par. (1) are sent where the expected value of the public procurement contract for construction with VAT excluded is equal or exceeding BGN 9 779 000.

(4) *(Last Amendment - SG No. 33/2012)* In the cases under Art. 14a (4), the documents under Par. (1) are sent where the expected value of the public procurement contract for services with VAT excluded is equal or exceeding BGN 391 160.

(5) *(Last Amendment - SG No. 33/2012)* The contracting authorities are obliged to send in accordance with Par. 1 the prior notices or communications for publication of preliminary notices on the buyers profile when the public procurements under Art. 3 (1) in categories of supplies and services under Annex No 2 to Art. 5, (1), pt. 1 have the BGN equivalent equal or exceeding 750 000 EUR, according to the official exchange rate, and for public procurements under Art. 3 (2) – values equal or exceeding those indicated in Par. (2), pt. 7. The contracting authorities have the obligation to send prior notices only in case that they intend to apply the shorter time periods under Art. 64 (2), Art. 81 (2) and Art. 104 (1).

(6) *(Former Par. (4) - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities shall be obliged to send pursuant to par. 1 the announcements for creation of systems for preliminary selection.

(7) *(Repeal, Former Par. (5), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities may send the documents under Par. 1, 5 and 6 to the Official Journal of the European Union by post, fax or electronically, and in the cases under Art. 76, Par. 3 and Art. 86, Par. 3 – by fax or electronically. The notification under Par. 1, Subpar. 1 shall be sent electronically.

(8) *(Former Par. (6) - SG No. 93/2011, in force as of 26.02.2012)* The contracting **authorities may not publish preliminary announcements in the buyer's profile prior to the** date of sending of the notification under Par. 1, Subpar. 1 for publication in the Official Journal of the European Union.

(9) *(Former Par. (8), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The documents under Pars. (1), (5) and (6) are sent for publication in the Official Journal of the European Union under standard forms approved by the Implementing Regulation (EU) No 842/2011. The Bulgarian version shall be considered the only authentic text.

(10) *(Former Par. (9), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities shall be obliged to send for publication in the Official Journal of the European Union the documents under Par. 1, 5 and 6 not later than the time of their sending for publication in the Public Procurement Register. The documents sent for publication in the country shall also indicate the date of their sending to the Official Journal.

(11) *(Former Par. (10) - SG No. 93/2011, in force as of 26.02.2012)* The contracting authorities shall be obliged to perform the following:

1. *(Last Amendment - SG No. 33/2012)* to publish in identical information in the documents sent to the Official Journal of the European Union and in those sent to the Public Procurement Register;

2. to submit upon request evidence about the date of dispatch of the documents and the confirmation of the date of publication, provided by the Official Journal of the European Union.

(12) *(Former Par. (11), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In case of incompliance of the information published in the Public Procurement Register with the information promulgated in the Official Journal of the European Union, the information promulgated in the Official Journal shall be regarded as authentic.

(13) *(Last Amendment - SG No. 33/2012)* The contracting authorities may send to the Official Journal of the European Union notice of awarded contracts also in cases where they apply Art. 4, Items 2, 4 and 5, Art. 12 (1), Items 2 - 9, 11-15 and Art. 13 (1), where the contracts have values equal or exceeding those defined in Par. (2). The contracting authorities must state in the notice the reasons for the application of the respective exception.

Chapter Four

COMMON RULES FOR PARTICIPATION IN PUBLIC PROCUREMENT AWARD PROCEDURE

Section I

Requirements to Candidates or Tenderers

(Title Last Amendment - SG No. 37/2006, in force as of 01.07.2006)

Article 46. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Any candidate or tenderer, who or which possesses the required qualifications as announced in advance, may participate in a public procurement award procedure.

Article 47. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority shall exclude from participation in a public procurement award procedure any candidate or tenderer who or which:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* has been convicted by an effective sentence, unless rehabilitated, of:

(a) a criminal offence against the financial, tax or social security system, including money laundering, under Articles 253 to 260 of the Criminal Code;

(b) bribery under Articles 301 to 307 of the Criminal Code;

(c) participation in an organized criminal group under Articles 321 and 321a of the Criminal Code;

(d) a criminal offence against property under Articles 194 to 217 of the Criminal Code;

(e) a criminal offence against the economy under Article 219-252 of the Criminal Code;

f) (*New - SG No. 33/2012*) a criminal offence under Article 108a of the Criminal Code – in cases of public procurements under Art. 3 (2).

2. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) has been adjudicated bankrupt;

3. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) is being wound up or is in any analogous situation arising from a similar procedure under national laws and regulations.

4. (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) has obligations within the meaning of art. 162, para. 2, pt. 1 of the Tax- Insurance Procedure Code to the state and to municipality, specified with an effective act issued by a competent authority, unless there is a deferral of obligations permitted, or has obligations for taxes and social insurance payments in accordance with the legislation of the state in which the candidate or the participant is established.

(2) (*Last Amendment - SG No. 33/2012*) The contracting authority may exclude from participation in a public procurement award procedure any candidate or tenderer:

1. (*Last Amendment - SG No. 33/2012*) who or which is the subject of pending bankruptcy proceedings, or has made an out-of-court arrangement with the creditors thereof within the meaning given by Article 740 of the Commerce Act or, in case the candidate or tenderer is a foreign person, is in any analogous situation arising from a similar procedure under national laws and regulations, including where the affairs thereof are being administered by the court, or the candidate or tenderer has suspended the business activities thereof;

2. (*Last Amendment - SG No. 33/2012*) has been disqualified from practicing a specific profession or activity according to the legislation of the State where the violation has been committed, including in cases of violations related to export of products in the fields of defense and security;

2a. (*New - SG No. 33/2012*) is guilty of breach of public procurement contract, including in relation to information security and supply security in cases of procurements under Art. 3 (2), proved by the contracting authority by reference to a court decision which has entered into force;

3. (*Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014*)

4. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) who is a convict with an effective sentence, unless he or she is rehabilitated for a crime under art. 136 of the Penal Code linked to the healthy and safe labour conditions, or under art. 172 of the Penal Code against the labour rights of the employees;

5. (*New - SG No. 33/2012*) has been convicted by an effective sentence, for a criminal offence under Art. 313 of the Criminal Code in relation to public procurement award procedures;

6. (*New - SG No. 33/2012*) has been found by the security services, within the meaning of the Classified Information Protection Act, on the basis of any means of evidence, including intelligence sources, to be lacking the reliability necessary to exclude risks to the national security in case of award of contracts under Art. 3 (2).

(3) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) Where the contracting authority envisages elimination of candidates or participants if any of the circumstances under Par. (2) exists, the contracting authority must state these circumstances in the notice on the public procurement and in cases of negotiated procedure without publication of contract notice – in the invitation for participation.

(4) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The requirements under Par. 1, Subpar. 1 and Par. 2, Subpar. 2, 4 and 5, when so indicated by the contracting authority in the announcement, shall be applied as follows:

1. (*Last Amendment – SG No. 52/2010*) in case of general partnership – for the persons under Art. 84, Par. 1 and Art. 89, Par. 1 of the Commercial Law;

2. in case of a limited joint stock company – for the persons under Art. 105 of the Commercial Law, without the limited liable partners;

3. in case of a limited liability partners – for the persons under Art. 141, Par. 2 of the Commercial Law, and in case of a private limited liability company – for the persons under Art. 147, Par. 1 of the Commercial Law;

4. in case of a joint stock company – for the authorized persons under Art. 235, Par. 2 of the Commercial Law, and in case of lack of authorization – for the persons under Art. 235, Par. 1 of the Commercial Law;

5. in case of a limited joint stock company with shares – for the persons under Art. 244, Par. 4 of the Commercial Law;

6. (*New - SG No. 93/2011, in force as of 26.02.2012*) in case of sole proprietor – for the natural person – proprietor;

7. (*Former Item 6 - SG No. 93/2011, in force as of 26.02.2012*) in all other cases, including non-residents – for the persons representing the applicant or the participant;

8. (*Former Item 7, Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) in the cases under Items 1 - 7 - also for the managerial agents, if such are present; where a foreign person has more than one managerial agent, the declaration is submitted only by the one whose agency rights include the territory of the Republic of Bulgaria, or respectively the territory of the state where the procedure is carried out in case of contracting authority under Art. 7, Item 2.

(5) (*Last Amendment – SG No. 94/2008, in force as of 01.01.2009*) No candidates or tenderers may participate in public procurement procedure if:

1. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) persons under para. 4 are connected persons with the contracting authority or with any holders of a position of responsibility at the organization of the said contracting authority,

2. which have a signed contract with a person under Art. 21 or 22 of the Prevention and Identification of Conflict of Interests Act.

(6) *(Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)*

(7) *(Last Amendment - SG No. 33/2012)* The requirements referred to in Items 2 and 3 of Paragraph (1) and Item 1 of Paragraph (2) shall not apply in the cases referred to in Item 12 of Article 90 (1), Item 11 of Article 103 (2) and Item 10 of Article 119c (3) herein.

(8) *(Former Par. (7) - SG No. 93/2011, in force as of 26.02.2012)* Where the candidate or tenderer envisages the participation of subcontractors in the performance of the procurement, the requirements covered under Paragraphs (1) and (5) and the requirements under Paragraph (2) as indicated in the notice shall apply to the subcontractors as well.

(9) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Upon submission of a request to participate or of a tender, the candidate or tenderer shall attest, by means of one declaration, signed by the persons who represent the candidate or the participant, the non-existence of the circumstances covered under Paragraphs (1) and (5) and the conformity with the requirements under Paragraph (2), Items 1-5 as indicated in the notice. In the declaration is also included information about the public registers in which the indicated circumstances are contained, or the competent authority which, according to the legislation of the state in which the candidate or the participant is established, is obligated to ex officio submit to the contracting authority information for these circumstances.

(10) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Upon signing the public procurement contract, the participant selected to be a contractor is obligated to present documents from the respective competent authorities for the purpose of certifying the lack of the circumstances under para. 1, pt. 1- 4 and of the circumstances under para. 2, pt. 1, 2, 4 and 5 of the announcement, except in the cases in which the legislation of the state in which he or she is established provides the inclusion of any of these circumstances in a free public register or their free disposal to the contracting authority.

(11) *(Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)*

Article 48. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* A foreign natural person or legal entity for whom, in the state where he or she is established, any of the circumstances under art. 47, para. 1 or any of the circumstances under art. 47, para. 2 specified in the announcement is present, may not participate in a procedure for award of a public procurement.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Upon placing the offer, the candidate or the participant certifies the lack of the circumstances under para. 1 with the declaration under art. 47, para.9.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* In case the legislation of the state in which the candidate or the participant is established does not provide for the inclusion of any of the circumstances under para. 1 in a free public register or their official and free granting to the contracting authority, upon signing the public procurement contract, the participant selected for a contractor is obligated present:

1. documents, issued by a competent authority certifying the lack of the circumstances under art. 47, para. 1 and of the circumstances under art. 47, para. 2 specified in the announcement, or

2. an abstract from a judicial register, or

3. an equivalent document issued by a judicial or administrative authority from the state in which he or she is established.

(4) *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* In case in the state in which the candidate or the participant is established no documents for the specified circumstances are issued or, in case the documents do not include all circumstances, the participant presents a declaration, if such declaration has a legal significance according to the legislation of the state where he or she is established.

(5) *(Former Par. 4 - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where the declaration on oath has no legal significance according to the relevant national law, the tenderer shall submit a solemn declaration made before a judicial or administrative authority, a notary or a competent professional or trade body in the State in which the tenderer is established.

Article 49. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority may require from every candidate or participant to prove his or her registration in a professional or commercial register in the state where he or she is established, to present a declaration or a certificate for the presence of such registration by the competent authorities in accordance with the respective national Act, when, by virtue of an Act, the presence of the registration is specified as a condition for implementation of the subject of the public procurement.

(2) In procedures for the award of public procurements of services, insofar as candidates or tenderers have to possess a particular authorization or to be members of a particular organization in order to be able to perform the service concerned in their country, the contracting authority may require the said candidates or tenderers to prove that they hold such authorization or membership.

(3) (New – SG No. 52/2010) For permission for participation in a procedure of applicants or participants settled in another Member State of the European Union the contracting authority is not entitled to request provision of a certificate or document of registration by an administrative body if they provide an equivalent document issued in their country of residence.

Article 50. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authorities specify requirements for the financial and economic status of the candidates and the participants only if, for the purpose of the execution of the procurement, a financial resource for providing of materials, supplies, payment of remuneration and the related taxes

and insurances, an others is necessary. In these cases the contracting authority specifies a requirement for the amount of the financial resource of the candidate or the participant which cannot exceed 50 percent of the prognosticated price of the public procurement. The candidates and the participants may prove the presence of the financial resource required by the contracting authority with one or several of the following documents:

1. a bank certificate;

2. the annual financial statement or any of its components, when their publication is required by the legislation of the state where the candidate or the participant is established.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* If, for any valid reason, the candidate or tenderer is unable to provide the references required by the contracting authority, the said candidate or tenderer may prove the economic and financial standing thereof by any other document which the contracting authority considers appropriate.

(3) *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases under para. 1, pt. 2 and under para.2, the contracting authority is not entitled the right to require the presentation of the annual financial statement or any of its components, as well as any other document, if they are published in a public register in the Republic of Bulgaria and the candidate or the participant has indicated information about the authority which maintains the register.

Article 51. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* As evidence of the technical capacity and/or qualifications of the candidates or tenderers, the contracting authority may require that they provide one or more of the following references according to the subject of the public procurement:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* a list of the deliveries or the services which are identical with or similar to the subject of the public procurement which have been fulfilled during the last three years as of the date of submission the application or placing the offer, and with reference to the procurements under art. 3, para. 2 -fulfilled during the last 5 years, by including the values, the dates and the recipients along with a proof for the performed delivery or service;

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* a list of the construction, executed during the last 5 years as of the date of submission of the application or placing the offer, and with reference to construction which is identical with or similar to the subject of the procurement and:

a) indication of the public registers in which is contained information about the certificates for launching the construction into exploitation, and information which includes data for the competent authorities which have issued these certificates, the value, the date on which the execution has been completed, the location and the type of construction, or

b) certificates for good performance which contain the price, the date on which the execution has been completed, the location, the type and the size of the construction, as

well as whether it has been performed in accordance with the normative requirements; the certificates contain a date and signature of the issuer and contact information or:

c) copies of documents, certifying the execution, the type and the size of the performed construction works;

3. (*Last Amendment - SG No. 33/2012*) a description of the technical facilities and **measures used to ensure quality and the undertaking's study and research facilities, and in cases under Art. 3 (2) – the internal rules regarding intellectual property;**

4. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) a list of the technicians involved, including those responsible for quality control;

5. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) samples, description and/or photographs of the goods to be supplied, the authenticity of which must be certified if the contracting authority so requests;

6. (*Last Amendment - SG No. 33/2012*) certificates issued by accredited quality management persons attesting the conformity of the products with the relevant specifications or standards;

7. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) specification of the degree of education, the professional qualification and the professional experience of the candidate or the participant and/ or of his or her managerial employees, including of the persons who are in charge of fulfillment of the service or execution of the construction;

8. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) a statement of the average annual manpower and of the size of managerial staff of the candidate or tenderer for the last three years, except in the cases in which the candidate or the participant has specified in his or her offer that he or she is going to use a subcontractor or the resources of a third party

9. (*Last Amendment - SG No. 33/2012*) a statement of the technical equipment available to the service provider or contractor for performance of a public procurement of services or works; and in all cases of contract awards under Art 3 (2) – a description of staff numbers and know-how and/or sources of supply — with an indication of the geographical location when it is outside the territory of the European Union — which the candidate has at its disposal to perform the contract, cope with any additional needs required by the contracting authority as a result of a crisis or carry out the maintenance, modernization or adaptation of the supplies covered by the contract;

10. (*Renumbered from Item 8 and supplemented, SG No. 37/2006*) a statement of the technicians whom the candidate or tenderer can call upon for carrying out the works, whether or not they belong to the firm;

11. (*New - SG No. 37/2006, in force as of 01.07.2006*) for public procurements of works and services: an indication of the environmental protection measures that the candidate or tenderer will apply when performing the procurement, if the contracting authority has envisaged such measures in the notice;

12. (*New - SG No. 33/2012*) **permit, certificate or confirmation for access to classified information within the meaning of the Classified Information Protection Act, including**

evidence of the ability to process, store and transmit such information at the level of protection required by the contracting authority – in case of public procurements containing or requiring classified information.

13. *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* certificates, certifying the compliance of the candidate or the participant with standards for quality management systems in accordance with art. 53.

(2) *(Last Amendment - SG No. 33/2012)* In procedures for the award of public procurement of supplies which require siting or installation work, the provision of services and/or the execution of works, contracting authorities may impose requirements on the candidates or tenderers with regard to their skills, efficiency and experience in providing the services or in executing the installation or building works.

(3) *(New - SG No. 33/2012)* The contracting authority may include in the contract notice an additional time period within which the persons not having permit, certificate or confirmation under Par. (1), pt. 2 to submit the respective document. Within the time period for submission of application, such persons shall submit before the contracting authority a declaration of consent for investigation and shall apply the documents required under the Classified Information Protection Act, which shall be sent by the contracting authority to the respective security service.

(4) *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases under para. 1, pt. 1, the proof for the performed delivery or service is submitted in the form of a certificate, issued by the recipient or a competent authority, or through indicating in a public register in which information about the delivery or the service is published.

Article 51a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) A candidate or a participant may prove the compliance with the requirements for financial and economic status, for the technical capacities and/ or qualification with the resources of one or more than one third parties. In these cases, along with the documents for proving the respective resources, specified by the the contracting authority, the candidate or the participant presents evidence that upon performance of the procurement he or she will be in possession of the resources of the third parties.

(2) For the purposes of para. 1 as third parties might be specified subcontractors, linked enterprises and other persons, regardless of the legal relationship of the candidate or the participant with them.

Article 52. *(Last Amendment - SG No. 33/2012)* Where the subject of a public procurement is complex or is required for a special purpose, as well as in all cases of public procurements under Art. 3 (2), the contracting authority may carry out a check of the technical capacity of the candidate or tenderer and, if necessary, on the study and research facilities and the quality assurance measures thereof. Alternatively, the contracting authority may request that such a check be carried out on its behalf by a competent official body of the country in which the candidate or tenderer is established, subject to the agreement of the said body.

Article 53. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Should the contracting authority require the production of certificates verifying conformity of the candidate or tenderer to quality management systems, the contracting authority shall define the quality management systems by reference to the relevant European standards series.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In the cases referred to in Item 11 of Article 51 (1) herein, the contracting authority shall require the production of certificates verifying the compliance of the candidate or tenderer with certain environmental management standards, and shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The certificates under Pars. (1) and (2) must be issued by independent persons accredited under the relevant European standards series by the Bulgarian Accreditation Service Executive Agency or by national accreditation body party to the multi-lateral agreement on mutual recognition of the European co-operation for Accreditation for the respective sphere and meeting the requirements for recognition under Art. 5a (2) of the National Accreditation of Authorities for Assessment of Compliance Act.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall accept equivalent certificates issued by bodies established in other Member States, as well as other evidence of equivalent environmental quality assurance or environmental protection measures.

Article 53a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) A candidate or tenderer may submit a certificate or registration on an official list of approved economic operators of a Member State of the European Union.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases referred to in Paragraph (1), the contracting authority may not exclude a candidate or tenderer from a public procurement award procedure or to refuse to conclude a contract therewith on the grounds of the said candidate or tenderer failing to produce any of the documents referred to in Article 47 (10), Article 50 (1) and (2), Article 51 and Article 51 (3) herein, provided that the circumstance is proved by the certificate produced.

Article 53b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority is not entitled the right to remove a candidate or a participant from a procedure for public procurement award or to refuse concluding a contract with him on the basis of non- presenting of a document under art. 51 or art. 53, para. 1 in case:

1. he or she has presented a certificate for entry in a professional register which is created under an act or an equivalent document and which has been issued by an organisation, established in another Member State of the European Union, and

2. from the certificate or the equivalent document the presence of circumstances which might be proven with the respective document requested by the contracting authority can be ascertained.

Article 53c. *(New - SG No. 33/2012)* (1) In the cases under Art. 51 (1), pt. 2, the contracting authorities shall recognize security clearances issued in accordance with the legislation of a Member State of the European Union, where the candidate or tenderer is established, in case of an international agreement into force or bilateral agreement for classified information protection, the Republic of Bulgaria is a party to. That does not exclude the possibility the contracting authority to request further investigations in the respective Member State of the European Union, under the terms and conditions of the Classified Information Protection Act.

(2) The contracting authority may, under the terms and conditions of the Classified Information Protection Act, ask the national security authority of the candidate's State to check the conformity of the premises and facilities that may be used, the industrial and administrative procedures that will be followed, the methods for managing information and/or the situation of staff likely to be employed to carry out the contract.

Art. 53d. *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authorities are not entitled the right to require form the candidates and the participants to prove that they meet the specified selection criteria with information and documents which are not specified in this Act.

Section II

Tender

Article 54. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* (1) In drawing up a tender, each tenderer must strictly observe the terms and conditions announced by the contracting authority.

(2) Before expiry of the time limit fixed for submission of tenders, each tenderer in a procedure may modify, supplement or withdraw the tender thereof.

Article 55. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Each tenderer in a public procurement award procedure shall have the right to submit a single tender.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Where the criterion of the most economically advantageous tender applies in the evaluation of the tenders and the contracting authority has authorized variants, the tenderer may submit several variants in the tender thereof.

(3) *(New - SG No. 93/2011, in force as of 26.02.2012)* Where the prices of goods or services subject to public procurement are subject to regulation, the participants may submit tenders with prices lower than the regulated ones.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Only variants meeting the minimum requirements laid down by the contracting authority shall be taken into consideration. 'In the cases under art. 25, para. 3, pt. 3 for examination are accepted only the offers which meet the minimum requirements under art. 28, para. 1, pt. 5.

(5) *(Former Par. (4), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* No party, participateing in combination or who or which has given their consent and is named as a subcontractor on the tender of another tenderer, may submit a separate tender.

(6) *(New - SG No. 93/2011, in force as of 26.02.2012)* A natural or legal person may participate in only one combination of persons participating in the public procurement procedure.

(7) *(New - SG No. 40/13.05.2014, in force as of 01.07.2014)* Linked persons or linked enterprises are not entitled the right to be independent candidates or participants in one and the same procedure.

Article 56. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) Each tender must contain:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* presentation of the participant which includes:

a) specification of a unified identification code under art. 23 of the Commercial Register Act, BULSTAT and/ or other identifying information in accordance with the legislation of the state in which the candidate or the participant is established, as well as address, including electronic one, for correspondence upon performance of the procedure;

b) a declaration under art. 47, para.9 and

c) evidence for exercising of professional activities under art. 49, para. 1 and 2, if such are required by the contracting authority;

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* with reference to participants in associations- a copy of the association contract and, when the person who represents the participants in the association is not specified in the contract, a document, signed by the persons in the association, in which the representative is specified;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* an original copy of a bank guarantee for participation or a copy of the document for a guarantee paid in in the form of money;

4. *(Former Item 3 - SG No. 93/2011, in force as of 26.02.2012)* evidence of economic and financial standing under Article 50 herein, as specified by the contracting authority in the contract notice;

5. (Former Item 4 - SG No. 93/2011, in force as of 26.02.2012) evidence of technical capacity and/or qualifications under Article 51 herein, as specified by the contracting authority in the contract notice;

6. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) a declaration on non-existence of link with other participant or candidate in accordance with Art. 55 (7), as well as the non-existence of the circumstances under Art. 8 (8) pt. 2 herein;

7. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) technical proposal for execution of the public procurement contract, including term for execution, to **which, if it's possible, a declaration is put.**

8. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) the types of works from the the subject of the contract which are to be offered to subcontractors and the percentage share of the public procurement price corresponding to these works, and the envisaged subcontractors;

9. (Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)

10. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) price offer;

11. (Last Amendment - SG No. 33/2012) a declaration that the employment protection requirements, including minimum labor cost requirements, have been complied with, in the cases under Art. 28 (5).

12. (New - SG No. 93/2011, in force as of 26.02.2012) declaration that the conditions of the draft contract are accepted;

13. (Former Item 11 - SG No. 93/2011, in force as of 26.02.2012) any other information indicated in the notice or in the contract documents;

14. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) a list of the documents and the information contained in the tender, signed by the tenderer.

(2) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) With their offer, the participants may, without any limitations, propose the use of subcontractors.

(3) (Last Amendment - SG No. 93/2011, in force as of 26.02.2012) Where the participant in the procedure is a combination which is not a legal person:

1. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) the documents referred to in Paragraph (1), **Item 1, l. "a" and "b" shall be submitted by each natural or legal person included in the said combination;**

2. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) the documents **referred to in Paragraph (1), Item 1, l. "c", 4 and 5 shall be submitted only for the participants through which the combination proves its compliance with the selection criteria under Art. 25 (2), Item 6;**

3. *(Last Amendment - SG No. 33/2012)* the declaration referred to in Item 11 of Paragraph (1) shall be submitted only for participants in the combination which will carry out activities related to construction or services.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where the tenderer in the procedure is a foreign natural or legal person or a combination of such persons, the tender shall be submitted in the Bulgarian language, and the document referred to in Item 1 of Paragraph (1) shall be produced in an official translation, whereas the documents referred to in Items 4, 5, and 11 of Paragraph (1), which are in a foreign language, shall be produced both in the original and in a translation.

(5) *(New – SG No. 52/2010)* When the place of execution of the procurement is outside the country the contracting authority may permit the application for participation and the bid to be presented in the official language of the relevant country.

Article 57. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The tender shall be submitted sealed in an opaque envelope by the tenderer or by an authorized representative thereof, in person or by registered mail with advice of delivery. On the said envelope, the tenderer shall indicate a mailing address, a telephone number and, if possible, a facsimile number and an electronic mail address and, where the tender is for lots, the lots to which the said tender applies. In the cases under art. 25, para. 3, pt. 3 on the envelope it is indicated for which parts of the nomenclatures in the lots the offer is placed.

(2) *(Last Amendment - SG No. 52/2010)* The envelope under Par. 1 contains three separate sealed non-transparent and signed envelopes as follows:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **Envelope № 1 entitled "Selection documents" where the documents and information under Art. 56, Par. 1, Subpar. 1 – 5, 8, 11-14.**

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **Envelope № 2 entitled "Proposal for execution of the procurement" where the technical offer and if it's applicable – declaration under Art. 33 (4) are placed;**

3. Envelope № 3 entitled "Bid price" containing the applicant's price proposal.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where a participant submits a tender for more than one separate position, Envelopes 2 and 3 shall be submitted for each of the positions. In case documents and information which are contained **in envelope № 1 are the same with reference to two or more lots for which the participant takes part**, the same are put in the envelope for the lot with the smallest serial number, and this circumstance is indicated in the list of the documents which is included in the envelopes for the other lots.

(4) *(Former Par. (3) - SG No. 93/2011, in force as of 26.02.2012)* Upon receipt of any tender, the consecutive number, date and hour of receipt shall be marked on the envelope, and the said particulars shall be entered in an incoming register wherefor a document shall be issued to the bearer.

(5) *(Former Par. (4), Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall reject and shall immediately return to the tenderers any tenders submitted after expiry of the time limit or in envelopes which are unsealed or physically unsound. These circumstances shall be noted in the register referred to in Paragraph (4).

(6) *(Former Par. (5) - SG No. 93/2011, in force as of 26.02.2012)* The tender may alternatively be submitted by electronic means under the terms and according to the procedure established by the Electronic Document and Electronic Signature Act. In such case, the tenderer shall be obligated to submit to the contracting authority all documents which do not exist in electronic format according to the procedure established by Paragraph (1) before expiry of the time limit for receipt of tenders.

(7) *(Former Par. (6) - SG No. 93/2011, in force as of 26.02.2012)* The terms and procedure for receipt and storage of tenders sent by electronic means shall be regulated by the Regulations for Application of this Act.

Article 58. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The period of tender validity shall be the period during which the tenderers shall be bound by the terms of the tenders thereby submitted.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall fix the period referred to in Paragraph (1) in calendar days. The period starts on the date indicated as the last date for submission of tenders.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority requests from the participants to extend the term of validity of the offers in the cases in which it has expired. A participant who, after the request and in the term specified in it, fails to extend the term of validity of his or her offer is eliminated from participation.

(4) *(New - SG No. 94/2008, in force as of 01.01.2009)* With exception of the open procedure, the contracting authority shall specify the term of validity of the bid proposals in the invitation for submission of the proposals.

Article 58a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The procedures shall be prepared and conducted by the contracting authority. The contracting authority shall be responsible for the receipt and storage of the requests to participate, the tenders and the projects.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The information exchange may be by post, by telefax, by electronic means under the terms and procedure established by the Electronic Document and Electronic Signature Act, or by a combination of those means, according to the choice of the contracting authority. The means of communication chosen must be generally available and to be pointed in the announcement.

(3) The exchange and storage of information in the course of conduct of the public procurement award procedure shall be carried out in such a way as to ensure that the integrity, veracity and confidentiality of the requests to participate and the tenders are preserved.

(4) All representations by a contracting authority to the candidates or tenderers shall be evidenced in writing.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The decisions of the contracting authority, which the contracting authority is obligated to communicate to the candidates and the documents, which are put in or tenderers, shall be delivered thereto in person upon signed acknowledgement of service or shall be dispatched by registered mail with advice of delivery, by telefax or by electronic means under the terms and according to the procedure established by the Electronic Document and Electronic Signature Act.

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority shall be obligated to preserve the entire documentation on the conduct of each public procurement award procedure for at least four years after ending the procedure or after completion of the performance of a contract.

Section III

Guarantees

Article 59. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Each candidate or tenderer shall provide a guarantee for participation in the public procurement award procedure, and the candidate or tenderer, who or which has been selected as supplier, contractor or service provider, shall provide a performance guarantee upon signature of the contract.

(2) The contracting authority shall determine the terms and the amount of the participation guarantee as a fixed sum of money which may not exceed 1 per cent of the value of the procurement.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority shall determine the terms and the amount of the contract performance guarantee as a percentage of the value of the public procurement which may not exceed 5 per cent of the value of the said procurement.

(4) The contracting authority shall also require other performance guarantees in the cases specified by a statute.

(5) *(New - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority is not obliged to require guarantee for participation or performance where:

1. negotiated procedure without publication of contract notice is carried out, or

2. (*Last Amendment - SG No. 33/2012*) the value of the public procurement is under Art. 14 (3).

(6) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*)) In the cases under art. 16d, the contracting authority does not require participation or performance guarantees from the specialised enterprises or cooperatives of people with disabilities.

Article 60. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) (1) Guarantees shall be provided in one of the following forms:

1. a cash deposit;
2. a bank guarantee.

(2) (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) The candidate or tenderer or the selected supplier, contractor or service provider shall be free to choose a form of the participation guarantee or of the performance guarantee, as the case may be.

(3) (*New - SG No. 93/2011, in force as of 26.02.2012*) Where the candidate or participant or the selected contractor is not a legal person, any of the participants in it may order the bank guarantee and pay the necessary amount.

Article 61. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) (1) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The contracting authority shall have the right to retain possession of the participation guarantee until resolution of the dispute when the candidate or participant in a public procurement who award procedure lodges an appeal against the decision of the contracting authority whereby the results of the preliminary selection or the decision on selection of a contractor are declared.

(2) The contracting authority shall have the right to use the participation guarantee regardless of its nature where a candidate or participant:

1. withdraws the application after expiry of the time limit for receipt of applications, or withdraws the tenders after expiry of the time limit fixed for receipt of tenders;
2. is selected as contractor but fails to fulfil the obligation thereof to conclude a public procurement contract.

Article 62a. (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) When, by virtue of an effective decision under art. 122d, para. 1, pt. 2, the Commission for Protection of Competition repeals the decision of the contracting authority and returns the file for continuation of the public procurement award procedure of the last lawful decision, the contracting authority requests from the participants whose guarantee is released in accordance with art. 62, para. 1, pt. 2 to provide participation guarantee again. A participant who, after a request and in the term specified in it, fails to provide a guarantee again is eliminated from participation.

Article 62. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* (1) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The contracting authority shall release the guarantees for participation of:

1. eliminated applicants or participants within 5 working days after the expiration of the **time limit for appeal of the contracting authority’s decision on preliminary selection**, or on selection of a contractor, respectively;

2. the participants occupying the first and the second place – after the conclusion of the public procurement contract, and for the rest of the admitted participants – within 5 working days after the expiration of the time limit for appeal of the decision on selection of a contractor.

(2) *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

(3) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* Upon termination of the public procurement award procedure, the guarantees provided by all candidates or tenderers shall be released within 5 working days after expiry of the time limit for lodgment of an appeal against the decision on termination.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall release the guarantees referred to in Paragraph (1) without owing interest for the period during which the said guarantees were in the legal possession thereof.

Article 63. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Former text of Art. 63 - SG No. 93/2011, in force as of 26.02.2012)* The terms and time limits for retention or release of the performance guarantee shall be regulated in the public procurement award contract.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where the public procurement contract is executed in stages, the contracting authority includes in the contract a clause for partial release of the guarantee under Par. (1) corresponding to the part of the contract performed. In case the performance guarantee also covers the guarantee maintenance of the subject of the public procurement, partial release is allowed only if the performance guarantee is bigger than the one for guarantee maintenance.

Chapter Five

OPEN PROCEDURE

Section I

Open Procedure Preparation

Article 64. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 33/2012)* Upon conduct of an open procedure, the contracting authority shall dispatch the public procurement notice to the Agency for entry into the Public Procurement Register not later than fifty-two days before expiry of the time limit fixed for the receipt of tenders, and in cases under Art. 14 (3) – not later than forty days before expiration of the time limit.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The time limits referred to in Paragraph (1) may be shortened to thirty-six days, provided that the prior information notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Paragraph (1) and contains the information which is available at the date of dispatch of the said notice.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The time limits referred to in Paragraphs (1) and (2) may be shortened by seven days where the notice has been transmitted by electronic means and by additional five days if the contracting authority offers full access by electronic means to the contract documents from the date of publication of the notice in an electronic format and if an Internet address at which these documents are accessible is specified in the text of the notice.

(4) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Article 65. *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Article 66. *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

Article 67. *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

Section II

Examination, Evaluation and Ranking of Tenders

Article 68. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The commission, appointed by the contracting authority to examine, evaluate and rank the tenders, shall commence work after receipt from the contracting authority of the list of tenderers and of the tenders as submitted.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Upon alteration of the date and hour of the opening of tenders, the tenderers shall be notified in writing.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Opening of the bids is public and it can be attended by the participants in the procedure or their authorized representatives as well as representatives of the mass media and other entities according to the regulations for access to the building, where the opening takes place.

(4) *(Last Amendment – SG No. 52/2010)* The Commission opens the bid in the order of their submission and checks for the availability of three separate sealed envelopes, after which at least three members of the Commission sign Envelope № 3. The Commission proposes representatives among the present participants to sign Envelope № 3 of the remaining participants.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the presence of the persons under Par. 3 the commission opens Envelope № 2 and at least three members of the commission sign all documents contained in the envelope. The commission proposes one representative of the participants to sign the documents contained in Envelopes № 2 of the remaining participants. After that the commission opens Envelope 1, announces the documents and the information contained in it and examines compliance with the list under Art. 56 (1), Item 14.

(6) *(Last Amendment – SG No. 52/2010)* Following completion of the activities under Par. 4 and 5 the public part of the meeting is closed.

(7) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The commission examines the documents and the information in Envelope 1 for compliance with the selection criteria established by the contracting authority and issues a protocol.

(8) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* In case of missing documents and/ or inconsistency with the selection criteria, and/ or another irregularity, including a factual mistake, the Commission indicates them in the written statement under para. 7 and sends the respective written statement to all participants on the day of its publication in the buyer's profile.

(9) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The participants submit the respective documents to the commission within five working days after receipt of the protocol under Par. (7). " In case of ascertained lack of documents and/ or inconsistency with the selection criteria, the participant may, in compliance with the requirements of the contracting authority which are specified in the announcement, replace the submitted documents or present new ones with which he or she considers that the selection criteria set by the contracting authority will be fulfilled.

(10) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* After expiration of the time limit under Par. (9), the commission checks the additionally submitted documents regarding the compliance of the participants with the selection criteria set by the contracting authority. The commission does not review the documents in Envelope 2 of participants who do not meet the selection requirements.

(11) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In case of necessity commission may at any time :

1. inspect the data stated by the participants, including by requesting information from other authorities and persons;

2. require the participants:

a) to clarify the data submitted by them;

b) to submit additional evidence on the data in the documents, contained in Envelopes 2 and 3, and this possibility may not be used for modification of the technical and price proposal of the participants.

Article 68a. *(New - SG No. 93/2011, in force as of 26.02.2012)* (1) The commission notifies the contracting authority where in the course of its activities reasonable doubts of agreements, resolutions or concerted practices under Art. 15 Protection of Competition Act arise.

(2) In the cases under Par. (1) the contracting authority notifies the Protection of Competition Commission. The notification does not stop the procedure.

Article 69. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The commission shall propose for exclusion from the procedure any tenderer:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* who or which has failed to submit any of the documents or the information required under Article 56 herein;

2. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* in respect of whom there exist any circumstances covered under Article 47 (1) and (5) herein and any circumstances covered under Article 47 (2) herein as indicated in the notice;

3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* who or which has submitted a tender which is non-responsive to the terms and conditions as announced in advance by the contracting authority;

4. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* who or which has submitted a tender which does not satisfy the requirements established by Article 57 (2) herein;

5. *(New - SG No. 93/2011, in force as of 26.02.2012)* who or which has been identified pursuant to Art. 68 (11) to have submitted untrue information in order to prove its compliance with the selection criteria announced by the contracting authority.

(2) *(Repeal - SG No. 33/2012).*

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* While the conduct of the open procedure is in progress, the tenderers shall be obligated to notify the contracting authority of any intervening changes in the circumstances covered under Article 47 (1) and (5) herein and the circumstances covered under Article 47 (2) herein as indicated in the notice within seven days after the occurrence of any such change.

Article 69a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) The envelope with the price offered by an applicant whose proposal does not meet the **contracting authority's requirements, shall not be opened.**

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Where the criterion is the most economically advantageous tender, the commission shall open the envelope with the proposed price after having performed the following actions:

1. **review of tenders in envelope N°2** for establishment of the compliance thereof with the requirements of the contracting authority;

2. conducting of a check-up for existence of the causes under Art. 70 (1) for the **tenders in envelope N°2;**

3. evaluation of tenders in terms of all other indicators save for the price offered.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Not later than two business days prior the date of the price offers, the Commission announces the date, time and place of opening at least through a notification in the buyer's profile. When the criterion is the most economically favourable offer, the notification also contains the results related to the assessment of the offers by the other assessment indices. The opening of the price offers is performed in public under the conditions of art. 68, para. 3. Upon opening the price offers, the Commission announces the offered prices and proposes one representative of every participant who is present to sign the price offers.

(4) Where the assessment criterion is the most economically beneficial proposal, prior to the opening of the bid proposals the committee shall announce to the present persons under Par. 3 the results from the evaluation of the proposals under the other indices.

Article 70. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* **Where a tenderer's offer contains** a proposal with numerical expression which is subject to evaluation and is 20 percent more favorable than the **average value of the other tenderes' proposals in terms of the same** evaluation indicator, the commission must require a detailed written rationale about the manner of price formation thereof. Commission set a reasonable deadline for submission of justifications that can not be less than three working days of receiving a request for it.

(2) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The committee may accept the written substantiation under Par. 1 and may not offer for elimination the proposal when objective circumstances are indicated, related to:

1. an original solution as to the performance of the public procurement;

2. the technical solutions proposed;

3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the exceptionally favourable conditions available to the tenderer;

4. the economics of the performance of the public procurement;

5. *(New - SG No. 37/2006, in force as of 01.07.2006)* obtaining State aid.

(3) (Last Amendment - SG No. 37/2006, in force as of 01.07.2006) Should a tenderer fail to submit the justification in writing as requested within the time limit as fixed, or should the commission determine that the circumstances cited are not objective, the commission shall propose the tenderer for exclusion from the procedure.

(4) (New - SG No. 37/2006, in force as of 01.07.2006) Where the commission establishes that the tender of a tenderer is abnormally low because the tenderer has obtained State aid on legal grounds which cannot be proven within the time limit as fixed, the commission may propose rejection of the tender and exclusion of the tenderer.

Article 71. *(Last Amendment – SG No. 52/2010)* (1) The commission shall examine the tenders admitted and shall evaluate the said tenders in accordance with the terms and conditions as announced in advance.

(2) (Last Amendment - SG No. 37/2006, in force as of 01.07.2006) Where the contracting authority has authorized the submission of variants in the tender, the commission may not reject a variant on the sole grounds that selection of the said variant would lead to conclusion of a service contract rather than a supply contract or vice versa.

(3) (Last Amendment - SG No. 37/2006, in force as of 01.07.2006) The commission shall rank the tenderers according to the extent to which the tenders are responsive to the terms and conditions as announced in advance by the contracting authority.

(4)(New – SG No. 52/2010) In the event the comprehensive valuations of two or more bids are equal when the criterion under Art. 37, Par. 1, Subpar. 2 is selected, the most economically profitable proposal is the one which offers the lowest price. On condition that the prices are equal the valuations under the index with the highest relative importance are compared and the more favorable rate of this index is selected.

(5) (New – SG No. 52/2010) The commission conducts a public ballot for designation of a contractor among the first rated bids if the procurement is assigned:

1. under the criterion “lowest price” and this price is offered in two or more bids; or

2. under the criterion “most economically profitable proposal” but this bid may not be determined under Par. 4.

Article 72. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) The commission shall draw up a memorandum on the examination, evaluation and ranking of the tenders which shall contain:

1. the composition of the commission and a list of the consultants;

2. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* a list of the participants proposed for elimination from the procedure and the grounds thereof;

3. the opinions of the consultants;

4. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the results of the examination and evaluation of the tenders admitted, including a brief description of the tenders submitted by the tenderers and the evaluations under each award criterion, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders;

5. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the ranking of the tenderers whereof the tenders have been admitted to examination and evaluation;

6. the date of drawing up of the memorandum.

7. *(New – SG No. 52/2010)* in the event there are such – dissenting opinions with the relevant substantiation of the members of the commission.

(2) The memorandum of the commission shall be signed by all members [thereof] and shall be delivered to the contracting authority together with the full set of documents.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The commission shall conclude its work by approving the contracting authority's memorandum.

Section III

Selection of Public Procurement Supplier, Contractor or Service Provider

Article 73. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Within five working days after conclusion of the work of the commission, the contracting authority shall issue a justified decision, declaring thereby the ranking of the tenderers and the tenderer who or which has been selected as supplier, contractor or service provider.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In the decision referred to in Paragraph (1), the contracting authority shall furthermore specify the tenderers and tenders who and which have been excluded from participation in the procedure and the justification of the exclusion thereof.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006 and 1.01.2007 in respect of sentence two)* The contracting authority shall dispatch the decision referred to in Paragraph (1) to the tenderers within three days after the issuing of the said decision. The contracting authority shall notify the European Commission in the cases referred to in Article 70 (4) herein.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The contracting authority publishes in the buyer's profile the decision under para. 1 along with the written statement of the Commission under the conditions of art. 22b, para. 3 and on the same day sends the decision to the participants.

(5) *(Repeal - SG No. 93/2011, in force as of 26.02.2012)*.

Article 74. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) The contracting authority shall conclude a public procurement contract with the tenderer who or which has been ranked highest by the commission and who or which has been selected as supplier, contractor or service provider.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority may appoint a contractor and enter into a contract with the second rated participant in the cases when the first rated participant:

1. refuses to conclude a contract;
2. fails to perform any of the requirements under Art. 42, Par. 1;

3. *(New - SG No. 93/2011, in force as of 26.02.2012)* does not comply with the requirements under Art. 47 (1) and (5) or the requirements referred to in the contract notice under Art. 47 (2).

Chapter Six

RESTRICTED PROCEDURE

Article 75. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* (1) *(Last Amendment - SG No. 33/2012)* In the contract notice of public procurement awarded by restricted procedure, the contracting authority may limit the number of candidates which the contracting authority intends to invite to tender, the said number being not less than five, and in cases under Art. 3 (2) – not less than three. The contracting authority may furthermore indicate the maximum number of such candidates. The number of candidates invited must be sufficient to ensure free and fair competition.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the contract notice, the contracting authority shall indicate objective and non-discriminatory criteria or rules which the contracting authority will apply upon selection of the candidates under Paragraph (1).

Article 76. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall

dispatch the contract notice to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for receipt from the candidates of applications to qualify.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* The time limit referred to in Paragraph (1) may be shortened by seven days where the notice has been dispatched by electronic means as well.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Should any reasons of extreme urgency arise as a result of which the time limit referred to in Paragraph (1) cannot be complied with, contracting authorities covered under Items 1 to 4 of Article 7 herein may fix a time limit for receipt of the applications to qualify that may not be less than fifteen days from the date of dispatch of the notice or less than ten days, where the notice has been sent by electronic means.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the contract notice.

Article 77. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contracting authority shall conduct qualification proceedings for the purpose of selecting the candidates possessing the financial and technical capacity required to perform the public procurement.

(2) Any candidate may submit an application to qualify.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The application for participation in the preliminary selection contains the documents and the information under art. 56, para. 1, pt. 1-5, 8 and 11-14.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The requirements of art. 56, para. 2- 5 are also applied with reference to the application."

(5) *(Repeal - SG No. 40/13.05.2014, in force as of 01.07.2014)*

(6) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(7) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Article 78. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The application shall be submitted according to the procedure established by Paragraphs (1), (4) - (6) of Article 57 herein, by telefax or shall be stated by telephone.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where the application to qualify is communicated by telephone, the candidate must confirm the said application in writing before expiry of the time limit fixed for the receipt of applications.

(3) (*New - SG No. 37/2006, in force as of 01.07.2006*) Where the application to qualify is dispatched by telefax, the contracting authority may obligate the candidate to confirm the said application by a letter sent with advice of delivery or by electronic means. This requirement, as well as the time limit for receipt of the written confirmation, must be indicated in the contract notice.

(4) (*New - SG No. 37/2006, in force as of 01.07.2006*) The terms and procedure for receipt and storage of the applications sent by electronic means or by telefax shall be regulated in the Regulations for Application of this Act.

(5) (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) In the qualification proceedings, the contracting authority shall have no right to require a tender, and the candidate shall have no right to submit a tender.

Article 79. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) (1) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The contracting authority appoints a commission for conducting the procedure under the terms of art. 34-36.

(2) (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) The committee shall review the submitted application under Art. 68 para. 7-11 and shall select the applicants on the basis of the documents certifying their economical and financial status, their technical capacity and/or qualification for execution of the public procurement. The opening of the applications is performed in public under the conditions of art. 68, para. 3.

(3) (*New - SG No. 33/2012*) The contracting authority establishes conditions for participation of persons other than the members of the commission, in cases of public procurements under Art. 3(2) which contain or require classified information.

(4) (*New - SG No. 33/2012*) Where the number of the candidates meeting the requirements of the contract notice exceeds the maximum number of persons to submit tenders announced, the commission carries out a selection based on objective and non-discriminatory criteria indicated in the notice.

(5) (*Last Amendment - SG No. 33/2012*) The commission shall draw up a memorandum on the results of the selection which shall contain::

1. the composition of the commission and a list of the consultants;
2. a list of the candidates who or which do not meet the requirements announced by the contracting authority, as well as the justification of this; including in cases under Art. 3 (2) where the requirements on protection of classified information and security of supplies have not been complied with;
3. a list of the candidates who or which meet the requirements of the contracting authority respectively the candidates selected on the basis of the objective and non-discriminatory criteria indicated in the notice – where their number exceeds the limit indicated in the notice;
4. the date of drawing up of the memorandum.

(6) *(Former Par. (3) - SG No. 33/2012)* In case the contracting authority has not included in the notice a limitation of the candidates who or which will be invited to tender, the contracting authority shall be obligated to invite all candidates who or which meet the selection criteria and the minimum requirements for technical capacity.

(7) *(Former Par. (4) - SG No. 33/2012)* In case the contracting authority has including in the notice a limitation of the number of candidates who or which will be invited to tender, the contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

(8) *(Former Par. (6), Last Amendment - SG No. 33/2012)* When the number of applicants meeting the selection criteria and minimum requirements is below the minimum indicated in the notice, the contracting authority may continue the procedure by inviting all applicants possessing the necessary capability.

(9) *(Former Par. (7), Last Amendment - SG No. 33/2012)* In cases of public procurements under Art. 3 (2), where after the preliminary selection the contracting authority considers that the number of candidates meeting the selection criteria and minimum requirements is too low to ensure genuine competition, it may:

1. republish the initial contract notice and repeat the selection procedure for the new applications, or
2. terminate the procedure.

(10) *(New - SG No. 33/2012)* In the cases under Par. (9), pt. 1, the contracting authority invites the candidates, selected after the first and second publication to submit their tenders.

(11) *(New - SG No. 33/2012)* The contracting authority may not invite candidates other than those which made a request to participate, or candidates without the requisite capabilities.

(12) *(Former Par. (8), Last Amendment - SG No. 33/2012)* Within five working days after the date of the memorandum containing the final selection results, the contracting authority shall declare by a decision the candidates proposed by the commission who or which will be invited to submit tenders. The said decision shall furthermore specify the candidates who or which do not meet the requirements announced by the contracting authority and the justification of this.

(13) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within three days after the adoption of the decision under para. 12, the contracting authority sends it to all candidates on the same day. The invitation for presenting offers in the limited procedure is sent to the selected candidates within 7 days after:

1. the expiration of the term for appeal- if the decision has not been subject to appeal, and if has been appealed- no request for imposition of an interim measure is made;
2. the entry into effect of the definition which disallows the request for an interim measure;
3. the entry into effect of the decision, in case an interim measure is imposed.

(14) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* On the day of sending the decision under para. 12 to the candidates, the contracting authority publishes the decision and the written statement of the commission in the buyer's profile under the conditions of art. 22b, para. 3.

Article 80. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* An invitation to submit a tender for participation in the restricted procedure must contain:

1. a time limit and place for submission of tenders;
2. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* date of publication of the contract notice;
3. *(New - SG No. 37/2006, in force as of 01.07.2006)* a copy of the specifications and all supporting documents, unless contained in the contract documents, and Internet address for accessing the specifications and the supporting documents, where they are made available by electronic means;
4. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* the methodology of assessment under each index and the methodology of determination of a comprehensive evaluation of the proposal, when the criterion is the most economically beneficial proposal.

Article 81. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) In the invitation referred to in Article 80 herein, the contracting authority shall fix a time limit for receipt of the tenders which may not be less than forty days from the date of dispatch.

(2) The time limit referred to in Paragraph (1) may be shortened to twenty-two days, provided that the prior information notice has been dispatched for publication between fifty-two days and twelve months before the date of dispatch of the notice referred to in Article 76 (1) herein and contains the information available at the date of dispatch of the said notice.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The time limit referred to in Paragraph (1) may be reduced by five days where, as from the date of publication of the notice, the contracting authority offers full access by electronic means to the contracting documents, specifying in the text of the notice an Internet address at which the said documents are accessible.

(4) In the cases referred to in Article 76 (3) herein, the contracting authority may fix a time limit for receipt of tenders which may not be less than ten days from the date of dispatch of the invitation referred to in Article 80 herein.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases referred to in Article 76 (3) herein, within seven days before expiry of the time limit for receipt of tenders, each candidate may request in writing additional information relating to the contract documents from the contracting authority. The contracting authority shall be obligated to reply within three days after receipt of any such request and to notify the non-inquiring candidates according to the procedure established by Article 29 (2) herein.

(6) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(7) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall be obligated to extend the time limit for receipt of tenders:

1. where it is established that the initially specified period is not sufficient for drawing up of tenders including in case of need for on-the-spot inspection of documents additional to the contract documentation or inspection of the site of execution;

2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* in the cases under Art. 29 (3);

3. in case of a necessity resulting from appellate proceedings.

Article 82. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The tender shall be submitted sealed in an opaque envelope under the terms and conditions of Art. 57, (1), (4) – (6).

(2) The envelope under Par. 1 contains two separate sealed non-transparent and designated envelopes as follows:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Envelope 1 entitled **„Proposal for Execution of Contract”, containing documents under Art. 56 (1), pt. 7.**

2. Envelope 2 entitled **“Bid Price”, containing the applicants’ price proposal.**

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The commission under art. 79, para. 1 commences its activities with reference to consideration, assessment and ranking the offers after receiving the list with the submitted offers.

(4) Upon alteration of the date and hour of the opening of tenders, the tenderers shall be notified in writing.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The opening of the offers is performed in public under the conditions of art. 68, para. 3.

(6) The contracting authority establishes conditions for participation of persons other than the members of the commission, in cases of public procurements under Art. 3 (2) which contain or require classified information.

(7) The Commission opens the tenders in the order of their submission and checks for the availability of two separate sealed envelopes, after which at least three members of the Commission sign Envelope 2. The Commission proposes one representative of the present participants to sign Envelope 2 of the remaining participants.

(8) In the presence of the persons under Par. (5) the commission opens Envelope 1, announces the documents it contains, and at least three members of the commission sign all documents contained in the envelope. The Commission proposes one representative of the present participants to sign the documents in Envelope 1 of the remaining participants.

(9) Following completion of the activities under Pars. (7) and (8) the public part of the meeting is closed.

(10) The commission examines, evaluates and ranks the tenders under the terms and conditions of Art. 69a, 70 and 71, and in its course of work it may examine the data from the tenders under the terms and conditions of Art. 68 (11).

Article 83. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
After completion of its tasks the commission shall draw a memorandum containing data on:

1. the composition of the commission and a list of the consultants;
2. the results of the examination and evaluation of the tenders admitted, including a brief description of the tenders submitted by the tenderers and the evaluations under each award criterion, where the criterion of the most economically advantageous tender applies in the evaluation of the tenders;
3. a list of the participants whose tenders are proposed for elimination from the procedure and the reasons thereof;
- 4. the ranking of the tenderers whose tenders have been admitted to examination and evaluation;**
5. the date of drawing up of the memorandum;
6. reasoned dissenting opinions of members of the commission – if there are any.

(2) The memorandum of the commission shall be signed by all of its members and shall be delivered to the contracting authority together with the full set of documents.

(3) The commission completes its work upon receipt of the memorandum by the contracting authority.

(4) The contracting authority designates a contractor with a reasoned decision within the time-limits under Art. 73 (1). The decision states the ranking of the participants, the eliminated participants and the reasons for their elimination.

(5) The contracting authority signs a contract with the participant designated as contractor. The contract may be concluded with the second rated participant under the terms and conditions of Art. 74 (2)

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority sends the decision under para. 4 to all participants on the same day and publishes the decision and the written statement of the commission in the buyer's profile under the conditions of art. 22b, para. 3.

Chapter Six A

(New - SG No. 37/2006, in force as of 01.07.2006)

COMPETITIVE DIALOGUE

Article 83a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contracting authority may award a public procurement by means of competitive dialogue where the procurement is particularly complex, which precludes award of the said procurement applying an open or restricted procedure.

(2) A public procurement is considered to be “particularly complex” where the contracting authority is objectively unable to define:

1. the technical specifications referred to in Article 30 herein, and/or
2. the financial or legal make-up of the procurement.

(3) In the decision on the award of a public procurement by means of competitive dialogue, the contracting authority shall justify the choice of the said procedure and shall approve the contract notice and a descriptive document.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The decision under para. 3 is substantiated by the persons to whom the contracting authority has awarded the preparation of the technical specifications and the methodology for offer assessment.

(5) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* The contracting authority shall set out the needs and the requirements thereof in the contract notice and/or in the descriptive document, which shall replace technical specifications.

(6) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* Upon award of a public procurement by means of competitive dialogue, the contracting authority shall evaluate the tenders on the sole basis of the criterion for the most economically advantageous tender.

Article 83b. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall dispatch the public procurement notice to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for the receipt of requests to participate in the competitive dialogue.

(2) The time limit referred to in Paragraph (1) may be shortened by seven days if the notice is transmitted by electronic means as well.

(3) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Article 83c. (1) The contracting authority may indicate in the notice the minimum and the maximum number of candidates that the said contracting authority intends to invite to participate in a competitive dialogue, the said number being not less than three. The number of candidates invited must be sufficient to ensure free and fair competition.

(2) The contracting authority may provide for the competitive dialogue to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage, by applying the award criteria as indicated in the notice or in the descriptive document.

Article 83d. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) With reference to institution of the procedure the contracting entity appoints a commission under the procedure of art.34-36

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The commission under para.1 examines applications submitted under the procedure of art.68, para.7-11 and selects the candidates on the basis of the documents ,submitted in accordance with the contract notice, which attest their economic and financial standing, their technical capacity and/or qualification to perform the public contract. The opening of the applications is performed in public under the conditions of art. 68, para. 3, except for the cases under art. 79, para. 3.

(3) Where the number of the candidates meeting the requirements specified in the procedure notice exceeds the stated maximum number of persons who or which will be invited to participate in a dialogue, the commission performs a selection on the basis of the objective and non-discriminatory criteria indicated in the notice.

(4) The commission draws up a memorandum on the results of the selection which contains:

1. the composition of the commission and a list of the consultants;
2. a list of the candidates who or which do not meet the requirements announced by the contracting entity, as well as the reasons of this, including in the cases of a subject matter under art.3, para.2, where the requirements related to the classified information protection and security of supply are not met;
3. a list of the candidates who or which meet the requirements announced by the contracting entity, respectively of the candidates selected on the basis of the objective and non-discriminatory criteria indicated in the notice- where their number exceeds the limitation stated in the notice;
4. date of drawing up of the memorandum.

(5) In case the contracting entity has not included in the notice a limitation of the candidates who or which will be invited to participate in a dialogue, the contracting entity is obliged to invite all candidates who or which meet the selection criteria and the minimum requirements for technical capacity.

(6) In case the contracting entity has included in the notice a limitation of the number of the candidates who or which will be invited to participate in a dialogue, the contracting entity is obliged to invite such number of candidates that is at least equal to the minimum number set in advance.

(7) Where the number of the candidates meeting the selection criteria and the minimum requirements is below the minimum indicated in the notice, the contracting entity may continue the procedure by inviting all candidates who or which possess the required capacity.

(8) Upon awarding of public contracts under art.3, para.2, where after the performance of pre- selection the contracting entity ascertains that the number of the candidates meeting the selection criteria and the minimum requirements is too small for guaranteeing real competition, he may:

1. publish again the initial notice and repeat the selection procedure stage with reference to the newly submitted applications, or

2. terminate the procedure.

(9) In the cases under para.8, pt.1, the contracting entity invites the candidates selected after the first and the second publication to participate in a dialogue.

(10) The contracting entity may not invite to participate in the dialogue any entities that have not submitted an application for participation or candidates who or which do not possess the necessary capacity.

(11) Within five business days after the date of the adoption of the memorandum comprising the final selection results, the contracting entity declares by a decision the candidates who or which will be invited to participate in a dialogue. In the decision are also included the candidates who or which do not meet the requirements announced by the contracting entity and reasons of this.

(12) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Within three days after the adoption of the decision under para. 11, the contracting authority sends the decision to all candidates on the same day and publishes the decision and the written statement of the commission in the buyer's profile under the conditions of art. 22b, para. 3. The invitation for participation in the dialogue is sent to the selected participants within 7 days- as specified under the procedure of art. 79, para. 13.

(13) During the pre- selection the contracting entity does not have the right to require and the candidate does not have the right to place tender.

Article 83e. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) An invitation to participate in a dialogue shall contain at least:

1. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* date of publication of the contract notice;

2. a copy of the descriptive document and all supporting documents, or Internet address for accessing the said documents when they are made available by electronic means;

3. the date and the address set for conduct of the dialogue;

4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* the methodology for determining the offer complex assessment.

Article 83f. *(Last Amendment - Last Amendment – SG No. 33/2012)* (1) The commission which conducted the qualification proceedings shall open a dialogue with each of the candidates approved, the aim of which shall be to identify the parameters of the procurement best suited to satisfying the needs of the contracting authority.

(2) *(Last Amendment - Last Amendment – SG No. 33/2012)* All aspects of the procurement may be discussed during the dialogue.

(3) All participants in the dialogue shall be ensured equality of treatment, providing them with identical information.

(4) The commission may not reveal to the other candidates any solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his or her agreement.

(5) The solutions proposed and the agreements reached with each candidate shall be recorded in a separate memorandum, which shall be signed by the members of the commission and by the candidate.

(6) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Upon conclusion of the dialogue with all candidates, the commission shall draw up a report to the contracting authority, putting down the result of the dialogue therein and proposing the candidates to be invited to tender.

Article 83g. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) Within five working days after submission of the report by the commission, the contracting authority shall issue a decision declaring that the dialogue is concluded and designating the candidates that the said contracting authority will invite to tender.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Within three days after the adoption of the decision under para. 1, the contracting authority sends the decision to all candidates on the same day and publishes it in the buyer's profile along with the written statement of the commission upon observance of art. 22b, para. 3. The invitation for presenting of offers is sent to the selected candidates within a seven- day term, specified under the procedure of art. 79, para. 13.

(3) In the invitation referred to in Paragraph (2), the contracting authority shall indicate a deadline for the receipt of tenders and the address to which the tenders must be sent.

(4) A tender must meet the requirements of the contracting authority and must contain all the solutions proposed during the dialogue for the performance of the procurement.

(5) At the request of the commission, tenders may be modified, complemented and specified. Any such modification, complementation and specification may not involve changes to the substantial aspects of the tender or of the invitation to tender, if this is likely to lead to a restriction of competition or have a discriminatory effect on the candidates.

(6) The commission shall evaluate the tenders received on the basis of the award criteria as laid down in the notice or the descriptive document, and shall choose the most economically advantageous tender.

(7) The commission may ask the tenderer identified as having submitted the most economically advantageous tender to clarify certain aspects of the tender or to confirm the commitments thereof contained in the said tender, provided that this does not have the effect of modifying substantial aspects of the tender or of the invitation to tender, nor lead to a restriction of competition or to causing discrimination against the candidates.

Article 83h. *(Last Amendment - Last Amendment – SG No. 33/2012)* The contracting authority shall select the supplier, contractor or service provider of the public procurement and shall conclude a contract therewith according to the procedure established by Articles 83 Par. (4)-(6) herein.

Chapter Seven

NEGOTIATED PROCEDURES

Section I

Negotiated Procedure with Publication of Contract Notice

Article 84. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Contracting authorities may award a public procurement by negotiated procedure with publication of a contract notice solely where:

1. *(Amended and supplemented, SG No. 37/2006)* the open or restricted procedure or the competitive dialogue has been terminated under Item 2 of Article 39 (1) herein and the terms and conditions as originally announced have not been substantially changed;

2. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* in exceptional cases, when the nature of the supply, service or works, or the risks attaching thereto, do not permit prior overall pricing;

3. when the nature of the service to be procured is such that the technical specifications cannot be established with sufficient precision to permit the award of the procurement according to the rules governing open or restricted procedures;

4. the procurement is of services referred to in Item 2 of Article 5 (1) herein;

5. in works, when the works involved are carried out purely for the purpose of research, experiment or development, and not for the purpose of ensuring profit or of recovering research and development costs.

Article 85. In the decision referred to in Article 25 (1) herein, the contracting authority shall be obligated to justify the choice of a negotiated procedure with publication of a contract notice.

Article 86. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contract notice shall be dispatched to the Agency for entry into the Public Procurement Register not later than thirty-seven days before expiry of the time limit fixed for receipt of the requests to participate in the procedure.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* The time limit referred to in Paragraph (1) may be shortened by seven days where the notice has been transmitted by electronic means as well.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Should any reasons of extreme urgency arise as a result of which the time limit referred to in Paragraph (1) cannot be complied with, contracting authorities covered under Items 1 to 4 of Article 7 herein may fix a time limit for receipt of requests to participate in the negotiated procedure that may not be less than fifteen days from the date of dispatch of the notice or not less than ten days, where the notice has been sent by electronic means.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In the cases referred to in Paragraph (3), the contracting authority shall be obligated to specify the reasons of extreme urgency in the contract notice.

(5) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the contract notice, the contracting authority may limit the number of candidates which the contracting authority intends to invite to participate in the negotiations, the said number being not less than three. The contracting authority may furthermore indicate the maximum number of such candidates. The number of candidates invited must be sufficient to ensure free and fair competition.

(6) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the contract notice, the contracting authority shall indicate objective and non-discriminatory criteria or rules which the contracting authority will apply upon selection of the candidates under Paragraph (5).

(7) *(New - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority may provide for the negotiations to take place in successive stages in order to reduce the number

of tenders to be negotiated at each successive stage so as to achieve the fullest possible correspondence of the tenders with the requirements as announced.

(8) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

(9) *(Repeal - SG No. 93/2011, in force as of 26.02.2012).*

Article 87. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The request to participate in a negotiated procedure with publication of a contract notice must satisfy the requirements covered under Paragraphs (3) and (4) of Article 77 herein.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The request shall be submitted according to the procedure established by Paragraphs (1), (4) - (6) of Article 57 herein, by telefax or shall be stated by telephone.

(3) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where the request to participate is communicated by telephone, the candidate must confirm the said request in writing before expiry of the time limit fixed for the receipt of requests.

(4) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where the request to participate is dispatched by telefax, the contracting authority may obligate the candidate to confirm the said request by a letter sent with advice of delivery by electronic means. This requirement, as well as the time limit for receipt of the written confirmation, must be indicated in the contract notice.

(5) *(New - SG No. 94/2008, in force as of 01.01.2009)* At the time of preliminary selection the contracting authority may not request and the applicant may not submit a proposal.

Article 88. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall appoint a commission for the conduct of the procedure according to the procedure established by Articles 34 to 36 herein.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The committee shall review the submitted applications and shall select the applicants under Art. 68 par. (7)-(11) on the basis of the documents submitted in accordance with the announcement, with regards to their economic or financial status, their technical capacity and/or qualification for execution of the public procurement. The opening of the applications is performed in public under the conditions of art. 68, para. 3, except in the cases under art. 79, para. 3.

(3) *(Last Amendment – SG No. 33/2012)* Where the number of the candidates who or which meet the requirements indicated in the procedure notice exceeds the stated maximum number of persons who will be invited to participate in the negotiations, the commission performs a selection on the basis of the objective and non-discriminatory criteria indicated in the notice.

(4) (*New - SG No. 33/2012*) The commission draws up a memorandum on the results of the selection which contains:

1. the composition of the commission and a list of the consultants;

2. a list of the candidates who or which do not meet the requirements announced by the contracting entity, as well as the justification of this, including in the cases of a subject matter under art.3, para.2, where the requirements related to the classified information protection and security of supply are not met;

3. a list of the candidates who or which meet the requirements announced by the contracting entity, respectively of the candidates chosen on the basis of the objective and non-discriminatory criteria indicated in the notice- where their number exceeds the limitation stated in the notice;

4. date of drawing up of the memorandum.

(5) (*Last Amendment - SG No. 33/2012*) In case the contracting entity has not included in the notice a limitation of the candidates who or which will be invited to participate in the negotiations, the contracting entity is obliged to invite all candidates who or which meet the selection criteria and the minimum requirements for technical capacity.

(6) (*Former Par. (4) - SG No. 33/2012*) In case the contracting authority has including in the notice a limitation of the number of candidates who or which will be invited to participate in the negotiations, the contracting authority shall be obligated to invite such number of candidates as is at least equal to the minimum number set in advance.

(7) (*Former Par. (6) - SG No. 33/2012*) When the number of applicants who meet the selection criteria and the minimum requirements is below the minimum indicated in the notice, the contracting authority may continue the procedure by inviting all applicants possessing the necessary potential. In this case the contracting authority may not invite other persons who have not submitted application forms for participation or applicants who do not possess the necessary potential.

(8) (*Former Par. (7), Last Amendment - SG No. 33/2012*) Upon awarding of contracts under art.3, para.2, where after performance of pre- selection, the contracting entity ascertains that the number of candidates who or which meet the selection criteria and the minimum requirements is too small for guaranteeing real competition, he may:

1. publish again the initial notice and repeat the selection procedure stage with reference to the newly submitted applications, or

2. terminate the procedure.

(9) (*New - SG No. 33/2012*) In the cases under para.8, pt. 1, the contracting entity invites the candidates chosen after the first and the second publication to participate in the negotiations.

(10) (*New - SG No. 33/2012*) The contracting entity may not invite to participate in the negotiations any entities that have not submitted an application for participation or candidates who or which do not possess the necessary capacity.

(11) *(Former Par. (8), Last Amendment - SG No. 33/2012)* Within five business days after the date of the adoption of the memorandum comprising the final selection results, the contracting entity declares by a decision the candidates who or which will be invited to participate in the negotiations. The said decision shall furthermore specify the candidates who or which do not meet the requirements announced by the contracting authority and the justification of this.

(12) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* Within three days after the adoption of the decision under para. 11, the contracting authority sends the decision to all candidates on the same day and publishes it in the buyer's profile along with the written statement upon observance of art. 22b, para. 3. The invitation for participation in the negotiation is sent to the selected candidates within a seven- day term, specified under the procedure of art. 79, para. 13.

Article 89. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) An invitation to participate in negotiations must contain:

1. a date and place for conduct of the negotiations;
2. a requirement to produce additional evidence of the circumstances as declared, should any such evidence be necessary;
3. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* a time limit for receipt of a tentative tender, which may not be less than ten days from the dispatch of the invitation;
4. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the address at which the tender must be dispatched;
5. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* date of publication of the public procurement notice;
6. *(Last Amendment - SG No. 33/2012)* A copy of the specifications and all supporting documents, unless contained in the contract document, and Internet address for accessing the specifications and the supporting documents, where they are made available by electronic means. In the decision is included the ranking of the candidates, the eliminated candidates and the reasons for their elimination.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The commission shall conduct the negotiations with the tenderers invited in order of submission of the initial tenders.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The proposals made and the arrangements reached with each tenderer shall be recorded in a separate memorandum, which shall be signed by the members of the commission and by the tenderer.

(4) *(New - SG No. 93/2011, in force as of 26.02.2012)* The commission applies Art. 70 **when it establishes that a tenderer's proposal, accomplished as a result of negotiations, is 20**

percent more favorable than the average value of the other tenderers' proposals in terms of the same evaluation indicator.

(5) *(Former Par. (4), Last Amendment – SG No. 93/2011, in force as of 26.02.2012)* After conduct of negotiations, the commission shall draw up a report to the contracting authority, whereby the commission shall give the result of the negotiations and propose:

1. a ranking of the tenderers, or
2. termination of the procedure.

(6) *(Former Par. (5), Last Amendment – SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall specify a contractor by a grounded decision within the time limit referred to in Art. 73 (1).

(7) *(New - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall conclude a contract with the tenderer selected as contractor. Such contract may be concluded with the tenderer ranked second in accordance with the terms referred to in Art. 74 (2).

(8) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority sends the decision under para. 6 to all participants on the same day and publishes the decision along with the written statement in the buyer's profile under the conditions of art. 22b, para. 3.

Section II

Negotiated Procedure without Publication of Contract Notice

Article 90. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) Contracting authorities may award a public procurement by negotiated procedure without publication of a contract notice solely where:

1. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* the open or restricted procedure has been terminated under Item 1 of Article 39 (1) herein and the conditions as originally announced are not substantially changed;

2. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* in the cases under Art. 39, Par. 1, Subpar. 3, invite for participation in the procedure only the applicants who have submitted their proposals and meet the requirements specified in the announcement for open or restricted procedure or competition dialogue;

3. the award of the public procurement to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a statute or of an administrative act;

4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* there is a necessity of taking urgent measures due to insurmountable force whose consequences cannot be surmounted upon observance of the terms for performance of open or limited procedure or a negotiation procedure with announcement;

5. the goods which are the subject matter of procurement are manufactured purely for the purpose of research, experiment, study or development, and this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

6. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;

7. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the service shall be assigned after a competition for a project and invitations for participation in the conclusion of the classified on the first place participant or of all classified participants in accordance with the provisions of the competition;

8. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:

(a) the additional service or works cannot be technically or economically separated from the subject of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement;

(b) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the aggregate value of the procurements for award of additional services or construction works does not exceed 50 per cent of the value of the main procurement;

9. the repetition of a service or work has to be entrusted to the same service provider or contractor not later than three years following the award of the original procurement, subject to the following conditions:

(a) the original procurement has been awarded by open or restricted procedure and the notice of the said procurement has mentioned the possibility of such an award;

(b) the aggregate value of the said procurement was included when the value of the original procurement was established;

(c) the new procurement conforms to a basic project for the implementation of which the original procurement was awarded;

10. *(Repeal - SG No. 37/2006, in force as of 01.07.2006)*;

11. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the subject of procurement is the supply of goods specified according to a list proposed by the State Commission on Commodity Exchanges and Wholesale Markets and approved by the Council of Ministers in the Regulations for Application of the Act;

12. (*New - SG No. 37/2006, in force as of 01.07.2006*) where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, upon sale by auction of the property of commercial corporations which have been put into liquidation or adjudicated bankrupt;

13. (*Last Amendment - SG No. 33/2012*) the procurement is for services under category **№ 21 of Annex № 3 to Art. 5 (1), it. 2 and has the value referred to in Art. 14 (3).**

14. (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) the procurement is for deliveries or services in the sphere of the physical education and sport and is at a price under art. 14, para. 3, pt. 2.

(2) (*Last Amendment - SG No. 33/2012*) In the cases referred to in Items 6 of Paragraph (1), the duration of the additional procurement contract may not be longer than three years.

Article 91. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) (1) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) In the decision on public procurement award by negotiated procedure without publication of a contract notice, the contracting authority shall justify the choice of this procedure.

(2) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) By the decision under Paragraph (1) the contracting authority shall approve an invitation for participation in the procedure which shall specify:

1. the subject of procurement, including quantity and/or volume and description of the specified positions, if any;

2. requirements of the contracting authority for performance of the procurement;

3. when applicable – the criterion for evaluation of tenders, and in case the criterion is the most economically advantageous tender – the indicators for complex evaluation with their relative weight or their ranking according to significance in a descending order when due to objective reasons it is impossible to specify their relative weight, as well as the methods for complex evaluation of tenders;

4. place and date for carrying out of negotiations;

5. other requirements which the contracting authority finds necessary.

(3) (*New - SG No. 93/2011, in force as of 26.02.2012*) The requirements under Paragraph (2) do not apply in the cases under Art. 90 (1) items 11 and 12.

Article 92. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) An invitation to participate in a negotiated procedure without publication of a contract notice shall be dispatched to the selected parties and to the Agency.

Article 92a. (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) (1)
The contracting authority shall appoint a commission for carrying out of the procedure in accordance with the procedure laid down in Arts. 34-36.

(2) The commission shall carry out the negotiations with the tenderers for determining the terms and conditions of the contract according to the contracting authority's requirements specified in the invitation for tender. The results of the negotiations shall be put down in a memorandum which shall be signed by the commission and the tenderer.

(3) Where the contracting authority has invited more than one tenderer, the proposals made and the negotiated terms with each of them shall be put down in a separate memorandum.

(4) The commission shall apply Art. 70 when it establishes that a tenderer's proposal, accomplished as a result of negotiations, is 20 percent more favorable than the average value of the other tenderers' proposals in terms of the same evaluation indicator.

(5) After carrying out the negotiations, the commission shall draw up a report to the contracting authority whereby it shall set down the result of negotiations and shall propose:

- 1. concluding of contract with the only one tenderer, or**
- 2. ranking of tenderers in the cases under Paragraph (3), or**
- 3. termination of the procedure.**

(6) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) The contracting authority shall specify a contractor upon a grounded decision within the time limit referred to in Art. 73 (1). Within three days after adoption of the decision, the contracting authority sends the decision and the written statement under para. 5 to all participants on the same day and publishes them in the buyer's profile upon observance of art. 22b, para. 3.

(7) The contracting authority shall conclude a contract with the tenderer selected as contractor. Such contract may be concluded with the tenderer ranked second in accordance with the terms referred to in Art. 74 (2).

(8) (Repeal, SG No. 40/13.05.2014, in force as of 01.07.2014)

(9) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) In the cases under art.90, para.1, pt.11, the regulations under para.1-7 are not applied and the contract is concluded in accordance with the rules of the respective stock exchange.

(10) (Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) In the cases under Art. 90 (1) Item 12, the provisions of Paragraphs (1) - (7) shall not apply and the contract shall be concluded pursuant to Part Three of the Commerce Act.

Article 93. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority is free not to apply Art. 91 (2), 92 and 92a when it concludes contracts pursuant to:

1. Art. 90 (1), it. 3 having as object supply of natural gas, heating or electric energy or drinking water with the companies possessing exclusive rights;

2. Art. 90 (1), it. 4;

3. *(Repeal, SG No. 40/13.05.2014, in force as of 01.07.2014)*

Chapter Seven A

(New - SG No. 37/2006, in force as of 01.07.2006)

FRAMEWORK AGREEMENT

Article 93a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) A "framework agreement" shall be an agreement concluded between one or more contracting authorities and one or more potential suppliers, contractors or service providers of public procurements, whereof the purpose is to pre-establish the terms governing the contracts which the parties intend to conclude during a given period not longer than four years, in particular with regard to the prices and, where appropriate, the quantity envisaged. In exceptional cases, the period of a framework agreement may exceed four years, and the contracting authority shall indicate the justification of this in the contract notice.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* A framework agreement may be concluded with at least three potential contractors of public procurements only if there is a sufficient number of candidates or participants who meet the selection criteria, or a sufficient number of offers which meet the preliminary announced conditions of the contracting authority.

(3) Contracting authorities may conclude a framework agreement for public procurement awards on the basis of each procedure conducted with the exception of a negotiated procedure without publication of a contract notice. The criteria covered under Article 37 herein shall apply upon conclusion of a framework agreement.

(4) With the framework agreement is specified the procedure for conclusion of the public procurement contracts, including the terms for receipt of offers and ranking of offers.

(5) *(Former Par. 4, SG No. 40/13.05.2014, in force as of 01.07.2014)* In the cases of concluding a contract on the basis of a framework agreement, the parties shall have no right to make substantial amendments to the terms laid down in the said framework agreement.

(6) *(Former Par. 5, SG No. 40/13.05.2014, in force as of 01.07.2014)* A framework agreement may not be concluded or applied if it prevents, restricts or distorts competition.

Article 93b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014) (1) (Former text of Art. 93b. - SG No. 93/2011, in force as of 26.02.2012)* Where all the terms are laid down in the framework agreement, the contracting authority shall conclude a public procurement contract applying the said terms.

(2) *(New - SG No. 93/2011, in force as of 26.02.2012)* Where the framework agreement does not lay down all terms and it is concluded with one person, the contracting authority shall require in writing that such person supplements its tender.

(3) *(New - SG No. 93/2011, in force as of 26.02.2012)* Where the framework agreement does not lay down all terms and it is concluded with more than one person, for each contract which is to be concluded, the contracting authority shall:

1. send a written invitation to the persons under the framework agreement;
2. specify an appropriate time limit for receipt of tenders by taking into account the subject and time necessary for sending of tenders;
3. stores the tenders submitted in sealed non-transparent envelopes until the expiration of the time limit for receipt thereof;
4. appoints a commission which considers and ranks the tenders in accordance with the criterion laid down in the framework agreement and in the provisions of Arts. 70 - 72.

(4) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* The offers are prepared in compliance with the frame agreement and include:

1. a deadline for performance of the procurement, if such has not been specified in the frame agreement;
2. an offered price;
3. technical offer for performance of the procurement, when the assessment criterion specified in the frame agreement is the most economically favourable offer.

Article 93c. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall specify a contractor in accordance with Art. 73 and shall conclude a contract in accordance with Art. 74.

Article 93d. *(Last Amendment - SG No. 33/2012)* The public procurement contracts based on framework agreement concluded by a central public procurement authority shall be awarded by the separate contracting authorities in accordance with Art. 93b.

Chapter Seven B

(New - SG No. 37/2006, in force as of 01.07.2006)

DYNAMIC PURCHASING SYSTEMS

Article 93e. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* (1) Dynamic system for deliveries is an entirely electronic process of performing regular **deliveries whose market characteristics meet the contracting authority's requirements.** The system shall be effective for a period not longer than 4 years and shall be open for the term of validity for any applicant who meets the selection criteria and has submitted a preliminary proposal in compliance with the specifications. As an exception, the term of validity of the system may be extended for more than 4 years provided that the contracting authority substantiates the motives for that in the announcement.

(2) A dynamic purchasing system shall be set up by means of an open procedure.

(3) The system shall be open to each candidate who or which:

1. meets the requirements of the contracting authority as indicated in the contract notice;

2. has submitted an indicative tender which complies with the specifications as defined by the contracting authority;

3. has submitted all additional documents as indicated by the contracting authority in the contract notice.

(4) The indicative tenders referred to in Item 2 of Paragraph (3) may be altered at any time within the period of validity of the system provided that they continue to comply with the specifications.

(5) Upon setting up a system referred to in Paragraph (1) and awarding public procurements through any such system, contracting authorities shall use solely electronic means.

Article 93f. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) Upon setting up a dynamic purchasing system, contracting authorities shall:

1. publish a contract notice, expressly indicating therein that such a system is set up;

2. define the technical specifications according to the procedure established by Articles 30 to 33 herein, the nature of the purchases, as well as all the necessary information concerning the system, the type and technical characteristics of the electronic means used.

(2) As from the publication of the notice on the setting up and up to the expiry of the period of validity of the system, contracting authorities shall offer, by electronic means, full, direct and unrestricted access to the technical specifications, as well as to any additional documents, mandatorily indicating in the notice the Internet address at which such documents may be consulted.

Article 93g. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) An indicative tender for admittance to a dynamic purchasing system may be submitted at any time within the period of validity of the system.

(2) The contracting authority shall appoint a commission according to the procedure established by Articles 34 to 36 herein for examination of the tenders referred to in Paragraph (1).

(3) The commission shall examine each indicative tender submitted and, on the basis of the criteria and rules as announced, shall propose to the contracting authority to admit or to refuse admittance of the candidate to the dynamic purchasing system.

(4) The contracting authority shall be obligated to make a decision within fifteen days after submission of the indicative tender and to inform the candidate of the admittance thereof to the dynamic purchasing system or of the refusal to admit the said candidate within three days after the date of the decision.

Article 93h. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) Before awarding each specific public procurement contract for purchasing, the contracting authority shall publish a simplified contract notice, inviting all interested parties to submit an indicative tender in accordance with Item 2 of Article 93f (1) herein and fixing a time limit for the submission of indicative tenders that may not be less than fifteen days from the date of dispatch of the simplified notice.

(2) Indicative tenders shall be evaluated and candidates shall be admitted to the system according to the procedure established by Article 93g (2) to (4) herein.

Article 93i. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) After making the decisions referred to in Article 93g (4) herein, the contracting authority shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each specific public procurement contract for purchasing to be awarded under the system.

(2) In the invitation referred to in Paragraph (1), the contracting authority shall fix a time limit for the submission of tenders and may formulate more precisely the award criteria for the public procurement contract.

Article 93j. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) The commission referred to in Article 93g (2) herein shall examine and rank the tenders, and shall propose to the contracting authority to conclude a public procurement contract for purchasing with the

tenderer whereof the tender was ranked highest on the basis of the award criteria as set out in the notice or in the invitation referred to in Article 93i herein.

(2) The contracting authority shall select a supplier, contractor or service provider according to the procedure established by Article 73 herein and shall conclude a contract according to the procedure established by Article 74 herein.

Article 93k. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) A dynamic purchasing system may not be applied if it prevents, restricts or distorts competition.

(2) The access to the dynamic purchasing system and the participation therein shall be unimpeded and free of charge to all interested parties.

Chapter Eight

DESIGN CONTEST

Section I

Design Contest Preparation

Article 94. (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The provisions of this Chapter shall apply upon conduct of a design contest:

1. organized as part of a procedure for the award of a public procurement of service;
2. with prizes and/or payments to participants in the contest.

(2) *(Redesignated from Article 94, SG No. 37/2006)* A design contest shall be organized for acquisition of:

1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* spatial development scheme or development plan;
2. a conceptual design for the preparation of projects, incl. landscape, architectural, structural, technological, utility-system designs, as well as designs for works of art and for restoration and renovation of cultural property;
3. designs in the sphere of data processing;
4. other designs.

(3) *(Last Amendment - SG No. 79/2006)* The terms and the procedure for the conduct of contests in spatial planning and the development-project designs shall be established by an ordinance of the Council of Ministers.

Article 95. (1) A design contest may be open or restricted.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In an open contest, all interested parties may submit projects.

(3) In a restricted contest, projects may be submitted solely by candidates who or which have been invited by the contracting authority on the basis of qualification.

Article 96. (1) The contracting authority shall adopt a decision to organize a design contest, whereby the said authority shall approve the participation notice and the contest programme.

(2) The contest programme must contain:

1. the project assignment and directions as to the implementation thereof;

2. all technical data as shall be necessary for implementation of the project;

3. the criteria to be applied in the evaluation of projects, the relative weighting to be given to each such criterion, and the methods for arrival at the integral evaluation of the project.

(3) The price of the contest programme may not exceed the actual costs of the preparation thereof.

Article 97. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall dispatch the contract notice to the Agency for entry into the Public Procurement Register not later than:

1. fifty-two days before expiry of the time limit for receipt of projects, in the case of an open contest;

2. thirty-eight days before expiry of the time limit for receipt of requests to participate in a restricted contest.

(2) *(Last Amendment - SG No. 33/2012)* A design contest notice must be based on the standard form referred to in Article 19 (7) herein.

(3) *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

(4) In the restricted contest notice, the contracting authority may limit the number of participants to be invited to submit projects, but the number thereof may not be less than five.

(5) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the restricted design contest notice, the contracting authority shall indicate objective and non-discriminatory criteria or rule that the contracting authority will apply upon selection of the candidates.

Section II

Design Contest Organization

Article 98. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Requests to participate in a restricted design contest may be submitted in writing according to the procedure established by Paragraphs (1) and (3) to (6) of Article 57 herein, by fax or by telephone. Where a request is made by telephone, it must be confirmed in writing before expiry of the time limit for the receipt of such requests.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* In the restricted design contest notice, the contracting authority may include a requirement that requests to participate made by fax must be confirmed by post or by electronic means.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall conduct qualification proceedings and shall invite the approved candidates to submit projects according to the procedure established by Articles 79, 80 and Article 81 (1) herein.

Article 99. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority shall appoint a jury consisting of not fewer than five members for examination and ranking of the projects.

(2) The members of the jury must satisfy the eligibility requirements covered under Article 35 herein.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where the participants in the contest are required to possess a particular professional qualification or licensed competence, at least 2/3 of the members of the jury must possess the same qualification or competence or its equivalent.

(4) *(New - SG No. 37/2006, in force as of 01.07.2006)* The jury shall be autonomous in making its decisions and in expressing opinions on the projects.

Article 100. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall

designate an official to receive the projects, which shall be submitted according to the procedure established by Article 57 (1) or (6) herein.

(2) The person referred to in Paragraph (1) shall be obligated to respect the confidential nature of any information as may come to the knowledge thereof in connection with the projects and shall pledge so in writing.

(3) (Last Amendment - SG No. 37/2006, in force as of 01.07.2006) The projects as submitted shall be assigned a number in the order of receipt, and a list of the numbers and the corresponding names of participants shall be drawn up. The said list shall be inserted into an envelope which shall be sealed and shall not be opened until the date of declaration of the results of the contest.

(4) In an open contest, the participants shall produce data and evidence of the professional qualifications and licensed competence thereof in a separate opaque envelope which shall be opened after the projects are ranked.

Article 101. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The jury considers the projects and rates them. The rating of the projects is performed in compliance with the project complex assessment indicators, specified in the announcement for opening the procedure. With reference to the investment projects, one of the indicators is the construction cost of the project.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* The jury shall draw up a memorandum recording the ranking of the projects, which shall be signed by all members. The contracting authority sends the written statement to the participants in the procedure on the same date and publishes it on the buyer's profile.

(3) The memorandum shall furthermore state the remarks of the jury and any points which need additional clarification or specification if necessary.

(4) In the cases referred to in Paragraph (3), the jury shall notify the candidates and shall enable them to answer the questions, whereafter the jury shall amend or supplement the memorandum if necessary.

(5) In an open contest, the jury shall propose for exclusion the participants in the contest that do not meet the criteria referred to in Paragraph (1).

(6) The contracting authority shall declare by a decision the ranking of the participants in the contest according to the memorandum of the jury, as well as the prizes and/or the other payments.

(7) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within 7 days after the adoption of the decision under para. 6, on one and the same day, the contracting authority:

1. sends information about the conducted competition to the Agency for entering in the Public Procurement Register;

2. sends the decision under para. 6, and in the cases under para. 4 and the supplemented written statement, to the participants in the competition;

3. publishes the documents under pt. 2 in the buyer's profile.

(8) The information referred to in Paragraph (7) shall be drawn up in the standard form referred to in Item 4 of Article 17 herein.

(9) Any information referred to in Paragraph (7) whereof the disclosure conflicts with a law shall not be entered into the Public Procurement Register. In such case, the contracting authority shall justify this to the Agency.

Chapter Eight „a"

(New - SG No. 93/2011, in force as of 26.02.2012)

AWARD OF PUBLIC PROCUREMENTS BY PUBLIC INVITATION

Article 101a. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 33/2012)* The terms and conditions under this chapter shall be applied in case of award of public procurements under Art. 14 (4).

(2) *(Last Amendment - SG No. 33/2012)* For the award of procurements under Art. 14 (4) the contracting authority shall collect tenders by publication of invitation.

Article 101b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014)* (1) No requirements towards the financial and the economic status may be specified with the invitation. To the invitation are enclosed technical specifications and a draft contract. The invitation is prepared in compliance with a sample form, endorsed by the Agency executive director and includes:

1. name and address of the contracting authority;
2. subject of the procurement, prognosticated price and a source of financing;
3. brief description of the subject of the procurement and, when applicable, amount or size;
4. the assignment criterion, and when the selection is made under the most economically favourable offer criterion – the methodology for offer assessment in compliance with art. 28a;
5. deadline and a place for receipt of the offers;
6. date, time and place of opening the offers.

(2) The contracting authority publishes the invitation in the Public Procurement Portal and in the buyer's profile on the same day. In the buyer's profile, along with the invitation, are also published the appendixes to it.

(3) On the day of publication, the contracting authority sends a notification for the invitation to the mass media and may send it to selected persons without changing the conditions under para. 1, pt. 2 – 6. The notification cannot include more information than the one in the invitation which is published in the portal.

(4) The deadline under para. 1, pt. 5 may not be shorter than 7 business days and starts as of the date, following the day of invitation publication in the buyer's profile.

(5) The contracting authority is obligated to apply the procedure for gathering of offers under para. 1-3 again when the invitation is withdrawn due to necessity for a change in the initially announced conditions.

(6) Upon written request made up to three days prior the expiration of the period for receipt of offers, the contracting authority is obligated to publish in the buyer's profile, on the following day at the latest, written clarifications with reference to the public procurement.

Article 101c. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
The tender under Art 101a (2) must contain at least:

1. data about the person which makes the tender proposal;
2. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* technical proposal;
3. bid proposal;
4. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* term of validity of the tender.

(2) The contents of the tender shall be submitted in sealed non-transparent envelope.

Article 101d. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
The receipt, consideration and the assessment of the offers is performed under procedure, specified with the internal rules of the contracting authority by a commission appointed by him or her.

(2) After receipt of the offers, the members of the commission present declarations for the circumstances under art. 35, para. 1, pt. 2- 4.

(3) The opening of the offers is made under the conditions of art. 68, para. 3. After opening of the offers, the commission announces the price offers and proposes one representative of every participant who is present to sign the technical and price offers.

(4) The commission prepares a written statement for the receipt, the consideration and the assessment of the offers and the ranking of the participants. The written statement is submitted to the contracting authority for endorsement and after that it is sent to the participants and is published in the buyer's profile on one and the same day under the conditions of art. 22b, para. 3.

Article 101e. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Former Art. 101e, SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting authority may award the execution of the procurement in case there is only one tender submitted, as well if it is in accordance with the technical specifications.

(2) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* In case there is no offer made, the contracting authority may award the performance of the procurement after negotiations with a contractor selected by him or her. In these cases, the contracting authority is bound by the prognosticated price, specified in the invitation under art. 101b, para. 1 and by the technical specifications and the draft contract enclosed to the invitation.

Article 101f. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) The contracting authority concludes a written contract which includes all tenders from the offer of the participant who is ranked first.

(2) Upon conclusion of a contract, the participant who is ranked first submits:

1. documents, issued by a competent authority which certify the lack of presence of the circumstances under art. 47, para. 1, pt. 1, unless the legislation of the state in which he or she is established provides the inclusion of any of these circumstances in a Public Register or their official submission to the contracting authority, and

2. declarations for the lack of the circumstances under art. 47, para. 5, except for the cases in which the procurement is awarded by a contracting authority under art. 7, pt. 2.

(3) The contracting authority may consecutively propose conclusion of a contract under the conditions of para. 1 and 2 with the participant who is ranked second or at a subsequent place, in case the participant who has the right to conclude the contract:

1. refuses to conclude a contract;

2. fails to submit any of the documents under para. 2;

3. does not meet the requirements under art. 47, para. 1, pt. 1 or para. 5.

(4) The contracting authority publishes the contract and the additional agreements in the buyer's profile under the conditions of art. 22b, para. 3.

Article 101g. *(New - SG No. 93/2011, in force as of 26.02.2012)* The contracting authority shall be obligated to keep all documents related to the award of procurements under this chapter for three years after the end of execution of the contract.

Part Three

PUBLIC PROCUREMENT AWARDS BY CONTRACTING AUTHORITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SECTORS

Chapter Nine

COMMON RULES FOR PUBLIC PROCUREMENT AWARD

Section I

General Dispositions

Article 102. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) The provisions of Part Three herein shall be applied by:

1. the contracting authorities covered under Items 5 and 6 of Article 7 herein;

2. the contracting authorities covered under Items 1, 3 and 4 of Article 7 herein, where carrying out any of the activities covered under Articles 7a to 7e herein.

(2) Any public procurement, which is intended to cover several activities covered under Articles 7a to 7e herein and other activities under this Act, shall be subject to the rules applicable to the activity for which the said procurement is principally intended.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In case one of the activities for which a public procurement is intended is subject to the special rules of this Part and the other to the general rules of this Act, or if it is objectively impossible to determine for which activity the procurement is principally intended, the said procurement shall be awarded according to the procedure established by the general rules of this Act.

(4) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In case one of the activities for which a public procurement is intended is subject to the special rules of this Part and the other is not subject to either the general or the special provisions of this Act, and if its objectively impossible to determine for which of the activities the procurement is principally intended, the said procurement shall be awarded according to the procedure established by this Part.

Article 103. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) Contracting authorities shall make a decision on the award of public procurements by open procedure, restricted procedure and negotiated procedure with publication of a contract notice whenever there are no conditions for conduct of a negotiated procedure without publication of a contract notice.

(2) Contracting authorities shall make a decision on the award of public procurements by negotiated procedure without publication of a contract notice solely where:

1. the open procedure, the restricted procedure, or the negotiated procedure with publication of a contract notice has been terminated because not a single tender or request to participate has been submitted, or no candidates or tenderers have been admitted, and the terms and conditions as originally announced are not substantially altered;

2. the award of the public procurement to another party would lead to infringement of copyrights or other intellectual property rights, or of exclusive rights accruing by virtue of a law or of an administrative act;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* necessity for taking urgent measures due to insurmountable force whose consequences cannot be surmounted upon observance of the terms for performance of open or limited procedure or a negotiation procedure with announcement has occurred;

4. the contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek those ends;

5. additional deliveries by the original supplier are required, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies, where a change of supplier would oblige the contracting authority to acquire goods having different technical characteristics which would result in incompatibility or technical difficulties in operation and maintenance;

6. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the service shall be assigned after a competition for a project is conducted by sending invitations for participation in the conclusion of a contract with the classified on the first place participant or with all classified participants in accordance with the provisions of the competition;

7. the award of an additional service or works to the same service provider or contractor becomes necessary through unforeseen circumstances under the following conditions:

(a) the additional service or works cannot be technically or economically separated from the subject of the main contract without great inconvenience to the contracting authority, or although separable, are strictly necessary to the performance of the procurement;

(b) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the aggregate value of the procurements for award of additional services or construction works does not exceed 50 per cent of the value of the main procurement;

8. the repetition of a work has to be entrusted to the same service provider or contractor subject to fulfilment of the following conditions:

(a) the original procurement has been awarded by open or restricted procedure and the contract notice of the said procurement has mentioned the possibility of such an award;

(b) the aggregate value of the said procurement was included when the value of the original procurement was established;

(c) the new procurement conforms to a basic project for the implementation of which the original procurement was awarded;

9. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* the subject of the procurement is the supply of goods specified according to a list proposed by the State

Commission on Commodity Exchanges and Wholesale Markets and approved by the Council of Ministers in the Regulations for Application of the Act;

10. the procurement is awarded on the basis of a framework agreement concluded according to the procedure established by this Act;

11. where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a short space of time at a price lower than normal market prices, inter alia upon sale of the property of commercial corporations which have been put into liquidation or adjudicated bankrupt;

12. *(Last Amendment - SG No. 33/2012)* the procurement is for services under category **Nº 21 of Annex Nº 3 to Art. 5 (1), It. 2 and has a value under Art. 14 (3).**

(3) In the cases referred to in Items 5 and 8 of Paragraph (2), the duration of the additional procurement contract may not be longer than three years.

(4) In the cases referred to in Item 9 of Paragraph (2), the contract shall be concluded according to the procedure established by the Commodity Exchanges and Wholesale Markets Act.

(5) *(Last Amendment - SG No. 33/2012)* In the cases referred to in Item 11 of Paragraph (2), the contract shall be concluded according to the procedure established by **Part Three of the** Commerce Act.

Article 104. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* (1) In an open procedure, where contracting authorities have published a prior information notice, the minimum time limit for receipt of tenders may be shortened to twenty-two days from the date on which the procedure initiation notice was sent.

(2) Where the procedure initiation notice was transmitted by electronic means as well, the time limit referred to in Paragraph (1) may be shortened by seven days.

Article 104a. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) In the case of restricted procedures and negotiated procedures with publication of a contract notice, the minimum time limit for receipt of requests to participate shall be thirty-seven days from the date on which the contract notice was sent.

(2) The time limit referred to in Paragraph (1) may be shortened by seven days if the contract notice was transmitted by electronic means as well.

(3) The time limit for the receipt of tenders in a restricted procedure and in a negotiated procedure with publication of a contract notice may be set by mutual agreement between the contracting authority and the candidates selected in the qualification proceedings. An agreement shall be admissible solely provided that all candidates have the same time limit to prepare and submit the tenders thereof.

(4) Should no agreement under Paragraph (3) be reached, the time limit shall be fixed by the contracting authority and may not be less than twenty-four days from the date of dispatch of the invitation to tender or to participate in the negotiations.

(5) In the cases referred to in Paragraph (4), where the contracting authority offers full access by electronic means to the contract documents and if the notice specifies an Internet address at which this documents are accessible, the time limit may be reduced by five days.

Section II

Qualification System

Article 105. *(Last Amendment - SG No. 33/2012)* (1) Contracting authorities may establish and use systems of qualification of suppliers, contractors or service providers of public procurements.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* The qualification systems may involve different qualification stages.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The qualification systems shall be based on objective criteria and rules which shall be established by the contracting authority and may be altered thereby as required.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The criteria and rules for qualification shall include requirements relating to economic and financial standing under Article 50 (1) herein and/or technical ability, and/or qualifications under Article 51 (1) herein, and may include the requirements covered under Article 47 (1) and (2) herein.

(5) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where the criteria and rules for qualification include technical specifications, the provisions of Articles 30 to 32 herein shall apply.

(6) *(New - SG No. 37/2006, in force as of 01.07.2006)* Where the criteria and rules for qualification of applicants include requirements relating to economic and financial standing and technical ability, and/or qualifications, the candidate may rely on the resources of third parties, whatever the legal nature of the link between itself and those third parties. In such cases, the candidate must be in a position to prove to the contracting authority that these resources will be available throughout the period of validity of the qualification system. In case the candidate is a combination of natural and/or legal persons, the said candidate may refer to the resources of a participant in the said combination or of third parties under the same conditions.

(7) *(New - SG No. 37/2006, in force as of 01.07.2006)* The criteria and rules for qualification, referred to in Paragraph (3), shall be made available to the candidates on request. The updating of the said criteria and rules shall be communicated to the persons included in the qualification system.

(8) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Contracting authorities shall dispatch a notice on the existence of qualification systems established thereby to the Agency for entry into the Public Procurement Register. Where the system is of a duration greater than three years, the notice shall be published annually.

(9) *(Repeal - SG No. 33/2012)*.

(10) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Where the description of the subject of the qualification system and/or the criteria and rules for qualification is of a large volume, the contracting authority shall include a brief description in the notice, whereas the detailed requirements shall be included in the contract documents.

(11) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Where the contracting authority uses a qualification system, the said authority shall select the candidates for participation in restricted procedures and negotiated procedures in accordance with the requirements of the said system.

(12) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Where a contracting authority considers that the qualification system of another contracting authority meets its requirements, the said authority shall inform the interested parties that the said authority will use the said system.

Article 106. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) An application for participation in the qualification system may be presented at any time within the duration of the said system.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority shall appoint a commission for examination of the applications for participation in the qualification system according to the procedure established by Articles 34 to 36 herein.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The commission shall examine each application received and, on the basis of the objective criteria and rules as announced, shall propose to the contracting authority to accept or to refuse inclusion of an applicant in the qualification system.

(4) The contracting authority shall be obligated to make a decision within six months after submission of the application for inclusion in the qualification system.

(5) If the decision referred to in Paragraph (4) will take longer than four months, the contracting authority shall inform the applicant, within two months after submission of the application, of the reasons justifying a longer period and of the date by which a decision will be made.

(6) Within fifteen days after the date of the decision referred to in Paragraph (4), the contracting authority shall inform the applicant of the inclusion thereof in the qualification system or of the refusal of such inclusion. A refusal shall have to be justified.

(7) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* In reaching a decision referred to in Paragraph (4) or when the criteria and rules are being altered, contracting authorities may not:

1. impose conditions of an administrative, technical or financial nature on some applicants which are not imposed on others;

2. require tests or proof which duplicate evidence already provided by the applicant.

(8) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Contracting authorities shall keep a written record of qualified suppliers, contractors or service providers, and the said record may be divided into categories, according to the subject of procurement for which the qualification is valid. In the cases referred to in Article 105 (12) herein, the contracting authority shall be obligated to provide information on the system and the record to other contracting authorities.

(9) The contracting authority may bring the qualification of an applicant to an end where the said applicant has ceased to meet the criteria for qualification as announced. The contracting authority shall be obligated to notify the applicant of the intention to bring qualification to an end at least fifteen days beforehand, together with the reason or reasons justifying the proposed action.

Section III

Framework Agreement

(Repeal - SG No. 37/2006, in force as of 01.07.2006)

Article 107. *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

Article 108. *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

Chapter Ten

SPECIAL RULES

Article 109. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Under the terms established by Article 23 herein, the contracting entities covered under Items 5 and 6 of Article 7 herein may dispatch to the Agency for entry into the Public Procurement Register a prior information notice or a periodic indicative notice of the public procurements or framework agreements planned for the following twelve months. The type of notice shall be at the choice of the contracting authority.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Contracting authorities publish a prior information notice of the public procurements or framework agreements planned for the following twelve months on the buyer profile thereof under the terms established by Article 23 (2) herein.

Article 110. *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Where contracting authorities publish a prior information notice on major projects which have been included in a previous prior information notice, they do not have to repeat the said information, provided that they indicate the notice wherein the said information has been included.

Article 111. *(Last Amendment - SG No. 33/2012)* Contracting authorities may open restricted procedure or by negotiated procedure with publication of a contract notice and by means of:

1. *(Repeal - SG No. 37/2006, in force as of 01.07.2006);*
2. *(Last Amendment - SG No. 33/2012)* a periodic indicative notice, published according to the procedure established by Article 23 herein;
3. *(Last Amendment - SG No. 33/2012)* a notice on the existence of a qualification system under Article 105 (8) herein.

Article 112. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* A periodic indicative notice shall be used as a means of calling on potential candidates to express interest in participating in the procedure.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* A periodic indicative notice must be based on the standard form referred to in Article 19 (7) herein.

(3) A periodic indicative notice must furthermore include the following information, if available at the date of dispatch of the said notice:

1. possibility to conclude framework agreements;
2. possibility to award additional procurements;
3. date scheduled for start and for completion of performance of the procurement;
4. duration of the contract;
5. requirements for the economic and financial standing of the candidate, as well as for the technical capacity and/or qualifications thereof;

6. terms and amount of the participation guarantee and of the contract performance guarantee;

7. (*New - SG No. 37/2006, in force as of 01.07.2006*) criteria to be applied in selecting a supplier, contractor or service provider and relative weighting to be given to the criteria in the integral evaluation of the tender;

8. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) address wherefrom the contract documents can be requested and the final date for making such a request, the price and method of payment of the price to be paid for such documents;

9. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) other information specified in the standard form under Art. 19 (7).

Article 113. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) (1) The contracting authority shall make available on request to interested parties the technical specifications regularly referred to in the supply, works or service contracts of the said authority, or the technical specifications which the said authority intends to apply to contracts covered by periodic indicative notices.

(2) Where the technical specifications are based on documents available to interested parties, the inclusion of a reference to those documents shall be sufficient.

Article 114. (*Last Amendment - SG No. 37/2006, in force as of 01.07.2006*) (1) When a negotiated procedure with publication of a contract notice or a restricted procedure has been announced by means of a periodic indicative notice, the contracting authority shall dispatch an invitation to participate in the procedure to all candidates that have expressed interest within the time limit indicated in the periodic indicative notice.

(2) The invitation to participate in the procedure shall be dispatched simultaneously to all candidates not later than twelve months after the date of publication of the periodic indicative notice. The said invitation shall be dispatched not later than thirty-seven days before the final date for receipt of requests to participate and, where transmitted by electronic means, the time limit for dispatch may be shortened by seven days.

(3) Where the periodic indicative notice does not include the information covered under Article 112 (3) herein, the contracting authority shall make the said information available to the candidates by means of the invitation referred to in Paragraph (1), furthermore indicating:

1. the address and final date for the submission of requests to participate;
2. documents which must be attached to the request to participate.

(4) Where the contracting authority has ensured direct and unrestricted access, by electronic means, to the information covered under Article 112 (3) herein from the day of publication of the prior indicative notice, the invitation to participate in the procedure shall indicate the Internet address at which the said information is accessible.

(5) The contracting authority shall conduct qualification proceedings according to the procedure established by Articles 77 to 79 herein.

(6) When selecting participants in a restricted procedure or in a negotiated procedure with publication of a contract notice, the contracting authority may not:

1. impose administrative, technical or financial conditions on certain candidates which would not be imposed on others;
2. require tests or evidence which would duplicate objective evidence already available.

Article 115. When the negotiated procedure or the restricted procedure has been announced by means of a notice on the existence of a qualification system, the contracting authority shall select participants from the qualified candidates in accordance with such a system.

Article 116. *(Repeal - SG No. 37/2006, in force as of 01.07.2006).*

Article 117. (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement in a restricted procedure shall follow the procedure established by Articles 68 to 74 herein.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The examination, evaluation and ranking of tenders and the selection of a supplier, contractor or service provider of the procurement in a negotiated procedure shall follow the procedure established by Articles 88 and 89 herein.

Article 118. (1) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authority may exclude a tender for a procurement where the proportion of the goods originating in third countries exceeds 50 per cent of the total value of the goods constituting the tender.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* The provision of Paragraph (1) shall not apply if there is a treaty concluded between European Union or the Republic of Bulgaria and a third country ensuring comparable and effective access for Bulgarian persons to participation in public procurement in that country.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The origin of the goods shall be determined in accordance with the effective customs legislation.

(4) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* Where two or more tenders are equivalent in the light of the criterion applied in the evaluation of tenders,

preference in the ranking shall be given to the tenders which may not be excluded according to Paragraph (1). The prices of the said tenders shall be considered equivalent if the price difference does not exceed three per cent.

(5) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* A tender may not be preferred to another according to Paragraph (4) where its acceptance would oblige the contracting authority to acquire goods having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance.

Article 118a. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) Where a public procurement having as its subject matter research and development services is awarded by an open or restricted procedure or by a negotiated procedure with publication of a contract notice, contracting authorities need not indicate nature and quantity in the information on a contract concluded in case such publication would breach a commercial secret. In such case, the information shall contain any information contained in the notice.

(2) Where a public procurement having as its subject matter research and development services is awarded by a negotiated procedure without publication of a contract notice under Item 4 of Article 103 (2) herein, contracting authorities need not indicate nature and quantity in the information on a contract concluded.

(3) In case of a contract concluded through a qualification system, the information on a contract concluded shall contain at least the information on the supplier, contractor or service provider included in the list under Article 106 (8) herein.

Article 118b. *(New - SG No. 37/2006, in force as of 01.07.2006)* (1) Where any activity covered under Articles 7a to 7e herein is exposed to competition, the supervisory authority in the relevant sphere may notify the Agency by dispatch of an opinion accompanied by evidence, for exemption of this activity from the scope of application of this Act.

(2) Within one month, the Agency shall send the documents referred to in Paragraph (1) to the European Commission for the adoption of a Decision.

Article 119. The provisions of Part Two herein shall apply, mutatis mutandis, to any matters unregulated in Part Three herein.

Part Three "A"

AWARD OF PUBLIC CONTRACTS IN THE FIELD OF DEFENCE AND/OR SECURITY

(New - SG No. 33/2012; Name amended, SG No. 40/13.05.2014, in force as of 01.07.2014)

Chapter Ten "a"

GENERAL PROVISIONS

Section I

General principles

Article 119a. *(New - SG No. 33/2012)* (1) The provisions of this part are applied upon award of public contracts under art.3, para.2 with value under art.14, para.2.

(2) In case with reference to one of the activities- subject of public contract, the rules of this part are applicable, and with reference to the other activity- the rules of part two or part three are applicable, it is awarded under the procedure of the this part provided the award of joint contract is motivated under objective reasons.

(3) In case with reference to one of the activities- subject of public contract, the rules of this part are applicable, and another activity of the subject-matter is outside the scope of the law and the award of joint contract is motivated with objective reasons, the law is not applied with reference to this contract.

(4) Adoption of a decision for awarding of joint contract for the purpose of the application of this part or exclusion of the contract from the scope of the law is not allowed.

Article 119b. *(New - SG No. 33/2012)* (1) *The contracting entities may receive supply or service from or through a central public contracts body which is:*

1.contracting entity within the meaning of art.8a, para.2 established by an act of the Council of Ministers, or

2.a European public body which is not a contracting entity.

(2) Where the contracting entities receive supplies or services under the procedure of para.1, it is considered that they have observed the provisions of the act as far as:

1.the body under para.1, pt.1 has observed the rules of this part;

2.the rules applied by the body under para.1, pt.2 correspond to the provisions of this act and the rules for appeal.

(3) The central body and the contracting entity are responsible for the conformity with the law of the respective procedure that they carry out.

Section II

Procedures

Article 119c. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1)
The public contracts in this part are awarded through a restricted procedure and a negotiated procedure with a notice, unless the conditions for competitive dialogue procedure and negotiation without a notice are at hand.

(2) The contracting entity may award public contract through a competitive dialogue when the requirements under art.83a, para. 1 and 2 are met.

(3) The contracting entities adopt a decision for award of public contracts through negotiation without a notice only when:

1. the restricted procedure, the competitive dialogue or the procedure of negotiation with a notice are terminated due to the lack of submitted applications for participation or there are no candidates qualified, only the candidates that have submitted tender in the terminated procedure are invited, and the initially declared conditions are not substantially changed;

2. the restricted procedure, the competitive dialogue or the procedure of negotiation with a notice are terminated due to the fact that the submitted tenders do not meet the previously declared conditions, only the candidates that have submitted tender in the terminated procedure are invited and the initially declared conditions are not substantially changed;

3. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* necessity for taking urgent measures due to insurmountable force whose consequences cannot be surmounted upon observance of the terms for performance of the procedures under para. 1 has occurred;

4. *(Repeal, SG No. 40/13.05.2014, in force as of 01.07.2014)*

5. due to technical reasons, or reasons connected with the protection of the exclusive rights, the contract may be awarded only to a particular contractor;

6. the contract has a subject matter of scientific research or development activities, unless in the cases under art.4, pt.4 and art.13, para.1, pt.4;

7. the products- subject of supply are manufactured for the purpose of research works, experiments, scientific or development activities and are in limited quantities, which do not allow formation of market price or reimbursement of expenses related to this activity;

8. additional supplies from the same contractor are necessary for the purpose of partial substitution or augmentation of the supplies, where the change of the contractor will force the contracting party to acquire products with different technical specifications and this will lead to incompatibility or substantial technical impediments upon exploitation and maintenance;

9.subject-matter of the contract is supply of products traded on the stock exchange;

10. for a short period of time, there are favourable conditions for supply of products on lower prices than the market price, including upon sale of the property of commercial entities in liquidation or insolvency;

11. due to unforeseen circumstances the award of an extra service or a construction from the same contractor under the following conditions is necessary:

a) the extra service or the construction may not be technically or economically separated from the subject of the basic contract without significant impediments for the contracting entity or, notwithstanding the fact that they may be separated, are of essential necessity for the performance of the contract.

b) the total value of the contracts by which extra services or construction are awarded is not more than 50 percent of the value of the basic contract;

12. it is necessary to repeat a service or construction by the same contractor in the presence of the following conditions:

a) the first contract is awarded upon a restricted procedure or a procedure of negotiation with a notice, or a competitive dialogue and in the notice for it the possibility for such award is indicated;

b) the total value of the new contract is included upon determination of the value of the first contract;

c) the new contract corresponds to the basic project in performance of which the first contract has been awarded;

13. the subject of the contract is related to provision of air and maritime transport services to the armed forces or the national security forces of the country which are situated or await to be situated outside the territory of the country, where the contracting entity must provide these services from contractors who or which guarantee the validity of their tenders only for such short periods of time that it is impossible the time limit for carrying out of the restricted procedure or the procedure of negotiation with a notice, including the shortened time limits under art.76, para.3 and art. 86, para.3 to be observed.

(4) In the cases under para.3, pt.8, the agreement for extra contract may not be for a period longer than five years, unless upon exceptional circumstances which are specified after taking into account the expected service life of the supplied products, equipment or systems and technical impediments which may lead to the change of the contractor.

(5) In the cases under para.3, pt.12, the procedure may be opened not later than five years after the award of the first contract, unless in case of exceptional circumstances which necessitate the procedure to be carried out after this time limit.

(6) In the cases under para.3, pt.9, the contract is concluded in accordance with the rules of the respective stock exchange.

(7) In the cases under para.3, pt.10, the contract is concluded under the procedure of part three of the Commerce Act.

Article 119d. (New - SG No. 33/2012) (1) The contracting entities may conclude a framework agreement for award of public contracts on the basis of a restricted procedure, negotiated procedure with a notice or a competitive dialogue.

(2) The framework agreements are concluded for a period not longer than seven years. As an exception, the period of the frame agreement may be longer where, with reference to the expected service life of the supplied products, equipment or services, the change of the contractor may arouse technical impediments. The contracting entity must indicate the reasons for this in the notice.

(3) With reference to the unsettled issues related to the framework agreement, the rules of art.93a- 93d are applied.

Chapter Ten "b"

SPECIAL PROVISIONS

Section I

Contract performance conditions

Article 119e. (New - SG No. 33/2012) (1) Where in correspondence with art.26, para. 2 in the notice it is indicated that the public contract includes or requires classified information, the contracting entity lays down, in the documentation which is provided along with the invitation for participation, to the participants and their subcontractors requirements for the purpose of protection of the classified information

(2) In the cases under para.1, in addition to the documents under art.51, para.1, pt.12, the contracting entity may:

1.request for granting an authorization, certificate or confirmation of access to classified information within the meaning of the Classified Information Protection Act with reference to the chosen subcontractors;

2. include in the draft contract clauses which oblige the contractor:

a) to submit the document under pt.1 and with reference to the subcontractors selected during the performance of the contract;

b) to protect the classified information that has become known to him in the process of the procedure, during and after the performance of the contract;

c) to include clauses under letter "b" related to the protection of the classified information in the agreements with subcontractors selected before and during the performance of the public contract.

(3) In the cases under art.51, para.1, pt.12, the contracting entity recognizes the authorizations for access to classified information, issued in accordance with the legislation of the Member State of the European Union in which the candidate or the participant is established upon presence of an operating international treaty or a bilateral agreement for classified information protection to which the Republic of Bulgaria is a party. This does not exclude the right of the contracting entity to request performance of additional examination in the respective Member State in the European Union under the conditions and the procedure of the Classified Information Protection Act.

Article 119f (New - SG No. 33/2012) (1) Where, in accordance with art.26, para.2, the contracting entity has included in the notice requirements for the security of the supplies, he may:

1. request the tender to also include:

a) licenses and other appropriate documents issued in the respective Member State of the European Union, with which it is proved that the participant will be able to fulfill his obligations related to the export, transfer or transit of products connected to the public contract;

b) indication of all limitations related to the opening, transfer or usage of products or the results of them which arouse from export control or agreements in the sphere of defense;

c) proofs that the organization and the location of the supply chain of the participant allows observation of these requirements, as well as a declaration, indicating that possible changes in the supply chain during the performance of the public contract will not have unfavourable effect;

d) each supporting documentation received by the national bodies of the participant with reference to the performance of the extra needs aroused on account of a crisis which is required by the contracting entity;

2. include in the draft contract clauses which oblige the contractor to:

a) create and/ or maintain the capacity necessary for meeting of extra needs, required by the contracting entity on account of a crisis in accordance previously settled conditions and procedure;

b) to perform the maintenance, modernization or adaptation of the supplies which are comprised by the public contract;

c) to immediately notify the contracting entity in case of any change in his organization, supply chain or industrial policy which may affect the performance of the public contract;

d) in case of discontinuation of the production to provide the contracting entity with all special means which are necessary for production of spare parts, components, assembly units and special test equipment, including technical drawings, licenses and user instructions under conditions and procedure settled upon occurrence of the respective circumstance.

(2) The contracting entity may not lay down to the participant any requirements that may arouse contradiction with the licensing criteria for export, transfer or transit of the respective Member State of the European Union.

Article 119g. *(New - SG No. 33/2012)* (1) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* With reference to public procurements under art. 3, para. 2 with the announcement, the contracting authority may specify a part of the public procurement to be performed by subcontractors, by specifying the minimum and the maximum percentage of the price of the offer, but not more than 30 percent.

(2) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* With their offer, the participants may propose a part of the total price of the offer which exceeds the maximum under para. 1.

(3) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* With their offer, the participants indicate types of works from the subject of the offer which are to be awarded to subcontractors and the part of the procurement corresponding to these works which cannot be

below the minimum, specified by the contracting authority, the already selected subcontractors are also indicated.

(4) *(Former Par. 1, SG No. 40/13.05.2014, in force as of 01.07.2014)* When a participant with his offer defines one or more subcontractors for concluding subcontractor contract, he is obliged to:

1. indicate in the tender the proposed subcontractors, the type of works they are going to perform and the share of their participation;

2. submit documents with which he proves the observance of the requirements for selection of each subcontractor in line with the type and the share of their participation;

3. notify the contracting entity of each change in the subcontractors that has happened during the performance of the public contract.

(5) *(Former Par. 2, SG No. 40/13.05.2014, in force as of 01.07.2014)* The contracting entity removes the participant if the subcontractors proposed by him do not meet the selection criteria.

Article 119h. (New - SG No. 33/2012) (1) The contracting entity may oblige the participant designated as a contractor to choose the subcontractors of all or part of the activities, offered for subcontracting upon observance of the provisions of art.119i- 119l. This possibility is indicated in the notice.

(2) The contracting entity indicates in the decision for nominating of a contractor with reference to which of the activities offered for subcontracting, the subcontractor must be selected upon observance of the provisions of art.119i-119l.

(3) The contracting entity does not have the right to set restrictions based on the nationality of the subcontractors.

Section II

Selection of subcontractors

Article 119i. (*New - SG No. 33/2012*) Where the participant who or which is selected for a contractor is a contracting entity under art.7, he concludes contracts for subcontracting amounting to the value under art.14, para. 2 through a procedure under art.119c, para.1.

Article 119k. (*New - SG No. 33/2012*) (1) Where the participant who or which is selected for a contractor is not a contracting entity under art.7 and must meet a requirement under art.119h, para.1, he prepares a declaration in line with the respective sample form, ratified by the regulation under art.45c, para.9 or under the procedure of art.19, para.7- in case of contracts for subcontracting amounting to value under art.14, para. 2.

(2) The notice under para.1 is published in the Public Contracts Register, and upon contracts for subcontracting amounting to a value under art.45c, para.2, pt.7- also in the "Official Journal" of the European Union upon observance of the provisions of art.45c, para.7, 10 and 11.

(3) In the cases under para.1, the subcontractors are selected upon observance of the transparency and competition policy.

Article 119l. (*New - SG No. 33/2012*) (1) Upon choosing of a subcontractor under art.119i and 119k are applied the selection criteria which are indicated by the contracting entity of the public contract. The participant chosen for a contractor may specify and other criteria which correspond to those indicated by the contracting entity.

(2) The selection criteria under para.1 have to be impartial, non-discriminatory, related to the subject of the contract for subcontracting and to be proportionate to its scope.

Article 119m. *(New - SG No. 33/2012)* (1) The contracting entity is entitled the right to reject subcontractors selected by the participant who is nominated for a contractor only in case they do not meet the selection criteria, indicated in the notice and the documentation, applicable with reference to the participants. In such a case, the participant selected for a contractor is obliged to apply the procedure under art.119i-119l again.

(2) In the cases under para.1, the contracting entity prepares a reasoned decision which is sent to the participant nominated as a contractor within three days after its issuance.

Article 119n. *(New - SG No. 33/2012)* The decisions of the participant nominated for a contractor related to the choice of a subcontractor are not subject to appeal in the cases where the participant nominated for a contractor is not a contracting entity under art. 7.

Article 119o. *(New - SG No. 33/2012)* The responsibility for performance of a public contract is assumed by the contractor even in the cases in which he has concluded contracts for subcontracting.

Part Four

APPEAL AND CONTROL

(Title Last amendment - SG No. 37/2006, in force as of 01.07.2006)

Chapter Eleven

APPEAL

(Title Last amendment - SG No. 37/2006 , in force as of 01.07.2006)

Article 120. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.10.2014) (1)* *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Any resolution of the contracting authorities is subject to appeal under this chapter in the case of procedure for:

1. public procurement assignment, including by application of a framework agreement, a dynamic delivery system or a preliminary selection system;
2. conclusion of a framework agreement;

3. establishment of a dynamic delivery system or a preliminary selection system;
4. project competition.

(2) The resolutions under Par. 1 are appealed before the Competition Protection Commission regarding their lawfulness, including availability of discriminating economical, financial, technical or qualification requirements in the notice, documentation or any other document related to the procedure.

(3) (*Last Amendment - **SG No. 33/2012***) The decisions under art.119m, para.2 are also subject to appeal under the procedure of this chapter.

(4) (*Former Par. (3) - **SG No. 33/2012***) Actions or inactions of the contracting authority which prevent the access or participation of persons to the procedure shall also be subject to appeal under this chapter. The actions of the contracting authority for issuance of the decisions under Paragraph (1) shall not be subject to separate appeal.

(5) (*Former Par. (4), Last Amendment - **SG No. 33/2012***) An appeal may be filed within 10 days as of:

1. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) the expiration of the time limit referred to in Art. 27a (3) – against the decision for opening of the procedure and/or the amending decision;

2. (*New - SG No. 93/2011, in force as of 26.02.2012*) the publication of the decision for opening of procedure under Art. 76 (3) or Art. 86 (3) or of negotiated procedure without publication of contract notice;

3. (*Last Amendment - **SG No. 33/2012***) receipt of the resolution under Art. 79 (12), Art. 83d (11), Art. 83g (1), Art. 88 (11), Art. 93g (4), Art. 106 (4) and Art. 119l (2);

4. (*Former Item 3 - SG No. 93/2011, in force as of 26.02.2012*) receipt of the resolution for selection of a contractor or for termination of the procedure;

5. (*Former Item 4, Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) publishing of the voluntary transparency notice in the Public Procurement Register or in the Official Journal of the European Union.

(6) (*Repeal, SG No. 40/13.05.2014, in force as of 01.10.2014*)

(7) (*Former Par. (6), Last Amendment - **SG No. 33/2012***) The appeal under Paragraph (4) shall be submitted within 10 days from the notification of the relevant action, and, in case the person has not been notified – from the date of expiration of the time limit for performance of the relevant action.

(8) (*Former Par. (7), Last Amendment - **SG No. 33/2012***) An appeal may be filed by:

1. (*Last Amendment - **SG No. 33/2012***) any interested party in the cases under Par. (5), Items 1, 2 and 5, Pars. (6) and (7);

2. (*Last Amendment - **SG No. 33/2012***) any interested applicant for the procedure – in the cases under Par. (5), Item 3 and Par. (7);

3. (*Last Amendment - **SG No. 33/2012***) any interested applicant or participant – in the cases under Par. (5), Item 4 and Par. (7).

(9) (*Former Par. (8), Last Amendment - **SG No. 33/2012***) Within the time limit under Paragraph (5), It. 1 any professional associations and organizations in the relevant branch may also file appeals against the decision for opening of the procedure and/or the amending decision in order to protect the interests of their members.

(10) (*Former Par. (9), Last Amendment - **SG No. 33/2012***) In the cases under Par. (5), Items 1 and 5, when the publishing dates of the notices into the Public Procurement Register and in the Official Journal of the European Union differ, the time limit for appeal starts to lapse from the later of the two dates.

(11) (*Former Par. (10), Last Amendment - **SG No. 33/2012***) An appeal against the rating of participants in a project competition may be filed by any interested applicant or interested participant within the time limit under Par. (5).

Article 120a. (*Last Amendment - **SG No. 33/2012***) (1) (*Last Amendment - **SG No. 33/2012***) Appeal against a decision, action or omission of the contracting entity, with the exclusion of the appeal against the decision for nomination of a contractor, does not suspend the award of public contract procedure, unless there is an interim measure "suspension of procedure" requested.

(2) When the appeal requires the interim measure under Par. 1, the public procurement assignment procedure is suspended until enforcement of:

1. the ruling rejecting the request for an interim measure, or
2. the judgment under the appeal if the interim measure is imposed.

Article 120b. (*New - **SG No. 52/2010***) An appeal against the decision for appointment of a contractor suspends the public procurement procedure until final settlement of the dispute unless a preliminary execution is permitted.

Article 121. (*Last Amendment - **SG No. 40/13.05.2014, in force as of 01.07.2014***) (1) (*Last Amendment - **SG No. 93/2011, in force as of 26.02.2012***) The appeal shall be filed simultaneously with the Commission for the Protection of Competition and with the contracting authority whose decision, action or inaction is subject to appeal.

- (2) The appeal must be written in the Bulgarian language and must contain:

1. designation of the authority wherewith the appeal is lodged;

2. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) designation, registered office and address of the place of management and court registration data on the appellant if a legal person; name, address and identity data on the appellant if a natural person, as well as address, including electronic, for receiving of messages and summons.

3. (*Last Amendment - SG No. 52/2010*) **contracting authority's name and address;**

4. data on the public procurement and the decision, action or omission which is appealed;

5. the complaints and the request of the appellant;

6. signature of the person who lodges the appeal or of the authorized representative thereof.

(3) A request for imposition of an interim measure shall be made simultaneously with the lodgment of the appeal.

(4) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) The following documents shall be attached to the appeal to the Commission for the Protection of Competition:

1. a copy of the appealed decision in case it is not published at the Public Procurement Register;

2. (*Last Amendment - **SG No. 33/2012***) proof for compliance with the time limit referred to in Article 120 (5) and (7) herein;

3. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) document for payment of stamp duty;

4. proof of the sending of the appeal to the contracting authority;

5. any other proof which the appellant has at his disposal.

(5) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) If the appeal does not meet the requirements covered under Par. (2) and Par. (4), Items 1 - 3, the Commission for the Protection of Competition shall notify the appellant and shall allow the appellant three days to cure the non-conformities.

(6) The Commission for the Protection of Competition shall not initiate proceedings where:

1. (*Last Amendment - **SG No. 33/2012***) the appeal has been lodged after expiry of the time limit referred to in Article 120, Pars. (5) and (7) herein;

2. the non-conformities have not been cured within the time limit referred to in Paragraph (5);

3. documentary proof of payment of stamp duty has not been presented;

4. (*New - SG No. 93/2011, in force as of 26.02.2012*) the appeal has been submitted before the expiration of the time limit referred to in Art. 27a (3).

5. (*New - SG No. 94/2008, in force as of 01.01.2009*) the appeal is withdrawn before its initiation.

(7) (*Last Amendment - SG No. 52/2010*) In the cases covered under Paragraph (6), the President of the Commission for the Protection of Competition shall return the appeal by an order which shall be appealable before a three-judge panel of the Supreme Administrative Court within three days after communication.

(8) Acting on its own initiative, the contracting authority may eliminate the violation before pronouncement by the Commission for the Protection of Competition.

Article 121a. (*Last Amendment - SG No. 33/2012*) (1) (*Last Amendment - SG No. 33/2012*) Within three days after lodging of the appeal or after the elimination of the non-conformities in it, the chairperson of the Commission for Protection of Competition institutes proceedings and designates a member of the commission who is responsible for the observation of the examination. The contracting entity is notified about the instituted proceeding.

(2) (*New - SG No. 93/2011, in force as of 26.02.2012*) The contracting authority shall send a written statement concerning the appeal which, if necessary, shall be supported by proof, within three days from the receipt of the notification under Paragraph (1).

(3) (*Former Par. (2) - SG No. 93/2011, in force as of 26.02.2012*) When the appeal contains a request for imposition of an interim measure, the Competition Protection Commission passes judgment under it in a closed session with a substantiated ruling within 7 days as of initiation of the proceedings.

(4) (*Last Amendment - SG No. 33/2012*) The Commission for Protection of Competition expresses an opinion with reference to the request after appraisal of the possible consequences of imposed interim measure with reference to all interests which may be affected, including the public interest and the interests related to the defence and the security, made on the basis of the claims in the appeal, the standing of the contracting entity and the evidence enclosed by the parties.

(5) (*Former Par. (4) - SG No. 93/2011, in force as of 26.02.2012*) The Competition Protection Commission may decide not to impose an interim measure when the negative consequences for all interests which may be harmed exceed the benefit from its imposition.

(6) (*Former Par. (5) - SG No. 93/2011, in force as of 26.02.2012*) The judgment on the interim measure does not bind the Competition Protection Commission when deciding on the essence of the dispute and does not affect the remaining claims of the petitioner.

(7) (Former Par. (6), Last Amendment - SG No. 93/2011, in force as of 26.02.2012) The ruling upon the temporary measure shall be subject to appeal before a three-member panel of the Supreme Administrative Court within three days from notification to the parties thereof. The court shall rule behind closed doors within fourteen days from the institution of the proceedings on the private appeal. The rules of Chapter Thirteen of the Administrative Procedure Code shall apply to all issues related to the proceedings on the appeal that are not provided for herein.

(8) (New - SG No. 93/2011, in force as of 26.02.2012) The appeal of the ruling for imposing of temporary measure shall not suspend the proceedings before the Commission for the Protection of Competition.

Article 121b. (Last Amendment - **SG No. 33/2012**) (1) (Last Amendment - SG No. 93/2011, in force as of 26.02.2012) Where the decision for selection of a contractor is appealed, the contracting authority may, within the time limit for submission of the statement under Art. 121a (2), request from the Commission for Protection of Competition permission for preliminary execution of the decision. Any request for preliminary execution which is made after the time limit has expired shall not be considered by the Commission for Protection of Competition.

(2) The contracting authority substantiates the request under Par. 1 and encloses evidence in support of the contracting authority's statements.

(3) The Competition Protection Commission passes judgment on the request for permission for preliminary execution by virtue of a ruling in a closed session within three days as of receipt of the statement.

(4) (Last Amendment - SG No. 33/2012) The Commission for Protection of Competition allows preliminary performance of the decision for selection of a contractor as an exception when this is necessary with reference to the securing of the life and the health of the citizens, in order to be protected important state or public interests including such which are related to the defence and the security, or if it is possible a significant or difficult to repair damage to averse of the delay of the performance.

(5) Preliminary execution under Par. 4 is not permitted when its motivated by economic interests connected with costs for:

- 1. adjournment of the execution of the contract;**
- 2. opening of a new public procurement procedure.**

(6) (New - SG No. 33/2012) The Commission for Protection of Competition allows a preliminary performance of the decision for a contractor selection in all cases in which the performance of a large-scale project in the sphere of the defence and the security, which is of considerable importance for the interests of the country, might be seriously threatened.

(7) (Former Par. (6) - SG No. 33/2012) The ruling is subject to appeal before the Supreme administrative court within three days as of its communication to the parties.

(8) (Former Par. (7) - SG No. 33/2012) The Supreme administrative court passes judgment on the ruling at its closed session within 14 days as of initiation of the proceedings under the private petition.

Article 122. (Last Amendment - SG No. 52/2010) (1) When proceedings are initiated against a decision for appointment of a contractor and preliminary execution is not permitted, the Competition Protection Commission verifies ex officio the availability of any **pending proceedings against another decision of the contracting authority under the same procedure.**

(2) The Competition Protection Commission suspends the proceedings initiated under a petition against a decision for appointment of a contractor when it ascertains pending proceedings under Par. 1.

(3) The proceedings are resumed ex officio or at the request of one of the parties after revocation of the grounds for suspension.

Article 122a. (Last Amendment - SG No. 33/2012) (1) (Last Amendment - SG No. 33/2012) The examination comprises the circumstances under the appeal which is lodged within the time limit under art.120, para.5 and 7 and is performed by a work team from the administration of the Commission for Protection of Competition specified by an ordinance of the chairperson. The examination is observed by the member of the commission under art.212a, para.1 who, upon necessity, gives instructions.

(2) (*New- SG No. 33/2012*) Where the public contract includes or requires classified information, including with a subject under art.3, para.2, the officials of the administration of the Commission for Protection of the Competition who participate in the proceedings of consideration of the correspondence, must have a permission for access to classified information at the respective level in line with the requirements of the Protection of Classified Information Act.

(3) (*Former Par. (2) - SG No. 33/2012*) Written and oral evidence and expert opinions shall be admitted in the proceedings before the Commission for the Protection of Competition.

(4) (*Former Par. (3) - SG No. 33/2012*) Upon recourse to expert opinions in the proceedings before the Commission for the Protection of Competition, the amounts due for fees of the experts shall be paid in advance by the party which requested the expert examination. Should an expert examination be ordered on the initiative of the Commission for the Protection of Competition, the costs of the expert fee shall be awarded to the appellant if the appeal is left without consideration or the proceedings are terminated and to the contracting authority in the cases referred to in Item 2, 4 and 5 of Article 122d (1) herein.

(5) (*Former Par. (4) - SG No. 33/2012*) The parties to the proceedings, the State bodies and the officials shall be obligated to cooperate with the Commission for the Protection of Competition in the fulfilment of the obligations assigned thereto by the law.

(6) *(Former Par. (5) - **SG No. 33/2012**)* No evidence collected under the proceedings may be disclosed if it constitutes an industrial, trade or other secret protected by the law. Where any such evidence contains data constituting classified information, the procedure established by the Classified Information Protection Act shall apply.

(7) *(Former Par. (6) - **SG No. 33/2012**)* After completion of the examination, the parties shall be afforded an opportunity to familiarize themselves with the evidence collected under the case file.

(8) *(Former Par. (7) - **SG No. 33/2012**)* The parties shall be obligated to submit all evidence thereof not later than on the day before the sitting at which the appeal is to be considered.

Article 122b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - **SG No. 33/2012**)* After the end of the examination, the work team places at the observing member of the commission's disposal a report which includes factual and legal analysis of the case, as well as a proposal for the way of settling the proceeding.

(2) *(New - **SG No. 33/2012**)* The observing member of the commission notifies the chairperson for the end of the examination. The chairperson, through a resolution, schedules an open session for consideration of the correspondence.

(3) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The parties are summoned under the procedure of the Administrative Procedure Code and the term for this is not shorter than three days prior the session. The parties may also receive notifications and summons on the electronic address specified by them.

(4) *(Former Par. (3) - **SG No. 33/2012**)* The parties may use defence by legal counsel.

Article 122c. *(Last Amendment - **SG No. 33/2012**)* (1) *(Last Amendment - SG No. 73/2011, in force as of 21.10.2011)* The meetings shall be deemed regularly convened if at least four members of the Competition Protection Commission are present.

(2) *(New - **SG No. 33/2012**)* Where the contract includes or requires classified information, including with a subject under art.3, para.2, the members of the Commission for Protection of the Competition who participate in the proceedings of consideration of the correspondence, must have a permission for access to classified information at the respective level in line with the requirements of the Protection of Classified Information Act.

(3) *(Former Par. (2) - **SG No. 33/2012**)* The Competition Protection Commission shall enact resolutions and determinations with an open vote and with a majority of 4 votes. In case the meeting is attended by less than 7 members the resolution shall be enacted only if at least four members of the commission have voted in favour of it.

(4) *(Repeal, Former Par. (3) - **SG No. 33/2012**)* A member of the committee may not participate in the proceedings of study under this act, when he is interested in its outcome or when reasonable doubts regarding his impartiality are present. The member of the committee shall be removed from this office at his request or at the request by the parties.

(5) *(Repeal – SG No. 102/2008)*.

(6) *(Last Amendment - **SG No. 33/2012**)* The session begins with settling the preliminary issues related to the regularity of the procedure. The parties to the proceeding may be asked questions.

(7) When he or she considers that the circumstances concerning the appeal are clarified, the President shall call upon the parties to give opinions.

(8) After the factual and legal aspects of the dispute are clarified, the President shall close the sitting.

Article 122d. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The Commission for Protection of Competition, meeting behind closed doors, shall render a decision whereby:

1. the Commission shall leave the appeal without consideration;

1a. *(New - **SG No. 33/2012**)* repeal unlawful decision for opening of procedure for award of public contract;

2. the Commission shall revoke decision and shall return the case file for continuation of the public procurement award procedure as from the last lawful decision or action or for termination of the procedure.

3. shall establish the unlawfulness of the decision and shall impose the sanctions referred to in Paragraphs (4) and (5).

4. shall declare the decision of the contracting authority null and void;

5. shall revoke the unlawful action or shall establish the unlawful lack of action and shall return the case file for continuation of the public procurement award procedure as from the last lawful decision or action or for termination of the procedure;

6. shall revoke the decision where it establishes that the contract has been concluded in violation of Art. 41, Par. 3 or 5 and establishes a violation of the law which has affected the opportunity of the appellant to take part in the procedure or to be selected as contractor.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* In the cases referred to in Items 2 and 5 of Paragraph (1), the Commission for the Protection of Competition may give mandatory instructions on the progress of the public procurement award procedure.

(3) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* When before or in the course of the proceedings the contracting authority enters into a contract the latter is obliged to notify the Competition Protection Commission immediately by sending a copy of the contract.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The Commission for Protection of Competition shall establish unlawfulness of the decision and

shall impose a sanction to the amount of to 10 percent of the value of the concluded contract where it has permitted preliminary execution but upon rendering of the decision it establishes a violation of the law which has affected the opportunity of the appellant to take part in the procedure or to be selected as contractor.

(5) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* When the contract has been concluded in violation of Art. 41, Par. 3 or 5, but no violation of the law is established which has affected the opportunity of the appellant to take part in the procedure or to be selected as contractor, the Commission for Protection of Competition shall impose a sanction to the amount of 3 per cent of the value of the concluded contract.

(6) (New – SG No. 52/2010) In the cases under Par. 4 and 5 when the value of the contracts is not indicated in them, the particular amount of the sanction is imposed by the Competition Protection Commission on the basis of an expertise for the expected value of the concluded contract. In case of appointing experts for that purpose the fees for the **expert's remuneration are covered by the contracting authority.**

(7) *(Former par.(5) – SG No. 52/2010)* The decision of the Commission for the Protection of Competition shall be evidenced in writing and shall state:

1. the designation of the issuing authority;
2. the grounds of fact and law for the issuance of the decision;
3. reasoning;
4. operative part;
5. the authority before which the decision may be appealed, and time limit for appeal.

(8) *(Former Par.(6) – SG No. 52/2010)* Any member of the Commission, who disagrees with the decision, shall sign the decision with a dissenting commission which shall be attached to the decision.

(9) *(New - SG No. 93/2011, in force as of 26.02.2012)* The Commission for Protection of Competition shall rule upon the liability for expenses in accordance with the terms and procedure laid down in Art. 143 of the Administrative Procedure Code.

Article 122e. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The Commission for Protection of Competition pronounces on the appeal within one month after the initiation of the proceeding with reference to public procurements under art. 45c, para. 2, and in the rest of the cases- within 15 days after the initiation of the proceedings.

(2) *(Last Amendment - SG No. 52/2010)* The decision together with the reasoning shall be drawn up and declared not later than seven days after pronouncement on the appeal.

Article 122f. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) (1) The decision of the Commission for the Protection of Competition shall be appealable before a three-judge panel of the Supreme Administrative Court within fourteen days after communication of the said decision to the parties.

(2) (*Last Amendment - SG No. 52/2010*) The Supreme administrative court passes judgment within one month as of submission of the appeal and its ruling is final.

(3) (*New - SG No. 93/2011, in force as of 26.02.2012*) The rules of Chapter Twelve of the Administrative Procedure Code shall apply to all issues concerning the proceedings in respect of appeals.

Article 122g. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) (1) The Commission for the Protection of Competition shall terminate the proceedings by a ruling:

1. upon ascertainment that the appeal is inadmissible;
2. if the natural-person appellant has died or if the legal-person appellant has been dissolved;
3. upon withdrawal of the appeal.

(2) (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) The rulings referred to in Paragraph (1) shall be appealable according to the procedure established by Article 122a (7) herein.

Article 122h. (*Last Amendment – SG No. 52/2010*)) The procedure for appeal of individual administrative acts shall apply to all unregulated matters regarding the appeals procedure before the Commission for the Protection of Competition under the Administrative Procedure Code.

Article 122i. (*Last amendment - **SG No. 33/2012***) (1) (*Last amendment - **SG No. 33/2012***) Declaration of invalidity of a concluded contract or a framework agreement on the grounds indicated in Art. 41b, Par. (1) may be requested by:

1. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) any interested party – in the cases under Art. 41b, Par. (1), Items 1 and 2;

2. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) any interested party and interested applicant – **in the cases under Art. 41b, Par. (1), Item 3, letters “a” and “b”;**

3. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) an interested applicant and/or interested participant – in the cases under Art. 41b, Par. (1), Item 3, letter “c”.

(2) The claim is filed in compliance with the provisions of the Civil Procedure Code.

(3) (*Last amendment - SG No. 33/2012*) Nullifying of the contract or the framework agreement under para.1 may be requested within two months after the publication of information for its conclusion in the Public Contracts register, and if it is not published- after learning about it, but not later than one year after the conclusion.

(4) (*Last amendment - SG No. 33/2012*) Where the contracting authority has published information about a concluded contract pursuant to Art. 4, Items 2, 4 and 5, Art. 12, Par. (1), Items 2 - 9, 11 - 15 and Art. 13, Par. (1) and has specified reasons for implementation of the relevant ground, the 2-month period under Par. (3) shall apply.

(5) (*Last amendment - SG No. 33/2012*) Where the contracting authority has published information about a concluded contract or a framework agreement before the end of appellate proceedings, the 2-month period for invalidity claim on the grounds of Art. 41b (1), Item 3 shall start to lapse from the coming into force of the decision for revoking of the **appealed contracting authority's decision.**

Article 122j. (*Last Amendment – SG No. 52/2010*) When the contract is declared invalid each party must return to the other party everything which has been received from it. In case this becomes impossible the relations are settled by returning the cash equivalent of what was received under the contract.

Article 122k. (*Last Amendment – SG No. 33/2012*) Where the contract or the framework agreement are declared null, each of the parties must return to the other party everything that it has received from it.

Article 122l. (*New – SG No. 52/2010*) The amounts of the sanctions under Art. 122d, Par. 4 and 5 are paid by the budget of the legal entities – contracting authorities or of legal entities administered by contracting authorities – natural persons.

Article 122m. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) The Competition Protection Commission sends the judgments under Art. 122d and the rulings under Art. 121a, Par. (3), Art. 121b, Par. (3) and Art. 122g, Par. (1) to the Public Procurement Agency within 7 days as of their announcement.

Article 122n. (*New, SG No. 40/13.05.2014, in force as of 01.07.2014*) (1) State fees and expenses are owed with reference to the proceedings before the Commission for Protection of the Competition and the Supreme Administrative Court under this Chapter.

(2) The contracting authorities are exonerated from paying state fees.

Chapter Eleventh „a"

PROVISIONS FOR ELIMINATION OF DISCREPANCIES ASCERTAINED BY THE EUROPEAN COMMISSION

(New – SG No. 52/2010)

Article 122o. *(New – SG No. 52/2010)* (1) The permanent representation of the Republic of Bulgaria to the European Union redirects on the date of receipt or on the following working day at the latest to the Public Procurement Agency, the administration of the Council of Ministers, the Ministry of Foreign Affairs and the Ministry of Economy the notice received from the European Commission about violations of contracting authorities ascertained by the latter as regards to procedures until conclusion of a contract for public procurement .

(2) The Executive Director of the Public Procurement Agency sends the notice under Par. (1) to the relevant contracting authority who is obliged to provide an answer within 5 days as of its receipt.

(3) With the answer under Par. (2) the contracting authority notifies the agency and encloses the relevant evidence when:

1. accepts as reasonable the statement of the European Union and eliminates the discrepancy, or

2. the violation indicated in the notice is already subject of appeal.

(4) Except the cases under Par. (3), when the contracting authority finds that no violation is available the latter sends a substantiated statement to the Public Procurement Agency and encloses evidence.

(5) The contracting authority is obliged to terminate any actions connected with the conduct of the procedure or conclusion of a public procurement contract as of the time of receipt of the notice under Par. (2) until the final settlement of the dispute.

(6) In the cases under Par. (4) the Executive Director of the Agency:

1. exercises the powers under Art. 19, Par. (2), Subpar. 4 when the violation indicated **in the notice under Par. (1) is a result of the contracting authority's act;**

2. approaches the competent state authority when the violation ensues from the application of a normative act which is not in compliance with the EU legislation.

(7) The organ under Par. (6), Item 2, within 5 days notifies the Agency by a substantiated statement and indicates the relevant measures, if any.

(8) The Executive Director of the Public Procurement Agency draws up a response to the European Commission which contains:

1. acknowledgement that the violation is eliminated – in the cases under Par. (3), Item 1;

2. information about available appeals against the violation – in the cases under Par. (3), Item 2;

3. information about adoption of measures for elimination of the violation – in the cases under Par. (6), Item 1 and Par. (7).

(9) The response under Par. (8) with enclosed evidence is sent to the Permanent representation of the Republic of Bulgaria to the European Union, the administration of the Council of Ministers, the Ministry of Foreign Affairs and to the Ministry of Economy within 17 days as of receipt of the notice under Par. (1) by the Public Procurement Agency.

(10) The Permanent representation of the Republic of Bulgaria to the European Union presents to the European Commission the response under Par. (8) not later than the expiration of 21 days as of the date of receipt of the notice under Par. (1).

Article 122p. *(New – SG No. 52/2010)* The information exchange under Art. 122p may be performed electronically, with electronic signature or by fax.

Article 122q. *(New – SG No. 52/2010)* The contracting authorities are obliged to notify the Agency in writing:

1. about the result from the appeal in the cases under Art. 122p, Par. (3), Item 2 – within 7 days as of enforcement of the ruling of the Competition Protection Commission;

2. when the procedure to which the notice under Art. 122p, Par. (1) refers, is terminated with an effective ruling and a new procedure is opened, entirely or partially related to the same subject – within three days as of opening the procedure.

Article 122r. *(New – SG No. 52/2010)* In the cases under Art. 122r the Executive Director of the Agency, within 7 days of receipt of the notice, notifies the European Commission under the provisions of Art. 122p, Par. (9).

Chapter Twelve

CONTROL

Article 123. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Control over

compliance with this Act, as well as the control over the execution of the public procurement contracts shall be exercised by the National Audit Office and by the authorities of the Public Financial Inspection Agency. The control shall not be fulfilled over the quality of the execution of the respective contract.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authorities covered under Article 7 herein, which fall within the scope of the National Audit Office Act, shall be subject to control by the National Audit Office.

(3) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The contracting authorities covered under Article 7 herein, which fall within the scope of the Public Financial Inspection Act, shall be checked by the authorities of the Public Financial Inspection Agency as to compliance with this Act within the framework of financial inspection.

(4) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Following an approved annual plan, the bodies of the Public Financial Inspection Agency shall conduct periodic follow-up inspections related to compliance with the public procurement regime of contracting authorities that do not come within the scope of the Public Financial Inspection Act.

(5) *(Last Amendment - SG No. 33/2006)* The orders on the performance of checks by the authorities of the Public Financial Inspection Agency shall be issued by the Director of the Agency or by officials authorized thereby.

(6) The orders referred to in Par. (5) shall be unappealable.

(7) *(Last Amendment - SG No. 33/2006)* The Director of the Public Procurement Agency may request from the authorities of the Public Financial Inspection Agency to exercise the powers thereof in a specific case.

Article 124. *(Last Amendment - SG No. 98/2008)* (1) *(Last Amendment - SG No. 98/2008)* Upon performance of any checks referred to in Article 123 herein, the authorities of the Public Financial Inspection Agency shall have the right:

1. to gain free access to the auditee;
2. to examine the full set of documents associated with public procurement awards and with the activities requiring public procurement award;
3. to require documents, information and reference briefs associated with the public procurements from the officials at the auditees.
4. *(New - SG No. 98/2008)* to search premises, transport vehicles and other places, where documentation of the auditees is stored, and to seize documents, records of computer information data and carriers of computer information data for ensuring evidence – with the assistance of the authorities of the Ministry of Internal Affairs and after permission received by the court.

(2) *(Last Amendment - SG No. 37/2006, in force as of 01.07.2006)* The persons at the auditees shall be obligated to cooperate with the authorities of the Public Financial

Inspection Agency and to provide the requisite documents, information and reference briefs associated with public procurements.

Article 125. Upon performance of any checks referred to in Article 123 herein, the control authorities shall be obligated:

1. to identify themselves, producing an official identity card and an order on performance of the check;

2. to record accurately the results of the control activity;

3. to respect the confidentiality of any information as may have come to the knowledge thereof upon performance of the checks.

Article 126. *(Last Amendment - SG No. 33/2006)* (1) *(Last Amendment - SG No. 33/2006)* The control authorities of the Public Financial Inspection Agency shall draw up a report on the results of each check as performed, containing the findings as arrived at, supported by evidence, conclusions, and recommendations.

(2) The report referred to in Par. (1) shall be served on the contracting authority.

(3) Should any administrative violations be ascertained, the control authorities shall draw up written statements on administrative violations.

(4) Should there be reason to believe that criminal offences have been committed, the records of the check shall be transmitted to the prosecuting magistracy.

(5) *(Last Amendment - SG No. 33/2006)* Where any breaches of the public procurement award procedures have been ascertained, the relevant parts of the financial inspection report and of the report referred to in Par. (1) regarding the breaches of the procedures as ascertained shall be dispatched promptly to the Director of the Public Procurement Agency.

(6) *(Last Amendment - SG No. 33/2006)* Information on control exercised as to compliance with this Act may be provided solely by the Director of the Public Financial Inspection Agency or by officials thereby empowered, as well as by the Director of the Public Procurement Agency in the cases referred to in Par. (5).

Art. 126a. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* Upon exercising of their activities under this Chapter, the controlling authorities are entitled the right to use an electronic platform "Electronic Monitoring" (E-monitoring) which collects, stores and provides online access to the written statements of all commissions for conducting of public procurement procedures, the frame agreements, the contracts between the contracting authorities and the contractors, the additional agreements to the contracts and the subcontracts.

Art. 126b. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* Upon exercising their activities under this Chapter, the controlling authorities are entitled the right to use an

electronic platform "Electronic Audit" (E- audit). The platform "E-audit" has a communication system which allows natural persons and institutions to submit, in a structured form, signals for deviation from the lawful conducting of the procedures under this Act and the performance of the public procurement contracts.

Art. 126c. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* The signals under art. 126b serve for confirmation and improvement of the methods for examination or control as well as for the analyses for development of anti-corruption measures.

Art. 126d. *(New, SG No. 40/13.05.2014, in force as of 01.10.2014)* The conditions and the procedure for introduction and use of the platforms under art. 126a and art. 126b are specified with the regulation for implementation of the Act.

Chapter Thirteen

ADMINISTRATIVE PENALTY PROVISIONS

Article 127. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* The written statements ascertaining violations of this Act shall be drawn up by officials of the Public Financial Inspection Agency within six months after the day whereon the offender was detected by Agency's authorities but not later than three years after the commission of any such violation.

(2) The penalty decrees shall be issued by the Minister of Finance or by officials empowered thereby.

(3) The ascertainment of violations, the issuing, appeal against and execution of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 127a. *(Last Amendment - **SG No. 33/2012**)* (1) *(Last Amendment - **SG No. 33/2012**)* Upon non-compliance with any effective decisions and/or rulings of the Commission for the Protection of Competition or non-fulfilment of the obligation referred to in Article 122a (5) herein, natural persons shall be liable to a fine and legal persons and sole traders shall be liable to a pecuniary penalty of BGN 5,000 or exceeding this amount but not exceeding BGN 100,000.

(2) The Commission for the Protection of Competition shall ascertain the violation committed and shall impose the sanctions referred to in Paragraph (1) by a decision which shall be appealable before the Supreme Administrative Court.

(3) The pecuniary penalties and the fines under effective decisions of the Commission shall be subject to collection according to the procedure established by the Tax and Social-Insurance Procedure Code.

Article 127b. *(New - SG No. 37/2006, in force as of 01.07.2006)* The Commission for the Protection of Competition shall send the decisions referred to in Article 127a (2) herein to the Public Procurement Agency within seven days after declaration of the said decisions.

Article 127c. *(New, SG No. 12/2015)* (1) The written statements ascertaining violations of this Act, identified by the Court of Auditors, shall be drawn up by authorized auditors within six months after the day the offender is detected but not later than three years after the commission of any such violation.

(2) The penalty decrees shall be issued by the Chairperson of the Court of Auditors or by officials empowered by the Chairperson.

(3) The ascertainment of violations, the issuing, appeal against and execution of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

Article 127d. *(New - SG No. 93/2011, in force as of 26.02.2012)* **Any contracting authority that does not adopt internal rules for award of public procurements under Art. 8b shall be liable to a fine or a pecuniary sanction between BGN 100 and BGN 500.**

Article 128. *(Last Amendment - SG No. 33/2012)* (1) *(Last Amendment - SG No. 33/2012)* An contracting authority who violated the prohibition under Art. 13a, Art. 15, Par. (4) – (7) and Art. 119a, Par. (4) shall be punished by a property sanction from 10 000 to 30 000 BGN or by a fine from 2000 to 8000 BGN, and the person under Art. 8, Par. 2 or 3 shall be punished by a fine from 2000 to 8000 BGN.

(2) *(New – SG No. 94/2008, in force as of 01.01.2009)* The punishments under Par. 1 shall also be imposed to an contracting authority who violates the prohibition under Art. 8, Par. 2, sentence two.

Article 128a. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* An contracting authority who in the course of conducting a procedure, violates the terms under Art. 64, Art. 76, Par. 1-3, Art. 81, Par. 1-3, Art. 83b, Par. 1 and 2, Art. 86, Par. 1-3, Art. 93h, Par. 1, Art. 97, Par. 1, Art. 104, Art. 104a, Par. 1, 2 and 4 and Art. 114, Par.2, shall be punished by a property sanction from 2000 to 3000 BGN or by a fine from 1000 to 2000 BGN, and the person under Art. 8, Par. 2 or 3 – by a fine from 1000 to 2000 BGN.

Article 128b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* An contracting authority who violates the prohibition under Art. 25, Par. (5), (9) or (10) shall be punished by a property sanction from 7000 to 25 000 BGN or by a fine from 2000 to 7000 BGN, and the person under Art. 8, Par. (2) or (3) – by a fine from 2000 to 7000 BGN.

(2) *(New - **SG No. 33/2012**)* The penalties under para.1 are imposed to both contracting entity and an entity under art.8, para.2 or 3, who upon award of contracts under art.3, para.2 violates the prohibition under art.119h, para.3.

Article 128c. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) Any contracting authority that approves and sends for publication in the Public Procurement Register a public procurement notice which does not contain the mandatory minimum content under Art. 25 (2), where it is applicable to the specific public procurement, shall be liable to a pecuniary sanction between BGN 1000 and BGN 2000 or to a fine between BGN 500 and BGN 1000, and the person under Art. 8 (2) or 3 – to a fine between BGN 500 and BGN 1000. The penalty shall not be imposed where the relevant part of the notice has been added by an amending decision published in accordance with the rules and the term under Art. 27a (3) or where the procedure has been terminated.

(2) Any contracting authority that violates Art. 27a (4) upon the publication of an amending decision or does not comply with the requirement under Art 47 (3), shall be liable to a pecuniary sanction between BGN 1000 and BGN 2000 or to a fine between BGN 500 and BGN 1000, and the person under Art. 8 (2) or 3 – to a fine between BGN 500 and BGN 1000.

(3) A contracting authority which approves tender documentation where the method for tender evaluation based on the most economically advantageous tender criterion does not comply with the requirements under Art. 28 (2), shall be liable to a pecuniary sanction between BGN 1000 and BGN 2000 or to a fine between BGN 500 and BGN 1500, and the person under Art. 8 (2) or (3) – to a fine between BGN 500 and BGN 1500.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Any contracting authority that violates Art. 28 (6) or (7) or fixes a price for tender documentation in violation of Art. 28 (4) or an amount of participation deposit or performance deposit in violation of Art. 59 (2) or (3), shall be liable to a pecuniary sanction between BGN 500 and BGN 1000 or to a fine between BGN 200 and BGN 500, and the person under Art. 8 (2) or (3) – to a fine between BGN 200 and BGN 500.

(5) Any contracting authority that sets down technical specifications in violation of Art. 32 (2), shall be liable to a pecuniary sanction between BGN 7000 and BGN 25 000 or to a fine between BGN 2000 and BGN 7000, and the person under Art. 8 (2) or (3) - to a fine between BGN 2000 and BGN 7000.

(6) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Any contracting authority that in the cases under Art. 29 (3) does not extend the time limit for submission of tenders or applications for participation, shall be liable to a pecuniary sanction between BGN 500 and BGN 2000 or to a fine between BGN 300 and BGN 1000, and the person under Art. 8 (2) or (3) - to a fine between BGN 300 and BGN 1000.

(7) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Any contracting authority that violates Art. 73 (4) or Art. 89 (8) shall be liable to a pecuniary sanction between BGN 500 and BGN 2000 or to a fine between BGN 300 and BGN 1000, and the person under Art. 8 (2) or (3) - to a fine between BGN 300 and BGN 1000.

Article 128d. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* A member of the public procurement committee who breaks Art. 69, Par. 1, Art. 70, Par. 1 or Art. 72, Par. 1 and 2 shall be punished by a fine to the amount of 500 BGN.

Article 128e. *(Last Amendment – SG No. 52/2010)* (1) *(Last Amendment – SG No. 52/2010)* An contracting authority who enters into a contract in violation of Art. 41, Par. 2, shall be punished by a property sanction from 10 000 to 20 000 BGN, or by a fine from 3000 to 5000 BGN and the person under Art. 8, Par. 2 or 3 – by a fine from 3000 to 5000 BGN.

(2) *(New – SG No. 52/2010)* The property sanction under Par. 1 is also imposed on an contracting authority who signs a contract prior to expiration of the term under Art. 41, Par. 3 with exception of the cases under Art. 41a.

(3) *(New – SG No. 52/2010)* The penalty under Par. 2 is not imposed in the cases when for the ascertained violation a sanction under Art. 122d, Par. 5 is imposed.

Article 128f. *(New - SG No. 94/2008, in force as of 01.01.2009)* An contracting authority who fails to adopt a resolution for a preliminary selection or a resolution for a selection of a contractor within the specified period of time, shall be punished by a property sanction from 1000 to 5000 BGN or by a fine from 200 to 2000 BGN, and the person under Art. 8, Par. 2 or 3 shall be punished by a fine from 200 to 2000 BGN.

Article 129. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* An contracting authority who fails to conduct a public procurement procedure if grounds for that are available, or amends a public procurement contract in violation of Art. 43, Par. 1, shall be punished by a property sanction from 15 000 to 50 000 BGN or by a fine from 3000 to 10 000 BGN, and the person under Art. 8, Par. 2 or 3 – by a fine from 3000 to 10 000 BGN.

(2) *(New - SG No. 37/2006, in force as of 01.07.2006)* The sanctions referred to in Paragraph (1) shall furthermore be imposed on any contracting authority or any person referred to in Article 8 (2) or (3) herein which or who, on the basis of a framework agreement, concludes a contract which makes substantial amendments to the terms laid down in the framework agreement.

(3) *(Last Amendment - **SG No. 33/2012**)* The punishments under Par. 1 shall be also imposed on an contracting authority or a person under Art. 8, Par. 2 or 3, who enter into contracts in violation of the provisions of Art. 5, Par. 4.

(4) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* The penalties under Par. (1) shall be also imposed to a contracting authority that, in violation of Art. 12 (6), does not terminate a contract pursuant to Art. 12 (1), It. 13.

(5) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Any contracting authority that awards a public procurement to the value under Art. 14, Par. (4) without complying with the rules referred to in Arts. 101a, 101b, 101c, 101d or 101f, shall be liable to a pecuniary sanction between BGN 1000 and BGN 2000, or to a fine between BGN 500 and BGN 1000, and the person under Art. 8, Pars. (2) or (3) - to a fine between BGN 500 and BGN 1000.

Article 129a. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* An contracting authority who fails to send the documents under Art. 45c, Pars. (1), (3), (4), (5) and (6) or fails to perform his obligations under Art. 45c, Par. (10) and (11) shall be punished by a property fine from 5000 to 15 000 BGN or by a fine from 1000 to 3000 BGN, and the person under Art. 8, Par. (2) or (3) shall be punished by a fine from 1000 to 3000 BGN.

(2) *(Repeal – SG No. 52/2010).*

Article 129b. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) *(Former text of Art. 129b. - SG No. 93/2011, in force as of 26.02.2012)* An contracting authority who fails to maintain the public procurement documentation within the time limit under Art. 58a, Par. (6) shall be punished by a property sanction from 1000 to 5000 BGN or by a fine from 500 to 1500 BGN, and the person under Art. 8, Par. 2 or 3 – by a fine from 500 to 1500 BGN.

(2) *(New - SG No. 93/2011, in force as of 26.02.2012)* Any contracting authority that does not keep all of the documents related to the award of the procurements under Chapter **Eight "a", within the time limit under Art. 101g, shall be liable to a pecuniary sanction** between BGN 500 and BGN 1000, or to a fine between BGN 300 and BGN 500, and the person under Art. 8, Pars. (2) or (3) - to a fine between BGN 300 and BGN 500.

Article 130. *(Last Amendment - **SG No. 33/2012**)* (1) *(Last Amendment - **SG No. 33/2012**)* An contracting authority under Art. 7, Items 1-4, who conducts a competition dialogue or an agreement procedure provided that the preconditions under Art. 83a, Art. 84, 90 or Art. 119c, Par. (3) are not available, shall be punished by a property sanction from 10 000 to 20 000 BGN, or by a fine from 3000 to 5000 BGN, and the person under Art. 8, Par. (2) or (3) shall be punished by a fine from 3000 to 5000 BGN.

(2) *(Last Amendment - **SG No. 33/2012**)* An contracting authority under Art. 7, Subpar. 5 and 6, who conducts an agreement procedure without announcement, and without the circumstances under Art. 103, Par. (2) or Art. 119c, Par. (3) being available, shall be punished by a property sanction from 10 000 to 20 000 BGN or by a fine from 3000 to 5000 BGN, and the person under Art. 8, Par. (2) or (3) – by a fine from 3000 to 5000 BGN.

Article 130a. *(Last Amendment - SG No. 33/2012)* (1) *(Former text of Art. 130a - SG No. 33/2012)* An contracting authority who enters into a framework agreement or creates a dynamic system for deliveries for a term exceeding 4 years, in violation of Art. 93a, Par. (1) or Art. 93e, Par. (1), or fails to perform his obligation as regards to annual publication of an announcement under a pre-selection system for a term longer than 3 years, shall be punished by a property sanction from 10 000 to 20 000 BGN or by a fine from 3000 to 5000 BGN, and the person under Art. 8, Par. (2) or (3) shall be punished by a fine from 3000 to 5000 BGN.

(2) *(New - SG No. 33/2012)* The penalties under para.1 are imposed to both contracting entity or an entity under art.8, para.2 or 3 who concludes a framework agreement for award of contracts under art.3, para.2 for a period longer than 7 years in violation of art.119d, para.2.

Article 131. *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* (1) An contracting authority who terminates a procedure without the grounds under Art. 39, Par. (1) or Par. (2) being available, shall be punished by a property sanction from 2000 to 10 000 BGN or by a fine from 1000 to 3000 BGN, and the person under Art. 8, Par. (2) or (4) shall be punished by a fine from 1000 to 3000 BGN.

(2) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* An contracting authority who opens a new procedure in violation of Art. 39, Par. (6) shall be punished by a property sanction from 2000 to 7000 BGN or by a fine from 1000 to 2000 BGN, and the person under Art. 8, Par. (2) or Par. (3) – by a fine from 1000 to 2000 BGN.

(3) An contracting authority who enters into a public procurement contract in violation of Art. 42, Par. (1) shall be punished by a property sanction from 5000 to 10 000 BGN or by a fine from 2000 to 5000 BGN, and the person under Art. 8, Par. (2) or Par. (3) shall be punished by a fine from 2000 to 5000 BGN.

Article 131a. *(Last Amendment – SG No. 33/2012)* (1) *(Former text of Art. 131a – SG No. 33/2012)* An contracting authority who fails to perform its obligation under Art. 62, Par. (1) or (3) within the time limit stipulated by the law, is punishable by a property sanction from 1000 to 5000 BGN or by a fine from 500 to 1500 BGN and the person under Art. 8, Par. (2) or (3) – by a fine from 500 to 1500 BGN.

(2) *(New – SG No. 33/2012)* A contracting entity who or which acquires the participation guarantee, without the reasons of art.61, para.2 to be at hand, is imposed a property sanction amounting from BGN 10 000 to BGN 15 000 or a fine amounting from BGN 1000 to BGN 5000, and the entity under art.8, para.2 or 3- a fine amounting from BGN 1000 to BGN 5000.

„(2) На възложител, който не публикува документ или информация, подлежаща на вписване в профила на купувача, се налага имуществена санкция или глоба до 2000 лв., а на лицето по чл. 8, ал. 2 или 3 - се налага глоба в размер до 1500 лв.“

3. Досегашните ал. 2 и 3 стават съответно ал. 3 и 4.

Article 132. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* Any contracting authority that fails to dispatch the information subject to entry into the Public Procurement Register within the prescribed time limits or does not publish in term documents and information, that **must be added in the buyer's profile, shall be liable to a pecuniary sanction of BGN 1000 to BGN 2000 or to a fine between BGN 500 and BGN 1500, and the person under Art. 8, Par. (2) or (3) - to a fine between BGN 500 and BGN 1500.**

(2) *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* A contracting authority who fails to publish a document or information subject to entry in the buyer's profile is imposed a proprietary sanction or a fine amounting to up to BGN 2000, and the individual under art. 8, para. 2 or 3 is imposed a fine amounting to up to BGN 1500.

(3) *(Former Par. 2, SG No. 40/13.05.2014, in force as of 01.07.2014)* Any contracting authority that fails to fulfill his/he duty under Art. 44, Par. (10) within the prescribed time limits, shall be liable to a pecuniary sanction of BGN 500 to BGN 1000 or to a fine between BGN 100 and BGN 500, and the person under Art. 8, Par. (2) or (3) - to a fine between BGN 100 and BGN 500.

(4) *(Former Par. 3, SG No. 40/13.05.2014, in force as of 01.07.2014)* Any person referred to in Article 8 (2) or (3) herein, who fails not fulfill its obligation under Art. 19, Par. (4), Art. 20a, Par. (2), Art. 122p, Par. (2) or (7), shall be liable to a fine of BGN 500 or exceeding this amount but not exceeding BGN 1,500.

Article 132a. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* Any person, who fails to provide the authorities of the Public Financial Inspection Agency with any documents, information and reference briefs within the time limits fixed by the said authorities in violation of Article 124 (2) herein, shall be liable to a fine of BGN200or exceeding this amount but not exceeding BGN500.

Article 133. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) *(Former text of Art. 133 - SG No. 93/2011, in force as of 26.02.2012)* In the event of a repeated violation of the violations covered under Articles 128 to 132a herein, the fine or the pecuniary penalty, as the case may be, shall be imposed on the offender in a double amount.

(2) *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Where the violations under Art. 128 – 132a, except for those under Art. 129 (4), 129b (2) and 132 (3) are committed with relation to the award of public procurements to the value referred to in Art 14 (3), the amounts of all fines and penalties provided for shall be decreased in half.

Article 134. *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* (1) A contracting authority who fails to observe the prohibitions under art. 45a, para. 2 is imposed a proprietary sanction in amount from BGN 5000 to BGN 50 000 or a fine in an amount from BGN 1000 to BGN 10 000.

(2) The sanctions under para. 1 are also imposed to a subcontractor who fails to observe the prohibition under art. 45, para. 4.

Additional Provisions

§ 1. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* Within the meaning given by this Act:

1. *(New – **SG No. 33/2012**)* "Military equipment" is equipment which is specially designed or adapted for military purposes and designated to be used as an arm, munitions or war materials;

1a. *(New – **SG No. 33/2012**)* "Civil Purchases" are all purchases which are not indicated in art.3, para.2 covering the procurement of non-military products, works or services for logistical purposes and concluded in accordance with the conditions under art.5, para.4;

1b. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* "**Public procurement contract**" shall be a contract for pecuniary interest in writing between one or more suppliers, contractors or service providers and one or more contracting authorities and having as its subject matter the execution of works, the supply of products, or the provision of services, concluded under the terms of the Act;

1c. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* "Subcontract" means a written contract for valuable consideration, concluded between the contractor and one or more persons, with a subject of performance of one or more activities from an awarded public procurement with a subject of construction, delivery of goods or providing of services;

1d. *(Former Item 1a – **SG No. 33/2012**)* „**Public utilities contracts**" shall be the contracts for performance of the following activities:

a) exploitation, maintenance, monitoring, recultivation and post-exploitation care for installations and facilities for treating and disposal of domestic waste;

6) management and organization of activities related to re-usage, recycling, recovery and disposal of waste for accomplishing the goals laid down in the municipal agendas for management of waste activities.

1e. (Former Item 1b – **SG No. 33/2012**) "European funds" shall be the Structural Funds, the Cohesion Funds, the European Agricultural Fund for Rural Development, and the European Fisheries Fund.

2. "European technical approval" shall be a favourable technical assessment of the fitness of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by bodies designated for this purpose by the Member State.

3. "Operation of airports" shall be the performance of activities concerning: maintenance of the airfield and development of airport infrastructure; containment and elimination of obstacles; maintenance of visual signalling devices; arrangement of emergency rescue, salvage and fire-prevention services for flights both within the airport perimeter and in the surrounding area; physical security of the airport; flight safety; commissioning of the elaboration and updating of the master plan and cadastral plan of the airport.

4. "Operation of maritime or inland ports" shall be the performance of activities concerning: maintenance of the aquatic areas adjacent to public-transport ports, the navigable and approach channels; survey and dredging; maintenance of moorage walls, port call facilities, port industrial track and crane tracks, fire-protection, water-supply and sewerage system, high and low voltage power lines, public-transport surfacing within the perimeter of ports.

5. "Electronic auction" shall be a repetitive (standard) process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

5a. (New, SG No. 40/13.05.2014, in force as of 01.07.2014) "Electronic Catalogue" (E-catalogue) is an online platform which allows the offering of deliveries which have already been standardized or with reference to which it is impossible own standards to be developed or approved.

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

6a. (New – **SG No. 33/2012**) "Life cycle" means all possible stages of a product, i.e. research and development, industrial development, production, operation, repair, modernization, modification, maintenance, logistics, training, testing, withdrawal and disposal;

6b. (Former Item 6a - **SG No. 33/2012**) "Interested applicant" is an applicant who is not eliminated from participation at the preliminary selection stage because the applicant has not been duly notified about the elimination or the appeal proceedings pertaining to such elimination have not been completed.

6c. (Former Item 6b - **SG No. 33/2012**) "Interested participant" is a participant who is not finally eliminated from a procedure. The elimination is final when the participant is notified about the decision for elimination and this decision has become effective. An interested party shall be also a participant that has been ranked but is not selected as a contractor.

6d. (Former Item 6c - **SG No. 33/2012**) "Interested person" is any other person who has or has had interest in the award of a certain public procurement and who has suffered or may have suffered damages as a result of the claimed violation.

7. "Law of the State in which the candidate or tenderer is established" shall be:

(a) applicable to natural persons: the national law (lex patriae) thereof, within the meaning given by Article 48 of the Private International Law Code;

(b) applicable to legal persons: the law of the State determined according to Article 56 of the Private International Law Code;

(c) applicable to combinations which are not legal persons: the law of the State in which they are registered or instituted.

8. (Last Amendment - *SG No. 40/13.05.2014, in force as of 01.07.2014*) "Insurmountable forces" means circumstances aroused by events which are unforeseen by the contracting authority such as natural disaster, emergency or an accident as well as other which directly endanger the life and the health of the people or the environment, or may significantly impede or disturb the normal performance of established normative activities of the contracting authority. An insurmountable force is also a subsequent danger for the national security, the state defense, the environment, the health, the protected territories, areas and sites and for the public order.

9. (Last Amendment – *SG No. 94/2008, in force as of 01.01.2009*) "Applicant" is a natural person or a legal entity or an association thereof, which has submitted an application for participation in a restricted procedure, procedure of agreement with an announcement, a competition dialogue or a restricted competition for a project.

10. (New - **SG No. 33/2012**) "Classified information" means any information or material, regardless of the form, nature or mode of transmission, to which a certain level of security classification or protection has been attributed, and which, in the interests of national security and in accordance with the laws, regulations or administrative provisions in force in the respective State- Member of the European Union, requires protection against any misappropriation, destruction, removal, disclosure, loss or access by any unauthorized individual, or any other type of compromise;

11. (Last Amendment - **SG No. 33/2012**) "Compensation (offset) agreement" means a contract with which a contractor of significant project in the sphere of the security and defense is obliged to perform activities (directly or indirectly related to the subject of the project) which aim at protection and/ or development of existing or creation of new abilities, necessary for guaranteeing of significant national interests in the sphere of the security and defense;

11a. (*New - **SG No. 33/2012***) "Crisis" means any situation in a State- Member of the European Union third country in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities. Crisis is also deemed to have arisen if the occurrence of such a harmful event is deemed to be impending. Armed conflicts and wars are also regarded as crises.

12. "**Minimum labour costs**" shall be the minimum amount of remuneration of labour, defined as a minimum monthly amount of the contributory income differentiated by economic activity and occupations grouped by qualification according to Item 1 of Article 8 of the Public Social Insurance Budget Act for the relevant year.

13. "**Network in the field of transport**" shall be any network whereof the operating conditions are laid down by the State or a municipality, and which includes the routes to be served, the capacity to make the transport service available, and the frequency of the service.

13a. (*New - **SG No. 33/2012***) "Research and development" means all activities comprising fundamental research, applied research and experimental development, where the latter may include the creation of technological demonstrators, i.e., devices that demonstrate the performance of a new concept or a new technology in a relevant or representative environment;

14. (*Repeal - SG No. 93/2011, in force as of 26.02.2012*).

14a. (*New - SG No. 94/2008, in force as of 01.01.2009*) "(CPV-Common Procurement Vocabulary)" is a unified classification system, applicable to public procurements for the purpose of unification of the various references used by the contracting authorities for description of the subject of the public procurement procedures. In case of differences between CPV and the Common Nomenclature of the Economic Activities in the European Communities (NACE-Nomenclature generale des activites economiques dans les Communautés Europeennes) or between CPV and CPC (Central Product Classification) preference shall be given to NACE and CPC nomenclatures respectively.

14b. (*Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014*) "Unforeseen circumstances" means circumstances which have occurred after the conclusion of the contract and are not a result of activity or non- activity of the parties which cannot have been foreseen upon taking the necessary care and which make the implementation of the contractual conditions impossible.

15. (*Last Amendment - **SG No. 33/2012***) "**Common technical specification**" shall be a technical specification laid down in accordance with a procedure recognized by a Member State and published in the Official Journal of the European Union.

16. (*Last Amendment - SG No. 93/2011, in force as of 26.02.2012*) "**Lot**" shall be such a part of the subject of public procurement which, even though can be treated as a self-contained subject of public procurement, is systemically related to the other lots in which the subject of public procurement is subdivided.

16a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* "Official translation" is a translation performed by a translator who is member of the list of a person, that has signed a contract with the Ministry of Foreign Affairs for performance of official translation.

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

17a. *(New - SG No. 33/2012)* "Government" means the State, regional or local government of a State- Member of the European Union or third country.

18. *(Last Amendment - SG No. 33/2012)* "Recognized body" means an individual that has been accredited, with reference to the respective sphere, by Executive Agency "Bulgarian Accreditation Service" or a foreign accreditation authority which is party to the EA Multilateral Agreement for mutual recognition of the European co-operation for Accreditation, or which meets the recognition requirements under art.5a, para.2 of the National Accreditation of Conformity Assessment Bodies.

19. "Repeated violation" shall be any violation which is committed by the same person within one year after the entry into effect of a penalty decree whereby the said person was penalized for a violation of the same kind.

19a. *(New – SG No. 52/2010)* "Preliminarily announced terms and conditions" are the terms and conditions contained in the notice and/or the participation documentation.

20. *(Repeal, SG No. 40/13.05.2014, in force as of 01.07.2014)*

21. "Body governed by public law" shall be any legal person which, regardless of its commercial or industrial character, is established for the specific purpose of meeting needs in the public interest and which fulfils any of the following conditions:

(a) *(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)* more than 50 percent is financed by the State budget, by the budgets of the Bulgarian National Bank, public social insurance or the National Health Insurance Fund, by the municipal budgets, or by any contracting authorities covered under Item 1 or 3 of Article 7 herein;

(b) more than half of the members of the management or supervisory body thereof are appointed by any contracting authorities covered under Item 1 or 3 of Article 7 herein;

(c) which is subject to management supervision on the part of any contracting authorities covered under Item 1 or 3 of Article 7 herein; management supervision shall be presumed when a person can exert, in any way whatsoever, a dominant influence on the activity of another person.

Any medical-treatment facility, which is a commercial corporation and more than 30 per cent of the income whereof for the preceding year is for the account of the State budget and/or a municipal budget, and/or the budget of the National Health Insurance Fund, shall likewise be a body governed by public law.

22. "Dominant influence" shall be presumed when any contracting authorities covered under Item 1 of Article 7 herein, or any bodies governed by public law or any other persons:

(a) hold more than 50 per cent of the capital of the undertaking, or

(b) hold blocking minority rights to the capital of the undertaking, or

(c) can appoint more than half of the members of the management or supervisory bodies of the undertaking.

22a. *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* "Professional competence" means the presence of knowledge, obtained through education or additional qualification and/ or skills, mastered in the process of exercising a certain office or position during performance of labour, official or civil relationships.

23. "Public undertaking" shall be any merchant, within the meaning given by the Commerce Act or according to the legislation of a Member State, over which any contracting authorities covered under Item 1, 3 or 4 of Article 7 herein may exert directly or indirectly a dominant influence.

23a. *(New - SG No. 93/2011, in force as of 26.02.2012)* "Affiliated persons" shall be:

a) first-degree relatives without limitations;

b) relatives of the lateral branch up to the fourth degree inclusive;

c) relatives by marriage - up to the second degree inclusive;

d) spouses or persons who are in factual cohabitation;

e) copartners;

f) the persons where one of such persons participates in the management of the other **person's company;**

g) a company and person that owns more than 5 percent of the share participation or shares issued with voting rights within the company.

A company having a capital that is a 100 percent state or municipal ownership, as well as the person that exercises the rights of the state, or respectively, the municipality, in such company, shall not be affiliated persons.

24. "Affiliated undertaking" shall be any undertaking:

(a) whereof the annual accounts are consolidated with those of the contracting authority, or

(b) over which the contracting authority may exercise, directly or indirectly, a dominant influence, or

(c) which may exercise a dominant influence over any contracting authority covered under Item 5 or 6 of Article 7 herein, or

(d) which, in common with any contracting authority covered under Article 7 herein, is subject to the dominant influence of another undertaking.

25. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **"Specialized undertakings or cooperatives of people with disabilities"** shall be those undertakings within the meaning given by Article 28 (1) of the Integration of Persons with Disabilities Act or the equivalent thereof under the legislation of a Member State.

26. **"Special or exclusive rights"** shall be rights granted by law or by a competent State body on grounds provided for by law, the effect of which is to reserve the exercise of any activities including those defined in Articles 7a to 7e herein for one or more persons, and which substantially limits the ability of other persons to carry out such activities.

26a. *(New - SG No. 33/2012)* "Special equipment, works or a service" means equipment, works or a service for security purposes which involve, require and/ or contain classified information.

27. **"Standard"** shall be a technical specification approved by a recognized standardization body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

(a) **"international standard"**: a standard adopted by an international standards organization and made available to the general public;

(b) **"European standard"**: a standard adopted by a European standards organization and made available to the general public;

(c) **"national standard"**: a standard adopted by a national standards organization and made available to the general public.

27a. *(New - SG No. 33/2012)* "Standard in the sphere of defence" means any technical specification, congruence with which is not obligatory and which is approved by a standardization organization, specialized in the production of technical specification for multiple or continuous application in the sphere of defence.

28. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **"Work"** shall be the outcome of above-ground, semi-subterranean, underground or underwater construction which is sufficient of itself to fulfil an economic or technical function and with reference to which the contracting authority has envisaged the issuance of a separate construction permit and a separate certificate for launching into exploitation.

28a. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* "Communication to the mass media" means an electronic document, whose titular is the contracting authority, which on one and the same day is sent electronically to the Bulgarian News Agency, at least three printed media and to at least three authorised radio and television operators.

29. *(Last Amendment - SG No. 33/2012)* **"Technical reference"** shall be any product produced by European standardization bodies, other than official standards, according to procedures adopted for the development of market needs.

30. *(Last Amendment - SG No. 40/13.05.2014, in force as of 01.07.2014)* **"Technical specification in the case of works"** shall be the totality of technical prescriptions contained in the contract documents, defining the characteristics required of the materials and the products to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics must include levels of environmental performance, design for all requirements, including accessibility for disabled persons, and conformity assessment, performance characteristics, safety or dimensions, including quality assurance procedures, terminology, symbols, testing and test methods, packaging, marking and labelling. They must also include rules relating to design, testing, construction supervision and conditions for acceptance of works and methods or techniques of construction, and all other technical conditions which the contracting authority is in a position to prescribe, by virtue of a law or of statutory instruments of secondary legislation, in relation to a finished work and to the materials or parts which it involves. Upon designing and executing of construction works, the technical specifications also include a design assignment, and in the other types of construction- the technical documentation for execution of the construction works, including approved investment project, in case there is such.

31. **"Technical specification in the case of services or supplies"** shall be the specification in a document defining the required characteristics of a product or a service, such as: quality levels, environmental performance levels, design for all requirements, including accessibility for disabled persons, and conformity assessment, production process or method, use or the product, safety, dimensions, requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking, labeling, user instructions, conformity assessment procedures.

32. **"Third country"** shall be any country which is not a Member State of the European Union.

32a. *(New, SG No. 40/13.05.2014, in force as of 01.07.2014)* "Single Account System and Fiscal Reserve Management" includes:

a) centralization of funds, payments through transit accounts and SEBRA and the related services, activities, software and resource ensuring in accordance with the Public Finance Act;

b) liquidity management of the single account system and the investment of temporarily unemployed funds in financial instruments in compliance with the Public Finance Act;

c) management of the assets of the State Fund for Guaranteeing the Stability of the State Pension System in compliance with the Public Finance Act;

d) management of the other accounts and assets, included in the fiscal reserve.

33. **"Tenderer"** shall be a natural or legal person or a combination thereof who or which has submitted a tender or a project;

34. **"Fixed networks intended to provide a service to the public"** shall be:

(a) the transmission and distribution networks within the meaning given by the Energy Act: applicable to the activities covered under Article 7a herein;

(b) the water-supply system and the sewer system within the meaning given by Items 32 and 33 of § 1 (1) of the Supplementary Provisions of the Water Act: applicable to the activities covered under Article 7b herein.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. This Act shall supersede the Public Procurement Act (promulgated in the State Gazette No. 56 of 1999, amended in Nos. 92 and 97 of 2000, Nos. 43 and 45 of 2002, and No. 109 of 2003).

§ 3. (In force as of 06.04.2004) The Council of Ministers shall adopt the Regulations for Application of this Act, as well as the ordinances referred to in Article 13 (2) and Article 14 (5) herein and the rate schedule referred to in Article 20 (6) herein, not later than the 1st day of October 2004.

§ 4.(1) (*In force as of 06.04.2004*) The Council of Ministers shall adopt Rules of Organization of the Public Procurement Agency within two months after the promulgation of this Act in the State Gazette.

(2) The Public Procurement Agency shall become a legal successor to all rights to the existing Public Procurement Register, including the technical facilities for the maintenance of the said Register.

(3) (*In force as of 06.04.2004*) The Council of Ministers shall adopt a decision on allocation of a suitable building to the Public Procurement Agency within two months after the promulgation of this Act in the State Gazette.

§ 5. (1) Upon evaluation of tenders submitted by a candidate or tenderer who or which is a small or medium-sized enterprise within the meaning given by the Small and Medium-Sized Enterprises Act, the price tendered thereby shall be treated as the lowest if exceeding the lowest price tendered by another candidate or tenderer by not more than:

1. fifteen per cent: applicable to public procurements awarded in 2004;
2. ten per cent: applicable to public procurements awarded in 2005;
3. five per cent: applicable to public procurements awarded in 2006.

(2) Paragraph (1) shall apply where the tenders evaluated have been submitted by candidates or tenderers originating in countries which are not included in the list referred to in Item 14 of Article 19 (1) herein.

(3) The provisions of Paragraphs (1) and (2) shall apply until the 1st day of January 2007.

§ 6. *(Last Amendment – SG No. 94/2008, in force as of 01.01.2009)* In the cases referred to in § 9 of the Transitional and Final Provisions of the Environmental Protection Act, when the State finances measures to eliminate environmental damage resulting from past acts or omissions by the State, the suppliers, contractors or service providers shall be selected according to the procedure established by Part Two herein, and when the contracting authorities are entities covered under points 5 and 6 of Article 7 herein, the selection shall follow the procedure established by Part Three herein.

§ 7. Any public procurement award procedures, in respect whereof a decision on initiation has been made prior to the entry of this Act into force, shall be completed according to the hitherto effective procedure.

§ 8. *(In force as of 06.04.2004)* The Council of Ministers shall adopt the Rules and the Statute of the Arbitration Court and shall designate the President thereof not later than the 1st day of September 2004.

§ 9. *(In force as of 06.04.2004)* The Health Insurance Act *(promulgated in the State Gazette No. 70 of 1998; amended in Nos. 93 and 153 of 1998, Nos. 62, 65, 67, 69, 110 and 113 of 1999, Nos. 1, 31 and 64 of 2000, No. 41 of 2001, No. 1, 54, 74, 107, 112, 119 and 120 of 2002, Nos. 8, 50, 107 and 114 of 2003)* shall be amended and supplemented as follows:

1. In Article 45:

(a) Paragraph (4) shall be amended to read as follows:

“(4) The Council of Ministers shall adopt an ordinance establishing a procedure and terms for contracting of medicinal drugs which are fully or partly reimbursable by the NHIF. The said ordinance shall contain the procedure and criteria for contracting of the particular medicinal drugs, as well as the methods for determination of the proportion of reimbursement thereof. The draft of the said ordinance shall be drawn up by the NHIF, shall be cleared with the Transparency Commission referred to in Article 85b of the Human Medicinal Drugs and Pharmacies Act, and shall be laid by the Minister of Health before the Council of Ministers.”;

(b) in Paragraph (5), the words **“the manufacturers and wholesalers of medicinal drugs”** shall be replaced by **“the holders of medicinal drugs registrations or the authorized representatives thereof within the territory of the Republic of Bulgaria under Article 17 of the Human Medicinal Drugs and Pharmacies Act”;**

(c) there shall be added the following new paragraph:

“(6) After the contracting referred to in Paragraph (5), the NHIF shall conclude contracts for the particular medicinal drugs referred to in Item 10 of Paragraph (1) and for the prices thereof with the holders of medicinal drugs registrations or the authorized representatives thereof within the territory of the Republic of Bulgaria under Article 17 of the Human Medicinal Drugs and Pharmacies Act.”

2. In the Transitional and Final Provisions, there shall be inserted the following new clause:

“§ 19b. The Council of Ministers shall adopt and promulgate in the State Gazette the ordinance referred to in Article 45 (4) herein not later than the 30th day of April 2004.”

§ 10. *(In force as of 06.04.2004)* In the Public Procurement Act *(promulgated in the State Gazette No. 56 of 1999; amended in Nos. 92 and 97 of 2000, Nos. 43 and 45 of 2002, No. 109 of 2003)*, the following new item shall be added in Article 4:

“4. of the National Health Insurance Fund, in respect of medicinal drugs provided for treatment at home within the entire territory of Bulgaria.”

§ 11. In Paragraph (3) of Article 126a of the Code of Civil Procedure *(promulgated in Transactions of the Presidium of the National Assembly No. 12 of 1952; amended in No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, Nos. 50 and 90 of 1961, corrected in No. 99 of 1961; amended in the State Gazette No. 1 of 1963, No. 23 of 1968, No. 27 of 1973, No. 89 of 1976, No. 36 of 1979, No. 28 of 1983, No. 41 of 1985, No. 27 of 1986, No. 55 of 1987, No. 60 of 1988, Nos. 31 and 38 of 1989, No. 31 of 1990, No. 62 of 1991, No. 55 of 1992, Nos. 61 and 93 of 1993, No. 87 of 1995, Nos. 12 and 26 of 1996, Nos. 37, 44 and 104 of 1996, Nos. 43, 55 and 124 of 1997, Nos. 59, 70 and 73 of 1998, Nos. 64 and 103 of 1999, Nos. 36, 85 and 92 of 2000, No. 25 of 2001, Nos. 105 and 113 of 2002, Nos. 58 and 84 of 2003)*, after the words “the State Receivables Collection Act” there shall be added “and under Article 120 of the Public Procurement Act.”

§ 12. This Act shall enter into force on the 1st day of October 2004, with the exception of the provisions of Article 13 (2), Article 14 (5), Items 3 and 4 of Article 17, Article 18, Paragraph (1) and Item 5 and Items 9 to 11 of Paragraph (2) of Article 19, Article 20, § 3, Paragraphs (1) and (3) of § 4, § 8, § 9 and § 10, which shall enter into force on the day of promulgation of the Act in the State Gazette.

This Act was passed by the 39th National Assembly on the twenty-fourth day of March in the year two thousand and four, and the Official Seal of the National Assembly has been affixed thereto.

Annex 1

(Last Amendment - SG No. 94/2008, in force as of 01.01.2009)

NACE ⁽¹⁾			CPVcode	
PART E		CONSTRUCTION		
Subdiv ision	G roup	C lass	Subject	Notes

45			Construction and mounting works	This subdivision includes: Erection of new buildings, reconstruction and repair works	45000000
	4 5.1		Site preparation		45100000
		4 5.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures — clearing of construction sites — earthworks: excavation works, removal of a polluted layer from the soil, leveling of construction sites, channel digging works, removal of stones, mining works, etc. — preparation of sections for extraction: — removal of alluvium and other preparations of sections for extraction This class also includes: — site drainage — drainage of farming lands and forests	45110000

		4 5.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> — test drilling and boring works and sample taking for construction, geophysical, geological or similar purposes <p>This class includes:</p> <ul style="list-style-type: none"> — test drilling for petrol or gas wells, refer to 11.20 — test drills for water wells, refer to 45.25 — shaft digging, refer to 45.25 — investigation of petrol and gas deposits, geophysical, geological and seismic studies, refer to 74.20 	45120000
	4 5.2		Building of complete constructions or parts thereof; civil engineering		45200000
		4 5.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> — erection of all types of buildings, general construction and civil engineering works — bridges, overhead roads, viaducts, tunnels and subways — transfer ducts, transmission power lines — civil transmission lines, distance communication lines and 	<p>45210000with the exception of:</p> <p>-45213316 45220000 45231000 45232000</p>

			<p>power transmission lines</p> <ul style="list-style-type: none">— supporting urban construction— assemblage and installation of pre-cast constructions on the spot <p>This class includes:</p> <ul style="list-style-type: none">— services related to petrol and gas output, <p>Refer to 11.20</p> <ul style="list-style-type: none">— installation of finished pre-cast structures from elements—own production, not from concrete, refer to subsections 20, 26 and 28— construction works on stadiums, swimming pools, sports playgrounds, tennis courts, golf courses, and other sports facilities <p>refer to 45.23</p> <ul style="list-style-type: none">— construction and assembling works on installations, Refer to 45.3— finishing construction works refer to 45.4— architectural and engineering services, refer to 74.20— construction project management services refer to 74.20
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		4 5.22	Erection of roof coverings and frames	<p>This class includes:</p> <ul style="list-style-type: none"> — construction and assembly works of roof structures — roof covering works — hydro insulation 	45261000
		4 5.23	Construction of motorways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> — construction and assembly works on motorways, streets, roads and other transport and passenger tracks — railroad construction — airfield construction — construction of stadiums, swimming pools, sports playgrounds, tennis courts, golf courses and other sports facilities — traffic marking <p>This class includes:</p> <ul style="list-style-type: none"> — earth works, refer to 45.11 	<p>45212212nD A03 45230000with the exception of:</p> <ul style="list-style-type: none"> -45231000 -45232000 -45234115
		4 5.24	Construction of water projects	<p>This class includes:</p> <p>Construction and assembly of:</p> <ul style="list-style-type: none"> — water channels, port and coastal facilities, yacht ports (yacht clubs), canal-locks, etc. — dam lakes and embankments — dredge works 	45240000

				<ul style="list-style-type: none"> — underwater construction and assembly works 	
		4 5.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> — construction and assembly works, specialized for one activity, common for various constructions, requiring specialized skills or equipment — funding, including pilot reinforcement — construction and boring works of water wells, shaft digging — assembly works of metal elements — reinforced concrete casting — masonry — mounting and dismounting of scaffolds and platforms, renting scaffolds and platforms — construction of chimneys and industrial furnaces <p>This class includes:</p> <ul style="list-style-type: none"> — rental of scaffolds 	45250000 45262000

				without construction and dismounting, refer to 71.32	
	4 5.3		Building installations		45300000
		4 5.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings and other construction facilities of: <ul style="list-style-type: none"> — electrical wiring and other electrical devices — distance communication systems — electric heating 	<p>45213316 45310000with the exception of: -45316000</p>

				<p>systems</p> <ul style="list-style-type: none"> — aerials for residential buildings — fire alarm systems — signaling systems — elevators and escalators — lightning-conductors, etc. 	
		4 5.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or in other construction facilities of heat insulation, sound insulation and vibration insulation <p>This class does not include:</p> <ul style="list-style-type: none"> — hydroinsulation, refer to 45.22 	45320000
		4 5.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or other construction facilities of: <ul style="list-style-type: none"> — water supply and sewage installations — gas installations — heating, ventilation, cooling and air-conditioning installations and ducts — spreading systems <p>This class does not include:</p> <ul style="list-style-type: none"> — electric heating installations, refer to 45.31 	45330000

		4 5.34	Other building installations	<p>This class includes:</p> <ul style="list-style-type: none"> — assembly works of lighting and signaling systems for roads, railroads, airfields and ports — assembly works in buildings or other construction facilities of other installations 	45234115 45316000 45340000
	4 5.4		Building completion		45400000
		4 5.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> — internal and external plastering and other facing materials 	45410000
		4 5.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> — assembly works on doors, windows, joinery, interior and other completion elements from wood or other materials — completion works of the interior such as wood lining of ceilings and walls, portable screens, etc. <p>This class does not include:</p> <ul style="list-style-type: none"> — inlaid flooring and other wooden types of flooring, refer to 45.43 	45420000
		4 5.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> — construction facilities in buildings and other construction sites: — ceramic, concrete or stone flooring and wall facing — parquet and other 	45430000

				<p>types of flooring</p> <ul style="list-style-type: none"> — flexible floor covers (carpets, linoleum), inclusive of rubber or plastic flooring — mosaic, granite flooring or facing — wallpapers 	
		4 5.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> — internal and external painting of buildings — painting of other sites — glazing <p>This class excludes:</p> <ul style="list-style-type: none"> — window fixing, refer to 45.42 	45440000
		4 5.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> — assembly of covered swimming pools — steam-cleaning, sand-jet cleaning and other types of external cleaning of buildings — other completion construction works <p>This class does not include:</p> <ul style="list-style-type: none"> — internal cleaning of buildings and other construction facilities, refer to 74.70 	45212212 and DA04 45450000
	4 5.5		Renting of construction or demolition equipment		45500000

			with operator		
		4 5.50	Renting of construction or demolition equipment with operator	This class does not include: — rental of construction machinery and equipment without operator, refer to 71.32	45500000

⁽¹⁾Regulation (EEC) № 3037/90 of the Council of 9 October 1990 as regards to the statistical classification of economic activities in the European Community, last amended by Commission Regulation (EEC) № 761/93.

Annex 2 to Article 5 (1) pt.2

(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)

Cat egory №	Services	Reference No. under CPC ⁽¹⁾	Reference № under CPV
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (with exception of numbers from 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2	Land transport services ⁽²⁾ , including armoured car services, and courier services, except transport of mail	712 (with exception of 71235), 7512, 87304	From 60100000-9 to 60183000-4 (with exception of 60160000-7, 60161000-4, 60220000-6) and From 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (with exception of 7321)	From 60410000-5 to 60424120-3 (with exception of 60411000-2, 60421000-5) and 60500000-3

			From 60440000-4 to 60445000-9
4	Transport of mail by land ⁽²⁾ and by air	71235, 7321	60160000-7,60161000-4 60411000-2, 60421000-5
5	Telecommunication s services	752	From 64200000-8 to 64228200-2 72318000-7 and From 72700000-7 to 72720000-3
6	Financial services: a) Insurance services 6) Banking and investment services ⁽³⁾	ex 81, 812, 814	From 66100000-1 to 66720000-3 ⁽³⁾
7	Computer and related services	84	From 50310000-1 to 50324200-4 From 72000000-5 to 72920000-5 (with exception of 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services ⁽⁴⁾	85	From 73000000-2 to 73436000-7 (with exception of 73200000-4, 73210000-7, 73220000-0
9	Accounting, auditin g and bookkeeping services	862	From 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6 and 79342310-9, 79342311-6
11	Management consulting services ⁽⁵⁾ and related services	865, 866	From 73200000-4 to 73220000-0 From 79400000-8 to 79421200-3 and

			79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8
12	Architectural services, engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	from 71000000-8 to 71900000-7 (with exception of 71550000-8) and 79994000-8
13	Advertising services	871	From 79341000-6 to 79342200-5 (with exception of 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, from 82201 to 82206	From 70300000-4 to 70340000-6 and From 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6 From 79970000-6 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar service	94	From 90400000-1 to 90743200-9 (with exception of 90712200-3 From 90910000-9 to 90920000-2 and 50190000-3, 50229000-6

(1) CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

(2) Except the railway transport services falling within Category 18.

(3) Except public procurements for financial services related to emission, purchase and transfer of securities or other financial instruments, as well as services performed by central banks. Also excluded: Public procurements with subject: purchase or rental, irrespective of what financial manner, of terrains, existing buildings or other real properties or referring to rights upon these properties; however financial services contracts, concluded simultaneously, in advance or later than the contract for purchase or rent, irrespective of their form, shall fall within the scope of the present directive.

(4) Except public procurements for services related to research and development activities, other than these, the benefits of which belong exclusively to the contracting authority and/or the contracting authority when exercising their activity, provided that the service performed is fully paid by the contracting authority and/or by the contracting authority.

(5) Except services related to arbitration and conclusion of a conciliating agreement.

Annex 3

(Last Amendment - SG No. 94/2008, in force as of 01.01.2009)

Category No	Services	Reference No under CPC ⁽¹⁾	Reference No under CPV
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60653000-0 and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (with exception of 63711200-8, 63712700-0, 63712710-3 and from 63727000-1 to 63727200-3) and 98361000-1

21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services ⁽²⁾	872	From 79600000-0 to 79635000-4 (with exception of 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (with exception of 87304)	From 79700000-1 to 79723000-8
24	Education and vocational educational services	92	From 80100000-5 to 80660000-8 (with exception of 80533000-9, 80533100-0, 80533200-1)
25	Health and social services	93	79611000-0 and from 85000000-9 to 85323000-9 (with exception of 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services ⁽³⁾	96	From 79995000-5 to 79995200-7 and from 92000000-1 to 92700000-8 (with exception of 92230000-2, 92231000-9, 92232000-6)
27	Other services		

⁽¹⁾CPC nomenclature (provisional version) for determination of the field of application of Directive 92/50/EEC of the Council regarding coordination of public procurement procedures for services.

⁽²⁾Except public procurements for personnel employment.

⁽³⁾Except public procurements the purpose of which is purchase, development, individual or joint production of programmes from organizations, occupied in radio broadcasting and public procurements related to the time of broadcasting.

Annex 3 to Art. 26a

Mileage for the entire operational life of the road motor vehicles

(New- SG No. 52/2010)

Motor vehicle category (Categories M and N according to the definitions in Directive 2007/46/EO)	Mileage for the entire operational life
Cars (M1)	200 000 km
Light-freight motor vehicles (N1)	250 000 km
Heavy-freight motor vehicles (N2, N3)	1 000 000 km
Buses (M2, M3)	800 000 km

Annex 4 to Art. 45a, Par. (2), Item 3, Letter "b"

(Last Amendment - SG No. 93/2011, in force as of 26.02.2012)

A list of the goods assigned in the field of defence

Annex No 5 to Art. 5 (1), pt. 3

(New - SG No. 33/2012)

Cat egory No	Services	CPV Reference No
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1	Maintenance and repair services	50100000-5, from 50100000-6 to 50884000-5 (except from 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2	Foreign military-aid-related services	75211300-1
3	Defense services, military defense services and civil defense services	75220000-4, 75221000-1, 75222000-8
4	Investigation and security services	From 79700000-1 to 79720000-7
5	Land transport services	60100000-8, from 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4) and from 64120000-3 to 64121200-2
6	Air transport services of passengers and freight, except transport of mail	60400000-2, from 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), from 60440000-4 to 60445000-9 and 60500000-3
7	Transport of mail by land and by air	60160000-7, 60161000-4, 60411000-2, 60421000-5
8	Rail transport services	From 60200000-0 to 60220000-6
9	Water transport services	From 60600000-4 to 60653000-0 and from 63727000-1 to 63727200-3
10	Supporting and auxiliary transport services	From 63100000-0 to 63111000-0, from 63120000-6 to 63121100-4, 63122000-0, 63512000-1 and from 63520000-0 to 6370000-6
11	Telecommunication services	From 64200000-8 to 64228200-2, 2318000-7 and from 72700000-7 to 72720000-3
12	Financial services: Insurance services	From 66500000-5 to 66720000-3
13	Computer and related services	From 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4, 9342410-4
14	Research and development services ^[1] and evaluation tests	From 73000000-2 to 73436000-7
15	Accounting, auditing and bookkeeping services	From 79210000-9 to 79212500-8
16	Management consulting services ^[2] and related services	From 73200000-4 to 73220000-0, from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7 98362000-8

17	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8
18	Building-cleaning services and property management services	From 70300000-4 to 70340000-6 and from 90900000-6 to 90924000-0
19	Sewage and refuse disposal services; sanitation and similar services	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6, 50243000-0
20	Training and simulation services in the fields of defense and security	80330000-6, 80600000-0, 80610000-3, 80620000-6, 80630000-9, 80640000-2, 80650000-5, 80660000-8

[1 Except research and development services referred to in Article 13 (1), pt. 4.

2 Except arbitration and conciliation services.]

Annex No 6 to Art. 5 (1), pt. 4

(New - SG No. 33/2012)

Cat egory No	Services	CPV Reference No
21	Hotel and restaurant services	From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6
22	Supporting and auxiliary transport services	From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3 and from 63727000-1 to 63727200-3) and 98361000-1
23	Legal services	From 79100000-5 to 79140000-7
24	Personnel placement and supply services ^[1]	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9

25	Social and health services	79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Other services	

[1 Except employment contracts.]