

THE LAW
ON PUBLIC PROCUREMENT

I. BASIC PROVISIONS

1. The subject of the Law

The scope of the Law

Article 1

This Law shall regulate: the conditions, the manner and the procedure of procurement of goods and services, as well as the awarding of work assignments when the entity ordering such goods and services is a state organ, organization, institution or some other legal entity prescribed by this Law, the manner of recording contracts and other information concerning public procurement, the manner of protecting the rights of the bidders, the establishment of the Office of Public Procurement as an organization authorized to deal professionally with tasks pertaining to public procurement and other matters of importance for public procurement.

Aspects of public procurement exempt from this Law

Article 2

The provisions of this Law shall not apply to the following aspects of public procurement:

- 1) public procurement from organizations which are considered to be orderers in accordance with the provisions of this Law and have been established for the purpose of providing services that are the object of public procurement;
- 2) public procurement based on an international agreement pertaining to supplying goods, performing work, providing services or public tenders for design, stipulating joint implementation or exploitation of a project on the part of the states or organizations having concluded the agreement;
- 3) public procurement aimed at providing elementary living conditions following natural disasters, other accidents or damage, in accordance with the rules regulating protection from such disasters, accidents or damage;
- 4) procurement of armaments and other confidential forms of procurement regulated by special rules.

An orderer of public procurement referred to in paragraph 1 item 4 of this Article shall be obligated to notify the Office of Public Procurement of procurement plans for the current year by January 31st at the latest.

2. Terms

The meaning of particular terms as used in this Law

Article 3

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

1) the term **orderer** shall be used to denote:

(a) a state organ, organization, institution or another direct or indirect beneficiary of the budget in accordance with the provisions of the law regulating the budget system, as well as an organization dealing with compulsory social insurance ;

(b) a legal entity established by a direct or an indirect beneficiary of the budget with a view to performing activities in the public interest, provided that more than one half of the members of the management of the said entity be representatives of the budget beneficiary or that more than one half of the votes in the management organ of the said entity belong to representatives of the budget beneficiary;

(c) a public company or a company established by a public company wherein a direct or an indirect beneficiary of the budget, that is, an orderer in accordance with the provisions of this Law, owns more than 50% of the shares;

(d) another type of enterprise connected with the organs, organizations or legal entities referred to in item 1, subitems (a)-(c) of this Article through the management or in some other way, so that on the basis of this connection:

- they jointly decide on the business policy and act in coordination for the purpose of realizing business objectives, or

- the organ, organization or legal entity referred to in item 1, subitems (a)-(c) of this Article exerts significant influence on the policy decisions, financing and business activity of this enterprise;

2) the term **public procurement** shall be used to denote obtaining goods and services or awarding work assignments on the part of a state organ, organization, institution or some other legal entity considered to be an orderer in accordance with the provisions of this Law, in the manner and under the conditions prescribed by this Law;

3) the term **public procurement contract** shall be used to denote a written contract concluded following the procedure prescribed by this Law between an orderer and a provider of goods, services or work, concerning the procurement of goods, providing services or performing work assignments;

4) the term **bidder** shall be used to denote a domestic or foreign legal or physical person offering to supply goods, provide services or perform work assignments;

5) the term **candidate** shall be used to denote a person invited by an orderer to make a bid after that person's qualifications have been established;

6) the term ***open procedure*** shall be used to denote a procedure wherein all the interested parties may submit their bids;

7) the term ***restrictive procedure*** shall be used to denote a procedure wherein only those candidates invited by the orderer after their qualifications have been established may submit their bids;

8) the term ***negotiatory procedure*** shall be used to denote a procedure wherein the orderer negotiates the choice of contractors and the conditions of the contract with the providers of goods, services or work;

9) the term ***tender for design*** shall be used to denote a procedure used for concluding a contract of urban planning, architectural and civil engineering design, engineering, design or informatics services; the design shall be chosen by a jury established in advance;

10) the term ***price offered*** shall be used to denote the price offered by a bidder in connection with public procurement, expressed in Yugoslav dinars; when public procurement items include imported goods, the prices shall include the customs tax and other income taxes that apply;

11) the term ***exceptionally low price*** shall be used to denote an offered price which is so low that it makes the orderer doubt that public procurement will be effected;

12) the term ***criterion*** shall be used to denote an element used for evaluating, comparing or judging bids;

13) the term ***requirement*** shall be used to denote an exclusive element that has to be complied with in its entirety within the framework of a bid, in the manner prescribed by the documents pertaining to the tender in question;

14) the term ***qualification requirement*** shall be used to denote a requirement contained in the documents pertaining to a public procurement tender that is essential for the implementation of the tender, which has to be complied with in its entirety because it constitutes a prerequisite for ascertaining a bidder's ability;

15) the term ***qualification procedure*** shall be used to denote the manner of conducting the first phase of the restrictive procedure applied in concluding a contract of public procurement in the sphere of waterworks, energy production, telecommunications and traffic;

16) the term ***request for participation*** shall be used to denote an application submitted to the orderer by any interested person in the course of the qualification procedure;

17) the term ***updating the criteria and conditions*** shall be used to denote occasional adjustment effected by the orderer in the course of the qualification procedure, in view of the market conditions, development and other circumstances;

18) the term ***timely bid*** shall be used to denote a bid submitted to the orderer meeting the deadline specified in a tender for public procurement;

19) the term ***correct bid*** shall be used to denote a bid submitted in a timely manner, for which it has been established, following the opening, examination and evaluation of the bids, that it fully complies with the requirements contained in the tender documentation;

20) the term *adequate bid* shall be used to denote a bid submitted in a timely manner, for which it has been established, following the opening, examination and evaluation of the bids, that it fully complies with all the technical specifications;

21) the term *acceptable bid* shall be used to denote a bid submitted in a timely manner, for which it has been established, following the opening, examination and evaluation of the bids, that it fully complies with all the criteria, conditions and potential qualification requirements;

22) the term *reduced offered price* shall be used to denote the method of determining the price that a bidder may offer only when a contract is awarded per individual lots and the orderer cannot consider this method an element warranting any additional privileges;

23) the term *goods* shall be used to denote movable and immovable objects, products and equipment, electric power, raw materials and reproductive materials in solid, liquid and gaseous state;

24) the term *public funds* shall be used to denote funds controlled by and at the disposal of the Republic, an autonomous territorial unit, local government and compulsory social insurance organization.

List of orderers

Article 4

The Government of the Republic of Serbia (hereinafter referred to as: the Government), acting upon the proposal of the Minister of Finance and the Economy, shall establish the list of orderers every six months.

The list referred to in paragraph 1 of this Article shall be published in “The Official Gazette of the Republic of Serbia”.

3. Principles of public procurement

The principle of economy and efficiency of use of public funds

Article 5

The orderer shall be obligated to ensure that the public procurement procedure is conducted and the choice of bidders made within the deadlines and in the manner prescribed by this Law, incurring as little costs as possible in the realization of public procurement.

The principle of ensuring that there is competition among the bidders

Article 6

The orderer may not limit competition among the bidders; in particular, the orderer may not prevent any bidder from participating by unwarranted use of the restrictive procedure or by using discriminatory criteria.

Persons who have been engaged in preparing the tender documentation or parts thereof may not appear in the role of bidders or subcontractors, nor may they cooperate with the bidders in the course of preparing their bids.

The orderer may not request that a bidder should engage the services of a particular contractor or engage in any other transaction, such as exporting certain goods or services unless otherwise stipulated by a special law or international agreement or unless it is specified in the tender documentation that the orderer has to engage the services of a certain number of domestic subcontractors or include a certain quantity or value of domestic goods and services.

The principle of transparency of use of public funds

Article 7

Public funds may be used only for the purposes determined by a contract concluded in the public procurement procedure.

A public tender for public procurement shall be published in “The Official Gazette of the Republic of Serbia” and in one daily paper as well.

A person who has participated in the bidding shall have the right to gain access to the information concerning the public procurement procedure conducted in accordance with this Law.

The principle of the equality of bidders

Article 8

The orderer may not impose conditions that would constitute territorial, subject or personal discrimination of the bidders, or discrimination arising out of the classification of work performed by the bidder.

It is allowed to stipulate the origin of goods or services under the circumstances and for the purposes stipulated by special regulations.

The orderer may not exclude any bids merely because the bidder’s legal residence is located in a state with which Yugoslavia has not concluded an agreement on the equal treatment of domestic and foreign bidders.

4. Protection of data and documentation, and keeping records of procedures

Protection of data

Article 9

The orderer shall keep as confidential all the data on the bidders contained in the tender documentation that are designated as confidential by a special act.

The orderer may refuse to disclose information that would entail a breach of confidentiality of data received in the bidding procedure.

The orderer shall keep the names of bidders and their bids as a business secret until the expiry of the deadline for the opening of the bids.

Determining what is confidential

Article 10

In the course of submitting technical specifications concerning the awarding of public procurement contracts to the bidders, the orderer may demand that the confidentiality of information being placed at their disposal be protected.

A person who has received data designated as confidential shall be obligated to observe their confidentiality irrespective of the degree of confidentiality stipulated.

Documentation and keeping records of the procedure

Article 11

The orderer shall keep records of all the phases of the procedure of awarding public procurement contracts.

The orderer shall keep all the documentation pertaining to public procurement in accordance with the regulations concerning documentation and archives.

The orderer shall keep records of public procurement contracts awarded in negotiatory procedures.

Keeping documentation

Article 12

If the period stipulated for keeping the documentation in accordance with the provisions of Article 11 paragraph 2 of this Law expires before the deadline stipulated for the execution of a public procurement contract, the orderer shall be obligated to

keep the documentation for a period of three years following the expiry of the deadline for executing that contract.

5. Language in public procurement procedure

Article 13

The orderer shall prepare the tender documentation and conduct the procedure in the Serbian language.

The tender documentation for public procurement of goods and services exceeding 6,000,000 Yugoslav dinars or for work assignments exceeding 120,000,000 Yugoslav dinars shall be prepared by the orderer in a foreign language commonly used in international commerce.

A bidder shall submit his bid in the language used in the tender documentation, that is, in the language specified by the orderer in the tender documentation.

Article 14

The orderer may allow that bids, whether in their entirety or in part, be submitted in a foreign language, especially in the section pertaining to technical characteristics, quality and technical documentation.

In the case referred to in paragraph 1 of this Article, the orderer shall be obligated to specify which part of a bid may be submitted in a foreign language and which foreign language it is to be submitted in.

If, in the course of the examination and evaluation of the bids, the orderer establishes that part of a bid should be translated into the Serbian language, he shall set a deadline to the bidder for translating the said part of the bid into Serbian.

In case of conflict, the Serbian version of the tender documentation shall be relevant.

6. Currency

Article 15

The values in the tender documentation and the bids shall be expressed in Yugoslav dinars.

The orderer may demand of a bidder to express the values in a foreign currency, in which case it shall be stated that the values shall be converted into Yugoslav dinars using the medium exchange rate of the National Bank of Yugoslavia in effect on the day of the opening of the bids.

Article 16

If a bidder has been allowed to submit a bid in a foreign currency, in accordance with Article 15 paragraph 2 of this Law, the orderer shall be obligated to state the currency which can be used to express the values referred to in the bid in the tender documentation.

7. Anticorruption regulations

Article 17

The orderer shall reject a bid if there is verifiable evidence that the bidder has given or promised a current or former employee of the orderer a gift, be it a gift in money or a non-monetary one, or that the bidder offered employment or any other benefit that may be expressed in terms of money, in an attempt to influence the procedure, decision making or the subsequent course of the public procurement procedure.

The orderer shall be obligated to inform, in writing, the bidder referred to in paragraph 1 of this Article, as well as the Office of Public Procurement, that the bid in question has been rejected and of the reasons for rejection, and to keep a record of this in the documentation pertaining to the public procurement procedure.

II. OFFICE OF PUBLIC PROCUREMENT

Manner of establishment

Article 18

The Office of Public Procurement (hereinafter referred to as: the Office) shall be established as a special organization for performing expert work in the sphere of public procurement, in order to ensure that proper conditions exist for economic, transparent use of public funds for the purpose of public procurement and to promote competition among and the equality of bidders in the public procurement procedure.

The regulations pertaining to the state administration shall apply to the work and organization of the Office.

Work

Article 19

The Office shall perform work pertaining to:

- 1) the drafting of the regulations pertaining to the sphere of public procurement;
- 2) providing consulting services to orderers and bidders;

- 3) organizing staff training for work in the sphere of public procurement;
- 4) cooperation with foreign institutions and experts in the sphere of public procurement;
- 5) the publication and distribution of relevant professional literature;
- 6) preparing samples of the tender documentation and contracts for typical forms of public procurement;
- 7) gathering information on public procurement in other states;
- 8) systematic gathering of information from bidders and keeping records of data in the sphere of public procurement;
- 9) the preparation of and participation in determining the criteria for calculating various kinds of expenses incurred by public funds beneficiaries;
- 10) the preparation of a common database for keeping a record of bidders and their creditworthiness, on the basis of concluded and executed contracts of public procurement;
- 11) monitoring the public procurement procedure;
- 12) cooperation with other state organs, organizations, compulsory social insurance organizations, as well as organs of an autonomous territorial unit and local government;
- 13) other work in accordance with the law.

Once a year the Office shall submit a report on public procurement in the previous year, including a proposal for measures to be undertaken, to the Government.

III. THE PROCEDURE AND MANNER OF AWARDING CONTRACTS OF PUBLIC PROCUREMENT

1. The procedure for awarding contracts of public procurement

Types of procedure

Article 20

The awarding of public procurement contracts shall be performed using the open procedure.

The awarding of public procurement contracts may be performed using the restrictive procedure or the negotiatory procedure.

Awarding contracts using the open procedure

Article 21

The open procedure is a procedure wherein all the parties interested in obtaining a contract of public procurement may submit their bids in accordance with previously defined requirements of the orderer specified in the tender documentation.

Awarding contracts using the restrictive procedure

Article 22

The restrictive procedure is a procedure in the first phase of which the orderer establishes the qualifications of the bidders on the basis of previously determined qualification requirements, whereas in the second phase the orderer invites all the bidders whose qualifications have been established to submit their bids.

The orderer may apply the restrictive procedure only in the case when the object of public procurement are such goods, services or construction work that, in view of the technical, staff and financial ability required, may be delivered, provided or performed only by a small number of bidders.

Prior to the publication of the tender for the first phase of the restrictive procedure, the orderer shall obtain the opinion of the Office, which shall be obligated to forward its opinion within seven days of having received the orderer's request.

If the Office fails to submit its opinion within the deadline referred to in paragraph 3 of this Article, the orderer may proceed with the public procurement procedure.

The orderer may also apply the first phase of the restrictive procedure in the case when it is not possible to plan public procurement in advance, in view of its scope and the time required, and if it cannot be realized immediately and is not realized in accordance with special requirements of the orderer but according to the market conditions.

The orderer shall be obligated to compile the tender documentation in the first phase of the restrictive procedure, so that the only criterion for selecting the best bid in the second phase should be the lowest price offered.

Awarding contracts in the negotiatory procedure without previous publication and after publication of the tender

Article 23

The orderer may award a contract of public procurement without previous publication of the tender if:

1) due to objective circumstances or for reasons to do with protecting exclusive rights, public procurement may be effected only by specific providers of goods or services, or performers of work assignment;

2) due to urgent or unforeseen circumstances the orderer was unable to observe the deadlines for the open and the restrictive procedure.

In the case referred to in paragraph 1 of this Article, the orderer shall request the opinion of the Office.

The Office shall be obligated to forward its opinion within seven days of having received the orderer's request.

If the Office fails to forward its opinion within the deadline specified in paragraph 3 of this Article, the orderer may proceed with the public procurement procedure.

The orderer may award a contract in the negotiatory procedure if a tender for bids in the open or restrictive procedure has been previously published:

1) if no bids whatsoever or inadequate or unacceptable bids have been received in the open or restrictive procedure, on the condition that the content of the published tender documentation should remain essentially unchanged. The orderer shall publish notification to the effect that the contract will be awarded in the negotiatory procedure, which will include all the bidders whose bids have been submitted in the open or restrictive procedure and complied with the qualification requirements;

2) in exceptional circumstances when, due to the nature of procurement, it is not possible to previously determine the price in its entirety.

The orderer shall be obligated to ensure that in the course of negotiations the price does not exceed the comparable market price and to check the quality of the object of public procurement with due caution.

2. Commencement of the procedure

Conditions for the commencement of the procedure

Article 24

The orderer may commence the public procurement procedure if the procurement in question is envisaged by the procurement plan and if funds for that particular procurement contract have been set aside in the budget of the Republic of Serbia (hereinafter referred to as: the Republican Budget), an autonomous territorial unit, local government or in the financial plan in accordance with the Law on the Budget system.

The funds set aside for a particular public procurement contract may not exceed the amount stipulated by the regulations pertaining to budget spending and public financing.

If a public procurement procedure lasts several years, the obligations that become due in the years to come shall be negotiated and expressed in the amounts stipulated by the regulations pertaining to budget spending for each year individually.

If the public procurement in question concerns investments, the orderer shall prepare the investment program according to the common methodology for preparing investment programs, in accordance with the development plan.

The program referred to in paragraph 4 of this Article shall be certified by the chief executive officer of the orderer in writing.

If the Republican Budget, the budget of an autonomous territorial unit, the budget of a local government or the financial plan of another orderer has not been passed, the orderer may commence the public procurement procedure up to the amount of the funds planned in accordance with the regulations dealing with temporary financing.

Decision on the commencement of the procedure

Article 25

The orderer shall commence the public procurement procedure by passing a written decision which contains:

- 1) the registry number of the public procurement for the current year;
- 2) the object of public procurement;
- 3) the value of public procurement according to the orderer's estimates and the expectations concerning the bids;
- 4) the data on the decision on allowing public procurement of investments, in accordance with the common methodology, when necessary;
- 5) provisional dates for the implementation of the individual phases of the public procurement procedure and
- 6) the data on the budget position or the financial plan for payment.

The decision may contain other elements if the orderer considers them necessary for the implementation of the public procurement procedure.

Parallel with the passing of the decision on commencing the public procurement procedure, the orderer shall establish a committee for professional evaluation of bids, in accordance with the regulation criteria for the establishment of such committees.

Acting upon the proposal of the Minister of Finance and the Economy, the Government shall establish the criteria for establishing public procurement committees.

Implementation of a public procurement procedure by another legal entity

Article 26

The orderer may authorize another legal entity in writing to implement the procedure of awarding public procurement contracts on his behalf and for his account.

In the procedure of awarding public procurement contracts in the sphere of waterworks, energy production, telecommunications and traffic, the orderer may decide to use the list of qualified bidders of another orderer.

The decision on using the list of qualified bidders of another orderer shall be made in writing and has to contain a justification.

3. The content of the tender documentation

Preparation of the tender documentation

Article 27

The orderer shall prepare the tender documentation so that the bidders may prepare correct bids on the basis of the documentation prepared.

The data contained in the tender documentation have to be identical to the data contained in the public invitation for bids.

The tender documentation for the open procedure and for the second phase of the restrictive procedure shall contain:

- 1) an invitation for bids;
- 2) instructions to bidders on how to prepare a bid;
- 3) a bid form;
- 4) a form for establishing the bidder's qualifications and instructions on how to prove the bidder's qualifications (only in the case of the open procedure);
- 5) a form wherein the bidder states that he accepts the conditions in the public invitation for bids;
- 6) a sample contract;
- 7) the type, technical characteristics (specifications), quality, quantity and description of goods, services or work, the manner of executing control and ensuring a guarantee of quality, the deadline for executing the contract, the place of execution or of the delivery of goods, potential additional services and the like;
- 8) the technical documentation and plans;
- 9) the invoice form, including instructions on how to fill it in and
- 10) the type of financial guarantee whereby the bidders ensure the fulfillment of their obligations in the procedure of awarding contracts of public procurement

(various forms of pledging securities, movable property, mortgages, bills of exchange, guarantees given by other legal entities possessing adequate creditworthiness, bank guarantees, insurance policies, etc.).

The tender documentation may contain other elements which, in view of the object of public procurement, are necessary for the preparation of bids.

The tender documentation in the first phase of the restrictive procedure shall contain:

- 1) an invitation to submit bids;
- 2) instructions to the bidders on how to prepare their bids;
- 3) a bid form and
- 4) a form for establishing the bidder's qualifications and instructions on how to prove the bidder's qualifications.

The Minister of Finance and the Economy shall regulate the compulsory elements of the tender documentation more closely.

The law regulating the annual Republican Budget shall stipulate the amount of public procurement funds above which the orderer shall demand a bank guarantee in the public procurement procedure.

4. Access to the tender documentation

Deadline for submitting the tender documentation

Article 28

As of the day of the publication of the invitation for bids, the orderer shall enable interested parties to have direct access to the tender documentation or shall forward the documentation by post, telefax or e-mail within two days of having received a request from a bidder.

In the case referred to in paragraph 1 of this Article, the orderer shall charge only the costs of copying and forwarding the tender documentation.

In the open procedure the orderer may limit the period of time during which the bidders may request access to the tender documentation; this period shall not exceed one half of the period for submitting the bids.

The bidder may not set a higher price afterwards, claiming that the tender documentation is incomplete or inadequate concerning the segments of public procurement execution that were not specified in the tender documentation if these segments could have been predicted considering the object of public procurement and the documentation in its entirety.

Alterations of and additions to the tender documentation

Article 29

If the orderer alters or adds to the tender documentation before the expiry of the deadline for submitting the bids, he shall be obligated to forward these alterations and additions immediately and without recompense to the bidders who have already taken the tender documentation.

A bidder may request additional information or explanations concerning the preparation of bids five days before the expiry of the deadline for submitting the bids at the latest.

In the case referred to in paragraph 2 of this Article, the orderer shall be obligated to send a written answer to the bidder within the time period and in the manner stipulated in Article 28 paragraph 1 of this Law, and at the same time to forward that information to all the other bidders who have received the tender documentation.

If the tender documentation or the additional documents are too long, or if a bid can only be made after a direct inspection of the place where public procurement will be effected, or if the orderer alters or adds to the tender documentation six or fewer days before the expiry of the deadline for submitting the bids, the orderer shall be obligated to extend the deadline for submitting the bids.

The orderer shall inform in writing all the bidders who have been forwarded the tender documentation of the extension of the deadline for submitting the bids referred to in paragraph 4 of this Article.

The decision on the extension of the deadline for submitting the bids shall be published in the same way as the invitation for bids.

After the expiry of the deadline for submitting the bids, the orderer may not alter or add to the tender documentation.

5. Determining the value of public procurement

Determining the value of public procurement of goods

Article 30

The basis for calculating the estimated value of public procurement of goods shall be determined in the following manner:

1) in the case when the object of the contract is buying, selling, renting or leasing goods, and when the contract is concluded for a period of 12 months or less, the total value of the contract throughout its duration shall be taken; when the contract is concluded for a period longer than 12 months, the overall value of the contract shall

include the value for the first 12 months and the values for the period remaining until the expiry of the deadline stipulated in it;

2) in the case when the contract referred to in paragraph 1 item 1 of this Article is concluded for an indefinite period of time, the monthly value of the contract multiplied by 48 shall be used.

If the contract is concluded for an indefinite period of time or if it has to be renewed after a certain period of time, the estimated value of public procurement shall be determined on the basis of the real total value of similar contracts concluded in the course of the previous budget year or in the course of the previous 12 months, adjusted for the expected changes concerning the quantity or the value of the goods whose procurement is the object of the contract in the course of 12 months, counting from the day of the original conclusion of the contract.

Determining the value of public procurement of services

Article 31

When calculating the estimated value of public procurement of services, the orderer shall include all the expenses concerning the service in question incurred by the bidder.

In the case of some services, the orderer shall take into consideration the following amounts:

- 1) for insurance services – the amount of the premium;
- 2) for banking and financial services – recompense, commission and interest rates, as well as other payments charged to the service;
- 3) for architectural services, industrial design, landscape planning and the like – recompense or commission.

If the orderer cannot determine the estimated value of the contract due to the length of its duration, the value of the contract shall be determined in the manner prescribed in Article 30, paragraph 1 of this Law.

Determining the value of public procurement of work

Article 32

The total value of public procurement of work shall be determined by taking the total construction values as the basis for calculating the value of the contract of work.

When determining the value of public procurement of construction work, the orderer shall include the value of all the goods and services that are necessary for the execution of the public procurement contract.

The value of public procurement of construction work may not include the value of goods and services that are not necessary for the execution of public procurement of construction work.

Determining the value of public procurement per lot

Article 33

The object of public procurement may be organized in a number of separate wholes (lots), so that each lot may be negotiated separately.

When the object of public procurement is organized in separate lots, and each lot is the subject of a separate contract, when determining the value of this public procurement, the value of all the lots over a period of one year, counting from the day of negotiating the first lot, is taken into consideration.

The provider shall be obligated to award individual lots whose total value exceeds the amounts stipulated in Articles 69, 71, 90, 114, 123 and 126 of this Law, in accordance with the provisions of this Law.

The decision on organizing public procurement in lots and on determining the values of these lots shall be approved by the Office.

The method of determining the value of public procurement

Article 34

The orderer may not choose the method of determining the value of public procurement so that, due to a low estimated value, a public invitation for bids is avoided.

The estimated value of public procurement shall be expressed without including the turnover tax.

6. General rules on determining the technical elements of public procurement

Technical specifications

Article 35

Technical specifications constitute an obligatory part of the tender documentation.

The orderer shall be obligated to state the technical specifications in the tender documentation pertaining to each individual contract of public procurement.

The orderer shall determine the technical specifications referring to the laws, technical regulations and standards that are in effect in the Republic; in the case when such technical regulations or standards do not exist in the Republic, the orderer shall refer to the existing European standards, technical licenses or common technical specifications.

The authorized ministry shall establish whether the technical regulations and standards referred to in paragraph 3 of this Article exist.

The use of technical specifications

Article 36

The orderer may not use or refer to technical specifications concerning goods, services or particular type of work if such a designation might give a bidder an undue advantage or might unwarrantedly eliminate the other bidders.

The orderer may not include in the tender documentation any specification that would result in giving an undue advantage or unwarrantedly eliminating some bidders, in the manner referred to in paragraph 1 of this Article, unless such a specification is warranted in view of the subject of the contract.

The orderer may not specify any particular trademark, patent, type, origin or manufacturer in the tender documentation.

When it is not possible to describe the subject of the contract in the tender documentation in such a way that the specifications will be comprehensible to all the bidders, the orderer must specify elements like trademarks, patents, type or manufacturer using the words "or equivalent to the above".

Issuing certificates

Article 37

When the orderer negotiating a service demands a certificate of fulfillment of the requirements concerning the quality of management and the quality of services provided issued by independent organs or organizations, which should confirm that the services in question fulfill specific standards, the authorized issuer of the certificate shall refer to the system of quality guarantees in accordance with the Yugoslav JUS EN ISO 9000 series standard, fulfilling the requirements of the Yugoslav standards JUS EN 45000 and JUS ISO/IEC 17025.

The content of technical specifications or project documentation

Article 38

The terms technical specifications and project documentation, as used in the text of this Law, denote the technical requirements constituting an obligatory part of the tender documentation referring to the characteristics of lots of work assignments, materials, products, goods or services. These specifications have to ensure that the work assignments, materials, products, goods or services being procured are described in a manner that is objective and will meet the demands of the orderer.

Technical specifications may contain requirements concerning the quality, performance, safety or dimensions of materials, products, goods, or services, which concern the guarantees of quality, terminology, designations, testing and the methods of testing, packing, marking and labeling.

In the case of public procurement of construction work, technical specifications may include regulations concerning designs and the calculation of costs, tests, inspection, conditions for taking over the finished product, and the technique or method of construction.

Exceptions

Article 39

The orderer, subject to the prior approval of the Office, need not adhere to the provisions of Article 35 of this Law under the following circumstances:

1) if the standards, technical approval or the general technical specifications or project documentation do not contain a provision requiring adjustment, or if there are no technical means of satisfactorily adjusting the product or service being procured to these standards, technical approval or general technical specifications or project documentation;

2) if adherence to the above-mentioned provisions would prejudice mutual recognition of standard-type approval of telecommunications or computer equipment, or standardization in the sphere of information technology and telecommunications, or in other specific areas of goods and services;

3) if adherence to the standards, technical approval or general technical specifications would put the orderer in a position of having to procure goods that are incompatible with the existing equipment, would result in disproportionately higher expenses or would cause the orderer excessive technical difficulties;

4) if the contract of public procurement in question is a markedly innovative one, so that adherence to standards, technical approval or general technical specifications would be out of place.

The orderer shall state the reasons for acting in the manner referred to in paragraph 1 of this Article in the invitation for bids or in the tender documentation.

Other methods of determining technical specifications

Article 40

If no standards, technical approval or general technical specifications exist, technical specifications may be determined in the following way:

1) in accordance with the technical specifications that apply in FR Yugoslavia and that are in compliance with the basic requirements that are applied for technical harmonization in the European Union (especially in the case of public

procurement in the sphere of information technology, telecommunications and the like);

2) in accordance with the technical specifications that apply in FR Yugoslavia pertaining to the drafting of design, method of calculation, work assignment performance and the use of materials;

3) in accordance with other documents, in which case the orderer shall adhere to the following order of criteria when deciding:

(a) the Yugoslav standard JUS which corresponds to the international standard;

(b) some other national standard;

(c) the technical approval and recommendation being applied in FR Yugoslavia.

Standards

Article 41

The term ***Yugoslav standard*** shall be used to denote a standard recognized by the federal organ authorized for standardization that is accessible to the public.

The term ***international standard*** shall be used to denote a standard recognized by the international organization for standards, that is, the international standardization organization, and is accessible to the public.

The term ***European standard*** shall be used to denote a standard recognized by the authorized organ of the European Union that is accessible to the public.

The term ***foreign national standard*** shall be used to denote a standard recognized by the authorized organ of a foreign state that is available to the public.

The term ***other standards*** shall be used to denote standards that may be accepted for other reasons (e.g. standards applying for a particular branch of industry, company standards and the like).

Technical approval

Article 42

Technical approval is a positive technical evaluation of the suitability of a particular product for the intended use.

European technical approval is a positive technical evaluation of the suitability of a particular product for the intended use, based on the fulfillment of the basic requirements of the intended construction work, issued by the organ authorized to give technical approval.

European technical approval shall apply in the case of public procurement of construction work.

Common technical specifications

Article 43

Common technical specifications are technical specifications passed in accordance with the procedure accepted by the Government, which is applied by all the member states of the European Union.

Stating essential requirements and the costs of compensation for the use of patents

Article 44

Essential requirements that are not included in the technical norms and standards currently in effect, and which pertain to safety and other factors of general interest, shall apply and shall be expressly stated in the tender documentation.

The orderer may state in the tender documentation that compensation for the use of patents and responsibility for any breach of protected intellectual property rights of third persons shall be borne by the bidder.

7. Requirements for participating in the procedure of awarding contracts of public procurement

Obligatory requirements for participation

Article 45

The orderer shall state the requirements that the bidder has to fulfill in order to be able to participate in the procedure.

The following domestic or foreign legal entities or physical persons shall have the right to participate in the procedure:

- 1) those registered for particular activities with the authorized organ of the state where their legal residence is located;
- 2) those against whom no enforced settlement, bankruptcy or liquidation proceedings have been initiated and those that have not ceased working on the basis of a court decision or some other enforceable decision;
- 3) those that have not been punished for a criminal offence, commercial offence or an offence pertaining to their business activities by the enforceable decision of a court or an administrative organ over a period of five years prior to the initiation of the public procurement procedure, or if, over the same period of time,

they have not received an enforceable court decision or administrative decision prohibiting them to perform the activity which is the object of public procurement;

4) those that have settled due taxes, contributions and other forms of public taxation in accordance with the regulations of the state where their legal residence is located, or in accordance with the regulations of the Republic of Montenegro if their legal residence is located on its territory;

5) those that have a valid permit of the authorized organ for performing the activity which is the object of public procurement, if such permits are stipulated by a special regulation;

6) those that possess the necessary financial and business capacity;

7) those that possess sufficient technical capacity.

The orderer may impose additional requirements concerning the fulfillment of obligations that the bidder may have towards his subcontractors and suppliers.

Proving the fulfillment of requirements

Article 46

Along with the bid, the bidder shall submit the following to prove that he fulfils the requirements referred to in Article 45 of this Law:

1) a court register certificate or some other register certificate;

2) a certificate issued by the authorized tax organ of the state where the bidder's legal residence is located, or by the authorized tax organ of the Republic of Montenegro, or by the Republican Office of Public Revenues;

3) a certificate issued by the authorized organ keeping records of permits issued for performing specific activities;

4) a balance sheet certified by an authorized auditor, or an excerpt from the balance sheet, or a certificate of the bidder's overall sales income and income obtained from the products, work or services that the public procurement contract pertains to – for the last three accounting years, as well as the evaluation or statement of a bank or another specialized institution, or the proof required in the public invitation or the tender documentation. The orderer shall be obligated to state in the public invitation or in the tender documentation which element from this item he has chosen and which other elements serving to prove the financial and business capacity the bidder shall submit;

5) one or more pieces of evidence in accordance with the subject of the contract, the quantity and the intended purpose, such as:

(a) a list of the most important goods delivered, work assignments performed or services provided over a period of the last three years, together with the amounts, dates, and lists of buyers or orderers. If the buyers or orderers are entities that are considered to be orderers in accordance with the provisions of this Law, the proof to be submitted has to be in the form of a certificate issued or signed by the authorized organ; if the buyers or orderers are entities or entrepreneurs other than orderers in the

sense of the provisions of this Law, the certificate shall be issued or signed by a buyer or an orderer;

(b) a description of the bidder's technical equipment, measures for ensuring quality and the capacity for research and development;

(c) a statement on the key technical staff and other experts working for the bidder who will be responsible for the execution of the contract and on the persons responsible for quality control;

(d) a sample description or a photograph of the product and a description of the work or services that the bidder will provide. In case of doubt, the orderer may demand proof of the authenticity of samples, descriptions or photographs;

(e) a certificate issued by the organ or organization authorized for quality control, testifying that the products or services in question are adjusted to the technical specifications or the standards stipulated in the tender documentation;

(f) a report on research, if the products to be delivered or the work and services to be provided are complex, or in exceptional circumstances, when the object of public procurement is to be used for special purposes. The research shall be conducted by representatives of the orderer or, on behalf of the orderer, by the authorized organ of the state where the legal residence of the bidder is located. The research shall pertain to the bidder's production capacity, and if need be, to his capacity for research and development, and the method of ensuring quality.

If the bidder's legal residence is located in another state or in the Republic of Montenegro, the orderer shall check whether the documents with which the bidder proves that he fulfils the requirements of the tender have been issued by the authorized organ of the state in question or the Republic of Montenegro.

The Minister of Finance and the Economy shall compile a list of the authorized organs of foreign states which issue documents submitted by foreign bidders, complying with the provisions of paragraph 2 of this Article.

The bidder shall be obligated to notify the orderer immediately of any changes concerning the information referred to in paragraph 1 of this Article no later than five days after such changes have occurred; the notification shall be in writing and shall be documented in the manner prescribed.

The bidder shall ensure that his subcontractors, if they are mentioned in the bid, also comply with the requirements referred to in Article 45 of this Law; the proof of this shall be documented in the manner referred to in paragraph 1 of this Article.

The bidder shall be obligated to confirm explicitly in the bid that he accepts the requirements referred to in Article 45, paragraph 1 item 4 of this Law, and to state whether the bid refers to the procurement in its entirety or to particular lots thereof only.

If the bidder submits a bid referring to all the lots, it must be submitted in such a way that it may be evaluated separately for each lot.

Professional references and the confidentiality of the data obtained

Article 47

If the orderer requests that the bidders should submit professional references, he shall be obligated to state expressly in the public invitation for bids or in the tender documentation which professional references the bidders have to obtain.

The orderer shall be obligated to duly respect the lawful interests of the bidders, protecting their technical or professional secrets.

The orderer may use the data obtained only for the purpose of that particular public procurement contract.

The bidder shall be responsible for the authenticity of the professional references referred to in paragraph 1 of this Article.

Bidder's statement

Article 48

If the authorized organs of the state or the republic where the legal residence of the bidder is located do not issue the certificate referred to in Article 46, paragraph 1 item 2 of this Law, the bidder may submit a written statement instead, certified by the authorized organ of the state or republic where his legal residence is located, taking full criminal and material responsibility for it.

8. Recognizing qualifications

Establishing qualifications

Article 49

Before concluding a contract of public procurement, the orderer shall be obligated to check whether the bidder meets the requirements concerning his business and financial capacity stipulated in Article 45, paragraph 2 item 6 of this Law.

The orderer shall be obligated to conclude the contract of public procurement observing the criteria for establishing qualifications pertaining to the financial, staff and technical capacity of the bidder for executing the public procurement contract.

The orderer may define additional criteria for establishing the bidder's qualifications, provided these do not discriminate against other bidders.

Establishing the qualifications of subcontractors

Article 50

When establishing the qualifications for executing a public procurement contract, the orderer may request that the bidder should state whether he will entrust the execution of the public procurement contract in question, in its entirety or partly, to a subcontractor.

If the bidder intends to entrust the execution of the contract to a subcontractor, he shall be obligated to supply the name of the subcontractor; if the contract is concluded, this subcontractor shall be included in the contract between the orderer and the bidder.

The bidder shall be responsible for the execution of the entire public procurement contract irrespective of the number of subcontractors.

The bidder shall be obligated to allow the orderer, upon the latter's request, access to the subcontractor for the purpose of establishing the subcontractor's qualifications.

Submitting a joint bid

Article 51

A bid may be submitted by a group of bidders.

In the case referred to in paragraph 1 of this Article, the orderer may not request a group of bidders to associate themselves into a legal entity so that they may submit a joint bid.

The orderer may request a group of bidders to submit a legal act binding themselves to joint execution of the contract in question if it is awarded to them, provided that such a request is necessary for successful execution of public procurement.

The legal act referred to in paragraph 3 of this Article shall specify the responsibility of each bidder for the execution of the contract.

The bidders forming a group of bidders shall bear joint unlimited responsibility towards the orderer.

The orderer may request legal entities to state the names and respective professional qualifications of the persons who will be responsible for the execution of the contract in their bids or requests for participation.

Selection of candidates

Article 52

In the first phase of the restrictive procedure and the negotiatory procedure, the orderer shall select those bidders that will be invited to submit their bids as candidates in the second phase or to participate in the negotiations.

In the first phase of the procedures referred to in paragraph 1 of this Article, the orderer shall select the candidates on the basis of the information submitted by the bidders proving the bidders’:

- 1) legal status;
- 2) business capacity;
- 3) financial capacity;
- 4) technical qualifications and
- 5) staff qualifications.

The bidders shall prove that the requirements referred to in paragraph 2 of this Article have been fulfilled in the manner prescribed in Article 46 of this Law.

Compiling a list of candidates

Article 53

The orderer shall be obligated to compile a list of candidates and to determine the period during which their qualifications will be recognized; this period may not exceed three years.

The orderer selecting a bidder in the negotiatory procedure on account of not having received correct or acceptable bids shall be obligated to include all the bidders who have previously participated in the unsuccessful open or restrictive procedure whose qualifications have been recognized on the basis of Article 52 of this Law and who have submitted correct bids; the orderer shall also be obligated to publish an announcement stating that the public procurement contract will be awarded in the negotiatory procedure.

9. Criteria for selecting the best bid

Determining the criteria

Article 54

The orderer shall be obligated to publish identical criteria for selecting the best bid in the public invitation and the tender documentation.

The criteria on the basis of which the orderer will select the best bid have to be described and evaluated in the tender documentation; they must not be discriminatory and have to be logically connected with the object of public procurement.

In the tender documentation the orderer shall state, describe and evaluate in advance all the criteria that he intends to use.

The orderer may not alter the criteria after the publication of the public invitation for bids or after awarding the contract of public procurement in question in the restrictive procedure.

When evaluating the bids, the orderer shall be obligated to apply only the criteria contained in the tender documentation, in the manner in which they have been described and evaluated.

Types of criteria

Article 55

The criteria for evaluating the bids shall be:

- 1) the most favorable bid in economic terms and
- 2) the lowest price offered.

The most favorable bid in economic terms shall be the bid based on different criteria, depending on the object of public procurement, especially including:

- 1) the deadline for delivery or performance of services or work;
- 2) current expenses;
- 3) cost effectiveness;
- 4) quality and the application of adequate systems of quality analysis/control;
- 5) aesthetic and functional characteristics;
- 6) technical and technological advantages;
- 7) post-sale servicing and technical assistance;
- 8) the guarantee period, the type and quality of guarantees and the guaranteed values;
- 9) the responsibilities concerning spare parts;
- 10) post-guarantee servicing;
- 11) the price offered;
- 12) the possibility of typification and unification;
- 13) the extent to which the services of subcontractors are engaged, etc.

To each of the elements referred to in paragraph 2 of this Article the orderer shall assign relative (weighted) significance in such a way that the sum total of weighted points amounts to 100.

The orderer shall perform the selection based on the criterion of the most favorable bid in economic terms by ranking the bids on the basis of those criteria and the points assigned to the criteria in question.

The selection of the best bid based on the lowest price offered shall be based on the lowest price as the sole criterion if all the requirements contained in the tender documentation have been complied with.

If the criterion of the lowest price offered applies, the orderer may not accept any price increase following the conclusion of the contract.

Variant bids

Article 56

If the criterion for awarding a contract of public procurement is the most favorable bid in economic terms, the orderer may take into consideration variant bids submitted by the bidders fulfilling the minimum requirements concerning the orderer's technical specifications.

In the tender documentation the orderer shall be obligated to state the minimum technical requirements that have to be observed in variant bids, as well as special requirements for presenting such bids.

If variant bids are not allowed, the orderer shall be obligated to point this out in the public invitation and in the tender documentation.

The orderer may not reject the variants proposed solely on account of the fact that the variant bid in question was compiled on the basis of technical specifications drawn up in accordance with the national technical specifications recognized as appropriate for the fulfillment of essential requirements.

Exceptionally low price

Article 57

If a bid for public procurement offers exceptionally low prices, the orderer shall be obligated to demand a detailed written justification of all the elements of the bid he considers to be relevant, in particular those concerning the economy of the construction method, production or the selected technical solutions and exceptionally favorable circumstances that are available to the bidder for the execution of the contract, or pertaining to the originality of the products and work proposed by the bidder.

In the case referred to in paragraph 1 of this Article, the orderer shall be obligated to give the bidder a sufficient period of time to reply; this period may not exceed 20 days from the day of having received such a request.

Having received the requested justification, the orderer shall be obligated to check the relevant elements of the bid referred to in paragraph 1 of this Article.

Additional explanations, control and acceptable corrections

Article 58

The orderer may request additional explanations from a bidder that will help him in the course of examining, evaluating and comparing the bids; he may also exert control of the bidder or the latter's subcontractor.

The orderer may not demand, allow or offer any alterations to the content of a bid, including a change of price; in particular, the orderer may not demand, allow or offer such changes that would turn an inadequate bid into an adequate one.

The orderer may, subject to the agreement of the bidder, only correct mistakes noticed in the course of examining the bid after the opening of the bids.

The orderer may request the bidder to forward data on his business connections that are relevant to the public procurement contract in question.

If the value of the contract of public procurement being awarded exceeds 300,000,000 dinars, the bidder shall be obligated to submit his bid along with a copy, in two separate envelopes.

The bidder shall guarantee that the bid and its copy are identical.

A bid shall be opened in accordance with the provisions of this Law, whereas its copy shall be forwarded immediately directly to the Committee for the Protection of the Rights of Bidders, unopened.

If no request for the protection of the bidder's rights is lodged, the copy deposited with the Committee shall be returned to the bidder immediately after the expiry of the deadline for lodging requests for the protection of the bidders' rights.

If a bidder lodges a request for the protection of his rights, the copy deposited with the Committee shall be returned to the bidder immediately after the procedure for the protection of his rights is terminated.

10. Deadlines in the procedure of awarding contracts of public procurement

Deadline for submitting bids

Article 59

The orderer shall be obligated to set a deadline for submitting the bids in the public invitation and in the tender documentation.

The deadline for submitting the bids set in the public invitation has to be identical to the deadline set in the tender documentation.

The deadline referred to in paragraph 2 of this Article shall be considered to be the date and the hour by which the bids may be submitted.

After the expiry of the deadline for submitting the bids, the bidder may not withdraw his bid or make alterations to it; if he does so or if he does not sign a contract after his bid has been selected, the orderer shall be authorized to cash the guarantee submitted alongside the bid.

The bidder shall submit his bid in person or by post.

Counting the deadlines

Article 60

The deadlines for submitting the bids shall be counted from the day of publishing the public invitation for public procurement in "The Official Gazette of the Republic of Serbia".

Timely bid

Article 61

A bid shall be considered timely if it has been submitted before the date and the hour specified in the public invitation.

Having received a bid, the orderer shall be obligated to mark the date and the hour of receipt and to issue a certificate of receipt should the bidder request it.

If a bid has been submitted after the date and the hour specified in the public invitation, it shall be considered untimely, and the orderer shall return it to the bidder unopened after the procedure of opening the bids is terminated, together with a note stating that it has been submitted in an untimely manner.

Setting the deadline for submitting the bids

Article 62

The deadline for submitting the bids has to be adequate for the period required for the preparation of a correct bid.

If the tender documentation or the technical specifications to be examined are voluminous, or if it is necessary to examine the location and the like, the orderer shall envisage the possibility of extending the deadline.

The general deadline for submitting the bids in the open procedure

Article 63

The deadline for submitting the bids in the open procedure may not be less than 40 days from the day of the publication of the public invitation in “The Official Gazette of the Republic of Serbia”.

Shorter deadline for submitting the bids in the open procedure

Article 64

The deadline for submitting the bids may be shorter than the deadline referred to in Article 63 of this Law, but it may not be shorter than 30 days.

The deadline for submitting the bids in the open procedure may be shorter than the deadline referred to in paragraph 1 of this Article, but it may not be shorter than 22 days from the day of publishing the public invitation if the orderer, in accordance with the provisions of Article 69 of this Law:

- 1) has previously issued a notice on the regulation, form stating his intention to award a public procurement contract;
- 2) has issued the notice at least 52 days and no longer than 12 months before the publication of the public invitation;
- 3) has included in the previously issued notice at least as much information as he had at the moment of issuing the notice.

The deadlines for submitting the bids in the restrictive procedure and the negotiatory procedure

Article 65

The deadline for submitting the bids in the restrictive procedure and the negotiatory procedure may not exceed 25 days from the day the orderer sends an invitation for bids.

Setting the general deadline for submitting the bids in the restrictive procedure

Article 66

The deadline for submitting the bids in the restrictive procedure may not be shorter than 30 days from the day when the orderer sends out a written invitation.

Shorter deadline for submitting the bids in the restrictive procedure

Article 67

The deadline for submitting the bids in the restrictive procedure may be shorter than the deadline referred to in Article 66 of this Law, but it may not be shorter than 26 days from the day of sending out a written invitation if the orderer:

- 1) has previously issued a notice on the regulation form, stating his intention to award a public procurement contract;
- 2) has issued the notice at least 52 days and no longer than 12 months before the publication of the public invitation;
- 3) has included in the previously issued notice at least as much information as he had at the moment of issuing the notice.

The application for participating in the procedure may be sent by letter, telegram, telex, telefax or electronic mail; it may also be announced by telephone.

If the application has been sent by telegram, telex, telefax, electronic mail, or if it has been announced by telephone, it has to be confirmed by letter, which is to be forwarded within the period of time set for submitting the bids.

Conditions for additional shortening of the deadlines in the restrictive procedure

Article 68

If, on account of the urgency of the matter, it is not possible to observe the deadlines referred to in Article 67 of this Law, the orderer may set the following deadlines:

- 1) the ultimate deadline for submitting the applications for participating in the procedure may not be shorter than 15 days from the day of sending out the invitation;
- 2) the ultimate deadline for submitting the bids may not be shorter than 10 days after the day of sending out the invitation for participating in the tender.

If a candidate has requested additional information in connection with the tender documentation in a timely manner, the orderer shall be obligated to forward

that information four days before the expiry of the deadline for submitting the bids at the latest.

The applications and invitations for participating in the tender shall be forwarded in the fastest possible way.

If a bidder sends his application by telegram, telex, telefax, or if he announces it by telephone, he shall be obligated to confirm it by letter, which is to be sent before the expiry of the deadline referred to in paragraph 1 of this Article.

The provisions in paragraphs 1-4 of this Article shall not pertain to public procurement in the sphere of waterworks, energy production, telecommunications and traffic.

11. Publishing the advertisement of public procurement

The manner of announcing public procurement

Article 69

All advertisements to do with public procurement shall be published in "The Official Gazette of the Republic of Serbia" and in at least one more daily paper distributed on the entire territory of the Republic.

If the value of public procurement exceeds 6,000,000 Yugoslav dinars for goods and services, or if it exceeds 120,000,000 dinars for work assignments, the advertisements referred to in paragraph 1 of this Article shall be published in a newspaper as well, or in a business publication, technical or professional magazine available to the general international professional and other public, in a language commonly used in international commerce.

Advertisements to do with public procurement shall also be published on the web site of the Office, in accordance with the Office's decision.

The advertisements to do with public procurement referred to in paragraph 3 of this Article shall be published in the Serbian language and in a language commonly used in international commerce.

Types of advertisements

Article 70

The types of advertisements used shall be:

- 1) a previously issued notice;
- 2) a public invitation;
- 3) a public invitation for establishing the qualifications of the bidders;

- 4) notification of awarding a contract of public procurement and
- 5) periodical informative announcements.

In the restrictive procedure, the orderer shall publish the invitation in the first phase, for the purpose of establishing the qualifications of the bidders, and in the second phase the candidates shall be invited to submit their bids.

A public invitation for establishing the qualifications of the bidders and periodical informative announcements shall be published only in the cases of public procurement in the sphere of waterworks, energy production, telecommunications and traffic.

Previous notice of intent

Article 71

In the case of scheduled public procurement whose approximate value exceeds 50,000,000 dinars, the orderer shall be obligated to publish, at least once a year, a previous notice of the intention to award a public procurement contract.

In the case of public procurement in the sphere of waterworks, energy production, telecommunications and traffic, the notice of intent shall be published, at the latest, 12 months before the orderer sends out an invitation to participate in the restrictive procedure or the negotiatory procedure; in doing so, the orderer shall observe the deadlines set for submitting the bids in accordance with the provisions of this Law.

Public invitation

Article 72

The orderer shall be obligated to publish a public invitation:

- 1) in the case of public procurement in the open procedure;
- 2) in the first phase of the restrictive procedure and
- 3) in the case of public procurement in the negotiatory procedure after a previously published notice.

A public invitation shall contain information about the orderer, the object of public procurement, the criteria, the time and the place of gaining insight into the tender documentation, the time and the place for submitting the bids, the approximate date of passing the decision on awarding the contract of public procurement, as well as the name of the person to contact for additional information.

A public invitation may contain other data necessary for providing information to the bidders.

A public invitation for establishing the qualifications of the bidders and the content of the invitation for submitting bids in the restrictive procedure

Article 73

In the restrictive procedure, the orderer shall select the most favorable bid after implementing the qualification procedure in the first phase.

In the case of the qualification procedure, the orderer shall be obligated to ensure that bidders may request at any moment that their qualifications for participation in the bidding be established.

If a public invitation has been issued in the qualification procedure, the bidders from the procedure involving previous establishment of qualifications or participants in the negotiatory procedure shall be selected from among the candidates in accordance with this method of selection.

A public invitation for the purpose of establishing the qualifications of the bidders in the qualification procedure shall contain information about:

- 1) the name and the address of the orderer, including the telephone, telefax and telex number, as well as the e-mail address;
- 2) the purpose of the qualification procedure;
- 3) the address for obtaining information concerning participation in the qualification procedure;
- 4) the deadline for submitting the application for participation;
- 5) the duration of the qualification procedure if it is possible to estimate it.

If the orderer estimates that the process of decision making will last more than six months from the day of submitting the application for participation, he shall be obligated to notify the applicants, within two months of the day of submitting their applications, of the reasons for extending the period of decision making and of the date when the decision will be passed.

The qualification procedure may encompass several phases, and has to be based on non-discriminatory criteria and requirements, established by the orderer in advance.

The orderer may, if need be, update the criteria and requirements referred to in paragraph 6 of this Article.

Upon the request of any interested supplier and provider of services, the criteria and requirements referred to in paragraph 6 of this Article shall be made accessible, and the orderer shall be obligated to inform the interested parties of any update.

If the orderer thinks that his system of qualifications meets the requirements of other orderers as well, he shall be obligated to supply the names of these orderers to interested suppliers and providers of services.

The orderer shall be obligated to implement the qualification procedure for awarding contracts of public procurement in the sphere of waterworks, energy production, telecommunications and traffic.

The orderer shall be obligated to invite the selected candidates at the same time in writing to submit their bids.

The invitation shall contain especially information about:

- 1) the address where the candidate may request the tender documentation and additional documentation, the deadline for submitting the request, the amount and the method of payment for the tender documentation;
- 2) the deadline for receiving the bids, the address where the bids are to be sent and the language to be used in making the bids;
- 3) the bidder's references in the area to which the public procurement in question pertains;
- 4) the list of documents to be submitted to support the statements made by the candidates pertaining to meeting the requirements for participation or supplying additional data to prove the candidates' financial and business capacity and the ability to execute the contract that is the object of the invitation;
- 5) the date of opening the bids.

Information about awarding a contract of public procurement

Article 74

The orderer shall be obligated to publish the information about awarding a contract of public procurement in "The Official Gazette of the Republic of Serbia" within 14 days of having concluded the contract at the latest.

Periodical informative announcements

Article 75

Periodical informative announcements refer to the goods, work or services that are the object of public procurement in the restrictive procedure or the negotiatory procedure and invite all the interested bidders to submit their bids in writing.

In the announcement referred to in paragraph 1 of this Article, it shall be stated that the contract will be awarded in the restrictive procedure or in the

negotiatory procedure, without any subsequent issuing of a public invitation, and all the interested bidders are invited to apply for participation in writing.

Before commencing the process of selecting the bidders or participants in the negotiatory procedure, the orderer shall be obligated to invite all the candidates to confirm their interest in participating in the public procurement procedure.

12. Opening of the bids

Public opening of the bids

Article 76

The opening of the bids in the open procedure and in the second phase of the restrictive procedure shall be public.

Under exceptional circumstances, the orderer may decide not to open the bids publicly for the purpose of protecting business, professional, military or state secrets.

The orderer shall be obligated to state the decision referred to in paragraph 2 of this Article when announcing the public procurement procedure.

Keeping a record of the opening of the bids

Article 77

The orderer shall be obligated to keep a record of the procedure of the opening of the bids, where the following data in particular shall be entered:

- 1) the registry number of the bid;
- 2) the name of the bidder, or the bidder's code if the tender is anonymous;
- 3) the price offered and any reduction offered by the bidder.

The orderer shall be obligated to ensure that the bidders' business secrets are kept.

The Minister of Finance and the Economy shall determine more closely the procedure of opening the bids in the open procedure, the restrictive procedure and the negotiatory procedure; he shall also prescribe the form for keeping a record of the opening of the bids.

Forwarding the record of the opening of the bids

Article 78

The orderer shall be obligated to forward the record of the opening of the bids within three days of the termination of the process of opening the bids.

13. Awarding a contract of public procurement

Correct bid, adequate bid and acceptable bid

Article 79

The orderer shall select the best bidder if he has received at least two independent correct bids from two different bidders that are not legally connected, in the sense of the provisions of the law regulating the taxation of company profit, or the law regulating the taxation of citizens' income.

Having examined and evaluated the bids in the procedure of awarding a contract of public procurement, the orderer shall be obligated to reject all the incorrect bids, and he may also reject inadequate and unacceptable bids.

If he has received only inadequate or only unacceptable bids, the orderer may continue the procedure of awarding a contract of public procurement in accordance with the provisions of Article 23 of this Law.

The orderer may request bidders or candidates to submit additional proof of meeting the requirements, within 20 days at the latest, but only in the case when the bidders or candidates have been unable to obtain the documents required on account of the fact that they are not issued according to the regulations of the state where the bidder's or the candidate's legal residence is located or according to the regulations of the Republic of Montenegro.

In the case referred to in paragraph 4 of this Article, the orderer shall state which documents or additional proof have to be submitted.

Rejection of all bids

Article 80

The orderer shall be obligated to provide a written justification of rejecting all bids, specifying the reasons for rejection.

The orderer shall be obligated to publish the decision referred to in paragraph 1 of this Article in "The Official Gazette of the Republic of Serbia".

Report on awarding a contract of public procurement

Article 81

The orderer shall be obligated to compile a written report on each contract of public procurement that has been awarded.

The report referred to in paragraph 1 of this Article shall contain the following data in particular:

- 1) the name and address of the orderer;

- 2) the subject and value of the contract of public procurement;
- 3) the names of the bidders whose bids have been rejected and the reasons for rejection;
- 4) the name of the successful bidder and the reasons for selecting his bid; if the bidder has stated that he will execute the contract of public procurement using the services of a subcontractor, every part of the contract to be executed by the subcontractor shall be specified;
- 5) if the negotiatory procedure has been applied – the circumstances justifying the application of this procedure.

Justified notification of awarding a contract of public procurement

Article 82

On the basis of the report referred to in Article 81 of this Law, the orderer shall be obligated to notify the bidders immediately of awarding a contract of public procurement immediately.

A bidder who has not been selected may submit a written request for a justification of awarding the contract of public procurement within eight days of having received the notification referred to in paragraph 1 of this Article.

The orderer shall be obligated to forward the written justification of awarding a contract of public procurement referred to in paragraph 2 of this Article within 15 days of having received the request in writing.

The justification referred to in paragraph 2 of this Article shall contain the following data:

- 1) the reasons for rejecting the bid of the applicant referred to in paragraph 2 of this Article;
- 2) the names of the bidders who have met the set requirements and criteria;
- 3) the advantages of the selected bid from the point of view of meeting the criteria;
- 4) the name of the bidder whose bid has been selected.

The orderer may refuse to provide written justification, in whole or in part, if forwarding such data would be in violation of the regulations or if it would be against the public interest in some other way, or if it would violate a business secret of the selected bidder, and also if the justification would contain data designated as classified on the basis of other regulations, or if the data thus imparted might adversely affect fair competition among the bidders or other parties in the procedure.

Rejecting applications for establishing qualifications

Article 83

The orderer shall be obligated to notify the candidates whose applications for establishing qualifications have been rejected of the reasons for rejection, which can be based solely on the qualification criteria.

The orderer shall be obligated to keep the written reports on the qualified bidders, classified according to the type of public procurement, in accordance with the regulations pertaining to the sphere of documentary materials and archives.

Excluding candidates from the list of qualified bidders

Article 84

The orderer may exclude a candidate from the list of qualified bidders only for reasons based on criteria determined in advance.

The orderer shall inform the bidder of the reasons for exclusion from the list referred to in paragraph 1 of this Article.

**IV. THE SUBJECT OF A CONTRACT OF PUBLIC
PROCUREMENT AND SPECIAL CASES OF AWARDING A
CONTRACT**

1. Procurement of goods

Determining the subject of a contract of public procurement

Article 85

The subject of a contract of public procurement may be:

- 1) the purchase of goods (to be paid in a lump sum or in installments);
- 2) the renting of goods;
- 3) the leasing of goods (with or without the right of purchase).

Attendant services

Article 86

A contract of public procurement may encompass provision of services if the services in question are of necessity connected with the supply of goods (assembly, transport, insurance or other services defined by the orderer).

Additional deliveries

Article 87

The orderer may award a contract of public procurement in the negotiatory procedure without a prior announcement in the case of additional deliveries by the original supplier intended for:

- 1) partial replacement of products, materials or installations or

2) the extension of the range of existing products, materials or installations, which would impose upon the orderer the obligation to procure materials of different technical characteristics if the supplier or the provider of services was changed, causing great technical difficulties in business operations and maintenance.

The total value of the additional deliveries referred to in paragraph 1 of this Article may not exceed 25% of the total value of the main public procurement contract.

Other deliveries

Article 88

The orderer may award a contract of public procurement in the negotiatory procedure without a prior announcement in the case of procuring goods intended solely for the purpose of research, experimentation, study or development, and not for any commercial purposes or to compensate for research and development expenses.

2. Procurement of work

Determining the subject of a contract of public procurement of work

Article 89

The subject of a contract of public procurement of work shall be:

- 1) the execution of work assignments;
- 2) the design and execution of work assignments in connection with specific activities listed in Annex II, forming an integral part of this Law;
- 3) construction work on an object taken as a whole which meets all the economic and technical requirements of the orderer.

Prior informative announcement

Article 90

If the estimated value of work exceeds 50,000,000 dinars, the orderer shall be obligated to issue a prior informative announcement of the work immediately after the passing of the law regulating the annual Republican Budget.

Subsidized construction work

Article 91

The provisions of this Law shall apply to the execution of work assignments for which the investor has received a subsidy from a direct or an indirect budget

beneficiary, or from an organization of compulsory social insurance, if the subsidy exceeds 50% of the value of the contract of public procurement of work.

The provisions of paragraph 1 of this Article shall apply to public procurement in connection with the building of hospitals, sports and recreational facilities and holiday facilities, school and university buildings and buildings used by organs of the state, as well as civil engineering construction work, in accordance with Annex II of this Law.

Additional work

Article 92

The orderer may award a contract of public procurement of work in the negotiatory procedure without a prior announcement in the following cases:

1) in the case of additional work or services that were not included in the project originally assigned or in the original public procurement contract, and which have, due to unforeseeable circumstances, become necessary for the execution of the contract of public procurement of work, on the condition that the contract be awarded to the original contractor or provider of services, and if

(a) such additional work or services cannot be separated, in technical or economic terms, from the main public procurement contract without causing insurmountable difficulties for the orderer;

(b) or if such work or services, which the orderer could assign separately from the execution of the original contract, are necessary for the further phases of the execution of the work in question, provided that the total value of all the additional work or services cannot exceed 25% of the total value of the main public procurement contract;

2) in the case of such new services or work which represent a repetition of similar work or services, and are executed by the original contractor, provided that such work or services fit into the basic project, for which the original contract of public procurement was awarded following the issue of a public invitation. The orderer shall be obligated to mention such a possibility in the initial announcement of the public invitation.

The orderer may award a contract of public procurement of work in the negotiatory procedure without the announcement referred to in paragraph 1 item 2 of this Article if less than three years have elapsed since the conclusion of the first contract.

Other work

Article 93

Following the initial announcement in the negotiatory procedure, the orderer may award a contract involving construction work solely for the purpose of research, development or experimentation, and not for any commercial purpose of the orderer or for the purpose of compensating for research and development expenses.

Meeting special requirements for awarding a contract

Article 94

In the tender documentation, the orderer may name the organ authorized to provide the necessary information concerning the obligations to be fulfilled in order to meet the requirements of the regulations dealing with safety measures at work, employment and working conditions currently in effect.

In the case referred to in paragraph 1 of this Article, the orderer shall be obligated to request the bidders or candidates to expressly state in the text of their bids that they have observed the obligations resulting from the regulations dealing with safety measures at work, employment and working conditions currently in effect.

The orderer shall in particular verify the fulfillment of the obligations resulting from the regulations dealing with safety measures at work, employment and working conditions currently in effect if the exceptionally low price offered results from non-observance of these regulations.

List of interested contractors

Article 95

Based on a public invitation, the Chamber of Commerce of the Republic of Serbia (hereinafter referred to as: the Chamber) shall compile a list of interested contractors in the area of construction work, adhering to the conditions referred to in Article 45, paragraph 2 items 1-3 and 5 of this Law and the regulations dealing with construction work in the Republic.

If FR Yugoslavia has concluded an agreement with another state, contractors whose legal residence is located in other states will be included in the list, provided that they meet the requirements referred to in paragraph 1 of this Article.

Contractors whose legal residence is located in the Republic of Montenegro will be included in the list, provided that they meet the requirements referred to in paragraph 1 of this Article.

If the Chamber receives information to the effect that a contractor included in the list of interested contractors does not fulfill the requirements referred to in

paragraphs 1 and 2 of this Article, it shall send a written request to the contractor in question, demanding that he should prove again, within eight days of having received the request in writing, that he fulfils the said requirements.

If the contractor referred to in paragraph 4 of this Article fails to provide evidence of fulfilling the requirements referred to in paragraphs 1 and 2 of this Article, the Chamber shall erase his name from the list of interested contractors.

For each public procurement procedure they participate in, the contractors shall submit a certificate of being included in the list issued by the Chamber.

Statement given by a bidder or a candidate on meeting the obligations towards the employees and the subcontractors

Article 96

For each contract of public procurement the orderer shall be obligated to demand that a bidder or candidate should submit a statement to the effect that he fulfils the minimum requirements of the collective agreement or some other corresponding legal act in an orderly manner, and that he fulfils the obligations he has towards the subcontractors regularly and in a timely manner.

The orderer may impose special conditions concerning the fulfillment of obligations on the part of the contractor towards his subcontractors, and the bidder shall expressly accept those conditions.

3. Procurement of services

Determining the subject of a contract of public procurement of services

Article 97

The subject of a contract of public procurement of services shall be the services listed in Annexes I A and I B, forming an integral part of this Law.

Public procurement of services directly subsidized from the budget where the amount of the subsidy exceeds 50% of the value of the contract and where the orderer is not a direct beneficiary of the budget shall be executed in accordance with the provisions of this Law.

Services that this Law does not apply to

Article 98

The provisions of this Law shall not apply to:

- 1) the services referred to in Article 2 of this Law;

2) financial services (credit, loan) connected with buying or renting land, residential objects or other real estate items, or the rights attached to them, irrespective of the form of the contract, of whether it is concluded simultaneously, prior to or after the conclusion of the contract of purchase or renting real estate;

3) the buying, developing, production or co-production of radio or television programs or time for broadcasting programs;

4) voice telephony, telex, radio-telephone, paging and satellite services;

5) arbitration services and the settling of disputes by mutual agreement;

6) financial services in connection with the issuing, selling, buying and transferring securities or other financial instruments;

7) the services of the National Bank of Yugoslavia;

8) contracts of employment and

9) services pertaining to research and development (except in the case when the orderer uses the research results solely for his own needs), provided that the orderer should bear the costs of these services in their entirety.

Awarding a contract of public procurement through a tender

Article 99

The orderer shall award a contract of public procurement of services by means of a tender in the sphere of urban planning, architecture, civil engineering, engineering, design and informatics.

A draft, plan or design shall be selected by an independent jury.

Only physical persons who are not in any way connected with the participants in the tender may be members of the jury referred to in paragraph 2 of this Article.

If the orderer should demand that the participants in the tender have special professional qualifications or experience, at least one third of the members of the jury have to possess equal qualifications or experience as a minimum.

The jury shall be independent when it comes to decision making, and the participants in the tender shall be anonymous.

The decision of the jury shall be based solely on the criteria referred to in Article 55 of this Law.

Additional services

Article 100

The orderer may award a contract of public procurement of services in the negotiatory procedure without a prior announcement:

1) in the case of additional services or work not included in the originally assigned project or in the original public procurement contract, which, due to unforeseeable circumstances, have become necessary for the execution of the public procurement contract in question, provided that the contract be awarded to the original provider of services or contractor, and if:

(a) such additional services or work cannot be separated, in technical or economic terms, from the main public procurement contract without causing insurmountable difficulties for the orderer, or

(b) if such services or work, although the orderer could award them separately from the execution of the original contract, are necessary for the subsequent phases of the work in question; the total estimated value of these additional services or work may not exceed 25% of the total value of the main public procurement contract;

2) in the case of new services and work that represent a repetition of similar services or work executed by the original contractor, on the condition that such services or work fit into the basic project, for which the original contract of public procurement was awarded following the issue of a public invitation. The orderer shall be obligated to mention this possibility in the first announcement of a public invitation. The orderer may award a contract of public procurement of services in the negotiatory procedure without the prior announcement referred to above only if less than three years have elapsed since the conclusion of the first contract;

3) when a contract of public procurement of services is awarded on the basis of a tender for a draft, plan or design referred to in Article 99 of this Law, and if it is to be awarded to one successful candidate or one of several successful candidates. If there are several successful candidates, the orderer shall be obligated to invite each one of them for negotiations.

Awarding a contract of consulting services

Article 101

A contract of consulting services (the services referred to in items 9-11 of Annex I A and the services referred to in items 21-22 of Annex I B) shall be awarded in the restrictive procedure.

In the first phase, the orderer shall recognize the qualifications of a certain number of candidates on the basis of ability and professional experience in connection with the services that are the object of public procurement.

Under exceptional circumstances, contrary to the provisions of paragraph 2 of this Article, on account of the nature of the consulting services that are the object of public procurement, the orderer may issue a public invitation requesting potential bidders to express their interest.

The public invitation referred to in paragraphs 2 and 3 of this Article shall contain information about:

- 1) the name and address of the orderer, including the telephone, telefax and telex number and the e-mail address;
- 2) the purpose of the qualification procedure;
- 3) the address where information concerning participation in the qualification procedure may be obtained;
- 4) the deadline for submitting a request for participation;
- 5) the duration of the qualification procedure, if it is possible to estimate it;
- 6) the consulting service that is the object of public procurement;
- 7) the manner of obtaining the pre-qualification documentation;
- 8) the amount of the expenses incurred for the copying and forwarding the pre-qualification documentation that have to be covered.

In the second phase, the orderer shall invite all the candidates whose qualifications have been recognized or the bidders who have expressed their interest in submitting a bid.

Article 102

The orderer may, having previously obtained the approval of the Office, forward an invitation for submitting bids for consulting services directly to the bidders if:

- 1) the consulting service that is the object of public procurement may be obtained only from a limited number of bidders, in which case the invitation for submitting the bids may be forwarded to such bidders only;
- 2) the time and the expenses necessary for evaluating a great number of proposals would not be commensurate with the value of the service that is the object of public procurement, on the condition that the invitation for submitting the bids has been forwarded to a sufficient number of bidders to ensure effective competition.

In addition to the elements referred to in Article 52, paragraph 2 of this Law, an invitation for submitting bids for consulting services shall contain a statement concerning the relative (weighted) significance of the criteria that will be applied for the evaluation of the bids.

The orderer shall be obligated to base the criteria referred to in paragraph 2 of this Article on the following:

- 1) the qualifications, experience, reputation, dependability and professional and managerial ability of the bidder and the staff involved in providing the service in question;
- 2) to what extent the bid in question meets the needs of the orderer;

- 3) the price offered, including potential side expenses and attendant expenses;
- 4) the effects of the bid in question on the balance of payments and the foreign exchange reserves of FR Yugoslavia;
- 5) the scope of the participation of domestic participants and how this will boost employment;
- 6) the effects of the transfer of technology and knowledge, and of the development of managerial and professional skills;
- 7) other circumstances, depending on the nature of the consulting service in question.

To each of the elements from paragraph 3 of this Article the orderer shall assign a relative significance (weight), so that the sum total of weighted points amounts to 100.

The orderer shall evaluate the bids submitted by establishing the minimum requirements that the bids have to meet in terms of quality and technical aspects, which shall be obtained by applying the weighted criteria referred to in paragraph 3 items 1, 2 and 4-7 of this Article; after that he shall rank the bids on the basis of these criteria and weighted points.

After completing the ranking procedure, the orderer shall compare the prices offered in the bids ranked above the minimum requirements level.

A bid referred to in paragraph 5 of this Article may be selected:

- 1) on the basis of the lowest price offered, or
- 2) on the basis of having received the best mark, combining the criteria referred to in paragraph 3 items 1, 2, 4 and 7 of this Article and the price offered.

Article 103

The awarding of a contract of consulting services may be performed in the negotiatory procedure following a prior announcement.

The negotiations referred to in paragraph 1 of this Article may be conducted:

- 1) simultaneously or
- 2) consecutively.

Simultaneous negotiations are negotiations with the bidders who have submitted acceptable bids in the procedure referred to in Articles 101 and 102 of this Law; alterations of the bids may be requested or allowed, provided that all the bidders have been given the opportunity to participate in the negotiations.

Following the negotiations, the orderer shall request all the remaining bidders to give their best and final bids concerning all the aspects of their proposals within a stipulated period of time.

When evaluating the bids, the prices offered shall be considered separately, only after the technical evaluation of the bids has been completed.

A contract of public procurement of consulting services shall be awarded to the bidder whose bid suits the orderer's needs the most, based on the criteria referred to in Article 102 of this Law and the weighted points assigned to these criteria in the manner outlined in the public invitation referred to in Article 101 of this Law.

Article 104

Consecutive negotiations comprise the establishment of the minimum requirements that the bids have to meet in terms of quality and the technical aspects referred to in Article 102 of this Law and the ranking of the bids.

The orderer shall be obligated to inform the bidders ranked below the minimum requirements level of this.

The orderer shall invite the top-ranked bidder to negotiate the price offered; the other bidders ranked above the minimum requirements level shall be informed that they may be invited for negotiations if the contract of public procurement in question is not awarded to the first invited bidder.

The procedure referred to in paragraph 3 of this Article shall last until the contract of public procurement is awarded, that is, until the remaining bids are rejected.

Tender as an integral part of another service

Article 105

In accordance with the provisions of this Law, the object of public procurement encompasses tenders for drafts, plans or designs which form an integral part of the procedure for awarding a contract of public procurement of the services referred to in:

- 1) Annex I B;
- 2) Annex I A, with the exception of voice telephony, radio telephony, paging and satellite services referred to in item 5 of the said Annex.

Tender as an independent service

Article 106

The object of public procurement also encompasses independent tenders for drafts, plans or designs, involving the awarding of prizes and paying the participants in the case of the services referred to in:

- 1) Annex I B;
- 2) Annex I A, with the exception of voice telephony, radio telephony, paging and satellite services referred to in item 5 of the said Annex.

**V. PUBLIC PROCUREMENT IN THE SPHERE OF
WATERWORKS, ENERGY PRODUCTION,
TELECOMMUNICATIONS AND TRAFFIC**

The object of public procurement

Article 107

The following shall be considered to be public procurement in the sphere of waterworks, energy production, telecommunications and traffic:

- 1) the supply or operation of permanent networks providing public services in connection with the production, transport or distribution of: drinking water, electric power, gas and heat, as well as supplying drinking water, electric power, gas or heat to these networks;
- 2) the exploitation of a specific geographic area for the purpose of exploring for or extracting oil and gas, exploring for or digging coal or other solid fuels, as well as the building, exploitation and maintenance of airports, river ports or other terminals for air or river transport carriers;
- 3) the operation of networks providing public services in the sphere of railway transport, automated systems, bus transport or telegraphy. In the case of transport services, it shall be considered that a network exists if the service in question is provided in accordance with the operating conditions (e.g. the maintenance of roads, the availability or frequency of the service in question) prescribed by the authorized organ;
- 4) the maintenance or operation of public telecommunications networks or the providing of telecommunications services, with the exception of those areas of public procurement where the orderers award contracts of purchase whose sole purpose is to enable them to provide telecommunications services, provided that other organizations may offer their services in the same area and under the same conditions.

Awarding a contract when special or exclusive rights are granted

Article 108

If the Republic, a territorially autonomous unit or local government has granted, through a special law, decree or other regulation, a special or exclusive right to perform the activities referred to in Article 106 of this Law, the holder of such a right shall be obligated, when procuring goods, services or work, to act like an orderer in the sense of the provisions of this Law.

Granting a special or exclusive right to perform the activities referred to in paragraph 1 of this Article shall not encompass granting concessions to a person who is not an orderer in the sense of the provisions of this Law.

The special or exclusive right referred to in paragraph 1 of this Article means that the holder of such a right may use expropriation for the purpose of building the networks or facilities referred to in Article 106, and that he may install the equipment for building a network on, below or above a public road.

In accordance with the provisions of paragraph 1 of this Article, the right referred to in Article 100 paragraph 1 of this Law, when its holder provides drinking water, electric power, gas or heat for a network operated by another person, shall also be considered to be a special or exclusive right.

Deciding on exemptions from the object of public procurement

Article 109

The providing of drinking water, electric power, gas or heat shall not be considered to be one of the activities referred to in Article 107 of this Law in the following cases:

1) in the case of providing drinking water or electric power:

(a) if a person who is not an orderer in accordance with the provisions of this Law draws drinking water or produces electric power, and the consumption of these goods is necessary for performing activities not specified in Article 107 of this Law;

(b) if the providing of a public network depends solely on the personal consumption of a person who is not an orderer in accordance with the provisions of this Law, and if this consumption does not exceed 30% of the total consumption of drinking water or electric power on the part of that person, taking into consideration the average consumption over the last three years, including the current year;

2) in the case of providing gas and heat:

(a) if the production of gas or heat on the part of a person who is not an orderer in accordance with the provisions of this Law is an unavoidable consequence of performing activities not specified in Article 107 of this Law, and

(b) if the providing of a public network is intended solely for the purpose of economic exploitation of such production and does not exceed 20% of the total annual income of the organization in question, taking into consideration the last three years, including the current year.

Additional procurement

Article 110

The object of public procurement in the sphere of waterworks, energy production, telecommunications and traffic may also be procurement:

- 1) connected with hydraulic engineering projects, irrigation or land drainage, provided that the quantity of water intended for water supply exceeds 20% of the total quantity of water provided through these projects, irrigation or land drainage;
- 2) connected with wastewater treatment or filtration.

Procurement in the sphere of waterworks, energy production, telecommunications and traffic that this Law does not apply to

Article 111

The provisions of this law shall not apply to public procurement in the sphere of waterworks, energy production, telecommunications and traffic in the following cases:

- 1) when the orderer responsible for providing or operating public telecommunications networks, or for providing telecommunications services awards a contract of buying and selling goods whose sole purpose is to enable him to provide one or several kinds of telecommunications services, provided that another person may freely offer his services in the same area and under the same conditions;
- 2) when the orderer awards a contract for the purpose of purchasing water;
- 3) when the orderer awards a contract for the purpose of providing electric power or providing fuel for electric power production;
- 4) when the orderer transports oil or natural gas through systems where only one bidder exists;
- 5) in the case of a public tender for designs which the orderer awards or organizes for purposes not specified in Article 107 of this Law;
- 6) in the case of services that the orderer awards to a mixed company, established by several orderers for the purpose of performing activities in the following areas:
 - (a) the supplying or operation of permanent networks intended for providing public services in connection with the production, transfer or distribution of drinking water, electric power, gas or heat, or supplying drinking water, electric power, gas or heat;

(b) the exploitation of a certain geographic area for the purpose of supplying airports, river ports or other terminals for air or river transport;

(c) the operation of networks providing public services in the sphere of railway traffic, automated systems, bus traffic and telegraphy. It shall be considered that a traffic network exists if the service in question is provided in accordance with the operating conditions (e.g. the maintenance of roads, the availability or frequency of the service in question) prescribed by the authorized organ;

(d) the supplying or the operation of public telecommunications networks or the providing of telecommunications services;

7) services that the orderer awards to an affiliated company, provided that the affiliated company in question has made at least 80% of its average overall income over the last three years from the services provided in the Republic, for the companies it is affiliated with;

8) providing public bus transport services, provided that other persons may provide those services in the same geographic area under the same conditions.

Also, the provisions of this Law shall not apply to public procurement contracts awarded to other companies for the purpose of resale or renting, provided that the orderer shall not have exclusive or special rights to the resale or renting the object of public procurement, and that other companies may freely sell or rent it under the same conditions.

The orderer shall be obligated to notify the Office of the public procurement contracts referred to in paragraph 2 of this Article.

Awarding a contract without a prior announcement

Article 112

The orderer may award a contract of public procurement without a prior announcement:

1) if no bids or no adequate bids have been received in the procedure involving a public invitation for submitting bids, provided that the original conditions of the procurement contract remain essentially unchanged;

2) if the contract in question is awarded solely for the purpose of research, experimentation, study or development, and not for profit or to compensate for research and development expenses, provided that the awarding of such a contract does not determine or limit any future awarding of contracts, when it would be necessary to ensure that there is competition among the bidders;

3) if, due to objective reasons or for reasons connected with the protection of exclusive rights, the contract in question may be executed by a specific supplier or provider of services;

4) if there occur any unforeseen circumstances which the orderer could not influence and on account of which he was unable to execute the procedure involving a public invitation within the stipulated period of time;

5) if the contract in question is awarded for additional deliveries by the original supplier intended for partial replacement of products, materials or installations, or for the extension of the range of existing products, materials or installations, in a situation where a change of supplier or provider of services would oblige the orderer to obtain materials with different technical characteristics, which would result in incompatibility or cause excessive technical difficulties in operation and maintenance;

6) for goods offered and purchased on commodity markets;

7) for additional work or services not included in the project originally awarded or in the contract originally concluded, which, due to unforeseeable circumstances, have become necessary for the execution of the contract of public procurement in question, provided that the contract be awarded to the contractor or service provider executing the original procurement contract:

(a) if such additional work or services cannot be separated, in technical or economic terms, from the main contract without harmful consequences for the orderer;

(b) if the additional work or services, even though they are separable from the original contract, are necessary for the subsequent phases of contract execution, provided that the total estimated value does not exceed 25% of the value of the original contract;

8) for new work or services which represent a repetition of similar services or work awarded to the contractor or service provider who has been awarded the previous contract, provided that the work or services in question fit the basic project for which the original contract was awarded after a public invitation. The orderer shall be obligated to announce such a possibility immediately after the issue of the first public invitation. The orderer may award a contract in this manner within a period of three years from the day of concluding the first contract;

9) for procuring goods sold under particularly favorable circumstances, at a price considerably below the market price;

10) for the purchase of goods under particularly favorable circumstances from a supplier undergoing a liquidation procedure, with the agreement of other creditors, in accordance with the regulations dealing with enforced settlement, liquidation and bankruptcy;

11) for services that are part of the continuation of a tender for designs organized in accordance with this Law, if the contract in question was granted to a participant or participants who have been awarded prizes, in which case the orderer shall be obligated to invite all the participants for negotiations;

12) for the services and goods of firms dealing with the training, professional rehabilitation and employment of invalids, if the procurement in question is directly connected with the training, professional rehabilitation and employment of such persons, provided that the firm in question fulfils the requirements referred to in Article 45 of this Law and that the Office has given its approval. The orderer shall be obligated to check the price and the quality of the object of procurement by gathering several bids, analyzing the expenses, comparing the quality or in some other way; he shall also be obligated to run checks taking into consideration the object of procurement as stated in his documentation.

Ban on limiting participation

Article 113

The right to participate in a tender for designs may not be limited by the territorial affiliation of the participants or by their character (physical or legal entity).

If tenders for designs are planned for a limited number of participants, the orderer shall be obligated to establish clear and non-discriminatory criteria for selection.

The number of candidates invited to participate in a tender for designs has to be sufficient to ensure that there is real competition (no less than five, and 20 at the most).

The jury evaluating the proposals that have been submitted shall be composed solely of physical persons who are not in any way connected with the participants in the tender.

If special professional qualifications are required from the participants in a tender, a minimum of one half of the jury members shall have the same or corresponding professional qualifications.

The jury shall be independent in decision making, and participation in the tender shall be anonymous.

The decisions of the jury shall be made on the basis of the criteria stated in the tender advertisement and in the tender documentation, in accordance with Article 55 of this Law.

Prior notice

Article 114

When awarding contracts of public procurement in the sphere of waterworks, energy production, telecommunications and traffic, at least once a year the orderer shall be obligated, in accordance with the provisions of Article 67, paragraph 2 of this Law, to give prior notice of:

1) the basic characteristics of the work he intends to contract, if its estimated value is not less than:

a) 300,000,000 dinars if the orderer performs activities in the sphere of telecommunications;

b) 25,000,000 dinars for procuring services not specified in Annex I A, with the exception of the services referred to in item 5 of the said Annex, if the orderer is involved in the drawing, transfer or distribution of drinking water, the transfer or distribution of electric power, the supply of airports, bus, trolleybus or streetcar transport, or the supply of river ports and other terminals;

c) 300,000,000 dinars if the orderer is involved in the transport or distribution of gas and heat, or the extraction and processing of oil and gas, or railway transport services;

2) the estimated total value of a contract of public procurement of services in each of the category of services specified in Annex I A that the orderer intends to award in the next 12 months, if the estimated value in question is not less than 50,000,000 dinars.

Updating the criteria and requirements

Article 115

If the orderer decides to make a selection in the qualification procedure or if he updates the criteria and requirements, he shall be obligated to set criteria and requirements that are not discriminatory towards the bidders.

Submitting certificates

Article 116

The orderer may request the candidates to submit certificates issued by the organs or organizations authorized to verify that the bidders fulfill the orderer's requirements concerning the standard of quality.

The certificates referred to in paragraph 1 of this Article shall refer to the systems for ensuring quality in accordance with the corresponding European standards series EN 29000, for which the authorized organs or organizations have to certify that they are in compliance with the European standards series EN 45000.

The orderer shall be obligated to recognize the equivalent certificates issued by organs or organizations established in other states if this is prescribed by an international agreement concluded by FR Yugoslavia.

The orderer shall be obligated to recognize other proof of equivalent measures of ensuring quality on the part of service providers who do not have access to the certificates referred to in paragraph 3 of this Article or are unable to obtain them in time.

Joint bid

Article 117

Bidders may submit a joint bid or negotiate as a group, in accordance with the provisions of Article 51 of this Law.

The orderer who demands in his advertisement that only physical or legal persons may be bidders or candidates may not reject bidders or candidates who perform their activities in accordance with the regulations of the state where their

legal residence is located, and who are allowed to perform the activity that is the object of the public procurement in question.

Application of other criteria and requirements

Article 118

In addition to the criteria referred to in Articles 54 and 55 of this Law, the orderer may apply other criteria for evaluating bids, if those criteria are prescribed by some other regulations that are in effect and if they give a certain advantage to bidders or candidates, and if such a way of awarding a contract of public procurement is not in violation of international agreements concluded by FR Yugoslavia.

The application of other criteria has to be announced in the public invitation and in the tender documentation.

If the strategic interest in awarding a contract of public procurement of goods or work is the elimination of regional differences or the provision of new jobs in underdeveloped regions, the manner of awarding a contract referred to in paragraph 1 of this Article may not be in contravention of international agreements concluded by FR Yugoslavia.

The Government shall be authorized to determine the strategic interests that apply when other criteria and requirements are set.

Observing the principle of reciprocity

Article 119

If some bidders offer products originating from a country with which FR Yugoslavia has not concluded an agreement that would enable Yugoslav bidders to have access to the market of that state on an equal footing, such bids may be rejected if more than 50% of the products offered in those bids originate from the state in question.

The origin of products shall be established in accordance with the relevant regulations.

In accordance with the provisions of paragraphs 1 and 2 of this Article, software used for equipping a telecommunications network shall be considered a product.

The orderer shall be obligated to review carefully the list of countries from which products that may be rejected in accordance with the provisions of paragraph 1 of this Article originate.

Suspension of awarding contracts of public procurement of services

Article 120

Having obtained the opinion of the federal Ministry authorized for economic relations with foreign countries, the Government may temporarily suspend the awarding of contracts of public procurement of services:

- 1) to bidders whose legal residence is located in a country with which FR Yugoslavia has not concluded an agreement on treating domestic and foreign bidders equally;
- 2) to bidders who are affiliated to the bidders referred to in paragraph 1 of this Article and whose legal residence is located in a state with which FR Yugoslavia has concluded an agreement on equal treatment of domestic and foreign bidders, but who are not directly and effectively connected with the economy of the Republic;
- 3) to bidders having submitted bids offering services from a state with which Yugoslavia has not concluded an agreement on equal treatment of domestic and foreign bidders.

Preferential awarding of a contract of public procurement

Article 121

If two or more bids are equal on the basis of the criteria stipulated in Articles 54, 55 and 56 of this Law, the orderer shall be obligated to give priority to the bids which:

- 1) if a contract of public procurement was awarded, could not be suspended on the basis of the provisions of Article 120 of this Law;
- 2) if a contract of public procurement was awarded, would not result in the orderer having to procure materials whose technical characteristics are different from those of the existing materials.

In accordance with the provisions of paragraph 1 of this Article, those bids whose prices do not differ by more than 3% shall be considered equal.

Archiving the documentation

Article 122

The orderers shall be obligated to keep the documentation to do with the awarding of contracts in the sphere of waterworks, energy production, telecommunications and traffic pertaining to:

- 1) the qualifications and selection of bidders, and the awarding of a contract of public procurement;

2) the implementation of the procedure without a prior announcement, in accordance with Article 112 of this Law;

3) the awarding of contracts of public procurement of services, the application of technical specifications and standards, and the selection of the method of public procurement, when the provisions of this Law have not been applied.

The orderer shall be obligated to keep the documentation referred to in paragraph 1 of this Article for at least four years from the day of the conclusion of a contract, and to forward the data to the authorized organ upon the request of the latter.

An orderer involved in the drawing, transfer and distribution of drinking water, electric power, bus and other city transport services, railway traffic and the operation of airports, river ports and other terminals, shall be obligated to inform the bidders of such activities if they request him to do so.

The information referred to in paragraph 3 of this Article shall be imparted orally, and if a bidder submits a special request, in writing.

Having received a request in writing from a bidder who has been eliminated, the orderer shall be obligated to forward the written information referred to in paragraph 4 of this Article on the following day and to inform him of the reasons why his bid has been rejected, of the advantages of the selected bid and of the name of the bidder who has been awarded the contract of public procurement in question.

VI. PUBLIC PROCUREMENT OF LOW VALUE

The notion of public procurement of low value and the manner of awarding public procurement contracts of low value

Article 123

Public procurement of low value, in accordance with the provisions of this Law, is procurement whose estimated value is lower than the value determined by the law regulating the annual Republican Budget.

Each year, when preparing the annual Republican Budget proposal, the Government shall be obligated to determine the value representing the upper limit in the budget year below which orders may execute the procedure of public procurement of low value.

In the procedure of public procurement of low value, the orderer shall be obligated to obtain at least three bids and to notify the bidders of the elements included in the price of public procurement (e.g. compensation for transport and insurance expenses, tax duties, turnover tax, excise tax, etc.).

The bidders may submit only one bid each and may not alter it.

The orderer and the bidders shall not be allowed to negotiate elements of the bids.

A contract of public procurement of low value shall be awarded to the bidder who offers the lowest price under the same conditions.

Preparation of internal acts

Article 124

The orderer shall be obligated to regulate the procedure of awarding a contract of public procurement of low value by means of an internal act, in conformity with the provisions of this Law.

In the internal act referred to in paragraph 1 of this Law, the orderer shall in particular regulate:

- 1) the manner of executing public procurement concerning the estimated value, technical and technological requirements and the financial consequences of the procurement in question;
- 2) the manner of preparing the tender documentation;
- 3) the persons authorized to collect bids by telephone, telefax and the like, and in particular the method of verifying the price offered;
- 4) the manner of documenting the bids and keeping the documentation;
- 5) the manner of executing the contract once it is concluded and monitoring its execution, in particular during the guarantee period;
- 6) the manner of using order forms and other standard documents prepared in advance in the course of this procedure; the orderer shall be obligated to prescribe a limit for using a standard document prepared in advance for each individual contract of public procurement.

The orderer shall be obligated to determine the manner of proving that the minimum requirements for bidders have been complied with, in accordance with the provisions of this Law.

Keeping records of concluded contracts of public procurement of low value

Article 125

The orderer shall be obligated to keep special records of contracts of public procurement of low value concluded in the procedure of awarding contracts for public procurement of goods, services and work.

VII. RECORDS OF PUBLIC PROCUREMENT

1. Keeping records

Types of data on public procurement

Article 126

The orderers shall be obligated to collect and keep records of certain data concerning awarded contracts of public procurement, in accordance with the provisions of this Law; they shall be obligated to keep records separately for contracts of public procurement of goods, public procurement of services and public procurement of work, as well as public procurement in the sphere of waterworks, energy production, telecommunications and traffic.

In the case of awarding contracts of public procurement of services referred to in item 5 of Annex I A, records need not be kept if the value of the public procurement in question does not exceed 12,500,000 dinars.

The Minister of Finance and Economy shall prescribe the forms for entering data on public procurement.

The content of a report

Article 127

If the orderer is a direct beneficiary of budget funds, a report on contracts of public procurement shall contain the following information:

- 1) the estimated total value of concluded contracts;
- 2) the number and the value of concluded contracts, and the type of procedure used in awarding a contract, the type of goods, work or services, the name of the other party to the contract and his legal residence. If the contract in question has been awarded in the negotiatory procedure, the basis referred to in Article 23 of this Law shall be stated, as well as the number and the value of contracts concluded with parties to the contract whose legal residence is in the Republic of Montenegro or abroad.

If the orderer is not a direct beneficiary of budget funds, a report on contracts of public procurement shall contain only the data referred to in paragraph 1 item 2 of this Article.

The orderer shall be obligated to record the data on contracts of public procurement of low value separately.

The Minister of Finance and the Economy shall prescribe the content of the report referred to in paragraph 1 of this Article more closely.

The orderer shall be obligated to forward a report on contracts of public procurement concluded in the course of the previous year to the Office by April 30th at the latest.

The Office shall be obligated to compile a cumulative report and to forward it to the Government by July 31st of the current year at the latest.

VIII. PROTECTION OF THE RIGHTS OF THE BIDDERS

The subject of ensuring legal protection

Article 128

In all the phases of the public procurement procedure, the protection of the rights of bidders shall be ensured by the Office, through the Committee for the Protection of the Rights of Bidders (hereinafter referred to as: the Committee), established by the Office.

The composition and the appointment of the Committee

Article 129

The Committee shall have a Chairman and four members.

The Chairman and the members of the Committee shall be appointed by the Government, acting upon the proposal of the Minister of Finance and the Economy.

The Chairman of the Committee shall be a graduate lawyer who has passed the Bar examination.

A minimum of two members of the Committee shall be graduate lawyers, and the remaining members may be graduate economists or engineers.

The term of office of the Chairman and the members of the Committee shall be four years; upon its expiry, they may be appointed again.

The manner of work of the Committee

Article 130

The manner of the work of the Committee shall be determined by a special act passed by the Committee.

Once a year, the Committee shall submit a report on its work to the Government and the National Assembly.

Keeping the secrecy of data

Article 131

The members of the Committee shall keep the secrecy of data pertaining to state, military, professional or business secrets, and shall treat the documents in accordance with their level of confidentiality.

Submitting a request for the protection of rights to the Committee

Article 132

A request for the protection of rights may be submitted by any person who has participated in the public procurement procedure as a bidder (hereinafter referred to as: the submitter) and is of the opinion that his rights have been violated in the public procurement procedure.

A request for the protection of rights in the public procurement procedure may not call into question the criteria for evaluating the bids or any restrictions on participation imposed by the orderer, unless they are in contravention of this Law.

Consequences of initiating the procedure for the protection of rights

Article 133

A request for the protection of rights in the public procurement procedure shall result in delaying any further activities of the orderer in awarding a contract of public procurement.

Acting upon the proposal of the Committee, to do with a request submitted by the orderer or the submitter, the Office may decide that the request for the protection of rights should not delay any further activities of the orderer in the procedure of awarding a contract of public procurement.

Deadlines for submitting requests for the protection of rights

Article 134

A request for the protection of rights may be submitted in any phase of the public procurement procedure, unless otherwise stipulated by this Law.

A request for the protection of rights may not be submitted if the reasons for submitting the said request were known to the bidder, or could have been known to him, before the orderer made the decision on awarding the contract, but he failed to submit a request for the protection of rights before the orderer made his decision.

After the passing of the decision on awarding a contract of public procurement, the deadline for submitting a request for the protection of rights shall be eight days from the day of awarding the contract of public procurement.

The manner of submitting a request for the protection of rights

Article 135

A request for the protection of rights shall be submitted to the orderer in two copies; the submitter shall inform the Office at the same time of having submitted the said request.

A request for the protection of rights shall be submitted to the orderer by registered post, fax or e-mail.

A request for the protection of rights has to contain justification.

The submitter shall be obligated to pay a tax in the amount of 40,000 dinars into the appropriate account when submitting a request.

In the case of public procurement of low value, the tax shall be in the amount of 20,000 dinars.

The submitter shall be obligated to state the following information in the request:

- 1) the name and address of the submitter;
- 2) the name and address of the orderer;
- 3) the public procurement contract which is the subject of the request for the protection of rights and the notice of awarding the said contract of public procurement, if it has been forwarded to the bidder;
- 4) the violation(s) of the provisions of this Law concerning the procedure of public procurement;
- 5) the facts that prove that the provisions of this Law concerning the procedure of public procurement have been violated;
- 6) a certificate of having paid the tax referred to in paragraph 4 or 5 of this Article.

If the orderer estimates that the request for the protection of rights submitted does not contain all the information referred to in paragraph 6 of this Article, or that it is not possible to establish, on the basis of the data supplied in the request, how the public procurement procedure was violated, he shall invite the submitter to present additional information within three days of having received the request for additional information.

If the submitter fails to provide the additional information requested within the period stipulated in paragraph 7 of this Article, the orderer shall reject the request.

Prior verification of a request for the protection of rights

Article 136

After receiving a request for the protection of rights, the orderer shall check whether it has been submitted in a timely manner and by a person referred to in Article 132 of this Law.

If a request for the protection of rights has been submitted in an untimely manner, or if it has not been submitted by a person referred to in Article 132 of this Law, the orderer shall reject such a request and notify the Committee of it.

If a request for the protection of rights has been submitted in a timely manner and by an interested party, the orderer shall consider the reasons pointed out by the submitter.

Authorization of experts

Article 137.

The orderer shall be obligated to request the Office to appoint an expert who will participate in the procedure initiated by a request for the protection of rights.

The Office shall appoint an expert from a list of experts compiled in cooperation with the Chamber within three days of having received the orderer's request.

When selecting an expert, the Office shall take into consideration his knowledge of the regulations dealing with public procurement, as well as the regulations dealing with the particular area of public procurement involving the contract of public procurement which was the subject of a request for the protection of rights.

The appointed expert shall be obligated to examine the documentation of the orderer and present a justified opinion about potential violations of the provisions of this Law concerning the procedure of public procurement within eight days of having received the decision on his appointment.

If the expert fails to forward his opinion within the deadline stipulated in paragraph 4 of this Article, the orderer shall decide on the request without the expert opinion and inform the Office of the expert's inactivity.

If the orderer does not take into consideration the expert opinion when deciding on a request for the protection of rights, he shall be obligated to state this and to provide justification for doing so.

The Minister of Finance and the Economy shall prescribe the conditions for appointing an expert referred to in paragraph 1 of this Article more closely.

Deciding on a request for the protection of rights

Article 138

After the prior verification referred to in Article 136 of this Law, the orderer shall decide on a request for the protection of rights by either:

- 1) annulling the public procurement procedure in its entirety or partly, or
- 2) rejecting the request for the protection of rights.

The orderer shall be obligated to pass the decision referred to in paragraph 1 of this Article within 20 days of having received the request for the protection of rights.

If the orderer fails to pass the decision within the period stipulated in paragraph 2 of this Article, it shall be considered that the request has been rejected.

Lodging a complaint against the orderer's decision on a request for the protection of rights

Article 139

The orderer shall be obligated to inform the submitter in writing of his decision to reject the request for the protection of rights within three days of having passed the decision.

When forwarding the information referred to in paragraph 1 of this Article, the orderer shall invite the submitter to forward a written statement on whether he will continue the procedure before the Committee or not, within three days of having received the orderer's decision.

If the submitter forwards a written statement to the effect that he will continue the procedure before the Committee, the orderer shall be obligated to forward the request for the protection of rights, together with the documentation and his decision, to the Committee within three days of having received the written statement.

If the submitter does not act in the manner and within the period of time referred to in paragraph 2 of this Article, the orderer shall decide to terminate the procedure.

It shall be allowed to lodge a complaint against the decision referred to in paragraph 4 of this Article within three days of the day of delivering the decision to the submitter.

Procedure before the Committee for the Protection of the Rights of Bidders

Article 140

The procedure before the Committee shall continue on the basis of the request submitted and the documentation referred to in Article 139, paragraph 3 of this Law.

The Committee shall decide within the framework of the request submitted.

In the case of violation of the basic principles of public procurement, the Committee shall use all the evidence that it considers conducive to the clarification of the problem and to the passing of a lawful and correct decision.

Deadlines

Article 141

The Committee shall pass its decision within 15 days of having received a request for the protection of rights.

The deadline referred to in paragraph 1 of this Article may be extended by five days if the situation warrants it, of which the Committee shall inform the submitter.

The decision referred to in paragraph 1 of this Article shall be forwarded to the submitter and the orderer.

Adding to a request for the protection of rights

Article 142

If the Committee estimates that the request in question does not contain all the data referred to in Article 135 of this Law, or that it is not possible to establish, on the basis of the information provided in the request, what violations of the provisions of this Law are being pointed out, it will invite the submitter to forward additional information within eight days of having received the invitation.

If the submitter fails to comply with the provisions of paragraph 1 of this Article, the Committee shall reject such a request.

Before reaching a decision, the Committee may request the information it considers necessary for passing a decision from the authorized organs and organizations.

The request for information referred to in paragraph 3 of this Article shall contain justification.

The expenses of the procedure before the Committee

Article 143

Each party to the procedure before the Committee shall bear its own expenses, incurred through its actions.

In a separate request, to be forwarded to the Committee, the parties shall state the costs of the procedure for which they request compensation; the losing party in the procedure shall compensate the other party's expenses.

The Committee's decision on the costs of the procedure shall be enforceable.

The Committee's decision

Article 144

The Committee shall decide on a request for the protection of rights by either:

- 1) annulling the public procurement procedure in its entirety or partly, or
- 2) rejecting the request as unwarranted.

The Committee shall be obligated to provide justification for its decision.

The orderer shall be obligated to act in accordance with the Committee's decision.

No complaint may be lodged against the Committee's decision, nor may administrative proceedings be initiated against it.

The submitter may sue the orderer for damage before the authorized court of law.

IX. NULLITY OF CONTRACT

Nullity

Article 145

A contract of public procurement shall be null and void:

- 1) if it has been concluded in contravention of the provisions of this Law regulating the manner and the procedure of awarding contracts of public procurement;
- 2) if the orderer has acted in contravention of the provisions to do with determining the value of public procurement per lot;
- 3) if it has been concluded in order to settle rights and obligations, without executing the public procurement procedure;

- 4) if the orderer has awarded the contract under conditions different from those prescribed by this Law or to a bidder who has not been selected as the best one;
- 5) if the orderer awards the execution of the contract, or authorizes a third person to execute the contract, or a person who is not an orderer in accordance with the provisions of this Law, so as to avoid the application of this Law;
- 6) if the alterations of and additions to the original contract have been effected in contravention of the provisions of Article 87, 92 and 100 of this Law;
- 7) if it has been concluded in contravention of the Committee's decision, and
- 8) if it has been concluded without a prior procedure of awarding public procurement, which the orderer was obligated to execute in accordance with the provisions of this Law.

X. PENAL PROVISIONS

Violations

Article 146

The orderer shall be fined in the amount of 100,000 to 200,000 dinars:

- 1) if he awards a contract of public procurement without executing the prior procedure prescribed by this Law (Article 20);
- 2) if he commences the public procurement procedure before the prescribed conditions are fulfilled (Article 24 and 25);
- 3) if the subject of a contract, contract requirements, technical specifications or other elements of the public invitation are adjusted to a specific bidder, or if a contract is awarded to a bidder who has participated in the preparation of the tender documentation or part thereof (Articles 6 and 36);
- 4) if he awards a contract in violation of the principle of the equality of bidders (Article 8);
- 5) if he does not protect the data contained in the tender documentation, in accordance with the degree of confidentiality (Articles 9-12 and 82);
- 6) if he does not keep records or keep the documentation of public procurement (Article 12);
- 7) if he does not forward the information on bids rejected due to attempts at bribery to the Office (Article 15);
- 8) if he does not forward the tender documentation to everyone asking for it, in accordance with the public invitation (Articles 28 and 29);
- 9) if he fails to observe the deadlines for issuing a public invitation and submitting bids (Articles 59-68);
- 10) if he fails to publish the advertisements prescribed in Article 70 of this Law in "The Official Gazette of the Republic of Serbia" or if he sends them to be

published in other public media without having sent them to “The Official Gazette of the Republic of Serbia” for publication (Article 69);

11) if he does not observe the technical norms, standards and other technical regulations currently in effect while preparing the tender documentation (Articles 35-44);

12) if he sets conditions and criteria for participation that are not in conformity with this Law, or if he alters the conditions and criteria after the publication of a public invitation without notifying the bidders of this (Articles 29 and 45-58);

13) if he fails to forward the information about the executed public procurement procedures (Article 126);

14) if he does not act in the manner prescribed by this Law in connection with a request for the protection of rights in the public procurement procedure (Article 140);

15) if he fails to comply with the Committee’s decision (Article 144).

The responsible official of the orderer shall be fined in the amount of 7,000 to 10,000 dinars for a violation referred to in paragraph 1 of this Article.

Article 147

A bidder shall be fined in the amount of 100,000 to 200,000 dinars:

1) if he fails to notify the orderer of alterations to the bid (Article 46. paragraph 4);

2) if he gives inaccurate information concerning professional references (Article 4);

3) if he gives inaccurate information in the documents which prove that he meets the requirements set by the orderer (Articles 46 and 48).

The responsible official of the bidder shall be fined in the amount of 7,000 to 10,000 dinars for a violation referred to in paragraph 1 of this Article).

A physical person acting as a bidder shall be fined in the amount of 7,000 to 10,000 dinars for a violation referred to in paragraph 1 of this Article.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 148

On the day this Law comes into effect, the provisions of regulations that are in contravention of this Law shall no longer apply to public procurement of the Government, ministries, special organizations, public services and other organizations founded by the Republic.

The provisions of this Law shall apply to the public procurement of other subjects considered to be orderers according to this Law as of January 1st 2003.

Public procurement procedures initiated by persons considered to be orderers according to this Law for which public invitations were issued before the coming of this Law into effect shall be executed in accordance with the regulations that were in effect when they commenced.

Article 149

Until the law regulating the Republican Budget comes into effect in 2003, public procurement whose estimated value is below 350,000 dinars shall be considered to be of low value in accordance with this Law.

Article 150

The Office of Public Procurement shall commence work within one year of the day this Law comes into effect at the latest.

Until the Office referred to in paragraph 1 of this Article commences work, its work shall be performed by the Republican Office of Common Affairs, which shall inform the Government of its work once a month.

Article 151

Until the regulations referred to in Article 137, paragraph 7 of this Law come into effect, the Government shall give its approval to individual decisions on appointing experts.

Article 152

This Law shall come into effect on the eighth day after its publication in "The Official Gazette of the Republic of Serbia".

ANNEX I A:

Services

Category no.	Object
1.	maintenance and repair
2.	land transport (except for railway transport), including transport in armored vehicles and courier services (except for postal transport)
3.	air transport of passengers and goods (except for postal transport)
4.	land and air postal transport (except for railway transport)
5.	telecommunications (except for voice telephony, radio telephony, paging and satellite services)
6.	financial services: - insurance services, - banking and investment services (except for procurement of financial services in connection with issuing, selling, buying or transferring securities or other financial instruments, and the services of the National Bank of Yugoslavia)
7.	computer and related equipment
8.	research and development (except for procuring research and development services where the research results are not used solely by the orderer for his own needs, provided that the orderer bears the costs in their entirety)
9.	accounting, auditing and bookkeeping
10.	market research and public opinion surveys
11.	management consulting (except for arbitrage, settlement and similar services)
12.	architectural, engineering, urban planning and landscape architecture services; technical testing and analyses
13.	advertising
14.	building cleaning and real estate management services
15.	publishing and printing services on a part-time or contractual basis
16.	garbage removal, sanitary and other related services

ANNEX I B:

Services

Category no.	Object
17.	hotel and restaurant services
18.	railway transport services
19.	river transport services
20.	additional and auxiliary transport services
21.	legal services
22.	personnel recruitment
23.	investigative and security services (except for transport in armored vehicles)
24.	education and professional training
25.	health care and social services
26.	recreational, cultural and sports services
27.	other services

ANNEX II:

Construction work

Class	Group	Sub-group	Description
50			CONSTRUCTION AND CIVIL ENGINEERING
	500		<i>General-type construction and civil engineering work (without special specifications) and demolition</i>
		500.1.	General-type construction and civil engineering work (without special specifications)
		500.2.	Demolition
	501		Construction of objects and parts thereof
		501.1.	General-type construction work
		501.2.	Construction of eaves and roofs
		501.3.	Construction of chimneys, furnaces and fireplaces
		501.4.	Protection against water and damp
		501.5.	Renovation and maintenance of external walls (refilling brick joints with mortar, cleaning, etc.)
		501.6.	Raising and dismantling scaffolding
		501.7.	Other specialized activities in connection with construction work, including carpentry
	502		<i>Civil engineering: building roads, bridges, railways, etc.</i>
		502.1.	General-type civil engineering work
		502.2.	Earthwork
		502.3.	Building bridges, tunnels and shafts; drilling
		502.4.	Hydraulic engineering and water management (rivers, canals, ports, tributaries, dams, etc.)
		502.5.	Building roads, railway lines, airports and sports facilities
		502.6.	Specialized civil engineering work in connection with water (irrigation, land drainage, waterworks, wastewater removal, sewage, etc.)
		502.7.	Other types of civil engineering work, including specialized activities in other areas of civil engineering
	503		Installations
		503.1.	General-type industrial work
		503.2.	Installations for supplying gas and water, and sanitary equipment installations
		503.3.	Heating and ventilating installations (central heating, air conditioning, ventilation)
		503.4.	Isolation work
		503.5.	Electrical installations
		503.6.	Installation of aerials, lightning conductors, telephones, etc.
	504		Finishing construction work
		504.1.	General-type finishing construction work
		504.2.	Façade and stucco work
		504.3.	Interior woodwork (including laying parquet floors)
		504.4.	Painting, glazing and wallpapering
		504.5.	Laying tiles and other floor and wall covering

		504.6.	Other types of finishing and additional construction work (installation of fireplaces, etc.)
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