

# Act CVIII of 2011 on Public Procurement<sup>1</sup>

(NOT OFFICIAL TRANSLATION, PREPARED BY THE PUBLIC PROCUREMENT AUTHORITY)

## PART ONE

### GENERAL PART

#### CHAPTER I

#### Principles and main purpose of the Act

##### Article 1

This Act regulates contract award procedures and rules concerning the legal remedies related thereto for the sake of a reasonable and effective use of public funds and with the aim of providing for the public control thereof, and furthermore with the aim of ensuring fair competition in public procurement. In addition, the purpose of this Act and the legislation based on its execution is to enhance access of small and medium-sized enterprises to contract award procedures, to promote sustainable development, social considerations of the State and lawful employment.

##### Article 2

1. In the contract award procedure, the contracting authority shall ensure and the economic operators shall respect the fairness, the transparency and the public nature of competition.
2. The contracting authority shall ensure equal opportunities and equal treatment for economic operators.
3. In the course of the contract award procedure, contracting authorities and economic operators shall act in good faith and in compliance with the requirements of honesty and proper practice of the law.
4. When the contracting authority uses public funds, it shall act respecting the principle of effective and responsible management.
5. **In the course of the contract award procedure, national treatment shall be applied to economic operators established in the European Union as well as to goods originating in the Community. As regards economic operators established outside the European Union and goods originating outside the Community, national treatment is to be applied in accordance with the international obligations assumed by Hungary and the European Union in the field of public procurement.**<sup>2</sup>
6. Contract award procedures shall be conducted in Hungarian. The contracting authority may make it possible to use another language instead of Hungarian but it shall not be made compulsory.

##### Article 3

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<sup>1</sup> In a single composition with Act CLXVI of 2011 on the Amendment of Certain Acts Founding the 2012 Budget of Hungary, with Act CLXXX of 2011 on the Amendment of Other Judicial Acts Related to Court Enforcement, with Act CLXXXII of 2011 on the Amendment of Certain Acts with Subject Related to Energetics, with Act CCI of 2011 on the Amendment of Certain Acts Related to the Fundamental Law, with Act CXCIV of 2011 on Public Finances, with Act V of 2012 on Transitional, Amended and Repealed Rules Related to the Act on Civil Servants, and on the Amendment of Certain Related Acts, with Act XXXV of 2012 on the amendment of Act LIII of 2006 on the Acceleration and Simplification of the Execution of Investments Having Particular Importance in Respect of National Economy, with Act XCIII of 2012 on the Formation of Counties and the Modification of Certain Related Acts, with Act CCVIII of 2012 on the Amendment of Certain Acts with the Aim of Founding the 2013 Budget of Hungary and on Other Amendments of these Acts, with Act CCXI of 2012 on the Amendment of Specific Judicial Acts, and with Act CCXVII of 2012 on the Participation in the Community Trade System of Greenhouse Gases and in the Implementation of the Effort Sharing Decision, with Act XXXIV of 2013 on the institution collaborating in the settlement of debates on design and execution of buildings, on the amendment of other acts in connection with hindering debts related to construction and building and late payments, with Act CXVI of 2013 on the Amendment of Act CVIII of 2011 on public procurements, **and with Act CXCVI of 2013 on to the Amendment of Certain Acts Related to the Integration of Co-operative Loan Institutions.**

<sup>2</sup> This amendment entered into force on 1 July 2013.

Derogation from the provisions of this Act is authorised only to the extent that such derogation is expressly allowed by this Act. For the purposes of the application of the provisions of this Act as well as for the purposes of the issues which are not covered by an act of legislation, the objectives of the rules concerning public procurements and the basic principles of public procurement shall be observed in the course of preparing and the executing the contract award procedure, concluding and performing the contract. The provisions of Act IV of 1959 on the Civil Code (hereinafter referred to as ‘the Civil Code’) shall be applied to the contracts concluded on the basis of a contract award procedure, with the differences set out by this Act.

## CHAPTER II

### Definitions

#### Article 4

For the purposes of this Act the following terms shall be defined as follows:

1. ‘*tenderer*’: an economic operator who (which) submits a tender in a contract award procedure;
2. ‘*subcontractor*’: an economic operator who (which) participates directly in the performance of the contract concluded in a contract award procedure involved by the tenderer, except for
  - (a) economic operators who (which) pursue their activity on the basis of an exclusive right,
  - (b) manufacturers, distributors and suppliers of parts and basic materials intended to be employed for the performance of the contract,
  - (c) in case of public works, suppliers of building material;
3. ‘*procurement related to fundamental security interests of the country*’: any procurement the subject-matter of which is directly linked to public works, public supply and services, which may exercise an influence on the physical, environmental, health, economic, national defense security of the population, including procurement in the benefit of preventing immediate flood damage in times of flooding emergency;
4. ‘*dynamic purchasing system*’: a completely electronic process for executing commonly used public procurement, the characteristics of which meet the requirements laid down by the contracting authority, and which is limited in duration, and throughout its validity entry into this system may be requested by any tenderer that, or who satisfies the selection criteria, is not under the force of a ground for exclusion, and has submitted a preliminary tender that complies with the documentation;
5. ‘*electronic auction*’: a repetitive process forming a part of the contract award procedure that, following the evaluation of tenders according to Article 63 (4), allows the presentation of a new offer more favourable with respect to the amount of the consideration, as well as to the specific substantial elements of the award criteria for the tender, and enables the offers to be ranked automatically, by means of an electronic device;
6. ‘*electronic means*’: application of wired, wireless, optical, or any other electromagnetic tools for data processing, data storing and data forwarding;
7. ‘*European Union and Member States of the European Union*’: the European Economic Area and the states that are signatories to the Agreement on the European Economic Area, except with respect to Article 9 (1) (d);
8. ‘*sustainability criteria*’: are the criteria laid down in the Government Decree on the promotion of sustainability criteria, in particular the criteria relating to the application of solutions enabling resource- and energy efficiency, dematerialization, the cutting of emissions of greenhouse gas, and the least possible environmental effect during the life cycle of a given product/service;
9. ‘*economic operator*’: any natural or legal person, any company without legal personality, individual firm, any entity which has legal capacity under its personal right who or which offer on the market the execution of public works and/or the construction of any work, the supply of goods or the provision of services;

10. *'false data'*: data known accordingly, but disclosed as distorted;
11. *'false declaration'*: a declaration containing false data;
12. *'framework agreement'*: a specific agreement between one or more contracting authorities and one or more tenderers, the purpose of which is to establish the substantial terms governing public contracts to be signed between the parties in a specific manner during a given period, in particular with regard to the consideration and, if possible, the quantity envisaged;
13. *'preparation of contract award procedure'*: completion of the activities required for launching the relevant contract award procedure, including in particular the assessment and market survey relevant to the public contract in question, the assessment of the estimated value of the public contract and preparation of the contract notice launching (announcing) the procedure, of the contract notice and of the documentation;
14. *'commencement of the contract award procedure'*: The public procurement shall be deemed to commence on the date of dispatch of the contract notice launching the contract award procedure, the date of dispatch of the direct invitation to participate [Article 38(1)] or in the case of a negotiated procedure without prior publication of a contract notice the date when the invitation to tender, in the case of application of Article 99(2) the invitation to negotiation is sent, or in the absence of such documents, the date of the starting of the negotiation;
- 15.<sup>3</sup>**
16. *'dominant influence'*: it can be exercised by an entity which meets at least one of the following conditions in relation to another entity:
- (a) it alone controls the majority of the votes of members (shareholders) by virtue of its participation in that entity or its share as a member thereof,
  - (b) it alone controls the majority of the votes, pursuant to an agreement it has concluded with other members (shareholders) or secured in any other manner,
  - (c) it is entitled to elect (appoint) or recall more than half of the entity's chief officers (decision-makers, managers) or members of the entity's supervisory board (supervisory, controlling authority, body).
17. *'postal services'*: a term as defined in the Act on Postal Services, noting that the weight limits defined therein concerning the notion of postal consignments shall not be applicable;
18. *'services differing from postal services'*:
- (a) mail-service management services (mail management services both preceding and subsequent to dispatch);
  - (b) added-value services linked to electronic postal services and provided entirely by electronic means (including the secure transmission of encrypted documents by electronic means, address management services, and transmission of registered electronic mail);
  - (c) services concerning postal consignments not included in point 17 (such as direct mail bearing no address);
  - (d) financial services as defined in Group 6 of Annex 3, and Article 9(5)(b), including payment services;
  - (e) philatelic services;
  - (f) logistics services concerning postal consignments (services combining physical delivery or warehousing with other non-postal functions);

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<sup>3</sup> This point was repealed on 1 July 2013.

19. *'candidate'*: any economic operator who (which) submits a request to participate in the first stage, that of participation, of a contract award procedure consisting of more than one stages;
20. *'organization possessing social employment permit'*: a term as defined in the Government Decree containing the rules concerning the granting of permission for and the exercising of supervision over social employment, and applying for social employment support and supervising the use of such support, which was issued on the basis of the Act on Social Governance and Social Benefits;
21. *'support'*: the granting of funds or other pecuniary benefits to the contracting authority for the performance of the public procurement contract, excluding tax incentives and guarantees;
22. *'design contest'*: is a procedure regulated in detail in a separate act of legislation, which makes it possible for the contracting authority to acquire a plan or design, especially in the field of architecture and construction, that has been chosen by a jury, subsequent to a contest with or without a prize.
23. *'sheltered place of employment'*: employment by an accredited employer in case the employer ensures a transit or permanent employment, and as a minimum 50% of its employees are deemed to be persons with a reduced ability to work pursuant to Article 22 of Act CXCI of 2011 on the benefits of persons with a reduced ability to work and on the amendment of specific acts.<sup>4</sup>

### **CHAPTER III**

#### **Scope of the Act**

##### **Article 5**

Contract award procedures shall be conducted by entities defined as contracting authorities with the aim of concluding contracts for pecuniary interest for the realization of purchases of specified subject and value (public procurement).

#### *Contracting authorities*

##### **Article 6**

1. For the purposes of this Act, the following entities shall be considered as contracting authorities:
  - (a) ministries, the Prime Minister's Office, the body authorised to invite tenders in a centralised public procurement procedure;
  - (b) the State, local governments and all the budgetary organs, public foundations, local and national self-governments of national minorities, associations of local governments, organisations designated by a local government to exclusively invite tenders for locally centralised procurement and organisations designated by more than one local governments or by communities with a single common governing body to exclusively invite tenders for centralised procurement system, associations of local governments for the purpose of regional development, development councils at area level;
  - (c) entities having legal capacity, which were set up to carry out non-industrial and non-commercial activities of general interest, over which one or more entities specified in points (a)-(d), the Parliament or the Government can exercise, either separately or together, a dominant influence or their operation is financed by one or more of those entities (bodies) to an extent exceeding 50%;
  - (d) economic organisations specified in Article 9(1)(k);
  - (e) economic organisations not covered by points (a)-(d) of this Act [Article 685(c) of the Civil Code] pursuing one of the public utilities activities specified in Article 114(2), or having been established to pursue such activities, and over which one or more entities mentioned in points (a)-(d) can exercise, either directly or indirectly, a dominant influence in the course of the contract award procedure conducted by it with the aim of ensuring its public utilities activity defined in Article 114(2)<sup>5</sup>

<sup>4</sup> This amendment entered into force on 1 January 2013.

<sup>5</sup> This amendment entered into force on 1 January 2013.

- (f) entities not covered by points (a)-(e) pursuing one or more public utilities activities specified in Article 114(2) on the basis of a special or exclusive right in the course of a contract award procedure conducted by it with the aim of ensuring its public utilities activity pursuant to Article 114(2);
  - (g) in relation to public procurements to be realised using support, entities not covered by points (a)-(f) – except for sole traders in case of procurements not reaching EU threshold – whose procurement of services, supplies or public works is supported directly by one or more entities subject to points (a)-(d) to an extent exceeding 50% in case of procurements equalling or exceeding EU threshold, and to an extent exceeding 75% in case of procurements reaching national threshold but not reaching EU threshold;
  - (h) in the course of the realisation of a given public procurement, the entities not covered by points (a)-(g) conducting a contract award procedure on the basis of an obligation assumed by them voluntarily or in a contract, or on the basis of an obligation deriving from a separate act of legislation;
2. For the purposes of paragraph 1(c), in relation to the qualification of the non-industrial and non-commercial activity of general interest, the question whether the entity specified therein, in addition to its activity of general interest, pursues any other activity with the aim of earning profit, even if such an activity represents more than 50 % of its activities, is not relevant for establishing the entity's quality as a contracting authority.
  3. Credit institutions or finance companies considered contracting authorities pursuant to paragraph 1 shall not be considered as such for the purposes of financial or associated services and investment or associated services utilised by such credit institutions for their own purposes.
  4. For the purposes of paragraph 1(f) special or exclusive rights mean rights based on legislation, or granted by a competent authority by way of administrative decision (authorisation), and on the basis of which one or only a limited number of entities can be authorised to carry out an activity defined in Article 114(2), and which substantially affects the ability of other entities to carry out such activities.

*Subject-matters of public procurements*

**Article 7**

1. Subject-matters of public procurements shall be the following: public supply, public works, public services, public works concessions and service concessions.
2. Public supply contracts are contracts for pecuniary interest having as their object the acquisition by a contracting authority, with or without option to buy, of rights of ownership or right of use, of exploitation of negotiable movable property which can be taken into possession. Public supply contracts shall in addition include installation and putting into operation.
3. Public works contracts are contracts for pecuniary interest having as their object one of the following types of work to be ordered (and accepted) by a contracting authority:
  - (a) the execution, or both the execution and design as defined in a separate act of legislation, of works related to one of the activities listed in Annex 1;
  - (b) the execution, or both the execution and design as defined in the relevant legislation, of a work;
  - (c) the execution, by whatever means or in whatever manner, of a work corresponding to the requirements specified by the contracting authority concerned.
4. Public service contracts are contracts for pecuniary interest which are not covered by the definition of public supply nor that of public works and which have as their object an activity in particular ordered by a contracting authority.
5. Public works concession is a public works contract whereby the consideration by the contracting authority for the works to be carried out consists either in the right to exploit the work for a specified period of time or in this right together with monetary consideration, and in which the whole risk or at least the major part of the risks related to the exploitation are borne by the winning tenderer.

6. Service concession is a public service contract whereby the contracting authority transfers the right to exploit commercially the provision of the relevant services (the right of exploitation) for a specific period of time and the consideration is the right of exploitation or the transfer of this right together with a monetary consideration, and in which the whole risk or at least the major part of the risks related to the exploitation are borne by the winning tenderer.

### **Article 8**

1. If the contract covers several subject-matters of public procurement interdependent by their nature, then such contract shall be classified according to the subject-matter of public procurement of determining value.
2. If a public procurement has as its subject-matters public supply and services, and if the value of services covered by such a contract exceeds that of the supply covered thereby, the contract shall be considered a public service contract.

### *Exceptions*

### **Article 9**

1. The procedure laid down in this Act shall not apply to
  - (a) procurements – with the exception of Part Five of this Act – which concern qualified data and the fundamental security and national security interests of the country, or whose execution must be accompanied by special security measures (hereinafter referred to as: ‘qualified contract award procedure’) – in the case of procurements reaching EU thresholds only if the competent committee of the Parliament has adopted a preliminary decision to rule out the application of this Act – for which a separate act of legislation drawn up on the basis of the empowerment of this Act shall apply, or for which the separate act of legislation drawn up on the basis of the empowerment of this Act shall not apply either;
  - (b) in the field of defence public supplies, services and works specifically designed for military and public order purposes (arms, munitions and war material) (hereinafter referred to as: ‘contract award procedure in the field of defence), for which – with the exception of Part Five of this Act – a separate act of legislation drawn up on the basis of the empowerment of this Act shall apply and procurements having such subject-matters in the case of which, in compliance with Article 346 of the Treaty on the Functioning of the European Union, even the application of the separate act of legislation based on the empowerment of this Act is ruled out for the sake of the fundamental security interests of the country;
  - (c) procurements awarded pursuant to a particular procedure set out on the basis of an international treaty or of an international agreement if the treaty or the agreement relates to the stationing, passing through, deployment of troops (military forces), including in the case of units deployed (transferred), replaced to the operational area the procurements related to such deployment (transfer), replacement;
  - (d) procurements awarded pursuant to a particular procedure laid down in an international treaty which has been concluded with a state outside the European Union related to the joint implementation or exploitation of a project by the signatory States;
  - (e) procurements pursuant to a particular procedure laid down by an international organisation;
  - (f) procurements the purpose of which is exclusively to make it possible for the contracting authorities to provide one or more public electronic telecommunication services, or to use, or exploit a public electronic telecommunication network.
  - (g) the supply, services or public works purchased by the central purchasing body through a contract award procedure, with respect to those entities for the benefit of which the public procurement contract has been concluded by the central purchasing body;
  - (h) public works concessions and service concessions awarded by contracting authorities specified in Article 6(1)(a)-(f), if the aim of the concession is to ensure a public utilities activity defined in Article 114(2)

pursued by the contracting authority, and according to Article 20 or Article 121(2) Chapter XIV of this Act would apply;

- (i) if the service concession falls under the scope of the Act on concessions, noting that the contracting authority shall immediately notify in writing the Public Procurement Authority of the procedure -stipulated therein;
- (j) **the conclusion of public procurement contracts on public passenger transport services by road and by rail under the Act on Passenger Transport Services; however, in the case of public passenger transport services by bus or tram, only if the contract is considered a service concession; the contracting authority shall notify within three days in writing the Public Procurement Authority of any tender under the Act on Passenger Transport Services;**<sup>6</sup>
- (k) agreements which are
  - (ka) concluded by a contracting authority defined in Article 6(1)(a)-(d) and an economic operator solely owned by that authority, and over the economic operator, with consideration to its task related to the implementation or the organisation of the implementation of the public task or public service, the contracting authority fully possesses supervisory rights in relation to management tasks and the strategic objectives and substantial decisions of the economic operator can be fundamentally influenced by the contracting authority, on condition that at least 80 % of the annual net revenue of the economic operator is derived from the performance of the contracts to be concluded with the single member (shareholder) contracting authority in the given financial year, following the conclusion of the contract;
  - (kb) concluded by a contracting authority and an economic operator whose shares or business stake are exclusively owned by that contracting authority and by other contracting authorities defined in Article 6(1)(a)-(d), and over which, with consideration to its task related to the implementation or the organisation of the implementation of the public task or public service, the contracting authorities jointly, fully possess comprehensive supervisory rights in relation to management tasks and whose strategic objectives and substantial decisions can be fundamentally influenced by the contracting authorities, on condition that at least 80 % of the annual net revenue of that economic operator is derived from the performance of the contracts to be concluded with the contracting authority members in the given financial year, following the conclusion of the contract;
- (l) the provision of the obligatory public educational task of the local government through a non-public institution maintaining body pursuant to the Act LXXIX of 1993 on public education, and the transfer of the institution maintaining rights of a public educational institution to a non-public maintaining body;
- (m) **procurements of the Integrated Organization of Co-operative Loan Institutions established by Act CXXXV of 2013 and the Common Capital Guarantee Fund of Co-operative Loan Institutions established by the same law.**<sup>7</sup>

2. The provisions set out in paragraph 1(k) shall be applicable if the economic operator according to paragraph 1(k) is owned by the state; in this case the additional conditions according to paragraph 1(k) shall be applicable with relation to the legal entity exercising ownership rights (the organ directed by the minister, or if applicable, by other person directing a central administrative organ) as a contracting authority.

3. Contracts specified in paragraph 1(k) may be concluded for a definite period of time, for not more than five years, unless otherwise stipulated by law. For the purposes of paragraph 1(k), the counter value of public services provided to third parties on the basis of the contracts shall be regarded as deriving from the performance of those contracts regardless whether this counter value is paid by the contracting authority or by the person using this public service.

4. The criteria laid down in paragraph 1(ka) and (kb) shall be fulfilled throughout the full term of the contract. If the criteria laid down in paragraph 1(ka) and (kb) are not fulfilled anymore the contracting authority may and shall terminate the contract with a period of notice that permits for it to ensure the implementation of the public task (to conduct the contract award procedure).

<sup>6</sup> This amendment entered into force on 1 July 2013.

<sup>7</sup> This amendment entered into force on 30 November 2013.

5. The procedure laid down in this Chapter shall not apply to the services specified in Article 27 in the following cases:

- (a) contracts for the acquisition of existing buildings or other immovable property or for the acquisition of other rights on immovable property; except for contracts (concluded in whatever form and with any content) for financial services associated with such contract for acquisition;
- (b) financial services specified in Annex 3. Group 6, in connection with the issue, sale, purchase or transfer of securities and other financial instruments, or with the acquisition of money or capital in the benefit of implementing monetary, exchange rate, or reserve management policy, or of the debt management policy of central government, and central bank activities;
- (c) contracts for the acquisition, development, production or co-production of programme (programme material) by broadcasters (or the Media-Services Support and Property Management Fund) and contracts for broadcasting time;
- (d) contracts for arbitration, mediating and conciliation services;
- (e) employment contracts, public service relationships, relationship of public servants, public prosecutors, court employees, law officers and professional members of the armed forces;
- (f) research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the service provided is wholly remunerated by the contracting authority;
- (g) contracts for services which are provided by one of the contracting authorities specified in Article 6(1)(a)-(c), or by an association they have established, on the basis of an exclusive right which they enjoy pursuant to law or regulation.
- (h) when the implementation of a public task is transferred by a contracting authority defined in Article 6(1)(a)-(c) to another contracting authority defined in Article 6(1)(a)-(c) on condition that the contracting authority shall implement the public task totally independently from the transferring authority, assuming all the responsibility and acting without any lucrative purpose.

6. The access to data of public interest and data publicised in the public interest, that are managed in relation to procurements defined in paragraph 1(a), may be restricted by contracting authorities defined in Article 6(1)(a) and (b) due to national security interests, considering the weight of public interest related to the access to data and to the prohibition of the access to data, for a time period of maximum 10 years after the creation of data.

7. Based on paragraph 6, in relation to procurements defined in paragraph 1(a) the access to the following shall not be prohibited:

- (a) the decision made by the authority performing in its duties and competences,
- (b) the name of the successful tenderer,
- (c) the designation, subject-matter, value, duration of contracts, the names of the contracting parties.

#### *Public procurement thresholds*

### **Article 10**

1. The public procurement thresholds are

- (a) the thresholds specified by EU law (hereinafter referred to as 'EU thresholds');
- (b) the thresholds defined as national thresholds by the Budget Act of Hungary (hereinafter referred to as 'national thresholds').

2. The EU thresholds are established periodically and published in the Official Journal of the European Union by the European Commission.
3. The national thresholds concerning each subject-matter of public procurement shall be determined annually by the Budget Act of Hungary. The EU thresholds concerning each subject-matter of public procurement shall be determined by the annual Budget Act of Hungary, in light of the relevant EU legislation specified in paragraph 2.
4. The EU thresholds and the national thresholds concerning each subject-matter of public procurement are published by the Public Procurement Authority in the Public Procurement Bulletin, at the beginning of each year. For this purpose, the amount of the EU thresholds expressed in HUF shall be set in compliance with the Communication on the amount of the EU thresholds expressed in national currencies, published by the European Commission in the Official Journal of the European Union.

*Value of public procurements*

**Article 11**

1. The value of a public procurement shall be the highest, full consideration requested or offered in general for its subject-matter at the time of the beginning of the contract award procedure, which is to be calculated net of VAT and taking account of the provisions of Articles 12 to 18 (hereinafter referred to as 'estimated value'). The full consideration shall include the value of the optional part in the case of an invitation to tender containing an optional part.
2. The estimated value of the public procurement shall include the fees and payments (commission) payable by contracting authorities to the candidates or the tenderers, if contracting authorities shall be fulfilling such payments to candidates or to tenderers.
3. It shall be prohibited to select the method for establishing the estimated value with the intention of avoiding the application of this Act.

**Article 12**

In the case of supply contracts for the acquisition of the right to use or to exploit products, the estimated contract value shall be:

- (a) in the case of fixed-term contracts, where the term of the contract is 12 months or less, the consideration for its duration, or, where the term of the contract exceeds 12 months, the consideration for its duration including the estimated residual value;
- (b) in the case of contracts for an indefinite period or where the date of the termination of the contract cannot be indicated precisely at the time of the starting of the procedure, the monthly value multiplied by 48.

**Article 13**

1. In the case of regular contracts or of contracts which are to be renewed periodically, the estimated value of the supply or service contract shall be:
  - (a) either the actual value of the contract or contracts having the same or similar subject-matters, concluded within the preceeding calendar year, adjusted according to the anticipated changes in quantity and value in the following calendar year, or
  - (b) the estimated consideration following the first delivery, during the 12 months following the initial contract or during the term of the contract(s), if it exceeds 12 months.
2. In the case of a public procurement including an option clause, the estimated contract value shall be the highest possible value of consideration inclusive of the purchase price.
3. If the public procurement includes both supplies and services, the estimated value shall be the aggregate of the estimated value of the supplies and services. The estimated value of installation and putting into operation shall also be taken into account, where appropriate, in the estimated value of the supplies.

#### Article 14

1. In the case of service contracts which do not specify a total price, the estimated contract value shall be:
  - (a) in the case of fixed-term contracts with a term of 4 years or less, the contract value for its duration;
  - (b) in the case of contracts of indefinite duration or with a term of more than 4 years, the monthly consideration multiplied by 48.
2. For the purposes of calculating the estimated value of the services the following shall be taken into account in the case of the following services:
  - (a) in the case of insurance services: the premium payable and other considerations;
  - (b) in the case of banking and other financial services: fees, commissions, interest, and other considerations;
  - (c) in the case of services including design: the fee payable, or the commission and other considerations.

#### Article 15

For the purpose of calculating the estimated contract value for the design contest the following shall be taken into account:

- (a) the fees or the commissions and also other considerations payable to candidates, as well as
- (b) the estimated value of the services that shall be purchased subsequent to the design contest procedure, and for which a contract shall be concluded with the winner or, based on a recommendation from the jury, with one of the winners (prize winners), unless the contracting authority (the sponsor) excluded the conclusion of any such contract in the notice launching the procedure.

#### Article 16

**1. When calculating the estimated value of public works contracts, the total counter value of the works shall be taken into account. In order to decide what should be considered one single public works contract, the integrity of the economic and, at the same time, technical function shall be the decisive aspect to be taken into account.<sup>8</sup>**

2. The estimated value of the supplies and services needed to carry out the works and provided by the contracting authority shall also be taken into account for the purpose of calculating the estimated contract value of the works.

3. The estimated value of supplies or services not needed to carry out the public works shall not be taken into consideration when calculating the estimated value thereof with the intention of avoiding the application of this Act to the given public supply or public service contract.

#### Article 17

1. The estimated value of the framework agreement shall be the estimated highest aggregated value of the contracts to be concluded during the period in question on the basis of the agreement.

2. In the case of the application of the dynamic purchasing system the estimated value of the public procurement shall be the estimated highest aggregated value of the contracts to be concluded during the period in question on the basis of the system.

#### Article 18

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<sup>8</sup> This amendment entered into force on 1 July 2013.

1. It shall be prohibited to split up any procurement with the intention of avoiding the application of this Act or of Part Two of this Act.

2. Where a public works contract or a public service contract or the procurement of similar supplies is divided into lots and realised through more than one contract, the value of all lots shall be taken into account for the establishment of the estimated value.<sup>9</sup>

3. Contrary to the provision set out in paragraph 2, the procedure laid down in Part Three of this Act shall apply in each case to contracts having an estimated value – without taking into consideration the provision set out in paragraph 2 - less than HUF 21 824 000 in case of services and supplies and less than HUF 272 800 000 in case of public works contracts, on condition that the total estimated value of such lots not calculated together does not exceed 20 % of the value that would have been established by the contracting authority in case of application of paragraph 2 as the total estimated value of the public procurement contract.<sup>10</sup>

4. Where the estimated value of the public procurement would reach the EU threshold pursuant to paragraph 2, the provisions set out by Part Three of this Act as an exception to this Act [Article 120] may not be applied on the basis of paragraph 3. For the purposes of paragraph 3, the value of each separated contract shall be taken into account separately in order to decide which type of procedure shall be conducted under Part Three.<sup>11</sup>

5. Where the contracting authority ensures the possibility of dividing the contract into lots in the course of one contract award procedure, the value of all lots shall be calculated together for the establishment of the estimated value of the public procurement contract.

6. In the case of public procurement contracts for the purchases of foreign representations, paragraph 2 shall be applied separately for each foreign representation, in the case of institutions **maintained**<sup>12</sup> by the state public educational operator, paragraph 2 shall be applied separately for each institution, and in the case of contract award procedures conducted for the purchases of parliamentary panels, paragraph 2 shall be applied separately for each parliamentary panel. Moreover, paragraph 2 shall be applied separately for the purchases to be realized from the allocation granted to the bodies specified in Article 8(1)(a)-(c) and Article 10(1) of Act CLXIII of 2011 on the Prosecution Service.<sup>13</sup>

#### *Applicable procedures*

#### **Article 19**

1. For the purposes of public procurement contracts the value of which equals or exceeds EU thresholds Part Two of this Act shall apply, and as regards public procurement contracts the value of which does not reach EU thresholds but at the same time reaches national thresholds Part Three of this Act shall apply, unless otherwise provided by this Act.

2. For the purposes of services specified in Annex 4, Part Three of this Act may be applied. In the case of public procurement contracts which have as their object a complex service including both a service specified in Annex 3 and a service specified in Annex 4, Part Three of this Act may be applied if the value of the service specified in Annex 4 exceeds the value of the service specified in Annex 3.

3. As regards legal services specified in Annex 4 the contracting authority shall not conduct a contract award procedure, but the contract notice pursuant to a separate act of legislation shall be published concerning the conclusion of a public procurement contract reaching EU thresholds and such a public procurement contract shall be included in the annual statistical summary drawn up on the basis of a standard form specified in a separate act of legislation.

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<sup>9</sup> This amendment entered into force on 1 July 2013.

<sup>10</sup> This amendment entered into force on 1 July 2013.

<sup>11</sup> This amendment entered into force on 1 July 2013.

<sup>12</sup> This amendment entered into force on 1 July 2013.

<sup>13</sup> This amendment entered into force on 1 January 2013.

4. Where the subject-matter of the public procurement contract is a service concession, Part Three of this Act shall apply.
5. In the case of public works concessions Part Two of this Act shall be applied in compliance with the specific rules pursuant to Chapter XIII.
6. The detailed rules of design contests are set forth in a separate act of legislation. A separate act of legislation may determine cases when it is mandatory to carry out a design contest.

#### **Article 20**

1. Where the public procurement contract of the contracting authority aims to ensure one or more activity (activities) specified in Article 114(2), in the case of contracting authorities pursuant to Article 16(1)(a)-(f), Part Two of this Act shall be applied in compliance with the specific rules stipulated by Chapter XIV.
2. Specific rules stipulated by Chapter XIV shall be applied where the contracting authority defined in Article 6(1)(a)-(f) shall need the public procurement contract for ensuring one or more activity (activities) specified in Article 114(2) and at the same time for ensuring activities other than those specified therein, but the subject-matter of the public procurement contract is required primarily for ensuring its public utilities activity pursuant to Article 114(2). Since the conduct of one and only contract award procedure may not serve as a pretext for conducting the contract award procedure according to Chapter XIV or for avoiding the application of this Act, it shall be taken into consideration whether the elements of the public procurement contract related to the pursuit of different activities may be separated from each other.
3. Where the contracting authority defined in Article 6(1)(a)-(d) shall need the public procurement contract for ensuring one or more activity (activities) specified in Article 114(2) and also for ensuring activities other than those specified therein and it may not be established which of those activities require primarily the public procurement contract, Chapters I-XIII shall apply.
4. Where the contracting authority defined in Article 6(1)(e)-(f) shall need the public procurement contract for ensuring one or more activity (activities) specified in Article 114(2) and at the same time for ensuring the implementation of activities other than those specified therein, and it may not be established which of those activities require primarily the public procurement contract, the provisions of Chapter XIV shall apply.
5. Pursuant to Article 6(1) (h) entities applying this Act voluntarily or on the basis of a contractual obligation may act accordingly to the provisions of Chapter XIV, on condition that their public procurement contract aims to ensure the implementation of one or more activities specified in Article 114(2).

### **CHAPTER IV**

#### **Provisions pertaining to contracting authorities and economic operators**

##### *Procedure of the contracting authority*

#### **Article 21**

1. Contracting authorities, with the exception of those referred to in Article 6(1)(g)-(h), shall notify the Public Procurement Authority of their falling under the scope of this Act and about the changes concerning their data within thirty days following the date from which such contracting authorities come under the scope of this Act or from the date of the changes.
2. The contracting authority may authorise other contracting authorities to conduct a contract award procedure for its benefit. However, this authorisation may not result in the avoidance of the rules to be applied to the authorising contracting authority according to this Act.
3. A public procurement contract may be realized jointly by several contracting authorities, by authorizing one of them, selected by themselves, to conduct the contract award procedure.

4. In the cases pursuant to paragraphs 2 and 3, the contract notice launching the procedure shall state that the contracting authority conducts the procedure (also) on behalf of other contracting authority (authorities).

5. The Public Procurement Authority shall maintain an up-to-date register of contracting authorities and publish it on its website, and shall provide further information about the contracting authorities included in the register as required by the European Commission. If the concerned entity fails to fulfil its obligations of notification as set out in paragraph 1, or, where there is a doubt whether the concerned entity is subject to this Act, the Public Procurement Authority may initiate the procedure of the Public Procurement Arbitration Board.

## Article 22

1. Contracting authorities shall be obliged to determine, in accordance with the relevant legislation, the distribution of responsibilities for the preparation, carrying out and internal control of their contract award procedures, as well as the responsibilities of persons and organisations acting on their behalf or involved by them in such procedures and the documenting procedure applicable to their contract award procedures. In this scope, contracting authorities shall specify in particular the person, persons or bodies responsible for decisions made in the course of the procedure.

2. Where a contracting authority does not have any general rules on public procurement drawn up according to paragraph (1) or fulfils the criteria that allow derogation from such rules as laid down therein, it shall lay down the requirements set forth in paragraph (1) before the preparatory work for the given contract award procedure at the latest.

3. Persons and organisations acting in the name of a contracting authority or involved in a contract award procedure who or which take part in the preparatory work for the contract award procedure, the preparation of the invitation and the documentation, the evaluation of tenders or in any other stages of the procedure, shall be required to possess adequate professional competence related to the subject-matter of the public procurement, in the field of public procurement, in the field of law and in the field of finance.

4. Contracting authorities shall set up an evaluation committee, possessing the professional competence pursuant to paragraph 3, of at least three members for the evaluation of the tenders according to Article 63(3) and (4), taking place following the supply of missing information, the provision of requested information or the provision of explanation [Articles 67-70], if necessary. The evaluation committee shall put forward in writing an expert's opinion and a proposal for a decision for the person or body making the decision closing the contract award procedure in the name of the contracting authority. The work of the evaluation committee shall be documented by drawing up minutes, such minutes containing the members' reasoned evaluation sheets.

5. The person taking the decision closing the contract award procedure in the name of the contracting authority may not be a member of the evaluation committee. In the case of a collective decision-making process, persons delegated by the decision-making body in the evaluation committee shall be entitled to have right of consultation. In the case of collective decision-making process, a vote by call-over shall be applied.

### *Centralised public procurement*

## Article 23

**1. The Government may order the budgetary authorities under its control or supervision, public foundations established by itself, and economic organisations under state ownership to execute any public procurement within the framework of a centralised procedure, and may determine the personal and material scope thereof, the organisations entitled to invite tenders (central purchasing body) and the conditions to participate in such a procedure. A legislative measure or the organization which grants the support may make the granting of the fiscal support under the Act on Public Finances subject to adherence to the centralised procedure.<sup>14</sup>**

2. A centralised procedure may be used for health-care services of organisations financed by the Health Insurance Fund. The Government shall be entitled to specify the detailed rules for the procedure, including the personal and material scope thereof and the organisations entitled to invite such tenders. Such centralised public

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<sup>14</sup> This amendment entered into force on 1 July 2013.

procurements shall be financed from the funds allocated in the budget of the Health Insurance Fund for the type of service in question.

3. The detailed rules pertaining to the centralised public procurement procedure, if different as required by such procedures from those set out in this Act, shall be determined in separate act of legislation.

4. In the case of settlements with a single common governing body the Government may order the execution of public procurements within the framework of a centralised procedure and the detailed rules pertaining to those centralised procedures, if different as required by such procedures from those set out in this Act, shall be specified by the Government in a Decree.

5. Local government may implement public procurement concerning organisations under its control in a locally centralized, combined manner. The local government shall issue a decree concerning locally centralised contract award procedures. The provisions of this Act and the decree of the local government shall apply to locally centralized public procurement procedures.

6. Public procurements may be implemented in a locally centralised, combined manner by more than one local governments as well. Rules pertaining to the cooperation of local governments establishing a centralised procurement system are laid down in the association agreement of local governments.

#### *Conflicts of interest*

#### **Article 24**

1. Contracting authorities shall take all the necessary measures to avoid situations resulting in conflicts of interest and distortion of competition.

2. Persons or organizations not being able to perform their functions in an unbiased and objective manner for whatever reason, in particular due to economic interests or any other common interest with an economic operator participating in the procedure, may not participate in the preparation and the execution of the procedure on behalf of the contracting authority, for that is qualified a conflict of interest.

3. Persons or organizations involved by the contracting authority in the pursuing of any activity relating to the procedure or to the preparatory work thereof may not participate in the procedure as a tenderer, a candidate, a subcontractor or an organization participating in the certification of suitability if their involvement in the procedure may have the effect of distorting competition, for that is qualified a conflict of interest. If the participation in the contract award procedure of a person or organization involved in the preparatory work of the procedure had the effect of creating a conflict of interest pursuant to this paragraph, the contracting authority, considering in particular the extra information gathered by it, shall be obliged to notify such a person or organization thereof.

4. Persons or organisations acting on behalf of the contracting authority and persons or organisations involved by the contracting authority in the pursuing of any activity relating to the procedure or the preparatory work thereof shall provide a declaration in writing concerning conflicts of interest with respect to this Article.

5. For the purposes of paragraph 3, the participation of such persons (organisations) in the procedure from which the contracting authority

(a) asked for information for the assessment and market survey relevant to the given public contract or for the assessment of the estimated value of the public contract, without the indication of the starting date of the public procurement, and only advising them of the data necessary for the assessment or

(b) received a price offer necessary for the submission of the application (tender) for support

does not entail the distortion of competition and does not qualify a conflict of interest, on condition that, in relation to the application of point (a) or (b), those persons (organizations) were not given any information beyond the scope of the data disclosed to all tenderers (candidates) by the contracting authority in the course of the contract award procedure.

#### *Rules pertaining to economic operators*

### **Article 25**

1. Tenders or requests to participate may be submitted by several economic operators jointly.
2. In the case of application of paragraph 1 joint tenderers or candidates shall designate among themselves a representative entitled to act on behalf of the joint tenderers or candidates in the course of the contract award procedure.
3. All the statements made on behalf of the group of joint tenderers or candidates shall clearly include the designation of the joint tenderers or candidates.
4. Where this Act stipulates that contracting authorities shall send a notification to tenderers or candidates and also for the purposes of supply of additional information [Article 45], supply of missing information [Article 67], request of information [Article 67] and request of explanation [Article 69-70], the contracting authority shall dispatch the information, notification and request addressed to the joint tenderers (candidates) to the representative defined in paragraph 2.
5. Where the contracting authority prescribes the provision of a tender guarantee [Article 59], joint tenderers shall provide the guarantee only on one occasion. In the event of the infringement of the validity period of the tender by any joint tenderer [Article 59 (4)] the tender guarantee shall be due the contracting authority.
6. Joint tenderers are jointly liable for the performance of the contract to the contracting authority.
7. After the expiry of the time limit for the submission of tenders or in the case of a procedure consisting of more than one stage the time limit for participation, no changes can be made in the person of the economic operator(s) submitting a joint tender or request to participate.

### **Article 26**

If an economic operator participates in a direct manner in the performance of the contract, in case of the possibility of division into lots, the contract concerning one part, for more than 25% of the value of the public procurement, this economic operator may not be considered as a subcontractor, and shall be referred to in the tender (in the request to participate) as a joint tenderer and shall be involved in the performance of the contract as a joint tenderer (in the stage of participation of the contract award procedure, as a candidate). The percentage of the participation of a person (an organisation) in the performance of a contract is determined by his share from the counter value – net of VAT – relating to the subject-matter of the contract.

### **Article 27**

1. The contracting authority shall not require setting up an economic organisation as a condition for participating in the contract award procedure; however it may be required from successful tenderer(s) should that be justified for the performance of the contract to be concluded pursuant to a contract award procedure. The notice starting the contract award procedure should clearly set the requirement of the contracting authority for setting up an economic organisation.
2. If a contracting authority allows or requires the setting up of an economic organisation (project company) for the performance of the contract, the contracting authority shall specify the requirements concerning the business organisation to be set up in the documentation. The requirements shall relate only to the legal form, to the minimal amount of the subscribed capital, defined proportional to the value of the contract, to the scope of the activity of the business organisation and to the control of its activity.

### *Safeguarding of competition*

### **Article 28**

1. In the course of the same contract award procedure, or in the case of a possibility of division of a contract into lots the contract concerning one part, the tenderer or the candidate

- (a) may not submit a further tender jointly with a different tenderer, or may not submit a further request to participate jointly with a different candidate,
- (b) may not participate as a subcontractor of a different tenderer or candidate,
- (c) may not certify the suitability of any other tenderer submitting a tender, or candidate submitting a request to participate for the performance of the contract [Article 55(5)].

2. In case a contracting authority experiences an obvious breach of provisions set out in Article 11 of the Hungarian Competition Act (Act LVII of 1996; hereinafter referred to as: 'CA'), as well as provisions set out in Article 101 of the Treaty on the Functioning of the European Union establishing the European Community or it has a sound reason to assume it in the course of its procedure, the contracting authority shall notify the Hungarian Competition Authority thereof in accordance with the provisions of CA regarding notification or complaint.

#### *Reserved Public Procurement Contracts*

#### **Article 29**

1. Contracting authorities, according to provisions set out in a separate act of legislation, may or shall reserve the right to participate in a public procurement procedure for organizations that are designated as sheltered place of employment, furthermore for organizations possessing a social employment permit, which employ, in a proportion over 50%, disabled persons who cannot carry out occupations under normal conditions, and for organizations providing employment for inmates of social institutions in a framework of social employment, providing work for disabled persons in a proportion over 50%. Contracting authorities shall refer to this fact in the invitation starting the procedure.<sup>15</sup>

2. In the case of contracts that are reserved according to paragraph 1, contracting authorities shall ensure equal rights to economic operators established within the European Union that provide employment in a proportion over 50% for disabled workers who cannot carry on occupations under normal conditions.

3. The personal and material scope of, as well as the detailed rules for public procurement procedures reserved according to paragraph 1 shall be set forth in a separate act of legislation.

4. In the application of paragraph 1 contracting authorities, also considering the estimated value of the public procurement, shall act in accordance with this Act and with the relevant separate act of legislation.

### **CHAPTER V**

#### **Rules pertaining to publication and communication**

##### *Rules concerning publication, provision of data and planning of public procurements*

#### **Article 30**

1. The following documents shall be published by the contracting authority in the course of a contract award procedure:

- (a) the contract notice launching the open procedure;
- (b) the invitation to participate starting restricted procedures, negotiated procedures with the publication of a contract notice and competitive dialogues, except for the direct invitation to participate starting restricted and negotiated procedures launched by a periodic indicative notice or by a pre-qualification notice pursuant to a separate act of legislation;
- (c) the invitation launching a procedure according to Article 123;
- (d) the periodic indicative notice and the pre-qualification notice announcing restricted and negotiated procedures launched by an invitation containing a periodic indicative notice and a pre-qualification notice;

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<sup>15</sup> This amendment entered into force on 1 January 2013.

- (e) notices on the results of the procedure;
- (f) contest notices launching design contests;
- (g) notices on the results of design contests;
- (h) information notices concerning an amendment to the contract.

2. The notice on the results of the procedure [paragraph 1(e)] shall be dispatched by the contracting authority not later than ten business days after the conclusion of the contract or, failing this, the decision of the contracting authority declaring the procedure unsuccessful or refusing the conclusion of the contract [Article 124(9)]. The contract award procedure shall be concluded by the publication of that notice.

3. Contrary to the provision set out in paragraph 2, the contracting authority may publish the information notice on the results of its contract award procedure conducted on the basis of a framework agreement all together concerning the contracts concluded based on that framework agreement. In this case, the notice on the contracts awarded in the previous quarter of the year under the framework agreement shall be sent within ten business days after the last day of the calendar quarter. A separate notice shall not be published on the incomplete, first quarter following the award of the framework agreement.

4. The contracting authority shall dispatch the information notice defined in paragraph 1(h) concerning any amendment to the contract not later than fifteen business days after any amendment to the contract.

5. Contracting authorities shall send notices to the Public Procurement Authority by electronic means specified in a separate act of legislation. The contracting authority shall publish notices defined in the provisions of this Act according to a standard form specified in a separate act of legislation. Detailed rules pertaining to the applicable standard forms, the mandatory content elements thereof and the sending and examination of notices, the related fees and their payment and the way of publication of notices shall be laid down in a separate act of legislation. The fees related to the examination and drafting of the notices are qualified as administrative service fees. The Public Procurement Authority shall be obliged to use the fees to cover the costs of its own operation in the sphere of its basic activity.

### Article 31

**1. The contracting authority shall publish the following data, information, documents in the Public Procurement Database maintained by the Public Procurement Authority or, if the publication in the Database is not possible, on its own homepage or on the homepage of the maintaining entity:**

- (a) the public procurement plan and amendment(s) thereto, without delay upon adoption of said plan or amendment thereto;**
- (b) the contracts concluded in accordance with Article 9(1)(k), without delay upon conclusion of the contract;**
- (c) data specified in Article 79(2) concerning preliminary dispute settlement, without delay upon receipt of the preliminary dispute settlement;**
- (d) the contracts concluded on the basis of the contract award procedure, without delay upon conclusion of the contract;**
- (e) the following data concerning the performance of the contract: reference to the notice launching the contract award procedure (in the case of procedures without prior publication of a contract notice, to the invitation), the denomination of the parties to the contract, the establishment whether the performance was in compliance with the contract, the date of the acknowledgement by the contracting authority of the performance of the contract, the date of the payment of the consideration and the value of the paid consideration within ten (10) days following the fulfilment of the contract by each party or, in the case of public procurements carried out using support, for the payment of suppliers, by the entity which is obliged to make payment;**

**(f) the annual statistical summary defined in a separate act of legislation, at the time of its sending to the Public Procurement Authority.<sup>16</sup>**

2. The data defined in paragraph 1 are qualified as data to be published in the public interest and their disclosure may not be prohibited by invoking business secrecy.

3. The public procurement plan defined in paragraph 1 shall be accessible on the homepage until the publication of the public procurement plan regarding the following year on the homepage.

**4. The data, information, documents specified in paragraph 1(c) and (e)-(f) shall be accessible on the homepage until the date stipulated in Article 34(2).<sup>17</sup>**

**5. The contracts specified in paragraph 1(b) and (d) shall be accessible on the homepage for a period of five years continuously following the performance of the contract.<sup>18</sup>**

**6. In the case of contracts concluded for a term over one year or for an indefinite period of time, the information specified in paragraph 1(e) shall be updated annually following the conclusion of the contract.<sup>19</sup>**

### Article 32

1. After the budgetary year begins, for the relevant year, or for the subsequent 12 months at the most, contracting authorities may prepare a prior information notice, or the contracting authorities acting according to the specific rules pursuant to Chapter XIV may prepare a periodic indicative notice in the case of such procedures, for the planned

(a) total public supply contracts (equaling or exceeding EU thresholds and exclusive of exceptions) if the total estimated value of such contracts equals or exceeds EU threshold;

(b) total public service contracts listed in Annex 3 (equaling or exceeding EU thresholds and exclusive of exceptions), if the total estimated value of such contracts equals or exceeds EU threshold.

2. In the case of public supply contracts the prior information notice shall be prepared in a breakdown of product categories, and shall specify the relevant product category by reference to the Common Procurement Vocabulary (hereinafter referred to as 'the CPV').

3. In the case of public service contracts, prior information notices shall be prepared by categories of services listed in Annex 3.

4. Contracting authorities may prepare a prior information notice, or in the case of procedures to be conducted according to specific rules pursuant to Chapter XIV a periodic indicative notice, indicating the essential characteristics of and terms for a planned public works contract, if the estimated value of that public works contract is equal to or exceeds the EU threshold concerning public works. Where a contracting authority prepares an information notice, it shall be prepared after the decision has been made to implement the planned public works.

5. With regard to subject-matters specified in paragraph 1 (a) and (b), prior information notices may be prepared either to cover all of them in a single document or to cover each in an individual document.

6. The prior information notice specified in paragraph (4) shall be drawn up separately.

7. Contracting authorities shall publish prior information notices, or for the purposes of the provisions set out in Chapter XIV periodic indicative notices, in a notice drawn up according to the standard form specified in a separate act of legislation.

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<sup>16</sup> This amendment entered into force on 1 July 2013.

<sup>17</sup> This amendment entered into force on 1 July 2013.

<sup>18</sup> This amendment entered into force on 1 July 2013.

<sup>19</sup> This amendment entered into force on 1 July 2013.

8. Where the prior information notice (the periodic indicative notice) is published on the homepage of the contracting authority, the contracting authority shall be obliged to send the notice designated as ‘the notice on a buyer profile to the Publications Office of the European Union, through the Public Procurement Authority. The prior information notice (the periodic indicative notice) may be published on the homepage only after the dispatch of such a notice to the Publications Office of the European Union by electronic means.

9. Publication of a prior information notice (a periodic indicative notice) shall not entail any obligation to conduct a procedure for the award of a contract included therein.

10. The contracting authority acting pursuant to the provisions set out in Chapter XIV may publish a periodic indicative notice on its major project or public works without repeating the information having been included in a previous notice of the same type, provided that it clearly states that the latter notice is of additional nature.

11. In the case of the publication of the notice specified in paragraph 7 on the Internet homepage of the contracting authority, the date when that notice is published on the homepage shall govern the legal effects related to the publication of the notice.

### **Article 33**

1. Contracting authorities defined in Article 6(1)(a)-(d), with the exception of contracting authorities acting under Chapter XIV and entities authorised to invite tenders in the course of centralised public procurements, shall draw up, at the beginning of the budgetary year, by 31 March at the latest, an annual overall public procurement plan (hereinafter referred to as ‘public procurement plan’), which shall outline all public procurements envisaged for given year. The public procurement plan shall be retained by the contracting authority for a period of at least five years. Public procurement plans are public.

2. The contracting authority may launch contract award procedures prior to the completion of its public procurement plan, such procedures shall be subsequently included in the public procurement plan as appropriate.

3. A public procurement plan shall not entail any obligation to carry out the procedures for the award of contracts included therein. Moreover, contracting authorities may carry out procedures for the award of contracts not included in the procurement plan or for the award of contracts that have been modified as compared to what the plan contains, provided that a need for public procurement or other changes have occurred for reasons unforeseeable by them. In such cases the public procurement plan shall be amended upon the occurrence of such a need or changes, indicating the justification thereof.

4. Contracting authorities shall, upon request, forward their public procurement plans to the Public Procurement Authority or to the bodies empowered by an act of legislation to exercise control over the contracting authority.

*Rules pertaining to documentation of contract award procedures, contract keeping and calculation of time limits*

### **Article 34**

1. Contracting authorities shall arrange for the documentation of each of their contract award procedures, covering such procedures from the preparatory work up to the performance of the contract concluded on the basis of such procedures, in writing, or, if the procedural actions are carried out electronically, it shall be obliged to arrange for it separately, by electronic means according to a separate act of legislation based on the empowerment of this Act.

2. Contracting authorities shall retain all documents created in the course of the preparation and conduct of the contract award procedure for a period of five years following the closure of the procedure [Article 30(2)], and all documents created in relation to the performance of the contract for a period of five years following the performance of the contract. If a procedure has been launched to seek legal remedy in connection with the public procurement, the documents shall be kept until such a procedure, or in the case of a judicial review, such a review is concluded with a judgement which has the force of *res judicata*, but at least for five years as set out above.

3. Contracting authorities shall, upon request, forward the public procurement documents to the Public Procurement Authority or to other bodies empowered by an act of legislation or make the public procurement documents accessible to those bodies by electronic means.

#### Article 35

1. All statements shall be made in writing between the contracting authority and the economic operators, unless otherwise required by this Act.

2. Where this Act does not expressly provide for a specific form of contact keeping, written statements may be made as follows:

(a) by postal delivery or through direct delivery, taking into account the provision set out in paragraph 5;

(b) by fax;

(c) by electronic means.

3. The contracting authority may prescribe the application of a specific form of contact keeping, but it may not prejudice the equal opportunities of economic operators; tenderers may not be obliged to make their statements by electronic means in all cases, except for the case of the electronic auction.

4. According to paragraph 2(c), statements may be submitted in an electronic document which is supplied with an advanced electronic signature, or which meets the requirements specified in a separate act of legislation based on the empowerment of this Act.

5. For the purposes of the provision or request of information stipulated by this Act, postal delivery may only be used exceptionally, and in justified cases.

#### Article 36

1. Procedural actions may also be carried out electronically. The method of carrying out of the public procurement procedural actions by electronic means is laid down in a specific Government Decree, the provisions of which may be different from the provisions set out in this Act, to the extent as required by the carrying out of procedural actions by electronic means.

2. Where this Act prescribes that minutes shall be drawn up in the course of the contract award procedure, this criterion may also be fulfilled by recording the actions in a public document provided that the actions take place in the presence of a notary public.

3. Where this Act, or on the basis of this Act or a separate act of legislation based on the empowerment of this Act contracting authorities require the submission of a certificate in the course of the public procurement procedure, such a certificate may be submitted in a simple copy form, unless provided otherwise by an act of legislation. The contracting authority may prescribe the submission of originals or certified copies of such statements that serve directly as the basis of the enforcement of a claim (in particular bank guarantee or declaration of guarantee). In the case of documents not submitted in Hungarian, the liable translation produced by the tenderer shall also be accepted by the contracting authority.

4. In case the certificate required by this Act is non-existent in the country outside the European Union where the tenderer is established, contracting authorities may accept a certificate, and even a document that is equal to the certificate.

5. The certification of facts and data that may be verified free of charge by the contracting authority on an electronic, **official**<sup>20</sup> register available in Hungarian, including the registers specified by the Act on General Rules of Launching and Conducting a Service Providing Activity, may not be requested by the contracting authority in the course of the contract award procedure and shall not be presented by the tenderer or the entity contributing to the certification of the suitability thereof.

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<sup>20</sup> This amendment entered into force on 1 July 2013.

6. The Public Procurement Authority shall issue guidelines on the electronic, **official**<sup>21</sup> registers pursuant to paragraph 5 to be used frequently considering the subject-matter of the contract award procedures and on their accessibility on the Internet. If a register pursuant to paragraph 5 is not included in the guidelines of the Public Procurement Authority, the register in question shall be designated in the course of the contract award procedure by the tenderer (candidate) or the organisation participating in the certification of suitability.

7. The contracting authority verifies the fact of the inclusion in the registers specified in paragraph 5 on one occasion, during the period between the expiry of the time limit to submit tenders and the sending of the notice on the results of the procedure or, in a procedure consisting of two stages, between the expiration of the participation deadline and sending to the candidate of the notice of results concerning the participation stage, and keeps the fact and the result of the verification among the documents concerning the procedure.

### **Article 37**

1. For the purposes of the time limits stipulated by this Act, the time limits or periods (hereinafter jointly referred to as 'time limits') expressed in days, months or years shall be calculated in such a manner that they do not include the starting date. The starting date shall be the date of the event or other circumstance from which the time limit begins to run.

2. A time limit expressed in months or years shall expire on the day which corresponds to the date following that of the starting date; if the month of expiry does not contain such a date, expiry shall take place on the last day of the month.

3. Where the closing date of the time limit is not a business day, expiry shall take place only on the subsequent business day.

4. Time limits indicated in notices (invitations) shall begin to run on the day following the date of dispatch of the relevant notice (invitation) or on the date of the direct sending of the invitation.

## **PART TWO**

### **PROVISIONS RELATED TO PUBLIC PROCUREMENTS REACHING EU THRESHOLDS**

#### **CHAPTER IV**

##### **Invitations**

##### **Contents of the notice launching the procedure**

### **Article 38**

1. According to the rules pertinent to each type of contract award procedure, notices launching the contract award procedure shall be the contract notice, the invitation to participate, the invitation to tender, or the direct invitation to participate specified in a separate act of legislation laying down the specific rules applicable to procedures pursuant to the provisions set out in Chapter XIV.

2. The contract notice and the invitation to participate shall be published by the contracting authority in a notice drawn up according to the standard form specified in a separate act of legislation.

3. The notice launching the contract award procedure shall contain in particular:

- (a) name, address, telephone number and fax number (e-mail) of the contracting authority;
- (b) type of the contract award procedure, in the case of negotiated and accelerated procedures the grounds for their use;

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<sup>21</sup> This amendment entered into force on 1 July 2013.

- (c) the method, the time limit and the place of availability of the documentation and the additional documents, or, in the case of a competitive dialogue the descriptive document, as well as the related financial terms. In the case of restricted procedure, negotiated procedure with the publication of a contract notice and competitive dialogue data concerning the documentation or the descriptive document shall only be included in the invitation launching the procedure if the contracting authority makes the documentation (the descriptive document) already available in the participation stage, and in the case of a negotiated procedure without prior publication of a contract notice such data shall only be included in the invitation launching the procedure if the contracting authority draws up a documentation and it did not send the documentation together with the invitation to tender;
- (d) the subject-matter and quantity of the public procurement;
- (e) specification of the contract to be concluded as a result of the contract award procedure;
- (f) the term of the contract or the time limit for performance/delivery;
- (g) place of performance/delivery;
- (h) conditions for settling the consideration or reference to the applicable legislation;
- (i) acceptance or prohibition of variant (alternative) offers and the possibility or ruling out of the division of the contract into lots;
- (j) award criteria [Article 71 (2)] of the tenders, in the case of the award criterion is the most economically advantageous tender the data specified in Article 71 (3) taking into consideration Article 71 (5);
- (k) grounds for exclusion and the required methods of certification;
- (l) suitability criteria, data needed for the assessment of suitability and the required method of certification;
- (m) time limit for submission of tenders or in the case of an invitation to participate the time limit for requests to participate;
- (n) address to which tenders (requests to participate) shall be sent;
- (o) an indication whether or not the tenders or the requests to participate may be submitted in another language in addition to Hungarian;
- (p) the place and time of opening the tenders and the parties authorised to be present at the opening of the tenders; in the case of an invitation to participate the place and time of the opening of requests to participate;
- (q) the minimum validity period of the tender, except for invitations to participate;
- (r) in the case of an invitation to participate the planned date of sending the invitation to tender;
- (s) information on the prescription of a tender guarantee and the types of retention required in the contract;
- (t) in the case of public procurements receiving aid from European Union resources, data concerning the relevant project (programme).

4. Detailed information concerning guarantees specified in paragraph 3(s) shall not be given in the invitation to participate, but as regards the tender guarantee the amount of the guarantee to be requested by the contracting authority for the participation in the tendering stage of the procedure shall already be stated in the invitation to participate and as regards types of contract retention data pursuant to Article 126(1) shall already be stated in the invitation to participate.

### **Article 39**

1. The notice launching the procedure shall be drawn up in all cases in such a way as to grant equal opportunities to economic operators to submit an appropriate tender or request to participate.

2. Data concerning the subject-matter of the public procurement shall be given in the notice launching the procedure in such a way as to make it possible for economic operators to assess whether they are able to submit a tender in the procedure.

#### Article 40

1. The contracting authority shall be obliged to prescribe in the notice launching the procedure that the following information shall be indicated in the tender or in the request to participate:

- (a) the part (parts) of the public procurement for the performance of which the tenderer (candidate) intends to employ a subcontractor,
- (b) the subcontractors intended to be employed by the tenderer in those parts for more than ten per cent of the value of the public procurement contract and the percentage of the public procurement for the performance of which the indicated subcontractors will contribute.

**2. The indication and employment under paragraph 1 shall not affect the tenderer's liability regarding performance. In the participation stage of a procedure consisting of more than one stage, the declaration made under paragraph (1) may be modified by the tenderer in the tendering stage of the procedure, without prejudice to Article 26; in such cases, the tenderer shall submit again its declaration to the effect that he shall not employ any subcontractor who is liable to the grounds for exclusion [Article 87(1)(d), Article 91(1)(d) and Article 107(4)(e) ]. In the case of economic operators participating in the certification of suitability, such modification may not entail any change in the contents of the declarations made in the framework of the certification of suitability.<sup>22</sup>**

3. If the contracting authority has submitted or will submit an application (tender) for support, it may start the procedure – regardless of the fact whether the notice launching the application for support has already been published or not – but economic operators shall be advised of this circumstance as well as the condition set forth in paragraph 4.<sup>23</sup>

4. For the purposes of paragraph 3 the refusal of the application for support or its acceptance for an amount not reaching the amount for which the contracting authority has applied shall be considered as a circumstance to which the contracting authority may refer as a reason for becoming incapable to conclude or perform the contract [Article 76(1)(d), Article 124(9)]. The contracting authority is entitled to stipulate the conclusion of the support contract or the conclusion of the support contract in a determined amount as a condition suspending the entering into force of the contract being conducted as a result of the public procurement procedure.<sup>24</sup>

*Time limit for submission of tenders, time limit for requests to participate, the amendment to and revocation of the invitation and the documentation*

#### Article 41

1. Taking into account the minimum time limits laid down for each type of procedures, and also in such cases where this Act does not lay down a minimum time limit, the time limit for submission of tenders and the time limits for requests to participate shall be established in all cases by the contracting authority in such a way as to ensure enough time for drawing up and submitting tenders or requests to participate, considering the subject-matter of the contract, the degree of complexity of the tender to be submitted, and the scope of the documents to be filed by the tenderers and the candidates.

2. If justified, the contracting authority shall have the right to extend the time limit for submission of tenders or the time limit for requests to participate set in the invitation launching the procedure on one occasion, but the time limits may not be shortened.

<sup>22</sup> This amendment entered into force on 1 July 2013.

<sup>23</sup> This amendment entered into force on 1 January 2013.

<sup>24</sup> This amendment entered into force on 1 January 2013.

3. If the launching the procedure was published in a notice, the modified time limit and the reason therefor shall be published in a notice before the expiry of the original deadline. In the procedures without prior publication of a notice the economic operators invited for tendering or participating [Article 38(1)] shall be informed at the same time, directly, before the expiry of the original deadline.

4. The provisions set out in paragraph 2 and 3 shall be applied with the necessary changes where applicable in the participation stage of contract award procedures consisting of more than one stages, in that case the economic operators invited to tender shall be informed at the same time, directly by the contracting authority about the new time limit, prior to the expiry of the original deadline.

#### **Article 42**

1. In the course of the open procedure up until the expiry of the time limit to submit tenders, the contracting authority shall have the right to modify the terms specified in the notice launching the procedure and the documentation [Article 49].

2. Prior to the expiry of the deadline laid down in paragraph 1, a new notice shall be published and it shall contain the modified elements of the contract notice or the modified elements of the documentation or, if the modification of the documentation is of a larger extent, it shall state the fact of the modification of the documentation and shall establish the list of the modified points and the method, time limit of making available the modified documentation, and its place of collection, and at the same time it shall inform the economic operators who have expressed their interest in the procedure, in particular those who received the documentation or asked for additional information.

3. In the case of any amendment to the invitation to tender and the documentation the time limit for submitting tenders shall be extended. The new time limit shall be set in such a way as to ensure in all cases a suitable period of time for the submission of tenders, but at least half of the minimum time limit for submission of tenders stipulated by this Act from the date of dispatch of the amending notice. If such a suitable period of time is also ensured on the basis of the original time limit for the submission of tenders, the original time limit shall not be extended. Where the modification affects only the documentation and the time limit for submission of tenders shall not be shortened, contrary to the provision set out in paragraph 2, the contracting authority shall not publish a notice, but only inform directly those economic operators who received the documentation about the amendment to or the availability of the amended documentation.

4. If an amendment to the documentation is of a larger extent, the integrated form of the documentation with the introduced modifications shall be made available in application of Article 50-51 to be applied with the necessary changes where applicable, and it is not possible to request additional consideration for it. If the plan, the technical specifications or the budget not stating the price, which form part of the documentation, is not modified, it shall not be included in the integrated form of the documentation with the introduced modifications.

5. For the purposes of negotiated procedures without prior publication of a contract notice paragraph 1-4 shall be applied, noting that, instead of the dispatch of a notice, the economic operators invited to submit a tender shall be informed at the same time, directly, prior to the expiry of the deadline according to paragraph 1, and the time limit for submission of tenders shall be extended in such a way as to ensure a suitable period of time for the submission of tenders, from the sending of the additional information on the amendments.

#### **Article 43**

1. In the course of the first stage of the restricted procedure and the negotiated procedure with the publication of a contract notice the invitation to participate and, if the documentation has been made accessible by the contracting authority already in the participation stage, the documentation, and in the course of the competitive dialogue the request to participate and the descriptive document may be amended by the contracting authority until the expiry of the participation deadline, in accordance with the provisions set out in Article 42(1)-(4), applied as appropriate, noting that in place of time limit for submission of tenders one shall understand time limit for requests to participate and in place of documentation one shall understand descriptive document.

2. In the course of the restricted procedure, the negotiated procedure with the publication of a contract notice and the participation stage of the competitive dialogue the contracting authority may amend the invitation to tender and the documentation (descriptive document), until the expiry of the time limit for submission of tenders, informing directly, simultaneously the economic operators invited to submit a tender.

3. In the participation stage of the restricted procedure, those elements of the invitation to tender or the documentation which have already been included in the invitation to participate may not be amended.
4. In the negotiated procedure with the publication of a contract notice and in the competitive dialogue, the invitation to tender or the documentation (descriptive document) may not be amended in such a way as to change the terms indicated in a previous stage (stages) of the procedure to such an extent that it would distort competition or prejudice equal opportunities of economic operators, in particular where the decision of the interested economic operators concerning their ability to participate in the contract award procedure may have been substantially influenced by their awareness of the new terms or as a result of the amendment any of the tenderers would become unable to submit a tender.
5. In the case of an amendment to a larger extent, the integrated form of the documentation shall be made accessible in accordance with Articles 50-51, applied as appropriate.

#### Article 44

1. The contracting authority shall have the right to revoke the notice launching the procedure, until the expiry of the time limit for the submission of tenders or the time limit for requests to participate.
2. Where the notice launching the procedure has been published, a notice shall be published concerning the revocation before the expiry of the time limit set out in paragraph 1, and at the same time those economic operators who expressed their interest to the contracting authority shall be informed. In the procedures without prior publication of a notice the economic operators invited to submit a tender or to participate shall be informed simultaneously and directly, before the expiry of the original time limit.
3. In the tendering stage of the restricted procedure and the negotiated procedure with the publication of a contract notice (with a direct invitation to participate as set out in a separate act of legislation), and in the dialogue stage and tendering stage of the competitive dialogue, the contracting authority may revoke the invitation to tender not later than the expiry of the time limit for submission of tenders and only if, due to unforeseeable and unavoidable reasons beyond its control, such material circumstances arise after the sending of the invitation to tender, which make the contracting authority incapable of concluding or performing the contract.

#### *Additional information*

#### Article 45

1. In order to submit an appropriate tender or request to participate, any economic operator being potential candidate or potential tenderer in a given contract award procedure may ask in writing from the contracting authority or the authority designated by it additional (interpretative) information concerning the contents of the notice launching the procedure, in the case of a procedure consisting of more than one stage the invitation to tender and the documentation (descriptive document).
2. The additional information shall be given within reasonable time after the reception of the request, but not later than six days, in the case of accelerated procedure not later than four days, in a negotiated procedure without the publication of a contract notice not later than three days before the expiry of the time limit for submission of tenders, and in the participation stage of the contract award procedures not later than four days before the expiry of the time limit for submission of requests to participate.
3. **If the request for additional information has been submitted later than the fourth day, in an accelerated procedure or a negotiated procedure without the publication of a contract notice the third day preceding the time limit for sending of the answer set out in paragraph 2, the contracting authority is not obliged to provide additional information, however, it may provide such information, where it considers that the question received too late needs to be answered for the appropriate submission of tenders or requests to participate. The contracting authority may extend the time limit for submission of tenders or the time limit for submission of requests to participate specified in paragraph 4 in such cases as well, on condition that there is not enough time to provide the answer and to comply with the answer.<sup>25</sup>**

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<sup>25</sup> This amendment entered into force on 1 July 2013.

4. The contracting authority may extend the time limit for submission of tenders and the time limit for submission of requests to participate if the additional information has been requested not later than the fourth day, in the case of an accelerated procedure and a negotiated procedure without the publication of a contract notice the third day before the time limit for sending of the answer according to paragraph 2, but the contracting authority is not able to provide the information within the time limit specified in paragraph 2. The contracting authority shall inform without delay and at the same time about the extension of the expiry of the time limit all the economic operators which have expressed interest in the procedure to the contracting authority, while in the participation stage of procedures consisting of more than one stage and in negotiated procedures without the publication of a contract notice all the economic operators invited directly to submit a tender or request to participate. If the contracting authority has stated in the invitation launching the procedure that the purchasing or the receipt of the documentation (descriptive document) or the additional documents made accessible for the drawing up of the request to participate is a precondition for participation in the procedure, the provisions set out in Article 41(2) and (3) shall not apply to the extension of the time limit published in the notice. Economic operators which have not yet purchased nor have received the documentation (additional documents) at the time of the extension of time limit, shall be informed in writing about the abovementioned circumstance at the time of reception of the documentation (additional documents).

5. The provision of additional information may not prejudice the equal opportunities of economic operators. The full contents of the information shall be made accessible or sent to all of those economic operators which expressed their interest in the procedure to the contracting authority, in the participation stage of procedures consisting of more than one stage and in negotiated procedures without the publication of a contract notice all the economic operators invited directly to submit a tender or request to participate. In the course of the provision of additional information the contracting authority may not disclose which of the economic operators asked for the information, and in the open procedure neither the economic operators who also received the given additional information may be referred to.

6. If any element of the documentation (descriptive document) is null and void because the same data, information is mentioned differently in several points within the documentation or any element of the documentation is not in line with the notice launching the procedure, the invitation to participate in a procedure consisting of more than one stage or with this Act, the contracting authority shall state this fact in an additional information without taking into consideration the provisions set out in Articles 42 and 43. The element, stipulation declared invalid may not be applied in the contract award procedure and in the public procurement contract.

7. Additional information may also be provided in the form of consultation. In that case, the time and place of the consultation shall be indicated in the notice launching the procedure. Minutes shall be taken on the consultation to be forwarded or made accessible by electronic means within five days thereof to the economic operators defined in paragraph 5.

8. Paragraphs 1 to 7 shall be applicable also to additional information provided during on-the-site inspections and site visits.

## **CHAPTER VII**

### **Determination of the subject-matter of public procurements and the public procurement technical specifications**

#### **Article 46**

1. The contracting authority shall state the subject-matter and quantity of the public procurement in the invitation launching the procedure.

2. The contracting authority may specify the value or quantity of the contract as a threshold or a ceiling and allow derivation therefrom, stating also the percentage of permitted discrepancy.

3. The contracting authority shall verify its procurement regarding if the nature of the subject-matter of the procurement allows division into lots. If the possibility of division into lots may be allowed due to the nature of

the subject-matter of the contract the contracting authority **may allow**<sup>26</sup> division into lots in the invitation launching the procedure, on condition that this possibility is not irrational, considering economic, technical and quality related aspects and other aspects related to the fulfilment of the contract.

4. In the case of division into lots, the invitation launching the procedure shall stipulate those elements of the subject-matter of the public procurement which may be divided into lots for the purposes of submission of tenders or requests to participate.

5. In application of paragraph 3, the contracting authority may stipulate in the invitation launching the procedure that one single tenderer has the right to submit a tender or request to participate for all the lots of the procurement, but the contracting authority may not make it mandatory for the tenderer.

#### **Article 47**

1. The invitation launching the procedure shall indicate if the tenderer is permitted to submit variant (alternative) offers.

2. The contracting authority may permit the submission of variant offers, where the contract is awarded on the basis of the most economically advantageous criterion [Article 71 (2) (b)].

3. When the contracting authority permits the submission of variant offers, it shall state in the invitation launching the procedure or the documentation the minimum requirements and technical specifications for public procurement to be observed by the variant offers and any specific requirements for their presentation. The fact that in the case of the acceptance of a variant offer, the subject-matter of the public procurement would qualify as a public service contract instead of a public supply contract, or as a public supply contract instead of a public service contract, shall not affect the suitability of any variant offer.

#### **Article 48**

1. The contracting authority shall provide in the invitation launching the procedure or in the documentation the public procurement technical specifications for the subject-matter of the public procurement.

2. Technical specifications are the entirety of the technical prescriptions contained, in particular, in the documentation needed for submitting tenders, that defines the characteristics required by the subject-matter of a public contract, permitting the subject-matter of a public procurement to be described in a manner that it shall fulfill the purpose required by the contracting authority.

3. Detailed rules for the determination and the contents of the technical specifications are stipulated by a separate act of legislation.

### **CHAPTER VIII**

#### **Documentation**

#### **Article 49**

1. In order to facilitate the preparation of suitable tenders, the contracting authority shall draw up documentation, in the case of competitive dialogue descriptive document and it may draw up documentation in the case of a negotiated procedure without the publication of a contract notice. The documentation shall, among others, contain the draft contract, except for the cases in which a negotiated procedure or a competitive dialogue is used, where the contracting authority is entitled to specify only the contract terms and conditions known by him, instead of a draft-contract. (Draft-contract and contract terms and conditions hereinafter referred to as: 'draft-contract'.)

2. The documentation shall contain provision of information necessary for the tenderers in relation to the preparation of the tender and the list of the certificates, declarations to be submitted as part of the offer. The documentation may also contain samples of certificates, declarations proposed for the tenderers. Where the documentation is made available already in the participation stage, it may contain information concerning the

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<sup>26</sup> This amendment entered into force on 1 July 2013.

participation stage as well. In contract award procedures concerning public works, for the sake of suitable tendering and the substantive comparison of the offers, the contracting authority shall make available for the tenderers an unpriced budget relating to and suitable for the subject-matter of the public procurement.

3. Rules pertaining to documentation shall be applied to descriptive documents, with the differences pursuant to Article 105(2).

4. In the documentation, the contracting authority may specify the detailed rules concerning certain requirements, elements of tenders, but it may not entail that an economic operator that would be able to submit a tender in the contract award procedure according to the invitation launching the procedure would not be able to do so in the light of the contents of the documentation.

5. The contracting authority shall ensure that the documentation is available from the date of publication of the contract notice in an open procedure, from the starting date of the procedure in a negotiated procedure without the publication of a contract notice - provided there is a documentation in such a procedure - and in a restricted procedure, a negotiated procedure with the prior publication of a contract notice and a competitive dialogue not later than the date of dispatch of the invitation to tender, until the expiry of the time limit for submission of tenders.

6. The contracting authority may stipulate that at least one tenderer or candidate or subcontractor designated in the tender or the request to participate per each request to participate shall purchase or receive or shall have electronic access to the documentation.

#### **Article 50**

1. The contracting authority shall specify in the contract notice of the open procedure the manner, time-limit, location and financial conditions of the availability of the documentation.

2. In the negotiated procedure without the publication of a contract notice paragraph 1 shall be applied with the necessary changes where applicable, if the contracting authority has drawn up documentation but did not send them together with the invitation to tender to the economic operators invited to submit a tender.

3. If there is a request for sending the documentation and the contracting authority fails to make available the documentation in full, directly by electronic means, the contracting authority or the organisation designated by it shall do so within two business days after reception of the request, on condition that the consideration was paid for it.

#### **Article 51**

1. In a procedure consisting of more than one stage, as regards the documentation, the contracting authority shall only include in the invitation to participate the data defined in Article 50(1), if it makes the documentation available already in the participation stage.

2. If the contracting authority has not made the documentation available in the participation stage, it shall send the documentation to the economic operators invited to tender together with the dispatch of the invitation to tender, or it shall indicate in the invitation to tender the path to access the documentation in full, directly by electronic means.

3. If the documentation or the descriptive document is not at the contracting authority's disposal or any other reason justifies it, the contracting authority, contrary to the provisions set out in paragraph 2, shall indicate in the invitation to tender the final date and the place for collecting the documentation or the descriptive document as well as the terms of payment. In that case, Article 50(3) shall also apply.

#### **Article 52**

1. The counter value for the documentation shall be established based on the costs incurred in connection with their production and provision to the tenderers, considering the contract award procedure.

**2. All economic operators concerned shall receive (have access to) the documentation without any charge. Only the organisations under Article 124(4) are bound to make payment for the documentation according to the terms set by the contracting authority.<sup>27</sup>**

**3. In a negotiated procedure without the publication of a contract notice, as well as in procedures under Article 122/A, no payment may be requested for the documentation.<sup>28</sup>**

### **Article 53**

Where the contracting authority does not make the documentation available at the time of the submission of the requests to participate, it may provide additional documents which may include in particular information necessary for the candidates in relation to the preparation of the request to participate, the list of certificates, declarations to be submitted as part of the request to participate, specifically with the aim of helping the submission of requests to participate. Such additional documents shall be made available ensuring equal opportunities of economic operators, applying accordingly the rules concerning the provision of documentation, and the method of the provision of such additional documents shall be included in the invitation to participate by the contracting authority. The contracting authority may stipulate in the invitation to participate that at least one candidate or subcontractor designated in the request to participate per each request to participate shall receive or shall have electronic access to the documents provided for the preparation of request to participate.

### **Article 54**

1. In the case of public works and public services the contracting authority may state in the contract notice or in the invitation to tender that the tenderer shall manage to obtain appropriate information on the obligations relating to taxes, to environmental protection, to the protection of health, to equal opportunities of disabled persons and it shall be obliged to state that the tenderer shall manage to obtain appropriate information on the obligations relating to the employee protection provisions, and to the working conditions which are in force at the site of implementation and which shall be met during the performance of the contract. Such information shall be made available free of charge by the competent bodies.

2. If the contracting authority requires tenderers to obtain the appropriate information on the obligations specified in paragraph 1, it shall provide the name and the address of the bodies (authorities) from which a tenderer may obtain the appropriate information in the documentation.

## **CHAPTER IX**

### **Requirements related to tenderers and candidates**

#### *Suitability of economic operators for the performance of the contract*

### **Article 55**

1. In the course of contract award procedures only those economic operators may submit a tender which meet the minimum requirements (suitability criteria) established by the contracting authority in relation to

- (a) professional experience and qualifications,
- (b) technical conditions,
- (c) quality assurance or environmental standards,
- (d) economic and financial standing

and is not subject to any ground for exclusion [Article 56 and 57]. The contracting authority shall prescribe at least one suitability criterion according to points (a)-(c) (technical and professional ability) and at least one suitability criterion according to point (d) (financial and economic standing).

<sup>27</sup> This amendment entered into force on 1 July 2013.

<sup>28</sup> This amendment entered into force on 1 July 2013.

2. The suitability criteria and the documents to be submitted for the certification of compliance therewith shall be specified accurately in the notice launching the procedure. For that purpose, those conditions whose existence, non-existence or a degree of deficiency determined therein rules the tenderer or the candidate out of being considered by the contracting authority as having the necessary ability to perform the contract, shall be stated pursuant to paragraph 1.

3. The contracting authority shall confine the establishment of suitability criteria to the subject-matter of the contract and may prescribe such criteria only to the extent actually necessary for the performance of the contract, also taking into consideration the estimated contract value.

4. The specified suitability criteria may be met jointly as well by joint tenderers or joint candidates, and the criteria defined according to paragraph 1(d), which apparently concern each economic operator individually, may be met only by one of them.

5. Tenderers or candidates may also meet suitability criteria by relying on the capacity of any other entity (person), regardless of the legal nature of their relation. In such cases, the tender or, in a procedure consisting of more than one stage the request to participate shall designate that entity and the suitability criterion (criteria), indicating the related point of the notice launching the procedure, for the certification of which the tenderer or candidate relies (also) on the resources of that entity. The entity providing resources shall certify by the same means as the ones prescribed for the tenderer that it is able to perform the contract and shall declare that the resources needed for the performance of the contract will be at his disposal during the period of implementation of the contract.

6. The tenderer or the candidate may rely on the capacity of another entity for the certification of its suitability pursuant to paragraph 5 in the following cases:

- (a) where the tenderer or the candidate will actually use the resources presented during the certification of suitability and provided by that other entity in the course of the performance of the contract and it makes a statement on the method of its use; if the entity has been designated as a subcontractor, this fact also qualifies as such a declaration, or
- (b) where the suitability criterion is related to previous supplies, provision of services or execution of public works, the tenderer (candidate) shall make a statement on the way of involving in the performance the entity whose data is used by it for the certification of suitability, which enables it to use the professional experience of that entity in the performance of the contract, or
- (c) **for the purposes of the certification of economic and financial ability - where, contrary to the provision set out in point (a) of this Article, the suitability criteria are not related to resources which may actually be provided at the time of the performance -, if the tenderer (candidate) submits in his tender (request to participate) a statement made by the other entity participating in the certification of suitability stating that the latter undertakes guarantee under the provisions set out in Article 274(1) of the Civil Code to recover all those damages incurred by the contracting authority which derived from the non-performance or defective performance of the tenderer and has not been recovered through the enforcement of any other retention.<sup>29</sup>**

#### *Grounds for exclusion*

#### **Article 56**

1. The following economic operators are excluded from participating in the procedure as a tenderer, a candidate or a subcontractor, and may not contribute to the certification of suitability either:

- (a) who are being wound up or who were subject to the publication of a decree in bankruptcy or the liquidation proceedings launched against whom were legally imposed, or against whom a similar process is in progress pursuant to their personal right, or who are in any analogous situation under their personal right;
- (b) who have suspended business activities or whose business activities have been suspended;

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<sup>29</sup> This amendment entered into force on 1 July 2013.

- (c) who have been convicted of an offence concerning their business activities or professional conduct by a final judgment, until the time-limit for the detriments regarding criminal records lapses; or whose activity was restricted by a final judgment, under Article 5(2)(b) or (g) of Act CIV of 2001 on Measures Applicable to Legal Entities in Criminal Law, during the period of prohibition; or whose activities have been restricted for a similar reason and in a similar manner by another court in a judgement which has obtained the force of res judicata;
  - (d) who have been prohibited from participating in contract award procedures by a final judgment, during the period of the prohibition;
  - (e) who have not fulfilled their tax, customs duty or social security contribution payment obligations for over a year, in accordance with the legal provisions of the country in which they are established or with those of the country of the seat of the contracting authority, unless they were granted a permission for deferred payment of the debt;
  - (f) who supplied false data in an earlier contract award procedure (concluded within the previous three years) and was therefore excluded from the procedure, or the supply of false data was ascertained by a final judgment, until the time-limit set with the force of res iudicata.
- (g)**<sup>30</sup>
- (h) who pursuant to the Criminal Code have committed a crime of participation in a criminal organization—including committing a crime within a criminal organization – of bribery, bribery in international relations, misappropriation, negligence, budgetary fraud, infringement of the financial interests of the European Communities, as well as money laundering, or who have committed a similar crime pursuant to their personal right provided they are the subject of the final judgment of the court, until the expiry of the time-limit for the consequences of such judgment;
  - (i) who, in relation to a contract concluded as a result of an earlier contract award procedure after 15 September 2010, failed to meet, towards their subcontractor, more than 10% of their payment obligation (originating from a final or partial invoice), established by an enforceable administrative or court judgement which has been pronounced within the last two years, within the time limit set in such judgement, although the party entering into the contract as contracting authority paid them in due time.
  - (j) in the course of the fulfilment of the obligation concerning data provision stipulated in the given procedure, it provides false data or makes false statement which may prejudice the fairness of competition;
  - (k) in the case of whom any of the following circumstances occur:
    - (ka) which have their fiscal domicile in a country outside the EU, the EEA or the OECD, or in a country having signed an agreement with Hungary on avoiding double taxation, or
    - (kb) whose profit deriving from the public procurement contract would be subject to more favourable conditions of taxation in the country where they have their fiscal domicile (considering the final income tax to be paid after the reception of tax refunds) than the terms of taxation which would apply to its domestic profit deriving from the given country. The latter criterion shall not be met by the economic operator if he will perform the public procurement contract through his branch office registered in Hungary and the profit earned on the basis of the contract would qualify as a profit attributable to that branch office.
    - (kc) companies which are **not listed on any official stock exchange**<sup>31</sup>, whose proprietor pursuant to Article 3(r) of the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing may not be identified.

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<sup>30</sup> This point was repealed on 1 July 2013.

<sup>31</sup> This amendment entered into force on 1 July 2013.

2. An economic operator in which a legal person or a business organisation without legal personality subject to the conditions set out in paragraph 1(k) owns directly or indirectly a share exceeding 25% or has the right to vote, may not be tenderer or candidate in the procedure. If the business organisation having a share exceeding 25 % or having the right to vote (in the given economic operator) is subject to partnership taxation, the condition set out in paragraph 1(ka) shall be applied – with the necessary changes where applicable – to the proprietor companies of the given partnership.

3. With regard to economic operators with a seat in Hungary the tax payment liability referred to in paragraph 1 (e) shall mean the tax payment liability indicated in the records of the national tax authority and the national customs authority.

4. As regards criminal acts similar to those referred to in paragraph 1 (h), i.e. participation in a criminal organisation, bribery, bribery in international relations, infringement of financial interests of the European Communities and money laundering in the case of tenderers established in other Member State of the European Union, participation in a criminal organization, as defined in Article 2 (1) of Council Joint Action 98/733/JHA, corruption, as defined in Article 3 of the Council Act of 26 May 1997, and Article 3 (1) of Council Joint Action 98/742/JHA, respectively, fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities, money laundering, as defined in Article 1 of Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering shall be effective, respectively.

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6. The contracting authority in the notice launching the procedure shall refer to the reasons for exclusion set out in paragraph 1 and 2.

7. The contracting authority shall inform the Public Procurement Authority of the exclusion specified in paragraph 1(j) and of the date of the exclusion, indicating the name and address (seat, residence) of the involved tenderer, candidate, subcontractor, organisation participating in the certification of suitability, as well as the subject-matter and the reference number of the procedure and the date of the exclusion.

#### **Article 57**

1. The contracting authority may stipulate in the notice launching the procedure that the following economic operators are excluded from participating in the procedure as a tenderer, a candidate, a subcontractor, and may not contribute to the certification of suitability:

- (a) who have violated the law concerning their business activities or professional conduct and this fact has been stipulated in a final judgment delivered within the previous five years;
- (b) who have violated the law under Article 11 of Tptv., or according to Article 101 of the Treaty on the Functioning of the European Union, and this fact has been stipulated in the final and enforceable decision of the Hungarian Competition Authority – delivered within the previous five years —, or in the event of the court review of the decision of the Hungarian Competition Authority, by a final judgment of the court, and have been issued a pecuniary penalty; or if the establishment of such violation of the law by the tenderer has been ascertained by a final decision and a pecuniary penalty of another competition office or court within the previous five years;
- (c) who have violated their contractual obligations undertaken in a previous contract award procedure as ascertained under a final administrative or final court judgement, which was pronounced within the last two years;
- (d) who are not registered in their country of establishment;
- (e) who do not hold the permit or licence or are not members in a professional organisation or chamber prescribed in their country of establishment for the provision of the service.

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<sup>32</sup> This paragraph was repealed on 1 July 2013.

(f) committed, as defined by legislation, a serious breach of professional duty or an act violating professional ethics established in a procedure for breach of the code of ethics conducted by a professional organisation specified in a separate act of legislation, within the last three years;

2. Economic operators authorised to provide the relevant service in the country of their establishment shall not be excluded from the procedure on the grounds that they do not fulfil the legal and organisational criteria (e.g. being a legal entity) stipulated by Hungarian legislation for the provision of the relevant service, or that according to Hungarian legislation only natural persons are entitled to provide the relevant service.

3. The period of time pursuant to Article 56(e)-(g) and (i), as well as points (c) and (f) of the present Article shall be calculated in each case from the date of verification of the non-existence of the ground for exclusion. In the procedures consisting of more than one stage, such a verification shall be made by the contracting authority between the participation deadline and the dispatch of the information notice on the results of the procedure to the tenderer as well.

*Documents to be submitted by candidates and tenderers*

**Article 58**

1. The contracting authority may require economic operators to submit the certificates which are necessary for the conduct of the contract award procedure, for the evaluation of tenders or requests to participate. Those certificates shall help to assess

- (a) the ability of the tenderers or candidates to perform the contract, the provision of the tender guarantee and the non-existence of the grounds for exclusion ;
- (b) whether the supplies, services or public works offered by the tenderer meet the stipulations laid down by the contracting authority.

2. The Government shall set out in a decree which shall be the ways of certification and the documents to be submitted the contracting authority may stipulate or shall be obliged to accept for the assessment of the suitability and the verification of the non-existence of the grounds for exclusion.

3. The tenderers or candidates shall only make a statement in their tender or, in the case of a procedure consisting of more than one stage in their request to participate that they do not employ any subcontractor subject to the grounds for exclusion specified in Article 56 and they do not employ any other entity for the certification of their suitability being subject to the grounds for exclusion defined in Article 56.

4. The contracting authority shall have the right to request information from other public bodies or economic operators for the verification of the contents of certificates, statements submitted in the tender or in the request to participate. The entity the contracting authority requested information from shall be obliged to provide the contracting authority with the information within three business days.

5. For the purposes of the verification of non-existence of the grounds for exclusion and the assessment of the suitability, the contracting authority shall have the right to manage data concerning identity, as well as skills, qualifications, professional experience, current membership in an organisation or public body or business organisation of the persons designated in the tender or the request to participate. For the purposes of the verification of non-existence of the grounds for exclusion, a certificate attesting clean criminal record may also be requested pursuant to the rules for certification set out in a separate act of legislation. For their members, economic and professional chambers may also validate the declaration to be submitted pursuant to the rules set out in a separate act of legislation for the purposes of the verification of non-existence of the grounds for exclusion.

*Tender guarantee*

**Article 59**

1. A contracting authority may make subject participation in the procedure to the condition of provision of a tender guarantee (for the purposes of this Chapter, hereinafter referred to as 'tender guarantee'), to be provided by tenderers at the time of submission of their tenders, or by the deadline specified by the contracting authority

in the contract notice or in the invitation to tender in the amount defined therein. Tenderers shall produce proof of having the tender guarantee provided to the contracting authority. The guarantee ensures the observance of the validity period of the tender and the contracting authority may not make subject the participation in the participation stage to the condition of provision of a guarantee.

2. The tender guarantee may be provided by having the prescribed sum deposited into the payment account of the contracting authority or by the provision of bank guarantee or by furnishing a promissory note issued pursuant to an insurance contract and containing a joint and several guarantees, according to the choice of the tenderer. The place of payment and the payment account number of the contracting authority, together with the method of evidencing such payment shall be defined in the contract notice or in the invitation to tender.

3. The amount of the tender guarantee shall be established in a way that ensures equal opportunity to all tenderers and set so as to cover any potential cost to be incurred, as foreseeable, by the contracting authority in the event of infringement of the validity period of the tender as described in paragraph 4, in the event of the tenderer withdrawing his tender within the validity period or if the contracting fails due to reasons within the tenderer's sphere of interest. Where the contracting authority allows the division of the public procurement into lots, the tender guarantee and the amount thereof shall be set separately for each lot.

4. If the tenderer withdraws its tender during the validity period or the contract is not concluded due to a reason arising within the tenderer's sphere of interest, the tender guarantee shall be forfeit and can be claimed by the contracting authority.

5. The tender guarantee shall be refunded

(a) to tenderers within ten days after the withdrawal of the contract notice or the invitation to tender, or after having their tender declared invalid or after the dispatch of the notice on the results of the procedure to the tenderers;

(b) to the successful tenderer, or in the case set forth in Article 124(4) to the tenderer ranked second, within ten days after the conclusion of the contract, unless the contract notice stipulated the tender guarantee to be retained and transferred as additional security for the ensuing contract.

6. If participation in the procedure was made subject to the condition of the provision of a tender guarantee, the contracting authority shall, within ten days, refund double the amount in case of a tender guarantee furnished in cash, or an amount equivalent to the tender guarantee in all other cases

(a) to tenderers in the event of failing to notify tenderers of the results of the procedure during the validity period as set in the invitation to tender or during the extended validity period;

(b) the successful tenderer, or in the case set forth in Article 124(4), to the tenderer ranked second, in the event of failing to conclude the contract.

7. Contrary to the provisions set out in paragraph 6, if the contracting authority requests tenderers to maintain their tender pursuant to Article 62(2), and any of the tenderers or all tenderers choose not to maintain the tender, the guarantee shall be refunded within ten days after the receipt of the tenderer's statement or the dispatch of the notice on the results of the procedure to the tenderers. The tenderers maintaining their tender shall be requested by the contracting authority in the request defined in Article 65(2) to maintain the same guarantee as the one that was offered before, for the extended validity period of the tender.

## **CHAPTER X**

### **Tenders and requests to participate and the rules pertaining to the opening thereof**

#### **Article 60**

1. The tender shall be drawn up and submitted by the tenderer in compliance with the requirements for the contents and form set out in the contract notice (invitation to tender) or, in the case of a procedure consisting of more than one stage in the invitation to tender and the invitation to participate, and in the documentation.

2. In the procedures consisting of more than one stage, the request to participate shall be drawn up and submitted by the candidates in compliance with the requirements for the contents and form set out in the invitation to participate.
3. The tender shall contain in particular the explicit statement of the tenderer concerning the conditions set out in the contract notice or invitation to tender, the conclusion and performance of the contract and the requested consideration.
4. No offer may be made in the request to participate.
5. Moreover, in the tender or, in the case of a procedure consisting of more than one stage in the request to participate, in addition to the submission of other required documents, the tenderer or the candidate shall make a statement whether it qualifies as a micro, small or medium-sized enterprise according to the Act on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises.
6. The tender and the request to participate shall contain a reading sheet which indicates the information specified in Article 62(3) in the case of tenders, or the information defined in Article 62(5) in the case of requests to participate.
7. The tenderer and the candidate shall have the right to amend or withdraw his tender or request to participate until the expiry of the time limit for submission of tenders or the time limit for participation.
8. As regards the validity period of the tender relevant to the tenderer, the rules set out for each type of contract award procedure shall govern respectively.

#### Article 61

1. **Where the submission of paper-based tenders (requests to participate) is required by the contracting authority, tenders and requests to participate shall be submitted in one paper-based original copy, in writing, in a sealed envelope, by hand delivery or mail, to the address indicated in the contract notice, in the invitation to tender or in the invitation to participate, by the expiry of the time limit to submit tenders or the time limit to participate. The contracting authority may prescribe the submission of electronic copies corresponding precisely to the paper-based original.<sup>33</sup>**
2. The contracting authority may permit the submission of the tenders and requests to participate by a method alternative to that specified in paragraph 1, provided that it can guarantee that the tenders will not be opened before the expiry of the time limit to submit tenders or the time limit to participate and will not be disclosed to unauthorised users within the sphere of interest of the contracting authority.
3. The packing of tenders or requests to participate received after the expiry of the deadline may be opened with the aim of identifying the tenderer or the candidate, and it shall be recorded by drawing up separate minutes.

#### Article 62

1. The documents containing the tenders or requests to participate shall be opened at the time of the expiry of the time-limit fixed to submit tenders or the time limit to participate. The tender opening procedure shall last until all tenders or requests to participate submitted by the expiry of the time-limit have been opened.
2. The tender opening procedure may be attended only by the contracting authority, the tenderers, and persons invited by them and – in case of contracting authorities receiving support for the public procurement – the representatives of organisations and persons specified in a separate act of legislation.
3. Upon opening the tenders, the names and addresses (seat, residence) of the tenderers, as well as the main quantifiable particulars to be assessed according to the evaluation criteria (sub-criteria), shall be announced.
4. **When the opening of the tenders - or, in the case of a negotiated procedure that of the final tenders - is started, immediately before the opening of the tenders, the contracting authority shall disclose the**

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<sup>33</sup> This amendment entered into force on 1 July 2013.

**estimated value of the public procurement contract calculated without taking into account the provision set out in Article 18(2), as well as the amount of the funds available for the performance of the contract, where the division of the contract into lots is allowed, for each lot. In a negotiated procedure, if the contracting authority does not request the submission of final tenders in writing, it shall disclose the estimated value of the public procurement contract and the amount of the funds available for the performance of the contract - if the division of the contract into lots is allowed, for each lot – in the framework of the last negotiation, after all the tenderers submitted their final tender.**<sup>34</sup>

5. Upon opening the requests to participate, the names and addresses (seat, residence) of the candidates shall be announced.

6. If a person – being present at the opening of the tenders and specified in paragraph 2 – requests during the opening of the tenders to be permitted to have access to the reading sheet specified in Article 60(6) for review, he shall be given the opportunity to do so without delay, immediately after the presentation of the tender.

7. The contracting authority shall draw up minutes of the opening of the tenders and requests to participate not submitted electronically, as well as of the presentation of the data that has been read out and shall distribute such minutes to all tenderers and candidates within five days from the day of opening.

## **CHAPTER XI**

### **Rules pertaining to the evaluation of tenders and requests to participate**

#### **Article 63**

1. In the course of evaluating the tenders, the contracting authority shall examine the tenders if they are in compliance with the conditions set in the contract notice (the invitation to tender) or, in the case of procedures consisting of more than one stage the invitation to participate (to tender), the documentation and by law.

2. In the procedures consisting of one stage, the suitability or unsuitability of the tenderer to perform the contract shall be assessed against the criteria set out in the contract notice (the invitation to tender).

3. The contracting authority shall determine which tenders are invalid and whether there are any tenderers to be disqualified from the procedure.

4. Admissible tenders shall be assessed based on the evaluation criteria set forth in the invitation launching the procedure (Article 71) and with regard to Articles 71-73.

#### **Article 64**

1. In the course of assessing the requests to participate, the contracting authority shall examine the requests if they are in compliance with the conditions set out in the invitation to participate and in the relevant legislation.

2. The suitability or unsuitability of the candidate to perform the contract shall be assessed against the stipulations of the invitation to participate. The assessment may involve the verification of the authenticity of the certifications, or of the adequacy of the certified copies.

3. The contracting authority shall determine which requests to participate are invalid and whether there are any candidates to be excluded from the procedure.

#### **Article 65**

1. The contracting authority shall be bound to evaluate the tenders as quickly as possible, the evaluation shall be carried out within a time period which allows the notification of the tenderers of the decision closing the procedure during the validity period of tenders.

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<sup>34</sup> This amendment entered into force on 1 July 2013.

2. In appropriate cases, prior to the expiry of the validity period of tenders, the contracting authority may request tenderers to maintain their tenders until a set date, but the extension of the validity period of tenders may not exceed sixty days from the original date of expiry of the validity period. If the tenderer does not make any statement within the time limit set by the contracting authority, it shall be considered that the tenderer will maintain its tender until the date set by the contracting authority. If any of the tenderers refuses to maintain his tender, his tender may not be taken into consideration after the expiry of the original validity period of tenders, in the course of the procedure, for the purposes of the evaluation.

3. The contracting authority shall be obliged to evaluate the requests to participate as quickly as possible, the evaluation shall be carried out within a time period which allows to send the notification on the results of the participating stage to the candidates prior to the date of dispatch of the invitation to tender indicated in the invitation to participate.

**4. In appropriate cases, the contracting authority shall have the right to defer the date of sending of the invitation to tender set earlier, by not more than thirty days altogether; in that case, before the expiry of the original – or the modified - deadline, all candidates shall be notified at the same time of the new date of sending the invitation to tender and the candidates shall be notified of the results of the participation stage at an earlier date.<sup>35</sup>**

#### Article 66

1. The contracting authority shall evaluate the tenders and the requests to participate, except where, due to unforeseeable and unavoidable reasons beyond its control, material circumstances arise after the starting of the contract award procedure or in the tendering stage of a procedure consisting of more than one stage after the expiry of the time limit for submission of tenders, which make it incapable to conclude the contract or to perform the contract once concluded. In such cases the contracting authority shall declare the procedure unsuccessful.

2. In negotiated procedures and competitive dialogues, the contracting authority shall be obliged to conclude the negotiation or the dialogue as quickly as possible, except where, due to unforeseeable and unavoidable reasons beyond its control, material circumstances arise after the expiry of the time limit for submission of tenders, which make it incapable to conclude the contract or to perform the contract once concluded. In such cases the contracting authority shall declare the procedure unsuccessful.

*Request for supply of missing information, for provision of information from the tenderers or candidates*

#### Article 67

1. The contracting authority shall ensure the possibility of supplying missing information under the same conditions for all tenderers and candidates and it shall request information from the tenderers or candidates for the purpose of clarifying the content of ambiguous statements, declarations, certificates included in the tenders or requests to participate.

2. The request for supply of missing information or provision of information shall be sent by the contracting authority directly to the tenderers or candidates, informing about this fact at the same time all the other tenderers or candidates and setting the time limit, and in the case of request for the supply of missing information, providing for the information to be supplied.

**3. The supply of missing information - in the course of which the documents included in the tender or the request to participate may be amended, as well as completed - shall be restricted to align the tender or the request to participate with the requirements set out in the contract notice, the invitation to tender or the invitation to participate, the documentation or the relevant legislation. In the course of the supply of missing information, if Article 26 was not applied properly, the economic operator designated as a subcontractor in the tender or, in the case of a procedure consisting of more than one stage in the request to participate, may be qualified as a joint tenderer or, in the case of a procedure consisting of more than one stage a joint candidate, but only in the participation stage.<sup>36</sup>**

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<sup>35</sup> This amendment entered into force on 1 July 2013.

<sup>36</sup> This paragraph entered into force on 1 July 2013.

4. During the whole time period - set in the request or notification according to paragraph 2 - of the supply of missing information for any tenderer or candidate, the tenderer or candidate has the right to supply such missing information for which he has not been requested by the contracting authority to supply missing information.

**5. If the contracting authority perceives any missing information not mentioned in the previous requests for missing information, it shall be obliged to request for another supply of missing information. Where, in the course of the supply of missing information, the tenderer (candidate) involves in the procedure an economic operator which was not included in the tender (request to participate) and this involvement would require another supply of missing information, the contracting authority shall not be obliged to request for another supply of missing information, provided the contracting authority specified in the notice starting the contract award procedure that, in such cases, it would not prescribe another supply of missing information (or would only prescribe another supply of missing information with the restrictions set by itself). The missing information indicated earlier, may not be supplied in the course of the subsequent supplies of missing information.<sup>37</sup>**

6. When the contracting authority requests information he shall do so in compliance with the provisions set out in paragraph 1 and 2 and the scope of the requested information shall be restricted to the information necessary for the evaluation of tenders or requests to participate, the request for information may not aim at negotiation with the tenderers or the candidates.

7. The supply of missing information or the provision of information may not

- (a) prejudice the principles set out in Article 2(1)-(4) or
- (b) infringe the validity period of the tender, i.e. modify the content of the tender concerning the subject-matter of the public procurement or the terms of the contract (hereinafter referred to as 'professional tender').

8. Contrary to the provisions set out in paragraph 7(b), errors that are not significant and concern specific details and whose modification does not affect the total price or a partial amount thereof to be evaluated, the result of the competition between tenderers and the ranking of tenderers to be formed during the evaluation [Article 63(4)], may be corrected in the course of supply of missing information or provision of information.

9. The contracting authority shall be obliged to ascertain the supply of missing information and the request of information complies with the provisions set out in paragraph 3 and 7. In the case of non-observance of provisions of paragraph 3 or 7 or, if the supply of missing information, provision of information was not fulfilled or was fulfilled beyond the set time limit, only the original copy (copies) of the tender or request to participate may be taken into consideration.

*Correction of calculation errors in the tenders and the unrealistic tender element*

**Article 68**

If the contracting authority perceives in the tender a calculation error affecting the result of the evaluation stipulated by Article 63(4), this error is corrected by the contracting authority by calculating the aggregate price based on the itemised value (core data) of the elements of the subject-matter of the contract, or by calculating another data based on a calculation included in the tender. All tenderers shall be advised forthwith in writing of the correction of the calculation error simultaneously, directly and without delay.

**Article 69**

1. The contracting authority shall request in writing the basic data determining the contents of those tender elements that are relevant for the assessment as well as an explanation, and shall notify the other tenderers of such request at the same time in writing, if a tender contains a consideration appearing to be abnormally low in light of the subject-matter of the contract to be concluded, as regards any of the amounts related to the consideration which shall be assessed individually according to Article 71.

**2. For the purposes of assessing if the tender is abnormally low, the contracting authority shall take account of its previous experiences, the result of the market survey carried out prior to the public**

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<sup>37</sup> This paragraph entered into force on 1 July 2013.

**procurement, or other data used before the starting of the public procurement for determining the estimated value. In particular, the contracting authority shall be obliged to apply paragraph 1, where the consideration according to paragraph 1 included in the tender differs from the estimated value of the public procurement contract calculated without taking into account the provision set out in paragraph 18(2) - in the case of an element of the consideration being assessed individually, from the estimated value of that given element - by more than twenty per cent.<sup>38</sup>**

3. The contracting authority, on the basis of the explanations received and the documents available, shall verify whether the tender elements are well founded. Where the explanations are not sufficient for making a well-grounded decision, the contracting authority shall request tenderers in writing to provide information concerning disputed constituent elements in the tender. It is incumbent upon the tenderer to make all facts, data, calculation concerning the well-founded nature of the consideration available for the contracting authority so as to make it possible for the contracting authority to decide, after due deliberation, whether the consideration is well-founded.

4. The contracting authority may take into consideration objective explanations relating in particular to

- (a) the cost-efficiency of the manufacturing process, of the public works or of the provision of services,
- (b) the technical solutions chosen,
- (c) the exceptionally favourable performance conditions for the tenderer,
- (d) the originality of the goods, works, or services offered by the tenderer,
- (e) the compliance with employment protection provisions and working conditions in force at the place of performance of the public works, services, or supply contract, or
- (f) the possibilities the tenderer possesses for obtaining state support.

5. The contracting authority shall declare the tender invalid if it deems the explanation unsatisfactory and irreconcilable with economic rationality.

6. The explanation is considered as irreconcilable with economic rationality in particular when the tender price – regarding the extent of the live labour input needed for the performance of the contract – does not make provision for the financial cover for the wages and the related rates and taxes defined – within one year prior to the dispatch of the notice on the results of the procedure to the tenderer – in the relevant legislation, or in the collective agreement or in the contract extended by the minister for the sector, subsector. For the purposes of the consideration of the well-founded nature of the tender, the contracting authority may request information from the tenderer about those standard wages as well.

7. For the sake of comparison of offers, the contracting authority may request data founding specific tender elements from the other tenderers as well, where it is necessary for the decision-making on the well-founded nature of the tender price pursuant to paragraph 5.

8. The contracting authority may declare a tender invalid for being abnormally low owing to state support only if previously they had requested information in this respect from the tenderer in writing, and the tenderer was unable to prove that it obtained the relevant state support legally. The contracting authority shall inform the European Commission, through the Public Procurement Authority, about the tenders deemed invalid due to these reasons.

## **Article 70**

1. If a tender element to be assessed based on the constituent factors appears to involve an unfeasible, abnormally low or high, or disproportionate undertaking, the contracting authority shall request in writing details of the affected tender elements and an explanation. The contracting authority shall notify the other tenderers of such request thereof simultaneously in writing.

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<sup>38</sup> This amendment entered into force on 1 July 2013.

2. The contracting authority, on the basis of the explanations received and the documents available, shall verify the tender elements and the feasibility of such, and may request tenderers in writing to provide information concerning disputed tender elements.

3. The contracting authority shall declare the tender invalid if it deems the explanation unacceptable and not reconcilable with economic rationality.

*Award criteria, evaluation of tenders*

**Article 71**

1. The contracting authority shall specify the award criteria in the notice launching the procedure.
2. The contract may be awarded based on either of the following two criteria:
  - (a) the lowest price tender, or
  - (b) the most economically advantageous tender.
3. If the contracting authority wishes to select the most economically advantageous tender, it shall specify:
  - (a) the constituent factors for assessing the most economically advantageous tender;
  - (b) the rated multiplier of each constituent factor to determine its weight, as consistent with the actual significance of such factor (hereinafter referred to as 'weight');
  - (c) the lowest and highest scores, to be the same for all constituent factors, for the content elements of tenders when evaluating according to constituent factors;
  - (d) the method(s) that shall provide the scores in the range between the limits of the scores [point (c)].
4. The contracting authority shall specify the constituent factors pursuant to paragraph 3 (a), according to the following requirements:
  - (a) Within the scope of constituent factors the financial and economic standing, the technical and professional abilities of the tenderer for performing the contract shall not be evaluated;
  - (b) The constituent factor for the amount of consideration shall always be provided for among the constituent factors;
  - (c) The constituent factors shall always be based on quantifiable elements or elements that may be evaluated based on professional requirements and shall be related to the subject-matter of the public procurement, the material terms of the relevant contract (in addition to the price, e.g.: quality, technical merit, aesthetic and functional characteristics, environmental and sustainability characteristics, running costs, economy and cost-effectiveness, after-sale service and technical assistance, supply of spare parts, securing stocks, delivery date or period); the offered degree of employment of unemployed or long-term unemployed people may be evaluated among the constituent factors.
  - (d) The constituent factors shall never allow the same substantial element in a tender being taken into consideration more than once;
  - (e) If within the scope of the constituent factors sub-factors have been specified, the relevant weight of these shall be specified commensurate to their actual significance. If the contracting authority, specifying the method described in paragraph 3 (d), describes which components or characteristics of the tender element relating to the constituent factor will be examined by him in the case of a given constituent factor that may be evaluated based on professional requirements, it may not be considered as the stipulation of a sub-factor.

5. The information listed in paragraph 3 shall be indicated in the notice launching the procedure (the details referred to in points (c) and (d) under —Other information||), however, the detailed description of the method(s) specified in point (d) may also be included in the documentation.

6. The Public Procurement Authority shall prepare recommendations regarding the methods referred to in paragraph 3 (d) and the assessment of the tenders.

7. In relation to the tender elements concerning constituent factors (sub-factors) other than the award criteria or the constituent factor (sub-factor) related to the consideration, the contracting authority may specify in the notice launching the procedure the most favourable level of the tender element in question, and he may stipulate that he will give the same score as the highest score specified according to paragraph 3 (c) to this most favourable level, as well as to the offers going beyond this level, and he may also stipulate a minimum level of requirement which shall be met by the given tender element, even if it is the less favourable option of that element among the tenders.

### **Article 72**

1. Where the criterion for the award of the contract is that of the most economically advantageous tender, the contracting authorities shall evaluate the tender elements according to the constituent factors between the minimum and maximum points specified in the notice launching the procedure, by the method described in Article 71(3)(d), then weighs the scores given to each tender element and aggregates the products of multiplication for each tender. The most economically advantageous tender will have the highest aggregate score.

2. Should the total score of several tenders calculated according to paragraph 1 be identical, the tender offering the lower consideration shall be deemed the most economically advantageous one; while in the event of identical considerations, it shall be the tender which received higher score for the constituent factor (having been given a different score) with the largest weight.

3. The contracting authority may hold a drawing in the presence of a notary public and declare winner the tenderer selected on the basis of the drawing, if

- (a) the contracting authority shall base the award of the contract to the tender offering the lowest price and this lowest price is contained identically in two or more tenders, or
- (b) the award criteria for tenders are the selection of the most economically advantageous tender, but the most economically advantageous tender cannot be determined applying the provisions of paragraph 2.

4. The winner of the contract award procedure shall be selected by a drawing for tenderers having submitted valid tenders with identical prices according to paragraph 3(a), and for tenderers having identical aggregated scores and subscores according to paragraph 3(b).

5. After the evaluation of tenders, the contracting authority may start an electronic auction, if it was indicated previously in the contract notice or in the invitation to tender. A separate act of legislation shall define the detailed rules for the electronic auction.

### **Article 73**

The contract shall be awarded to the tenderer who has submitted to the contracting authority the most favourable valid tender according to the conditions set out in the notice launching the procedure - in a procedure consisting of more than one stage in the invitation to tender - and in the documentation, as well as according to one of the award criteria set out in Article 71(2).

#### *Invalidity of the tender and the request to participate*

### **Article 74**

1. The tender or the request to participate shall be deemed invalid if

- (a) it is submitted after the expiry of the time-limit to submit tenders or to submit requests to participate;

- (b) the tenderer, the candidate or its subcontractor or the entity contributing to the certification of sustainability indicated in the tender or in the request to participate does not fulfil the conflict of interest criteria (Article );
  - (c) the tenderer, the candidate or its subcontractor or the entity contributing to the certification of sustainability has been excluded from the procedure;
  - (d) the tenderer or the candidate does not comply with the suitability conditions required for performing the contract;
  - (e) does not comply in any other way with the conditions stipulated in the contract notice, the invitation to tender or the invitation to participate and the documentation and by law, with the exception of. formal requirements for tenders and for requests to participate set out by the contracting authority.
2. In addition to the cases set out in paragraph 1, the tender shall be deemed invalid if
    - (a) the consideration offered is abnormally low [Article 69];
    - (b) it contains unfeasible, abnormally low or high, or excessively disproportionate undertaking [Article 70];
    - (c) the tenderer failed to provide the tender guarantee within the time-limit set by the contracting authority or provided the tender guarantee in a smaller amount than it was prescribed.
  3. In addition to the cases set out in paragraph 1, the request to participate shall be deemed invalid if the candidate submits a tender.
  4. The contracting authority shall not assess invalid tenders based on the award criteria.

#### **Article 75**

1. The contracting authority must exclude from the procedure those tenderers, candidates, subcontractors, or entities contributing to the certification of suitability
  - (a) who fall under the effect of grounds for exclusion (Articles 56–57);
  - (b) on whose side grounds for exclusion (Articles 56–57) arose during the course of the procedure.
2. The contracting authority may exclude from the procedure
  - (a) those tenderers or candidates who are not eligible for national treatment [Article 2(5)]; or
  - (b) those tenderers who offer a product in the tender not eligible for national treatment due to its place of origin [Article 2(5)].
3. The place of origin of products shall be established based on the rules stipulated in a separate act of legislation or in the Council Directive on the Community Customs Code.
4. The Government may determine the obligatory conditions and aspects to be considered on the grounds of which paragraph 2 apply in the case of budgetary authorities governed or supervised by it, as well as business organisations owned by the State.

#### *Lack of success of the contract award procedure*

#### **Article 76**

1. The procedure shall be deemed unsuccessful if
  - (a) no tenders or in the case of a procedure consisting of more than one stage no requests to participate have been submitted;

- (b) only invalid tenders or requests to participate have been submitted;
  - (c) none of the tenderers, not even the tenderer submitting the most economically advantageous tender, meets the requirements for financial cover available to the contracting authority;
  - (d) the contracting authority declares the procedure unsuccessful due to its becoming incapable to conclude the contract or deliver thereunder [Article 66(1); 44(3)];
  - (e) the contracting authority decides to invalidate the procedure due to action by a tenderer or candidate that materially damages the correctness of the procedure or the interests of the other tenderers or candidates;
  - (f) in the case pursuant to Article 65(2), the validity period expires for all submitted tenders and neither of the tenderers maintain their tender;
  - (g) the Public Procurement Arbitration Board annuls a decision by the contracting authority, and the contracting authority decides to conduct a new contract award procedure or to relinquish its intention to conduct such procedure, but the procedure may not be declared invalid by the contracting authority, if the lawfulness of the procedure may be restored by making a lawful decision after having the decision closing the unlawful procedure annulled.
2. Where the contracting authority has allowed the subdivision of the contract into lots, only the lot concerned by the reason for invalidity may be declared invalid. If the contracting authority has indicated in the notice launching the procedure that the invalidity of any lot makes him lose interest in the conclusion of the contracts, and also has given an explanation for it therein, he may declare the procedure invalid as regards all lots.

*Communication of the decisions of the contracting authority, the preliminary dispute settlement*

**Article 77**

1. The contracting authority shall inform the tenderer or the candidate in writing of the results of the procedure or of the participation stage, the lack of success of the procedure, their exclusion, or being deemed unsuitable for performing the contract, and the classification of their tender or request to participate as invalid on any other grounds pursuant to Article 74, as well as of the relevant reasons thereof in detail, as quickly as possible after the decision to this effect, but within three business days at the latest.
2. Upon completing the evaluation of the tenders and requests to participate, the contracting authority shall prepare a written summary of the tenders and requests to participate according to the standard forms specified in a separate act of legislation. Upon completing the evaluation of the tenders and requests to participate, the contracting authority shall provide the information pursuant to paragraph 1 by sending the written summary by fax or electronic means to all tenderers - in the case of closing of the participation stage to all candidates – at the same time.
3. If the procedure is unsuccessful according to Article 76(1)(d), the contracting authority shall be obliged to provide information on the amount of the planned financial cover of the public procurement and, where appropriate, also on the time and causes of withdrawal, regrouping.
4. The written summary about the requests to participate shall provide reasons for the suitability or unsuitability of candidates according to the suitability criteria stipulated in the invitation to participate.
5. The summary concerning the evaluation of tenders shall be submitted, upon request, to the European Commission and the Public Procurement Authority, and in the case of contracting authorities obtaining support for the public procurement to the representatives of bodies specified in a separate act of legislation. The summary shall be sent to the European Commission via the Public Procurement Authority.
6. When the summary concerning the requests to participate is sent to the candidates, at the same time, it shall be sent at all times to the Public Procurement Authority, and in the case of contracting authorities obtaining support for the public procurement, upon request, to the representatives of bodies specified in a separate act of legislation.

### **Article 78**

1. The contracting authority may modify on one occasion the written summary concerning the evaluation of tenders, if necessary, retract the communication on invalidity, furthermore rescind the contract already concluded within twenty days from the dispatch of the written summary to the tenderers or, if the performance of the contract has already been started and the original status quo may not be restored anymore, terminate the contract immediately, should he observe after the sending of the results that the result (or lack of success) was unlawful and the modification provides legal remedy thereto. The contracting authority shall dispatch the modified written summary by fax or electronic means to all tenderers at the same time, without delay.
2. From the sending of the summary concerning the evaluation of the requests to participate to the candidates to the expiry of the time limit for submission of tenders, the contracting authority shall have the right to amend on one occasion the written summary, if necessary, retract the communication on invalidity, furthermore to send an invitation to tender to the candidate setting a new time limit for submission of the tender should he observe after the sending of the results that the result (or lack of success) was unlawful and the modification provides legal remedy thereto. The contracting authority shall dispatch the modified written summary by fax or electronic means to all candidates at the same time, without delay.
3. In case of detecting any clerical error (change of names, misspelled names, numeric errors, miscount or any other similar error) in the written summary concerning the tenders or the requests to participate, the contracting authority may correct it at or without request. The contracting authority shall send the corrected written summary to all tenderers or candidates at the same time, not later than ten days after the sending of the results of the procedure or the participation stage.

### **Article 79**

1. The following entities may initiate a preliminary dispute settlement:
  - (a) the tenderer or the candidate, within 3 business days after having knowledge of the illegal event, if it considers that the written summary or any procedural act of the contracting authority or any other document made during the contract award procedure, except for those listed in point (b), is partly or completely illegal;
  - (b) any interested economic operator or the chamber or the interest representation body with an activity related to the subject-matter of procurement (for the purposes of this Article, hereinafter jointly referred to as 'applicant') not later than ten days before the expiry of the time limit to submit tenders or to participate, in accelerated procedures or negotiated procedures without prior publication of a contract notice launched for extreme urgency until the expiry of these time limits, if he considers that the contract notice, the invitation to tender, the invitation to participate, the documentation or the modification thereof is partly or completely illegal.
2. The applicant shall state in his application to the contracting authority (hereinafter referred to as 'preliminary dispute settlement application') the points of the written summary deemed unlawful, or other document, or procedural action, furthermore his recommendations, remarks, and the data and facts and supporting his opinion and he shall also refer to the documents – if any – supporting such data and facts.
3. The preliminary dispute settlement application shall be dispatched to the contracting authority by fax or electronic means, and the contracting authority shall inform the applicant for settlement about its standpoint regarding the application not later than three days after the reception of the application by the means identical to that of the submission, furthermore the contracting authority shall inform all tenderers or candidates – known by it – participating in the procedure about the submission of the preliminary dispute settlement application and his answer to it.
4. Where the infringement of law committed in the procedure is remediable through these procedural acts, the contracting authority may require – on not more than one occasion, not later than three business days after the reception of the preliminary dispute settlement application – the tenderers (candidates) to supply missing information (Article 67), to provide information (Article 67) or an explanation (Articles 69-70), setting a time limit of three business days, even if the procedural rules would not allow to do so. In this case the contracting authority shall inform the applicant for settlement and the tenderers (candidates) about the submission of the application for preliminary dispute settlement on the date of dispatch of the request for the supply of missing

information or for the provision of information or for explanation, and he shall inform these entities about his answer to the application not later than seven business days after reception of the application.

5. If a tenderer has submitted a preliminary dispute settlement application in connection with a procedural act done, document made following the opening of tenders within the time limit pursuant to paragraph 1 and in compliance with paragraph 2, the contracting authority may not conclude the contract – if division into lots was possible, he shall not conclude the contract on the part of procurement concerned – before the end of a period of ten days from the date of submission of the application, following the date of dispatch of its reply, even if the standstill period would otherwise expire until that date.

*Public nature of the tenders and requests to participate and the protection of business secrets*

**Article 80**

**1. Tenderers and candidates may prohibit the release of documents containing business secrets (Article 81(2) of the Civil Code), that are included separately in their tender, request to participate or explanation pursuant to Articles 69-70 of this Act. Pursuant to Article 81(3) of the Civil Code, the documents containing business secrets shall only contain pieces of information that, if made public, would be unreasonably detrimental for the business operation to which it is related and may not contain any element specified in paragraph (2)-(3) herein.<sup>39</sup>**

2. The tenderers may not prohibit the public release of their name, address (seat, residence) or any fact, information, solution or data (hereinafter jointly referred to as ‘data’) to be evaluated under the award criteria according to Article 71, but they have the right to prohibit the public release of basic data, partial information not covered by paragraph 3 (such as particularly the budget stating the price) which serve as the basis of the data mentioned above.

3. The disclosure of data subject to data supply and information obligation specified in a separate act of legislation pertaining to data of public interest and data publicised in the public interest may not be restricted or prohibited by invoking business secrecy. The provision excluding the assignment of the contract concluded pursuant to a contract award procedure shall not be regarded as a business secret.

4. After sending the summary concerning the evaluation of tenders (requests to participate), the disclosure of such data that are covered by paragraph (2)–(3) may not be restricted or prohibited by invoking business secrecy. In consideration of this, the tenderer (candidate) may ask to inspect those parts of the tender of another tenderer (the request to participate of another candidate) which do not qualify business secret. In the course of the inspection, notes may be taken on the contents of the documents. Access to documents shall be provided during office hours, on the day suggested by the entity asking for access.

**Article 81**

On request by a tenderer submitting an admissible tender, the contracting authority shall provide information regarding the features of the winning tender and its advantages over the tender submitted by him within five business days from receiving the request, taking into consideration the winning tenderer’s interests regarding business secrecy.

**CHAPTER XII**

**Types of contract award procedures**

**Article 82**

1. Contract award procedures may be open or restricted or negotiated procedures or competitive dialogue. Recourse to a negotiated procedure or to a competitive dialogue may only take place if this is permitted by this Chapter. Negotiated procedures may be with or without the publication of a contract notice.

2. Contracting authorities may apply a framework agreement procedure as well.

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<sup>39</sup> This paragraph entered into force on 1 July 2013.

3. Contracting authorities may create and operate a dynamic purchasing system that aims to pre-select those who are entitled to participate in the procedures to be conducted in order to realise certain public procurements. A separate act of legislation shall define the detailed rules concerning the dynamic purchasing system.
4. In the course of a contract award procedure there shall be no changeover from one type of procedure to another.

#### Open procedures

##### **Article 83**

1. The open procedure is a contract award procedure consisting of one stage whereby all interested economic operators may submit tenders.
2. The open procedure shall be launched by a contract notice.
3. The documents concerning the grounds for exclusion and the certification of suitability pursuant to the stipulations of the invitation and the documentation, as well as the provisions set out by this Act shall be submitted by the tenderer together with his tender. In open procedures no negotiation may take place.
4. The time limit for submission of tenders shall be set by the contracting authority in the contract notice at not less than 45 days from the date of dispatch of the notice.
5. If the contracting authority has dispatched a prior information notice at least fifty-two days, but not earlier than twelve months prior to the dispatch of the notice including the contract notice, which also contained the data available at the time of the dispatch of the information notice in a notice drawn up according to the standard form of contract notices, the time limit for submission of tenders provided in paragraph 4 may be shorter, however, it may not be shorter than twenty-nine days from the date of dispatch of the contract notice, with the exception of urgency, when the time limit for submission of tenders may be shortened to twenty-two days.
6. The time limit for submission of tenders, which must be at least forty-five days or twenty-nine days, may be shortened by not more than five days, provided the contracting authority makes the documentation accessible for the tenderers fully and without any charge, by electronic means, from the date the contract notice is published, and discloses the accessibility data in that notice.
7. In the open procedure, the contracting authority shall be bound by the stipulations of the invitation and the documentation (the commitment of the contracting authority), while the tenderer shall be bound by his tender (validity period of the tender) from the date of expiry of the time limit for submission of tenders. In the invitation for the submission of tenders, the contracting authority may not set a validity period exceeding thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days from its commencement.

#### Restricted procedures

##### **Article 84**

1. The restricted procedure is a contract award procedure consisting of two stages in the first stage of which, that of participation, the contracting authority decides whether or not the candidates are suitable for the performance of the contract. In the second stage, that of tendering, only those candidates qualified suitable and invited to tender by the contracting authority may submit a tender. There shall be no negotiation in the restrictive procedure.
2. The restricted procedures start with an invitation to participate.
3. In the course of the participation stage of the procedure any interested economic operator shall have the right to submit a request to participate, no tender may be submitted by candidates in the participation stage.

4. In the invitation to participate, the contracting authority may set the range of the number of tenderers, and state that, in the second stage of the procedure, it will send invitations to tender only to a number of candidates - selected from the candidates which are suitable and also submitted a valid request to participate - falling within the upper limit of that range. The range must include minimum five tenderers and shall provide for genuine competition.

5. If the contracting authority sets a range, it shall also define in the invitation to participate a ranking method in case the number of suitable candidates exceeds the upper limit of the range. Ranking can be determined in the scope of certification of technical and professional abilities necessary for the performance of the contract.

#### **Article 85**

1. In the restricted procedure, the contracting authority may not set a shorter time limit for participation than a period of thirty days from the day of issuing the notice containing the invitation to participate.

2. Exceptionally, in duly justified and urgent cases, the contracting authority shall have the right to set a shorter time limit for participation than the time limit according to paragraph 1, but it may not be less than ten days from the date of dispatch of the invitation to participate (accelerated procedure). The reason for the use of the accelerated procedure shall be stated in the notice launching the procedure.

3. The date of dispatch of the invitation to tender may not be set later than thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days after the opening of the requests to participate.

#### **Article 86**

1. If the participation stage is successful, then the contracting authority shall - not later than five business days after notifying the candidates of the results - send at the same time a written invitation to tender to suitable candidates, or in the case of setting of a range to the candidates selected based on technical or professional ability.

2. When the number of candidates qualified as suitable is less than the lowest number in the range, the contracting authority shall continue the procedure by inviting to tender the candidates that qualify as suitable. Candidates invited to tender may not submit joint tenders.

#### **Article 87**

1. As a minimum, the invitation to tender shall contain the following:

- (a) the name and address, telephone and fax number (e-mail) of the contracting authority;
- (b) reference to the issued invitation to participate and the date of its issuing;
- (c) the method of, and time limit for supplying the documentation, its place of obtainment and financial terms, if such terms were not specified by the contracting authority in the invitation to participate and if it did not send the documentation together with the invitation to tender;
- (d) as required in the invitation to participate and, if necessary, the definition of certifications, declarations and documents to be attached to the tender, which shall prove that neither the tenderer, its subcontractor nor the entity contributing to the certification of suitability is liable to the grounds for exclusion at the time of the tendering stage;
- (e) the time limit for submission of the tender;
- (f) the tender submittal address;
- (g) the indication whether or not the tender may be submitted in a language other than the Hungarian as well;
- (h) the place and time of opening tenders;

- (i) the parties authorised to be present at the opening of the tenders;
- (j) the validity period of the tender;
- (k) the date of sending the invitation to tender.

2. In the restricted procedure, the contracting authority shall be bound by the stipulations of the invitation to participate from the expiry of the time limit to participate, while he shall be bound by the stipulations of the invitation and the documentation and the tenderer shall be bound by his tender from the date of expiry of the time limit for submission of tenders. In the invitation to tender, the contracting authority may not set a validity period exceeding thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days from its commencement.

3. The tenderer shall follow the procedure stipulated in the invitation to tender – based on paragraph (1)(d) – regarding grounds for exclusion. Those certificates and declarations that had already been attached to the request to participate shall not be attached to the tender, except where the previously submitted certificate or declaration is not adequate anymore for the purposes of certifying as required.

#### **Article 88**

1. In the tendering stage of the restricted procedure, the time limit for submission of tenders shall be determined by the contracting authority as a period not shorter than forty days from sending the invitation to tender.

2. If minimum fifty-two days, but not more than twelve months prior to dispatch of the notice containing the invitation to participate, the contracting authority had dispatched a prior information notice and if it had contained the data as per the standard form of the invitation to participate and available at the time of dispatching the notice containing such information, then deadlines shorter than stipulated in paragraph 1 may also be defined. In such cases the time limit for submission of tenders shall be minimum twenty-six days from sending the invitation to tender.

3. The time limit for submission of tenders of not less than forty days according to paragraph 1, or of twenty-six days according to paragraph 2, may be shortened by not more than five days, provided the contracting authority made accessible the documentation, free-of-charge and fully, for tenderers directly by electronic means from the date of publication of the invitation to participate, and provides the access data in the invitation.

4. In accelerated procedure, in case of a restricted procedure, the contracting authority may not set a time limit for submission of tenders which is shorter than ten days from the day the invitation to tender is dispatched.

#### Negotiated procedures with the publication of a contract notice

#### **Article 89**

1. The negotiated procedure with the publication of a contract notice is a contract award procedure consisting of two stages in the first stage of which, that of participation, the contracting authority shall decide whether the candidate is suitable or not suitable for the performance of the contract and in the second stage, that of tendering, the contracting authority conduct negotiations on the terms of the contract with the suitable candidates invited to submit a tender.

2. Contracting authorities may award their public procurements in a negotiated procedure with the publication of a contract notice in the following cases:

- (a) if the open or the restricted procedure, or the competitive dialogue has been unsuccessful pursuant to Article 76(1)(b) or (c), insofar as the original terms set in the invitation, the documentation or the descriptive document are not substantially altered;
- (b) in exceptional cases, when the nature of supplies, works, or services or the relevant risks involved do not permit prior overall (all inclusive) pricing;

- (c) for public works, when the works involved are required purely for the purposes of research, experiment or development, and not to establish commercial viability or recover research and development costs;
- (d) for public services, when the nature of the services to be provided, in particular in the case of intellectual services and financial services falling within category 6 of Annex 3, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in an open or restricted procedure.

#### **Article 90**

1. The negotiated procedure with the publication of a contract notice shall be launched by a request to participate. The invitation to participate shall state the grounds for the use of negotiated procedure.
2. In the participation stage of the procedure, any interested economic operator shall have the right to submit a request to participate. Candidates are not allowed to submit a tender in the participation stage.
3. In the invitation to participate, the contracting authority may set the range of the number of tenderers, and state that, in the second stage of the procedure, he will send invitations to tender only to a number of candidates - selected from the candidates which are suitable and also submitted a valid request to participate - falling within the upper limit of that range. The range must include minimum three tenderers and shall provide for genuine competition.
4. If the contracting authority sets a range, it shall also define in the invitation to participate a ranking method in case the number of suitable candidates exceeds the upper limit of the range. Ranking can be determined in the scope of certification of technical and professional abilities necessary for the performance of the contract.
5. The contracting authority shall have the right to stipulate that the negotiations in the tendering stage of the procedure will be conducted by him in several stages and that it will continue the negotiation in the subsequent stage only with those tenderers which submitted the most favourable tender according to the award criteria. In such cases the contracting authority shall already state in the notice launching the procedure that he intends to reduce the number of the tenderers in the course of the negotiation.
6. The provisions set out in Article 85 and 86 shall be applied in the negotiated procedures with the publication of a contract notice as well.

#### **Article 91**

1. As a minimum, the invitation to tender shall contain the following:
  - (a) the name and address, telephone and fax number (e-mail) of the contracting authority;
  - (b) reference to the issued invitation to participate and the date of its issue;
  - (c) the method of, and time limit for supplying the documentation, its place of obtainment and financial terms, if such terms were not specified by the contracting authority in the invitation to participate and if it did not send the documentation together with the invitation to tender;
  - (d) as required in the invitation to participate and if necessary, the definition of certifications, declarations and documents to be attached to the tender, which shall prove that neither the tenderer, its subcontractor nor the entity contributing to the certification of suitability is liable to the grounds for exclusion at the time of the tendering stage;
  - (e) the time limit for submission of the tender;
  - (f) the tender submittal address;
  - (g) the indication whether or not the tender may be submitted in a language other than the Hungarian as well;
  - (h) the place and time of opening the tenders;

- (i) the parties authorised to be present at the opening of the tenders;
- (j) the validity period of the tender;
- (k) the date of sending the invitation to tender;
- (l) the procedure and fundamental rules of the negotiations set by the contracting authority;
- (m) the date of the first negotiation.

2. In the negotiated procedure, the contracting authority shall be bound by the stipulations of the invitation to participate, the invitation to tender and the documentation, while the tenderer shall be bound by his tender from the date of conclusion of the negotiations. In the invitation to tender, the contracting authority may not set a validity period exceeding thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days from its commencement (from the conclusion of negotiations).

3. The tenderer shall follow the procedure stipulated in the invitation to tender – based on paragraph (1) (d) – regarding grounds for exclusion. Those certifications and declarations that had already been attached to the request to participate shall not be attached to the tender, except where the previously submitted certification or declaration is not adequate anymore for the purposes of certifying as required.

#### **Article 92**

1. The objective of negotiations between the contracting authority and one or more tenderers in negotiated procedures is to award the contract to the tenderer offering the most advantageous admissible tender with the most advantageous terms.

2. In the course of the negotiations, the contracting authority shall ensure equal treatment of the tenderers, thus in particular, all information provided by the contracting authority shall be communicated to all tenderers.

3. If the contracting authority negotiates with the tenderers one by one, no information provided by the tenderer about his tender during the negotiation may be communicated to the other tenderers without his permission.

4. The contracting authority shall draw up minutes of each negotiation which shall be signed by all tenderers that participated in the stage in question not later than by the commencement of the subsequent stage of the negotiation (in the case of a single stage or the last stage not later than two days after the negotiations ended), and a copy of such minutes shall be handed over or dispatched to them within two business days.

5. In the course of the negotiation, the subject-matter and the terms of the public procurement may not be modified in such a way as to

(a) modify the terms set out in invitation to participate, the invitation to tender and the documentation or complete those terms to such an extent that would distort competition or prejudice equal opportunities of economic operators - in particular where the decision of the interested economic operators concerning their ability to participate in the contract award procedure may have been substantially influenced by their awareness of the new terms - or make any tenderer incapable to submit a final tender at the end of the negotiations.

(b) change the award criteria or method.

6. In the case pursuant to Article 90(5), the contracting authority shall stipulate in advance in the invitation to tender the process of such a multi-round negotiation and the upper limit of the number of tenderers to be selected for the negotiation following the first or the given round. In the course of the negotiations conducted with the tenderers selected in the above manner the contracting authority may not modify its terms, not either according to paragraph (5), and the tenderers may only submit tenders which are more advantageous to the contracting authority compared to the tenders submitted in earlier rounds.

7. The contracting authority shall clearly notify in advance the tenderers of the date of conclusion of the negotiations, if the invitation to tender does not contain any precise information in this respect. As a conclusion

of the negotiations, the contracting authority may invite tenderers to submit a final tender in writing, if the extent of the modifications justifies it, making accessible a new documentation. In the case of public works contracts, where the tender price is modified, the budget stating the price shall also be submitted in the final tender to confirm the modified tender price. The time limit for submission of the final tenders shall also be set by the contracting authority.

8. Where the contracting authority does not provides for the submission in writing of the final tenders, it shall inform all tenderers at the same time, not later than two business days after the last negotiation ended about the main quantifiable particulars of the tenders to be assessed according to the award criteria (sub-criteria).

### **Article 93**

1. In the course of the negotiated procedure, the tenders are evaluated in two stages by the contracting authority.

2. As regards the first tender, not entailing a validity period and submitted within the time limit for submission of tenders set in the invitation to tender, the contracting authority shall verify that the first tender is in compliance with the terms set out in the invitation to participate, the invitation to tender and the documentation. If the tender is invalid due to a reason in relation to which the tender may not be made suitable in the course of the negotiations or the supply of missing information, the tender shall be declared invalid prior to the starting of the negotiations. Considering Article 92(5)(a) and (b), he contracting authority shall have the right to indicate in the invitation to tender which elements related to the professional tender are excluded from negotiations or which elements will be part of the negotiations. Before starting the negotiations, the tender may only be declared invalid due to unsuitability of the professional tender, if such an element of the professional tender differs from the stipulations of the invitation to tender and the documentation, which will be excluded from the negotiations according to the invitation to tender. Any other missing data, information in relation to the certificates, declarations included in the tender shall be supplied until the conclusion of the negotiations.

3. After the conclusion of the negotiations, the contracting authority shall verify that the final tenders are in compliance with the contents of the invitation and the documentation at the time of the conclusion of negotiations and with the requirements set out in the relevant legislation, and, where appropriate, he applies Articles 67-70. Those missing data, information in relation to the declarations, documents which should have been supplied until the conclusion fo negotiations, may not be supplied subsequently. The valid final tenders shall be evaluated by the contracting authority on the basis of the award criterion set in the notice launching the procedure.

#### Negotiated procedures without prior publication of a contract notice

### **Article 94**

1. The negotiated procedure without prior publication of a contract notice is a contract award procedure consisting of one stage, in which the contracting authority negotiates the terms of the contract with the tenderers invited to submit a tender and qualified as suitable.

2. Contracting authorities may conduct a negotiated procedure without prior publication of a contract notice in the following cases:

- (a) if the open, restricted procedure or the competitive dialogue was unsuccessful under Article 76(1)(b) or (c), provided that the original terms set in the invitation to tender, the documentation or the descriptive document are not altered substantially, and that all the tenderers - not covered by Article 74(1)(a)-(d) and (2)(c) - of the open, restrictive procedure or the competitive dialogue are invited by the contracting authority to the negotiation.
- (b) the open, restrictive procedure or the negotiated procedure with the publication of a contract notice was unsuccessful because no tender or request to participate was submitted in the procedure, provided that the original terms set in the invitation to tender or the documentation are not altered substantially; a report to this effect shall be communicated by the contracting authority, through the Public Procurement Authority, to the European Commission;

- (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can only be concluded with a particular organisation or person;
  - (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseen by the contracting authority, the time limit laid down for the open, restricted or negotiated procedures with the publication of a contract notice cannot be kept. However, the circumstances invoked to justify extreme urgency must not in any event be attributable to the negligence of the contracting authority.
3. Further, contracting authorities may award public works or public service contracts by negotiated procedure without prior publication of a contract notice in the following cases:
- (a) for additional works or services not included in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the public works or service described therein, provided that such additional public works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities, or, when such public works services, although separable from the performance of the original contract, are strictly necessary for its completion; on condition that the total estimated value of the contract(s) on such additional public works or service — awarded to the winner of the former award procedures — shall not exceed 50% of the value of the original public works or service;
  - (b) for new public works or services consisting in the repetition or similar works or services entrusted to the former winning tenderer to which the same contracting authority awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded in an open or restricted procedure, and the contracting authority indicated in the contract notice for the original procedure that the negotiated procedure might be adopted furthermore took into consideration the total estimated cost of subsequent works or services (**to determine whether it reaches the EU threshold<sup>40</sup>**); such negotiated procedure may be applied solely during the three years following the conclusion of the original contract;
4. In addition, contracting authorities may award public supply contracts by negotiated procedure without prior publication of a contract notice in the following cases:
- (a) when the products involved are manufactured purely for the purpose of research, experiment, study or development; however, this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
  - (b) for additional deliveries by the winner of the original contract which are intended either as a partial replacement of normal supplies or as the extension of existing supplies where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; however, the total length of such contract(s) may not exceed three years;
  - (c) when the product is listed on and procured from a commodity exchange;
  - (d) when the supplies are procured with exceptionally favourable terms in the course of a sale in a liquidation procedure, in a closing sale or in the execution of a court warrant, or in any similar procedure related to the personal rights of the entity concerned.
5. In addition, contracting authorities may award public service contracts by negotiated procedure without prior publication of a contract notice, where the contract concerned follows a design contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful (awarded) candidates; in the latter case, all candidates (tenderers) recommended by the evaluation committee shall be invited to participate in the negotiations.

## Article 95

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<sup>40</sup> This amendment entered into force on 1 July 2013.

1. Negotiated procedures without prior publication of a contract notice shall start by sending an invitation to tender - with the exception of the case specified in Article 94(4)(c)-(d) – and in the case pursuant to Article 99(2) it shall start by sending an invitation to negotiate.
2. In the negotiated procedures without prior publication of a contract notice, only such an economic operator (those economic operators) may submit a tender which were invited to tender. The economic operators invited to tender may not submit a joint tender, however, nothing prevents any economic operator invited to tender from submitting a joint tender with any other economic operator not invited to tender by the contracting authority.
3. If several tenderers may submit a tender, the invitation to tender shall be sent to all tenderers at the same time.
4. Where Article 94(2)(b) and (4)(a) applies to the negotiated procedure, and - if it may be reasonably ensured - in a situation resulting in extreme urgency in the case of application of Article 94(2)(d) as well, the contracting authority shall, if possible, send an invitation to tender to at least three tenderers.

#### **Article 96**

1. In addition to the contents provided for in Article 38, the invitation to tender shall contain at least the following:

- (a) the ground for adopting the negotiated procedure;<sup>41</sup>**
- (b) the process of negotiations and the related fundamental rules prescribed by the contracting authority;
- (c) the date of the first negotiation;

2. In the negotiated procedure without prior publication of a contract notice, the drawing up of a documentation is not compulsory. Where the contracting authority does not draw up a documentation, the contract terms, the technical specifications, the budget not stating the price in the case of public works, and, where appropriate, the requirements for the business organisation to be set up by the successful tenderers shall be set out by the contracting authority in the invitation for the submission of tenders.

3. In the negotiated procedure without prior publication of a contract notice according to Article 94(5), the contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

4. The contracting authority shall be bound by the stipulations of the invitation for the submission of tenders and the documentation, while the tenderer shall be bound by his tender from the date of conclusion of the negotiations. In the invitation for the submission of tenders, the contracting authority may not set a validity period exceeding thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days from its commencement (from the conclusion of negotiations).

#### **Article 97**

1. Article 92(1)-(4) and (7)-(8) shall also be applied to negotiations, with the necessary changes where applicable.

2. In the course of the negotiation, the subject-matter and the terms of the public procurement may not be modified in such a way as to

- (a) result in a divergence in the properties or conditions of the subject-matter or the terms of the contract awarded in the procedure from the original subject-matter intended to be purchased or the terms of the contract laid down at the commencement of the contract award procedure to such an extent that would have not allowed the application of a negotiated procedure,
- (b) modify the terms set out in the invitation to tender and the documentation or complete those terms to such an extent that makes any tenderer incapable to submit a final tender at the end of the negotiations, or

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<sup>41</sup> This point entered into force on 1 July 2013.

- (c) change the award criteria or method.

#### **Article 98**

1. In the course of the negotiated procedure without prior publication of a contract notice the tenders are evaluated in two stages by the contracting authority.
2. As regards the first tenders, not entailing a validity period and submitted within the time limit for submission of tenders set in the invitation to tender, the contracting authority shall verify that the first tenders are in compliance with the conditions set out in the invitation to tender and the documentation. The suitability or unsuitability of the tenderer for the performance of the contract, as well as the invalidity of the tender in case of the existence of a ground for exclusion shall be established by the contracting authority before the starting of the negotiations.

Considering Article 97(2)(a) and (b), the contracting authority shall have the right to indicate in the invitation to tender which elements related to the professional tender are excluded from negotiations or which elements will be part of the negotiations. Before starting the negotiations, the tender may only be declared invalid due to unsuitability of the professional tender, if such an element of the professional tender differs from the stipulations of the invitation to tender and the documentation, which will be excluded from the negotiations according to the invitation to tender. Furthermore, if the tenderer does not fulfil the suitability criteria necessary for the performance of the contract or the tender is invalid due to the existence of a ground for exclusion, or if the tender is invalid due to a reason in relation to which the tender may not be made suitable in the course of the negotiations or the supply of missing information, the tender shall be declared invalid prior to the starting of the negotiations. Any other missing data, information in relation to the certificates, declarations included in the tender shall be supplied until the conclusion of the negotiations.

3. After the conclusion of the negotiations, the contracting authority shall verify that the final tenders are in compliance with the contents of the invitation and the documentation at the time of the conclusion of negotiations and with the requirements set out in the relevant legislation. Those missing data, information in relation to the declarations, documents which should have been supplied until the conclusion of the negotiations, may not be supplied subsequently. The final valid tenders shall be evaluated by the contracting authority on the basis of the award criterion set in the notice launching the procedure.

#### **Article 99**

1. In negotiated procedures without prior publication of a contract notice under Article 94(2)(d), negotiations shall be conducted and a written contract concluded when the negotiations have been completed with the tenderer or the tenderers able to perform the contract within the period of time required by the extraordinary circumstances, or, if more economic operators received an invitation, with the tenderer who submitted the most favourable tender.
2. In that case the contracting authority shall send an invitation to tender or, where such an invitation to tender may not be drawn up due to an extreme urgency brought about by the circumstances, an invitation to negotiation to the suitable economic operators. The invitation to negotiation shall state the name and seat of the tenderer, the place and time of the negotiation and at least the subject-matter and the quantity of the public procurement.
3. In a procedure to be conducted considering an extreme urgency
  - (a) contrary to the general rules, no suitability criteria shall be stipulated and accordingly, the suitability of the tenderers shall not be certified by itself,
  - (b) the tenderers shall only make a statement that he is not subject to the grounds for exclusion according to Article 56 and, where appropriate, to other grounds for exclusions stipulated by the contracting authority , and
  - (c) the successful tenderer shall attach the certificates necessary for the certification of the non-existence of the grounds for exclusion not later than fifteen days following the conclusion of the contract.

#### **Article 100**

1. On the starting date of a negotiated procedure without prior publication of a contract notice, the contracting authority shall submit the invitation to tender, as well as an information note on the name and address (seat, residence) of the economic operators to be invited to tender, the estimated value of the public procurement and the circumstances which justify the use of the negotiated procedure to the Public Procurement Arbitration Board.
2. For the purposes of Article 94(2)(d), when the contracting authority sends the invitation to tender or, where appropriate, the invitation to negotiation to the economic operators, he shall be bound to inform at the same time, without delay the Public Procurement Authority according to the provisions set out in paragraph (1)
3. On the starting date of the negotiated procedure specified in Article 94(4)(c) and (d), an information note stating the circumstances which justify the use of the negotiated procedure and – in cases according to point (d) – the name and address of the organisation concerned shall be submitted by the contracting entity without delay via fax or e-mail to the Public Procurement Arbitration Board.

### Competitive dialogue

#### Article 101

1. The competitive dialogue is a contract award procedure whereby the contracting authority shall conduct a dialogue with the candidates selected by him according to the provisions set out in this Act, with the aim of identifying with precision the subject-matter of the public procurement and the type of and the terms for the relevant contract, and subsequently he invites them to submit a tender.
2. The competitiv dialogue consists of three stages:
  - (a) participation stage,
  - (b) dialogue,
  - (c) tendering stage.

#### Article 102

1. The contracting authority may make use of the competitive dialogue where
  - (a) he is not able to define, or to define in the detail needed for using the open or the negotiated procedure, the technical specifications concerning the subject-matter of the public procurement, or
  - (b) he is not able to define, or to define in the detail needed for using the open or the negotiated procedure, the type of the contract, or the legal or the financial terms thereof.
2. The conditions specified in point (a) and (b) shall not be the consequence of any negligence on the part of the contracting authority.

#### Article 103

1. The competitive dialogue shall start with an invitation to participate. Article 90(1)-(5) shall also apply to the competitive dialogue noting that the term ‘negotiation’ shall be meant as dialogue conducted in the dialogue stage of the procedure.
2. In the competitiv dialogue, the time limit for participation may not be shorter than thirty days from the date of dispatch of the invitation to participate.
3. In the competitive dialogue, the contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.
4. The date of dispatch of the invitation to tender may not be set later than thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days after the opening of the requests to participate.

5. Where no descriptive document is made available by the contracting authority in the participation stage, the contracting authority shall set out his needs and requirements related to the subject-matter of the public procurement more precisely in the invitation to participate.

#### **Article 104**

1. If the participation stage is successful, then the contracting authority shall, not later than five business days after notifying the candidates of the results, send an invitation to tender at the same time to all candidates qualified as suitable, or in the case of setting of a range to the candidates selected based on technical or professional ability.

2. Where the number of candidates qualified as suitable is less than the lowest number in the range, the contracting authority may continue the procedure by inviting to conduct a dialogue the candidates qualified as suitable. The tenderers invited to participate individually in the dialogue may not submit joint proposal for solution or tender.

3. In the dialogue stage of the procedure, the tenderers shall submit proposals for solution, and then, based on those proposals for solution, the contracting authority shall conduct a dialogue with them.

#### **Article 105**

1. As a minimum, the invitation to tender shall contain the following:

- (a) the name and address, telephone and fax number (e-mail) of the contracting authority;
- (b) reference to the issued invitation to participate and the date of its issue;
- (c) the method of, and time limit for supplying the descriptive document, its place of obtainment and financial terms, if such terms were not specified by the contracting authority in the invitation to participate and if it did not send the descriptive document together with the invitation to tender;
- (d) the deadline for submitting the proposal for solution (time limit for submission of tenders);
- (e) the address of submitting the proposal for solution;
- (f) the indication whether or not the proposal for solution or the dialogue may be submitted in another language in addition to Hungarian;
- (g) the place and time of opening the proposals for solution;
- (h) the parties authorised to be present at the opening of the proposals for solution;
- (i) the date of sending the invitation to conduct a dialogue;
- (j) the procedure of the conduct of the dialogue and the fundamental rules thereof set by the contracting authority;
- (k) where the contracting authority intends to reduce the number of the tenderers in the course of the dialogue, the conduct of the stages of the dialogue and the upper limit of the number of participants to be selected for the dialogue following the given stage;
- (l) if the contracting authority intends to give a prize to one or more tenderer(s), the stipulations thereon set out by him;
- (m) as required in the invitation to participate and if necessary, the definition of certificates, declarations and documents to be attached to the proposal for solution, which shall prove that neither the tenderer, its subcontractor nor the entity contributing to the certification of suitability is liable to the grounds for exclusion at the time of the conduct of the dialogue;

2. The descriptive document shall contain, in particular, a definition, to the extent the contracting authority is capable of, concerning the subject-matter of the public procurement, the related technical specifications for the public procurement, the contract terms, as well as guidelines about the circumstances concerning which the the contracting authority requests proposals from tenderers and about the scope or requirements imposed by the contracting authority as regards those circumstances.
3. The proposed solution shall contain
  - (a) the proposal, regarding one or more solution, of the tenderer concerning the conditions according to paragraph 2, as well as
  - (b) the preliminary tender of the candidate regarding the performance of the contract according to the technical, legal, or financial criteria proposed by that candidate, as well as
  - (c) the statement regarding what part of which proposed solution is a business secret, as well as
  - (d) the statement whether the tenderer agrees to the use of his proposal for solution – wholly or partly - during the definition regarding the requirements for the subject-matter of the procurement.
4. The contracting authority may stipulate in the invitation to tender that the submission of the proposal for solution means at the same time the permission of the tenderer for the contracting authority to use his proposal, ideas – which do not qualify as a protected intellectual property - for the purposes of the determination of the requirements concerning the subject-matter of the public procurement.
5. The rules pertaining to the opening of tenders shall be applied to the submission and opening of proposals for solution and the provisions set out in Article 74(1)(a) and Article 76(1)(a) shall be applied to the proposals for solution submitted by tenderers as well, with the necessary changes where applicable.

#### **Article 106**

1. The dialogue between the contracting authority and one or more tenderers in the competitive dialogue aims at defining in the detail needed for the contract award the technical specifications of the public procurement concerning the subject-matter of the public procurement, as well as the type of the contract or the legal or financial terms thereof.
2. During the dialogue the contracting authority shall ensure equality of treatment among all tenderers, and in particular the contracting authority shall provide to all tenderers any information they give to any tenderer.
3. During the conduct of the dialogue, the tenderers shall not be bound by their proposal for solution and the contracting authority shall not be bound by the conditions set by him either, however, in the procedure, neither the subject-matter of the public procurement, nor the conditions set by the invitation to participate, the invitation to tender and the descriptive document may be changed to such an extent that it would distort competition or prejudice equal opportunities of economic operators. Neither the award criteria nor the method may be modified in the course of the procedure.
4. In the case of application of Article 105(1)(k), in the course of further negotiation conducted with the participants still being in competition, the contracting authority may not modify the conditions set by him, not even pursuant to paragraph 3, and the tenderers may propose only more favourable solutions for the contracting authority than those proposed in the previous stage. Where a tenderer submits a multi-variant proposal for solution, those shall be considered as independent proposals, and the contracting authority is not bound to invite to a successive stage (stages) of the dialogue any specific solution proposed by a candidate.
5. The contracting authority shall conduct the dialogue with the tenderers one by one, and no information provided by him may be communicated to the other tenderers without his permission.
6. Where oral negotiations take place (as well) in the course of the dialogue, the contracting authority shall draw up minutes for each negotiation that shall be signed by all tenderers that participated in the negotiation in question not later than by the commencement of the subsequent stage of the negotiation (in the case of a single stage or the last stage not later than two days after the negotiations ended), and a copy of such minutes shall be handed over or dispatched to them within two business days.

**Article 107**

1. After the conclusion of the dialogues the contracting authority shall invite in writing, at the same time all tenderers who participated in the dialogue – or, where appropriate, in the last stage of the dialogue - to submit their tender.
2. Where all participants in their proposal for solution have agreed to the use of his proposal for solution – wholly or partly - during the definition regarding the requirements for the subject-matter of the procurement and the contracting authority considers it necessary, the contracting authority may use wholly or partly one or more proposals for solution in defining the public procurement technical specifications and the contract terms, for the drawing up of the final tender. In this case the contracting authority shall draw up a documentation for the tendering.
3. Where the requirements according to paragraph 2 do not exist, tenderers shall draw up their tenders by finalizing the previous proposal for solution.
4. The invitation to tender shall state the following:
  - (a) the deadline and the place for submission of tenders,
  - (b) the place and time of opening the tenders,
  - (c) in the case specified in paragraph 2, the data concerning the accessibility of documentation the contracting authority if did not send the documentation together with the invitation to tender,
  - (d) the validity period of the tender,
  - (e) in compliance with the stipulations of the invitation to participate, if necessary, the certificates, declarations and documents to be attached to the tender, certifying that the tenderer and its subcontractor and the entity contributing to certification of suitability is not under the scope of grounds for exclusion in the tendering phase either.
5. The validity period of tender shall start with the expiry of the time limit for submission of tenders. In the invitation to tender, the contracting authority may not set a validity period exceeding thirty - in case of public works, or where the contract award procedure is conducted under a control integrated in a process stipulated by a separate act of legislation, sixty - days from its commencement.
6. The contracting authority shall verify the validity of tenders according to the provisions set out in this Act – where no documentation was drawn up for the submission of tenders the verification pursuant to Article 63(1) shall be provided in compliance with the requirements set in the descriptive document - and then he shall evaluate the valid tenders on the basis of the award criteria set out in the notice launching the procedure.

## Framework agreement

**Article 108**

1. The contracting authority may realise its public procurement through a framework agreement as well.
2. For this purpose
  - (a) he shall conclude a framework agreement – considering the provisions set out in Article 109 – through the conduct of an open, restricted or, where the necessary conditions for the use of negotiated procedure are fulfilled, negotiated procedure;
  - (b) on the basis of the framework agreement, he shall realise the public procurement according to the provisions set out in Article 110.

**Article 109**

1. Framework agreements may be concluded in four ways:
  - (a) framework agreements concluded with one tenderer, which set out as obligatory all terms of the contract(s) aimed at the realisation of the public procurement based on it;
  - (b) framework agreements concluded with one tenderer, which do not set out all terms of the contract(s) aimed at the realisation of the public procurement based on it, or set out such terms and condition without any obligation for their fulfilment;
  - (c) framework agreements concluded with several tenderers, which set out as obligatory all terms of the contract(s) aimed at the realisation of the public procurement based on it;
  - (d) framework agreements concluded with several tenderers, which do not set out all terms of the contract(s) aimed at the realisation of the public procurement based on it, or set out such terms and condition without any obligation for their fulfilment;
2. In the notice launching the procedure, the contracting authority shall indicate which type of framework agreement pursuant to paragraph 1 is aimed at by the procedure
3. In the case a framework agreement concluded with several tenderers, in the notice launching the procedure the contracting authority shall state the range of the tenderers that have submitted the most favourable tender according to one of the award criteria set according to Article 71(2), and the contracting authority shall conclude a framework agreement with not more than the highest limit number of such tenderers. The range shall be adjusted to the subject-matter of the public procurement and to the specific characteristics of the procedure, and under all circumstances shall ensure genuine competition. The range shall include at least three tenderers. Article 72(2)–(4) shall not apply to the evaluation of identical tenders. Where several tenders are identical regarding the limit of the highest number of tenderers that have submitted most economically advantageous tenders, the contracting authority shall conclude a framework agreement with all such tenderers that have submitted identical tenders.
4. The framework agreement pursuant to paragraph 3 shall only be concluded with at least three tenderers if at least three suitable tenderers submitting a valid tender participate in the procedure. Where the contracting authority indicated in the notice launching the procedure that the procedure is aimed at the conclusion of the framework agreement according to paragraph 1(d), the procedure may be declared invalid – in addition to the cases set out in Article 76(1) - if only one suitable tender has been submitted.
5. **The term of a framework agreement may not exceed four years, except in extraordinary, duly justified cases, in particular with regard to the subject-matter of the framework agreement. In this respect it shall be considered whether the specific features related to the given framework agreement require the setting of a longer fixed term, and whether or not it results in a disproportionate restriction of competition. The notice starting a contract award procedure to be conducted for the conclusion of a framework agreement exceeding four years shall specify the justification of the setting of a longer term. In the framework agreement, the contracting authority may indicate that it undertakes to realise a specific part of the envisaged quantity of the public procurement. The contracting authority shall not be bound to realise the public procurement based on the framework agreement if, due to unforeseeable and unavoidable reasons beyond its control, material circumstances making the contracting authority incapable of concluding or performing the contract(s) arise after the conclusion of the framework agreement. In such a case the contracting authority shall notify without delay, in writing the tenderers who signed the framework agreement and the Public Procurement Authority.<sup>42</sup>**
6. In order to implement the public procurement according to the framework agreement, the contracting authority may use another procedure with the prior publication of notice according to this Chapter, particularly when the framework agreement has been concluded for a term of several years or when the number of tenderers that concluded the framework agreement does not allow genuine competition. In this case the contracting authority, in a new notice, shall refer to this circumstance and shall inform at the same time, without any delay, about the publication of this new notice the tenderers that concluded the framework agreement.

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<sup>42</sup> This paragraph entered into force on 1 July 2013.

7. The framework agreement may cover several subject-matters of public procurement.<sup>43</sup>

8. The framework agreement concluded pursuant to paragraph 1(c) shall specify the objective criteria (e.g. the ranking determined on the basis of the award criterion used in the first phase or any other objective criteria related to the subject-matter of the public procurement based on the framework agreement) on the basis of which the contracting authority will conclude the contract aimed at the realisation of the specific public procurement with one or another tenderer participating in the framework agreement.

### Article 110

1. The term of the contract(s) concluded on the basis of the framework agreement and the procured quantity may not exceed the term of the framework agreement or the total quantity envisaged in the framework agreement.

2. Where a consultation or the reopening of competition takes place on the basis of the framework agreement, the terms laid down in the framework agreement may not be substantially modified in the course of the consultation or the reopening of competition.

3. On the basis of a framework agreement concluded with one tenderer - including such cases in which the procedure aimed at the conclusion of a framework agreement according to Article 109(1)(c) or (d) and the framework agreement was concluded with the sole valid tenderer (pursuant to Article 109(1)(a) instead of (c) and Article 109(1)(b) instead of (d)) - the realisation of the given public procurement may take place:

- (a) according to the terms set in the framework agreement pursuant to Article 109(1)(a), through a direct purchasing order placed by the party entering in the framework agreement as a contracting authority;
- (b) for the purposes of a framework agreement according to Article 109(1)(b) through the conclusion of the contract following a consultation. In the invitation for consultation, the tenderer shall be invited by the contracting authority to complete his tender submitted in the procedure aimed at the conclusion of the framework agreement, the supplements to be taken into consideration by the tenderer when drawing up his tender shall be laid down by the contracting authority in the invitation for consultation. The invitation for consultation shall specify the data related to the subject-matter and the contract terms of the given public procurement. In the course of the consultation, the tenderer may only submit a tender similar to or more favourable than the terms of the framework agreement, the tenderer shall be bound by his tender submitted in the course of the consultation until the deadline set in the invitation for consultation. The contracting authority shall notify the tenderer of the acceptance or the rejection of his tender submitted in the course of the consultation.

4. On the basis of a framework agreement concluded with several tenderers the realisation of the given public procurement may take place:

- (a) according to the terms set in the framework agreement pursuant to Article 109(1)(c), through a direct purchasing order placed by the party entering in the framework agreement as a contracting authority with the tenderer selected pursuant to Article 109(8);
- (b) for the purposes of a framework agreement according to Article 109(1)(d) through the reopening of competition by conducting an electronic auction or a procedure pursuant to paragraph (5)-(7).

5. In application of paragraph 4(b), the contracting authority shall send the invitation to tender in writing, at the same time to all tenderers that concluded a framework agreement. No other tenderer may be involved in the procedure. The invitation to tender shall include the following:

- (a) the name and address, telephone and fax number (e-mail) of the contracting authority;

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<sup>43</sup> This amendment entered into force on 1 July 2013.

- (b) reference to the notice launching the procedure to be conducted for the conclusion of the framework agreement and the date of its issue;
- (c) reference to the concluded framework agreement;
- (d) the subject-matter and the quantity of the specific public procurement;
- (e) the determination of the contract;
- (f) the term of the contract or the time limit for performance of the contract;
- (g) the place of performance/delivery;
- (h) the conditions for settling the consideration or reference to the applicable law;
- (i) the time limit for submission of the tender, the tender submittal address and if the submission of tenders is made possible by the contracting authority an indication in another language as well in addition to Hungarian, the stating of that circumstance;
- (j) the place and time of opening the tenders and the parties authorised to be present there;
- (k) any other information necessary for the submission of the tender, as regards, where appropriate, the accessibility of the documentation;
- (l) the validity period of the tender;
- (m) the award criteria and in the case of the award criteria concerning the most economically advantageous tender, the provisions set out in Article 71(3)-(4).

6. The contracting authority may apply a contract award criteria that differs from the award criteria used in the procedure conducted for the conclusion of the framework agreement where he has specified thereto in the notice launching the procedure or in the documentation and where the award criteria in question is included in the framework agreement as well. Where the contract award criteria is the selection of the most economically advantageous tender, the provisions set out in Article 71(3)-(4) shall also be set out in the notice launching the procedure or the documentation, and the framework agreement. The tenderer may only submit tenders which are similar to the contents of the framework agreement or which are more advantageous for the contracting authority compared to the contents of the framework agreement.

7. Chapter X-XI shall apply to the opening and evaluation of tenders, the communication of the decisions of the contracting authority as well as the conclusion of the contract.

## **CHAPTER XIII**

### **Special rules pertaining to public works concession**

#### **Article 111**

1. In respect of public works concession, the rules set forth in Chapter VI-XII shall apply in compliance with the provisions set out in this Chapter.
2. In the notice launching the procedure the contracting authority shall indicate the type of contract award procedure to be followed. In respect of the preparation of the notice the rules pertaining to contract notice or to invitation to participate shall be applied accordingly. An accelerated procedure shall not be applied.
3. Negotiated procedure with the publication of a contract notice may be used without any specific condition to be met. The use of a negotiated procedure without prior publication of a contract notice is only permitted on the basis of the provisions set out in Article 94(2)(a), (b) or (c), or (3)(a).

4. When additional works is necessary for the performance of the works specified in the prior contract, the contracting authority may conclude with the concessionaire a relevant contract without conducting a new contract award procedure, provided
- (a) the additional works, owing to technical or economic reasons, may not be separated from the prior contract without causing major inconvenience for the contracting authority, or
  - (b) the additional construction works although separable but are strictly necessary for the the completion of the works in question.
5. The estimated aggregate value of the contract or contracts concluded with the ex-concessionaire for the additional works according to paragraph 4 shall not exceed half of the value of the original works concession.
6. In the notice launching the procedure, the contracting authority shall be entitled to:
- (a) either require the tenderer winning the public works concession (hereinafter referred to as ‘concessionaire’) to award contracts representing a minimum of thirty percent of the total value of the work for which the concession contract is to be awarded, to third parties,
  - (b) or request the tenderers to specify in their tenders the percentage of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.
7. Tenderers may increase the percentage specified in paragraph 6(a) in their tender. Based on the tender submitted by the concessionaire, this minimum percentage shall be specified in the concession contract.
8. For the purposes of paragraph 6 and Article 113, the following shall not be regarded as third parties:
- (a) any tenderers having submitted a joint tender;
  - (b) undertakings over which the tenderer may exercise, directly or indirectly, a dominant influence, or which may exercise, directly or indirectly, a dominant influence over the tenderer or the tenderer and another organisation.
9. A list of the organisations referred to in paragraph 6(b) shall be indicated in the tender and this list shall be brought up to date following any subsequent changes.
10. The contracting authority shall not stipulate in the notice launching the procedure that tenderers must name the subcontractors intended to be employed for more than 10% of the contract value.

### **Article 112**

1. In respect of public works concessions,
- (a) the award criterion may be only the selection of the most economically advantageous tender [Article 71(2)(b)];
  - (b) the time limit for submission of tenders in open procedures, the participation deadline in restricted procedures and in negotiated procedures with a prior publication of a contract notice shall be not less than forty-five days from the date of dispatch of the tender notice furthermore, neither Article 83(5) nor Article 88(2) may be applied.
2. If the public works concession also fall under the scope of Act XVI of 1991 on Concessions (hereinafter referred to as ‘Act on Concessions’) instead of inviting a concession tender, the contracting authority shall proceed in compliance with this Act and shall also appropriately apply the provisions of Act on Concessions — with the exception of Article 2 (1) (a), Article 4, Article 8 (1) and Article 9. In respect of the preparation of the written summary pursuant to Article 77(2) herein Article 9/A of the Act on concessions shall also be appropriately applied.

*Procedure to be followed by the concessionaire not considered to be a contracting authority, in the case of contracts with third parties*

### Article 113

1. If the value of the public works reaches or exceeds the EU threshold and the concessionaire may not qualify a contracting authority pursuant to Article 6(1)(a)-(d) – and the concession has not been awarded on the basis of Article 9(1)(h) without the conduct of a contract award procedure - he shall proceed in compliance with Chapters I-XII of this Act – with the differences set forth in paragraphs 2 to 5 below – for the purposes of the conclusion of a public works contract with a third party.
2. In the notice launching the procedure the concessionaire shall specify the type of procedure adopted. The notice shall be drawn up accordingly, pursuant to the regulations pertaining to the contract notice or the invitation to participate.
3. A negotiated procedure with prior publication of a contract notice may be used without any specific condition to be met.
4. With the exception of negotiated procedures, the time limit for submission of tenders may not be set at less than thirty-three days from the date of the dispatch of the contract notice or the invitation to tender, and the time limit for participation may not be set at less than thirty days. Article 83(5) and Article 88(2) may not be applied.
5. The accelerated procedure may not be applied.

## CHAPTER XIV

### Special rules for the contract award procedures in the public utility sector

#### *Public utility contract*

### Article 114

1. The rules set out in Chapters VI-XII shall be applied to public utility contracts with the differences set out in this Chapter and in a separate act of legislation.
2. The public utility contracts are the contracts of contracting entities pursuant to Article (1)(a)-(f) pursuing any of the activities defined in this paragraph (hereinafter referred to as 'public utilities activities') and which is concluded with the aim of ensuring one or more public utilities activities specified herein as follows:
  - (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, electricity; gas or heat; or the supply of drinking water, electricity, gas or heat to such networks;
  - (b) the exploitation of a specific geographical area for the purpose of:
    - (ba) exploring for or extracting (mining) oil, gas, coal or other solid fuels, or
    - (bb) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway, or passenger transport;
  - (c) the provision, operation of networks providing a service to the public in the field of transport by railway, automatic systems, tram, trolley bus, bus or cable car.
  - (d) the provision of postal services or other services than postal services on condition that the latter is provided by an undertaking which provides postal services as well.
3. For the purposes of paragraph 2(c), a network shall be considered to exist where the service is provided under specific (operating) conditions laid down by a competent authority, thus, in particular, conditions on the routes to be served, the capacity to be made available or the frequency of the service.
4. This Chapter shall apply (it qualifies as a public utilities activity) if the contract award procedure of a contracting entity pursuing an activity related to drinking water as specified in paragraph 2(a)

- (a) is connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than twenty percent of the total volume of water made available by these projects or irrigation or drainage installations, or
- (b) is connected with the disposal or treatment of sewage.

5. Public utility contracts are the contracts of contracting entities pursuant to Article 6 (1)(a)-(e), even if the contracting entity has not started its public utilities activity yet, however, the contract at issue is needed in order to ensure the preparation, the start or the conduct of the public utilities activity.<sup>44</sup>

### **Article 115**

1. The supply of drinking water, electricity, gas or heat to networks operated by a contracting entity specified in Article 6(1)(e)(f) shall remain an exception among the public utilities activities related to drinking water, electricity, gas or heat, where:

- (a) in the case of drinking water or electricity, the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for pursuing an activity other than public utilities activities, and supply to the network depends only on the entity's own consumption and has not exceeded thirty percent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (b) in the case of gas or heat, the production of gas or heat by the entity concerned is the unavoidable consequence of pursuing an activity other than public utilities activities, and supply to the network is aimed only at the economic exploitation of such production and amounts to not more than twenty percent of the entity's turnover having regard to the average for the preceding three years, including the current year.

2. The provision of bus transport services to the public shall remain an exception among the activities related to networks providing services in the field of public transport where other entities are free to provide those services, either in general or in a particular geographical area, under the same condition as the contracting entity.

3. Detailed rules pertaining to the contract award procedures to be conducted according to this Chapter shall be set out by a separate act of legislation, with the differences which are necessary due to the specificities of those procedures.

#### *Exceptions*

### **Article 116**

1. This Act shall not apply to those contracts which

- (a) aim at an objective other than the pursuit of a public utilities activity of a contracting entity according to Article 6(1)(e)(f), or
- (b) are related to a public utilities activity pursued by the contracting entity in a non-EU member country, under conditions not involving the physical use of a network or geographical area within the European Union.

2. The contracting entity shall notify – through the Public Procurement Authority – the European Commission, at the request thereof, the information regarding the activities specified in paragraph 1 as exceptions.

### **Article 117**

1. This Act shall not apply to:

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<sup>44</sup> This paragraph entered into force on 1 January 2013.

- (a) the water supply awarded by a contracting entity conducting a public utilities activity related to drinking water;
  - (b) the supply of energy or of fuels for the production of energy awarded by a contracting entity conducting a public utilities activity related to energy, gas or heat, as well as the development or exploitation of oil, gas, coal or other solid fuels.
2. This Act shall not apply to public utility contracts concluded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject-matter of such contracts and other undertakings may obtain such rights subject to the same terms and conditions as the contracting entity.
3. The contracting entity shall notify – through the Public Procurement Authority – the European Commission, at the request thereof, the groups of supplies or activities specified in paragraph 2 as exceptions.

### **Article 118**

1. This Act shall not be applied
- (a) where the contracting entity concludes a public utilities contract with an entity which is subject to the obligation to prepare an annual consolidated report in accordance with the Act on Financial Reporting, or which the contracting entity may control, or which may control the contracting entity directly or indirectly, or with another entity which is directly or indirectly controlled by the same entity as the contracting entity, or
  - (b) where a joint venture formed by a number of contracting entities for the sole purpose of carrying out a public utilities activity concludes a public utilities contract with an entity which has a relationship specified in point (a) above with any of the contracting entities involved, provided that at least eighty percent of the average turnover of the undertaking defined in points (a) and (b) with respect to public supply or services or public works within the European Union for the preceding three years derives from economic activities conducted with the entities with which it has a relationship defined in point (a) above.
2. When because of the date on which the undertaking, within the meaning of paragraph 1, concluding the contract with the contracting entity, was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in paragraph 1 is credible, particularly by means of business projections.
3. When more than one undertaking, which are in a relationship with the contracting entity as specified in paragraph 1 (a), provides the same or similar services, supplies or works for the contracting entity, the total turnover deriving from the provision of services, supplies or works by these undertakings shall be taken into account.
4. Where the entity having a relationship specified in paragraph 1 with the contracting authority, is not a contracting authority, and the given entity employs a third entity – not covered by the scope of subjects to this paragraph – to an extent exceeding twenty-five per cent for the performance of the contract concluded with the contracting authority with the aim of satisfying the procurement related needs of the latter, the exception pursuant to paragraph 1 may only be applied if the entity having a relationship specified in paragraph 1 with the contracting authority conducts a contract award procedure based on Article 6(1)(h) for the selection of that third entity. The application of exception pursuant to paragraph 1 shall only be subject to the abovementioned condition if the procurement of the contracting authority would otherwise require the conduct of a contract award procedure.
5. Furthermore, this Act shall not apply
- (a) where a joint venture formed by a number of contracting entities for the sole purpose of carrying out a public utilities activity concludes a public utilities contract with one of those contracting entities, or
  - (b) where the contracting entity concludes a public utilities contract with such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period

of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

6. The contracting entity shall communicate – through the Public Procurement Authority – to the European Commission, at the request thereof, regarding the application of paragraphs (1)-(5), the names of the undertakings concerned, the nature and value of the contracts involved, and any such conditions or proof which may be deemed necessary by the European Commission to establish if the relationship between the contracting parties complies with the requirements of this Article.

7. This Act shall not apply to public utilities contracts, if, pursuant to Article 30 of Directive 2004/17/EC, the European Commission has established that the given activity is directly exposed to competition and has made a decision to that effect or the Commission has not made any decision within the time limit for decision.

8. The procedure of the European Commission shall be governed by Article 30(5) and (6) of Directive 2004/17/EC of the European Parliament and the Council as well as Commission Decision 2005/15/EC. The ways of initiation of the procedure of the European Commission and the sending of the request shall be stipulated by a separate act of legislation. In the procedure pursuant to Article 30 of Directive 2004/17/EC for establishing whether or not a given activity is directly exposed to competition, the Hungarian Competition Authority performs the duties specified in the Gov. Decree on the specific public procurement rules pertaining to the public procurement contracts of the utilities sector, which lays down the ways of initiation of the procedure of the European Commission and the sending of the request, regulates the provision of information on all essential facts related to the performance of a given activity under competitive conditions.

### PART THREE

#### NATIONAL PROCEDURES

##### Article 119

This Chapter shall apply for the purposes of public procurement contracts not reaching EU threshold and at the same time equalling or exceeding national thresholds, as well as for the purposes of service concessions. Furthermore, the procedure pursuant to this Chapter may be applied in such cases where Chapter III of this Act allows it [Article 18(3); Article 19(2)].

##### *Exceptions*

##### Article 120

This Act shall not apply to the following procurements not reaching EU thresholds:

- (a) to the procurement of textbooks, if it is carried out in accordance with the Act on the Rules for the Textbook Market, in the framework of the supply of textbooks to schools and the textbook is registered in the textbook register;
- (b) to the procurement of supplies and services for the full boarding of children situated in children's homes and apartment homes on the basis of Act XXXI of 1997 on the Protection of Children and on Guardianship Administration, for the full boarding of those who receive after-care and of persons receiving social services under Articles 59-85/A of Act III of 1993 on Social Administration and Social Benefits;
- (c) to hotel and catering services, entertainment, cultural and sport services specified in Annex 4;
- (d) to the purchase conducted through crisis management for humanitarian aid within foreign affairs assistance about which the competent committee of the Parliament has made a preliminary decision excluding the application of this Act;
- (e) to the procurement of cold foodstuffs and cooking raw materials, fresh and processed vegetables and fruits, milk and dairy products, cereals, bread products, honey, eggs, horticultural plants;

- (f) in case of a public service aimed at the creation of a literary (technical, scientific) work, or involving consulting or personal interpreting activity necessary for the performance of the contracting authority's core activity.
- (g) to the employment of public procurement consultant activity;
- (h) to Article 3(5)(7)(9) of the Act CXXVIII of 2011 on Disaster Management and the Amendment of Certain Related Acts; as well as, in case of a crisis, emergency or serious situation, to public procurements carried out with the aim of preventing epidemic diseases in animals, directly preventing or avoiding damage caused by serious industrial or traffic accidents or by water, preventing adverse impacts on water quality, as well as for the purposes of protective preparedness or the subsequent reconstruction;<sup>45</sup>**
- (i) to the procurement of goods made, services provided and works executed in the framework of obligatory employment of prisoners;
- (j) to the procurement of goods made, services provided and works executed in the framework of public work employment relationship;
- (k) to the raising of a loan and borrowing, as well as to services related to cash management pursuant to the Act CXII of 1996 on Credit Institutions and Financial Enterprises.<sup>46</sup>**
- (l) to the procurements of the organization providing services defined in Article 114 (2) (d)<sup>47</sup>
- (m) to the purchasing of items within the domain of cultural goods and other rights related thereto.<sup>48</sup>**

*Procedural rules to be applied*

#### Article 121

**1. For the purposes of carrying out a public procurement contract covered by this Part, the contracting authority, according to its choice**

- (a) shall conduct a procedure developed independently in a way pursuant to Article 123, or**
- (b) shall proceed according to the rules set out in Part Two of this Act, with the differences stipulated in Article 122 and Article 122/A.<sup>49</sup>**

2. For the purposes of paragraph 1(b) – applying accordingly the criteria set out in Article 20 -, Part Two of the Act shall apply to the conclusion of public utility contracts [Article 114(2)] in compliance with the specific rules pursuant to Chapter XIV.

#### Article 122

1. In the notice launching the procedure, the contracting authority shall be entitled to provide for the enforcement of one or more of the grounds for exclusion pursuant to Article 56-57 in the contract award procedure, and shall be bound to provide for the enforcement of the grounds for exclusion pursuant to Article 56(1)(k) and (2). As regards the non-existence of the grounds for exclusion, the tenderer shall only make a statement and, regarding Article 56(1)(kc), shall submit a document according to the stipulations set out by a separate act of legislation.

**2. In the case of public works – with the exception of negotiated procedures without prior publication of a contract notice which were started on a ground specified in Article 94(2)-(3) -, the contracting authority shall be bound to and in any other case he shall be entitled to draw up a documentation, which, in the case**

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<sup>45</sup> This point entered into force on 1 July 2013.

<sup>46</sup> This point entered into force on 1 July 2013.

<sup>47</sup> This point entered into force on 1 January 2013.

<sup>48</sup> This point entered into force on 1 July 2013.

<sup>49</sup> This paragraph entered into force on 1 July 2013.

**of a public supply or service, shall only state the substantial contract terms (hereinafter jointly referred to as 'draft-contract') in the place of a draft-contract.<sup>50</sup>**

3. In open and restricted procedures – except for the accelerated procedures -, the time limit for submission of tenders may not be shorter than twenty days from the date of dispatch of the notice launching the procedure or the date of dispatch of the invitation to tender. In the participation stage of the procedures consisting of more than one stage, the time limit to participate shall be set in such a way as to allow appropriate submission of requests to participate.

4. The negotiated procedure with the publication of a contract notice and the competition dialogue may be applied in all cases.

**5. The supplementary information shall be provided by the contracting authority within reasonable time before the expiry of the time limit for submission of tenders or the time limit to participate. Under the provision set out in Article 45(4), if the contracting authority is not able to provide the requested information within the time limit set, it may extend the time limit for submission of tenders and the time limit for submission of requests to participate.<sup>51</sup>**

6. The notice amending the time limit for submission of tenders or the time limit to participate, the notice launching the procedure or the documentation shall only be dispatched, but not published until the expiry of the original time limit for submission of tenders or time limit to participate, however, the economic operators who have expressed their interest in the procedure, in particular those who received the documentation or asked for additional information shall be notified at the same time, directly, in writing of the contracting authority's intention of amendment and of the dispatch of the amending notice, prior to the expiry of the original time limit for submission of tenders or time limit to participate; no measures and decisions may be taken and no documents may be submitted in the contract award procedure before the publication of the amending notice.

7. The contracting authority may launch a negotiated procedure without prior publication of a contract notice in the following cases as well:

(a) If the estimated value of public supply or services does not reach HUF 25 million or the estimated value of public works does not reach HUF 150 million;

(b) the exceptionally favourable, publicised terms – which are open for all entities - of the public procurement, persist only for a limited period of time and the amount of the consideration is substantially lower than the market prices, furthermore the application of a procedure according to this Part would prevent from taking advantage of those favourable terms;

(c) the public procurement contract is carried out for a foreign representation.

**8. In the case of application of Article 7(a), Article 100(1) shall not apply. Competition shall be ensured by the contracting authority also in cases specified in Article 7(a) and (c) and at least three economic operators – which are able to comply with the suitability criteria for the performance of the contract according to the contracting authority - shall be invited to tender. In the course of the selection of economic operators to be invited to tender, the principle of equal treatment shall be complied with and, if possible, in particular the participation of micro, small or medium-sized enterprises shall be ensured. For the purposes of the consideration thereof, the restrictive provision laid down in Article 3(4) of the Act XXXIV of 2004 on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises shall not apply.<sup>52</sup>**

9. The contracting authority may reserve the right to participate in a public procurement procedure for tenderers not reaching in the previous year in the case of public supply and public services a revenue HUF 100 million net of VAT, in the case of public works a revenue of HUF 1 billion net of VAT, who use subcontractors also complying with the condition set in this paragraph for the performance of the contract and who fulfil the defined suitability criteria with the support of the capacity of another entity also complying with the conditions set by this paragraph.

<sup>50</sup> This paragraph entered into force on 1 July 2013.

<sup>51</sup> This paragraph entered into force on 1 July 2013.

<sup>52</sup> This paragraph entered into force on 1 July 2013.

10. In the case of public works and works concessions paragraph 1 only applies if the value of the public procurement does not exceed HUF 500 million.

11. In relation to the budgetary authorities managed or supervised by the Government and to the business organisations owned by the state, the binding stipulations and considerations to be taken into account for the purposes of the application of paragraphs (9) and (10) may be set out by the Government.

12. In the cases specified in Article 79(1)(b), preliminary dispute settlement may be initiated until the expiry of the time limit for submission of tenders and the time limit to participate.

#### Article 122/A<sup>53</sup>

**1. If the estimated value of public supplies or public services does not reach HUF 25 million or the estimated value of public works does not reach HUF 150 million and no negotiation shall be conducted, the contracting authority may carry out a contract award procedure wherein it applies the rules pertaining to open procedures within the framework of national procedures, with the differences stipulated in this paragraph. Instead of the publication of the notice launching the procedure, the contracting authority shall send an invitation to tender in writing, directly to at least three economic operators – which are able to comply with the suitability criteria for the performance of the contract according to the contracting authority – at the same time. In the course of the selection of economic operators to be invited to tender, the principle of equal treatment shall be complied with and, if possible, in particular the participation of micro, small or medium-sized enterprises shall be ensured.**

**2. The minimum time limit for submission of tenders shall be fifteen days from the date of sending of the invitation to tender. No notice shall be published on the modification of the time limit for submission of tenders, any amendment to the invitation to tender and the documentation or the revocation of the invitation to tender; prior to the expiry of the original deadline, the economic operators invited to tender shall be informed thereof at the same time, directly, in writing by the contracting authority.**

**3. Only the economic operators invited to tender may submit a tender in the procedure. Economic operators invited to tender may not submit joint tenders. Any economic operator invited to tender may submit a joint tender with any other economic operator not invited to tender by the contracting authority.**

#### Article 123

**1. The contracting authority may develop independent procedural rules not subject to provisions set out by Part Two of this Act.<sup>54</sup>**

2. The type of procedure chosen by the contracting authority may not be changed by him in the course of the contract award procedure; if he develops independently the rules concerning the procedure to be conducted by him in the course of the contract award procedure, those rules shall be indicated in the notice launching the procedure. The notice launching the procedure shall ensure in all cases that, on the basis of it, the economic operators are able to submit appropriate tenders or requests to participate with equal opportunities.

3. The notice launching the procedure shall state all the information necessary for suitable tendering (request to participate) by the economic operators, in particular the most important elements of the contract to be awarded (the subject of the procedure, the quantity, the contract terms) and a short description of the way of awarding (award criteria and method), the time limit for submission of tenders (time limit to participate) and the information concerning the way of contacting the contracting authority. The contracting authority shall be bound to arrange for the opening of the tenders at the time and place indicated in the notice launching the procedure. The invitation shall be published by the contracting authority in a notice drawn up pursuant to the standard form specified in a separate act of legislation.

4. In the notice launching the procedure the contracting authority shall be entitled to prescribe to apply in the contract award procedure one or more grounds for exclusion set out in Articles 56-57, however, other grounds for exclusion than those set out by this Act may not be prescribed. The contracting authority shall be bound to

<sup>53</sup> This Article entered into force on 1 July 2013.

<sup>54</sup> This paragraph entered into force on 1 July 2013.

provide for the application of the ground for exclusion specified in Article 56(1)(k) and (2). As regards suitability, the contracting authority may provide for other objective suitability criteria and way of certification than the suitability certification criteria set out in the separate act of legislation, but the provisions set out in Article 55(3) shall be applied in such a case as well.

5. For the purposes of establishing the procedural rules according to paragraph 1, the contracting authority shall be bound to ensure the public nature of procedures to the appropriate degree, in compliance with this Act.

6. The contracting authority shall ensure all the economic operators established in the European Union equal access (right to participate), mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as provision of information on time limits suitable for the submission of tenders (requests to participate), drawing up of the regulations making it possible to have preliminary information on the applicable procedural rules and respect of the principle of non-discrimination and equal treatment when the decision closing the procedure is taken.

7. The subject-matter of the contract shall be described by the contracting authority in a non-discriminatory way; public procurement technical specifications may not be set by the contracting authority in such a way as to exclude certain economic operators or goods from the procedure or to result in their inappropriate, discriminatory or preferential treatment. If the precise and intelligible description of the subject-matter of the public procurement justifies reference to a specific make or source, or type, or a particular process, activity, person, patent or trade mark, the specification shall state this was justified only by the need to specify the subject-matter precisely, and such a reference shall be accompanied by the word “or equivalent”.

8. As regards the budgetary authorities controlled or supervised by the Government, the public foundations established by the Government as well as the business organisations owned by the state, the Government shall have the right to set binding procedural rules according to paragraph 1-7 for public supplies and public services not reaching EU thresholds.

9. The contracting authority shall inform in writing tenderers, candidates as well as, before the opening of tenders, the economic operators who have expressed their interest in the procedure about all the decisions and information affecting the results of the procedure and the detailed justification thereof as soon as possible and not later than three business days after the decision. After the completion of the evaluation of tenders, the contracting authority shall be bound to draw up a written summary which provides information on the evaluation of tenders and the reasons for the selection of the winning tender, and to send that written summary to all tenderers at the same time, by fax or by electronic means.

10. For the purposes of establishing the individual procedural rules pursuant to paragraph 2, the contracting authority shall be bound to provide for the grounds for exclusion specified in Article 74(1) and (3), and shall be entitled to provide for the grounds for exclusion specified in Article 74(2), noting that the ground for exclusion specified in Article 74(1)(d) shall only apply in case of the prescription of suitability criteria.

11. In the course of the procedure, provisions set out in Articles 80 and 81 shall be applied accordingly.

## **CHAPTER FOUR**

### **Public procurement contracts**

#### *Conclusion of the contract*

#### **Article 124**

1. Contracts shall be concluded based on successful contract award procedures, in writing, with the entity (person) winning the procedure – in the case of joint submission of the tender, the entities (persons) winning the procedure - in accordance with the final terms communicated in the contract award procedure, the content of the draft contract and the tender.

2. The contract shall contain the evaluated elements of the successful tender, in compliance with the award criteria applied in the procedure.

3. If the contracting authority allowed division into lots, each contract concerning each lot shall be concluded with the various winners of the different lots.

4. The contracting authority may only conclude the contract with the successful tenderer, or upon the withdrawal of the successful tenderer, with the entity (person) considered as offering the second most favourable tender in the course of evaluating the tenders, if he was named in the written summary on the evaluation of tenders.

5. The validity period of the tender shall be extended by thirty days – in case of public works contracts by sixty days – for the successful tenderer and – in the case specified in paragraph 4 – for the tenderer submitting the second most favourable tender from the date of sending of the written summary concerning the evaluation of tenders to the tenderers.

6. The contract shall be concluded by the contracting authority within the validity period pursuant to paragraph 5, unless otherwise provided by this Act, and the contract may not be concluded in any case before the end of a period of ten days following the date of dispatch of the written summary.

7. Where an application for review procedure [Article 137(2)] is filed or a review procedure is initiated (Article 140), the contract – in the case stipulated in paragraph 3 the contract on the part of procurement affected by the review procedure – may be concluded only after the substantial decision or the decision closing the public procurement case has been taken, except in cases where the Public Procurement Arbitration Board allows the conclusion of the contract [Article 144(4)]. Where the validity period of the tender of the successful tenderer has expired, the contract may only be concluded with the successful tenderer by the contracting authority if he makes a statement that he maintains his tender.

8. Contrary to the provisions set out in paragraph 6, the contract may be concluded earlier than ten days after the sending of the written summary in the following cases:

- (a) if only one tender was submitted in the course of an open procedure;
- (b) if only one tender was submitted in the course of a restricted procedure, a negotiated procedure with the publication of a contract notice or a competitive dialogue, and if there was an invalid request to participate in the procedure or there was an exclusion and the time limit for initiating a review procedure by the concerned parties against the decision thereon expired or the given decision was considered as lawful by the Public Procurement Arbitration Board;
- (c) if the negotiated procedure without prior publication of a contract notice was launched on the basis of Article 94(2)(d);
- (d) in the case of a public procurement carried out on the basis of a framework agreement, except for the cases where the public procurement is carried out through the reopening of competition [Article 110(4)(b)].
- (e) **if the negotiated procedure without prior publication of a contract notice was started on the basis of Article 94(2)(c), (3) or 4(b)-(d) and the chairperson of the Public Procurement Arbitration Board did not launch the review procedure within the time limit set in Article 141(3);<sup>55</sup>**
- (f) **if only one tender was submitted in a procedure under Article 122(7)(a) or Article 122/A.<sup>56</sup>**

9. The contracting authority may only be relieved of its obligation to conclude the public procurement contract with the successful entity (person) if – due to unforeseeable and unavoidable reasons beyond its control – material circumstances arise after the sending of the written summary on the evaluation of tenders, which make the contracting authority incapable to conclude or perform the contract.

#### *Contents of the contract*

#### **Article 125**

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<sup>55</sup> This point entered into force on 1 July 2013.

<sup>56</sup> This point entered into force on 1 July 2013.

1. The contracting authority may set specific terms for the performance of the contract, which are related to, in particular, social, environmental, quality insurance considerations. Reference to such contract terms shall be made in the notice launching the procedure and shall be included in the draft-contract forming part of the documentation.
2. The application of paragraph 1 shall not result in either unjustified and positive or negative discrimination of tenderers, moreover, in the context of the performance of the contract no such issues shall be set forth that concern the technical specification of the public procurement, the assessment of the financial and economic standing, and technical or professional abilities of tenderer, and the award criteria considered as such by the contracting authority.
3. For the purpose of the application of paragraph 1 a social requirement, in particular, shall be
  - (a) involvement in the fulfillment of the relevant contract of a sheltered place of employment as well as an organization that possesses a social employment license<sup>57</sup>;
  - (b) employment of persons looking for work, of unemployed persons or of prisoners;
  - (c) employment of persons in part-time jobs who are recipients of child care aid, of child education support during the duration of such payments or subsequent to the ending of such payments, and employment of persons who are recipients of pregnancy and child birth aid, and child care benefits after the end of the payment of such;
  - (d) a specification of the measures for ensuring the implementation of the principle of equal treatment.
4. The contracting authority shall be bound to set the following as contract terms:
  - (a) any cost incurred in relation to a company not being in compliance with the stipulations set out in Article 56(1)(k) and which may be used for reduction of the successful tenderer's taxable income, may not be paid or charged by the successful tenderer in the context of the performance of the contract;
  - (b) the successful tenderer shall reveal its structure of ownership to the contracting authority during the full period of performance of the contract, and notify without delay the contracting authority of the transactions according to paragraph 5.
5. The party entering into the contract as a contracting authority shall be entitled to and at the same time shall be bound to terminate the contract – where necessary, giving a period of notice which makes it possible for him to arrange for the carrying out of his duty according to the contract - if
  - (a) any legal person or any business organisation without legal personality not complying with the stipulations set out in Article 56(1)(k) acquires directly or indirectly a share exceeding 25% in the successful tenderer;
  - (b) the successful tenderer acquires directly or indirectly a share exceeding 25% in any legal person or any business organisation without legal personality not complying with the stipulations set out in Article 56(1)(k).
6. In the case of termination of the contract according to paragraph 5, the successful tenderer shall be entitled to receive a payment for the services performed before the end of the contract, in conformity with the contract.
7. The successful tenderer having his fiscal domicile in a foreign country shall be bound to attach to the contract an authorization stating that data concerning the successful tenderer may be acquired by the Hungarian National Tax and Customs Authority directly from the competent tax authority of the successful tenderer's fiscal domicile, without using the legal aid service established between countries.
8. In the notice launching the procedure, the period of the contract shall be set by the contracting authority in such a way that does not bind him for an indefinite or definite but disproportionate period of time, which

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<sup>57</sup> This amendment entered into force on 1 January 2013.

would not be in compliance with the aim of maintaining competition and effective use of public funds, unless such a period of the contract is justified by the subject-matter, the chosen structuring of the contract, or the terms of payment related thereto or the investment realized by the successful tenderer.

9. Where the parties to a public works contract provide for a reserve fund, the value of such a fund may not exceed **10%**<sup>58</sup> of the amount of the consideration set by the contract.
10. Provisions may be included in the contract which obviously stipulate the precise conditions and content of the subsequent changes of the determined substantial elements of the contract and may be recognised in advance by all tenderers. In case of such provisions the fulfillment of conditions specified in Article 132 of this Act shall not be verified, however, the envisaged changes may not result in a fundamental change of the subject matter of the contract.<sup>59</sup>

#### Article 126

1. In the contract to be concluded with the successful tenderer, the contracting authority may stipulate guarantees and this fact, as well as the type and the extent of the guarantee(s) shall be included in the notice launching the procedure.

**2. The amount of the retention for the claims related to non-performance of the contract may not exceed five per cent of the amount of the consideration, exclusive of the reserve fund and net of VAT, provided for in the contract.**<sup>60</sup>

**3. The amount of the retention for guarantee and warranty claims related to defective performance may not exceed five per cent of the amount of the consideration, exclusive of the reserve fund and net of VAT, provided for in the contract.**<sup>61</sup>

**4. The retention required for claims in case of non-performance shall be made available on the date of the entering into force of the contract, the retention required to meet the guarantee and warranty claims shall be made available on the date of performance. Other types of retention shall be made available – according to the terms stipulated in the contract - on the date from which the event concerned by the retention may occur, and it may not be earlier than the date of conclusion of the contract.**<sup>62</sup>

5. The tenderer shall declare in the tender that the guarantee specified in paragraph 4 will be made available within the time limit set, and other certificates, declarations concerning the guarantees may not be required in the contract award procedure.

6. Where a guarantee for the requirements of warranty or any other guarantee to be made available is stipulated, the contracting authority, in the notice launching the procedure, shall

- (a) specify that, until the expiry of the deadlines specified in paragraph 3, these guarantees may be provided by having the prescribed sum deposited into the payment account of the party entering into the contract as contracting authority, by the provision of **bank guarantee or joint and several bank guarantee**<sup>63</sup> or by furnishing a promissory note issued pursuant to an insurance contract and containing a joint and several guarantee, subject to the choice of the party entering into the contract as tenderer, or,
- (b) indicate one or more forms of guarantee not mentioned in point (a), and stipulate that the guarantee may be provided according to any of the forms indicated, or specified in point (a), subject to the choice of the party entering into the contract as tenderer.

7. As regards the guarantee for the validation of warranty and guarantee claims, the contracting authority may allow in the contract to assure the guarantee or a set part thereof through deduction from the amount of

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<sup>58</sup> This amendment entered into force on 1 July 2013.

<sup>59</sup> This paragraph entered into force on 1 January 2013.

<sup>60</sup> This paragraph entered into force on 1 July 2013.

<sup>61</sup> This paragraph entered into force on 1 July 2013.

<sup>62</sup> This paragraph entered into force on 1 July 2013.

<sup>63</sup> This amendment entered into force on 1 July 2013.

consideration due to the tenderer for the (partial) performance instead of crediting it to the contracting authority's account pursuant to Article 6(a).

8. The party entering into the contract as the successful tenderer shall have the right to change one of the forms of guarantee defined in Article (6) into another form of guarantee defined therein, however, the guarantee shall be accessible continuously according to the amount and time limit set out in the contract.

#### *Invalidity of the contract*

#### **Article 127**

1. A contract falling under the scope of this Act is void, if
  - (a) it was concluded with the unlawful bypass of the contract award procedure;
  - (b) it was concluded as a result of a negotiated procedure without prior publication of a notice and the criteria for the application of this type of procedure were not fulfilled;
  - (c) the parties concluded the contract with the infringement of the rules regarding the standstill period [Article 79(5), Article 124(6) and (7)] and as a result they deprived the tenderer of the opportunity to resort to a remedy preceeding the conclusion of contract, and at the same time they infringed the rules applicable for public procurement in such a way that it influenced the prospects of the tenderer to win the contract award procedure.
2. Contrary to paragraph (1) the contract is not void, if
  - (a) the contracting authority has not conducted a contract award procedure with prior publication of a notice or it has concluded an agreement with bypassing the contract award procedure [Article 9(1)(k)] as it presumed to have a right to apply a contract award procedure without a prior publication of a notice or to conclude a contract with bypassing the contract award procedure, and it has published a notice in accordance with the standard form provided in a separate act of legislation about its intentions to conclude a contract, furthermore it has not concluded the contract (agreement) within ten days following the publication of the notice;
  - (b) a significantly important interest is connected to the performance of the contract.
3. The economic interest directly connected to the contract (in particular the costs resulting from the obligations due to the delayed performance, to the conduction of a new contract award procedure, to the possible changes of the contracting partner or to the invalidity) shall not be regarded as significantly important public interest, and the further economic interests connected to the validity of the contract shall be regarded so exclusively in that case when the invalidity of the contract would result in disproportionate consequences.

**4. The provision of the contract concluded pursuant to a contract award procedure shall be considered null and void should it exclude or restrict the application of legal consequences stipulated to a breach of contract perpetrated by the contracting authority except for the case set out in Article 301/B (2) of the Civil Code concerning the interest for late payment.<sup>64</sup>**

5. Application of the legal consequences provided for in this Act shall not exclude the application of Article 200 (2) of the Civil Code with regard to public procurement and to stating the invalidity of contracts concluded infringing the regulations applicable for contract award procedures.

#### *Performance of the contract*

#### **Article 128**

1. The public procurement contract shall be performed by the contracting party entering into the contract as the successful tenderer or joint tenderers based on the contract award procedure or – if the contracting authority required or allowed setting up a business organisation (Article 27) – by the business organisation (hereinafter referred to as project-company) set up by the winning tenderer(s) with their exclusive share.

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<sup>64</sup> This paragraph entered into force on 1 July 2013.

2. In the performance of the contract on the tenderer's side the subcontractors and professionals contributing to the certification of suitability of the tenderer in the course of the contract award procedure shall be obliged to participate, except for the cases according to paragraph 3. The tenderer shall be obliged to notify the contracting authority, in the course of the performance, of the participation of any subcontractor – even if it is the subcontractor intended to be employed in place of the one designated before – not designated by him in the tender and together with the notification he shall also make a statement that the subcontractor intended to be employed by him is not subject to the grounds for exclusion according to Article 56 and if the contracting authority provided for it in the preceding contract award procedure, also according to Article 57.
3. The subcontractor or professional (for the purposes of this paragraph, hereinafter referred to as 'subcontractor') who or which contributed to the certification of suitability of the tenderer in the contract award procedure may only be replaced with another subcontractor for the performance with the approval of the contracting authority and if the contract or any part thereof cannot be performed using the identified subcontractor due to a reason unforeseeable at the time of the contract conclusion and arising thereafter, or due to the provable defective performance of the subcontractor and provided that the tenderer is able to meet the same suitability criteria with the new subcontractor that the party entering into the contract as the tenderer met with the subcontractor designated in the contract award procedure.
4. The tenderer may not be replaced where, taking into consideration the specific characteristics of the given service, the employment of one particular subcontractor was considered as a determining factor in the course of the evaluation of tenders [Article 63(4)] in the contract award procedure.
5. The obligations stipulated in paragraphs 1 and 2 may be performed by the successor of the tenderer as a contracting party or the non-natural person subcontractor, if any of them is transformed as a business organisation or the entity terminates by succession.
- 6.

#### **Article 129**

1. If the winning tenderer(s) set up a project-company in order to perform the public procurement contract, it shall be stipulated in the public procurement contract that the rights and obligations set out therein shall be entitled to the project-company from the date of its establishment. In this case, the subcontractors named in the tender shall conclude the contract(s) required for the conclusion of the public procurement contract with the project-company.
2. Otherwise, the rules pertaining to the public procurement contracts shall also be applied to the contract concluded between the party entering into the contract as a contracting authority and the project-company, in particular the stipulations concerning the public nature of contracts, the obligatory contents and any amendment to contracts, as well as provisions set out by this Act or by other acts of legislation concerning the control of performance of contracts.
3. The project-company and the winning tenderer(s) are jointly liable for the performance of the contract.
4. The project-company shall perform activities and conclude contracts only in order to perform the public procurement contract, it shall not acquire share in another economic organisation and it shall not undergo a transformation.
5. A share in the project-company shall not be acquired by others than the winning tenderer(s). The subscribed capital and the assets other than the subscribed capital – excluding the dividend – shall not be deprived by the founders.
6. The winning tenderer(s) may terminate the project-company if
  - (a) the project-company has performed the requirements set out in the public procurement contract and the project-company and the contracting authority have performed their obligations regarding settling accounts with one another, or

(b) the winning tenderer(s) have taken over the rights and obligations from the public procurement contract and from the contract concluded to perform the public procurement contract from the project-company completely.

7. All those members of the project-company who have taken part in the performance in reality may present the performance of the project-company as reference for the certification of suitability or as revenue, according to the proportion of their participation in the performance, even if the project-company has terminated in the meantime.

8. The party having entered into the contract as contracting authority may terminate the contract if it stipulated that the successful tenderer must set up a business organisation and the tenderer does not register the conclusion of the articles of incorporation or the acceptance of the articles of association with the Court of Registry within twenty days following the conclusion of the contract.

9. In case of public works concession, if the contract also falls within the scope of the Act on Concessions, this Article and Article 132 shall apply with derogations pursuant to the provisions of the Act on Concessions applicable to concession contracts and concession companies.

### Article 130

1. The party entering into the contract as contracting authority shall make a written declaration on acknowledgement of the performance of the contract (receipt of performance) or on the refusal of such acknowledgement within 15 days from the date of the performance by the party entering into the contract as tenderer or of the receipt of the written notification thereof.

**2. In case of a public works contract the party entering into the contract as contracting authority shall issue a receipt of performance upon the request of the party entering into the contract as tenderer, if the contracting authority does not start the delivery procedure upon the written notice (completion notice) of the party entering into the contract as tenderer within 15 days following the deadline defined in the contract as the deadline for starting the delivery procedure, or if he starts in time but does not finish with it until the deadline defined in the contract with regard to Article 405 (1) of the Civil Code.<sup>65</sup>**

**3. In case of a public works contract, specific rules – other than those set out in Article 292/B (1)-(2) of the Civil Code – pertaining to the payment of the consideration provided for in the contract may be laid down by a Gov. Decree.<sup>66</sup>**

**4. In case of a public procurement carried out using support, for the payment of suppliers the entity obliged to make payment shall make payment according to the rules set out in Article 292/B (1)-(2) of the Civil Code for the party entering into the contract as the contracting authority.<sup>67</sup>**

**5. The parties may also agree on payment in instalments, provided that the chosen type of contract actually justifies it, and in such cases each instalment shall be subject to the provisions set out by this Act or a Gov. Decree for payments.<sup>68</sup>**

6. Only the overdue claims of the same kind, acknowledged by the entitled party may be set off by the contracting authority against its debts arising from the consideration based on the contract concluded pursuant to a contract award procedure.

### Article 131

**1. Where the subject-matter of the public procurement is a public works contract and the time limit for the performance of the contract is more than two months, the contracting authority shall be bound to make available an advance of 5% of the full amount of consideration - exclusive of the reserve fund and net of VAT - provided for in the contract, but not more than HUF 68 million.<sup>69</sup>**

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<sup>65</sup> This paragraph entered into force on 1 July 2013.

<sup>66</sup> This paragraph entered into force on 1 July 2013.

<sup>67</sup> This paragraph entered into force on 1 July 2013.

<sup>68</sup> This paragraph entered into force on 1 July 2013.

<sup>69</sup> This paragraph entered into force on 1 July 2013.

**2. In the contract, the parties may provide for the payment of an advance the amount of which exceeds the obligatory amount set in paragraph 1, and may provide for the payment of an advance in any other case as well.<sup>70</sup>**

**3. The stipulations set out in Article 130 (1)-(2), (6) and in this Article form part of the contract even if the parties did not agree on this matter or – without regard to the case set out in paragraph 2 – agreed on it differently.<sup>71</sup>**

#### *Amendment to the contract*

#### **Article 132**

1. The parties may not amend the elements of the contract concluded as a result of the contract award procedure determined on the basis of the invitation, the terms of the documentation and the contents of the tender, if

- (a) the terms affected by the amendment had allowed the participation of other tenderers (candidates) as well in addition to the original tenderers (candidates) or the success of another tender instead of the successful tender, would those terms have been indicated in the contract award procedure preceding the conclusion of contract; or
- (b) the amendment shifts the economic balance of the contract in favour of the successful tenderer; or
- (c) the amendment extends the subject-matter of the contract over a new element compared to the tenderer's obligations imposed by the original contract.

2. The fulfilment of the condition specified in paragraph 1(a) shall not be verified if an amendment to the contract was made necessary by any circumstance which occurred due to a reason unforeseeable at the time of the contract conclusion and arising thereafter and the contract jeopardizes a substantial legitimate interest of one of the parties. Where a contract element serving as the basis of the evaluation of tenders [Article 63(4)] in the contract award procedure has been changed as a result of the amendment, the contracting authority shall be bound to inform all the tenderers participating in the procedure of the amendment and the detailed reasons therefor.

**3. For the purposes of paragraph 1(b), an increase of the amount of the original consideration – where the parties provided for a reserve fund in the contract, exclusive of the reserve fund - specified by the contract by more than 5% shall be considered in all cases as a circumstance shifting the economic balance of the contract in favour of the successful tenderer.<sup>72</sup>**

### **CHAPTER FIVE**

#### **Judicial remedies available for public procurement**

#### **Article 133**

1. Against acts or defaults in violation of the legislation applicable to public procurement, contract award procedures, qualified public procurements, qualified contract award procedures, procurements in the field of defence as well as contract award procedures in the field of defence, judicial remedy pursuant to the provisions of this Part shall be available.

2. The judgement of legal disputes related to contracts concluded pursuant to a contract award procedure – with the exception of legal disputes arising from a contract amendment or performance violating this Act or a

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<sup>70</sup> This paragraph entered into force on 1 July 2013.

<sup>71</sup> This paragraph entered into force on 1 July 2013.

<sup>72</sup> This paragraph entered into force on 1 July 2013.

Gov. Decree based on the empowerment of this Act –, and claims in civil law related to contract award procedures shall fall within the competence of a court.

3. Wherever this Part refers to public procurement or contract award procedure, such reference shall also include design contests.

4. Wherever this Part refers to public procurement or contract award procedure, such reference shall also include qualified contract award procedures and contract award procedures in the field of defence.

5. In case of review procedures in relation to qualified public procurements or qualified contract award procedures, wherever this Part refers to this Act, such reference shall mean the Gov. Decree on procurements which concern qualified data and the fundamental security and national security interests of the country, or whose execution shall be accompanied by special security measures, except where such reference shall mean the rules pertaining to the judicial remedies pursuant to this Part.

6. In case of review procedures in relation to public procurements or contract award procedures in the field of defence, wherever this Part refers to this Act, such reference shall mean the Gov. Decree on public supplies and services in the field of defence, specifically designed for military and public order purposes and which concern the fundamental security interests of the country, except where such reference shall mean the rules pertaining to the judicial remedies pursuant to this Part.

7. The settlement of all legal disputes and the conduct of all review procedures related to qualified public procurements or qualified contract award procedures come within the court's jurisdiction, in the following cases:

- (a) in case of purchases where the Government has established in a Decree the application of the rules pertaining to community procurement would oblige Hungary to provide information whose the disclosure would be against the fundamental security interests of the country;
- (b) in case of extremely sensible purchases;
- (c) in case of procurements related to military intelligence service activity.

*General provisions pertaining to the proceedings of the Public Procurement Arbitration Board*

**Article 134**

1. The provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as 'AP') shall apply to the proceedings of the Public Procurement Arbitration Board, unless otherwise provided by this Act or the government decree based on the empowerment of this Act.

2. Proceedings initiated against any infringement of the legislative provisions applicable to public procurement, contract award procedures, qualified public procurements, qualified contract award procedures, procurements in the field of defence as well as contract award procedures in the field of defence, including the proceeding initiated against the rejection of the request for prequalification specified in a separate Gov. Decree laying down the specific rules pertaining to the procedures pursuant to Chapter XIV and the deletion from the prequalification list (hereinafter referred to as: 'review procedures initiated in prequalification cases'), shall fall within the competence of the Public Procurement Arbitration Board, with regard to the contract award procedure.

3. The Public Procurement Arbitration Board shall have the competence to conduct proceedings initiated against an amendment to or the performance of contracts, concluded on the basis of a contract award procedure, in a manner violating this Act or the Gov. Decree based on the empowerment of this Act, as well as proceedings initiated against any misconduct or failure violating the procedural rules laid down independently by the contracting authority in compliance with Article 123.

4. The Public Procurement Arbitration Board shall also have competence to decide legal disputes related to infringements within the meaning of paragraph 1 and 2, committed by any organisation (or natural person) applying this Act on a voluntary basis.

5. The jurisdiction of the Public Procurement Arbitration Board shall extend to the whole territory of the state.
6. In qualified contract award procedures, the issue whether or not the procedure conducted for inclusion on the list or deletion from the list is in compliance with the relevant rules does not fall within the competence of the Public Procurement Arbitration Board.
7. In the course of review procedures concerning qualified contract award procedures, the Public Procurement Arbitration Board may not review the preliminary decision of the competent Committee of the Parliament to rule out the application of this Act.

*Public procurement commissioners*

**Article 135**

1. In the cases determined in Article 134(2)–(4) (hereinafter referred to as ‘public procurement cases’), with the exception described in paragraph 4, the Public Procurement Arbitration Board shall act in a panel consisting of three public procurement commissioners, passing its decision by a majority vote.
2. The members and the president of the proceeding panel shall be appointed by the chairperson of the Public Procurement Arbitration Board. At least two of the appointed members of the panel to try the case shall have the bar examination, and one of the members shall have a degree in higher education closely related to the subject-matter of the case. The president of the panel may only be a public procurement commissioner who has obtained the Bar examination. Commissioners proceeding in cases related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, shall have been subjected to national security vetting at the level required for the qualified contract award procedure or the contract award procedure in the field of defence.
3. The president of the proceeding panel shall be responsible for preparing and presiding over the proceeding. With the exception of interim measures and of decrees resulting in an end of the public procurement case [Articles 139(3) and (4) of this Act and Articles 30 and 31(1) of AP] and of decisions on the substance of the public procurement case (in the following: substantial decision) [(Article 152)], the president of the proceeding panel may take any measures and make any decisions which, under the provisions of this Act, fall within the competence of the Public Procurement Arbitration Board.
4. In matters specified in Article 141 a public procurement commissioner of the Public Procurement Arbitration Board may proceed. Only public procurement commissioners having qualified for the Bar can be appointed single commissioners by the chairperson of the Public Procurement Arbitration Board. Any reference in this Act to proceeding panel (president) shall also include single commissioners.

**Article 136**

1. Apart from the cases specified in Article 42 (1) and (3) of the AP, public procurement commissioners shall be prohibited from acting in the public procurement case if
  - (a) they own a share in the contracting authority or in an entity which has unlawfully failed to adopt the contract award procedure in its procurement, or own a share in a tenderer or in any other interested entity having initiated the procedure (hereinafter jointly referred to as ‘client entity’);
  - (b) they own a share in an entity which maintains regular business relations with the client entity;
  - (c) he has been an employee, or has been in any other legal relationship for the purpose of employment with, or has held a membership in, or has been an executive officer or a member of the supervisory board of, or has had a share in the client organisation within the last two years preceding the commencement of the review procedure.

2. Public procurement commissioners shall be prohibited from acting in a public procurement case if any of their relatives
- (a) is employed by, or has any other legal relationship for the purpose of employment with the client entity or is a member thereof, or an executive officer or board member thereof;
  - (b) owns a share in the client entity;
  - (c) is an employee or has any other legal relationship for the purpose of employment with, or is a member, an executive officer or board member of an entity which maintains regular business relations with the client entity, or owns a share of the former;
  - (d) works as a civil servant for an entity which is either responsible for the supervision of the client entity or is subordinated to it, or has granted the client entity any support or exclusive rights.
3. The public procurement commissioner shall notify without delay and not later than within 3 (three) days the chairperson of the Public Procurement Arbitration Board if any reason for his exclusion arises pursuant to this paragraph or Article 42 (1) or (3) of the AP. He shall assume disciplinary and financial liability for any failure of, or delay in, filing such notification.
4. The decision in exclusion cases shall be made by the chairperson of the Public Procurement Arbitration Board. Where the chairperson of the Public Procurement Arbitration Board participates in the proceeding as a member of the proceeding council, the chairperson of the Public Procurement Authority shall decide on his exclusion.

*Review procedures*

**Article 137**

1. The Public Procurement Arbitration Board shall proceed upon application or ex officio. In review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, the Public Procurement Arbitration Board may not proceed ex officio and Articles 140-141, 152(4)(e) may not be applied.
2. An application may be submitted by the contracting authority, the tenderer, in the case of a joint tender any of the tenderers, the candidate, in the case of a joint request to participate any of the candidates, or any other interested person whose right or legitimate interest is being harmed or risks being harmed by an activity or default which is in conflict with this Act. The chambers or interest representation organisations with an activity related to the subject-matter of procurement may submit an application regarding the illegal nature of the contract notice, the invitation for submission of tenders, the invitation to participate, the documentation or any amendment thereto. Those included in this paragraph are hereinafter jointly referred to as 'applicant'.
3. The application may be submitted, with the derogation in paragraph 4, within fifteen days from the date when the applicant learned of the infringement and in cases of infringing decisions closing a contract award procedure within ten days from the date when the applicant learned of the infringement. No application may be submitted later than 90 days following the occurrence of the infringement.
4. The application related to the contract notice, the invitation to tender, the invitation to participate, the documentation or their modification may be submitted not later than five days before the expiry of the, in case modified, time limit to submit tenders or time limit to participate, however if the time limit stipulated in paragraph 3 expires later, the applicant is entitled to submit its application till the date stipulated in paragraph 3.
5. When compliance with the time limit referred to in paragraph 3 is examined, the infringement shall be deemed to have become known at:
  - (a) **the date of the publication of the notice launching the contract award procedure with unlawful contents or the reception of the direct invitation with unlawful contents or, in the case of a documentation with unlawful contents the accessibility thereof;**<sup>73</sup>

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<sup>73</sup> This point entered into force on 1 July 2013.

- (b) the fifteenth day after the publication of the notice in the case of a notice dispatched after the expiry of the relevant time limit;
- (c) the date of closing the access to documents for review, related to the infringement in the decision closing the contract award procedure in connection with the documents reviewed, if the tenderer has had an access to the documents at the contracting authority or the Public Procurement Arbitration Board;
- (d) the date of sending the standpoint of the contracting authority, if preliminary dispute settlement has been requested and the contracting authority has sent its standpoint but no further measure has been made;
- (e) **in the case of an amendment to or performance of a contract – concluded on the basis of a contract award procedure – in violation of this Act, the thirtieth day after the publication of the notice containing the information on an amendment to the contract or after the publication of the data concerning performance [Article 31(1)(e)] in the Public Procurement Database maintained by the Public Procurement Authority or, if the publication in the database is not possible, on the contracting authority’s homepage or on the homepage of its maintaining entity.**<sup>74</sup>

6. When compliance with the time limit referred to in paragraph 3 is examined, the infringement shall be deemed to have become known at:

- (a) the publication date of the notice in the case of a notice launching a contract award procedure or the date when the invitation was sent in cases of direct invitation;
- (b) the publication date of the notice, in the case of notices which have been published after the expiry of the relevant time limit;
- (c) the date of the conclusion of the contract, or if this date cannot be established, then the commencement of its performance by either party, in case of a procurement bypassing the contract award procedure.

7. If the applicant learned that the procurement was conducted with bypassing a contract award procedure following the time limit set out in paragraph 3, the application may be submitted within one year following the conclusion of the contract or if it cannot be established then following the date when any of the parties began to perform the contract.

8. Failing to meet the time limits set out in paragraphs 3 and 7 shall result in the forfeiture of rights.

9. The Public Procurement Arbitration Board shall publish the indication and subject-matter of the procedure concerned by the application, the indication of the names of the parties and the date of reception of the application on the homepage of the Public Procurement Council following the receipt of the application without delay.

10. Prior to the submission of the application, the applicant specified in paragraph 1 shall notify the contracting authority or the procurer of this fact – by designating the infringement assumed by him – in the same way as the application was submitted by him. In the review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, paragraph 9 and Article 152(4)(d) may not be applied. In qualified contract award procedures, Article 138(1)(h) shall not be applied to the application.

### Article 138

1. The application shall state:

- (a) the name and place of establishment (place of residence) of the applicant (and its representative), and the facts supporting the eligibility of the applicant;
- (b) the name and place of establishment of the contracting authority of the contract award procedure concerned in the application and the subject-matter of the procurement, or as the case may be, the name, and place of

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<sup>74</sup> This point entered into force on 1 July 2013.

establishment of the purchaser and the subject-matter of the purchase in the case of a purchase carried out without a contract award procedure;

- (c) the date when the infringement occurred and the date when the applicant learnt thereof;
  - (d) the infringed provision of law;
  - (e) the proposal (motion) for the decision of the Public Procurement Arbitration Board and the reasons for such a decision;
  - (f) the proposal (motion) for ordering an interim measure (Article 144) and the reasons for it;
  - (g) the names and place of establishments (places of residence) known to the applicant of any entities possibly interested in the public procurement case.
  - (h) if preliminary dispute settlement has taken place or not, and if it has, its result and the answer of the contracting authority, which shall be attached to the application.
2. The proceeding of the Public Procurement Arbitration Board initiated with an application shall be subject to the payment of an administrative service fee, the value of which shall be set in a Government Decree.
  3. The number of copies of the application which are to be lodged shall be the number of potential parties concerned in the proceedings as can be known to the applicant, plus one.

#### **Article 139**

1. The review procedure pursuant to an application in compliance with Article 137(1)–(7) and Article 138 shall be launched by the Public Procurement Arbitration Board on the working day following the day of receipt of such an application at the latest.
2. If the application does not include the information as provided for in Article 138(1) or there is no supporting document to show that the fee provided for in Article 138(2) has been paid or no authorisation for the authorised representative has accompanied the application, the Public Procurement Arbitration Board shall call upon the applicant to supply the missing information or document(s) within eight days, and warns the applicant that, should he submit an incomplete application again, such application shall be dismissed by the Public Procurement Arbitration Board. No certification may be accepted in the case of the failure to meet the time limit to supply missing documents or information. In the case specified in the Gov. Decree regulating the way of payment of the administrative service fee, the Public Procurement Arbitration Board informs the applicant, in an invitation to submit missing information, of the amount of the estimated value on which the administrative service fee is based.
3. The Public Procurement Arbitration Board shall dismiss the application with a decree brought within five days without a substantial examination if - in addition to the cases set out in paragraph 30 of the AP - it concludes that
  - (a) the applicant has not fulfilled the invitation to submit missing information within the defined time limit, or it has submitted an incomplete application again;
  - (b) the contracting entity has legally withdrawn its notice or invitation launching the contract award procedure.
4. The Public Procurement Arbitration Board **shall dismiss**<sup>75</sup> the review proceeding in cases when according to paragraph 3 a reason existed for dismissing the application without substantial examination, but the reason for dismissing was learned by the Arbitration Board only after the proceeding had started.
5. The applicant may withdraw his application initiating the proceeding until a decision has been passed pursuant to Article 152 on the substance of the case.

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<sup>75</sup> This amendment entered into force on 1 July 2013.

6. If the Public Procurement Arbitration Board rejects the application for judicial remedy without a substantial examination or **dismisses**<sup>76</sup> the review proceeding on the basis of a reason set out in paragraph 4, the administrative service fee shall be reimbursed to the applicant. If the application is withdrawn the applicant may not claim the reimbursement of the administrative service fee.

#### Article 140

1. An ex officio proceeding of the Public Procurement Arbitration Board may be initiated by the following entities or persons on the grounds that they have, in the performance of their duties, learned of any behaviour or default in violation of this Act:

- (a) the president of the Public Procurement Council;
- (b) the State Audit Office;
- (c) an internal audit body designated by the Government;
- (d) the organ responsible for the legal supervision of the local governments;
- (e) the Hungarian State Treasury;
- (f) the Commissioner for Fundamental Rights;
- (g) the entity granting support for the public procurement, or the entity co-operating pursuant to law in the use of the support;
- (h) the entity entitled to calls for applications in centralised public procurement;
- (i) the Hungarian Competition Authority;
- (j) the body appointed by the government to control the European Union and other international supports;
- (k) the minister responsible for the supervision of the national property;
- (l) **the public prosecutor**<sup>77</sup>.

2. The ex officio proceeding of the Public Procurement Arbitration Board may be initiated

- (a) by an entity specified in paragraph 1 (a), (d)-(i) and (k) within thirty days from learning of the infringement, in the case of bypassing the contract award procedure, from the conclusion of the contract, or if it cannot be established, from the day when the start of performance on the side of any of the parties has been learnt of, but not later than within one year after the occurrence of the infringement, or, in the case of bypassing the contract award procedure, within three years,
- (b) by the entity specified in paragraph 1 (b), (c) and (j) (l) within 30 days after learning of the infringement, but not later than within three years after the occurrence of the infringement, in the case of a purchase conducted with the bypass of the contract award procedure from the date of conclusion of the contract, or if it cannot be established, from the day when the start of performance on the side of any of the parties has been learnt of, within three years,

3. The document initiating the ex officio proceeding of the Public Procurement Arbitration Board shall contain the data listed in Article 138(1)(a)–(d) and (g), and a proposal may be made concerning points (e) and (f). The initiating document shall be accompanied by copies of the documents available in relation to the purchase (or public procurement) involving an infringement.

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<sup>76</sup> This amendment entered into force on 1 July 2013.

<sup>77</sup> This amendment entered into force on 1 July 2013.

4. The Public Procurement Arbitration Board shall launch the proceeding not later than on the first working day following the receipt of the initiative complying with paragraph 1.
5. If the initiative does not contain the data set out in paragraph 3, the Public Procurement Arbitration Board shall call on the entity or person concerned to provide the missing information. Article 139 (2) shall be applied appropriately regarding missing information.
6. The Public Procurement Arbitration Board shall ensure that the naming and the subject of the case related to the initiative for its proceeding, the names of the parties, the date of the receipt of the initiative are published without delay on the homepage of the Public Procurement Authority following the submission of the initiative.
7. Dismissal of the initiative without a substantive examination, and a termination of the proceeding with a decree shall be governed by Article 139(3)-(6), appropriately.

#### **Article 141**

1. The president of the Public Procurement Authority shall launch the ex officio proceeding of the Public Procurement Arbitration Board
  - (a) if the contracting authority fails to present the annual statistical summary to the Public Procurement Authority by the time limit, according to a separate act of legislation, as from the date of the request of the president of the Authority, furthermore
  - (b) if the given entity does not fulfil its obligations of registration and declaration on the list of contracting authorities covered by this Act, notwithstanding request of the Public Procurement Authority, and
  - (c) if an amendment to or the performance of the contract was probably unlawful.
2. To the initiation set out in paragraph 1 Article 140(2)-(7) shall apply.
3. Where the chairperson of the Public Procurement Arbitration Board finds upon the examination of the documents submitted to the Public Procurement Arbitration Board in relation to the launch of a negotiated procedure without a notice that there is a well-founded supposition of a breach of the rules and fundamental principles set out for public procurement and for contract award procedures, he shall commence the procedure of the Public Procurement Arbitration Board ex officio not later than fifteen days counted from the receipt of such documents.
4. Where compliance with the requirements concerning the applicability of the negotiated procedure without prior publication of a contract notice or the lawfulness of the invitation to tender may not be clearly established on the basis of the documents supplied by the contracting authority, the chairperson of the Public Procurement Arbitration Board shall call upon the contracting authority to supply the necessary information within three days by fax or by electronic means.
5. Should the contracting authority fail to produce the missing information, the chairperson of the Arbitration Board shall decide about the commencement of the proceeding on the basis of the information already available.

#### **Article 142**

1. The Public Procurement Arbitration Board shall notify the clients and any parties interested in the public procurement case of the launch of the proceeding, and shall request them to submit their comments within five days. The Public Procurement Arbitration Board shall attach to the notice the application, or in cases of ex officio launched proceedings the document initiating this proceeding.
2. Furthermore the Public Procurement Arbitration Board shall call upon the contracting authority of the relevant contract award procedure or the purchaser who carried out a purchase bypassing the contract award

procedure, to supply within five days all documents related to the procurement in question, or if it is not necessary, the documents required by the Arbitration Board. When the application is submitted by the contracting authority, the available documents shall be supplied together with the application.

3. When a proceeding is launched by the Public Procurement Arbitration Board, the contracting authority may suspend the ongoing contract award procedure and it shall notify the Public Procurement Arbitration Board to this effect. The suspension shall extend any time limits running by the duration of the suspension period.

#### **Article 143**

1. The Public Procurement Arbitration Board may order that certain cases being dealt with by the Commission be consolidated if their subjects are interrelated or settling such cases collectively is justified by practical, economic or other procedural considerations. In the review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, consolidation may only take place if the given cases have been initiated on the basis of applications filed in the same contract award procedure.

2. The Public Procurement Arbitration Board may order that certain parts (elements of application) of a given case being dealt with by the Commission be separated if settling such cases separately is justified by practical, economic or other procedural considerations.

3. In case the applicant has more issue in the application concerning the same contract award procedure the Public Procurement Arbitration Board may make its decision at the same time. The Public Procurement Arbitration Board may make a single compound decision.

#### *Interim measures*

#### **Article 144**

1. In an ongoing review procedure the Public Procurement Arbitration Board may, on request or ex officio, order interim measures until the conclusion of the contract in the contract award procedure (or purchase) involved in the review procedure, if, taking into account all circumstances in the case in question, it is probable that an infringement of the rules of this Act or principles has been committed or a risk thereof exists.

2. As an interim measure, the Public Procurement Arbitration Board shall

(a) order the suspension of the contract award procedure;

(b) call upon the contracting authority involved in the contract award procedure to invite the applicant seeking a remedy to take part in the contract award procedure.

3. Suspension of the contract award procedure shall result in extending the already running time limits prescribed in the invitation by the duration of the suspension period.

4. Due to an extremely important interest allowing no delay or to the protection of public interest (including the reason of national economy) the Public Procurement Arbitration Board may allow the conclusion of the contract in its decree upon the request of the contracting authority if the benefits exceed the drawbacks of the conclusion of the contract. The extremely important interest allowing no delay or the public interest (reason of national economy) shall be stated in the application and the documents proving the grounds for the application shall be submitted together with the application. For the purposes of this paragraph, public interest means in particular the maintenance of the uninterrupted security of conduct of the public utilities activity. For the purposes of qualified contract award procedures and contract award procedures in the field of defence, the public interest is in particular interest related to defence or security. The Arbitration Board makes a decision within five days following the receipt of the application, no review procedure shall lie from the decree.

5. The Public Procurement Arbitration Board shall ensure without delay the publication of its decree on the permission for the conclusion of the contract on the homepage of the Public Procurement Authority. except for the case of review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence.

*Initiating the preliminary ruling procedure of the European Court of Justice***Article 145**

1. If the Public Procurement Arbitration Board initiates a preliminary decision-making procedure of the European Court of Justice in accordance with the rules laid down in the Treaty establishing the European Community, such initiative shall be subject of an individual decree, and the Public Procurement Arbitration Board shall suspend the proceeding in question at the same time. In its decree, the Public Procurement Arbitration Board shall identify the issue requiring a preliminary decision by the European Court, and recite the facts and the relevant Hungarian legislation to the extent required for addressing the issue raised. At the same time when the decree is delivered to the European Court, the Public Procurement Arbitration Board shall also supply a copy thereof to the Minister responsible for justice for their information.

2. An individual remedy under Article 156 shall be available concerning such a decree initiating the preliminary decision-making procedure. Appeal for such an individual remedy shall have a suspensory effect on the execution of the decree.

*Scope of investigation by the Public Procurement Arbitration Board***Article 146**

1. If during the proceeding and before a substantial decision (Article 152) is made the Public Procurement Arbitration Board learns of an infringement additional to those already being investigated pursuant to the application or initiative, it may proceed ex officio also in respect of such an infringement. The proceeding may only be extended where the disclosed infringement distorts competition or prejudices the public nature of the competition, **the equal opportunities of tenderers**<sup>78</sup> or substantially influenced the decision of the contracting authority. Decision on the extension of the proceeding shall be made by the chairperson of the Public Procurement Arbitration Board, on the basis of the notification given by the proceeding council.

2. In case an application is being withdrawn, the Public Procurement Arbitration Board shall continue the proceeding if, based on the available data, there is indicative evidence that a serious infringement has taken place.

3. Should the Public Procurement Arbitration Board, in the course of the proceeding, detect any circumstances which might suggest that another law or regulation has been violated, it shall report such violation to the competent authority, in particular to the one responsible for prosecution, as well as to the State Audit Office, an internal audit body designated by the government or the Hungarian Competition Authority.

**Article 147**

1. The Public Procurement Arbitration Board shall make arrangements to ensure that both the applicant (the party initiating the procedure) and the opposing party can reveal all new facts in the course of the proceeding, as well as all applications and statements filed, and enable both parties to put forward their points of view thereon.

2. The Public Procurement Arbitration Board shall send the comments of the parties and the entities interested in the public procurement case according to Article 142(1) to the adverse party and to any other interested entities noting that they shall be bound to make their statements thereon not later than within 5 days.

3. If the Public Procurement Arbitration Board holds a hearing in the given case, the parties and any other interested entities shall be bound to make all substantial statements, comments before the hearing.

4. After the hearing, the parties and any other interested entities may only make further comments or statements if a request is made by the Public Procurement Arbitration Board therefor. Any further comment or statement made after the hearing of the given case, without the request of the Public Procurement Arbitration Board shall not be taken into consideration by the Public Procurement Arbitration Board for its decision.

**Article 148**


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<sup>78</sup> This amendment entered into force on 1 July 2013.

1. The hearing shall be held by the Public Procurement Arbitration Board not later than 20 days after the starting of the proceeding.
2. At the hearing held by the Public Procurement Arbitration Board, in addition to the parties to the proceedings, other interested persons may attend in person or through their representatives, and they may make comments, and bring forward their evidence until the hearing is closed.
3. The hearing shall be held in public. The Public Procurement Arbitration Board may, by its reasoned decree, exclude the public from the hearing or a part of thereof, if requested or ex officio, if this is necessitated in order to keep a qualified data, business secret or any other secrets defined as such in a separate act of legislation. In review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, in case a hearing is held, it shall be held closed from the public by the Public Procurement Arbitration Board.

#### **Article 149**

1. The applicant of the public procurement case (the initiating party), the opposing party as well as their representatives shall have the right within fifteen days from the initiation of the proceeding to have access to and make copies or notes of all documents drawn up in the course of the contract award procedure or the review procedure. and any members of the Public Procurement Authority shall have the right at any time during the proceeding to view and make copies or notes of all documents drawn up in the course of the contract award procedure or the review procedure.
2. The contracting authority, the tenderer and the candidate may request, referring to the protection of business secrets, that a prohibition or restriction be imposed on access to documents or data by any persons specified in paragraph 1 in the case of documents not considered having public interest or information made public out of public interest.
3. If certain specified documents are included by the tenderer or the candidate separately, as a business secret in the tender or in the request to participate, or, if the tenderer or the candidate requests to treat any other document submitted by him in the course of the contract award procedure as a business secret, it shall be regarded as a request for the prohibition imposed on access to these documents by any persons specified in paragraph 1.
4. The Public Procurement Arbitration Board shall examine if the circumstances justifying the prohibition or the restriction imposed on access to these documents exist and, when making a decision on an application to this effect, it may at the same time require the relevant party to prepare a version of the document in question which will not include any confidential business information.
5. Access to documents drawn up in the course of the contract award procedure or the review procedure, the making of copies and notes thereof by persons other than those referred to in paragraph 1 shall only be granted to persons who have a legitimate interest in getting to know the documents and their access to documents does not violate any rule applicable to the protection of qualified data.
6. Documents containing qualified data shall not be accessed in the absence of the permission for use. Neither shall other documents containing other information protected by law be accessed where such access is prohibited by the legislation regulating the protection of the relevant information, or the entity specified in paragraph 1 and requesting access is not prevented from exercising its right for judicial remedy by not being familiar with the protected information. In review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, the contracting authority, by invoking national security interest in its reasoned request, may request that a prohibition or restriction be imposed on access to documents or data by any persons specified in paragraph 1 in the case of documents not considered having public interest or information made public out of public interest.
7. Minutes taken of a hearing from which the public has been excluded in order to protect qualified data must not be copied or have notes made of. Even access to such documents – as specified in the Act of Protection of

qualified data – is subject to the terms and conditions set by the president of the Public Procurement Arbitration Board.

8. Access to the documents shall be subject to the permission of the Public Procurement Arbitration Board, taking into consideration the provisions set out in paragraphs 1-7.

#### **Article 150**

1. The Public Procurement Arbitration Board may impose a procedural fine from HUF 50.000 up to HUF 500.000 on the applicant or any other person taking part in the review procedure if such participant

- (a) has supplied false data or has failed to disclose data relevant to the judgement of the case;
- (b) has failed to supply the required information or has supplied it after the expiry of the time limit set therefore;
- (c) has been hindering access to documents related to its business, professional or public procurement activities;
- (d) has made a clearly unsubstantiated statement with respect to exclusion, or makes a repeated unsubstantiated statement against the same public procurement commissioner during the same procedure.

2. An individual remedy of the decree imposing a procedural fine may be sought under Article 156. Appeal for such an individual remedy shall have a suspensory effect on the execution of the decree.

#### **Article 151**

1. When no hearing is held in the case, the Public Procurement Arbitration Board shall be required to finish the case within fifteen days countered from the launch of the proceeding, save for the case specified in paragraph 3.

2. If the Public Procurement Arbitration Board has held a hearing in the case, it shall be required to finish the case within thirty days counted from the launch of the proceeding, save for the case specified in paragraph 3.

3. The Public Procurement Arbitration Board shall conclude the case concerning an amendment or performance violating this Act of the contract concluded on the basis of the contract award procedure within sixty days from the launching of the procedure.

4. In the case of the consolidation of cases according to Article 143(1) the time limit for arrangement shall be aligned to the latest review procedure.

5. Where justified, the time limit referred to in paragraphs 1 and 2 may be extended for a period of up to 10 days, and the time limit referred to in paragraph 3 may be extended for a period of up to thirty days on one occasion, which shall be notified to the parties to the proceedings prior to the expiry of the initial time limit set in accordance with paragraphs 1 to 3.

6. The client may not have the right to apply for suspension of the proceedings.

#### *Substantial decision of the Public Procurement Arbitration Board*

#### **Article 152**

1. The Public Procurement Arbitration Board shall make its decision in the name of the Public Procurement Authority.

2. In its decision the Public Procurement Arbitration Board

- (a) shall dismiss any unfounded applications;
- (b) in procedures launched or conducted ex officio shall state the lack of infringement;

- (c) shall state that an infringement has occurred;
- (d) shall state that an infringement has occurred and shall apply the legal consequences listed in paragraph 3;
- (e) shall, besides stating that an infringement has occurred, impose a fine in cases set out in paragraph 4;
- (f) shall state that an infringement has occurred and shall prohibit the tenderer, the subcontractor or another entity (person) who or which participated in the contract award procedure from participating in the contract award procedure, according to the stipulations of a separate act of legislation.

3. If the Public Procurement Arbitration Board states in its decision that an infringement has occurred, it may

- (a) before the closure of the contract award procedure, call upon the person who committed the infringement to act in conformity with the rules laid down in this Act, or shall order that the contracting authority may take its decisions only subject to certain conditions;
- (b) declare void any decision made by the contracting authority either during the contract award procedure or as a decision closing that procedure, provided that no contract has been concluded yet on the basis of the decision in question;
- (c) order the removal of the tenderer from the official list of approved tenderers;
- (d) prohibit the economic operator from participating in any contract award procedure, according to the stipulations of a separate act of legislation;
- (e) impose a fine on any organisation (person) which has infringed the law or on any person or organisation that is liable for the infringement and has a legal relationship with the person or organisation liable for the infringement in question.

4. The Public Procurement Arbitration Board, besides stating that an infringement has occurred, shall impose a fine

- (a) if the infringement has occurred by the unlawful bypass of the contract award procedure;
- (b) the parties have concluded the contract with the infringement of the rules regarding the standstill period;
- (c) if the contract has been concluded as a result of a negotiated procedure without prior publication of a contract notice and the criteria for the application of this type of procedure were not fulfilled.
- (d) if the contracting authority failed to send previous notice to the Public Procurement Arbitration Board, in the case of a negotiated procedure without prior publication of a contract notice;
- (e) if the ex officio proceeding has been initiated by the chairperson of the Public Procurement Authority [Article 141] and the Public Procurement Arbitration Board states that there was an infringement.

**5. In determining whether a fine is to be imposed or whether the economic operator is to be excluded from the contract award procedure as well as in fixing the amount of the fine and setting the period of the exclusion, the Public Procurement Arbitration Board shall take into account all the circumstances relevant in the matter, in particular the importance of the offence committed, the subject-matter and value of the public procurement concerned, the effect of the offence on the decision closing the contract award procedure, the reoccurrence, if any, of the infringement of this Act, the liable person's readiness to cooperate in the proceedings, the length of time which elapsed between the committing of the offence and the launching of the review procedure, in the case of public procurements carried out using support the fact that, in the procedure of another authority, a sanction concerning the repayment of the support may be attached to the offence. When establishing the sum of the fine and setting the period of the exclusion, it shall also be taken into account whether the act of the offence has been manifestly deliberate. For the**

**purposes of the decision on exclusion the provisions set out in a separate act of legislation shall also be taken into account.**<sup>79</sup>

6. The amount of the fine shall be regulated by the Government in a decree.

**7. If the Public Procurement Arbitration Board annuls the decision of the contracting authority having concluded the procedure, then the contracting authority shall make a new decision closing the procedure, within thirty days following the date when the decision becomes enforceable. If the procedure shall not presumably be unsuccessful, the contracting authority - before making its decision - shall obtain the statement of all tenderers having submitted valid tenders to the effect that they uphold their tenders, setting a time limit. In such cases where the tenderer has not made any statement, it shall be presumed that he does not maintain his tender. If the contracting authority made subject participation in the procedure to the condition of provision of a tender guarantee, the tenderers who uphold their tenders shall certify that the tender guarantee is also upheld or is made available for the new term of the validity period set by the contracting authority.**<sup>80</sup>

8. If the Public Procurement Arbitration Board establishes in its decision pursuant this paragraph an infringement of the legislation applicable to public procurement or the contract award procedure, the contracting authority or the party entering into the contract as tenderer may, within thirty days from the service of the decision of the Public Procurement Arbitration Board, rescind the contract concluded pursuant to the relevant contract award procedure, provided that the infringement affected the decision concluding the contract award procedure.

*Announcement and publication of the decision of the Public Procurement Arbitration Board*

**Article 153**

1. The decree on suspension of the procedure, the decree on the dismissal of the application without substantial examination, the decree on termination of the procedure, the substantial decision as well as the decision closing the public procurement case shall be delivered to the parties, as well as to other parties having an interest in the case. Where the decree on suspension of the procedure, the decree on the dismissal of the application without substantial examination, the decree on termination of the procedure, the substantial decision or the decision closing the case is related to a public procurement realised by subsidies, the decision shall also be delivered to the organisation providing such subsidies for the public procurement.

2. The decree on the dismissal of the application without substantial examination, the decree on termination of the procedure, the substantial decision, the decision closing the public procurement case and the decree on the allowance of the conclusion of the contract [Article 144(4)] shall be published on the homepage of the Public Procurement Authority on the day of their drawing up. The substantial decision shall be published even if the Public Procurement Arbitration Board has excluded the public from the proceedings pursuant to Article 148(3). In the review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence, however, the provisions set out in this paragraph and in paragraphs 3-4 shall not apply.

3. The Public Procurement Arbitration Board shall publish the substantial decision on the homepage, even if an application for a judicial review (Article 157) of the decision has been lodged, but it shall also include a reference to that fact.

4. In the case of a judicial review of the decree on the dismissal of the application without substantial examination, the decree on termination of the procedure, the substantial decision, the decision(s) of the court shall be published on the homepage of the Public Procurement Authority together with the data of the application initiating the proceedings of the Public Procurement Arbitration Board in accordance with Article 137(9) and Article 144(5) and with the decision on the substance of the case.

5. If the judicial review of the substantial decision of the Public Procurement Arbitration Board is requested, the contracting authority may suspend the procedure or may postpone the conclusion of the contract until the court makes its final decision.

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<sup>79</sup> This paragraph entered into force on 1 July 2013.

<sup>80</sup> This paragraph entered into force on 1 July 2013.

*Review procedures for prequalification cases*

**Article 154**

1. The provisions pertaining to the procedure conducted by the Public Procurement Arbitration Board shall apply to review procedures for prequalification cases with the differences pursuant to paragraphs 2–4, as appropriate.
2. The applicant may lodge an appeal against the rejection of its prequalification application and its deletion from the pre-qualification list. Such appeal may be lodged within fifteen days of receiving written notification of the same by the contracting entity.
3. The appeal shall state:
  - (a) the name and place of residence or establishment of the applicant (and its representative);
  - (b) the name and place of establishment of the contracting entity operating the prequalification system covered by the appeal;
  - (c) the date of receiving the contracting entity's written notification;
  - (d) the legal provision violated;
  - (e) the motion relating to the decision of the Public Procurement Arbitration Board, and its reasons.
4. In its decision, the Public Procurement Arbitration Board shall, besides stating that an infringement has taken place, declare void or change the contracting entity's decision.

*Ensuring the uniformity of the decisions of the Public Procurement Arbitration Board*

**Article 155**

1. For the sake of the uniformity of the remedies procedures, a general council including the public procurement commissioners shall operate within the framework of the Public Procurement Arbitration Board.
2. The Public Procurement Arbitration Board shall operate a council for the cases and groups of cases set out in the organisational and operational regulations. The college shall examine the practice of the Public Procurement Arbitration Board and express its opinion on the disputed legal issues in order to enhance a uniform practice of review.
3. If the proceeding panel of the Public Procurement Arbitration Board has made a decision on a matter of principle, it shall be bound to present its decision to the chairperson of the Public Procurement Arbitration Board. The chairperson of the Public Procurement Arbitration Board shall present the decision concerning the matter of principle to the general council.
4. If the general council establishes that the decision or any element of it is matter of principle, it shall publish a guideline on the decision or on a given element thereof.
5. If the proceeding panel of the Public Procurement Arbitration Board intends to depart from the contents of the guideline in relation to an issue of law, it shall notify the chairperson of the Public Procurement Arbitration Board thereof. The chairperson of the Public Procurement Arbitration Board shall present the envisaged decision to the council competent to deal with the given group of matters or the general council and shall ask for the opinion of the council or the general council. For the purposes of the decision-making, the proceeding panel shall be bound to wait for the opinion of the college or the general college, however, it is not bound by that opinion and it shall have the right to make a decision departing from the guideline. In case of mutual agreement between the proceeding panel and the council or general council the Public Procurement Arbitration Board shall publish information of the new guideline on the homepage of the Public Procurement Authority.

6. The chairperson of the Public Procurement Arbitration Board continuously monitors the decision-making process of the Public Procurement Arbitration Board. If the chairperson has knowledge of decision-makings by the proceeding panels on the basis of conflicting grounds of principles, he shall inform the general council thereof. The general council shall express an opinion on the issue of law in question for the sake of the uniform decision-making. The opinion expressed by the general council may only be departed from according to the provisions set out in paragraph 5.

7. Rules pertaining to the operation of the councils and the general council are laid down by the organisational and operational regulations of the Public Procurement Arbitration Board.

*Review of decisions of the Public Procurement Arbitration Board*

**Article 156**

1. Individual review of decrees of the Public Procurement Arbitration Board made in the course of the proceedings shall be available only if the law so provides. Review shall be available pursuant to this Article also against decrees suspending the proceedings, decrees dismissing the application without substantial examination, as well as decrees dismissing the review proceeding.

2. Applications for a review may be submitted to the Public Procurement Arbitration Board within eight days from the communication of the decision. Upon the receipt of the application, the Public Procurement Arbitration Board shall forward it, together with the documents of the case, to the court without delay.

3. Applications for an individual review of a decision of the Public Procurement Arbitration Board made in the course of the proceedings shall be decided by the administrative and labour court<sup>81</sup> by way of a priority treatment within the framework of a non-litigious proceeding. The Court may change the decree of the Public Procurement Arbitration Board. No appeal or judicial review shall lie from the Court's relevant decree.

4. Unless otherwise required by this Act or the nature of the non-litigious proceeding, Chapter XX of Act III of 1952 on the Act on Civil Procedure (hereinafter referred to as 'CP') shall apply as appropriate to the proceedings of the court.

**Article 157**

No appeal or application for retrial shall be brought against the substantial decision of the Public Procurement Arbitration Board. Anyone whose right or legitimate interest is being harmed by the decision of the Public Procurement Arbitration Board on the substance of the case, or the person or organisation requesting the proceeding of the Public Procurement Arbitration Board pursuant to Article 140, shall be entitled to bring an action before the court for its judicial review. The reason for asking review shall not only be the infringement of the Public Procurement Arbitration Board, but that circumstance as well if according to the claimant the Public Procurement Arbitration has not evaluated, qualified accordingly the previous procedure, decision of the requested with regard to the provisions of this Act.

**Article 158**

1. The claim shall be submitted to the Public Procurement Arbitration Board within fifteen days from the delivery of the decision.

2. The Public Procurement Arbitration Board shall forward the application together with the documents of the case – and with its statement on the contents of the application – to the court within five days, and at the same time it shall inform the court about the parties participating in the procedure of the Public Procurement Arbitration Board and about the interested parties concerning whom the decision contains a provision.

3. Any person who is not to be granted to act as a public procurement commissioner on the grounds set out in Article 136 shall be excluded from trying the case and shall not participate in it as a judge.

**Article 159**

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<sup>81</sup> This amendment entered into force on 1 January 2013.

1. The court shall examine the application within eight days, and it shall send the application which is in accordance with the legislation together with the declaration of the Public Procurement Arbitration Board to the claimant.
2. If the application contains a request for the suspension of the execution of the decision, the court shall make a decision in this matter within five days following the receipt of the documents at the court and it shall send its decision to the parties without delay.
3. The court shall inform the opponent party and the parties for whom the decision of the Public Procurement Arbitration Board contains an order, about the possibility to intervene within the time limit specified in paragraph (1), noting that the intervention shall be reported to the court within eight days following the receipt of the notification. Failing to meet this time limit no excuse shall be granted.
4. In the course of the legal proceeding a time limit of not more than eight days shall be given for the submission of the missing information of the applications. When justified, the time limit may be extended once with a period of eight days at most.

#### **Article 160**

1. The court shall make its decision on the substance of the case without holding a trial, however upon the request of the parties the court shall hold a hearing. Holding a hearing may be requested by the claimant in his application and by the defendant in his declaration related to the application. In default of this, no certification may be accepted. The intervening trial shall be requested in accordance with Article 338(3) of the Civil Code. For the adjudication without holding a trial Article 338(5), (7) and (8) of the Civil Code shall apply.
2. Article 332/B of the Civil Code shall be applied with the derogation that, the first trial shall be hold within thirty days following the receipt of the documents at the court and if there is no need to conduct a procedure of evidence, or in the case of a procedure without a hearing the decision shall be made within this time limit. When counting the time limits the time period for the submission of the missing information shall not be taken into account.
3. The court may change the decision of the Public Procurement Arbitration Board - including the sum of the fine – and it may apply the legal consequences set out in Article 152(2) (f) and (3) and (4).
4. The decision of the Public Procurement Arbitration Board may not be annulled by the court unless an infringement of the substantial rules on legal remedy proceedings having an effect on the substance of the case occurred in the proceeding of the Public Procurement Arbitration Board.
5. No appeal shall lie from the court’s ruling except where the decision of the Public Procurement Arbitration Board is reversed by the court.
6. The decision of the court shall be served within eight days following the date on which it was passed to the parties.
7. The court shall send its decision applying Article 152(2) (f) and (3)(d) to the Public Procurement Authority.

*Single legal procedure for the review of the decision of the Public Procurement Arbitration Board and for the statement of the invalidity of contracts infringing regulations applicable for public contract award procedures*

#### **Article 161**

1. The applicant shall request the review of the decision of the Public Procurement Arbitration Board and the statement of the invalidity of the contract on which the decision is based – due to the reasons specified in paragraph 127(1) – and the application of the legal consequences of the invalidity exclusively in one single legal procedure. The legal procedure shall be initiated against the Public Procurement Arbitration Board and the contracting parties. The application shall be submitted to the Public Procurement Arbitration Board not later than fifteen days after the reception of the decision.

2. In the course of the legal procedure other civil right claims shall not be open for enforcement, the statement of the invalidity of the contract due to reasons other than those listed in paragraph 127(1) shall not be requested.
3. In the course of the legal procedure Chapter XX of the Civil Code shall be applied with the derogations specified in this Act.
4. The Public Procurement Arbitration Board shall forward the application together with the documents of the case and the provision of information according to Article 158(2) as well as its statement on the contents of the application to the court within five days after receiving the application.

#### **Article 162**

1. Any person who is not to be granted to act as a public procurement commissioner on the grounds set out in Article 136 shall be excluded from trying the case and shall not participate in it as a judge.
2. The application may be changed or expanded only within the period open for the initiation of the legal proceeding. Article 335/A (2) of the Civil Code shall apply in this case as well.
3. Where a hearing is held upon the request of any of the parties, any further comment or statement made after the hearing of the given case, without the request of the Public Procurement Arbitration Board shall not be taken into consideration by the Public Procurement Arbitration Board for its decision.

#### **Article 163**

1. The court may change the decision of the Public Procurement Arbitration Board – including the sum of the fine – and it may apply the legal consequences set out in Article 152(2)(f) and (3) and (4). If the court annuls the decision of the Public Procurement Arbitration Board it shall close the legal procedure on the subject of the invalidity of the contract. The decision of the Public Procurement Arbitration Board may not be annulled by the court unless an infringement of the substantial rules on legal remedy proceedings having an effect on the substance of the case occurred in the proceeding of the Public Procurement Arbitration Board.
2. If the court states the partial invalidity of the contract concluded pursuant to a contract award procedure or it states the lack of invalidity explicitly pursuant to Article 127(2), it shall impose a fine, the sum of which – taking into consideration all the circumstances relevant to the case – shall equal not more than fifteen percent of the value of the contract. If the court, when establishing the legal consequences of invalidity, declares the contract valid for the period of deliberation, it shall impose a fine the sum of which shall equal – taking into consideration all the circumstances relevant to the case – not more than ten per cent of the contract value.
3. No appeal may lie from the court's decision, except for the decisions concerning the invalidity of the contract and for the cases where the decision of the Public Procurement Arbitration Board is reversed by the court.
4. The court shall impose a fine according to paragraph 2, if it states the partial invalidity or the lack of invalidity of a contract concluded on the basis of a qualified contract award procedure or a contract award procedure in the field of defence or a contract concluded by circumventing such contract award procedure, by invoking the fact that it would jeopardize the broader defence or security program, which is essential for the sake of the security interests of the country.

*Civil action for stating the invalidity of contracts infringing regulations applicable for public contract award procedures*

#### **Article 164**

1. If the Public Procurement Arbitration Board states in its substantial decision that an infringement set out in Article 127(1) has occurred, it shall bring an action with a view to annulling the contract and applying the legal consequences of invalidity. Simultaneously with the initiation of the legal proceeding, the Public Procurement Arbitration Board shall request the court – as an interim measure – to suspend the further execution of the contract. The Public Procurement Arbitration Board is entitled to exemption from all court costs.

2. The Public Procurement Arbitration Board shall initiate the action set out in paragraph 1 within thirty days counted from the date of making its substantial decision. In the case of failing to meet the deadline, a certification may be presented.

3. The Public Procurement Arbitration Board shall publish a notification about initiating the action set out in paragraph 1 on the homepage of the Public Procurement Authority except in case of qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence. The notification shall contain the naming of the case in question (the indication of the related contract award procedure), the indication of the decision on the substance of the case, the date of the submission of the claim and the naming of the parties to the proceedings.

4. If the court states the invalidity of the contract due to reasons specified in Article 127(1)(a)-(c) in a legal procedure pursuant to paragraph (1), the contract shall become void from the date of its conclusion and the state of affairs existing before the conclusion of the contract shall be restored.

5. If the court states the partial invalidity of the contract concluded pursuant to a public contract award procedure or the lack of invalidity explicitly pursuant to Article 127(2), it shall impose a fine, the sum of which – taking into consideration all the circumstances relevant to the case - shall equal not more than fifteen percent of the value of the contract. If the court, when establishing the legal consequences of invalidity, declares the contract valid for the period of deliberation, it shall impose a fine the sum of which shall equal – taking into consideration all the circumstances relevant to the case – not more than ten per cent of the contract value.

6. The legal action specified in paragraph 1 falls within the exclusive competence of the administrative and labour court<sup>82</sup> trying the case in the administrative proceeding pursuant to Article 157 initiated in relation to the same infringement of the public procurement law. If a request for judicial review was lodged against the substantial decision of the Public Procurement Arbitration Board stating an infringement specified in Article 127(1)(a)-(c) and the administrative proceeding was initiated later than the civil action, the case shall be referred to the court trying the case in the administrative proceeding pursuant to Article 157. The administrative proceeding and the civil action initiated by the Public Procurement Arbitration Board shall be consolidated. The Public Procurement Arbitration Board shall inform without delay the court trying the case in the civil action if an application for the judicial review of its substantial decision stating an infringement specified in Article 127(1)(a)-(c) was submitted to it.

7. As regards the consolidated proceedings specified in paragraph 6, Chapter XX of the CP shall apply with the derogations defined in Articles 161(2), 162(1)-(3) and 163. The court shall impose a fine according to paragraph 5, if it states the partial invalidity or the lack of invalidity of a contract concluded on the basis of a qualified contract award procedure or a contract award procedure in the field of defence or a contract concluded by circumventing such contract award procedure, by invoking the fact that it would jeopardize the broader defence or security program, which is essential for the sake of the security interests of the country.

*Other civil actions related to public procurements*

**Article 165**

1. With the exception of cases covered by Article 161(1) and Article 164(1) any claim in civil law grounded on an infringement of legislation applicable to public procurement or to the public contract award procedure shall be admissible on condition that the infringement has been stated in a legally enforceable decision by the Public Procurement Arbitration Board, or in the course of the review of the decision of the Public Procurement Arbitration Board, by the court.

2. If tenderers only claim the reimbursement of their costs (damages) incurred in the preparation of a tender and in relation to their participation in a contract award procedure from the contracting authority, it is sufficient to prove for the enforcement of such a claim that

(a) the contracting entity has violated a legislative provision applicable to public procurement or the contract award procedure, and

(b) they have had a real chance of winning the contract, and

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<sup>82</sup> This amendment entered into force on 1 January 2013.

- (c) the infringement has adversely affected their chance of winning the contract.

*Procedure of the European Commission*

**Article 166**

1. Where the European Commission considers that a manifest infringement of Community law in the field of public procurement has been committed during a contract award procedure falling within the scope of Part Two, it may initiate procedures pursuant to paragraph 2.
2. The European Commission shall notify the perceived infringement to the contracting entity also, calling upon it to remedy the infringement by the time of the conclusion of the contract.
3. The contracting entity shall be required to report on the notified infringement to the Public Procurement Authority in such a way as to allow the Public Procurement Authority to forward it to the European Commission within twenty-one days from the receipt of the request, or thirty days in the case of a contract award procedure related to a public utility contract.
4. The contracting entity shall give notification, in particular, whether
  - (a) the infringement has been remedied, or
  - (b) the infringement has not been remedied, or
  - (c) it has suspended its contract award procedure in question, or the Public Procurement Arbitration Board has suspended the contract award procedure as an interim measure in the course of remedy proceedings.
5. The notice in accordance with paragraph 4(b) shall give reasons. Where the reason for failure to remedy the alleged infringement is that this infringement is already the subject of a remedy proceeding, the Public Procurement Authority shall, without delay, inform the European Commission of the decision delivered in the remedy proceeding.
6. In cases within the meaning of paragraph 4(c) the Public Procurement Authority shall also notify, without delay, the European Commission of the outcome of the contract award procedure and/or the remedy proceeding and the question of remedying the reported infringement.

**PART SIX**

**THE PUBLIC PROCUREMENT AUTHORITY**

**Article 167**

1. For purposes of enforcing the objectives set out in this Act, a Public Procurement Authority (hereinafter referred to as 'Authority') shall operate, as subordinated to Parliament only.
2. The Authority shall operate as an autonomously reporting central budgetary organ subordinated to Parliament, with general competence within its scope of responsibilities as laid down in this Act. Its seat shall be in Budapest.
3. The Authority's budget shall be appropriated separately within the annual central budget. Any regroupings against this appropriation during the year shall be subject to approval by Parliament.

*Members and officers of the Council operating within the framework of the Authority*

**Article 168**

1. Within the framework of the Public Procurement Authority, a Council shall operate (hereinafter referred to as 'the Council'). The Council shall have ten members. Specific objectives in the public interest, contracting authorities and tenderers shall be each represented by an equal number of members within the Council.

2. The enforcement of the principles of this Act and specific objectives in the public interest shall be the responsibility of persons designated by the following bodies or persons:

- (a) the president of the Hungarian Competition Authority;
- (b) the Minister responsible for public funds;
- (c) the Minister responsible for economic policy.

3. The general interests of contracting authorities of contract award procedures shall be represented in the Council by persons designated by the following bodies or persons:

- (a) the person designated by the National Development Agency;
- (b) the person designated jointly by the national associations of local governments;
- (c) the person designated by the Minister responsible for the building matters.

4. The general interests of tenderers in contract award procedures shall be represented in the Council by the three persons designated by the national employers' interest representation bodies and the national economic chambers.

5. The president of the Council shall become a member of the Council even if he was not designated from among the members. Where the president of the Council was selected from among members of the Council, the president shall discontinue to represent the general objectives or interests of the person (persons) designating him, and the person (persons) designating him shall be entitled to designate a new member to the Council. The designating person (persons) shall not exercise against the president of the Council their right as laid down in Article 170(6)(b) and (7).

6. The Council member shall report to the person (persons) designating him on his activities within the Council for the achievement of objectives he has to enforce and general interests he represents, and also the objectives of this Act, as well as the enforcement of these in the field of public procurement.

7. The president, the vice-president and the members of the Council shall be obliged to make a declaration of property according to the rules regarding the members of Parliament, for the first time within thirty days from their designation. As regards the registration, control and filing of declarations of property the rules applicable to the registration, control and filing of declarations of property of members of Parliament shall be applied.

#### **Article 169**

1. The following persons shall not be eligible for membership in the Council:

- (a) members of Parliament;
- (b) have previous convictions under criminal law.

2. The term of office of members shall be two years at least.

3. The president of the Council is the president of the Authority. The vice-president of the Council is the vice-president of the Authority. If the president, the vice-president or the member of the Authority refuses their obligation to make a declaration of property, neglect to fulfil their obligation or declare false data, fact in their declaration of property, their term of office shall be terminated due to incompatibility.

4. The rules, except as laid down in paragraphs 1-3, for designating and recalling members shall be set by the designating bodies in such a way as to guarantee the sustained operability of the Council.

5. Members shall be required to perform their designated tasks in person.

#### **Article 170**

1. The Council shall decide on the appointment of the president of the Authority for five years with a two-thirds majority of members present. The appointment shall be renewable on one occasion.
2. The Act on Civil Servants shall be applicable to the president of the Authority with the derogations set out in this Act.
3. The president of the Authority shall be entitled to salary and other benefits as due to public administration state secretaries.
4. The Council shall exercise employer rights over the president of the Authority, and the president shall make the statement of his incompatibility [Article 392 (6)] to the Council.
5. The Council shall elect the vice-president of the Authority for five years from among the members with a two-third majority of the members present.
6. The term of office of the president, vice-president of the Authority and members of the Council shall end in the event of
  - (a) the expiry of the term;
  - (b) recalling;
  - (c) resignation;
  - (d) the occurrence of circumstances as set out in Article 169(1);
  - (e) becoming undeserving or permanently unsuitable for the office;
  - (f) death;
  - (g) establishment of incompatibility.
7. In cases within the meaning of paragraph 6 (e) and (g) the Council shall state the termination of the term of office with the vote of two thirds of the members present and with attention to the opinion of the bodies or persons designating the person in question.
8. In case the Authority does not decide on the appointment of the new president of the Council until the expiry of the term of office of the president, the term of office of the president shall extend until the end of the calendar year.

#### **Article 171**

1. The president of the Authority shall
  - (a) represent the Authority and the Council operating within its framework;
  - (b) if invited, attend sessions of Parliament and of its committees, and present the Authority's annual report;
  - (c) issue a president's briefing on practical information related to contract award procedures;
  - (d) initiate a direct voting in accordance with the provisions of the organisational and operational regulations of the Authority in order to make decisions on matters allowing of no delay in periods between sessions;
  - (e) exercise employer's rights over the secretary-general of the Authority (hereinafter referred to as 'secretary-general'), the employees of the Secretariat of the Authority and the chairperson, deputy chairperson and public procurement commissioners of the Public Procurement Arbitration Board.
2. The vice-president shall have full powers to substitute for the president of the Authority in the absence of the latter.

*Responsibilities and competence of the Authority*

**Article 172**

1. The Authority shall be responsible for effectively contributing to framing the public procurement policy and for forming and spreading the lawful public procurement behaviour enhancing the public and transparent spending of public funds while taking into account the public interest and the interest of contracting authorities and tenderers.
2. The Council operating within the framework of the Authority shall
  - (a) monitor the enforcement of the rules stipulated in this Act, and initiate with competent persons the making or amendment to legislation related to public procurement;
  - (b) review draft legislation and legislation concepts related to public procurement and the operation of the Council;
  - (c) establish the headcount of the Public Procurement Arbitration Board;
  - (d) appoint or recall the chairperson and deputy chairperson of the Public Procurement Arbitration Board and the public procurement commissioners; judge cases of incompatibility related to public procurement commissioners;
  - (e) manage and publish on its homepage an up-to-date
    - (ea) list of the contracting authorities falling under the scope of the legislation,
    - (eb) the official list of approved tenderers, determine approval criteria and methods of certification,
    - (ec) the list of official public procurement consultants,
    - (ed) the list of tenderers excluded from participation in contract award procedures, which list shall include the term of such exclusion as well,
  - (f) keep a registry of public procurements;
  - (g) prepare annual consolidated statistical reports, which shall be sent to the European Commission by 31 October in the year following the year under review;
  - (h) make arrangements for editing the —Public Procurement Bulletin — Official Journal of the Public Procurement Authority (hereinafter referred to as ‘Public Procurement Bulletin’ and for publishing and examining notices related to the contract award and design contest procedures, furthermore for publishing other data and information stipulated by this Act on its homepage or in the Public Procurement Bulletin;
  - (i) publish on its homepage, at the time of reception, the data of the application initiating the procedure of the Public Procurement Arbitration Board and of the ex-officio initiation of the procedure – including the document on initiation of the review procedure of the Public Procurement Arbitration Board by the president of the Arbitration Board -, the substantial decision of the Public Procurement Arbitration Board and the decision closing the public procurement case, furthermore in the course of the judicial review of the decision, the decision(s) of the court;
  - (j) set up and operate and publish on its homepage the public database of the decisions of review procedures, in which it ensures a free, full, electronic access for anybody to the decisions of the Arbitration Board and the court with the possibility of a keyword search;
  - (k) consulting with the minister responsible for public funds prepare a guideline facilitating the application of the regulations applicable for contract award procedures based on the experiment drawn from the decisions of review procedures, and about the practical information on public procurement; the guide shall be published on its homepage and in the Public Procurement Bulletin;

(l) monitor any amendment to and the performance of contracts concluded pursuant to contract award procedures;

**(m) maintain the Public Procurement Database, which is the central register of contract award procedures, promote public access to public procurement information, the spread of the use of electronic public procurement databases, furthermore the support of electronic administration and communication possibilities;<sup>83</sup> and within the framework of the aforementioned it shall ensure the possibility of an electronic publication, where the contracting authority may make available the documentation of the public procurement procedure in a centralized manner, without any charge, in full, directly by electronic means for the tenderers, and where the tenderers may have access to the documentations of the public procurement procedures without any charge;<sup>84</sup>**

(n) together with the minister responsible for public funds participate in setting up the framework regarding the training of the participants in contract award procedures, the coordination, supervision and control of the public procurement education;

(o) maintain relationships with public procurement bodies of other states and shall send notification pursuant to Article 45(4) of Directive 2004/18/EC;

(p) renew permanently, maintain and publish on its homepage the wages usual or determined in the different sectors and the related common charges;

(q) approve its own organisational and operating regulations, and other internal regulations relating to its operations, especially the procedures for launching remedy procedure for the review of notices, and also its draft budget and annual budget report;

(r) perform other responsibilities designated to it by law.

3. Each year, the Council shall prepare a report to the Parliament on its activity, on its experience on the fairness and transparency of public procurement processes, and on the experience of review procedures. The report shall make statements regarding the tendency of the number and value of public contract award procedures, and the economic situation of national tenderers, including micro, small and medium size enterprises. For information, the Council shall send the report to the State Audit Office as well.

4. For the purposes of the official list of the approved tenderers, the Authority is entitled to manage data concerning identity, as well as skills, qualifications and professional experience of the persons designated by the applicant.

5. For the purposes of the list of the official public procurement consultants, the Authority is entitled to keep record of data concerning identity, the contact address, qualifications, ability to act, clean criminal record of the official public procurement consultant, as well as data concerning the employer and the professional experience in public procurement of the consultant, furthermore, to keep record of the eligibility of the consultant to pursue an activity according to Article 5(1) and (2) of the Act XI of 1998 on Attorneys at Law.

6. The Authority shall be entitled to manage data pursuant to paragraph 5 for one year after the deletion of the official public procurement consultant from the list. The official public procurement consultant shall be deleted from the list if he does not fulfil requirements for registration laid down by a separate act of legislation; any of the grounds for exclusion pursuant to paragraph 7 occurs; a final judgement pronounced that the official public procurement consultant, in his capacity as an official public procurement consultant, committed wilfully an infringement of law; the effect of the registration has expired and no request for renewal was submitted; or such a request was submitted but rejected by the authority; the official public procurement consultant asks for it; **in case of death of the person included in the list; or the dissolution of the official public procurement consultant organisation<sup>85</sup>.**

7. The following shall preclude eligibility for the post of official public procurement consultant

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<sup>83</sup> This point entered into force on 1 July 2013.

<sup>84</sup> This amendment entered into force on 1 November 2013.

<sup>85</sup> This amendment entered into force on 1 July 2013.

- (a) limited competency or incompetency;
- (b) lack of exemption from the disadvantages attached to previous convictions under criminal law;
- (c) post of public procurement commissioner;
- (d) presidency or vice-presidency of Public Procurement Authority.

8. The documents or the certified copy thereof proving the non-existence of the grounds for exclusion pursuant to paragraph 7 shall be attached to the application for registration. For the registration, the renewal of the registration and the supplementation of the submitted data, the Public Procurement Authority shall be entitled to receive an administrative service fee, the value of which is set in a separate act of legislation.

9. Guidelines shall be issued by the Authority - in cooperation with the minister responsible for foreign policy - concerning the international agreements related to public procurements, as well as concerning countries which have an agreement on avoidance of double taxation with Hungary.

10. No appeal shall lie from the decision and decree of the Authority delivered within its scope of duties. However, the judicial review of the decision may be requested from the court by the applicant, i.e. the approved tenderer concerned in case of procedures pursuant to paragraph 2(eb), and by the applicant, i.e. the official public procurement consultant concerned in case of procedures pursuant to paragraph 2(ec), no later than fifteen days after reception of the decision. The administrative and labour court<sup>86</sup> shall take its decision in a non-litigious procedure, no later than sixty days after submission of the request, it may reverse the decision of the Public Procurement Authority. **No appeal and review shall lie from the court's decree**<sup>87</sup>. Chapter XX of the CP shall apply as appropriate to the proceedings of the court, unless other provisions of this Act specify otherwise or the nature of the non-litigious procedure clearly indicates otherwise.

11. For the purposes of publication of the decisions of the Public Procurement Arbitration Board and the decisions delivered in the judicial review of the contract award procedures, the provisions set out in Chapter XII of the Act CLXI of 2011 on the Organisation and Administration of the Courts (hereinafter referred to as 'OAC') shall be applied with the following differences:

- (a) contrary to the provisions laid down by Article 163(1) of the OAC, it is incumbent on the Public Procurement Authority to publish the court rulings delivered in the contract award procedure and the Reports on the Decisions of the Public Procurement Arbitration Board,
- (b) it is incumbent on the Public Procurement Arbitration Board to make anonymous digital copies according to Article 163(3) of the OAC in relation to the decisions of the Public Procurement Arbitration Board,
- (c) the application specified in Article 166(4) of the OAC may be presented to the chairperson of the Public Procurement Arbitration Board,
- (d) Article 163(2) and (5) may not be applied,
- (e) Article 163(3) and Article 164(1) of the OAC may be applied noting that the decision shall be sent to the President of the National Council of Justice of Hungary by the chairperson of the court which delivered the decision for the purposes of its publication in the Reports and the President of the National Council of Justice of Hungary shall make the decision – as well as the related decisions specified in Article 163(3) of the OAC - available for the chairperson of the Public Procurement Authority.

#### *Operation of the Council*

#### **Article 173**

1. The Council shall convene its sessions as required, but at least on six occasions every year.

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<sup>86</sup> This amendment entered into force on 1 January 2013.

<sup>87</sup> This amendment entered into force on 1 July 2013.

2. The Council shall have a quorum if two thirds of its members are present.
3. The Council shall make decisions with a simple majority vote, with the exceptions within the meaning of this Act.
4. Members of the Council who are related to persons affected in the matter may not participate in the preparation and passing of the decision of the Council on the subject of Article 172(2)(d).
5. As regards the Council's procedures concerning official public procurement consultants or approved tenderers, members of the Council having personal or property interest in entities covered by the given procedure may not participate in such procedures and employees of the Council's organisation having personal or property interest in entities covered by the given procedure may not contribute to the preparation of such procedures.
6. Members of the Council shall be required to notify to the president if they are or have become subject to reasons for incompatibility within the meaning of paragraphs 4 and 5, and shall be required to discontinue their participation in the ongoing procedure.

#### **Article 174**

1. The Authority may not conduct any other business activities, accept pecuniary contributions from, or grant the same to any entities or persons.
2. The full amount of the collected administrative service fee, shall constitute the Authority's own revenues. The revenue from the examination of the notices shall be used partly to ensure the IT support for the Authority to perform its duties pursuant to this Act.
3. The administrative service fees payable pursuant to paragraph 2 shall be used to cover the costs incurred by the Authority in the course of performing its duties.
4. The Authority shall keep separate records of the administrative service fee, procedural fine and fine payments received, for the purpose of monitoring compliance with the fee payment obligation. Taking into account Article 339 (1) and Article 339 (2) (q) of the CP and the related provisions of this Act, the Authority shall make settlements of its revenues, as of December 31, from fines in the current year as reduced with the amount of its repayment obligations incurred in the current year. The maintenance of records on fees, procedural fine and fine, their handling and accounting shall be governed by the legislation regulating the reporting and accounting requirements of budget-driven economic operators.
5. To the administrative service fee referred to in paragraph 2 Act XCIII of 1990 on Duties (hereinafter: AD) shall apply as follows:
  - (a) its provisions set out in Article 3 (4) and Article 28 (2) and (3) shall apply to fee payment obligation;
  - (b) the first sentence of Article 31 and the provisions set out in Article 31 (2), (4), and (5) and shall apply to the establishment of entities subject to fee payment;
  - (c) its provisions set out in Article 86 shall apply to limitation

as appropriate, with the derogation that the duty referred to in the AD shall be interpreted as fee.

#### *Organisation of the Authority*

#### **Article 175**

1. The coordination of Council activities, the preparation and implementation of its decisions, and the data collection, recording and administration activities required for the same shall be the responsibility of the Authority's Secretariat. The Secretariat shall be headed by the secretary-general.
2. The secretary-general and employees of the Secretariat shall be in a civil servant relationship with the Authority, for which the Act on Civil Servants shall apply. The secretary-general shall be entitled to salary and other benefits as due to deputy state secretaries.

3.

#### **Article 176**

1. A Public Procurement Arbitration Board (hereinafter referred to as 'Arbitration Board'), operating alongside the Council, in the framework of the Authority, shall be responsible for arranging remedy proceedings related to any infringements or disputes related to public procurement or design contest procedures.
2. The efficient operation of the Arbitration Board shall be ensured against the Authority's budget.
3. The Arbitration Board shall be constituted by public procurement commissioners in a number determined by the Council and employed as civil servants, and a chairperson, who are appointed and recalled by the Authority.
4. The chairperson and the deputy chairperson of the Arbitration Board shall be appointed for five years by the Council with the vote of two thirds of the members present. The deputy chairperson of the Arbitration Board shall be appointed by the Council from the public procurement commissioners and the person shall be recommended by the chairperson of the Arbitration Board. The chairperson and the deputy chairperson of the Arbitration Board can be re-elected.
5. One may qualify for the position of the chairperson of the Arbitration Board who has at least ten years experience in public procurement, and three years experience as a judge or who has at least ten years experience in public procurement and three years experience as a public procurement commissioner, furthermore holds a professional certificate in law.
6. The Act on Civil Servants (hereinafter referred to as 'ACS') shall be applicable to the public service relationship of the chairperson of the Arbitration Board with the differences pertaining to the public official legal status of the public procurement commissioners according to this Act.
7. The chairperson of the Arbitration Board shall be entitled to salary and other benefits as due to deputy state secretaries. The deputy chairperson shall be entitled to salary as due to heads of departments.
8. The Arbitration Board shall operate a college for the cases and groups of cases set out in the organisational and operational regulations. The college shall examine the practice of the Arbitration Board and express its opinion on the disputed legal issues in order to enhance a uniform practice of review.

#### **Article 177**

1. The president of the Arbitration Board shall
  - (a) manage the work of the Arbitration Board;
  - (b) represent the Arbitration Board;
  - (c) prepare and submit for approval to the Council the organisational and operating regulations of the Arbitration Board;
  - (d) verify that procedural time limits are observed;
  - (e) ensure that the naming and the subject of the case related to the application, the names of the clients, the date of the receipt of the application, the substantial decision of the Arbitration Board closing the case and its decree allowing the conclusion of the contract, and in the case of a judicial review the decision(s) of the court are published without delay following the submission of the application initiating the proceedings of the Arbitration Board;
  - (f) ensure that public procurement commissioners are informed about the opinion of the college pursuant to Article 176(8).

2. The vice-president shall have full powers to substitute for the president of the Public Procurement Arbitration Board in the absence of the latter.

#### **Article 178**

1. The president, vice-president of the Authority and members of the Council, the secretary-general, the employees of the Secretariat and the public procurement commissioners or persons having held such positions or conducted such activities, shall handle as confidential all qualified data and business secrets disclosed to them in the course of discharging their responsibilities.

2. On the invitation of the president of the Authority or a public procurement commissioner, all entities shall be required to give information on matters related to public procurement within fifteen days.

#### *Legal status of public procurement commissioners as civil servants*

#### **Article 179**

1. The legal status of public procurement commissioners as civil servants shall be governed by the ACS with the derogations provided for in this Act.

2. One may qualify for the position of public procurement commissioner on condition that he has a higher education degree and at least three years of work experience, as well as a professional certificate in public administration and/or law.

3. As regards the requirement for professional certificate provided for in paragraph 2, the time limits laid down in the ACS shall be applied as appropriate.

4. With the exception of scientific, teaching, artistic, publisher's reader's, editorial or legally protected intellectual activities, public procurement commissioners shall not accept other assignments, shall not have other gainful occupations, shall not be members under obligation to make personal contribution, chief officers or supervisory board members in business enterprises.

5. The following persons shall be precluded eligibility for the post of public procurement commissioner:

- (a) members of Parliament, members of local government, mayors and chamber officers;
- (b) persons holding an interest beyond twenty five percent, and/or HUF twenty five million in a business enterprise.

6. Public procurement commissioners shall be classified in accordance with the promotion rules stipulated in the ACS with the derogation that they shall be entitled to salary due under the classification two levels higher than their own classification.

7. Public procurement commissioners classified as chief counsellor shall be entitled to head of department salary, and public procurement commissioners classified as senior chief counsellor shall be entitled to deputy assistant under-secretary salary.

8. The legal status of public procurement commissioners as civil servants may terminate with dismissal other than provided for in the ACS in the event that the Council reduces the headcount of the Public Procurement Arbitration Board.

9. In the event that the public procurement commissioner's mandate terminates, he shall be re-classified in accordance with the rules of the ACS.

10. The public procurement commissioner shall not be given instructions in relation to remedy proceedings and/or decisions.

### **PART SEVEN**

#### **FINAL PROVISIONS**

*Entry into force***Article 180**

1. This Act shall enter into force on 21 August 2011, except for the provisions set out in paragraph 2.
2. Articles 1-179; Article 180(3)-(6); Article 181(1); Articles 182 and 183, as well as Annexes 1-4 of this Act shall enter into force 1 January 2012 and their provisions shall be applied to public procurements, contracts concluded on the basis of contract award procedures, design contests and review procedures requested, initiated or launched ex officio in relation thereto and preliminary dispute settlements initiated after the entering into force of this Act. No notices shall be dispatched on the fulfilment of the contract in the case of contracts, which were concluded on the basis of a contract award procedure initiated before 1 January 2012.
- 3.
4. In compliance with the provisions set out in Part Six of this Act, from 1 January 2012, the name of the Public Procurement Council as a budgetary organ shall change to Public Procurement Authority, the change of name shall take place during the uninterrupted operation of the budgetary organ.
- 4.
- 5.
- 6.
- 7.

*Transitional provisions***Article 181**

1. The Act CXXIX of 2003 on Public Procurement shall be repealed with effect from 1 January 2012, its provisions shall be applied to public procurements, contracts concluded on the basis of contract award procedures, design contests and review procedures requested, initiated or launched ex officio in relation thereto and preliminary dispute settlements initiated before 1 January 2012.
2. In qualified contract award procedures, the contracting authority is entitled to manage personal data concerning clean criminal record.
3. Article 6 (1) (e) of this Act set out in Article 129 (1) of Act CCXVII of 2012 on the participation in the community trade system of greenhouse gases and in the implementation of the Effort Sharing Decision (hereinafter referred to as GA) and Article 114 (5) set out in Article 129 (2) of the GA shall be applied to contract award procedures initiated after the entering into force of the GA.<sup>88</sup>
4. Article 4 point 23, Article 29 (1), Article 40 (3)-(4), and Article 125 (3) a) and (10) of this Act specified in Act CCVIII of 2012 on the Amendment of Certain Acts with The Aim of Founding the 2013 Budget of Hungary and on Other Amendments of these Acts shall be applied to contract award procedures initiated after 1 January 2013.<sup>89</sup>
- 4a.<sup>90</sup> Article 120 (1) of this Act set out in Article 129 (3) of the GA shall be applied to contract award procedures initiated after 1 January 2013.<sup>91</sup>**
- 5. Articles 127 (4), 130 (2)-(5), and 131 (3) of this Act set out by Act XXXIV of 2013 on the institution collaborating in the settlement of debates on design and execution of buildings, on any**

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<sup>88</sup> This paragraph entered into force on 1 January 2013.

<sup>89</sup> This paragraph entered into force on 1 January 2013.

<sup>90</sup> This amendment entered into force on 1 July 2013.

<sup>91</sup> This paragraph entered into force on 1 January 2013.

**amendment to other acts in connection with hindering debts related to construction and building and late payments (hereinafter referred to as: Amending Act), and the provisions of the Amending Act defining the rules of the Civil Code on transactions of contracting authorities shall be applied to the contracts concluded on the basis of a contract award procedure initiated after 1 July 2013.<sup>92</sup>**

**6. Article 2(5), Article 9(1)(j), Article 16(1), Article 18(2)-(4) and (6), Article 23(1), Article 31(1) and (4)-(6), Article 36(5)-(6), Article 40(2), Article 45(3), Article 46(3), Article 52(2)-(3), Article 55(6)(c), Article 56(1)(kc), Article 61(1), Article 62(4), Article 65(4), Article 67(3) and (5), Article 69 (2), Article 80(1), Article 96(1)(a), Article 109(5) and (7), Article 120(h), (k) and (m), Article 121(1), Article 122(2), (5) and (8), Article 122/A, Article 123(1), Article 124(8)(e) and (f), Article 125(9), Article 126(2)-(4) and (6)(a), Article 131(1)-(2), Article 132(3), Article 137(5)(a) and (e), Article 152(7) and Article 172(2)(m) of this Act set out in the Act CXVI of 2013 on the Amendment of the Act CVIII of 2011 on Public Procurement (hereinafter referred to as Amend2 Act) shall be applied to public procurements, contract award procedures, contracts concluded on the basis of contract award procedures which were started after the entering into force of the Amend2 Act, as well as to the review procedures launched in relation thereto. Article 4(15), Article 56(1)(g) and Article 56(5) of this Act, which were repealed by the Amend2 Act shall not be applied to contract award procedures started after the entering into force of the Amend2 Act.<sup>93</sup>**

**7. The contract concluded as a result of a contract award procedure which constitutes the basis of the remaining debts of a local government subject to the assumption under Articles 72-75 of the Act CCVI of 2012 on the Central Budget of Hungary may not be amended unilaterally by a financial institution under the Act on Credit Institutions and Financial Enterprises.<sup>94</sup>**

#### *Empowerment*

#### **Article 182**

1. The Government shall be empowered to regulate in a decree

1. the way of certification of suitability and the non-existence of the grounds for exclusion, the scope of documents which may be requested for that purpose, the verification of the suitability and the non-existence of the grounds for exclusion by the contracting authority, as well as detailed rules pertaining to the determination and the contents of the public procurement technical specifications in the contract award procedures;
2. rules pertaining to approved tenderers, conditions for and way of certification of being included in the list of approved tenderers, rules of the keeping of the list, requirements for the non-existence of grounds for exclusions and suitability proved by the certificate based on the list, as well as the requirements proved by such a certificate issued by the organisation of another Member State of the European Union;
3. detailed rules for the application of sanctions which may be imposed by the Public Procurement Arbitration Board, the amount and the way of payment of the penalty which may be imposed by the Public Procurement Arbitration Board and of the administrative service fee to be paid to the Public Procurement Arbitration Board and the rules pertaining to the way of their incurring;
4. the rules pertaining to design contests;
5. specific public procurement rules pertaining to the procedures specified in Chapter XIV, as well as rules pertaining to the procedure according to Article 118(8);
6. detailed rules pertaining to the centralised public procurements in relation to budgetary authorities controlled or supervised by it, to public foundations founded by it and the business organisations owned by the state, the amount of the fee covering the costs that shall be incurred only in connection with the execution, to be paid to the entity authorised to publish tenders in the framework of centralised public procurement;

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<sup>92</sup> This paragraph entered into force on 1 July 2013.

<sup>93</sup> This paragraph entered into force on 1 July 2013.

<sup>94</sup> This paragraph entered into force on 1 July 2013.

7. detailed rules pertaining to centralised public procurements of settlements with a single common governing body;
8. in the case of organisations funded from the Health Insurance Fund, the detailed rules of centralised procedures related to health care services and the amount of fee payable to the organisation authorised to invite tenders in a centralised procedure whose sole purpose is to cover the expenses incurred in the course of the implementation;
9. the detailed rules pertaining to procedural acts which may be conducted by electronic means and to electronic auctions as well as to electronic public procurements;
10. detailed rules for public works contracts and for the execution of public works contracts, as well as rules, which are different from those set out in this Act **and in the Civil Code**, pertaining to the payment of the consideration set out by the contract, in case of public works contracts;<sup>95</sup>
11. the specific rules pertaining to public procurement of pharmaceutical products and medical technology equipment, different - as required - from those set out in this Act;
12. the special rules applicable to procurement concerning qualified data or fundamental safety and national security interests or requiring special security measures;
13. the special rules applicable to the procurement of supplies, services and public works expressly for military, public order and security purposes in the field of defence;
14. the detailed rules pertaining to procurement within the scope of the NATO Programme for Security, and other programmes commonly financed and supported by NATO;
15. the rules pertaining to the dynamic purchasing system;
16. the detailed rules for the public procurement reserved for sheltered places of employment and entities having a permission for social employment as well as the binding cases and method to validate social considerations in public procurement;<sup>96</sup>
17. the specific public procurement rules for determining and taking into consideration of the energy and environmental impacts for the whole operational lifetime of the vehicle, entails with the operation of road vehicles, and the detailed rules for the related reporting obligation;
18. **the specific rules for the authorization of the launching and central supervision of the conducting of contract award procedures of the budgetary organs controlled or supervised by the government, the institutions thereof, the public foundations of the government, and the economic organisations in which the state has a majority ownership and, on behalf of the state, the ownership rights are exercised by a central budgetary organ or an institution thereof on the basis of a ministerial decree or an agency contract concluded with the Hungarian National Asset Management Inc.; as well as the specific rules for the control of the execution and the authorization of any amendment to the public procurement contracts of such organisations; furthermore, the authorization of conclusion of and amendment to the contracts of such organisations and the foundations founded or managed by them that concern a purchase but were not concluded through a contract award procedure;**<sup>97</sup>
19. procedural rules to be applied for public supply contracts and public services contracts not reaching EU thresholds in relation to budgetary authorities controlled or supervised by it, to public foundations founded by it and the business organisations owned by the state, for the purposes of Article 123 of this Act;
20. detailed rules which may be provided for in relation to environmental protection, sustainability and energy efficiency requirements covering all stages of the contract award procedure, as well as cases and ways of enforcement of environmental protection, sustainability and energy efficiency considerations in public

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<sup>95</sup> This amendment entered into force on 1 July 2013.

<sup>96</sup> This amendment entered into force on 1 January 2013.

<sup>97</sup> This point entered into force on 1 July 2013.

procurements in relation to budgetary authorities controlled or supervised by it, to public foundations founded by it and the business organisations owned by the state, the

2. The Minister responsible for public funds shall be empowered to regulate in a regulation

- (a) the rules of sending, dispatching and publishing notices, and the public procurement plan, the examination of notices, the related fees and their payment, the rules pertaining to annual statistical summary of public procurement, furthermore the order of publication in the Public Procurement Bulletin or on the homepage of the Public Procurement Authority;
- (b) the standard forms for notices, award summaries and annual statistical summaries, certain content elements of the notices;
- (c) the rules pertaining to the activity of official public procurement consultants, the public procurement practice specified as a criterion for acting as an official public procurement consultant, the provision of proof of such practice, the list of official public procurement consultants, the keeping thereof, the conditions for being included on the list, as well as the amount of the administrative service fee payable for registration, renewal of registration and supplementation of the submitted data;
- (d) the rules pertaining to the liability insurance specified as a criterion for acting as an official public procurement consultant, together with the minister responsible for public finances
- (e) the scope of the data to be submitted in relation to the central supervision and authorisation of public procurements, as well as the detailed rules for the recording and managing of the data concerning the purchasing plan, the public procurement plan, any amendment thereto, the contract award procedures and the contracts that concern purchases but their conclusion or the amendment thereto was not realized in a contract award procedure.

3. The body of representatives of local governments shall be empowered to lay down in a regulation the detailed rules pertaining to locally centralised public procurements, the entities obliged to act in compliance with the rules of locally centralised public procurements, the amount of the fee covering the costs that shall be incurred only in connection with the execution, to be paid to the entity authorised to publish tenders in the framework of locally centralised public procurement.

4. The Minister of the Interior shall be empowered to regulate in a decree, in concert with the Minister Responsible for the Supervision of the National Property, the specific rules, which are different from the provisions set out by this Act, pertaining to public supply contracts or public service contracts not reaching EU threshold, necessary for public employers to perform their tasks related to public employment.

*Compliance with European Union law*

**Article 183**

This Act shall serve the purpose of compliance with

- (a) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;
- (b) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;
- (c) Corrigendum to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors;
- (d) Corrigendum to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

- (e) Commission Directive (EC) 2005/51/EC of 7 September 2005 amending Annex XX of Directive 2004/17/EC of the European Parliament and of the Council on public procurement and Annex VIII of Directive 2004/18/EC of the European Parliament and Council.
- (f) Commission Regulation (EC) No 1422/2007 of 4 December 2007 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts;
- (g) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts [In implementation of the Act, legislation of Min. Decr. based on empowerment of Article 404 (2) (a)];
- (h) Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV;
- (i) The European Parliament and the Council Directive 2009/33/EK of 2009 on clean and energy efficient road vehicles in the promotion, together with, in implementation of the Act, legislation of Gov. Decr. based on empowerment of Article 182(1) (17) and Act XXXIII of 2004 on the Scheduled Passengers Transport by Means of Buses;
- (j) Article 7 (1) (b) of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- (k) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, together with Gov. Decr. based on empowerment of Article 182(1), points 12 and 13, drawn up for the implementation of this Act;
- (l) **Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.**<sup>98</sup>

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<sup>98</sup> This point entered into force on 1 July 2013.

*Annex 1 to Act [ ... ] of 2011 on Public Procurement***List of professional activities specified in Article 7(3)**

| NACE      |       |          |  |   |   |
|-----------|-------|----------|--|---|---|
| Section F |       |          | CONSTRUCTION   |   | CPV CODE  |
| Class     | Group | Subgroup | Subject  | Comments  |   |
| 45        | 45.1  | 45.11    | Construction   | This class includes:<br>construction of new buildings and works,<br>restoring and common repairs  | 45000000  |
|           |       |          | Site preparation   |   | 45100000  |
|           |       |          | Demolition and wrecking of buildings; earth moving                     | This subgroup includes:<br>- demolition of buildings and other structures<br>- clearing of building sites<br>- earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.<br>- site preparation for mining:<br>-overburden removal and other development and preparation of mineral properties and sites                   | 45110000  |
|           | 45.2  | 45.12.   | Test drilling and boring   | This subgroup includes:<br>- test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes<br><br>This subgroup excludes:<br>- drilling of production oil or gas wells, see 11.20<br>- water well drilling, see 45.25<br>- shaft sinking, see 45.25<br>- oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20 | 45120000  |
|           |       |          | Building of complete constructions or parts thereof; civil engineering |   | 45200000  |
|           |       | 45.21    | General construction of buildings and civil engineering works          | This subgroup includes:<br>-construction of all types of buildings<br><br>- construction of civil engineering constructions:  | 45210000<br>Except:<br>45213316<br>45220000<br>45231000 |

| NACE      |       |          |   |  |                               |
|-----------|-------|----------|---|--|-------------------------------|
| Section F |       |          | CONSTRUCTION                                    |  | CPV CODE                      |
| Class     | Group | Subgroup | Subject   | Comments   |                               |
|           |       |          |   | -bridges, including those for elevated highways, viaducts, tunnels and subways<br>-long-distance pipelines, communication and power lines<br>-urban pipelines, urban communication and power lines<br><br>-ancillary urban works<br><br>-assembly and erection of prefabricated constructions on the site<br><br>This subgroup excludes:<br><br>-service activities incidental to oil and gas extraction, see 11.20<br><br>-erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28<br><br>-construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23<br><br>-building installation, see 45.3<br><br>-building completion, see 45.4<br><br>-architectural and engineering activities, see 74.20<br><br>-project management for construction, see 74.20 | 45232000                      |
|           |       | 45.22    | Erection of roof covering and frames            | This subgroup includes:<br><br>-erection of roofs<br><br>-roof covering<br><br>-waterproofing  | 45261000                      |
|           |       | 45.23    | Construction of motorways, roads, airfields and | This subgroup includes:<br><br>-construction of highways, streets, roads,  | 45212212 and DA03<br>45230000 |

| NACE      |       |          |   |  |  |
|-----------|-------|----------|---|--|--|
| Section F |       |          | CONSTRUCTION                                      |  | CPV CODE   |
| Class     | Group | Subgroup | Subject   | Comments   |  |
|           |       |          | sport facilities                                  | <p>other vehicular and pedestrian ways</p> <p>-construction of railways</p> <p>-construction of airfield runways</p> <p>-construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</p> <p>-painting of markings on road surfaces and car parks</p> <p>This subgroup excludes:</p> <p>-preliminary earth moving, see 45.11</p>  | <p>Except: -</p> <p>45231000 -</p> <p>45232000 -</p> <p>45234115</p> |
|           |       | 45.24    | Construction of water projects                    | <p>This subgroup includes the construction of:</p> <p>-waterways, harbour and river works, pleasure ports (marinas), locks, etc.</p> <p>-dams and dykes</p> <p>-dredging</p> <p>-subsurface work</p>   | 45240000   |
|           |       | 45.25    | Other construction works involving special trades | <p>This subgroup includes:</p> <p>-construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:</p> <p>- construction of foundations, including pile driving</p> <p>-water well drilling and construction, shaft sinking</p> <p>-erection of non-self-manufactured steel elements</p> <p>-steel bending</p> <p>-bricklaying and stone setting</p> <p>-scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</p> <p>-erection of chimneys and industrial ovens</p> | 45250000   |

| NACE      |       |          |   |   |  |
|-----------|-------|----------|---|---|--|
| Section F |       |          | CONSTRUCTION  |   | CPV CODE   |
| Class     | Group | Subgroup | Subject   | Comments  |  |
|           | 45.3  | .        | <b>Building installation</b>                          | <p>This subgroup excludes:</p> <p>-renting of scaffolds without erection and dismantling, see 71.32</p>   | 45300000   |
|           |       | 45.31    | <b>Installation of electrical wiring and fittings</b> | <p>This subgroup includes:</p> <p>-installation in buildings or other construction projects of:</p> <p>-electrical wiring and fittings</p> <p>-telecommunications systems</p> <p>-electrical heating systems</p> <p>-residential antennas and aerials</p> <p>-fire alarms</p> <p>-burglar alarm systems</p> <p>-lifts and escalators</p> <p>-lightning conductors, etc.</p> | <p>45313316</p> <p>45310000</p> <p>Except: -</p> <p>45316000</p> |
|           |       | 45.32    | <b>Insulation work activities</b>                     | <p>This subgroup includes:</p> <p>-installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This subgroup excludes:</p> <p>-waterproofing, see 45.22</p>   | 45320000   |
|           |       | 45.33    | <b>Plumbing</b>                                       | <p>This subgroup includes:</p> <p>-installation in buildings or other construction projects of:</p> <p>-plumbing and sanitary equipment, gas fittings</p> <p>-heating, ventilation, refrigeration or airconditioning</p> <p>-equipment and ducts</p> <p>-sprinkler systems</p> <p>This subgroup excludes:</p>   | 45330000   |

| NACE      |       |          |                             |   |   |
|-----------|-------|----------|-----------------------------|---|---|
| Section F |       |          | CONSTRUCTION                |   | CPV CODE  |
| Class     | Group | Subgroup | Subject                     | Comments  |   |
|           |       | 45.34    | Other building installation | <p>-installation of electrical heating systems, see 45.31</p> <p>This subgroup includes:</p> <p>-installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>-installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>  | <p>45234115</p> <p>45316000</p> <p>45340000</p> |
|           | 45.4  |          | Building completion         |   | 45400000  |
|           |       | 45.41    | Plastering                  | <p>This subgroup includes:</p> <p>-application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>  | 45410000  |
|           |       | 45.42    | Joinery installation        | <p>This subgroup includes:</p> <p>-installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>-interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This subgroup excludes:</p> <p>-laying of parquet and other wood floor coverings, see 45.43</p> | 45420000  |
|           |       | 45.43    | Floor and wall covering     | <p>This subgroup includes:</p> <p>- laying, tiling, hanging or fitting in buildings or other construction projects of:</p> <p>-ceramic, concrete or cut stone wall or floor tiles</p> <p>-parquet and other wood floor coverings</p> <p>-carpets and linoleum floor coverings, including of rubber or plastic</p> <p>-terrazzo, marble, granite or slate floor or wall coverings</p> <p>-wallpaper</p>    | 45430000  |

| NACE      |       |          |   |   |                                  |
|-----------|-------|----------|---|---|----------------------------------|
| Section F |       |          | CONSTRUCTION  |   | CPV CODE                         |
| Class     | Group | Subgroup | Subject   | Comments  |                                  |
|           |       | 45.44    | Painting and glazing  | <p>This subgroup includes:</p> <ul style="list-style-type: none"> <li>-interior and exterior painting of buildings</li> <li>-painting of civil engineering structures</li> <li>-installation of glass, mirrors, etc</li> </ul> <p>This subgroup excludes:</p> <ul style="list-style-type: none"> <li>-installation of windows, see 45.42</li> </ul>   | 45440000                         |
|           |       | 45.45    | Other building completion                                     | <p>This subgroup includes:</p> <ul style="list-style-type: none"> <li>-installation of private swimming pools</li> <li>-steam cleaning, sand blasting and similar activities for building exteriors</li> <li>-other building completion and finishing work n.e.c.</li> </ul> <p>This subgroup excludes:</p> <ul style="list-style-type: none"> <li>-interior cleaning of buildings and other structures, see 74.70</li> </ul> | 45212212 and<br>DA04<br>45450000 |
|           | 45.5  |          | Renting of construction or demolition equipment with operator |   | 45500000                         |
|           |       | 45.50    | Renting of construction or demolition equipment with operator | <p>This subgroup excludes:</p> <ul style="list-style-type: none"> <li>-renting of construction or demolition machinery and equipment without operators, see 71.32</li> </ul>  | 45500000                         |

Annex 2 to Act [ ... ] of 2011 on Public Procurement**List of supplies in the field of defence**

- chapter 25: Salt; sulphur; earth and stones; gypsum; lime and cement
- chapter 26: Ores; slags and ashes
- chapter 27: Mineral fuels, mineral oils and their distilled derivatives; bituminous materials; mineral waxes  
*except:*  
ex 2710: special engine fuels
- chapter 28: Inorganic chemicals, inorganic or organic compounds from precious metals, rare-earth metals, radioactive elements and isotopes  
*except:*  
ex 2809: explosives  
ex 2813: explosives  
ex 2814: teargas  
ex 2828: explosives  
ex 2832: explosives  
ex 2839: explosives  
ex 2850: toxic products  
ex 2851: toxic products  
ex 2854: explosives
- chapter 29: Organic chemicals  
*except:*  
ex 2903: explosives  
ex 2904: explosives  
ex 2907: explosives  
ex 2908: explosives  
ex 2911: explosives  
ex 2912: explosives  
ex 2913: toxic products  
ex 2914: toxic products  
ex 2915: toxic products  
ex 2921: toxic products  
ex 2922: toxic products  
ex 2923: toxic products  
ex 2926: explosives  
ex 2927: toxic products  
ex 2929: explosives
- chapter 30: Pharmaceutical preparations

- chapter 31: Manuring products
- chapter 32: Tanning and colouring extracts; tannins and derivatives; dyes, pigments and other colouring agents, paints and varnishes; putty and mastic (finishing and sealing materials); inks
- chapter 33: Essential oils and resinoids; scents, beauty and body care products
- chapter 34: Soaps, organic tensides, detergents, lubricants, synthetic waxes, ceresin waxes, scrubbing and polishing materials, candles and similar products, modelling paste, "dental wax" and gypsum-based dental preparations
- chapter 35: Protein materials, modified starched; glues; enzymes
- chapter 37: Photographic and cinematographic products
- chapter 38: Miscellaneous chemical products  
*except:*  
ex 3819: toxic products
- chapter 39: Resins and plastics, cellulose ester and ether; goods made from these  
*except:*  
ex 3903: explosives
- chapter 40: Rubber, synthetic rubber and goods made from these  
*except:*  
ex 4011: bullet-proof tyres
- chapter 41: Fresh hide (except fur) and leather
- chapter 42: Leather goods; saddler and harnessmaker goods; travel articles, handbags and similar containers; goods made from animal guts (except goods made from silkworm gut)
- chapter 43: Fur, artificial fur; goods made from these
- chapter 44: Wood and timber products; charcoal
- chapter 45: Cork and cork goods
- chapter 46: Goods made from straw, alfa-grass and other spinning materials; basketwork and wickerwork goods
- chapter 47: Paper industry fibrous stuff
- chapter 48: Paper and cardboard; goods made from paper industry fibrous stuff, paper and cardboard
- chapter 49: Books, newspapers, pictures and other printed products; manuscripts, typed texts and design drawings
- chapter 65: Hats and other head-gear, and their parts
- chapter 66: Umbrellas, parasols, canes, walking-sticks, seat-sticks, lashes, whips, and their parts
- chapter 67: Finished feather and down, and goods made from these; artificial flowers; goods made from human hair
- chapter 68: Goods made from stone, gypsum, cement, asbestos, mica and similar materials
- chapter 69: Ceramics products
- chapter 70: Glass and glass products
- chapter 71: Natural or culture pearl, precious stone, semi-precious stone, precious metal, precious metal plated metal and goods made from these; imitation jewels
- chapter 73: Iron and steel, and goods made from these

- chapter 74: Copper and goods made from copper
- chapter 75: Nickel and goods made from nickel
- chapter 76: Aluminium and goods made from aluminium
- chapter 77: Magnesium and beryllium, and goods made from these
- chapter 78: Lead and goods made from lead
- chapter 79: Zinc and goods made from zinc
- chapter 80: Tin and pewter products
- chapter 81: Other non-precious metals and goods made from these
- chapter 82: Tools, craftsman's products, cutlery from non-precious metals; their parts  
*except:*  
ex 8205: tools  
ex 8207: tools, parts
- chapter 83: Miscellaneous goods from non-precious metals
- chapter 84: Furnaces, machinery and mechanic equipment; their parts  
*except:*  
ex 8406: engines  
ex 8408: other engines  
ex 8445: machines  
ex 8453: automatic data processing machines  
ex 8455: machine parts within the scope of customs tariff number 84.53  
ex 8459: atomic reactors
- chapter 85: Electric machines and electric equipment; their parts  
*except:*  
ex 8513: telecommunication equipment  
ex 8515: transmission equipment
- chapter 86: Railway engines and electric motorcoaches, other rail vehicles and their parts; railway and electric track accessories, fixtures and their parts; all kinds of mechanic traffic signalling equipment  
*except:*  
ex 8602: armoured electrical engines  
ex 8603: other armoured engines  
ex 8605: armoured wagons  
ex 8606: repair wagons  
ex 8607: wagons
- chapter 87: Vehicles and their parts, except railways or electric rail vehicles  
*except:*  
8708: tanks and other armoured vehicles  
ex 8701: tractors  
ex 8702: combat vehicles  
ex 8703: breakdown lorries

- ex 8709: motorcycles
- ex 8714: trailers
- chapter 89: Ships, boats and other floating structures
  - except:*
  - ex 8901 A: warships
- chapter 90: Optical, photographic, cinematographic, measuring, controlling, precision, medical and surgical instruments and equipment; their parts and accessories
  - except:*
  - ex 9005: binocular telescopes
  - ex 9013: miscellaneous instruments, lasers
  - ex 9014: telemetering equipment
  - ex 9028: electric and electronic measuring instruments
  - ex 9011: microscopes
  - ex 9017: medical instruments
  - ex 9018: mechanotherapeutic equipment
  - ex 9019: orthopaedic equipment
  - ex 9020: X-ray equipment
- chapter 91: Clocks, watches and their parts
- chapter 92: Musical instruments; sound recorder and playback equipment; television sound and image recorder equipment; their parts and accessories
- chapter 94: Furniture and parts; bed fittings, mattresses, spring-mattresses, pillows and other upholstered interior decoration articles
  - except:*
  - ex 9401: airplane seats
- chapter 95: Goods and products made from chiselling and moulding materials
- chapter 96: Brooms, brushes, powder-puffs and sieves
- chapter 98: Miscellaneous manufactured goods

*Annex 3 to Act [ ... ] of 2011 on Public Procurement*

## Services

| Category no. | Subject   | CPC reference no.               | CPV reference no.   |
|--------------|---|---------------------------------|---|
| 1.           | Maintenance and repair services   | 6112, 6122, 633, 886            | From 50100000-6 to 50884000-5 (except from 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1 |
| 2.           | Land transportation services, including services with armoured vehicles and courier services, except carrying postal consignments | 712 (except 71235), 7512, 87304 | From 60100000-9 to 60183000-4 (except from 60160000-7 to 601611000-4, 60220000-6,) and from 64120000-3 to 64121200-2                                      |
| 3.           | Air passenger carrying and freight forwarding services, except carrying postal consignments                                       | 73 (except 7321)                | From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5) and 60500000-3, From 60440000-4 to 60445000-9   |
| 4.           | Land and air carrying of postal consignments  | 71235, 7321                     | 60160000-7, 60161000-4, 60411000-2, 60421000-5  |
| 5.           | Telecommunication services  | 752                             | From 64200000-8 to 64228200-2, 72318000-7 and from 72700000-7 to 72720000-3   |
| 6.           | Financial services<br>(a) Insurance services<br>(b) Banking and investment services   | ex 81, 812, 814                 | From 66100000-1 to 66720000-3   |
| 7.           | Computer and related services   | 84                              | From 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4                            |
| 8.           | Research and development services   | 85                              | From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)   |
| 9.           | Accounting, auditing and bookkeeping services   | 862                             | From 79210000-9 to 79223000-3   |
| 10.          | Market research and public opinion poll services  | 864                             | From 79300000-7 to 79330000-6 and 79342310-9, 79342311-6  |
| 11.          | Management consulting services and related services   | 865, 866                        | From 73200000-4 to 73220000-0, from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 7991000-7        |

|     |   |                          |   |
|-----|---|--------------------------|---|
| 12. | Architectural services; civil engineering services and integrated civil engineering services; urban and country planning services; related scientific and technical consulting services; technical inspection and analysis services | 867                      | From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8  |
| 13. | Advertising services  | 871                      | From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)  |
| 14. | Building cleaning services and property management services   | 874, from 82201 to 82206 | From 70300000-4 to 70340000-6 and from 90900000-6 to 90924000-0   |
| 15. | Publishing and printing house services on ad hoc or contractual basis   | 88442                    | From 79800000-2 to 79824000-6<br>From 79970000-6 to 79980000-7  |
| 16. | Sewage disposal and waste recovery services; decontamination and similar services   | 94                       | From 90400000-1 to 90743200-9 (except 90712200-3)<br>from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6, 50243000-0 |

Annex 4 to Act [...] of 2011 on Public Procurement

## Services

| Category no. | Subject   | CPC reference no.     | CPV reference no.  |
|--------------|---|-----------------------|--|
| 17           | Hotel and catering services   | 64                    | From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6  |
| 18           | Railway transportation services   | 711                   | From 60200000-0 to 60220000-6  |
| 19           | Water transportation services   | 72                    | From 60600000-4 to 60653000-0 and from 6372000-1 to 63727200-3   |
| 20           | Auxiliary and supplementary transportation services                         | 74                    | From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3 and from 63727000-1 to 63727200-3) and 98361000-1 |
| 21           | Legal services  | 861                   | From 79100000-5 to 79140000-7  |
| 22           | Personnel placement and supply services                                     | 872                   | From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9                |
| 23           | Investigation and security services, except services with armoured vehicles | 873<br>(except 87304) | From 79700000-1 to 79723000-8  |
| 24           | Educational and vocational training services                                | 92                    | From 80100000-5 to 80660000-8 (except 80535000-9, 80533100-0, 80533200-1)  |
| 25           | Health and social services  | 93                    | 79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)  |
| 26           | Entertainment, cultural and sports services                                 | 96                    | From 79995000-5 to 79995200-7 and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)                |
| 27           | Other services  |                       |  |