

The Croatian Parliament

1919

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE PUBLIC PROCUREMENT ACT

I hereby promulgate the Public Procurement Act adopted by the Croatian Parliament at its session of 15 July 2011.

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Zagreb, 20 July 2011

The President of the

Republic of Croatia

prof. dr. sc. Ivo Josipović, m.p.

THE PUBLIC PROCUREMENT ACT

PART 1

GENERAL PROVISIONS

Subject-matter of the Act

Article 1

(1) This Act regulates procedures for the award of public contracts and framework agreements for the procurement of supplies, works or services, legal protection in relation to those procedures and the competences of the central state administration body competent for the public procurement system.

(2) This Act applies to the contracting authorities/entities referred to in Articles 5 and 6 of this Act.

(3) This Act applies also to other entities as stipulated in this Act.

(4) The following forms part of this Act:

– Annex I. List of activities in construction (hereinafter: Annex I),

- Annex II. List of services II A and II B (hereinafter: Annex II A or Annex II B),
- Annex III. List of military equipment (hereinafter: Annex III)
- Annex IV. Technical specifications (hereinafter: Annex IV),
- Annex V. Information to be included in public procurement notices (hereinafter: Annex V),
- Annex VI. Features concerning publication (hereinafter: Annex VI),
- Annex VII. Requirements relating to devices for the electronic receipt of tenders, requests to participate, applications for qualification and plans and projects (hereinafter: Annex VII).

(5) This Act contains the provisions which comply with the following acts of the European Union:

1. Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004.),
2. 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 (OJ L 134, 30.4.2004.),
3. Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 323, 9.12.005.),
4. Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ L 257, 1.10.2005.),
5. 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 (OJ L 335, 20.12.2007.),
6. Articles 2, 12 and 13 of 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 (OJ L 216, 20.8.2009.).

Definitions

Article 2

For the purposes of this Act, the terms below shall have the following meaning:

1. *Member State* is a member state of the European Union.
2. An *electronic auction* is a manner of implementation of part of the public procurement procedure which is a repetitive process involving an electronic device for the presentation of

new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Public service contracts and public works contracts having as their subject-matter intellectual performances, such as design, may not be the object of electronic auction.

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

4. An *economic operator* means any natural or legal person or group of such persons which offers on the market the execution of works and/or a work, delivery of products or provision of services.

5. *Research and development* means all activities comprising fundamental research, applied research and experimental development, which may include the realisation of technological demonstrators, that is, devices that demonstrate the performance of a new concept or a new technology in a relevant or representative environment.

6. *Contracting authority* is the authority referred to in Article 5 of this Act.

7. *The Common Procurement Vocabulary (CPV)* shall designate the reference nomenclature applicable to public procurement procedure, while ensuring equivalence with the other existing nomenclatures.

In the event of varying interpretations of the scope of this Act, owing to possible differences between the CPV and the nomenclature of the Statistical Classification of Economic Activities in the European Community (NACE) listed in Annex I of this Act, or between the CPV and the United Nations Provisional Central Product Classification (CPC prov.) listed in Annex II of this Act, the NACE or the CPC nomenclature respectively shall take precedence.

8. *Public works concession* is a contractually regulated legal relationship within the meaning of the regulations governing concessions, and which is within the meaning of this Act regarded as a public procurement contract.

9. *Contracting authority/entity* means contracting authorities and contracting entities.

10. *Candidate* is an economic operator willing to participate in a restricted procedure, negotiated procedure with prior publication or competitive dialogue, and who demonstrates its willingness in a request to participate.

11. *Competitive dialogue* is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable solutions capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

12. *Design contest* means a procedure which enables the contracting authority/entity to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

13. *Restricted procedure* means a procedure in which any interested economic operator may request to participate and whereby only those economic operators invited by the contracting authority/entity may submit a tender.

14. A *framework agreement* is an agreement between one or more contracting authorities/entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

15. *Open procedure* means a procedure whereby any interested economic operator may submit a tender.

16. *Written or in writing* means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

17. *Subcontractor* means an economic operator delivering supplies, providing services or performing works directly related to the subject-matter of procurement for the selected tenderer with whom the contracting authority/entity concluded a public procurement contract.

18. A *tenderer* is an economic operator who has submitted a tender in good time.

19. A *special or exclusive right* means the right granted by a competent authority by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of a particular activity to one or more economic operators and which substantially affects the ability of other economic operators to carry out such activity.

20. *Negotiated procedure* means a procedure whereby the contracting authority/entity consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

21. *Contracting entity* is the entity referred to in Article 6 of this Act.

22. *Sensitive equipment, sensitive works and sensitive services* means equipment, works and services for security purposes, involving, requiring and/or containing classified information.

23. *Third country* means any state which is not a Member State of the European Union, other than the Republic of Croatia.

24. *Public works contracts* is a public procurement contract having as its object:

1. either the execution, or both the design and execution, of works related to one or more activities within the meaning of Annex I of this Act, or

2. a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority/entity. A "work" means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

25. *Public service contracts* is a public procurement contract other than public works or public supply contract having as its object services within the meaning of Annex II A or services within the meaning of Annex II B to this Act.

A public procurement contract having as its object both products and services within the meaning of Annex II of this Act shall be considered to be a public service contract if the value of the services in question exceeds that of the products covered by the contract.

A public procurement contract having as its object services within the meaning of Annex II of this Act and including activities within the meaning of Annex I of this Act that are only incidental to the principal object of the contract shall be considered to be a public service contract.

26. *Public procurement contract* is a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities/entities and having as its object the execution of works, the supply of products or the provision of services.

27. *Public supply contract* is a public procurement contract other than public works contract having as its object the purchase, lease, rental or hire purchase, with or without option to buy, of products. A public procurement contract having as its object the supply of products and which also covers, as an incidental matter, sitting and installation operations shall be considered to be a public supply contract.

28. *Military equipment* means equipment specifically designed or adapted for military purposes and intended to be used as an arm, ammunition or war material, in particular equipment listed in Annex III to this Act.

29. *Group of tenderers or candidates* is an association of several economic operators which has submitted in good time a joint tender or request to participate.

Principles of public procurement

Article 3

(1) In the implementation of public procurement procedures under this Act, in relation to all economic operators, contracting authorities/entities shall respect the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and the principles deriving therefrom, such as the principle of competition, the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency.

(2) Contracting authorities/entities shall apply the provisions of this Act in a way to enable effective procurement and efficient spending of public procurement funds.

Conditions relating to agreements concluded within the World Trade Organisation

Article 4

On the date of accession of the Republic of Croatia to the Agreement on Government Procurement (GPA), contracting authorities/entities to which the Agreement relates shall apply its provisions to third-country economic operators parties to the Agreement in the award of public procurement contracts. In the award of public procurement contracts covered by the Agreement to economic operators from Member States, the Republic of

Croatia shall apply conditions as favourable as those which they grant to third-country economic operators parties to the Agreement on Government Procurement.

Contracting authorities

Article 5

(1) Contracting authorities are the following:

1. the state bodies of the Republic of Croatia,
2. local and regional self-government units,
3. legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions:
 - they are financed from the State Budget or the budget of local or the budget of regional self-government unit or other such legal persons in more than 50%, or
 - they are subject to management supervision by state bodies, local and regional self-government units or other such legal persons, or
 - they have a supervisory board, an administrative or managerial board, more than half of whose members are appointed by the state bodies, local and regional self-government units or other such legal persons,
4. associations formed by the bodies referred to in points 1 and 2 of this paragraph or legal persons referred to in point 3 of this paragraph.

(2) A list of contracting authorities referred to in paragraph 1 of this Article shall be prescribed by the minister competent for the economy in the Ordinance on the list of entities bound by the Public Procurement Act.

(3) State bodies and other bodies, and legal persons meeting the conditions referred to in paragraph 1 of this Article shall apply this Act even when they are not specified in the ordinance referred to in paragraph 2 of this Article.

Contracting entities

Article 6

(1) Contracting entities are the following:

1. contracting authorities which pursue one or more activities referred to in Articles 107 to 112 of this Act when procuring supplies, works or services for the purpose of performing those activities,
2. an undertaking over which one or more contracting authorities exercise or may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it, and which pursue one or more of the activities referred to in Articles 107 to 112 of this Act when procuring supplies, works or services for the purpose of performing those activities,

3. entities which have as one of their activities any of the activities referred to in Articles 107 to 112 of this Act or a combination thereof and operate by virtue of a special or exclusive right granted by a competent authority when procuring supplies, works or services for the purpose of performing those activities, and which are not contracting authorities or undertakings within the meaning of points 1 and 2 of this paragraph.

(2) A dominant influence on the part of the contracting authorities in relation to an undertaking within the meaning of point 2, paragraph 1 of this Article shall be presumed when these authorities, directly or indirectly:

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

(3) A list of contracting entities referred to in paragraph 1 of this Article shall be prescribed by the minister competent for the economy in the Ordinance on the list of entities bound by the Public Procurement Act.

(4) Undertakings and subjects meeting the conditions referred to in paragraph 1 of this Article shall apply this Act even when they are not included in the ordinance referred to in paragraph 3 of this Article.

Contracts subsidised or co-financed by contracting authorities by more than 50%

Article 7

(1) This Act shall apply to the awarding of:

- public works contracts directly subsidised or co-financed by contracting authorities by more than 50%, where such contracts include activities in construction within the meaning of Annex I to this Act for building work for hospitals, facilities intended for sports, recreation, leisure and culture, school and university buildings and buildings used for administrative purposes;
- public services contracts directly subsidised or co-financed by contracting authorities by more than 50% and connected with the public works contracts within the meaning of point 1 of this paragraph.

(2) Where the contract referred to in paragraph 1 of this Article is awarded by one or more subjects who are not contracting authorities/entities within the meaning of this Act, the contracting authority subsidising or co-financing the contract shall ensure that the subjects concerned comply with this Act. If the contracting authority is awarding the contract referred to in paragraph 1 of this Article for and on behalf of other subjects, such authority shall comply with this Act itself.

Central public purchasing body

Article 8

(1) Contracting authorities may purchase supplies, works and/or services from or through the central public purchasing body.

(2) The central public purchasing body is a contracting authority/entity which:

1. acquires supplies and/or services intended for contracting authorities/entities, or
2. awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities/entities.

(3) Where contracting authorities/entities are purchasing supplies, works and/or services from or through the central public purchasing body, it shall be considered that they comply with this Act in the respective part of this Act which the central public purchasing body complied with.

(4) Contracting authorities/entities may authorise another contracting authority/entity to carry out the public procurement procedure.

(5) For the purpose of joint procurement, several contracting authorities/entities may authorise one of them or a third contracting authority/entity to carry out the public procurement procedure.

(6) In the events referred to in paragraphs 4 and 5 of this Article, the authorised contracting authority/entity carrying out the public procurement procedure shall be considered to be the central public purchasing body.

Award of special or exclusive rights

Article 9

Where the contracting authority grants special or exclusive right to carry out a particular public service to a subject who is not a contracting authority within the meaning of this Act, the act by which that right is granted shall provide that, the subject concerned shall apply this Act to the procurement contracts which it awards to third parties connected with the provision of the public service concerned.

Exclusions from the application of the Act

Article 10

(1) This Act shall not apply to the following contracts awarded by contracting authorities:

1. contracts and contests governed by different rules of procurement and awarded or organized pursuant to the particular procedure of an international organisation;
2. contracts and contests governed by different rules of procurement and awarded or organized pursuant to an international agreement between the Republic of Croatia and one or more third countries, concluded in accordance with the Treaty establishing the European Community, and covering supplies or works intended for the joint implementation or

exploitation of works by the signatory states or services intended for the joint implementation or exploitation of a project by the signatory states. The European Commission shall be notified of all such international agreements;

3. service contracts awarded by contracting authority to a contracting authority or a association of contracting authorities providing the service on the basis of an exclusive right which it enjoys pursuant to a published law, other regulation or an administrative act which is in line with the Treaty establishing the European Community;

4. the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act;

5. arbitration and conciliation services;

6. employment contracts;

7. research and development services. This Act shall apply to those research and development services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

8. contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters;

9. contracts for broadcasting time;

10. financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and services of the Croatian National Bank;

11. contracts and design contests for the principal purpose of permitting the contracting authorities to provide or exploit public electronic telecommunications networks or to provide to the public one or more electronic telecommunications services;

12. until the date of accession of the Republic of Croatia to the European Union, contracts awarded for purposes of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting authority;

13. contracts awarded by contracting authority to a legal entity, on condition that:

a) the legal entity concerned is established for carrying out activities within the scope of contracting authority's competences,

b) the legal entity concerned performs activities mostly for that contracting authority,

c) the subject-matter of the contract is linked with carrying out activities referred to in sub-point a) of this point,

d) the contracting authority is the sole owner of business shares, stocks or other rights of the legal entity concerned,

e) the contracting authority exercises over legal entity concerned a control as similar to that which it exercises over its own organisational (business) departments, and

f) the legal entity concerned performs the whole contract by itself.

(2) This Act shall not apply to the following contracts awarded by contracting entities:

1. contracts and contests governed by different rules of procurement and awarded or organized pursuant to the particular procedure of an international organisation;

2. contracts and contests governed by different rules of procurement and awarded or organized pursuant to an international agreement between the Republic of Croatia and one or more third countries, concluded in accordance with the Treaty establishing the European Community, and covering supplies or works intended for the joint implementation or exploitation of works by the signatory states or services intended for the joint implementation or exploitation of a project by the signatory states. The European Commission shall be notified of all such international agreements;

3. service contracts awarded by contracting entity to a contracting authority or a association of contracting authorities providing the service on the basis of an exclusive right which it enjoys pursuant to a published law, other regulation or an administrative act which is in line with the Treaty establishing the European Community;

4. the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act;

5. arbitration and conciliation services;

6. employment contracts;

7. research and development services. This Act shall apply to those research and development services where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity;

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

9. contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity. The contracting entities shall notify the European Commission at its request of all the categories of products or activities which they regard as excluded;

10. contracts and contests for purposes other than the pursuit of activities of contracting entity as described in Articles 107 to 112 of this Act or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Republic of Croatia, and as of the date of accession of the Republic of Croatia to the European Union, networks or geographical areas within the European Community;

11. contracts for the purchase of water awarded by contracting entity engaged in one or both activities referred to in Article 108, paragraph 1 of this Act;

12. contracts for the purchase of energy or of fuels for the production of energy awarded by contracting entity engaged in an activity referred to in Article 107, paragraph 1 and paragraph 3, or in Article 109 of this Act;

13. works concession contracts, if those concessions are awarded for carrying out one or more activities referred to in Articles 107 to 112 of this Act.

(3) In the case referred to in paragraph 2, points 9 and 10 of this Article, the contracting entity shall notify the European Commission, at its request, of all categories of goods or activities it regards as excluded.

Defence and security procurement

Article 11

(1) This Act shall apply to public procurement contracts awarded by contracting authorities/entities in the field of defence and security, with the exception of contracts referred to in paragraph 2 of this Article.

(2) The Regulation on procurement for defence and security purposes shall apply for the procurement of the following:

1. the supply of military equipment, including any parts, components and/or subassemblies thereof,
2. the supply of sensitive equipment, including any parts, components and/or subassemblies thereof,
3. works, supplies and services directly related to the equipment referred to in points 1 and 2 of this paragraph for any and all elements of its life cycle,
4. works and services for specifically military purposes,
5. sensitive works and sensitive services.

(3) This Act or the Regulation on procurement for defence and security purposes shall not apply to the following contracts:

1. contracts governed by specific procurement rules in accordance with an international agreement or arrangement concluded between the Republic of Croatia and one or more third countries,
2. contracts governed by specific procurement rules pursuant to a concluded international agreement or arrangement relating to the stationing of troops and concerning the undertakings of the Republic of Croatia, a Member State or a third country,
3. contracts governed by specific procurement rules of an international organisation purchasing for its purposes, or contracts which the Republic of Croatia must award in accordance with those rules,

4. contracts for which the application of the provisions of this Act or Regulation on procurement for defence and security purposes would oblige the Republic of Croatia to supply information the disclosure of which is contrary to the essential interests of its security,

5. contracts for the purposes of the bodies pertaining to the intelligence system,

6. contracts awarded in the framework of cooperative programme based on research and development, conducted jointly by the Republic of Croatia and at least one Member State for the development of a new product and, where applicable, for the latter phases of all or part of the life cycle of this product. Upon the completion of the cooperative programme, Member States shall indicate to the European Commission the share of research and development expenditure in relation to the overall cost of the programme, the cost-sharing agreement, and the intended share of purchases per state, if any,

7. contracts awarded in a third country, including for civil purposes, where the forces are deployed outside the territory of the European Union if the operational needs require the contracts to be concluded with economic operators located in the area of operations,

8. contracts concluded by state bodies or local and regional self-government units of the Republic of Croatia with state bodies or the bodies of regional or local authority of a Member State or third country, and relating to:

– the supply of military equipment or sensitive equipment,

– works and services directly linked to such equipment, or

– works and services specifically for military purposes, or sensitive works and sensitive services.

(4) The Regulation on procurement for defence and security purposes regulating the rules, conditions and procedures of procurement referred to in paragraph 2 of this Article shall be adopted by the Government of the Republic of Croatia.

Procurement for purposes of diplomatic and consular offices

Article 12

(1) Public contracts for purposes of diplomatic and consular offices of the Republic of Croatia in foreign countries the estimated value of which is equal or higher than HRK 900,000.00 shall be concluded in accordance with this Act, and other contracts shall be concluded in accordance with the Ordinance on public procurement of diplomatic missions and consular offices of the Republic of Croatia abroad.

(2) The minister responsible for foreign affairs shall adopt the Ordinance on public procurement of diplomatic missions and consular offices of the Republic of Croatia abroad.

Preventing conflicts of interests

Article 13

(1) The following relationships of contracting authorities/entities and economic operators shall be regarded as conflict of interest in the award of public procurement contracts:

1. if the representative of the contracting authority/entity at the same time performs management-related activities in the economic operator, or

2. if the representative of the contracting authority/entity holds a business share, stock or other rights entitling it to participate in management, that is, capital of the economic operator by more than 0.5%.

(2) Representative of the contracting authority/entity within the meaning of this Article means:

1. the head of a body of the contracting authority/entity, member of the management or supervisory body of the contracting authority/entity,

2. the authorised representatives of the contracting authority/entity in the particular public procurement procedure referred to in Article 24 of this Act, and

3. other persons referred to in Article 24 paragraph 5 of this Act which have impact on decision making in the particular public procurement procedure.

(3) Contracting authorities/entities may not award public procurement contracts to economic operators referred to in paragraph 1 of this Article as tenderers and members of a group of tenderers. Economic operators referred to in paragraph 1 of this Article may not act as subcontractors of the selected tenderer.

(4) Paragraph 3 of this Article shall also apply where in the relationship with an economic operator referred to in the paragraph 1 of this Article is a person related to the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article. Related persons are the spouse or life partner, a blood relative in the direct line, siblings, an adopted parent or child of the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article.

(5) Paragraph 4 of this Article shall not apply where a person related to the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article acquired business share, stock or other rights entitling it to participate in management, that is, capital of the economic operator by more than 0.5% in the period of more than two years before the representative of the contracting authority/entity that is related to was appointed or took over its duties. Application of this provision does not prejudice other obligations that in such cases refer to persons obliged by the special regulation on suppression of conflict of interest.

(6) Paragraph 3 of this Article shall also apply when a representative of the contracting authority/entity or person related to the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article has transferred its ownership share to another person or specific body (trustee) pursuant special regulation on suppression of conflict of interest.

(7) A situation where the representative of the contracting authority/entity or the person related to the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article performs management-related activities in the economic operator as an official representative of the contracting authority, and not as a private individual shall not be regarded as a conflict of interest referred to in point 1 paragraph 1 of this Article.

(8) Representatives of the contracting authority/entity shall sign a statement concerning the existence or non-existence of a conflict of interest within the meaning of their relationship or

the relationship of person related to the representative of the contracting authority/entity referred to in point 1 paragraph 2 of this Article with the economic operators referred to in paragraph 1 of this Article.

(9) On the basis of the statements referred to in paragraph 8 of this Article, the contracting authority/entity shall:

1 at its website, publish the list of economic operators with whom the representative of the contracting authority/entity referred to in point 1, paragraph 2 of this Article or persons related to it are in a relationship referred to in paragraph 1 of this Article or notification that there are no such operators. If the contracting authority does not own a website, the said list shall be published in its official bulletin or bulletin board or made permanently available to the interested public in some other way,

2. in the tender documents for the particular public procurement procedure, specify the list of economic operators with whom it is in the conflict of interest within the meaning of this Article or specify that there are no such operators,

3. the list referred to in point 1 of this paragraph must be continuously updated in line with any changes thereto.

Economic operators

Article 14

(1) Economic operators who, under the law of the state in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the Republic of Croatia, they would be required to be either natural or legal persons. However, in the case of procurement procedures with the aim of awarding public service contracts, public works contracts and public supply contracts covering in addition services and/or sitting and installation operations, legal persons must be required to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

(2) In order to submit a tender or a request to participate, the groups of tenderers or candidates may not be required by the contracting authorities/entities to assume a specific legal form, however, after the award the group may be required to do so, to the extent this is necessary for the satisfactory performance of the contract. The joint tenderers shall be jointly and severally liable.

Reserved contracts

Article 15

(1) Contracting authorities/entities may reserve the right to participate in public procurement procedures to sheltered workshops or provide for contracts to be performed in the context of sheltered employment programmes where most of the employees concerned in relation to the overall number of employees are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under regular conditions.

(2) In the contract notice, it must be indicated that the public procurement procedure is reserved exclusively for economic operators referred to in paragraph 1 of this Article.

(3) The conditions referred to in paragraph 1 of this Article relate to economic operators for whom the right to participate in public procurement procedures or to perform such contracts is reserved, but also to subcontractors to whom they intend to assign part of the public procurement contract.

Confidentiality of the documentation of economic operators

Article 16

(1) Without prejudice to the provisions of this Act, in particular those relating to the publication of contract award notices and the content of decisions and minutes which the contracting authority/entity submits to candidates and tenderers, the contracting authority/entity shall safeguard and may not disclose information included in the documentation of economic operators which they have designated as a business secret in accordance with special regulations.

(2) If the economic operator designates certain information in its tender as a business secret, it shall state in the tender the legal basis on the basis of which the information is confidential.

(3) Economic operators shall not designate as secret the information on unit prices, the amounts of individual items, the price of the tender and the information from the tender relating to the criteria for the award of the economically most advantageous tender.

Participation in the preparation of tender documents

Article 17

(1) Before the commencement of a public procurement procedure, the contracting authority/entity may request or accept advice from an economic operator which may be used in drawing up the documentation, but such advice may not have the effect of distorting competition and discrimination.

(2) The economic operator referred to in paragraph 1 of this Article may be a candidate or tenderer in the public procurement procedure concerned, provided that the contracting authority/entity ensures that the information it obtained prior to the commencement of the public procurement procedure does not give such economic operator an advantage over the other economic operators.

Estimated value of procurement

Article 18

(1) Procurement of high-value is procurement where the estimated value is equal to or greater than the value of the European thresholds.

(2) Procurement of lesser value is procurement where the estimated value is smaller than the European thresholds.

(3) This Act need not be applied to procurement the estimated value of which is less than HRK 70,000.00.

(4) The calculation of the estimated value of a public contract shall be based on the total amount payable, net of VAT. When calculating estimated value of procurement the contracting authority/entity shall take account of the estimated total amount, including any form of option and any renewals of the contract.

(5) Where the contracting authority/entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of procurement.

(6) If the subject-matter of procurement is divided into several lots, for the application of paragraphs 1 and 2 of this Article the estimated value of procurement is the total estimated value of all such lots of the subject-matter of procurement. Separate procurement for individual lots of the subject-matter of procurement is governed by the rules applicable for the total estimated value of procurement.

(7) With the exception of paragraph 6 of this Article, if the subject-matter of procurement of high-value is divided into several lots, for the separate procurement of individual lot or lots the rules applicable for procurement of lesser value may be applied, on condition that:

the estimated value of individual lot or lots for supply or services is less than 80,000,00 EUR in Croatian currency equivalent or for works less than 1 million EUR in Croatian currency equivalent, and

the total aggregate value of those lots does not exceed 20 % of the total aggregate value of all the lots of the subject-matter as a whole.

(8) The estimated value of procurement must be valid at the moment when the contracting authority/entity sends the contract notice and in procedures where the contract notice is not published, at the moment when the contracting authority/entity commences the public procurement procedure.

(9) The contracting authority/entity shall specify the estimated value of procurement in the notice.

(10) The contracting authority/entity may not divide the values of works or certain quantities of products and/or services with the intention of prevent its coming within the scope of this Act or the rules applicable according to the estimated value of procurement.

(11) The choice of the method used to calculate the estimated value of procurement may not be used with the intention of prevent its coming within the scope of this Act or the rules applicable according to the estimated value of procurement.

(12) The values of the European thresholds are prescribed by the Government of the Republic of Croatia in the Regulation on public procurement notices. On the date of accession of the Republic of Croatia to the European Union, the values of the European thresholds which the European Commission publishes in the Official Journal of the European Union shall apply.

Methods for calculating the estimated value of procurement

Article 19

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

(2) The value of products or services which are not necessary for the performance of a particular public works contract may not be added to the value of the public works contract if that would result in removing the procurement from the rules applicable according to the estimated value of procurement for those products or services.

(3) In the calculation of the estimated value of procurement for contracts which include both products and services, the total value of products and services shall be taken into account, regardless of their respective shares. The calculation must include the value of the sitting and installation work.

(4) With regard to the purchase, lease, rental or hire purchase, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

1. in the case of fixed-term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value for which the contracting authority/entity may purchase the supplies;

2. in the case of public contracts without a fixed term, the monthly value multiplied by 48.

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

1. either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

2. or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

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

1. the premium payable and other forms of remuneration for insurance services;

2. the fees, commissions, interest and other forms of remuneration for banking and other financial services;

3. fees, commission payable and other forms of remuneration for design contracts.

(7) With regard to public service contracts, the value to be taken as a basis for calculating the estimated value for service contracts which do not indicate a total price shall be:

1. the total value for their full term in the case of fixed-term contracts, if that term is less than or equal to 48 months;

2. the monthly value multiplied by 48 in the case of contracts without a fixed term or with a term greater than 48 months.

(8) With regard to framework agreements, the value to be taken into consideration shall be the maximum estimated value of all the contracts envisaged for the total term of the framework agreement.

Procurement plan

Article 20

(1) The contracting authority/entity shall adopt the procurement plan for the budget or business year, which shall include at least the following information:

1. the subject-matter of procurement,

2. the file reference number of procurement,

3. the estimated value of procurement, if available,

4. the type of the public procurement procedure, including the procedure for the award of public service contracts referred to in Annex II B to this Act,

5. whether the public procurement contract or the framework agreement,

6. the planned commencement of the procedure,

7. the planned duration of the public procurement contract or the framework agreement.

(2) With respect to the subject-matter of procurement the estimated value of which is equal to or higher than HRK 20,000.00 and less than HRK 70,000.00, the procurement plan shall include the information about the subject-matter of procurement and the estimated value of procurement.

(3) If necessary, the contracting authority/entity may change the procurement plan, and all changes must be visibly indicated in relation to the basic plan.

(4) The contracting authority shall publish the procurement plan on the Internet within the period of 60 days from the day of the adoption of the budget or the financial plan. Any and all changes to the procurement plan shall be immediately published by the contracting authority on the Internet.

(5) The published procurement plan and all its changes must be available on the Internet at least until 30 June of the following year.

(6) The contracting authority shall submit, immediately, to the central state administration body competent for the public procurement system information concerning the website on which the procurement plan is published and provide any subsequent changes to the information. The central state administration body competent for the public procurement system shall include on its website the list of links to the websites on which the procurement plans of all contracting authorities are available.

(7) If the contracting authority does not have the possibility of publication on the Internet, it shall submit its procurement plan and any changes thereto to the central state administration body competent for the public procurement system by electronic means, which will have them published on its website, where the contracting authority is responsible for the accuracy of the information.

(8) The provisions of this Article related to the publishing of the procurement plan shall not apply to the contracts which involve, require and/or contain classified information.

Register of public procurement contracts and framework agreements

Article 21

(1) The contracting authority/entity shall maintain the register of public procurement contracts and framework agreements and update the information in the register at least every six months.

(2) The contracting authority/entity shall publish the register of public procurement contracts and framework agreements on the Internet.

(3) The register of public procurement contracts and framework agreements shall include at least the following information:

1. the subject-matter of procurement
2. the file reference of procurement and number of publication,
3. the type of the public procurement procedure conducted, including the procedure of awarding public service contracts referred to in Annex II B to this Act,
4. the amount of the awarded public procurement contract or framework agreement, including the public procurement contract based on a framework agreement,
5. the date of the conclusion and the period for which the public procurement contract or framework agreement was concluded, including the public procurement contract based on a framework agreement,
6. the name of the tenderer to whom the public procurement contract was awarded, the name of the economic operator(s) with whom the framework agreement was concluded, the name of the tenderer to whom the public procurement contract based on a framework agreement was awarded, the name of the subcontractor if any,
7. the final date of the supply of goods, provision of services or execution of works,
8. the final amount which the contracting authority/entity paid on the basis of the public procurement contract, and an explanation where this amount is higher than the contracted amount.

(4) The information referred to in paragraph 3 of this Article for an individual public procurement contract must be available in the register for a period of at least three years of the date of the final execution of the contract concerned.

(5) The contracting authority/entity shall submit, after the first publication of the register of public procurement contracts and framework agreements, to the body competent for the

public procurement system data concerning the website on which the register is published and provide any subsequent changes to the data. The central state administration body competent for the public procurement system shall include on its website the list of links to the websites on which the registers of all contracting authorities/entities are available.

(6) If the contracting authority/entity does not have the possibility of publication on the Internet, at six-month intervals it shall submit the updated registers of public contracts and framework agreements to the central state administration body competent for the public procurement system by electronic means, which will have them published on its website, where the contracting authority/entity is responsible for the accuracy of the data.

(7) This Article shall not apply to the contracts awarded in accordance with the regulation governing public private partnerships and the regulation governing concessions.

(8) The provisions of this Article related to the publishing of the register shall not apply to the contracts which involve, require and/or contain classified information.

Buyers profile

Article 22

(1) The contracting authority/entity may publish its profile on the website.

(2) The profile of the contracting authority/entity may include prior (information) notices and prior (indicative) notices in accordance with Articles 58 and 123 of this Act, the procurement plan and the register of contracts referred to in Articles 20 and 21 of this Act, information on public procurement procedures which are under way, request for tenders in accordance with Article 44 of this Act, planned public procurement contracts, awarded public procurement contracts, cancelled public procurement procedures and other information necessary, such as the contact service, telephone and fax numbers, address and electronic mail.

Commencement of the public procurement procedure

Article 23

(1) Open, restricted and negotiated procedure with prior publication and competitive dialogue begins on the date of sending of the contract notice.

(2) The negotiated procedure without prior publication begins on the date of sending of the invitation to negotiate.

(3) The procedure of awarding public contracts referred to in Annex II B in accordance with Article 44 of this Act begins on the date of publication of the request for tenders.

(4) Design contests begin on the date of sending the design contest notice.

(5) In other cases, the procedure begins on the date of sending of the relevant notice or invitation.

Authorised representatives of the contracting authority/entity and other persons

Article 24

- (1) Preparation and implementation of the public procurement procedure are carried out by the authorised representatives of the contracting authority/entity.
- (2) At least one authorised representative of the contracting authority/entity referred to in paragraph 1 of this Article must hold a valid certificate of a special training programme in the field of public procurement.
- (3) The contracting authority/entity shall appoint the authorised representatives in an internal decision and determine their obligations and powers in the public procurement procedure.
- (4) The authorised representatives of the contracting authority/entity who prepare and conduct the public procurement procedure do not have to be employees of the contracting authority/entity.
- (5) If other persons influence the decision making process and/or other activities related to a specific public procurement procedure, the contracting authority/entity shall include them in the decision referred to in paragraph 3 of this Article.

PART 2

AWARDING A PUBLIC PROCUREMENT CONTRACT FOR CONTRACTING AUTHORITIES

TITLE I

PUBLIC PROCUREMENT PROCEDURES, FRAMEWORK AGREEMENT, ELECTRONIC AUCTION, AWARDING PUBLIC SERVICE CONTRACTS

SECTION 1

SELECTION OF THE PUBLIC PROCUREMENT PROCEDURE

Selection of the public procurement procedure

Article 25

- (1) For the award of a public contract or conclusion of a framework agreement, the contracting authority may freely choose between the open and restricted procedure.
- (2) In special cases and circumstances stated in Articles 26, 27 and 28 of this Act, the contracting authority may use the negotiated procedure with prior publication or without prior publication.
- (3) In special circumstances stated in Article 30 of this Act, the contracting authority may use the competitive dialogue.

Negotiated procedure in the case of public works contracts

Article 26

(1) Public works contracts may be awarded in the negotiated procedure with prior publication:

1. in the event of irregular tenders or the submission of tenders which are unacceptable, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered;
2. for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
3. in exceptional cases, when the nature of the works or the risks attaching thereto do not permit prior overall pricing.

(2) Public works contracts may be awarded in the negotiated procedure without prior publication:

1. when no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report referred to in paragraph 8, Article 37 of this Act is sent to the European Commission if it so requests;

2. when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

3. insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limit for the open, restricted or negotiated procedure with prior publication cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

4. for additional works the total value of which may not exceed 25% of the value of the original contract, not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works described therein, on condition that the award is made to the economic operator performing such original contract:

- a) when such additional works cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority, or

- b) when such works, although separable from the performance of the original contract, are strictly necessary for its completion;

5. for new works consisting in the repetition of similar works entrusted to the economic operator to whom the same contracting authority awarded an original contract, provided that:

- a) such works are in conformity with a basic project for which the original contract was awarded,

- b) the original contract was awarded in the open or restricted procedure,

- c) in the first contract notice, the possible use of this procedure was already disclosed,
- d) the contracting authority, in determining the estimated value of procurement, took into consideration the total estimated cost of subsequent new works, and
- e) the procedure takes place during the three years following the conclusion of the original contract.

Negotiated procedure in the case of public supply contracts

Article 27

(1) Public supply contracts may be awarded in the negotiated procedure with prior publication:

- 1. in the event of irregular tenders or the submission of tenders which are unacceptable, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered;
- 2. in exceptional cases, when the nature of the supplies or the risks attaching thereto do not permit prior overall pricing.

(2) Public supply contracts may be awarded in the negotiated procedure without prior publication:

- 1. when no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report referred to in paragraph 8, Article 37 of this Act is sent to the European Commission if it so requests;
- 2. when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- 3. insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limit for the open, restricted or negotiated procedure with prior publication cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;
- 4. when the products involved are manufactured purely for the purpose of research, experimentation, study or development. This provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
- 5. for additional deliveries by the supplier from original contract which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of such contracts as well as that of recurrent contracts may not exceed three years;
- 6. for supplies quoted and purchased on a commodity market;

7. for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, or an arrangement with creditors, or a similar procedure under the national regulations of the country in which the economic operator is established.

Negotiated procedure in the case of public service contracts

Article 28

(1) Public service contracts may be awarded in the negotiated procedure with prior publication:

1. in the event of irregular tenders or the submission of tenders which are unacceptable, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered;

2. in exceptional cases, when the nature of the services or the risks attaching thereto do not permit prior overall pricing;

3. in the case of services, inter alia services within category 6 of Annex II A to this Act, and intellectual services such as services involving the design, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedure.

(2) Public service contracts may be awarded in the negotiated procedure without prior publication:

1. when no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report referred to in paragraph 8, Article 37 of this Act is sent to the European Commission if it so requests;

2. when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

3. insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limit for the open, restricted or negotiated procedure with prior publication cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

4. for additional services the total value of which may not exceed 25% of the value of the original contract, not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the provision of the services described therein, on condition that the award is made to the economic operator performing the original contract;

a) when such additional services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority, or

b) when such services, although separable from the performance of the original contract, are strictly necessary for its completion;

5. for new services consisting in the repetition of similar services entrusted to the economic operator to whom the same contracting authority awarded an original contract, provided that

a) such services are in conformity with a basic project for which the original contract was awarded,

b) the original contract was awarded in the open or restricted procedure,

c) in the first contract notice, the possible use of this procedure was already disclosed,

d) the contracting authority, in determining the estimated value of procurement, took into consideration the total estimated cost of subsequent new services, and

e) the procedure takes place during the three years following the conclusion of the original contract.

6. when the public service contract concerned follows a design contest and must, under the applicable rules, be awarded to the winner or to one of the winners of the contest. In the latter case, all the winners must be invited to participate in the negotiations.

Irregular, unacceptable and unsuitable tender

Article 29

Within the meaning of Articles 26 to 28 of this Act:

1. an irregular tender is a tender which does not comply with the tender documents requirements, includes provisions which the contracting authority deems harmful or the contracting authority justifiably deems that it is not the result of market competition, for example it is a consequence of an impermissible agreement between economic operators;

2. an unacceptable tender is a tender which, in view of formal or other objective reasons, cannot be selected; for example because it was received too late, a tender by the tenderer that meets the exclusion criteria in accordance with Articles 67 and 68 of this Act, a tender by the tenderer who failed to prove its suitability in accordance with the tender documents and the provisions of this Act, a tender missing a tender guarantee, an unauthorized alternative tender (*variant*), a tender the price of which is higher than the secured funds for procurement, an abnormally low tender;

3. an unsuitable tender is a tender which fully does not meet the needs of the contracting authority set out in the description of the subject-matter of procurement and the technical specifications, that is, which offers products, works or services which clearly do not satisfy the needs of the contracting authority in relation to the requested subject-matter of procurement.

Conditions for the use of competitive dialogue

Article 30

(1) Competitive dialogue may be used for the award of a public procurement contract in the case of a particularly complex subject-matter of procurement and the contracting authority considers that the use of an open or restricted procedure will not allow award of the contract.

(2) The subject-matter of procurement within the meaning of this Article is regarded as particularly complex where the contracting authority is objectively not able to define the following:

1. technical specifications in accordance with Article 81, paragraph 3 points 2, 3 or 4 of this Act capable of satisfying its needs and objectives, and/or

2. legal and/or financial conditions of the project.

(3) The award criterion in competitive dialogue is exclusively an economically most advantageous tender.

SECTION 2

THE COURSE OF PUBLIC PROCUREMENT PROCEDURES

The course of open procedure

Article 31

(1) Contracting authorities intending to award a public procurement contract or conclude a framework agreement in an open procedure shall publish a contract notice.

(2) As of the date of publication of a contract notice, the contracting authority shall offer unrestricted and full access by electronic means to the tender documents and any supplementary documents relating to the open procedure in the Electronic Public Procurement Classifieds of the Republic of Croatia. The contract notice shall specify the internet address at which this documentation is accessible. As an exception, if, on account of technical reasons, it is not possible to ensure unrestricted and full electronic access to parts of documents, such as design documents and similar, the contract notice has to state where such documents may be obtained or requested. In the case of a request, the contracting authority shall send, without any delay, such documents to the economic operator.

(3) If necessary, during the time limit for the receipt of tenders economic operators may request additional information and clarifications related to the documents referred to in paragraph 2 of this Article, and the contracting authority must provide additional information and clarifications without any delay in the same way and at the same Internet addresses as the basic documents without indicating the name of the person who requested them. Provided that it has been requested in good time, the last additional information and clarifications relating to the documents shall be made available by the contracting authority not later than six days before the deadline fixed for the receipt of tenders in a public procurement procedure of high-value, or four days in a public procurement procedure of lesser value.

(4) If, for whatever reason, the tender documents and the supplementary documents are not supplied as stipulated in paragraph 2 of this Article, if additional information and clarifications, although requested in good time, are not supplied within the time limits set in paragraph 3 of this Article, or if tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

(5) If the contracting authority during the time limit for the receipt of tenders modifies the documentation, it shall ensure that the modifications are available to all interested economic operators in the same way and at the same Internet addresses as the basic documentation and ensure that from the modification economic operators have at least 15 days to submit a tender in a public procurement procedure of high value or 10 days in a public procurement procedure of lesser value. If necessary, the contracting authority shall amend or correct the contract notice.

(6) Data on economic operators who took over the tender documents and any additional documents must be recorded and maintained as confidential until the opening of tenders.

(7) In the case of open procedure, economic operators shall submit their tenders within the time limit for the receipt of tenders.

(8) After the expiration of the time limit for the receipt of tenders, the tender may not be changed.

(9) The contracting authority shall examine and evaluate the tenders received and adopt an award decision according to the award criterion set out in the contract notice and in the tender documents.

The course of restricted procedure

Article 32

(1) The contracting authority intending to award a public procurement contract or conclude a framework agreement in restricted procedure shall publish a contract notice. If necessary to draw up a request to participate, the contracting authority shall make available additional documents in the Electronic Public Procurement Classifieds of the Republic of Croatia, and in the contract notice it shall specify the Internet address at which this documentation is accessible.

(2) Candidates who timely submitted their requests to participate and satisfied the requested conditions in accordance with Articles 67 to 74 of this Act shall be provided with an opportunity, taking into account Article 35 of this Act, to participate in the second instance of the restricted procedure.

(3) The contracting authority may not open requests to participate before the expiration of the time limit for their receipt. The opening of requests to participate is not open to the public.

(4) Contracting authorities shall draw up minutes on the evaluation of requests to participate which must include all material circumstances. Candidates shall be provided with an opportunity to examine the part of the minutes relating to their request to participate, which must be taken into account in the drawing up of the minutes.

(5) The content of the minutes on the evaluation of requests to participate shall be laid down by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

(6) The contracting authority shall send the decision on the impermissibility to participate to all candidates who will not be invited to tender in a way which makes it possible to prove its receipt (confirmation of receipt, return receipt, fax confirmation report, electronic document and the like).

(7) The decision on the impermissibility to participate must include reasons for the impermissibility and shall be submitted to each candidate separately in a way that the information of other candidates is not accessible.

(8) In the second instance of the restricted procedure, the contracting authority shall send a written invitation to tender to selected candidates in accordance with Article 36 of this Act. The invitation to tender shall be submitted to each candidate separately in a way that it does not have any information about other selected candidates.

(9) Candidates who received the invitation to tender shall submit their tenders within the time limit for the receipt of tenders.

(10) After the expiration of the time limit for the receipt of tenders, tenderers shall not change their tenders.

(11) The contracting authority shall examine and evaluate the tenders received and adopt an award decision based on the award criteria set out in the contract notice or in the tender documents.

The course of negotiated procedure with prior publication

Article 33

(1) The contracting authority intending to award a public procurement contract or conclude a framework agreement in negotiated procedure with prior publication shall publish a contract notice. If necessary to draw up a request to participate, the contracting authority shall make available additional documents in the Electronic Public Procurement Classifieds of the Republic of Croatia, and in the contract notice it shall specify the internet address at which this documentation is accessible.

(2) Candidates who timely submitted their requests to participate and satisfied the requested conditions in accordance with Articles 67 to 74 of this Act shall be provided with an opportunity, taking into account Article 35 of this Act, to participate in the second instance of the negotiated procedure.

(3) The contracting authority may not open requests to participate before the expiration of the time limit for their receipt. The opening of requests to participate is not open to the public.

(4) Contracting authorities shall draw up minutes on the evaluation of the requests to participate, which must include all material circumstances. Candidates shall be provided with an opportunity to examine the part of the minutes relating to their request to participate, which must be taken into account in the drawing up of the minutes.

(5) The content of the minutes on the evaluation of requests to participate shall be laid down by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

(6) The contracting authority shall send the decision on the impermissibility to participate to all candidates who will not be invited to negotiate in a way which makes it possible to prove its receipt (confirmation of receipt, return receipt, fax confirmation report, electronic document and the like).

(7) The decision on the impermissibility to participate must include reasons for the impermissibility and shall be submitted to each candidate separately in a way that the information of other candidates is not accessible.

(8) In the second instance of the negotiated procedure, the contracting authority shall send a written invitation to negotiate to selected candidates in accordance with Article 36 of this Act. The invitation to negotiate shall be submitted to each candidate separately in a way that it does not have any information about other selected candidates.

(9) During the negotiations, the contracting authority shall negotiate with each tenderer separately on any part of the initial tender to adapt them to the requirements stated in the contract notice, the tender documents and any additional documentation, if any, and to seek out the best tender according to the award criteria.

(10) During the negotiations, the contracting authority must ensure equal treatment for all tenderers and in particular must not provide any information in a discriminating manner which might favour individual tenderers.

(11) The contracting authority may provide for the negotiations to take place in successive stages in order to reduce the number of initial tenders to be negotiated. In the contract notice or in the tender document, the contracting authority shall indicate whether it intends to use this option.

(12) In the case referred to in paragraph 11 of this Article, the contracting authority shall reduce the number of initial tenders in stages by applying the award criteria stated in the contract notice or in the tender documents. After each stage, the contracting authority shall send without any delay a notice of the exclusion of the initial tender to the tenderers whose initial tenders are not to be discussed any further. The notice of the exclusion of the initial tender must include reasons for the exclusion.

(13) In the case referred to in paragraph 11 of this Article, the number of initial tenders in the final stage of the negotiations must be sufficient to ensure genuine competition, insofar as there are enough initial tenders or suitable tenderers. If after the reduction of the number of initial tenders, there is only one suitable tenderer, in the final phase of the negotiating procedure it is permissible to negotiate only with one tenderer.

(14) The contracting authority shall notify the tenderer(s) participating in the negotiated procedure of the conclusion of the negotiations.

(15) After the conclusion of the negotiations, the contracting authority shall invite, simultaneously and in writing, the remaining tenderer(s) to submit final tenders within a reasonable term. The provision of Article 36 of this Act shall apply to the invitation to submit final tenders.

(16) After the expiration of the time limit for the receipt of tenders, candidates shall not change their final tenders.

(17) The contracting authority shall examine and evaluate the tenders received and adopt an award decision based on the award criteria set out in the contract notice or in the tender documents.

The course of competitive dialogue

Article 34

(1) The contracting authority intending to award a public procurement contract or conclude a framework agreement in competitive dialogue shall publish a contract notice. In the contract notice, the contracting authority shall set out its needs and requirements regarding the subject-matter of procurement, which shall be defined in that notice and/or in the descriptive document of the competitive dialogue.

(2) Candidates who timely submitted their requests to participate and satisfied the requested conditions in accordance with Articles 67 to 74 of this Act shall be provided with an opportunity, taking into account Article 35 of this Act, to participate in the second instance of the competitive dialogue.

(3) The contracting authority may not open requests to participate before the expiration of the time limit for their receipt. The opening of requests to participate is not open to the public.

(4) Contracting authorities shall draw up minutes on the evaluation of the requests to participate, which must include all material circumstances. Candidates shall be provided with an opportunity to examine the part of the minutes relating to their request to participate, which must be taken into account in the drawing up of the minutes.

(5) The content of the minutes on the evaluation of requests to participate shall be laid down by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

(6) The contracting authority shall send the decision on the impermissibility to participate to all candidates who will not be invited to participate in the second part of the competitive dialogue in a way which makes it possible to prove its receipt (confirmation of receipt, return receipt, fax confirmation report, electronic document and the like).

(7) The decision on the impermissibility to participate must include reasons for the impermissibility and shall be submitted to each candidate separately in a way that the information of other candidates is not accessible.

(8) In the second instance of the competitive dialogue, the contracting authority shall send a written invitation to participate in the dialogue to selected candidates in accordance with Article 36 of this Act. The invitation to participate in the dialogue shall be submitted to each candidate separately in a way that it does not have any information about other selected candidates.

(9) The contracting authority shall open a dialogue with the selected candidates with the aim of identifying and defining one or more solutions that would best satisfy its needs and

requirements. During the dialogue with the candidates, the contracting authority may discuss all aspects of the public procurement contract.

(10) During the dialogue, the contracting authority shall ensure equal treatment for all candidates and in particular must not provide any information in a discriminating manner which might favour individual candidates.

(11) During the dialogue, the contracting authority shall discuss only the solution(s) of the respective candidates. The contracting authority may not reveal the solutions or parts thereof or confidential information of a candidate to other candidates without its consent.

(12) The contracting authority shall continue the dialogue until it can identify the solution(s), if necessary by comparing them, which would be most appropriate of meeting its needs.

(13) The contracting authority may provide for the dialogue to take place in successive stages, in order to reduce the number of solutions to be discussed during the dialogue. In the contract notice or in the descriptive document, the contracting authority shall indicate whether it intends to use this option.

(14) In the case referred to in paragraph 13 of this Article, the contracting authority shall reduce the number of solutions in stages by applying the award criteria stated in the contract notice or in the descriptive document. After each stage, the contracting authority shall send without any delay a notice of the exclusion of the solution to the candidates whose solutions are not to be discussed any further. The notice of the exclusion of the solution must include reasons for the exclusion.

(15) In the case referred to in paragraph 13 of this Article, the number of solutions in the final stage of the dialogue must be sufficient to ensure genuine competition, insofar as there are enough solutions or suitable candidates. If after the reduction of the number of solutions, there is only one suitable candidate, in the final phase of the dialogue it is permissible to carry out the dialogue only with one candidate.

(16) The contracting authority shall notify the candidate(s) participating in the dialogue of the conclusion of the dialogue.

(17) After the conclusion of the dialogue, the contracting authority shall invite, simultaneously and in writing, the remaining candidate(s) to submit their tenders within a reasonable term based on the elements of one or more solutions presented and specified during the dialogue. The provision of Article 36 of this Act shall apply to the invitation to submit tenders.

(18) The tenders must contain all the elements required and necessary for the performance of the project.

(19) At the request of the contracting authority, the tenderer may clarify, specify and fine-tune its tender, but this may not involve changes to the basic features of the tender or the final tender documents on the basis of which the tender was submitted, which might distort competition or have a discriminatory effect.

(20) The contracting authority shall examine and evaluate the tenders received and shall select the most economically advantageous tender on the basis of the award criteria laid down in the contract notice or the descriptive documents.

(21) The contracting authority may request the tenderer identified as having submitted the most economically advantageous tender to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the final tender documents on the basis of which the tender was submitted and does not distort competition or cause discrimination.

(22) The contracting authorities may specify prices or payments to the participants in the dialogue.

Reducing the number of suitable candidates in the restricted procedure, negotiated procedure with prior publication and competitive dialogue

Article 35

(1) In the case of restricted and negotiated procedure with prior publication and competitive dialogue, the contracting authority may use the option of reducing the number of suitable candidates to whom it will submit an invitation to tender, to negotiate or to participate in the dialogue, provided that there is a sufficient number of suitable candidates available.

(2) If the contracting authority decides to use the option referred to in paragraph 1 of this Article, the contracting authority shall indicate in the contract notice criteria or rules that it intends to apply for reducing the number of suitable candidates and the minimum and, if appropriate, maximum number of suitable candidates that it intends to invite.

(3) The criteria or rules referred to in paragraph 2 of this Article must be objective and non-discriminating. The contracting authority may specify the criteria or rules in relation to the relative weightings attributed to them.

(4) In the restricted procedure, in the case of a sufficient number of suitable candidates, the minimum shall be five candidates. In the negotiated procedure with prior publication and in the competitive dialogue, in the case of a sufficient number of suitable candidates, the minimum shall be three. The number of candidates which the contracting authority decides to invite must be sufficient to ensure genuine competition.

(5) If the number of candidates meeting the minimum levels of ability is greater than the published number of candidates that it intends to invite, the contracting authority may invite them all or reduce the number of suitable candidates to be invited based on the criteria or rules stated in the contract notice. In the case of reduction, the number of suitable candidates that the contracting authority will invite must be at least equal to the minimum number pre-determined in the contract notice. Reasons for the selection of a particular candidate shall be stated in the minutes.

(6) If the number of candidates meeting the minimum level of ability is less than the published number, the contracting authority may proceed with the procedure by inviting one or more suitable candidates. The contracting authority may not invite additional economic operators or candidates who did not prove their suitability.

Invitation to tender, to negotiate, or to participate in the dialogue

Article 36

(1) In the second instance of the restricted procedure, negotiated procedure with prior publication and competitive dialogue, the contracting authority shall invite, simultaneously and in writing, the selected candidates to submit their tenders, to negotiate or to participate in the dialogue.

(2) The invitation must include the tender documents or the descriptive documents, and any supporting documents. If unrestricted and full electronic access to such documents has been ensured in accordance with Article 65 of this Act, it shall suffice that the invitation includes a reference to the Internet address at which the documentation concerned is available.

(3) If an entity, other than the contracting authority who is responsible for the public procurement procedure, has the documents referred to in paragraph 2 of this Article, the invitation shall state the address at which the documentation is available and the final time limit for requesting it. The competent department shall send the documentation or make it available to the economic operator immediately after it was requested.

(4) Information on the selected candidates to whom the tender documents and any supporting documents was made available shall be maintained as confidential until the opening of (final) tenders.

(5) The invitation to tender, to negotiate or to participate in the dialogue shall include the following:

1. a reference to the contract notice published,
2. the deadline by which the (initial) tenders must be submitted, the address to which they must be sent, and the language(s) in which they must be drawn up,
3. the date and address set for the start of the dialogue, the language(s) to be used, in the case of competitive dialogue,
4. a reference to any adjoining documents to be submitted, either in support of the verification of the declarations by the candidate or to supplement the information concerning the conditions and proof of suitability in accordance with Articles 71 and 72 of this Act,
5. the award criteria, and in the case of an economically most advantageous tender, the relative weighting attributed to each individual criterion or, if appropriate, criteria in the descending order of their importance, if they are not given in the contract notice, the tender documents or the descriptive documents.

(6) In the case of competitive dialogue, the contracting authority shall not state the information referred to in paragraph 5, point 2 of this Article in the invitation to participate in the dialogue, but in the invitation to tender.

(7) If necessary, during the time limit for the receipt of tenders candidates may request additional information and clarifications related to the documents referred to in paragraph 2 of this Article, and the contracting authority must answer without any delay to all the candidates simultaneously without indicating the name of the person who requested them.

Provided that it has been requested in good time, the last additional information and clarifications relating to the documents shall be supplied by the contracting authorities not later than six days before the deadline fixed for the receipt of tenders in a public procurement procedure of high value, or four days in the restricted procedure or an accelerated the procedure referred to in Article 66 of this Act and in a public procurement procedure of lesser value.

(8) If, for whatever reason, the documents are not supplied in accordance with paragraphs 2 or 3 of this Article, if additional information and clarifications, although requested in good time, are not supplied within the time limits set in paragraph 7 of this Article, or if tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time limits for the receipt of tenders shall be extended so that all candidates concerned may be aware of all the information needed to produce tenders.

(9) If the contracting authority during the time limit for the receipt of tenders modifies the documents, it shall ensure that the modifications are available to all selected candidates in the same way as the basic documents and ensure that from the modification economic operators have at least 15 days to submit a tender in a public procurement procedure of high value or 10 days in a public procurement procedure of lesser value.

The course of negotiated procedure without prior publication

Article 37

(1) The negotiated public procurement procedure without prior publication may be used only if special cases and circumstances stipulated in this Act are satisfied.

(2) The contracting authority shall invite, in writing, one or, if possible, more economic operators with whom to negotiate. If the procedure is carried out with more economic operators, the invitation shall be sent simultaneously in a way that they do not have any insight into information about other economic operators.

(3) The invitation to negotiate must include the date by which the initial tender must be submitted, the address at which the tender is to be submitted, information about the language in which it is to be drawn up, and other information which the contracting authority deems necessary. The invitation shall include tender documents and any additional documents.

(4) The contracting authority shall first check reasons for exclusion and evaluate the suitability of tenderers based on the conditions set out in accordance with Articles 67 to 74 of this Act and stated in the tender documents, and if the contracting authority establishes that a particular tenderer is suitable, it shall examine and evaluate the initial tender.

(5) By way of exception, the contracting authority may renounce the rejection of the tenderer that meets the exclusion criteria in accordance with Article 67 paragraph 1, point 2 of this Act, in the case where the contract, due to technical or artistic reasons or reasons connected with the protection of exclusive rights may be performed solely by that particular economic operator. The contracting authority may waive the conditions referred to in Articles 67 to 74 of this Act in the case of supplies quoted and purchased on the commodity market.

(6) The initial tender which meets all the needs and requirements of the contracting authority may also be the final tender.

(7) If necessary, after examining the initial tender, the contracting authority shall invite the tenderer to amend the initial tender or to submit the final tender in accordance with its requirements and needs, and the tender documents.

(8) The contracting authority shall draw up minutes on the examination and evaluation of the initial and/or final tenders and select the best tender in accordance with the award criteria.

(9) The content of the minutes referred to in paragraph 8 of this Article shall be laid down by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

(10) After the selection, the contracting authority shall publish a prior notice of the intention to award a contract in the cases referred to in Article 26, paragraph 2, points 1, 2 and 5, Article 27, paragraph 2, points 1, 2, 4 and 5, and Article 28, paragraph 2, points 1, 2, 5 and 6, and in other cases it may publish a prior notice of the intention to award a contract.

(11) The date of publication of the notice shall have the effect of delivery of an award decision within the meaning of Article 96 of this Act, and the contracting authority shall apply the standstill period.

(12) If the contracting authority does not publish the prior notice of the intention to award a contract, after the selection it shall adopt the award decision and deliver it to the tenderer(s).

(13) The contracting authority shall keep appropriate documents and information which elaborate the special conditions and circumstances for the purpose of possible later justification on the use of the negotiated procedure without publication for each contract.

SECTION 3

FRAMEWORK AGREEMENT AND ELECTRONIC AUCTION

Framework agreement

Article 38

(1) Contracting authorities may conclude framework agreements and award public procurement contracts on the basis of concluded framework agreements.

(2) For the purposes of concluding framework agreements, contracting authorities shall conduct an open procedure, a restricted procedure, a negotiated procedure with prior publication or competitive dialogue in accordance with the provisions of this Act. Contracting authorities shall specify in the contract notice that they are to conclude a framework agreement.

(3) Contracting authorities may conclude a framework agreement with a single or several economic operators. The contracting authority shall select economic operators to be parties to the framework agreement by applying award criteria in accordance with Article 82 of this Act.

(4) If the contracting authority intends to conclude a framework agreement with several economic operators, in the contract notice and in the tender documents it shall specify the number of economic operators to be parties to the framework agreement.

(5) Framework agreements with several economic operators shall be concluded with at least three economic operators. If the contracting authority does not receive in advance specified number of suitable economic operators and/or valid tenders satisfying the contract award criteria, the contracting authority may conclude the framework agreement to a smaller number of suitable economic operators or with a single one.

(6) Framework agreements with several economic operators may not exceed four years, and framework agreements with single economic operator may not exceed two years, except where the contracting authority envisaged that the framework agreement with several economic operators would be concluded for a period over two years, and has received only one valid tender. Framework agreement may be concluded in an exceptional basis for a longer period if there are justified reasons related to the subject-matter of framework agreement which the contracting authority must specify in the contract notice and in the tender documents.

(7) The public procurement procedure for concluding a framework agreement is concluded after the award decision from Article 96 of this Act or the cancellation decision from Article 101 of this Act becomes enforceable.

(8) Public procurement contracts based on a framework agreement for the entire or part of the subject-matter of procurement shall be awarded in accordance with one of the procedures described in Article 39 of this Act. Those procedures may be applied only between the contracting authority and the economic operators parties to the framework agreement, or between the economic operators party to the framework agreement and other contracting authorities on whose behalf the framework agreement was concluded.

(9) Contracting authority shall specify in the tender documents the procedure for awarding the public procurement contracts based on the concluded framework agreement referred to in Article 39 paragraphs 1, 2, 3 or 4 of this Act. If contracting authority in the public procurement procedure for concluding a framework agreement with several economic operators receives only one valid tender, the framework agreement may be concluded with a single economic operator, provided that in the tender documents the contracting authority specified the procedure to be used for awarding the contracts based on the framework agreement referred to in Article 39 paragraphs 1 or 2 of this Act.

(10) When awarding contracts based on a framework agreement, the parties shall not make substantial amendments to the terms laid down in that framework agreement.

(11) The framework agreement may not be used improperly or in such a way as to prevent, restrict or distort competition.

Procedure of awarding a public procurement contract based on a framework agreement

Article 39

(1) Where a framework agreement is concluded with a single economic operator and lays down all the terms for the award of the public procurement contract, the contract is awarded directly based on the original terms and the tender submitted before award of the

framework agreement. This framework agreement shall be binding in the sense of awarding a public procurement contracts based on such framework agreement.

(2) Where a framework agreement is concluded with a single economic operator and does not lay down all the terms for the award of the public contract, the public contract may be awarded based on the written request of the contracting authority to the economic operator to supplement its tender or to submit new tender. The written request may include, besides the original terms, more precisely formulated terms, as well as other minor amendments to the terms of the framework agreement stated in the tender documents for the framework agreement. This framework agreement shall be binding in the sense of awarding a public procurement contract based on such framework agreement, if the contracting authority provided for it in the tender documents.

(3) Where a framework agreement is concluded with several economic operators and lays down all the terms for the award of the public contract, the public contract may be awarded directly based on the original terms and the tenders submitted before the award of the framework agreement without a repeated invitation to tender. Where the best economic operator is not in the position to perform the subject-matter of procurement or part thereof, the public procurement contract for the whole, lot or part of the subject-matter of procurement may be awarded to the next best available economic operator with whom a framework agreement was concluded. The contracting authority shall deliver to all economic operators from the framework agreement within a period of seven days after the award of the contract a decision on the award of the public procurement contract based on a framework agreement.

(4) Where a framework agreement is concluded with several economic operators and does not lay down all the terms for the award of the public contract, the contract may be awarded after a repeated invitation to tender to the parties in the framework agreement. The repeated invitation to tender may include:

1. the original terms, and, if necessary, more precisely formulated terms for the award of the contract based on the framework agreement, and
2. where appropriate, other terms to be complied with as stated by the contracting authority in the tender documents for the framework agreement.

(5) In the case referred to in paragraph 4 of this Article, the contracting authority shall carry out a procedure in which:

1. for every contract to be awarded, invites in writing the economic operators capable of performing the contract to submit new tenders in written form,
2. fixes a time limit which is sufficiently long to allow new tenders for each specific contract to be drawn-up, taking into account factors such as the complexity of the subject-matter of the procurement and the time needed to submit tenders,
3. keeps the tender content confidential until the time limit for submission of tenders has expired,
4. after examination and evaluation of the tenders submitted on the basis of the award criterion/criteria set out in the tender documents for the framework agreement, awards the contract to the best tenderer,

5. within a period of seven days after the award of the contract, delivers the decision on the award of the public procurement contract based on the framework agreement to all tenderers who submitted their tenders in accordance with this paragraph.

(6) The decision on the award of the public procurement contract based on a framework agreement referred to in paragraphs 3 and 5 of this Article shall be delivered in way which makes it possible to prove its receipt (confirmation of receipt, return receipt, fax confirmation report, electronic document and the like), and include the following information:

1. information on the contracting authority,
2. information on the framework agreement under which the contract was awarded,
3. the subject-matter of the contract,
4. name of the tenderer to whom the contract was awarded,
5. reasons for the award, features and advantages of the chosen tender,
6. the reasons for the rejection of the tender, and in the cases referred to in Article 81 paragraphs 4 and 5 of this Act the reasons for the rejection of the tender on the grounds of non-equivalence or failure to comply with the performance or functional requirements,
7. instructions as to the legal remedy,
8. date of adoption and signature of the responsible person.

(7) In the case referred to in paragraph 4 of this Article, the contracting authority may carry out an electronic auction in accordance with Articles 40 to 42 of this Act.

(8) Public procurement contracts based on a framework agreement shall be concluded in written form, and a purchase request, release order, sales agreement, purchase requisition etc. may have the same effect, provided that it contains all essential contract elements.

Electronic auction

Article 40

(1) Contracting authority may lay down that the award of a public contract in an open procedure, restricted procedure, or negotiated procedure with prior publication in the case referred to in Article 26, paragraph 1, point 1, Article 27, paragraph 1, point 1, or Article 28, paragraph 1, point 1 of this Act shall be preceded by an electronic auction, provided that the specifications of the subject-matter of procurement can be precisely and fully established. If an electronic auction is to be used, contracting authority must include such a fact in the contract notice.

(2) Electronic auction may relate only to such elements of the tender which can be quantitatively determined and presented in numbers or percentages.

(3) A simple electronic auction is based solely on prices in accordance with the award criterion of the lowest price.

(4) A complex electronic auction is based on prices and/or new values of the features of the tender indicated in the tender documents in line with the award criterion of the economically most advantageous tender.

(5) Contracting authority may freely choose whether to carry out a simple or complex electronic auction.

(6) Contracting authority may not misuse electronic auctions or use it in such a way as to prevent, restrict or distort competition or change the subject-matter of procurement set out in the contract notice and described in the tender documents.

Preparing an electronic auction

Article 41

(1) In the case of an electronic auction, the tender documents must include the following information:

1. the features of the tender (the price, other parts of the tender) the values for which will be the subject of electronic auction, provided that such elements are quantifiable and can be expressed in figures or percentages,

2. any limits on the values which may be submitted, as they result from the specifications relating to the subject-matter of procurement,

3. the information which will be made available to tenderers in the course of the electronic auction, and, if appropriate, the time or phase of the electronic auction in which the information will be made available,

4. all relevant information concerning the process of electronic auction,

5. the conditions under which the tenderers will be able to bid the values and, in particular, the minimum differences which will, where appropriate, be required when bidding,

6. all relevant information concerning the electronic equipment which will be used to conduct an electronic auction, and the arrangements and technical specifications for connection,

7. any other conditions and information on the conduct of the auction.

(2) In the case of an electronic auction, the opening of the tenders is not public.

(3) Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them and shall draw up the minutes thereof. To the examination and evaluation of tenders the provision of Articles 90 to 95 of this Act shall apply.

(4) Where the contracting authority establishes that on the basis of examination and evaluation of tenders there is only one suitable tenderer with valid tender, electronic auction shall not be conducted and the public procurement procedure shall be completed by awarding the contract to that tenderer.

(5) Contracting authority shall invite simultaneously by electronic means all suitable tenderers who submitted valid tenders in the public procurement procedure to participate in

an electronic auction and submit new prices and/or new values for the features of the tender for which the electronic auction is being carried out.

(6) Invitations to take part in an electronic auction shall include all relevant information concerning the connection of a individual tenderer to the electronic device used, and the date and time of the start of the electronic auction.

(7) In the case of a complex electronic auction, the contracting authorities shall include in the invitation to take part in the electronic auction the outcome of the full evaluation of the relevant tender in accordance with paragraph 2, Article 82 of this Act. The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the tender documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where alternative tenders (*variants*) are authorised, a separate formula shall be provided for each alternative tender (*variant*).

(8) Electronic auctions may proceed in several successive phases.

(9) The electronic auction may not start sooner than two working days after the date on which invitations to participate in an electronic auction are sent out.

Conducting an electronic auction

Article 42

(1) Throughout each phase of an electronic auction, the contracting authority shall instantaneously communicate to all tenderers sufficient information enabling them to determine at any time their ranking in relation to other tenders received.

(2) Provided that it is laid down in the tender documents, contracting authority may also communicate other information relating to prices and/or values of other tenderers.

(3) Contracting authority may at any time communicate the number of tenderers in an individual phase of the auction.

(4) During any phase of the electronic auction, contracting authority may not reveal the identity of the tenderers.

(5) Contracting authority shall close an electronic auction in one of the following ways:

1. at the moment fixed in the invitation to take part in the electronic auction for the closure of the electronic auction (according to the stated date and time);

2. when there are no more new prices or new values which meet the requirements concerning minimum differences. In such a case, contracting authority shall specify in the invitation to take part in the electronic auction the time which must expire after the receipt of the last tender before the electronic auction is closed;

3. when the number of phases of the electronic auction, fixed in the invitation to take part in the electronic auction, has been completed.

(6) If the contracting authority chooses to close the electronic auction in accordance with paragraph 5, point 2 of this Article, in combination with the arrangements laid down in paragraph 5, point 3 of this Article, the invitation to take part in the electronic auction shall indicate the timetable for each phase of the electronic auction.

(7) After closing an electronic auction, the name of the best tenderer and the price included in its tender shall be delivered or published without any delay in the manner stated in the tender documents.

(8) To the adoption of the award decision the provisions of Articles 96 to 99 of this Act shall apply. The award decision shall be submitted accompanied by a copy of the minutes of the examination and evaluation of tenders referred to in Article 41 paragraph 3 of this Act.

(9) Termination of an electronic auction shall be considered to be the cancellation of the public procurement procedure within the meaning of Article 100 of this Act. If an electronic auction is terminated, to the adoption of the cancellation decision the provision of Article 101 of this Act shall apply. The cancellation decision shall be submitted to all the tenderers participating in the public procurement procedure accompanied by a copy of the minutes of the examination and evaluation of tenders referred to in Article 41 paragraph 3 of this Act.

(10) Contracting authority shall keep a full record of the electronic auction and of all transmissions of the data relating to the electronic auction.

SECTION 4

AWARDING PUBLIC SERVICE CONTRACTS

Public service contracts

Article 43

(1) Public procurement contract which covers services listed in Annex II A and services listed in Annex II B shall be regarded as public service contract referred to in Annex II A if the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B. If the value of the services listed in Annex II B is greater than the value of services listed in Annex II A, the contract concerned shall be regarded as a public service contract referred to in Annex II B.

(2) For the award of public service contracts referred to in Annex II A, contracting authority shall conduct one of the public procurement procedures or design contest.

(3) For the award of public service contracts referred to in Annex II B, contracting authority shall conduct one of the public procurement procedures or the procedure described in Article 44 of this Act.

Procedure for the award of public service contracts from Annex II B to this Act

Article 44

(1) The contracting authority shall publish the request for tenders on the Internet. The request must be available on the Internet at least 60 days from the date of its publication.

(2) At the same time as the publication of the request for tenders on the Internet, the contracting authority may send the request for tenders to a certain number of economic operators of its own choice.

(3) The number of economic operators to whom the contracting authority sends request for tenders may not be less than three. Depending on the nature of the service, including the level of competition in the field concerned, the number of economic operator may be less than three.

(4) The request for tenders shall be delivered in a way which makes it possible to prove the receipt by the economic operator (confirmation of receipt, return receipt, fax confirmation report, electronic document and the like).

(5) By way of derogation from paragraph 1 of this Article, the contracting authority shall not be obligated to publish the request for tenders if that would be contrary to a special regulation or rules governing the performance of specific services. In such a case, the contracting authority shall send the request for tenders in accordance with paragraphs 2 to 4 of this Article.

(6) The request for tenders shall include at least:

1. the name of the contracting authority,
2. a description of the subject-matter of procurement and technical specifications,
3. estimated value of procurement
4. award criteria,
5. conditions and requirements that tenderers must satisfy, if any,
6. the deadline for the submission of tenders (date and time),
7. the manner of submitting tenders,
8. the address to which the tenders must be sent,
9. the address or the Internet address at which supporting documents are available, if necessary,
10. the contact person, telephone number and electronic address.
11. date of publication of the request on the Internet.

(7) The request for tenders which is sent to economic operators, save in case referred to in paragraph 5 of this article, must include information concerning the Internet address at which the request for tenders is published.

(8) The deadline for the submission of tenders may not be less than 15 days of the date of sending or publishing the request for tender.

(9) Contracting authorities may specify the conditions referred to in Articles 67 to 74 of this Act in the request for tenders.

(10) Simultaneously with the expiration of the deadline for the submission of tenders, contracting authorities shall open the tenders submitted. The tenders submitted based on the request for tenders published on the website shall be taken into consideration under the same conditions as tenders submitted based on the request for tenders which was sent to economic operators.

(11) Contracting authorities shall draw up minutes concerning the process of examining and evaluating tenders and select the best tender in accordance with the award criteria.

(12) After making the selection, contracting authorities may publish a prior notice of intention to award a contract.

(13) If the contracting authority publishes a prior notice of intention to award a contract, the date of publication of the notice has the effect of delivery of a award decision within the meaning of Article 96 of this Act, and the contracting authority shall apply the standstill period.

(14) If the contracting authority does not publish a prior notice of intention to award a contract, the authority shall adopt the contract award decision and deliver it to the tenderers.

TITLE II

DESIGN CONTEST

General provisions

Article 45

(1) The rules for the organisation of design contests shall be in conformity with this Title of the Act, other provisions of this Act applicable to design contest, and with special regulations and rules of the profession, provided that they are not contrary to this Act.

(2) Information on the design contest shall be communicated to those interested in participating in the contest.

(3) The admission of participants to design contests shall not be limited:

1. by reference to the territory or part of the territory of a state;

2. on the grounds that, under special regulations, participants would be required to be either natural or legal persons.

(4) The provisions of this Title of the Act relate to the following:

1. design contests organised as a procedure leading to the award of public service contract, or

2. design contests with prizes and/or payments to participants.

(5) In the case referred to in paragraph 4, point 1 of this Article, the estimated value of procurement is based on the estimated value of the public service contract, including possible prizes and/or payments to participants.

(6) In the case referred to in paragraph 4, point 2 of this Article, the estimated value of procurement is based on the total fund of prizes and payments, including the estimated value of a public service contract, which can be awarded subsequently based on the negotiated procedure without prior publication, unless the contracting authority excluded such a possibility in the design contest notice.

Types of design contests

Article 46

(1) Contracting authority which wishes to carry out a design contest shall make known its intention by means of a design contest notice in accordance with Annex V.F to this Act.

(2) Design contest shall be conducted as either open or restricted contest.

(3) In an open contest, economic operators having an interest to participate are publicly invited to submit their plans and projects.

(4) In a restricted contest, economic operators having an interest to participate are publicly invited to submit their request to participate, and after that the selected participants are invited to submit their plans and projects.

(5) Where the number of participants is restricted, the contracting authority shall establish clear and non-discriminating criteria for selecting the participants. The number of participants that the contracting authority invites to participate must be sufficient to ensure genuine competition.

Composition of the jury

Article 47

(1) The jury shall be composed exclusively of natural persons who are independent of participants in the contest.

(2) Where a particular professional qualification and experience are required from participants in a contest, at least a third of the members of the jury shall have the same or an equivalent qualification and experience.

Decisions of the jury

Article 48

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

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

(3) The jury shall record its ranking of projects in a report, made according to the merits of each project. The report shall include its remarks and any points which may need clarification. The report shall be signed by all members of the jury.

- (4) Anonymity must be observed until the jury has reached its opinion or decision.
- (5) Participants may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects. Complete minutes shall be drawn up of the dialogue between jury members and candidates.
- (6) The decision, opinion, report and minutes shall be submitted to the contracting authority for further procedure.

TITLE III

PUBLIC WORKS CONCESSIONS AND WORKS CONTRACTS AWARDED BY CONCESSIONARIES

Public works concessions

Article 49

- (1) Concession grantor shall apply the provisions of this Act governing the open procedure, the restricted procedure, the negotiated procedure with prior publication or the competitive dialogue, to public works concessions award procedures as appropriate.
- (2) Without prejudice to paragraph 1 of this Article, other issues related to public works concessions shall be governed by the regulations governing concessions.
- (3) Contracting authority shall have the capacity of concession grantor within the meaning of the regulations governing concessions.

Notice and deadlines concerning public works concessions

Article 50

- (1) Contracting authority which intends to award a public works concession contract shall make known its intention by means of a notice of the intention to award a public works concession.
- (2) In an open procedure of high value, the time limit for the receipt of tenders shall be not less than 45 days from the date of dispatch of the notice of the intention to award a public works concession.
- (3) In an open procedure of lesser value, the time limit for the receipt of tenders shall be not less than 25 days from the date of dispatch of the notice of the intention to award a public works concession.
- (4) In a restricted procedure, negotiated procedure with prior publication and competitive dialogue of high-value, the time limit for the receipt of requests to participate shall be not less than 45 days from the date of dispatch of the notice of the intention to award a public works concession.
- (5) In a restricted procedure, negotiated procedure with prior publication and competitive dialogue of lesser value, the time limit for the receipt of requests to participate shall be not

less than 25 days from the date of dispatch of the notice of the intention to award a public works concession.

(6) In a restricted procedure of high value, the time limit for the receipt of tenders shall be not less than 40 days from the date of dispatch of the invitation to tender.

(7) In a restricted procedure of lesser value, the time limit for the receipt of tenders shall be not less than 20 days from the date of dispatch of the invitation to tender.

SECTION 2

PUBLIC WORKS CONTRACTS AWARDED BY CONCESSIONAIRES

Public works concessionaire which is contracting authority

Article 51

Public works concessionaire which is contracting authority within the meaning of this Act shall carry out public procurement procedures for the award of public works contracts in the case of works to be performed by third parties.

Public works concessionaire which is not contracting authority

Article 52

(1) Public works concessionaire which is not contracting authority within the meaning of this Act shall apply the provisions of this Article and Article 53 of this Act in the case of works contracts of high value to be performed by third parties.

(2) The values of works contracts shall be calculated in accordance with the rules applicable to public works contracts laid down in Article 19 of this Act.

(3) Groups of economic operators which have been formed to obtain the concession or undertakings related to them shall not be considered third parties within the meaning of paragraph 1 of this Article.

(4) Related undertaking within the meaning of paragraph 3 of this Article shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which, as the concessionaire, is subject to the dominant influence of another undertaking as a result of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it:

- holds a majority of the undertaking's subscribed capital, or
- controls a majority of the votes attached to the shares issued by the undertaking; or
- can appoint more than half of the undertaking's administrative, management or supervisory body.

(5) The exhaustive list of such undertakings shall be included in the request to participate or the tender. That list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

The notice and deadlines

Article 53

(1) Public works concessionaire shall publish a notice of the intention to award a works contract by concessionaries which are not contracting authorities.

(2) Publication of the notice shall not be compulsory if the works contract satisfies the conditions stipulated in paragraph 2, Article 26 of this Act.

(3) The time limit for the receipt of requests to participate shall not be less than 30 days from the date on which the notice of the intention to award a works contract was dispatched, and the time limit for the receipt of tenders shall be not less than 33 days from the date on which the notice a notice of the intention to award a works contract was dispatched or 40 days from the date on which the invitation to tender was dispatched.

(4) If the concessionaire as of the date of publication of the notice of the intention to award a works contract offered unrestricted and full direct access by electronic means to the contract documents and any supplementary documents relating to the works contract in the Electronic Public Procurement Classifieds of the Republic of Croatia, the time limits referred to in paragraph 3 of this Article may be additionally shortened by five days. The notice shall specify the Internet address at which this documentation is accessible.

(5) If, for whatever reason, the tender documents and any additional documentation or additional information and clarifications are not made available or supplied on time, although requested in good time, or if tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

TITLE IV

PROVISIONS ON THE IMPLEMENTATION OF THE PUBLIC PROCUREMENT PROCEDURE

SECTION 1

RULES APPLICABLE TO COMMUNICATION

Communication and exchange of information between contracting authority and economic operators

Article 54

(1) All communication and exchange of information between contracting authorities and economic operators may be by post, by fax, by electronic means in accordance with paragraphs 5 and 6 of this Article, by telephone in accordance with paragraph 9 of this

Article, or by a combination of those means, according to the choice of the contracting authority.

(2) The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.

(3) Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the authorised persons of the contracting authority examine the content of tenders and requests to participate upon the expiry of the time limit set for submitting them.

(4) The contracting authority shall ensure that communication, exchange and storage of information is carried out in such a way as to ensure that the integrity and confidentiality of all information submitted by participants in the design contest are preserved. The jury may not examine the content of plans and projects before the time limit set for submitting them has expired.

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

(6) The following rules are applicable to the electronic transmission and receipt of tenders, requests to participate, and plans and projects:

1. permissibility of the electronic submission of tenders, plans and projects shall be laid down at the latest in the tender documents, and of the electronic submission of requests to participate in the contract notice or design contest notice,

2. information regarding the specifications necessary for the electronic submission of tenders, requests to participate, and plans and projects, including encryption, shall be available to interested parties,

3. the devices for the electronic receipt of tenders, requests to participate, and plans and projects shall conform to the requirements of Annex VII to this Act,

4. electronic submission of tenders shall be accompanied by an advanced electronic signature, and

5. tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for submission of tenders or requests to participate, in hard copy, the documents, certificates and declarations required in accordance with Articles 67 to 74 of this Act if they do not exist in electronic format.

(7) Details concerning the electronic transmission and submission of tenders, requests to participate, and plans and projects shall be prescribed by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

(8) The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

(9) Requests to participate in procedures for the award of public contracts may be made in writing or by telephone. Where requests to participate are made by telephone, a written

confirmation must be sent before expiry of the time limit set for their receipt. Contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, must be stated by the contracting authority in the contract notice.

SECTION 2

PROVISIONS ON PUBLICATION

Public procurement notices

Article 55

(1) Public procurement notices are the following:

1. a contract notice,
2. a design contest notice,
3. a prior notice of the intention to award a contract,
4. a prior (information) notice,
5. a notice of the publication of the prior (information) notice on the contracting authority (buyer) profile,
6. a contract award notice,
7. a notice of the results of a design contest,
8. a notice of the intention to award a public works concession,
9. a notice of the intention to award a works contract by concessionaries which are not contracting authorities,
10. a notice for additional information, cancellation of the procedure or correction.

(2) Public procurement notices referred to in paragraph 1, points 1 to 9 of this Article, shall contain the information in accordance with Annex V to this Act. If necessary, public procurement notices may contain other information which the contracting authority deems necessary.

(3) Contracting authorities shall draw up and send public procurement notices by electronic means, in accordance with the format and transmission procedures referred to in Annex VI point 3 to this Act. Public procurement notices shall be published in accordance with the technical characteristics of publication set out in Annex VI point 1(a) and (b) to this Act.

(4) Public procurement notices shall be published using the standard forms.

(5) The format and content of the standard forms, the manner and conditions for their publication shall be set out by the Government of the Republic of Croatia in the Regulation on public procurement notices. On the day of accession of the Republic of Croatia to the

European Union, public procurement notices for high value procurement shall be published in the format of standard forms adopted by the European Commission.

Publication levels

Article 56

(1) All public procurement notices for procurement the estimated value of which is equal to or greater than HRK 70,000.00 shall be published in the Electronic Public Procurement Classifieds of the Republic of Croatia.

(2) On the date of accession of the Republic of Croatia to the European Union, public procurement notices for high value procurement shall be published in the Official Journal of the European Union as well.

(3) In the Official Journal of the European Union, public procurement notices for procurement of lesser value may also be published.

(4) Public procurement notices referred to in paragraph 2 of this Article may not be published in the Electronic Public Procurement Classifieds of the Republic of Croatia before the date on which they are sent to the Official Journal of the European Union. Public procurement notices published in the Electronic Public Procurement Classifieds of the Republic of Croatia may not include information other than the information included in the notice which was sent to the Official Journal of the European Union or published on the buyer profile, but must include the date on which the notice was sent to the Official Journal of the European Union or the date of publication on the buyer profile.

(5) After the date on which the public procurement notice was sent in accordance with paragraphs 1 and 2 of this Article, the contracting authority may have the information published in other printed, other media, or in some other way. Such notices may include only such information included in the original notices and must indicate the date on which the original public procurement notice was sent.

(6) The contracting authority must be able to demonstrate the date on which the public procurement notice was sent for publication.

Use of the Common Procurement Vocabulary (CPV) in notices

Article 57

(1) The contracting authority shall use the nomenclature of the Common Procurement Vocabulary (CPV) in the description of the subject-matter of procurement in the public procurement notice.

(2) The nomenclature and the description of products, works and services which are the subject-matter of procurement and the conditions for using the Common Procurement Vocabulary (CPV) shall be laid down by the minister responsible for the economy in the Ordinance on the application of the Common Procurement Vocabulary (CPV).

(3) On the date of accession of the Republic of Croatia to the European Union, the nomenclature of the Common Procurement Vocabulary (CPV) shall apply, which is laid down by the European Commission in the Regulation.

Prior (information) notice

Article 58

(1) Contracting authorities may make known at least once a year, by means of a prior (information) notice or on their buyer profile:

1. where public supply contracts are concerned – the estimated total value of the contracts or framework agreements by product area which they intend to award over the following twelve months, where the total estimated value equals at least EUR 750,000 in Croatian currency equivalent. The product area shall be established by the contracting authorities by reference to the Common Procurement Vocabulary (CPV) nomenclature,

2. where public services contracts are concerned – the estimated total value of the contracts or framework agreements in each of the categories of services listed in Annex II A to this Act which they intend to award over the following twelve months, where such estimated total value equals at least EUR 750,000 in Croatian currency equivalent,

3. where public works contracts are concerned – information on the essential characteristics of the contracts or framework agreements which they intend to award, whose estimated value is equal to or greater than the European threshold for public works.

(2) The prior (information) notices relating to public supply contracts and public service contracts shall be sent for publication as soon as possible in accordance with Article 56 of this Act or published on the buyer profile after the beginning of the budgetary year.

(3) The prior (information) notice relating to public works contracts shall be sent for publication as soon as possible in accordance with Article 56 of this Act or published on the buyer profile after the decision approving the planning of the works contracts or the framework agreements that the contracting authority intends to award.

(4) Contracting authority who publishes a prior (information) notice on its buyer profile shall not publish it there before it has sent, in line with Article 56 of this Act, a notice of the publication of the prior (information) notice on the contracting authority (buyer) profile in that form, electronically and in accordance with the format and procedures for the electronic transmission of notices indicated in Annex VI point 3 to this Act. The date on which such notice was sent will be indicated on the buyer profile.

(5) Publication of the prior (information) notices shall be compulsory only where the contracting authority takes the option of shortening the time limits for the receipt of tenders as laid down in Article 64 of this Act.

(6) This Article shall not apply to negotiated procedures without the prior publication.

Prior notice of the intention to award a contract (voluntary ex ante transparency notice)

Article 59

(1) In the case of a negotiated procedure without prior publication, after the contracting authority chooses the tenderer in favour of whom the contract will be awarded, the contracting authority must publish a prior notice of intention to award a contract in accordance with Article 37, paragraph 10 of this Act.

(2) In the case of a public service contract referred to in Annex II B to this Act, in accordance with Article 44 of this Act, and the award of a contract excluded from the application of this Act, the contracting authority may publish, after the selection, a prior notice on the intention to award a contract.

(3) As of the date of the publication of the prior notice of the intention to award a contract in the case of negotiated procedure without prior publication and the procedure for the award of public service contracts referred to in Annex II B to this Act, the contracting entity shall be bound by a standstill period of 15 days in the cases of high-value procurement or ten days in the case of procurement of lesser value from the day of publication of the prior notice of intention to award a contract.

(4) If the contracting authority publishes the prior notice of the intention to award a contract in the case of a contract excluded from the application of this Act, the contracting entity shall be bound by a standstill period of 15 days from the day of publication of a prior notice of intention to award a contract.

(5) The start of the standstill period shall be calculated from the first following day after the day of the publication of a prior notice of intention to award a contract.

Contract award notice and notice of the results of the design contest

Article 60

(1) Contracting authority which has awarded a public contract or concluded a framework agreement shall send a contract award notice for publication no later than 48 days after the award of the contract or the conclusion of the framework agreement.

(2) In the case of public contracts concluded pursuant to a framework agreement, the contracting authority is not bound to send for publication a contract award notice.

(3) In the case of public service contracts referred to in Annex II B to this Act, the contracting authority shall specify in the notice whether it agrees with its publication.

(4) Contracting authority shall send a notice of the result of the design contest for publication at the latest within 48 days of the completion of the design contest.

(5) Certain information on the awarded contracts, framework agreements or the results of a design contest may be withheld from publication where release of such information would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

(6) The contracting authority may publish the contract award notice for a contract excluded from the application of this Act.

SECTION 3

TIME LIMITS

Determining time limits

Article 61

(1) When fixing the time limits for the receipt of requests to participate and tenders, contracting authority shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Act.

(2) The time limits for the receipt of requests to participate and tenders shall be fixed in a way to determine the exact date and time by which requests to participate and tenders may be timely submitted.

(3) Any extension of the time limit shall be communicated in a traceable manner to all candidates or tenderers.

Regular time limits for the receipt of tenders

Article 62

(1) In the case of high-value open procedure with great value, the minimum time limit for the receipt of tenders shall be 40 days from the date on which the contract notice was sent.

(2) In the case of open procedures of lesser value, the minimum time limit for the receipt of tenders shall be 20 days from the date on which the contract notice was sent.

(3) In the case of high-value restricted procedure, the minimum time limit for the receipt of tenders shall be 40 days from the date on which the invitation to tender was sent.

(4) In the case of restricted procedure of lesser value, the minimum time limit for the receipt of tenders shall be 20 days from the date on which the invitation to tender was sent.

Regular time limits for the receipt of requests to participate

Article 63

(1) In the case of high-value restricted procedure, negotiated procedure with prior publication and competitive dialogue, the minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent.

(2) In the case of restricted procedure, negotiated procedure with prior publication and competitive dialogue of lesser value, the minimum time limit for the receipt of requests to participate shall be 20 days from the date on which the contract notice was sent.

Shortened time limits for the receipt of tenders further to a prior (information) notice

Article 64

(1) When contracting authority has published a prior (information) notice, the time limit for the receipt of tenders under Article 62 paragraphs 1 and 3 of this Act may be shortened to 36 days or less, but not less than 22 days.

(2) The time limit for the receipt of tenders shall run from the date on which the contract notice was sent in open procedure or from the date on which the invitation to tender was sent in restricted procedure.

(3) The contracting authority may use the shortened time limits referred to in paragraph 1 of this Article, provided that:

1. the prior (information) notice has included all the information required for the contract notice in Annex V A to this Act, insofar as that information is available at the time the notice is published, and

2. the prior (information) notice was sent for publication at least 52 days, but at most 12 months before the date on which the contract notice was sent.

Shortened time limits for the receipt of tenders in restricted procedure by way of electronic means

Article 65

The time limits for receipt of tenders referred to in Article 62 of this Act in a restricted procedure may be reduced by five days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents relating to the restricted procedure in the Electronic Public Procurement Classifieds of the Republic of Croatia. The contract notice shall specify the Internet address at which this documentation is accessible.

Accelerated restricted and negotiated procedure with prior publication

Article 66

(1) In the case of restricted procedure or negotiated procedure with prior publication where urgency renders impracticable the regular or shortened time limits, contracting authorities may fix:

1. a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent,

2. a time limit for the receipt of tenders in the case of restricted procedures which shall be not less than 15 days from the date on which the invitation to tender was sent.

(2) The contracting authority shall explain in the contract notice reasons for the use of the time limits referred to in paragraph 1 of this Article.

SECTION 4

REASONS FOR EXCLUSION AND SELECTION CRITERIA OF ECONOMIC OPERATORS

Mandatory reasons for the exclusion of candidates or tenderers

Article 67

(1) The contracting authority shall exclude from participation in a public procurement procedure any candidate or tenderer:

1. if the economic operator and/or the person authorised under law to represent the legal person of the economic operator has been the subject of a conviction by final judgment for one or more of the following criminal acts: associating for the purpose of perpetrating criminal offences, accepting a bribe in business activities, offering a bribe in business activities, abuse of position and official powers, abuse in performing governmental duty, illegal intercession, accepting a bribe, offering a bribe, fraud, computer fraud, fraud in business activities or concealing unlawfully obtained money, or the corresponding criminal acts in accordance with the legal provisions of the country in which it is established or from which the authorised person comes, and

2. if it failed to fulfil the obligation to pay all outstanding tax liabilities and contributions for pension and health insurance, unless the economic operator was granted delayed payment of the said obligation under special regulations

3. if has submitted false information at the time of submitting documents in accordance with this Section of the Act.

(2) For the purpose of proving of the circumstances referred to in paragraph 1, point 1 of this Article, the economic operator shall submit in the tender or request to participate an extract from the criminal record of the state in which the economic operator is established and/or the state of citizenship of the person authorised under law to represent the legal person of the economic operator, and if such a record does not exist or is impossible to obtain, an equivalent document issued by the competent judicial or administrative authority of the state in which the economic operator is established and/or the state of citizenship of the person authorised under law to represent the legal person of the economic operator. Extracts or documents may not be older than six months of the date of commencement of the public procurement procedure.

(3) If in the state in which the economic operator is established and/or the state of citizenship of the person authorised under law to represent the legal person of the economic operator the documents referred to in paragraph 2 of this Article are not issued, are impossible to obtain or if they do not include all the criminal acts referred to in paragraph 1, point 1 of this Article, they may be replaced by a declaration on oath or a corresponding declaration made by the person who is authorised under law to represent the legal person of the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the state in which the economic operator is established and/or in the state of citizenship of that person. The declaration shall not be older than six months of the date of commencement of the public procurement procedure.

(4) For the purpose of proving the circumstances referred to in paragraph 1, point 2 of this Article, the economic operator shall submit in the tender or request to participate a certificate issued by the tax authority concerning the state of debt or an equivalent document issued by the competent authorities of the country in which the economic operator is established, which may not be older than 30 days of the date of commencement of the public procurement procedure.

(5) If the document referred to in paragraph 5 of this Article is not issued in the country in which the economic operator is established, it may be replaced by a declaration on oath or a corresponding declaration made by the person who is authorised under law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the country in which the economic operator is established, which may not be older than 30 days of the date of commencement of the public procurement procedure.

(6) Where there is doubt as to the truthfulness of the information in the presented documents or declarations by the economic operators referred to in this Article, the contracting authority may address the competent authorities to obtain information concerning the situation of economic operators concerned, and where the economic operator concerned is established in another state, the contracting authority may seek co-operation of the competent authorities.

(7) In the case of a group of tenderers or candidates, the circumstances referred to in paragraph 1 of this Article shall be established for all members of the group separately.

(8) The Republic of Croatia shall notify the European Commission of the national bodies competent for issuing documents referred to in this Article. Such notifications shall be without prejudice to the regulations on data protection.

Other reasons for the exclusion of candidates or tenderers

Article 68

(1) The contracting authority may exclude any tenderer or candidate from participation in the public procurement procedure where that economic operator:

1. is bankrupt, or is being wound up, where its affairs are being administered by a person designated by the competent court, where it has entered into arrangement with creditors, where it has suspended its business activities, or is in a similar procedure under the national regulations of the country in which the economic operator is established,

2. is the subject of preliminary proceedings to establish conditions for the declaration of a bankruptcy, the proceedings of compulsory winding up its business, or the proceedings by the competent court to designate a person to administrate the operation of the economic operator, or the proceedings of arrangement with creditors, or in a similar procedure under the national regulations of the country in which the economic operator is established,

3. where the economic operator and/or the person authorised under law to represent the legal person of the economic operator has been convicted by a judgment which has the force of *res judicata* of any offence concerning its professional conduct under the regulations of the country in which the economic operator is established or the state from which the person comes, or

4. where the economic operator and/or the person authorised under law to represent the legal person of the economic operator in the previous three years, up to the commencement of the public procurement procedure, has been found guilty of professional misconduct which the contracting authority can prove by any means.

(2) The contracting authority shall specify the reason(s) referred to in paragraph 1 points 1 through 4 of this Article it intends to use for the exclusion of candidates or tenderers.

(3) For the purpose of proving the circumstances referred to in paragraph 1 points 1 and 2 of this Article, the economic operator shall submit in the tender or request to participate an extract from the judicial, trade or other relevant register of the country in which the economic operator is established, and if such a record does not exist, an equivalent document issued by the competent judicial or administrative authority in the state in which the economic operator is established. Extracts or documents may not be older than three months of the date of commencement of the public procurement procedure.

(4) For the purpose of proving the circumstances referred to in paragraph 1 point 3 of this Article, the economic operator shall submit in the tender or request to participate an extract from the criminal, misdemeanour or relevant record of the country in which the economic operator is established and/or the state of citizenship of the person authorised under law to represent the legal person of the economic operator, and where such a record does not exist or is impossible to obtain, an equivalent document issued by the competent judicial or administrative authority in the state in which the economic operator is established or in the state of citizenship of the person authorised under law to represent the legal person of the economic operator. Extracts or documents may not be older than six months of the date of commencement of the public procurement procedure.

(5) If the documents referred to in paragraphs 3 and 4 of this Article are not issued in the country in which the economic operator is established or are impossible to obtain, they may be replaced by a declaration on oath or a corresponding declaration made by the person who is authorised under law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the country in which the economic operator is established. The declaration may not be older than 30 days of the date of commencement of the public procurement procedure.

(6) In the case of a group of tenderers or candidates, the circumstances referred to in paragraph 1 of this Article shall be established for all members of the group separately.

(7) Professional misconduct within the meaning of this Article is considered to be a misconduct which an economic operator or the person authorised under law to represent the legal person of the economic operator committed while performing its professional activities, acting contrary to the relevant regulation, collective agreements (for example, employment of workers without employment contracts or default on contributions for pension and health insurance for workers, non-payment of the minimum salary and/or contributions for pension) or rules of profession which were in particular determined by the competent administrative, authorised supervisory body, trade or professional authority, or a misconduct related to the performance of the contract which has led to the termination of that contract by the contracting authority or to other grave consequences.

(8) The Republic of Croatia shall notify the European Commission of the national bodies competent for issuing documents referred to in this Article. Such notifications shall be without prejudice to the regulations on data protection.

Selection criteria

Article 69

(1) In accordance with Articles 70 to 74 of this Act, the contracting authority determines the selection criteria for legal and business capacity, the financial standing and technical and professional suitability of the candidate or tenderer.

(2) Where the contracting authority uses the possibility of reducing the number of suitable candidates to whom it will submit an invitation to tender, to negotiate or to participate in a dialogue, the contracting authority shall specify objective and non-discriminating criteria and rules in accordance with Article 35 of this Act.

(3) Contracting authority may require tenderers or candidates to meet minimum level of financial standing, and technical and professional suitability. The extent of information and the minimum levels of suitability referred to in Articles 71 and 72 of this Act required for a specific contract must be related and proportionate to the subject-matter of procurement, or to a lot of the subject-matter of procurement if the subject-matter of procurement is subdivided into lots. The minimum level of suitability shall be specified in the contract notice and in the tender documents.

(4) The manner of setting the minimum levels of suitability referred to in paragraph 3 of this Article shall be prescribed by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

Legal and business capacity

Article 70

(1) In the public procurement procedure, any candidate or tenderer shall prove its enrolment with the court, trades, crafts, professional or other appropriate register of the country in which the economic operator is established.

(2) The registration referred to in paragraph 1 of this Article is proven by an adequate extract, and if those are not issued in the country in which the economic operator is established, the economic operator may submit a declaration on which the signature is legalised by the competent body.

(3) The extract or declaration referred to in paragraph 2 of this Article may not be older than three months of the date of commencement of the public procurement procedure.

(4) Insofar the candidate or tenderer have to possess a particular authorisation or to be a member of a particular organisation to be able to perform a specific contract in the state of its establishment, the contracting authority must request the candidate or tenderer to prove that they hold valid authorisation or membership.

(5) In the case of a group of tenderers or candidates, all members of the group shall prove their capacity referred to in paragraph 1 of this Article individually.

Financial standing

Article 71

(1) The contracting authority may stipulate the conditions of financial standing of the economic operator, which can be proven by, for example, one or more of the following documents:

1. the balance-sheet, the profit and loss account or an appropriate financial statement, if the publication thereof is required in the country in which the economic operator is established,
2. documents issued by banks or other financial institutions proving the solvency of the economic operator,
3. a guarantee for the coverage of professional risk indemnity insurance,
4. a report of the economic operator's overall turnover and, where appropriate, of the turnover of the economic operator generated in the area covered by the contract in question for a period of one to a maximum of the last three financial years available, depending on the date of establishment or commencement of activity of the economic operator, provided that the information on such turnover is available.

(2) An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links among them. In this case the economic operator must prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect. Under the same conditions, a group of tenderers may use the capacities of members of the group of tenderers or other subjects.

(3) The contracting authority shall specify the document/s in the contract notice or in the invitation to tender referred to in Article 36 of this Act which, in accordance with paragraph 1 of this Article, it requires, and other documents which must be submitted.

(4) If, for any valid reason, the economic operator is unable to submit the document of financial standing which the contracting authority requested, it may prove its financial standing by any other document which the contracting authority deems suitable.

Technical and professional ability

Article 72

(1) The contracting authority may determine the conditions of technical and professional ability of the economic operator. Technical and professional ability shall be assessed and examined in accordance with paragraphs 3 to 5 of this Article.

(2) The contracting authority shall stipulate in the contract notice or the invitation to tender referred to in Article 36 of this Act which proof referred to in paragraphs 3, 4 and 5 of this Article it requires.

(3) Technical and professional ability to perform a public procurement contract may, depending on the nature, quantity or scope and use of the supply, be proven by one or more of the following:

1. a list of the principal contracts on the delivery of supplies executed in the past three years, indicating the amount and date of delivery, and the name of the other party, contracting authority within the meaning of this Act or private subject. If the other party is a contracting authority within the meaning of this Act, the list should include or hold in attachment as proof a certificate issued or signed by the contracting authority. If the other party is a private subject, the list should include or hold in attachment as proof its certificate, and if there is no such certificate, a statement by the economic operator shall suffice along with proof that the certificate was requested,
2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control,
3. the educational and professional qualifications of the supplier and/or those of the undertaking's managerial staff, and especially person(s) responsible for the activities of sitting and installation of the products being procured,
4. the description of the technical facilities and measures used by the supplier for ensuring quality and the economic operator's study and research facilities,
5. where the products to be supplied are complex or, exceptionally, are required for a special purpose, a statement on acceptance of check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement, on the production capacities of the supplier and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
6. samples, descriptions and/or photographs of products, the authenticity of which, at the request of the contracting authority, must be certified,
7. certificates drawn up by the official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

(4) The technical and professional ability for the performance of a public procurement contract may, depending on the nature, quantity, importance and use of the works, be proven by one or more of the following:

1. a list of the works contracts carried out over the past five years, indicating or holding in attachment certificates of the other party concerning the satisfactory performance for the most important works. These certificates shall include the value of the works, the date and place of performance of the works, and an indication whether the works were carried out according to the rules of the trade and properly completed. Where appropriate, the contracting authority may require directly from the other party to provide confirmation for the purpose of verification,
2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and those upon whom the contractor can call in order to carry out the work,
3. the educational and professional qualifications of the contractor and/or those of the undertaking's managerial staff, and especially person(s) responsible for managing the works,

4. only in justified cases, a statement concerning the measures of environmental management which the economic operator will be in the position to apply during the execution of the works,

5. a statement by the economic operator on the average annual manpower and the number of managerial staff over the past three years,

6. a statement by the economic operator concerning tools, plant and technical equipment available to the contractor to perform the contract.

(5) Technical and professional ability to perform a public procurement contract may, depending on the nature, quantity or scope and use of the service, be proven by one or more of the following:

1. a list of the services contracts executed over the past three years, indicating the amount and date the service was provided, and the name of the other party, contracting authority within the meaning of this Act or private subject. If the other party is a contracting authority within the meaning of this Act, the list should include or hold in attachment as proof a certificate issued or signed by the contracting authority. If the other party is a private subject, the list should include or hold in attachment as proof its certificate, and if there is no such certificate, a statement by the economic operator shall suffice along with proof that the certificate was requested,

2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control,

3. the description of the technical facilities and measures used by the economic operator for ensuring quality and the economic operator's study and research facilities,

4. where the services to be supplied are complex or, exceptionally, are required for a special purpose, a statement on acceptance of check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the service provider is established, subject to that body's agreement, on the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;

5. the educational and professional qualifications of the service provider and/or those of the undertaking's managerial staff, and especially person(s) responsible for the providing the services,

6. only in justified cases, a statement concerning the measures of environmental management which the economic operator will be in the position to apply during the performance of the contract,

7. a statement by the economic operator on the average annual manpower of the service provider and the number of managerial staff for the past three years,

8. a statement by the economic operator concerning the tools, plant or technical equipment available to the service provider for carrying out the contract.

(6) An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links among them. In this case the economic operator must prove to the contracting authority that it will have at its

disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator. Under the same conditions, a group of tenderers may use the capacities of members of the group of tenderers or other subjects.

(7) In public procurement procedures, the subject-matter of which are products requiring sitting or installation work, the provision of services and/or the execution of works, the ability of the economic operator to provide the services, execute the installation or execute the works may be evaluated in particular with regard to its skills, efficiency, experience and reliability.

Quality assurance standards

Article 73

(1) The contracting authority may require the production of certificates drawn up by independent bodies attesting the compliance of economic operator with certain quality assurance standards. In such a case, the contracting authority shall refer to quality assurance systems based on the relevant Croatian standards accepting the European standards. Quality assurance systems referred to by the contracting authority must be certified by bodies conforming to the Croatian standards accepting the European standards for bodies certifying quality assurance systems.

(2) Contracting authorities shall recognise equivalent certificates of compliance with quality assurance systems from bodies established in other Member States.

(3) Contracting authorities shall also accept other evidence of equivalent quality assurance measures from economic operators.

Environmental management standards

Article 74

(1) Should the contracting authority, in the cases referred to in Article 72, paragraph 4, point 4, and paragraph 5, point 6 of this Act, require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, the contracting authority shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to the relevant Croatian environmental management standards accepting the European or international standards. Environmental management standards referred to by the contracting authority must be certified by bodies conforming to the regulations of the Republic of Croatia transposing Community law or to Croatian standards accepting European or international standards for bodies certifying environmental management standards.

(2) Contracting authorities shall recognise equivalent certificates of compliance with environmental management standards from bodies established in other Member States.

(3) Contracting authorities shall also accept other evidence of equivalent environmental management measures from economic operators.

Rules for submitting documents

Article 75

All documents required by contracting authority in accordance with Articles 67 to 74 of this Act may be submitted by tenderers or candidates in an uncertified copy. Uncertified copy also means an uncertified print-out of an electronic document.

SECTION 5

GUARANTEES

Types of guarantees

Article 76

The contracting authority may require economic operators to submit the following types of guarantees:

1. the tender guarantee in the event that the tenderer decides to withdraw its tender during its term of validity, provides untruthful information within the meaning of Article 67, paragraph 1, point 3 of this Act, fails to submit the original or certified copies within the deadline in accordance with Article 95, paragraph 4 of this Act, refuses to sign the public procurement contract or framework agreement, or fails to submit the performance guarantee,
2. the performance guarantee in the event of breach of certain contractual obligations,
3. the framework agreement guarantee when the framework guarantee is binding on the conclusion of a public procurement contract,
4. the overpayment guarantee in the event that the overpaid amount is to be repaid (repayment of advance payment, payment in instalments, or in line with a payment plan),
5. the warranty period guarantee in the event that the agent fails to meet the obligation of rectifying defects, arising from the warranty or compensation of damages within the warranty period,
5. the professional liability insurance guarantee warranting the rectification of damages which might occur in connection with the performance of a specific activity.

The tender guarantee

Article 77

- (1) If the contracting authority requires a tender guarantee, it shall state the means and conditions of the guarantee in the contract notice and in the tender documents.
- (2) The validity of the tender guarantee shall be determined in line with the term of validity of the tender.
- (3) The tender guarantee shall be stated in the absolute amount. The tender guarantee, except in justified cases, must not exceed 5% of the estimated value of procurement.

(4) If the term of validity of the tender expires, the contracting authority shall require the tenderer to extend the term of validity of the tender and of the tender guarantee in accordance with such extended term. To this end, the tenderer shall be given an appropriate time limit.

(5) The contracting authority shall return tender guarantees to the tenderers immediately after the completion of the public procurement procedure and the copy of the tender guarantee shall be archived pursuant to Article 104 of this Act.

SECTION 6

TENDER DOCUMENTS

Tender documents

Article 78

(1) The tender documents shall be drawn up in a way which is clear, comprehensive and unambiguous and which enables the submission of comparable tenders.

(2) The tender documents shall be drawn up in such a way to enable the prices to be calculated without assuming unusual risks and without extensive preliminary actions on the part of the tenderer.

(3) The contracting authority may not ask the economic operator to compensate the costs of drawing up and making available the tender documents and of any additional documents, or impose the foregoing as a condition for the takeover of the documents. By way of exception, the contracting authority may require the economic operator in an open procedure only the compensation for the costs of postal services for sending that part of the documents to which, for technical reasons, unrestricted and full access by electronic means is not possible.

(4) The contracting authority must specify in the tender documents whether customary practice (trade customs) shall apply to the public procurement contract.

(5) Tender documents shall be drawn up in the Croatian language and Latin script.

(6) The contracting authority may, except in Croatian language draw up tender documents or a part thereof in a foreign language or languages. In cases of dispute the tender documents drawn up in the Croatian language shall prevail.

(7) The content, preparation and the handling of tender documents, and other material issues related to the tender documents, shall be prescribed by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

Determining the subject-matter of procurement

Article 79

(1) The contracting authority shall specify the subject-matter of procurement so that it represents its technical, technological, aesthetic, functional and/or other whole.

(2) The contracting authority may divide the subject-matter of procurement into lots based on objective criteria, for example in terms of their type, properties, use, place and/or term of performance.

(3) If the contracting authority subdivided the subject-matter of procurement into lots, all lots of the subject-matter of procurement, except in the event of the separate procurement of the respective lot, must be specified in the contract notice and in the tender documents. In such a case, the tenderer must be enabled to submit tenders for one, more or all lots of the subject-matter of procurement.

(4) If the contracting authority permits the submission of tenders in lots, the public contract or the framework agreement shall be concluded separately for each lot of the subject-matter of procurement. If the tender of the same tenderer is chosen for more lots, the contracting authority may conclude one contract or the framework agreement with that tenderer for all those lots.

Description of the subject-matter of the procurement

Article 80

(1) The subject-matter of procurement shall be described clearly, unambiguously, fully and neutrally, in a way which ensures the comparability of tenders in terms of the conditions and requirements laid down by the contracting authority.

(2) The description of the subject-matter of procurement shall not favour a specific economic operator.

(3) The description of the subject-matter of procurement shall contain technical specifications and, where appropriate, it shall be supplemented with plans, projects documents, drawings, models, samples and the like.

(4) The description of the subject-matter of procurement shall state all the circumstances which are significant for the performance of the contract and thus also for the preparation of the tender, such as the place of performance, performance deadlines or special requirements regarding the method of performance of the subject-matter of procurement etc. The same shall apply to particularly aggravating or mitigating circumstances.

(5) The functional description of the subject-matter of procurement must identify the purpose of the subject-matter of procurement and the requirements set for the subject-matter of procurement in terms of its technical, economic, aesthetic and functional aspects.

(6) In the case where the running costs are one of the award criteria, the description of the subject-matter of procurement shall include all possible factors relating to the subject-matter of procurement which have had, have or will have an effect on the costs, such as the operation and maintenance works, repairs, necessary storage of spare parts, waste management, the costs of energy or energy sources etc.

Technical specifications

Article 81

(1) The technical specifications as defined in point 1 of Annex IV to this Act shall be laid down in the contract notice, tender documents or any additional documents. Where

possible, the technical specifications must include accessibility criteria for disabled persons or a design for all users.

(2) The technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to competition. The technical specifications must enable the submission of tenders reflecting the diversity of technical solutions.

(3) Without prejudice to mandatory national technical rules, provided that they are in conformity with European Community law, the technical specifications shall be formulated:

1. either by reference to technical specifications defined in Annex IV to this Act, where each reference shall be accompanied by the words "or equivalent", and in order of preference, to the following:

a) national standards transposing European standards,

b) European technical approvals,

c) common technical specifications,

d) international standards,

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

2. or in terms of performance or functional requirements, which may include environmental characteristics related to the subject-matter of procurement, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of procurement, and to allow the contracting authorities to award the contract;

3. or in terms of performance or functional requirements as mentioned in point 2 of this paragraph, with reference to the specifications mentioned in point 1 of this paragraph as a means of presuming conformity with such performance or functional requirements;

4. or by referring to the specifications mentioned in point 1 of this paragraph for certain characteristics, and by referring to the performance or functional requirements mentioned in point 2 of this paragraph for other characteristics.

(4) Where the contracting authority makes use of the option to refer to the specifications referred to in paragraph 3 point 1 of this Article, the contracting authority may not reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

(5) Where the contracting authority makes use of the option to refer to the specifications referred to in paragraph 3 of this Article in terms of performance or functional requirements, the contracting authority may not reject a tender for works, products or services which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these

specifications address the performance or functional requirements which the contracting authority has laid down. In its tender, the tenderer must prove to the satisfaction of the contracting authority by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

(6) Where contracting authority lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3 point 2 of this Article, it may use the detailed technical specifications, or, if necessary, parts thereof, as defined by European, national, multinational or other eco-labels, provided that:

1. those specifications are appropriate to define the characteristics of the supplies or services that are the object of the subject-matter of procurement,

2. the requirements for the eco-label are drawn up on the basis of scientific information,

3. the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and

4. the eco-labels are accessible to all interested parties.

(7) Contracting authority may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the tender documents. Contracting authority must accept any other appropriate means of proof.

(8) An appropriate means of proof within the meaning of this Article may include the technical dossier of the manufacturer or a test report from a recognised body.

(9) Recognised bodies within the meaning of this Article means test and calibration laboratories, and certification and inspection bodies which comply with applicable European standards. Contracting authority must accept certificates issued by recognised bodies established in other Member States.

(10) Unless justified by the subject-matter of procurement, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain economic operators or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of procurement in accordance with paragraphs 3 and 4 of this Article is not possible. Such reference shall be accompanied by the words "or equivalent".

Award criteria

Article 82

(1) The award criteria shall be:

1. when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public procurement contract in question, for example: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness,

after-sales service and technical assistance, delivery date and delivery period or period of completion, or

2. the lowest price.

(2) When the award is made to the tender most economically advantageous, the contracting authority shall specify in the contract notice or in the tender documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread. Where, in the opinion of the contracting authority, weighting of the criteria is not possible for demonstrable reasons, the contracting authority shall indicate the criteria in descending order of importance.

(3) When the award is made to the tender most economically advantageous, the award criteria may not be discriminating and must be related to the subject-matter of procurement.

(4) In the case of public service contracts and public supply contracts, the award criteria shall be without prejudice to the implementation of legislation, subordinate legislation and administrative acts prescribing remuneration for specific services for example the services performed by architects, engineers or lawyers, and setting out fixed price for specific supplies, for example for school books.

Special conditions for the performance of the contract

Article 83

(1) Contracting authority may lay down special conditions relating to the performance of a contract which may, in particular, concern social and environmental considerations, provided these are related to the subject-matter of procurement and they are not directly or indirectly discriminating.

(2) The contracting authority shall lay down the conditions referred to in paragraph 1 of this Article in the contract notice or in the tender documents in the description of the subject-matter of procurement, technical specifications, award criteria or conditions of the contract.

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

Article 84

(1) The contracting authority may state in the tender documents the bodies from which a candidate or tenderer may obtain valid information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions which are in force in the area in which the works are to be carried out or services are to be provided and which shall be applicable to the works performed on-site or to the services provided during the performance of the contract.

(2) In the event where the information referred to in paragraph 1 of this Article is supplied, the contracting authority shall request the candidates and tenderers to state that when drawing up their tender they have taken into account their obligations relating to taxes, environmental protection, the stipulations relating to employment protection provisions and

working conditions which are in force in the area in which the works are to be carried out or the services are to be provided.

(3) Paragraph 1 of this Article shall be without prejudice to the application of Article 91 of this Act concerning the examination of abnormally low tenders.

Special programmes

Article 85

By the date of accession of the Republic of Croatia to the European Union, with the purpose of awarding public works contracts for the purpose of implementing reconstruction programmes for residential units damaged or demolished during the war and residence allocation programmes, contracting authority may adopt a award decision of the best tender, or a award decision of all tenderers with valid tenders, provided that all tenderers with valid tenders agree to the price and terms of the best tender.

Subcontractors

Article 86

(1) Where the economic operator intends to subcontract a share of a public procurement contract to one or more subcontractors, in the tender it must indicate information concerning the share of the public procurement contract which it intends to subcontract and information referred to in paragraph 4 of this Article on all proposed subcontractors. Participation of subcontractors shall be without prejudice to the question of the liability of tenderer for the performance of the public procurement contract.

(2) The contracting authority may not require the tenderer to subcontract a share of a public procurement contract or to engage specific subcontractors, unless regulated otherwise in a special regulation or international agreement.

(3) Where a share of a public procurement contract is subcontracted, then for the works, supplies or services to be performed, delivered or provided by the subcontractor, the contracting authority shall effect direct payment to the subcontractor.

(4) Where a share of a public procurement contract is subcontracted, the essential elements of the public procurement contract are the following:

1. works, supplies or services to be performed, delivered or provided by the subcontractor,
2. the subject-matter, quantity, value, place and term for the performance of works, the delivery of supplies or the provision of services, and
3. information on the subcontractor (name, company name, abridged company name, seat, personal identification number and account number).

(5) The contracting authority must indicate in the tender documents that the information referred to in paragraph 4 of this Article is an essential element of the public procurement contract and that direct payment to the subcontractor, if in conformity with this Article, is mandatory.

(6) The tenderer must enclose to its invoice or certificate, invoices or certificates of its subcontractors, previously confirmed.

(7) The selected tenderer may change subcontractors during the performance of the public procurement contract in the part of the public procurement contract which it subcontracted solely with the agreement of the contracting authority.

(8) If after the conclusion of a public procurement contract, the subcontractor changes, provided that the contracting authority has agreed to it, the selected tenderer must submit to the contracting authority within 5 days of the date of the agreement the information from paragraph 4 of this Article for the new subcontractor.

SECTION 7

PROVISIONS ON TENDERS

Tenders

Article 87

(1) When drawing up its tender, the tenderer shall comply with the requirements and conditions stated in the tender documents.

(2) Unless expressly provided otherwise in the tender documents, the tender and its supporting documents shall be drawn up in the Croatian language and Latin script, and the tender price shall be denominated in HRK.

(3) When drawing up its tender, the tenderer shall not modify or supplement the text of the tender documents.

(4) Before the expiry of the time limit for the submission of tenders, the tenderer may modify, supplement or withdraw tender.

(5) At the request of the contracting authority, the tenderer may extend the validity of its tender.

(6) The content of the tender, manner of drawing up and handling of tenders shall be set out by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

Alternative tender (variant)

Article 88

(1) Alternative tender (*variant*) is the tender in which the tenderer provides an alternative solution for the subject-matter of procurement.

(2) Where the criterion for award is that of the most economically advantageous tender, contracting authority may authorise tenderers to submit alternative tenders (*variants*).

(3) Contracting authority shall expressly indicate in the contract notice whether or not it authorise alternative tenders (*variants*). Alternative tenders (*variants*) shall not be authorised without such indication in the contract notice.

(4) Contracting authority authorising alternative tenders (*variants*) shall state in the tender documents the minimum requirements to be met by the alternative tenders (*variants*) in relation to the subject-matter of procurement and any specific requirements for their presentation.

(5) Only alternative tenders (*variants*) meeting the minimum requirements laid down by this contracting authority shall be taken into consideration.

(6) In procedures for awarding public supply or service contracts, contracting authority which has authorised alternative tenders (*variants*) may not reject a alternative tender (*variant*) on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract, or vice versa.

Public opening of tenders

Article 89

(1) In open and restricted procedure, the contracting authority shall open the tenders in a public opening of tenders.

(2) In other procedures, save negotiated procedures without prior publication, the final tenders shall be open in a public opening of tenders. In the procedure for the award of public service contracts referred to in Annex II B in Article 44 of this Act, the contracting authority shall not have the obligation to publicly open tenders.

(3) The public opening of tenders shall commence at the designated place and at the designated time, coinciding with the expiry of the time limit for the receipt of tenders.

(4) The tenders shall be opened by at least two authorised representatives of the contracting authority.

(5) The public opening of tenders may be witnessed by authorised representatives of the tenderers and other persons.

(6) Only the representatives of the contracting authority and authorised representatives of the tenderers shall have the right to actively participate in the public opening of tenders.

(7) Minutes of the public opening of tenders shall be drawn up and immediately distributed to all authorised representatives or tenderers witnessing the public opening of tenders and to others upon a written request.

(8) The process of receipt of tenders, public opening of tenders and the content of the minutes of public opening of tenders shall be set out by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

Examination and evaluation of tenders

Article 90

(1) After the opening of tenders, the contracting authority shall examine and evaluate the tenders in accordance with the conditions and requirements in the tender documents.

(2) Examination and evaluation of tenders shall be confidential until the contracting authority adopts a decision.

(3) In the process of examination and evaluation of tenders, the contracting authority may proceed pursuant to Articles 91 and 92 of this Act.

(4) Minutes of the examination and evaluation of tenders shall be drawn up.

(5) The process of examination and evaluation of tenders and the content of the minutes shall be set out by the Government of the Republic of Croatia in the Regulation on the methodology for drawing up and handling tender documents and tenders.

Abnormally low price

Article 91

(1) If the prices or certain unit prices indicated in the tender appear to be abnormally low which raises doubt as to the possibility to supply goods, carry out works or provide services that are the subject-matter of procurement, the contracting authority may reject those tenders.

(2) Before it may reject the tender referred to in paragraph 1 of this Article, the contracting authority shall request from the tenderer a written explanation of the constituent elements of the tender, which it considers relevant for the execution of the contract. To this end, the tenderer shall be granted a reasonable time limit.

(3) The details referred to in paragraph 2 of this Article may relate in particular to:

1. the economics of the construction method, the manufacturing process or the services provided,

2. the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or the provision of services,

3. the originality of the work, supplies or services proposed by the tenderer,

4. compliance with the provisions relating to taxes, environmental protection, employment protection and working conditions in force at the place where the work, service or supply is to be performed,

5. the possibility of the tenderer obtaining State aid.

(4) The contracting authority shall verify the information about the constituent elements indicated in the tenderer's explanation, taking account of the evidence supplied.

(5) Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the contracting authority may reject this tender on that ground alone only if the tenderer fails to present a valid proof, after the request and within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally.

(6) Where the contracting authority rejects the tender under the circumstances referred to in paragraph 5 of this Article, it shall inform the European Commission thereof in the case of high-value procurement.

Clarification and supplement

Article 92

(1) In the process of examination and evaluation of tenders, in a reasonable time limit which may not be shorter than five or longer than ten days from the date of the request, the contracting authority may invite economic operators to clarify or supplement the documents they have submitted in accordance with Articles 67 to 74 of this Act.

(2) Clarification or supplementing referred to in paragraph 1 of this Article may refer only to the ambiguities, minor defects or mistakes which are remediable.

(3) Clarification or supplementing referred to in paragraph 1 of this Article must not result in subsequent replacement or subsequent submission of the requested documents, but only in supplementing the documents that have already been submitted.

(4) Requesting clarification of or supplementing referred to in paragraph 1 of this Article must not have a discriminatory effect, unequal treatment of economic operators or be in favour of the particular economic operator in the public procurement procedure.

(5) The contracting authority may, in a reasonable time limit which may not be shorter than five or longer than ten days from the date of the request, call for a written explanation of the tender if it contains ambiguities, minor defects or mistakes which the contracting authority considers remediable. Such clarification shall not result in the alteration of the tender or alteration in the ranking of tenders according to the award criteria under Article 94, paragraph 6 of this Act.

(6) Paragraphs 1 to 4 of this Article shall accordingly apply in the process of evaluation of requests to participate.

Reasons for the rejection of tenders

Article 93

(1) The contracting authority shall reject the following tenders based on the results of the examination and evaluation of tenders:

1. any tender for which the tenderer failed to supply a tender guarantee if required, or if the supplied guarantee is not valid,
2. any tender submitted by a tenderer who failed to prove its suitability in accordance with the tender documents and the provisions of this Act,
3. any tender which is incomplete,
4. any tender which is contrary to the stipulations in the tender documents,
5. any tender in which the price is not quoted in an absolute amount,

6. any tender which contains mistakes, defects or ambiguities, if such mistakes, defects or ambiguities are not remediable,
 7. any tender in which the mistake, defect or ambiguity has not been remedied by a clarification and supplementing pursuant to Article 92 of this Act,
 8. any tender which does not meet the conditions related to the characteristics of the subject-matter of procurement, thus it does not meet the requirements in the tender documents,
 9. any tender for one or more lots of the subject-matter of procurement, if submission of lots was not allowed,
 10. any tender with respect to which the tenderer did not accept the correction of a calculation error in writing,
 11. any alternative tender (*variant*) if not allowed,
 12. any alternative tender (*variant*) which does not meet the minimum requirements,
 13. any tender by a tenderer who submitted two or more tenders in the status of a tenderer and/or a member of a group of tenderers, except in the case of the submission of a alternative tender (*variant*) if it is allowed,
 14. any tender which contains harmful provisions,
 15. any tender for which the contracting authority has justified reasons to believe is not the result of competition,
 16. any tender submitted by an uninvited tenderer,
 17. any tender which is contrary to Article 13 of this Act,
 18. any tender by the tenderer who fails to comply with the conditions referred to in Article 15 of this Act,
 19. any tender which is contrary to Article 17 paragraph 2 of this Act.
- (2) The contracting authority may reject any tender submitted by a tenderer who did not provide the requested explanation within the fixed time limit or whose explanation is not acceptable to the contracting authority in accordance with Article 91 of this Act.

Manner of examination and evaluation of tenders

Article 94

- (1) In the process of examination and evaluation of tenders, the contracting authority shall first exclude the tenderer which meets the exclusion criteria in line with Articles 67 and 68 of this Act.
- (2) After the exclusion of the tenderer pursuant to paragraph 1 of this Article, the contracting authority shall reject the tender of the tenderer who failed to submit the tender guarantee, if required or if the submitted guarantee is not valid.

(3) In the tenders remaining after the exclusion and rejection pursuant to paragraphs 1 and 2 of this Article, in accordance with the conditions and requirements in the tender documents, the contracting authority shall verify the following in the stated order:

1. the format, content and completeness of the tender,
2. that the suitability criteria are met,
3. that the requirements related to the description of the subject-matter of procurement and technical specifications are fulfilled,
4. accuracy of calculations in the tender,
5. that the other conditions stated in the tender documents are met.

(4) Where the contracting authority during the examination of tenders finds a calculation error, it shall request the tenderer to accept the correction of the calculation error and the tenderer is obliged to answer within the time limit not longer than five days.

(5) After the verification of the tenders pursuant to paragraph 3 of this Article, the contracting authority shall reject the tenders if they meet the other reasons for the rejection of tenders stated in Article 93 of this Act.

(6) After the examination and evaluation of tenders pursuant to this Article, valid tenders shall be ranked in accordance with the award criteria.

Verification of tenderers

Article 95

(1) After the ranking of tenders according to the award criteria and before adopting an award decision, the contracting authority shall request the best tenderer to whom it intends to award a public procurement contract, or one or more economic operators with whom it intends to conclude a framework agreement, to submit the originals or certified copies of all those documents (certificates, documents, statements, authorisations etc.) that were required and are being issued by the competent authorities. In the case the economic operator has already submitted the originals or certified copies thereof in its request to participate or the tender, it shall not be obligated to submit them again.

(2) A reasonable time limit shall be fixed for the receipt of the documents referred to in paragraph 1 of this Article, which may not be shorter than five days or longer than ten days from the date of the request.

(3) The originals or certified copies of the documents referred to in paragraph 1 of this Article, do not have to correspond to the previously submitted uncertified copies of the documents, for example as regards the date of issue or recentness, but they have to prove that the economic operator still meets the requirements which the contracting authority specified in the public procurement procedure.

(4) Where the best economic operator fails to submit in the fixed period all required originals or certified copies of the documents referred to in paragraph 1 of this Article, and/or fails to prove that it still meets the requirements specified by the contracting authority, the contracting authority shall exclude this tenderer or reject its tender.

(5) In the case referred to in paragraph 4 of this Article, the contracting authority shall reassess the ranking of the tenders according to the award criteria not taking into consideration the tender of the excluded tenderer, or the tenderer whose tender was rejected, and call the following best tenderer to submit the required documents.

(6) The contracting authority shall not request the originals or certified copies to be submitted pursuant to this Article, if they are already submitted in another public procurement procedure carried out by the same contracting authority and if they comply with the conditions referred to in paragraph 3 of this Article.

SECTION 8

THE ADOPTION OF THE AWARD DECISION AND THE CANCELLATION DECISION

Award decision

Article 96

(1) Based on the results of the examination and evaluation of tenders, the contracting authority shall adopt the award decision.

(2) In the award decision the best tender of the tenderer to be awarded a public contract is chosen, or the best tender of one or more economic operators with whom a framework agreement is to be concluded.

(3) The award decision is based on the award criteria.

(4) The time limit for the adoption of the award decision starts from the expiry of the time limit for the receipt of tenders. The time limit for the adoption of the award decision shall be reasonable. Where the time limit for the award decision is not indicated in the tender documents, this time limit shall be 30 days from the expiry of the time limit for the receipt of tenders.

(5) If two or more valid tenders rank equally according the award criteria, the contracting authority shall choose the tender which was received earlier.

(6) The contracting authority shall immediately submit the award decision accompanied by a copy of the minutes of the examination and evaluation of tenders to each tenderer and each participant in the second-instance restricted procedure, negotiated procedure with prior publication and in the competitive dialogue in a traceable manner (delivery note, return receipt, successful fax transmission report, electronic certificate etc.).

(7) The award decision shall not have legal effect if the contracting authority has not submitted it to all tenderers or participants pursuant to paragraph 6 of this Article.

Content of the award decision

Article 97

In the award decision, the contacting authority shall state:

1. information on the contracting authority,

2. the subject-matter of procurement or a lot of the subject-matter of procurement with respect to which the decision is adopted,
3. the name of the tenderer who will be awarded a public contract or one or more economic operators with whom a framework agreement will be concluded,
4. the reasons for the award, features and advantages of the chosen tender,
5. the reasons for the exclusion of the tenderer,
6. the reasons for the rejection of the tender, and in the cases referred to in Article 81, paragraphs 4 and 5 of this Act the reasons for the rejection of the tender on the grounds of non-equivalence or failure to comply with the performance or functional requirements,
7. the standstill period in accordance with Article 98 of this Act,
8. instructions about the legal remedy,
9. date of the adoption and signature of the responsible person.

Standstill period

Article 98

(1) The contracting authority shall apply the standstill period of 15 days in the case of high-value procurement or the period of ten days in the case of procurement of lesser value starting from the date of the receipt of the award decision. The start of the standstill period shall be calculated from the first following day after the day of the receipt of the award decision.

(2) The standstill period shall not apply:

1. if only one tenderer participated in the open procedure, negotiated procedure without prior publication and in the procedure for the award of a public service contract referred to in Annex II B to this Act, and its tender is chosen, and
2. if only one tenderer participated in the second-instance restricted, negotiated procedure with prior publication or the competitive dialogue, and its tender is chosen.

The effect of the award decision

Article 99

- (1) The award decision shall become enforceable upon the expiry of the standstill period.
- (2) Enforceability of the award decision shall result in the conclusion of a public procurement contract or a framework agreement.
- (3) If a conclusion of a public procurement contract or a framework agreement is subject to approval from the competent body, the public procurement contract or the framework agreement shall be concluded at the moment such approval is obtained.

(4) The contracting authority shall not conclude a public procurement contract or a framework agreement nor start with its execution before enforceability of the award decision.

(5) If the appeal was lodged against the award decision, the award decision shall become enforceable upon the receipt of the decision by the State Commission for the Supervision of Public Procurement Procedures in accordance with Article 171 of this Act, whereby the appeal is either dismissed, rejected or the procedure is discontinued because the appeal was withdrawn,

(6) In the case referred to in Article 98 paragraph 2 of this Act, the award decision shall become enforceable upon its receipt by the tenderer.

(7) If on the day of enforceability of the award decision the validity period of the tender expires, a public procurement contract or a framework agreement shall be concluded upon the receipt of a written statement by the tenderer extending the validity of the tender, and if this was a condition, upon the receipt of the tender guarantee in accordance with the extended validity of the tender. The tenderer shall be given a reasonable time limit to issue the statement and the guarantee concerned.

(8) If within the given time limit chosen tenderer:

1. fails to submit the statement extending the validity of the tender and of the tender guarantee in accordance with paragraph 7 of this Article,

2. withdraws its tender,

2. declines to sign the public contract or the framework agreement, or

3. fails to deliver the performance guarantee required in the tender documents, the contracting authority shall, in compliance with Article 95 of this Act, reassess the ranking of the tenders according to the award criteria not taking into consideration the tender of the chosen tenderer, and adopt a new award decision on the selection of the subsequent best valid tender or cancel the public procurement procedure if there are reasons to do so.

Reasons for cancellation of the public procurement procedure

Article 100

(1) The contracting authority may cancel the public procurement procedure before the expiry of the time limit for the receipt of tenders or requests to participate:

1. if circumstances become known which, had they been known before, would have resulted in the non-commencement of the public procurement procedure;

2. if circumstances become known which, had they been known before, would have resulted in the substantially different contract notice and/or tender documents.

(2) The contracting authority shall cancel the restricted procedure, negotiated procedure with prior publication or competitive dialogue before the expiry of the time limit for the receipt of requests to participate:

1. if no request to participate has been submitted;

2. if there are no suitable candidates.

(3) The contracting authority may cancel the public procurement procedure after the expiry of the time limit for the receipt of tenders:

1. if the price of the best tender is higher than the funds allocated for the procurement;
2. if it has not received in advance specified number of economic operators which satisfy the selection criteria and/or valid tenders for conclusion of framework agreement.

(4) The contracting authority shall cancel the public procurement procedure after the expiry of the time limit for the receipt of tenders:

1. if circumstances become known which, had they been known before, would have resulted in the non-commencement of the public procurement procedure;
2. if circumstances become known which, had they been known before, would have resulted in the substantially different contract notice and/or tender documents;
3. if no tender has been submitted, or
4. if after the exclusion of tenderers and/or rejection of tenders no valid tender remains.

(5) When there are reasons for the cancellation of the procedure listed in this Article, the contracting authority shall cancel the public procurement procedure for the entire subject-matter of procurement or, if these reasons relate to the respective lot of the subject-matter of procurement, the contracting authority shall cancel the public procurement procedure for the lot in question, where such tenders were allowed.

(6) In the case of cancellation referred to in paragraph 1 of this Article, the contracting authority shall return to the economic operators their unopened tenders or requests to participate, if submitted.

(7) This Article shall apply, as appropriate, to the award of the public service contract referred to in Annex II B to this Act.

The cancellation decision and the standstill period

Article 101

(1) The contracting authority shall adopt the cancellation decision without delay if there are the reasons for cancellation of the public procurement procedure listed in Article 100 of this Act.

(2) In the cancellation decision, the contracting authority shall state:

1. the information on the contracting authority,
2. the subject-matter of procurement or a lot of the subject-matter of procurement with respect to which the cancellation decision is adopted,
3. the reasons for the cancellation referred to in Article 100 of this Act,

4. the time limit to recommence the procedure for the same or similar subject-matter of procurement, if applicable,
5. the standstill period in accordance with Article 98 of this Act, if applicable,
6. instructions about the legal remedy, if applicable,
7. date of the adoption and signature of the responsible person.

(3) In the case referred to in Article 100 paragraph 1 of this Act, the contracting authority shall send without delay the cancellation decision to the economic operators which obtained the tender documents.

(4) In the case referred to in Article 100 paragraph 2 point 2 of this Act, the contracting authority shall send without delay the cancellation decision to the candidates who have submitted the request to participate.

(5) In the case referred to in Article 100 paragraph 4 points 1 and 2 of this Act, the contracting authority shall send without delay the cancellation decision to each tenderer.

(6) In the case referred to in Article 100 paragraph 3 and Article 100 paragraph 4 point 4 of this Act, the contracting authority shall send without delay the cancellation decision with a copy of the minutes of the examination and evaluation of tenders to each tenderer.

(7) In the case referred to in Article 100 paragraph 2 point 2 and Article 100 paragraph 4 point 4 of this Act, the contracting authority shall not launch a new public procurement procedure for the same or similar subject-matter of procurement before the expiry of the standstill period lasting for 15 days in the case of high-value procurement or ten days for the procurement of lesser value from the date of receipt of the cancellation decision by the candidates or tenderers. The start of the standstill period shall be calculated from the first following day after the receipt of the cancellation decision.

(8) The contracting authority shall send the cancellation decision referred to in paragraphs 3, 4, 5 and 6, and copy of the minutes referred to in paragraph 6 of this Article by traceable means (delivery note, return receipt, successful fax transmission report, electronic certificate etc.).

Access to the tenders

Article 102

(1) After the receipt of the award decision referred to in Article 96 of this Act or the cancellation decision referred to in Article 101 of this Act and until the expiry of the time limit for lodging an appeal, the contracting authority must, upon a tenderer's request, provide access to any tender, including subsequently submitted documents pursuant to Article 95 of this Act, as well as clarifications and supplements pursuant to Article 92 of this Act, with the exception of information the tenderers designated as confidential pursuant to Article 16 of this Act.

(2) The tenderers shall not copy, duplicate, reproduce, photograph or record the information contained in other tenders. The tenderers may only record by hand the information contained in other tenders.

SECTION 9

COMPLETION OF THE PUBLIC PROCUREMENT PROCEDURE

General provisions on the completion of the public procurement procedure

Article 103

(1) The public procurement procedure shall be concluded on the day the award decision referred to in Article 96 of this Act or the cancellation decision referred to in Article 101 of this Act becomes enforceable.

(2) Immediately after the public procurement procedure is concluded, the contracting authority shall return the projects/documents for which such a return is provided for in the tender documents.

Archiving of documents

Article 104

The contracting authority shall archive all the documents concerning each public procurement procedure for a period of at least four years from the date on which the public procurement procedure was concluded, except the tenders and requests to participate of economic operators in the case of cancellation of the public procurement procedure referred to in Article 100 paragraph 1 of this Act.

SECTION 10

EXECUTION OF THE PUBLIC CONTRACT

Execution of the public contract

Article 105

(1) The public procurement contract or the framework agreement shall be in line with the conditions stipulated in the tender documents and the chosen tender.

(2) The parties to the contract shall perform the public procurement contract in line with the conditions stipulated in the tender documents and the chosen tender.

(3) The contracting authority is obliged to control if the execution of the public procurement contract is in line with the conditions stipulated in the tender documents and the chosen tender.

(4) Any change to public procurement contract in the course of its execution shall be considered a new contract for which the contracting authority is obliged to carry out a new public procurement procedure where those changes are substantial in relation to the subject of initial contract and such as to demonstrate the intention of the parties to renegotiate the essential elements of that contract.

(5) Substantial changes of public procurement contract within the meaning of Paragraph 4 of this Article are changes which:

1. introduce conditions, which, had they been part of the initial public procurement procedure, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted, or
 2. considerably extend the scope of the subject-matter of procurement to encompass goods, works or services not covered by initial contract, or
 3. change the economic balance in favour of the tenderer in a manner not provided in initial contract.
- (6) The responsibility of the contracting parties for the obligations under the public procurement contract shall be governed by the relevant provisions of the Civil Obligations Act.

PART 3

AWARDING PUBLIC PROCUREMENT CONTRACTS FOR CONTRACTING ENTITIES

TITLE I

GENERAL PROVISIONS

Scope

Article 106

- (1) This part of the Act contains special provisions to be applied by the contracting entities referred to in Article 6 of this Act when procuring supplies, works or services for the purpose of performing the activities referred to in Articles 107 to 112 of this Act.
- (2) If not otherwise stipulated in this part of the Act, contracting entities shall apply the relevant provisions of Part 2 of the Act.

Gas, heat and electricity

Article 107

- (1) The activities in the gas and heat sectors are the following:
1. the construction (provision) or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas and heat;
 2. the supply of gas or heat to fixed networks.
- (2) Where the contracting entity other than a contracting authority supplies gas or heat to networks which provide a service to the public, such activity shall not be considered an activity within the meaning of Paragraph 1 of this Article where:

1. the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 108 to 112 of this Act, and

2. supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

(3) The activities in the electricity sector are the following:

1. the construction (provision) or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;

2. the supply of electricity to fixed networks.

(4) Where the contracting entity other than a contracting authority supplies electricity to networks which provide a service to the public, such activity shall not be considered an activity within the meaning of paragraph 3 of this Article where:

1. the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraphs 1 or 3 of this Article or in Articles 108 to 112 of this Act, and

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

Water

Article 108

(1) The activities in the water sector are the following:

1. the construction (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;

2. the supply of drinking water to fixed networks.

(2) The provisions of this part of the Act shall also apply to public procurement contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 of this Article and which:

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

2. are connected with the disposal or treatment (purification) of sewage.

(3) Where the contracting entity other than a contracting authority supplies drinking water to networks which provide a service to the public, such activity shall not be considered an activity within the meaning of paragraph 1 of this Article where:

1. the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in Articles 107 to 112 of this Act, and

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

Exploration for, or extraction of, oil, gas, coal or other solid fuels

Article 109

The activities of exploring for or extracting of oil, gas, coal or other solid fuels means the activities relating to the exploitation of a geographical area for the purpose of exploring for or extracting of oil, gas, coal or other solid fuels.

Transport services

Article 110

(1) The activities in the field of transport include the provision or operation of networks providing a service to the public in the field of transport by railway, city railway, automated systems, tramway, bus, trolley bus or cable.

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

(3) The provision of bus transport services to the public shall not be considered an activity within the meaning of this Article if other economic operators may provide such services in general or within a specific geographical area under the same conditions as the contracting entity.

Airports, maritime and inland ports

Article 111

The activities of airports, maritime and inland ports means the activities relating to the exploitation of a geographical area for the purpose of provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Postal services

Article 112

(1) The activities in the area of postal services include the provision of postal services and, on the conditions set out in paragraph 4 of this Article, other services than postal services.

(2) For the purpose of this Article, postal item means an item addressed in the final form in which it is to be carried by postal service provider. In addition to items of correspondence,

postal items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value.

(3) Postal services within the meaning of this Article mean services consisting of the clearance, sorting, routing and delivery of postal items. These services comprise:

1. reserved postal services comprising the postal services which are reserved in accordance with the regulation governing postal services,

2. other postal services which may not be reserved in accordance with the regulation governing postal services.

(4) Other services than postal services means services provided in the following areas:

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

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

3. services not included in paragraph 2 of this Article, such as direct postal items bearing no address,

4. financial services, as defined in Annex II A category 6 and in Article 10, paragraph 2, point 8 of this Act, including in particular postal money orders and postal giro transfers,

5. services of issuing and selling postage stamps in accordance with the regulation governing postal services, and

6. logistics services (combining physical delivery and/or warehousing with other non-postal functions).

(5) This part of the Act is applicable to the provision of services referred to in paragraph 4 of this Article on the condition that they are provided by an entity which also provides postal services within the meaning of paragraph 3 of this Article, and provided that such services are not directly exposed to competition within the meaning of Article 114 of this Act.

Contracts covering several activities

Article 113

(1) An awarding of public procurement contract intended to cover several activities specified in Articles 107 to 112 of this Act shall be subject to the rules applicable to the activity for which it is principally intended. The contracting entity shall not subdivide the subject-matter of procurement comprising several activities to several contracts with the intention of avoiding the application of this Act.

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

(3) If one of the activities for which the public procurement contract is awarded is subject to the provisions of this Part of the Act and the other is not subject to either this Part or Part 2 of this Act, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the provisions of this Part of this Act.

Procedure for establishing whether a given activity is directly exposed to competition

Article 114

(1) Contracts and design contests intended enable the activities listed in Articles 107 to 112 of this Act to be carried out shall not be subject to this Act if, in the Republic of Croatia, the activity concerned is directly exposed to the competition on the markets to which access is not restricted.

(2) For the purposes of paragraph 1 of this Article, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the provisions on competition of the Treaty establishing the European Community, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

(3) For the purposes of paragraph 1 of this Article, access to a market shall be deemed not to be restricted if the Republic of Croatia has implemented and applied the provisions of European Community legislation.

(4) If free access to a given market cannot be presumed on the basis of paragraph 3 of this Article, it must be demonstrated that access to the market in question is free de facto and de jure.

(5) When the Republic of Croatia considers that, in compliance with paragraphs 2, 3 and 4 of this Article, paragraph 1 of this Article is applicable to a given activity, it shall notify the European Commission and inform it of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1 of this Article, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

(6) Contracts and design contests intended to enable the activity concerned to be carried out shall no longer be subject to this Act if:

– the European Commission has adopted a decision establishing the applicability of paragraph 1 of this Article in accordance with paragraph 10 of this Article and within the period it provides for, or

– the European Commission has not adopted a decision concerning such applicability within that period.

(7) Where free access to a given market is presumed on the basis of paragraph 3 of this Article, and where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 of this Article, contracts and contests intended to enable the activity concerned to be carried out shall no longer be subject to this Act if the European Commission has not established the inapplicability of

paragraph 1 by a decision adopted in conformity with paragraph 10 of this Article and within the period it provides for.

(8) If permitted by special regulations, the contracting entities may ask the European Commission to establish the applicability of paragraph 1 of this Article to a given activity by a decision, in conformity with paragraph 10 of this Article. In such a case, the European Commission shall immediately inform the Republic of Croatia thereof. Taking into account paragraphs 2, 3 and 4 of this Article, the Republic of Croatia shall inform the European Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1 of this Article and, where appropriate, together with the position adopted by an independent national authority that is competent in the activity concerned.

(9) The European Commission may also begin the procedure for adoption of a decision establishing the applicability of paragraph 1 of this Article to a given activity on its own initiative. In such a case, the European Commission shall immediately inform the Republic of Croatia thereof. If, at the end of the period laid down in paragraph 10 of this Article, the European Commission has not adopted a decision concerning the applicability of paragraph 1 of this Article to a given activity, paragraph 1 of this Article shall be deemed to be applicable.

(10) The European Commission shall adopt a decision under this Article within a period of three months starting from the first working day following the date on which it receives the notification or the request. This period may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact, or if the facts as reported undergo any substantive changes. This extension shall be limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of paragraph 1 of this Article in the cases provided for under paragraph 7 of this Article.

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

Contracts awarded to an affiliated undertaking or to a joint venture

Article 115

(1) Provided that the conditions in paragraph 2 of this Article are met, this Act shall not apply to public contracts awarded:

1. by a contracting entity to an affiliated undertaking, or
2. by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 107 to 112 of this Act, to an undertaking which is affiliated with one of these contracting entities.

(2) Paragraph 1 of this Article shall apply:

1. to service contracts required to perform the activities prescribed in Articles 107 to 112 of this Act, provided that, on average, at least 80 % of the turnover of the affiliated undertaking

with respect to the total services provided by such affiliated undertaking, for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;

2. to supplies contracts required to perform the activities prescribed in Articles 107 to 112 of this Act, provided that, on average, at least 80 % of the turnover of the affiliated undertaking with respect to the total supplies provided by such affiliated undertaking, for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;

3. to works contracts required to perform the activities prescribed in Articles 107 to 112 of this Act, provided that, on average, at least 80 % of the turnover of the affiliated undertaking with respect to the total works performed by such affiliated undertaking for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

(3) When, because of the date on which an affiliated undertaking 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 the provision of paragraph 2 of this Article is credible, particularly by means of business projections.

(4) Where two or more undertakings affiliated with the contracting entity provide the same or similar services, supplies or works, the percentages stated in paragraph 2 of this Article shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(5) This Act shall not apply to public contracts awarded:

1. by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 107 to 112 of this Act, to one or more of these contracting entities, or

2. by a contracting entity to a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity within the meaning of Articles 107 to 112 of this Act 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) Contracting entities shall notify to the European Commission, at its request, the following information:

1. the names of the undertakings or joint ventures under this Article,

2. the nature and value of the contracts under this Article,

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

(7) An affiliated undertaking under this Article means any undertaking the annual accounts of which are consolidated with those of the contracting entity pursuant to the provisions of the Companies Act, or in the case where the undertaking is not subject to the Companies Act, any undertaking over which the contracting entity exercises or may exercise, directly or indirectly, a dominant influence within the meaning of Article 6 paragraph 2 of this Act, or

which exercises or may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

TITLE II

PUBLIC PROCUREMENT PROCEDURES

Selection of the public procurement procedure

Article 116

(1) Contracting entity shall be free to choose between the open procedure, restricted procedure and the negotiated procedure with prior publication to award a public procurement contract or conclude a framework agreement, provided that a call for competition has been made in accordance with Article 122 paragraph 2 of this Act.

(2) The negotiated public procurement procedure without prior publication may be used by the contracting entity only in exceptional cases and under the circumstances laid down in Article 117 of this Act.

(3) Contracting entity may establish and operate a system of qualification of economic operators in accordance with Article 120 of this Act.

(4) Contracting entity may specify that the award of the contract in an open, restricted or negotiated procedure with prior publication shall be preceded by an electronic auction provided that the specifications of the subject-matter of procurement can be precisely and fully established.

(5) For awarding service contracts referred to in Annex II B to this Act, the contracting entity shall conduct one of the public procurement procedures laid down in this Part of the Act or the procedure described in Article 44 of this Act.

(6) For organizing design contest contracting entity shall apply the provisions of Articles 45 to 48 of this Act.

Negotiated procedure without prior publication

Article 117

Public procurement contract may be awarded by a negotiated procedure without prior publication in the following cases:

1. when no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure, restricted procedure or negotiated procedure with prior publication, provided that the initial conditions of contract are not substantially altered;

2. where a contract is purely for the purpose of research, experimentation, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

3. when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator;

4. insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior publication cannot be complied with;

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

6. for additional works or services which may not exceed 25% of the amount of the original contract, which were not included in the project initially awarded or in the original contract, but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the economic operator executing the original contract:

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

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

7. in the case of works contracts, for new works consisting in the repetition of similar works entrusted to the economic operator to whom the same contracting entity awarded an original contract, provided that:

a) such works are in conformity with a basic project for which the original contract was awarded,

b) the original contract was awarded in an open procedure, restricted procedure or negotiated procedure with prior publication,

c) possibility of applying such a procedure was foreseen in the first contract notice, and

d) the total estimated cost of subsequent works was taken as the basis for calculation of the estimated value of procurement by the contracting entity;

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

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

10. for purchases of supplies on particularly advantageous terms, from either a supplier definitively winding up its business activities, or the receivers or liquidators of a bankruptcy or as part of an arrangement with creditors, or a similar procedure under regulations of the country of establishment of the economic operator;

11. when the service contract concerned follows a design contest organised in compliance with the provisions of this Act and must, under the applicable rules, be awarded to the winner or to one of the winners. In the latter case, all the winners must be invited to participate in the negotiations.

Unsuitable tender

Article 118

Within the meaning of Article 117 of this Act an unsuitable tender is a tender which fully does not meet the needs of the contracting entity set out in the description of the subject-matter of procurement and the technical specifications, that is, which offers products, works or services which clearly do not satisfy the needs of the contracting entity in relation to the requested subject-matter of procurement.

Invitation to tender or to negotiate

Article 119

(1) In the second-instance restricted and negotiated procedures with prior publication, the contracting entity shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.

(2) The written invitation shall be supplemented by tender documents and any supporting documents. Where unrestricted and full access by electronic means to such documents has been provided in accordance with Article 131 of this Act, it shall suffice that the invitation contains a reference to the Internet address at which these documents are available.

(3) Where the documents referred to in paragraph 2 of this Article are held by an entity other than the contracting entity responsible for the procurement procedure, the invitation shall state the address from which those documents may be requested and the closing date for requesting such documents. The competent department shall send that documents or make them available to the economic operator immediately upon receipt of the request.

(4) The information on the selected candidates that were granted access to the tender documents and any supporting documents must be kept confidential until the opening of the (final) tenders.

(5) The invitation to tender or to negotiate shall contain:

1. a reference to the contract notice published,
2. where appropriate, the time limit for requesting supporting documents,
3. the date for the receipt of (initial) tenders, address to which they are to be sent, and the language or languages in which they are to be drawn up,
4. a reference to any documents which must be attached,
5. the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition,

6. in the case of the most economically advantageous tender, the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information is not given in the contract notice, the notice on the existence of a system of qualification or the tender documents.

Qualification systems

Article 120

(1) Contracting entity which intends to establish or operate a qualification system shall publish a notice on the existence of a qualification system in accordance with Annex V I of this Act, in which it will indicate the purpose of the system of qualification and the manner in which the rules and criteria for qualification may be requested. Where the qualification system is of a duration greater than three years, the notice on the establishment of a qualification system shall be published annually. Where the qualification system is of a shorter duration, an initial notice shall suffice.

(2) Contracting entity which establishes or operates a system of qualification shall ensure that economic operators are at all times able to request qualification.

(3) The qualification system may involve different qualification stages.

(4) The qualification system shall be operated on the basis of objective criteria and rules for qualification specified by the contracting entity. The criteria and rules for qualification may include the technical specifications in accordance with Article 81 of this Act. The criteria and rules for qualification may be updated as required.

(5) The criteria and rules for qualification shall include the exclusion criteria referred to in Article 67 of this Act, and they may also include the exclusion criteria referred to in Article 68 of this Act.

(6) Where the criteria and rules for qualification include requirements relating to the financial capacity, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case, the economic operator must prove to the contracting entity that the necessary resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. Under the same conditions, a group of economic operators may rely on the capacity of participants in the group or other entities.

(7) Where the criteria and rules for qualification include requirements relating to the technical and/or professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case, the economic operator must prove to the contracting entity that the necessary resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator. Under the same conditions, a group of economic operators may rely on the abilities of participants in the group or of other entities.

(8) The criteria and rules for qualification shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to interested economic operators. Where a contracting entity considers that the qualification system of

certain other contracting entities meets its requirements, it shall communicate to interested economic operators the names of such other contracting entities.

(9) Contracting entity shall keep a written record of qualified economic operators. The record can be categorised according to the type of contract for which the qualification is valid.

(10) Contracting entity which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months. If the decision will take longer than four months from the presentation of an application for qualification, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which its application will be accepted or refused.

(11) Applicants whose qualification is refused shall be informed immediately of this decision and the reasons for refusal and not later than 15 days from the date of the decision. The reasons shall be based on the criteria for qualification referred to in paragraph 4 of this Article.

(12) Contracting entity which establish and operate a system of qualification may bring the qualification of a previously qualified economic operator to an end only for reasons based on the criteria and rules for qualification. Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least 15 days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

Communication of technical specifications

Article 121

(1) Contracting entity shall make available on request to economic operators interested in obtaining a public procurement contract the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic (indicative) notices within the meaning of Article 123 of this Act.

(2) Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

(3) If, for whatever reason,

– the contract documents and the supporting documents have not been made accessible in accordance with this Act, or

– additional information and explanation, although requested in good time, have not been supplied within the time limits set in this Act, or

– where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended accordingly, except in the case of a time-limit set by mutual agreement in accordance with Article 129 paragraph 3 of this Act, so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

TITLE III

PUBLICATION

Publication of notices

Article 122

(1) Public procurement notices are the following:

1. a contract notice,
2. a design contest notice,
3. a prior notice of intention to award a contract,
4. a periodic (indicative) notice,
5. a notice of the publication of the prior (indicative) notice on the contracting entity (buyer) profile,
6. a notice on the existence of a qualification system,
7. a contract award notice,
8. a notice of the results of the design contest,
9. a notice for additional information, cancellation of the procedure or correction.

(2) A public procurement notice used as a means of calling for competition of economic operators for the supply of goods, works or services may be:

1. a periodic (indicative) notice referred to in Annex V B to this Act, or
2. a notice on the existence of a qualification system referred to in Annex V I to this Act, or
3. a contract notice referred to in Annex V C to this Act.

(3) Public procurement notices referred to in points 1 to 8 of paragraph 1 of this Article shall contain the information in accordance with Annex V to this Act. If necessary, public procurement notices may contain other information which the contracting entity deems necessary.

(4) Contracting entities shall draw up and send public procurement notices electronically, in accordance with the format and transmission procedures referred to in Annex VI point 3 to this Act. Public procurement notices shall be published in accordance with the technical characteristics of publication set out in Annex VI points 1(a) and (b) to this Act.

(5) Public procurement notices shall be published using the standard forms.

(6) The format and content of the standard forms, the manner and conditions for their publication shall be set out by the Government of the Republic of Croatia in the Regulation on public procurement notices. On the day of accession of the Republic of Croatia to the

European Union, public procurement notices for high value procurement shall be published in the format of standard forms adopted by the European Commission.

Periodic (indicative) notices

Article 123

(1) Contracting entity may make known, at least once a year, by means of a periodic (indicative) notice or by themselves on their 'buyer profile' the following:

1. where public supply contracts are concerned – the estimated total value of the contracts or framework agreements by product area which they intend to award over the following twelve months, where the total estimated value equals at least EUR 750,000 in Croatian currency equivalent. The product area shall be established by the contracting entities by reference to the Common Procurement Vocabulary (CPV) nomenclature,

2. where public services contracts are concerned – the estimated total value of the contracts or framework agreements in each of the categories of services listed in Annex II A to this Act which they intend to award over the following twelve months, where such estimated total value equals at least EUR 750,000 in Croatian currency equivalent,

3. where public works contracts are concerned – information on the essential characteristics of the contracts or framework agreements which they intend to award over the following 12 months, whose estimated value is equal to or greater than the European threshold for public works.

(2) The periodic (indicative) notice relating to public supply contracts and public service contracts shall be sent for publication as soon as possible pursuant to Article 56 of this Act, or published on the contracting entity (buyer) profile after the beginning of the budgetary year.

(3) The periodic (indicative) notice relating to public works contracts shall be sent for publication as soon as possible pursuant to Article 56 of this Act, or published on the contracting entity (buyer) profile after the decision approving the planning of the works contracts or the framework agreements that the contracting entity intends to award.

(4) Contracting entity which publishes a periodic (indicative) notice on its buyer profile shall not publish it there before it has sent, in line with Article 56 of this Act, a notice of the publication of the prior (indicative) notice on the contracting entity (buyer) profile in that form, electronically and in accordance with the format and procedures for the electronic transmission of notices indicated in Annex VI point 3 to this Act. The date on which such notice was sent will be indicated on the buyer profile.

(5) The publication of the periodic (indicative) notice shall be compulsory only where the contracting entity takes the option of using the reduced time limits for the receipt of tenders referred to in Article 130 paragraph 1 of this Act.

(6) This Article shall not apply to the negotiated procedure without prior publication.

(7) Contracting entity may publish or arrange for the Official Journal of the European Union to publish periodic (indicative) notices relating to major projects without repeating the information previously included in a periodic (indicative) notice, provided that it is clearly pointed out that these notices are additional ones.

Prior notice of intention to award a contract (voluntary ex ante transparency notice)

Article 124

(1) After the contracting entity chooses the tenderer in favour of whom the contract will be awarded in the negotiated procedure without prior publication, the contracting entity must publish a prior notice of intention to award a contract in the cases referred to in Article 117 points 1, 2, 3, 5, 7 and 11 of this Act, and in other cases it may publish a prior notice of intention to award a contract.

(2) Where contracting entity awards a research and development service contract by way of a negotiated procedure without prior publication in accordance with Article 117 point 2 of this Act, in a prior notice of intention to award a contract it may limit to the reference 'research and development services' the information to be provided in accordance with Annex V H to this Act concerning the description of the subject-matter of procurement.

(3) Where public services contracts referred to in Annex II B under Article 44 of this Act and contracts excluded from the application of this Act are awarded, contracting entity may publish a prior notice of intention to award a contract after the contracting entity chooses the tenderer in favour of whom the contract will be awarded.

(4) In the case of a negotiated procedure without prior publication and the award of a public services contract referred to in Annex II B to this Act, the contracting entity shall be bound by a standstill period of 15 days in the cases of high-value procurement or ten days in the case of procurement of lesser value from the day of publication of a prior notice of intention to award a contract.

(5) If they publish a prior notice of intent to award a contract in the case of contracts excluded from the application of this Act, contracting entity shall be bound by a standstill period of 15 days from the day of publication of a prior notice of intention to award a contract.

(6) The start of the standstill period shall be calculated from the first following day after the day of the publication of a prior notice of intention to award a contract.

Contract award notices and notices on the results of the design contest

Article 125

(1) Contracting entity which has awarded a public procurement contract or a framework agreement shall, within two months of the award of the contract or conclusion of the framework agreement, send for publication a contract award notice pursuant to Annex V E to this Act.

(2) In the case of a contracts awarded under a framework agreement, the contracting entity shall not be bound to send for publication the contract award notice.

(3) In the case of a public services contract referred to in Annex II B to this Act, the contracting entity shall indicate in the notice whether it agrees to the publication thereof.

(4) For each completed design contest the contracting entity shall send for publication a notice on the results of the design contest not later than two months from the closure of the design contest.

(5) When publishing contract award notices or framework agreement notices or notices on the results of a contest, certain confidential commercial information shall be respected which the contracting entity may point out when forwarding this information, concerning the number of tenders received, the number of designs or plans received, the identity of economic operators, or prices.

(6) Contracting entity may publish a contract award notice for contracts excluded from the application of this Act.

(7) Where a research and development service contract is concerned, awarded by way of a negotiated procedure without prior publication in accordance with Article 117 point 2 of this Act, in the contract award notice contracting entity may limit the information to be provided in accordance with Annex V E to this Act concerning the nature and quantity of the services provided only to research and development services.

(8) Where contracting entity awards research and development service contract which is not awarded by way of a negotiated procedure without prior publication in accordance with Article 117 point 2 of this Act, it may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Annex V E to this Act concerning the nature and quantity of the services supplied. In such cases, contracting entity shall ensure that any information published is no less detailed than that contained in the notice of the call for competition published in accordance with Article 122 paragraph 2 of this Act.

(9) If it uses a qualification system, contracting entity shall ensure that in the case of research and development service contract the information is no less detailed than the category referred to in the list of qualified service providers maintained in accordance with Article 120 paragraph 9 of this Act.

(10) Information provided in the contract award notice pursuant to Annex V E to this Act marked as not being intended for publication shall be published only in simplified form and in accordance with Annex VI to this Act for statistical purposes.

Periodic (indicative) notice as a call for competition

Article 126

(1) When a call for competition is made by means of a periodic (indicative) notice:

1. the periodic (indicative) notice shall refer specifically to the supplies, works or services which will be the subject-matter of tendering for a public procurement contract to be awarded or framework agreement to be concluded,

2. the periodic (indicative) notice shall indicate that the public procurement contract or the framework agreement will be awarded by restricted or negotiated procedure without further publication of a call for competition,

3. the periodic (indicative) notice shall invite all interested economic operators to express their interest to participate in writing, and

4. the periodic (indicative) notice shall have been published in accordance with Annex VI to this Act not more than twelve months prior to the date on which the contracting entity sends the invitation to confirm interest referred to in paragraph 2 of this Article. The contracting entity shall meet the time limits laid down in Articles 129 and 131 of this Act.

(2) Contracting entity shall, before beginning the selection of tenderers in restricted procedure or of candidates in negotiated procedure, invite all economic operators which have expressed their interest to participate to confirm their interest based on detailed information about the subject-matter of procurement. The invitation to confirm interest shall contain at least the following information:

1. nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options, and for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender,

2. type of procedure: restricted or negotiated procedure,

3. the date on which the delivery of supplies or the execution of works or services is to commence or to terminate, where appropriate,

4. the address and closing date for the submission of requests to participate and the language in which they are to be drawn up,

5. the address of the entity which is to award the contract and the information necessary for obtaining the tender documents and other documents,

6. exclusion criteria, legal and business, financial, technical and professional capacity, financial guarantees and information required from economic operators,

7. the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these,

8. the contract award criteria: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria in descending order shall be mentioned if this information is not given in the periodic (indicative) notice, tender documents, or it shall be indicated in the invitation to tender or to negotiate.

Notices on the existence of a qualification system as a call for competition

Article 127

(1) When a call for competition is made by means of notice on the existence of a qualification system the tenderers in restricted or candidates in negotiated procedure shall be selected from the economic operators who are qualified within the qualification system.

(2) For the purpose of selection of the participants in restricted or negotiated procedure for a specific contract which is the subject-matter of the call for competition, the contracting entity shall:

1. qualify economic operators in accordance with the provisions of Article 120 of this Act,

2. apply to such qualified economic operators the provisions of this Act that are relevant to second-instance restricted or negotiated procedure.

(3) Contracting entities which establish and operate a qualification system shall observe the provisions of Article 135 of this Act.

TITLE IV

TIME LIMITS

Regular time limits for the receipt of tenders in open procedure

Article 128

(1) In the case of high-value open procedure, the time limit for the receipt of tenders shall be at least 40 days from the date on which the contract notice was sent.

(2) In the case of open procedure of lesser value, the time limit for the receipt of tenders shall be at least 20 days from the date on which the contract notice was sent.

Regular time limits in restricted and negotiated procedure with prior publication

Article 129

(1) In high-value restricted and negotiated procedure with prior publication, the time limit for the receipt of the request to participate submitted in response to a notice referred to in Article 122, paragraph 2, point 3 of this Act or in response to an invitation to confirm interest referred to in Article 126 paragraph 2 of this Act, shall be at least 30 days from the date on which the contract notice or the invitation to confirm interest was sent.

(2) In restricted and negotiated procedure with prior publication of lesser value, the time limit for the receipt of the request to participate submitted in response to a notice referred to in Article 122 paragraph 2 point 3 of this Act or in response to an invitation to confirm interest referred to in Article 126 paragraph 2 of this Act, shall be at least 20 days from the date on which the contract notice or the invitation to confirm interest was sent.

(3) In restricted and negotiated procedure with prior publication the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders, but which shall not be shorter than 15 days from the date on which the invitation to tender was sent.

(4) Where it is not possible to reach an agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit of at least 30 days from the date on which the invitation to tender is sent, and in the case of public procurement of lesser value, this time limit shall be no less than 20 days from the date on which the invitation to tender was sent.

Shortened time limit for the receipt of tenders in procedures with a periodic (indicative) notice

Article 130

(1) Where contracting entity published a periodic (indicative) notice referred to in Article 123 of this Act in accordance with Annex V B, the time limit for the receipt of tenders referred to in Article 128 of this Act may be reduced to 36 days or less, but not less than 22 days from the date on which the contract notice was sent.

(2) Contracting entity may use the shortened time limit referred to in paragraph 1 of this Article provided that:

1. the periodic (indicative) notice has included, in addition to the information required by Annex V B, Part I, all the information required by Annex V B, Part II of this Act, insofar as such information is available at the time the notice is published, and

2. the periodic (indicative) notice was sent for publication between 52 days and twelve months before the date on which the contract notice referred to in Article 122 paragraph 2 point 3 of this Act was sent.

Shortened time limit for the receipt of tenders by way of electronic means

Article 131

Except in the case of a time limit set by mutual agreement in accordance with Article 129 paragraph 3 of this Act, the time limit for the receipt of tenders in restricted and negotiated procedure with prior publication may be reduced by five days where the contracting entity offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents in the Electronic Public Procurement Classifieds of the Republic of Croatia from the date of publication of the notice used as a means of call for competition. The contract notice shall specify the Internet address at which this documentation is accessible.

Restricted and negotiated procedure with prior publication for reasons of urgency

Article 132

Where the application of regular or shortened time limits is not possible in restricted or negotiated procedure with prior publication for reasons of urgency, the contracting entity may specify:

1. the time limit for the receipt of requests to participate, which shall be not less than 15 days starting from the date on which the contract notice or the invitation to confirm interest is sent,

2. the time limit for the receipt of tenders in the restricted public procurement procedure, which shall not be less than 15 days starting from the date on which the invitation to submit tenders is sent.

TITLE V

EXCLUSION CRITERIA AND SUITABILITY CRITERIA OF ECONOMIC OPERATORS

Exclusion criteria

Article 133

Contracting entities, save for the entities referred to in Article 6 paragraph 1 point 3 of this Act, shall in public procurement procedures specify mandatory reasons for exclusion of economic operators pursuant to Article 67 of this Act.

Selection criteria

Article 134

(1) Contracting entity shall establish the selection criteria of the candidates and tenderers in accordance with the provisions of this Act, which shall be objective and non-discriminatory, and available to all interested economic operators.

(2) In restricted and negotiated procedure with prior publication, the selection criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates shall be sufficient to ensure regular competition.

(3) Where the selection criteria include requirements relating to the financial capacity, the economic operator may, where necessary and for a particular contract, rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case, the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect. Under the same conditions, a group of economic operators may rely on the capacities of participants in the group or of other entities.

(4) Where the selection criteria include requirements relating to the technical and/or professional abilities, the economic operator may where necessary and for a particular contract, rely on the abilities of other entities, whatever the legal nature of the link between itself and those entities. In this case, the economic operator must prove to the contracting entity that for the performance of the contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator. Under the same conditions, a group of economic operators may rely on the abilities of participants in the group or of other entities.

Selection of candidates and tenderers

Article 135

(1) For the purpose of selecting candidates or tenderers in public procurement procedures, the contracting entity shall:

1. based on the reasons for exclusion which it established in accordance with Article 133 of this Act exclude economic operators which fulfil reasons for exclusion,
2. on the basis of objective and non-discriminatory selection criteria which it established in accordance with Article 134 paragraph 1 of this Act, select tenderers and candidates,
3. may, where appropriate, in accordance with Article 134 paragraph 2 of this Act, reduce the number of suitable candidates selected in the restricted procedure and negotiated procedure with prior publication pursuant to points 1 and 2 of this paragraph.

(2) When selecting candidates for a restricted or negotiated procedure, in reaching its decision as to qualification or when the criteria and rules are being updated, contracting entity shall not:

1. impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others,
2. require evidence which would duplicate objective evidence already submitted.

(3) When the award is made to the tender most economically advantageous, the contracting entity shall specify as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 126, paragraph 2 of this Act, in the invitation to tender or to negotiate, or in the specifications the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread. Where, in the opinion of the contracting entity, weighting of the criteria is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

TITLE VI

RELATIONS WITH THIRD COUNTRIES

Tenders comprising products originating in third countries

Article 136

(1) This Article shall apply to tenders covering products originating in third countries with which the European Union has not concluded an agreement ensuring comparable and effective access for economic operators established in the European Union to the markets of those third countries. This Article shall be without prejudice to the obligations of the European Union or its Member States in respect of third countries.

(2) Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as supplies.

(3) Where two or more tenders are equivalent in the light of the contract award criteria, preference shall be given to those tenders who may not be rejected pursuant to paragraph 2 of this Article. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %. However, a tender shall not be preferred to another where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

(4) Those third countries to which the benefit of the application of this Act has been extended by a Decision of the Council of the European Union in accordance with paragraph 1 of this Article shall not be taken into account for determining the proportion, referred to in paragraph 2 of this Article, of products originating in third countries.

Relations with third countries as regards public contracts

Article 137

(1) The Republic of Croatia shall inform the European Commission of any difficulties, in law or in fact, encountered and reported by its economic operators in securing the award of public contracts in third countries.

(2) The Republic of Croatia shall inform the European Commission of any difficulties, in law or in fact, encountered and reported by its economic operators and which are due to the non-observance of the international labour law provisions when these economic operators have tried to secure the award of contracts in third countries.

PART 4

LEGAL PROTECTION

TITLE I

GENERAL PROVISIONS

Competence to decide on appeals

Article 138

(1) The State Commission for the Supervision of Public Procurement Procedures (hereinafter: the State Commission) is competent for deciding on appeals in the procedures for awarding public procurement contracts, concluding framework agreements and design contests governed by this Act.

(2) The competence and other issues related to the operation of the State Commission shall be regulated in a special law.

Principles and legal nature of appellate procedure

Article 139

(1) Save the public procurement principles referred to in Article 3 of this Act, the appellate procedure shall be also based on the principles of legality, efficiency, cost-effectiveness and the adversarial nature of the procedure.

(2) The appellate procedure which is conducted according to provisions of this Act is administrative procedure.

Language of the procedure

Article 140

The appellate procedure shall be conducted in the Croatian language and using the Latin script.

The right to appeal

Article 141

(1) Any natural, legal person and a group of natural and/or legal persons having or having had an interest in obtaining a particular public procurement contract or a framework agreement and who has been or risks being harmed by the alleged infringement of subjective rights shall be entitled to lodge an appeal.

(2) The right to appeal shall also be granted to the central state administration body responsible for the public procurement system and the competent State attorney's office.

(3) Persons referred to in paragraph 1 and 2 of this Article (hereinafter: the appellant) have the right to lodge an appeal pursuant to conditions stated in this part of the Act.

Parties in the appellate procedure

Article 142

Parties in the appellate procedure are the appellant, the contracting authority/entity, the selected candidate and the chosen tenderer.

Rules for presenting evidence

Article 143

(1) In the appellate procedure, each party shall present all facts on which it bases its requests and propose evidence substantiating these facts.

(2) The appellant shall prove the procedural preconditions for lodging an appeal, including infringements of procedure and/or substantive law, referred to in the appeal.

(3) The contracting authority/entity shall prove all the facts and circumstances used to make decisions concerning one's rights, take actions or omit to take actions, or conduct procedures which are the subject of the appellate procedure.

Powers of the State Commission and substantial violations

Article 144

(1) In the appellate procedure the State Commission shall act within the limits of the grounds for the appeal and it shall *ex officio* pay attention to substantial violations perpetrated in the stage of the procedure when the appeal was lodged pursuant to Articles 146 to 153 of this Act.

(2) A substantial violation exists if the contracting authority/entity has not applied or has applied in an irregular manner any provisions in the source of law, which affected the legality of the procedure and which the appellant was not aware of nor could have been aware of when it lodged the appeal.

(3) The State Commission is not authorised to review state of facts or the legal situation which was the subject of a previous appeal in the same procurement procedure.

TITLE II

LODGING AN APPEAL

Lodging an appeal

Article 145

- (1) The appeal shall be lodged with the State Commission.
- (2) The appeal shall be lodged in writing. The appeal shall be submitted in person, by post or by electronic means, provided that the conditions for the submission of electronic documents have been met by both parties in line with the provisions concerning the electronic signature.
- (3) Simultaneously with the submission of the appeal to the State Commission, the appellant shall submit, by traceable means, a copy of the appeal to the contracting authority/entity.
- (4) The State Commission shall establish that the appeal has been lodged in good time. The appeal which has not been submitted to the contracting authority/entity pursuant to paragraph 3 of this Article shall be deemed not to have been lodged in good time.

Time limits for lodging an appeal in open procedure

Article 146

- (1) In high-value open procedure an appeal shall be lodged within a period of ten days and in open procedure of lesser value within a period of five days from the date of:
 1. the publication of the contract notice relating to the content of the contract notice and tender documents, and supplementary documents, if any,
 2. the publication of modifications to the tender documents relating to the content of the modification of the tender documents,
 3. the opening of tenders relating to the procedure for opening of tenders,
 4. the receipt of the award decision or cancellation decision relating to the procedure of examination, evaluation and selection of tenders, or the reasons for cancellation.
- (2) Any appellant who fails to lodge an appeal at a specific stage of the open procedure according to the provisions of paragraph 1 of this Article shall lose the right to appeal concerning the previous stage in a later stage of the procedure.

Time limits for lodging an appeal in restricted and negotiated procedure with prior publication, and in a competitive dialogue

Article 147

(1) In high-value restricted and negotiated procedure with prior publication and in a competitive dialogue the appeal shall be lodged within a period of ten days, and in the procurement procedures of lesser value within a period of five days from the date of:

1. the publication of the contract notice relating to the content of the contract notice and additional documentation for drawing up requests to participate, if any,
2. the publication of the contract notice relating to the content of the contract notice and tender documents, provided that unrestricted electronic access to complete tender documents and supporting documents concerning the procurement procedure was ensured as of the date of publication of the contract notice,
3. the receipt of the decision on the inadmissibility of participation in relation to the reasons for such inadmissibility,
4. the receipt of the tender documents and possible supporting documents relating to the content of the tender documents if unrestricted electronic access to complete tender documents and supporting documents was not ensured as of the date of publication of the contract notice,
5. the receipt or publication of modifications to the tender documents in relation to the content of the modification of the tender documents,
6. opening of (final) tenders relating to the procedure of opening of (final) tenders,
7. the receipt of the contract award decision or cancellation decision relating to the exclusion of initial tenders, solutions, examination, evaluation and selection of (final) tenders or the reasons for cancellation.

(2) Any appellant who fails to lodge an appeal at a specific stage of restricted and negotiated procedure with prior publication and a competitive dialogue according to the provisions of paragraph 1 of this Article shall lose the right to appeal concerning the previous stage in a later stage of the procedure.

Time limits for lodging an appeal in procurement procedure without prior publication

Article 148

(1) In high-value negotiated procedure without prior publication the appeal shall be lodged within a period of ten days, or in the case of procurement procedure of lesser value within a period of five days from the date of publication of a prior notice of intention to award a contract relating to the cases and circumstances for choice of the procedure, tender documents and any supporting documents, examination, evaluation and selection of tenders.

(2) Where the contracting authority/entity, pursuant to Articles 59 and 124 of this Act, doesn't publish a prior notice of intention to award a contract, the appeal shall be lodged within a period of ten days in high-value procedure, or within a period of five days in the case of procurement procedure of lesser value from the date of the receipt of the award

decision or cancellation decision relating to the tender documents and any supporting documents, examination, evaluation and selection of tenders or reasons for cancellation.

(3) Any appellant who fails to lodge an appeal pursuant to paragraph 1 or 2 of this Article shall lose the right to appeal after the publication of the contract award notice.

(4) If the contracting authority/entity did not publish a prior notice of intention to award a contract, the appeal shall be lodged within 30 days from the date of publication of the contract award notice relating to the cases and circumstances for the choice of the procedure.

(5) If the contracting authority/entity did not publish a prior notice of intention to award a contract and fails to publish a contract award notice, the appeal shall be lodged in accordance with Article 151 of this Act.

Time limits for lodging an appeal in the procedures for awarding public service contracts referred to in Annex II B

Article 149

(1) In high-value procedure for awarding public services contracts referred to in Annex II B, the appeal shall be lodged within a period of ten days, or in the case of procurement procedure of lesser value within a period of five days from the date of publication of a prior notice of intention to award a contract relating to the content of the request for tenders and supporting documents, if any, procedure of examination, evaluation and selection of tenders.

(2) Where the contracting authority/entity, pursuant to Articles 59 and 124 of this Act, doesn't publish a prior notice of intention to award a contract, the appeal shall be lodged within a period of ten days in high-value procedure or, in the case of procurement procedure of lesser value within a period of five days from the date of the receipt of the award decision or cancellation decision relating to the content of the request for tenders and supporting documents, if any, procedure of examination, evaluation and selection of tenders, and reasons for cancellation.

(3) In the case where no request for tenders or prior notice of intention to award a contract was published, the appeal shall be lodged within a period of 30 days from the date of publication of the contract award notice relating to the choice of the procedure.

(4) In the case where no request for tenders or prior notice of intention to award a contract was published, and the contracting authority/entity fails to publish a contract award notice, the appeal shall be lodged in accordance with Article 151 of this Act.

Time limits for lodging an appeal in the case of contracts excluded from the scope of this Act

Article 150

(1) If the contracting authority/entity published a prior notice of intention to award a contract in the case of contracts excluded from the scope of this Act, an appeal shall be lodged within a period of ten days from the publication of a prior notice of intention to award contract in relation to the legality to award such contract.

(2) Any appellant who fails to lodge an appeal pursuant to paragraph 1 of this Article shall lose the right to appeal after the publication of the contract award notice, if published.

(3) If the contracting authority/entity publishes only the contract award notice for the contracts excluded from the scope of this Act, an appeal shall be lodged within a period of 30 days from the date of publication of the contract award notice in relation to the legality to award of such contract.

Time limit for lodging an appeal in the case of awarding a contract without a public procurement procedure

Article 151

The time limit for the appeal in the cases of awarding a contract without a public procurement procedure shall be 30 days from the date of becoming aware of such contract, and may be lodged within the period of six months from the date of the conclusion of the contract.

Time limit for lodging an appeal in the case of awarding a contract based a framework agreement

Article 152

The time limit for lodging an appeal in the case of awarding a contract under a framework agreement referred to in Article 39 paragraphs 3 and 5 of this Act shall be 30 days from the date of receipt of the decision on the award of the public contract based on a framework agreement relating to the procedure for awarding a contract under a framework agreement.

Time limits for lodging an appeal in other cases

Article 153

In all other cases not specified in Articles 146 to 152 of this Act, the time limit for lodging an appeal shall be ten days from the date of receipt of the documents or decision on individual rights of the candidates or tenderers relating to the activities, decisions, actions and failure to take action by the contracting authority/entity which it should have taken pursuant to this Act, or other actions whereby the subjective right of the candidate or tenderer has been violated.

Actions of the contracting authority/entity with regard to the appeal

Article 154

The contracting authority/entity shall submit the following to the State Commission immediately and not later than within five days of the receipt of the appeal:

1. the appeal with the information and proof of the method and the time of the delivery,
2. the reply to the appeal with a statement concerning the claims in the appeal and the grounds for the appeal,

3. the documents concerning the procurement procedure with the list of attachments thereto,
4. a reference concerning the publication of the information in accordance with Article 157, paragraph 1, or Article 158, paragraph 6 of this Act, or evidence of notification of the selected candidates in accordance with paragraph 1 or Article 158 of this Act,
5. other evidence as to the existence of the preconditions necessary for the adoption of a lawful decision, performance of actions, omissions or procedures.

Calls to contracting authorities/entities

Article 155

- (1) If the contracting authority/entity fails to comply with Article 154 of this Act, the State Commission shall forthwith call the contracting authority/entity to submit the documents and warn it of the legal consequences in the case it fails to comply within the time limit which shall not be longer than five days.
- (2) If, following the request referred to in paragraph 1 of this Article, the contracting authority/entity fails to submit the requested documents, the State Commission shall annul the public procurement procedure or proceed in accordance with Articles 167 and 168 of this Act.

Notifying the successful tenderer and candidate

Article 156

- (1) The State Commission shall immediately notify the successful tenderer and candidate of the appellate procedure, if such tenderer or candidate exists in the stage in which the appeal was lodged.
- (2) The successful tenderer and candidate may submit to the State Commission, within a fixed time limit, its statement regarding the appeal.

Actions of the contracting authority/entity with regard to the appeal in relation to the tender documents in open procedure

Article 157

- (1) Where an appeal has been lodged in open procedure in relation to tender documents or modification of tender documents the contracting authority/entity shall immediately after the receipt of a copy of the appeal, publish in the same manner and at the same Internet address as original tender documents, information that an appeal has been lodged and that the public procurement procedure is suspended.
- (2) If State Commission dismisses or rejects the appeal referred to in paragraph 1 of this Article or discontinue the appeal procedure, the contracting authority/entity is obliged to publish a correction of the contract notice and, if necessary, tender documents in which it stipulates new time limit for the receipt of tenders. The duration of such time limit must be at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of tenders. If necessary, the contracting

authority/entity shall correct other information which is needed due to the change of the time limit for the receipt of tenders. An appeal cannot be lodged against the correction of the contract notice and the tender documents.

(3) If State Commission accepts the appeal referred to in paragraph 1 of this Article, the contracting authority/entity shall depending on the content of the State Commission decision and taking into account the explanation of the State Commission decision:

1. carry out new public procurement procedure, or
2. proceed with the public procurement procedure.

(4) In case referred to in paragraph 3 point 2 of this Article contracting authority/entity is obliged to publish a correction of the contract notice and modification of tender documents in that part which is covered by illegality and stipulate new time limit for receipt of tenders which shall last at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of tenders.

(5) If before the time limit initially stipulated for the receipt of tenders and during the appeal procedure in cases referred to in this Article, any tender is received, the contracting authority/entity shall immediately return the received tender to the economic operator unopened, together with a notification that the appellate procedure is under way, and that it might specify an additional time limit for the submission of tenders, depending on the outcome of the appellate procedure.

(6) By way of derogation from paragraph 1 of this Article, in the event where a copy of the lodged appeal against the tender documents or modifications to the tender documents was received by the contracting authority/entity after the expiry of the period of 15 days in the public procurement procedure of high-value, or 10 days on the public procurement procedure of lesser value from the day from which the time limit to lodge an appeal starts pursuant to Article 146 of this Act, the contracting authority/entity may continue with the procurement procedure, but it must not adopt the award decision or the cancellation decision before the receipt of a decision from the State Commission.

(7) In the event referred to in paragraph 6 of this Article, if the State Commission adopts the appeal, the contracting authority/entity shall act in accordance with paragraph 3 point 1 of this Article.

Actions of the contracting authority/entity with regard to the appeal in relation to the tender documents in restricted procedure, negotiated procedure with prior publication and competitive dialogue

Article 158

(1) Where an appeal has been lodged in restricted procedure, negotiated procedure with prior publication or competitive dialogue in relation to tender documents or modification to tender documents, the contracting authority/entity shall immediately after the receipt of a copy of the appeal inform all chosen candidates that an appeal has been lodged and that the procedure is suspended.

(2) If State Commission dismisses or rejects the appeal referred to in paragraph 1 of this Article or discontinue the appeal procedure, the contracting authority/entity shall sent to selected candidates correction of the invitation to tender and, if necessary, the tender

documents in which it stipulates new time limit for the receipt of tenders. This time limit shall last at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of tenders. If necessary, the contracting authority/entity shall correct other information which is needed due to the change of the time limit for the receipt of tenders. An appeal cannot be lodged against the correction of the invitation to tender and the tender documents.

(3) If State Commission accepts the appeal referred to in paragraph 1 of this Article, the contracting authority/entity shall depending on the content of the State Commission decision and taking into account the explanation of the State Commission decision:

1. carry out new public procurement procedure, or
2. proceed with the public procurement procedure.

(4) In case referred to in paragraph 3 point 2 of this Article contracting authority/entity shall send to the selected candidates new invitation to tender in which it stipulates new time limit for receipt of tenders which shall last at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of tenders and the modification of the tender documents in that part which is covered by illegality.

(5) If before the time limit initially stipulated for the receipt of tenders and during the appeal procedure in cases referred to in paragraphs 1 to 4 of this Article, any tender is received, the contracting authority/entity shall immediately return the received tender to the economic operator unopened, together with a notification that the appellate procedure is under way, and that it might specify an additional time limit for the submission of tenders, depending on the outcome of the appellate procedure.

(6) Where an appeal has been lodged in restricted procedure, negotiated procedure with prior publication and competitive dialogue pursuant to Article 147 paragraph 1 point 2 of this Act, the contracting authority/entity shall immediately after the receipt of a copy of the appeal, publish, in the same manner and at the same Internet address as original tender documents, information that an appeal has been lodged and that the procedure is suspended.

(7) If State Commission dismisses or rejects the appeal referred to in paragraph 6 of this Article or discontinue the appeal procedure, the contracting authority/entity is obliged to publish a correction of the contract notice and, if necessary, tender documents in which it stipulates new time limit for the receipt of requests to participate. The duration of such time limit shall be last at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of requests to participate. If necessary, the contracting authority/entity shall correct other information which is needed due to the change of the time limit for the receipt of requests to participate. An appeal cannot be lodged against the correction of the contract notice and the tender documents

(8) If State Commission accepts the appeal referred to in paragraph 6 of this Article, the contracting authority/entity shall depending on the content of the State Commission decision and taking into account the explanation of the State Commission decision:

1. carry out new public procurement procedure, or
2. proceed with the public procurement procedure.

(9) In case referred to in paragraph 2 point 8 of this Article contracting authority/entity is obliged to publish a correction of the contract notice and modification of documents in that part which is covered by illegality and stipulate new time limit for receipt of requests to participate which shall last at least as many number of days which remained from the day of lodging an appeal to the expiry of initially stipulated time limit for receipt of requests to participate.

(10) If before the time limit initially stipulated for the receipt of requests to participate and during the appeal procedure in cases referred to in paragraphs 6 to 9 of this Article, any request to participate is received, the contracting authority/entity shall immediately return the received request to participate to the economic operator unopened, together with a notification that the appellate procedure is under way, and that it might specify an additional time limit for the submission of tenders, depending on the outcome of the appellate procedure.

(11) By way of derogation from paragraphs 1 and 6 of this Article, in the event where a copy of the lodged appeal against the tender documents or modifications to the tender documents was received by the contracting authority/entity after the expiry of the period of 15 days in the public procurement procedure of high-value, or 10 days on the public procurement procedure of lesser value from the day from which the time limit to lodge an appeal starts pursuant to Article 147 of this Act, the contracting authority/entity may continue with the procurement procedure, but it must not adopt the award decision or the cancellation decision before the receipt of a decision from the State Commission.

(12) In the event referred to in paragraph 11 of this Article, if the State Commission adopts the appeal, the contracting authority/entity shall act in accordance with paragraph 3 point 1 or paragraph 8 point 1 of this Article.

TITLE III

CONTENT AND EFFECT OF APPEALS

Content of appeals

Article 159

(1) The appeal shall include the following information and evidence:

1. information on the appellant (first and last name, address of habitual residence – in the case of a natural person – citizen, company name, address of registered office – in the case of legal and natural person, or the relevant information about any entity forming a part of a group of natural and/or legal persons),
2. information on the representative or agent, with enclosed power of attorney,
3. the name and registered office of the contracting authority/entity,
4. subject-matter of the appeal,
5. the number of publication,
6. grounds for the appeal (description or irregularities and explanation thereof),

7. evidence,
8. the claims of the appeal,
9. proof of payment of the fee for initiating the appellate procedure, except in the event referred to in Article 169 paragraph 6 of this Act.
10. the signature, or the signature and official stamp of the authorised person, with reference to first names and last names or the company name and authorised person, in print and in capital letters.

Procedure with irregular appeals

Article 160

- (1) If an appeal is incomprehensible or does not include all the information and evidence referred to in Article 159 of this Act, the State Commission shall warn the appellant thereof and set the time limit, which may not be longer than five days, in which the appellant shall remedy the defects, warning it about the legal consequences if it fails to do so in the fixed time limit.
- (2) If the defects of the appeal are not remedied in the fixed time limit, the appeal shall be dismissed as irregular.

Preventing continuation of public procurement procedures or awarding a public contract and a framework agreement

Article 161

- (1) An appeal lodged against the tender documents or modifications to the documents shall prevent continuation of the public procurement procedure for all groups of the subject-matter of procurement, if not laid down otherwise in this part of the Act. In the case of an appeal, the contracting authority/entity shall proceed in accordance with Articles 157 or 158 of this Act.
- (2) An appeal lodged against the award decision shall prevent the award of a public procurement contract or conclusion of a framework agreement.
- (3) If the subject-matter of procurement is subdivided into lots for which the submission of tenders is allowed, an appeal lodged against the award decision shall prevent the conclusion of a public procurement contract or conclusion of a framework agreement for that lot of the subject-matter of procurement against which the appeal has been lodged.
- (4) An appeal lodged against a prior notice of intention to award a contract shall prevent the award of a public procurement contract for all groups of the subject-matter of procurement.
- (5) In other cases the lodged appeal shall not prevent the continuation of public procurement procedures, the implementation of a new public procurement procedure, or the award of public procurement contracts or conclusion of framework agreements, except in the case where the State Commission grants the appellant's motion for interim measure.

Request for the approval of continuation of public procurement procedures and/or award of public contracts

Article 162

(1) In the case an appeal preventing the continuation of public procurement procedures or the award of public procurement contracts or conclusion of framework agreements, the contracting authority/entity may file a request for the approval of the continuation of the public procurement procedure, the award of the public procurement contract or conclusion of a framework agreement for the subject-matter or part of the subject-matter of procurement on account of possible damage which is disproportionately higher than the value of the subject-matter of procurement, protection of public interest, urgency of procurement, and due to potential threat to human life and health, or due to other serious risks or possible damage.

(2) In the request referred to in paragraph 1 of this Article, the contracting authority/entity shall prove or show that there are reasonable grounds to believe in the existence of circumstances on which the request is based.

(3) The request referred to in paragraph 1 of this Article may be filed until the adoption of a decision by the State Commission.

(4) The State Commission shall adopt a decision on the request referred to in paragraph 1 of this Article within a period of ten days from the receipt of the request or it shall postpone the adoption of the decision for justifiable reasons until a decision on the principal matter is adopted. A justified reason in this case shall be specifically explained in the decision on the principal matter.

(6) The State Commission shall adopt a decision on the request referred to in paragraph 1 of this Article taking account of all circumstances in the public procurement procedure concerned.

Interim measures

Article 163

(1) Along with the appeal, which shall not prevent continuation of the public procurement procedure, award of a public procurement contract or conclusion of the framework agreement, the appellant may file a motion for interim measures with the aim of correcting the alleged infringement of the Act in a timely manner or preventing damage.

(2) The subject of the motion for interim measures may be the prevention:

1. of the continuation of the public procurement procedure, or
2. of the adoption or implementation of a decision or an action taken by the contracting authority/entity, or
3. of the conclusion and/or execution of a public procurement contract or framework agreement
4. of recommencement of a new public procurement procedure for the same or similar subject-matter of procurement.

(3) In the motion for interim measure, the appellant must prove or show that there are reasonable grounds to believe that the circumstances on which it is basing its motion indeed exist.

(4) The State Commission shall pass a decision concerning the motion for interim measure within a period of ten days from the date of completing the case file. The file shall be deemed to be completed when it contains all the documents and evidence based on which, according to an evaluation by the State Commission, a valid decision can be adopted.

(5) The decision imposing an interim measure will also specify its duration.

(6) Taking into account the probable consequences of interim measure for all interested parties that are likely to be harmed from such interim measure, including public interest, the State Commission may decide not to grant interim measure when it evaluates that their negative consequences could exceed their benefits.

(7) If the appellant does not file a motion for interim measure together with the appeal or the State Commission does not grant an interim measure, the public procurement procedure concerned shall continue or the public contract or framework agreement may be awarded or executed.

(8) The motion for injunction filed contrary to paragraph 1 of this Article shall be dismissed.

TITLE IV

THE DECISION-MAKING PROCESS IN THE STATE COMMISSION

Deciding on appeals

Article 164

(1) In the appellate procedure the State commission may:

1. discontinue the procedure,
2. dismiss the appeal due to lack of jurisdiction, impermissibility, irregularity, untimeliness, lack of legal interest and due to the fact that it was lodged by an unauthorised person,
3. reject the appeal,
4. set aside a decision, procedure or action in the part which is unlawful, including discriminating technical, financial and other provisions in the contract notice, tender documents or other documents related to the public procurement procedure,
5. cancel the public procurement contract or framework agreement or a part thereof,
6. decide on the request for the compensation of costs of the appellate procedure,
7. decide on the motion for interim measure,
8. decide on the request for the continuation of the public procurement procedure or the award of a public procurement contract or framework agreement,

9. specify a fine.

(2) The State Commission shall decide on the principal matter by issuing a decision and in other cases by issuing a conclusion.

(3) The decision shall contain an explanation for adopting such a decision by the State Commission.

(4) The decision of the State Commission is enforceable.

The rights of parties in the appellate procedure

Article 165

(1) All parties in the appellate procedure shall be entitled to give statements concerning the claims and allegations of another party and to propose evidence.

(2) The State Commission shall submit to each party the motions received in the case, with regard to the principal matter or with regard to new facts and evidence.

(3) All parties shall be entitled to review the case file, save for that part which is pursuant to this Act and special regulations designated as confidential. The parties shall not copy, duplicate, reproduce and photograph the information contained in other tenders or other documents in the file. The parties may only record by hand the information contained in other tenders.

Oral hearing

Article 166

(1) The parties may propose an oral hearing and present reasons for such a hearing, in particular when the aim is to clarify a complex state of facts or a complex legal issue.

(2) The State Commission shall decide on the proposed oral hearing.

(3) The State Commission may decide by itself to hold an oral hearing where it establishes that it is necessary to clarify a complex state of facts or a complex legal issue.

(4) The progress of an oral hearing shall be recorded in the form of minutes.

(5) The oral hearing shall be open to the public, save where the public may be excluded for reasons connected with the keeping of a secret.

Cancellation of public procurement contract or framework agreement

Article 167

(1) In the appellate procedure the State Commission shall cancel a public procurement contract or framework agreement in full or in part if the contracting authority/entity has concluded:

1. a public procurement contract or framework agreement without conducting a prior public procurement procedure, without this being permissible in accordance with this Act,
2. a public procurement contract or framework agreement during the standstill period when it has to be applied,
3. a public procurement contract or framework agreement contrary to Article 161 of this Act,
4. a public procurement contract or a framework agreement contrary to Article 163 of this Act,
5. a public procurement contract based on a framework agreement contrary to Article 39 paragraphs 3 and 5 of this Act.

(2) Depending on the reason for the cancellation referred to in paragraph 1 of this Article, taking account of all relevant circumstances, including the seriousness of the violation of this Act and behaviour of the contracting authority/entity, the State Commission may cancel the public procurement contract or the framework agreement including all legal consequences thereof as of the moment it was concluded or it can cancel the contract or the framework agreement only relative to those contractual obligations which have not yet been fulfilled.

(3) The State Commission may adopt a decision whereby the concluded public procurement contract or framework agreement shall remain in force in full or in part even though it was concluded contrary to paragraph 1 of this Article if, after taking into consideration all relevant circumstances, it establishes that the overriding reasons relating to a general interest require the effects of the contract should be maintained.

(4) Economic interests may only be considered to be overriding within the meaning of paragraph 3 of this Article under exceptional circumstances when the cancellation of the contract would lead to disproportionate consequences.

(5) Economic interests directly linked to the public procurement contract concerned, such as the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new procurement procedure, the costs resulting from the change of the economic operator performing the contract and the costs of legal obligations resulting from the cancellation of a public procurement contract, shall not constitute overriding reasons related to a general interest.

Fines

Article 168

(1) If the State Commission in accordance with Article 167 paragraph 2 of this Act cancels the contract or framework agreement only in relation to those contractual obligations which have not yet been fulfilled, or it adopts a decision pursuant to Article 167 paragraph 3 of this Act, it shall pass a decision imposing a fine on the contracting authority/entity.

(2) If the State Commission rejects the motion for interim measure pursuant to Article 163 of this Act, or it approves the continuance of the public procurement procedure or award of the public procurement contract or conclusion of a framework agreement pursuant to Article 162 of this Act, then, depending on the decision in the principal matter, it may impose a fine on the contracting authority/entity.

(3) The decision will specify the amount of the fine and the time limit in which the contracting authority/entity must pay it. The fine shall be determined proportionally to the fulfilment of the cancelled public procurement contract, the remaining contractual obligations that have yet to be fulfilled, i.e. the entire contract the award or execution of which is approved, and it may be imposed to the amount from 10% to 20% of the value of contract.

(4) The fine specified under the provisions of this Article shall be paid into the account of the State budget of the Republic of Croatia.

The fee for initiating the appellate procedure

Article 169

(1) The appellant shall pay a fee for initiating the appellate procedure in the amount of:

1. HRK 3,000.00 for the estimated value of procurement up to HRK 500,000.00,
2. HRK 4,500.00 for the estimated value of procurement equal to or higher than 500,000.00 to HRK 1,000,000.00
3. HRK 9,000.00 for the estimated value of procurement equal to or higher than HRK 1,000,000.00 to 3,000,000.00
4. HRK 15,000.00 for the estimated value of procurement equal to or higher than HRK 3,000,000.00 to HRK 5,000,000.00
5. HRK 21,000.00 for the estimated value of procurement equal to or higher than HRK 5,000,000.00 to HRK 10,000,000.00
6. HRK 27,000.00 for the estimated value of procurement equal to or higher than HRK 10,000,000.00.

(2) If the estimated value of procurement is not known at the moment of lodging an appeal with the State Commission or it is not published, the fee for initiating the appellate procedure shall be paid in the amount of HRK 3,000.00. The State Commission shall invite the appellant to pay the fee difference in the fixed time limit if, during the appellate procedure, it is established that the amount of the fee paid was too low.

(3) When the appeal is lodged against the award decision or cancellation decision for one or several lots of the subject-matter of procurement, the fee shall amount to one third of the amounts referred to in paragraph 1 of this Article per the respective lot of the subject-matter of procurement, but in total not exceeding the amounts referred to in paragraph 1 of this Article.

(4) If no proof of payment of the stipulated fee for initiating the appellate procedure is presented with the appeal, the State Commission shall invite the appellant to pay the fee for initiating the appellate procedure within a time limit which shall not be longer than five days.

(5) If the appellant fails to pay the fee for initiating the appellate procedure in accordance with the invitation from the State Commission referred to in paragraph 4 of this Article and fails to present the proof of payment of the fee in the fixed time limit, the appeal shall be dismissed as irregular.

(6) The bodies referred to in Article 141 paragraph 2 of this Act shall be exempt from the payment of the fee for initiating the appellate procedure.

(7) The fee for initiating the appellate procedure shall be paid into the account of the State budget of the Republic of Croatia.

Costs of the appellate procedure

Article 170

(1) All parties in the appellate procedure shall bear the costs incurred by their actions in advance.

(2) The State Commission shall decide on the costs of an appellate procedure, determine who shall bear the costs of the procedure and the amount thereof, and to whom and by when they must be paid.

(3) The party at whose detriment the procedure was terminated, shall reimburse the other party for all justified costs incurred by its participation in the appellate procedure.

(4) If an appeal is withdrawn, rejected or dismissed, the appellant shall not be entitled to the reimbursement of costs of the appellate procedure.

(5) If an appeal is partially accepted, the State Commission may decide that each party shall bear its respective costs, that the costs of the appellate procedure shall be split into equal parts or that they shall be divided proportionally to the acceptance of the appeal.

(6) If the appeal is accepted, the State Commission shall pass a decision ordering the contracting authority/entity to reimburse the costs of the appellate procedure to the appellant within a period of 8 days from the date of the receipt of the decision by the State Commission.

(7) The appeal may include the request for reimbursement of costs of the appellate procedure, which shall be specified and submitted to the State Commission before the decision is adopted.

Decision-making and delivery of decisions

Article 171

(1) In appellate procedures, the State Commission shall adopt decisions at meetings.

(2) The meetings of the State Commission shall not be open to the public, unless provided for otherwise in this Act.

(3) The State Commission shall pass its decision within a period of 30 days from the date on which the case file was completed.

(4) State Commission shall deliver its decisions by publication on the State Commission Internet address.

(5) The delivery is considered to be executed after the expiry of the period of eight days from the day of publication.

(6) Exceptionally, if it determines there are justified reasons for it, the State Commission shall send a written decision by registered mail or by other traceable means.

Recusal

Article 172

(1) The president, deputy or member of the State Commission shall be recused from working on a particular case:

1. if its a party, legal representative, attorney of a party or has a business relationship with the party,
2. if the party or its legal representative is a relative, spouse or related to it by marriage,
3. if there are other circumstances due to which its impartiality might be questioned.

(2) As soon as a reason for recusal becomes known, the member of the State Commission shall be recused and notify the president thereof or, in the event of recusal of the president, other members.

(3) Parties are entitled to file a motion for the recusal of the president, deputy and members of the State Commission.

(4) A party's motion for recusal of the members or deputy president of the State Commission shall be decided on by the president of the State Commission, and a motion for recusal of the president shall be decided on by its deputy and other members at the meeting.

TITLE V

COURT PROTECTION AND CIVIL LAW PROVISIONS

Court protection

Article 173

An administrative dispute against a decision of the State Commission may be initiated before a competent administrative court.

Procedures further to complaints

Article 174

Procedures further to administrative complaints in cases concerning public procurement shall be urgent.

Indemnification

Article 175

Any person who has suffered damage due to violations of this Act shall have the possibility of awarding damages before the competent court under the general indemnification regulations.

Nullity of a contract

Article 176

A public contract shall be null and void if awarded contrary to the provision of Article 13 of this Act.

PART 5

CENTRAL STATE ADMINISTRATION BODY RESPONSIBLE FOR THE PUBLIC PROCUREMENT SYSTEM

Central state administration body responsible for the public procurement system

Article 177

The central state administration body responsible for the public procurement system shall be responsible:

- for the development, improvement and coordination of the entire public procurement system;
- proposals, preparation and coordination of the preparation of draft proposals of laws and other regulations on public procurement and participation in the preparation of the related regulations;
- control of the implementation of this Act and implementing regulations to this Act and filing requests for the initiation of misdemeanour procedures;
- provision of professional assistance regarding the application of this Act and other regulations in the field of public procurement through issuing opinions, instructions, drawing up of manuals, other expert publications and standard forms, and maintenance of the Public Procurement Portal;
- preparation and implementation of training programmes in the field of public procurement;
- monitoring of the Electronic Public Procurement Classifieds of the Republic of Croatia and collection, recording, processing and analysing data on public procurement and delivery of statistical reports;
- development of expert and normative bases for the integration of the Republic of Croatia to the European Union in the field of public procurement;

- cooperation with the state bodies of the Republic of Croatia with a view of achieving uniform interpretation and correct application of the regulations in the field of public procurement;
- international cooperation and promotion of values of the public procurement system, and
- other tasks established in this Act.

Preparation and implementation of training in the field of public procurement

Article 178

- (1) The central state administration body responsible for the public procurement system is responsible for the preparation and implementation of training programmes in the field of public procurement.
- (2) The central state administration body responsible for the public procurement system shall issue certificates in the field of public procurement.
- (3) The manner of preparation and implementation of training in the field of public procurement, and the conditions for issuing and renewing the certificates in the field of public procurement shall be set out by the minister responsible for the economy in the Ordinance on the training in the field of public procurement.

Control over the implementation of this Act

Article 179

- (1) With the aim of preventing or remedying any irregularities which could result or have resulted from the violations of this Act and subordinate regulations in the field of public procurement, the central state administration body responsible for the public procurement system shall carry out the control.
- (2) After the carried out control, the central state administration body responsible for the public procurement system shall issue to the contracting authority/entity and the proponent of control an opinion concerning the irregularities observed and a recommendation on how to prevent or rectify such irregularities.
- (3) If, during the control, the central state administration body responsible for the public procurement system establishes one or more irregularities with the features of a misdemeanour offence referred to in Article 182 of this Act, it shall instigate a misdemeanour procedure against the contracting authority/entity before the competent misdemeanour court.
- (4) Control shall not be implemented if a candidate or tenderer seeking control in the procurement procedure concerned lodged an appeal with the State Commission for Supervision of Public Procurement Procedures, or they failed to do so in the set out time limit.
- (5) The powers of the central state administration body responsible for the public procurement system, the method of operation and other relevant issues concerning control, shall be set out by the Government of the Republic of Croatia in the Regulation on control over the implementation of the Public Procurement Act.

Obligation to submit documents

Article 180

- (1) The contracting authority/entity shall submit to the central state administration body responsible for the public procurement system, at its request and in the set time limit, all the documents concerning the procedures and public procurement contracts pursuant to this Act.
- (2) The contracting authority/entity shall submit to the European Commission, at its request and in the set time limit, all the documents concerning the procedures and public procurement contracts pursuant to this Act.
- (3) The documents referred to in paragraphs 1 and 2 of this Article shall relate to each public procurement procedure, qualification system, design contest, awarded contract, framework agreement, or cancellation of a public procurement procedure.

Statistical reports on public procurement

Article 181

- (1) The central state administration body responsible for the public procurement system shall not later than 31 October each year forward to the European Commission a statistical report on public procurement separately addressing public supply contracts, public service contracts and public works contracts awarded by contracting authorities/entities during the preceding year.
- (2) Contracting authorities/entities shall by 31 March each year prepare a report on public procurement for the preceding year.
- (3) For each contracting authority/entity, the statistical report shall detail at least:
 1. the number and value of awarded public procurement contracts pursuant to this Act,
 2. the number and total value of contracts awarded pursuant to derogations to the Agreement on Government Procurement (GPA).
- (4) The data referred to in paragraph 3 point 1 of this Article shall be broken down by:
 1. type of public procurement procedures used,
 2. for each of these procedures, works as given in Annex I to this Act, and products and services as given in Annex II to this Act identified by category of the CPV nomenclature, and
 3. country of establishment of the economic operator to which the contract was awarded.
- (5) Where the negotiated procedures have been used, the data referred to in paragraph 3 point 1 of this Article shall be broken down according to the conditions of this Act justifying the choice of the negotiated procedure with prior publication and negotiated procedure without prior publication, and shall specify the number and value of contracts awarded to the tenderers from third countries.

(6) The information contained in this Article for contracting entities shall be broken down by the:

1. contracting entities in the sectors of production, transport or distribution of gas or heat,
2. contracting entities in the sectors of production, transport or distribution of electricity,
3. contracting entities in the sectors of production, transport or distribution of drinking water,
4. contracting entities in the field of rail services,
5. contracting entities in the field of urban railway, tramway, trolleybus or bus services,
6. contracting entities in the postal services sector,
7. contracting entities in the sectors of exploration for and extraction of oil or gas,
8. contracting entities in the sectors of exploration for and extraction of coal and other solid fuels,
9. contracting entities in the field of maritime or inland port or other terminal facilities,
10. contracting entities in the field of airport installations.

(7) The statistical report shall contain any other statistical information required under the Agreement on Government Procurement (GPA).

(8) By the end of each current year, the central state administration body responsible for the public procurement system shall post on its Internet page the instruction on the content and method of submitting public procurement reports for the preceding year.

PART 6

MISDEMEANOUR OFFENCES PROVISIONS

Misdemeanour offences provisions

Article 182

(1) Any legal person or unit of local and regional self-government shall be fined in an amount from HRK 50,000.00 to HRK 1,000,000.00 for a misdemeanour if:

1. they procure supplies, works or services without a public procurement procedure laid down in this Act, save in cases permitted by the Act,
2. they award a public procurement contract contrary to the provision of Article 13 of this Act,
3. they subdivide the value of works or certain quantity of supplies and/or services with the intention to prevent its coming within the scope of this Act or the rules applicable according to the estimated value of procurement (Article 18 paragraph 10),

4. they fail to submit, immediately after publication, to the central state administration body competent for the public procurement system information concerning the website on which the procurement plan is published and any subsequent changes to the information (Article 20 paragraph 6) or fail to submit its procurement plan and any changes thereto to by electronic means (Article 20 paragraph 7),
 5. they fail to submit, after the first publication of the register of public procurement contracts and framework agreements, to the central state administration body competent for the public procurement system data concerning the website on which the register is published and any subsequent changes to the data (Article 21 paragraph 5), or fail to submit, at six-month intervals the updated registers of public procurement contracts and framework agreements by electronic means (Article 21 paragraph 6),
 6. if in the preparation and implementation of the public procurement procedure at least one authorised representative of the contracting authority/entity does not hold a valid certificate in the field of public procurement (Article 24 paragraph 2),
 7. they use the negotiated public procurement procedure without prior publication contrary to the provisions of Articles 26, 27, 28 or 117 of this Act,
 8. they award a public procurement contract or conclude a framework agreement with the tenderer who must have been excluded from the public procurement procedure or whose tender they were obligated to reject based on the results of the examination and evaluation of tenders,
 9. they fail to send for publication the contract award notice or the notice on the results of the design contest (Article 60 and Article 125),
 10. after the expiry of the period for the adoption of the award decisions and contrary to the written request of the economic operator, the procedure is not concluded in the manner prescribed by the Act,
 11. they conclude a public procurement contract or a framework agreement which is not in line with the conditions stipulated in the tender documents and the chosen tender (Article 105 paragraph 1),
 12. they authorise a person who is not a contracting authority/entity within the meaning of this Act to conduct the procurement procedure in order to avoid the application of this Act,
 13. at the request and in the time limit set by the central state administration body responsible for the public procurement system or the European Commission, they fail to submit the requested documents concerning the procedures and public procurement contracts pursuant to this Act (Article 180),
 14. at the request of the State Commission for the supervision of the public procurement procedures in set time limit fail to submit requested documents concerning the procedures and public procurement contracts pursuant to this Act,
 15. they act contrary to or do not comply with a decision issued by the State Commission for the Supervision of Public Procurement Procedure.
- (2) The responsible person in the legal person or the responsible person in the state body or in the unit of local and regional self-government shall be fined for the misdemeanour

referred to in paragraph 1 of this Article in an amount from HRK 10,000.00 to HRK 100,000.00.

Statute of limitations

Article 183

(1) The misdemeanour proceedings for misdemeanours laid down in this Act may not be instituted after the expiry of three years from the date on which the misdemeanour was committed.

(2) The statute of limitations shall take effect on the expiry of a period twice as long as the period after the date on which misdemeanour was committed referred to in paragraph 1 of this Article.

PART 7

TRANSITIONAL AND FINAL PROVISIONS

Article 184

(1) The Government of the Republic of Croatia shall adopt the regulation referred to in Article 11, paragraph 4 of this Act within a period of six months from the entry into force of this Act.

(2) The Government of the Republic of Croatia shall adopt the regulation referred to in Article 18, paragraph 12, Article 55, paragraph 5 and Article 122, paragraph 6 of this Act within a period of six months from the entry into force of this Act.

(3) The Government of the Republic of Croatia shall adopt the regulation referred to in Article 32, paragraph 5, Article 33, paragraph 5, Article 34, paragraph 5, Article 37, paragraph 9, Article 54, paragraph 7, Article 69, paragraph 4, Article 78, paragraph 7, Article 87, paragraph 6, Article 89, paragraph 8 and Article 90, paragraph 5 of this Act within a period of six months from the entry into force of this Act.

(4) The Government of the Republic of Croatia shall adopt the regulation referred to in Article 179, paragraph 5 of this Act within a period of six months from the entry into force of this Act

Article 185

(1) The minister responsible for the economy shall adopt the ordinance referred to in Article 5, paragraph 2, and Article 6, paragraph 3 of this Act within a period of six months from the date of entry into force of this Act.

(2) The minister responsible for the economy shall adopt the ordinance referred to in Article 57, paragraph 2 of this Act within a period of six months from the date of entry into force of this Act.

(3) The minister responsible for the economy shall adopt the ordinance referred to in Article 178, paragraph 3 of this Act within a period of six months from the date of entry into force of this Act.

(4) The minister responsible for foreign affairs shall adopt the ordinance referred to in Article 12, paragraph 2 of this Act within a period of six months from the date of entry into force of this Act.

Article 186

Public procurement procedures launched before the entry into force of this Act in which public procurement contracts or framework agreements have not been awarded yet or which are the subject of court or other procedures, shall be concluded pursuant the provisions of the Public Procurement Act which was in force at the time the procurement procedure began.

Article 187

The following shall cease to be valid on the date of entry into force of this Act:

- the Public Procurement Act (Official Gazette 110/07 and 125/08),
- the Regulation on the List of Entities Bound by the Public Procurement Act (Official Gazette 83/09),
- the Regulation on public procurement notices and records (Official Gazette 13/08, 77/08, 04/09 and 52/10),
- the Regulation on the conditions for applying the Common Procurement Vocabulary (CPV) (Official Gazette 13/08),
- the Regulation on the methodology for drawing up and handling tender documents and tenders (Official Gazette 13/08 and 4/09),
- the Regulation on the format, methods and conditions of training in the public procurement system (Official Gazette 43/09),
- the Regulation on the implementation of control through the activities of prevention and instruction (Official Gazette 97/09),
- the Regulation on the content and the method of forwarding public procurement reports (Official Gazette 14/08 and 4/09),
- the Regulation on procurement for defence and security purposes (Official Gazette 14/10),
- the Ordinance on public procurement for purposes of diplomatic missions and consular offices of the Republic of Croatia abroad (Official Gazette 52/10),
- Article 16 paragraph 3 points a) and b), Article 16 paragraph 5 and Annex V if the Concessions Act (Official Gazette 12/08),

– the title of the Article 15 and Article 15 of the Act of the State Commission for the Supervision of the Public Procurement Procedures (Official Gazette 21/10).

Article 188

This Act shall be published in the Official Gazette and enter into force on 1 January 2012, save for the provisions of Article 10 paragraph 3, Article 67 paragraph 8, Article 68 paragraph 8, Article 91 paragraph 6, Article 114, Article 115 paragraph 6, Article 123 paragraph 7, Article 136, Article 137, Article 180 paragraph 2 and Article 181 paragraph 1 of this Act, which shall enter into force on the day of accession of the Republic of Croatia to the European Union.

Class: 330-01/11-01/01

Zagreb, 15 July 2011

The Croatian parliament

The President of the Croatian Parliament

Luka Bebić, m.p.

ANNEX I

LIST OF ACTIVITIES IN CONSTRUCTION ¹

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites. This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000

¹ In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of all types of buildings construction of civil engineering constructions, — bridges, including those for elevated highways, viaducts, tunnels and subways, — long-distance pipelines, communication and power lines, — urban pipelines, urban communication and power lines, — ancillary urban works, — assembly and erection of prefabricated constructions on the site. <p>This class excludes:</p> <ul style="list-style-type: none"> — service activities incidental to oil and gas extraction, see 11.20, — erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, — building installation, see 45.3, — building completion, see 45.4, — architectural and engineering activities, see 74.20, — project management for construction, see 74.20. 	<p>45210000</p> <p>Except:</p> <p>-45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> — erection of roofs, — roof covering, 	45261000

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				— waterproofing.	
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of highways, streets, roads, other vehicular and pedestrian ways, — construction of railways, — construction of airfield runways, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, — painting of markings on road surfaces and car parks. <p>This class excludes:</p> <ul style="list-style-type: none"> — preliminary earth moving, see 45.11. 	45212212 and DA03 45230000 Except: - 45231000 45232000 45234115
		45.24	Construction of water projects	<p>This class includes</p> <ul style="list-style-type: none"> — construction of: — waterways, harbour and river works, pleasure ports (marinas), locks, etc., — dams and dykes, — dredging, — subsurface work. 	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> — construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, — construction of foundations, including pile driving, — water well drilling and construction, shaft sinking, — erection of non-self-manufactured steel elements, — steel bending, — bricklaying and stone setting, — scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, — erection of chimneys and industrial ovens. 	45250000 45262000

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				This class excludes: — renting of scaffolds without erection and dismantling, see 71.32	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: — electrical wiring and fittings, — telecommunications systems, — electrical heating systems, — residential antennas and aerials, — fire alarms, — burglar alarm systems, — lifts and escalators, — lightning conductors, etc.	45213316 45310000 Except: -45316000
		45.32	Insulation work activities	This class includes: — installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: — waterproofing, see 45.22.	45320000
		45.33	Plumbing	This class includes: — installation in buildings or other construction projects of: — plumbing and sanitary equipment, — gas fittings, — heating, ventilation, refrigeration or air-conditioning equipment and ducts, — sprinkler systems. This class excludes: — installation of electrical heating systems, see 45.31.	45330000
		45.34	Other building installation	This class includes: — installation of illumination and signalling systems for roads, railways, airports and	45234115 45316000

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				harbours, — installation in buildings or other construction projects of fittings and fixtures n.e.c.	45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: — application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: — installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, — interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: — laying of parquet and other wood floor coverings, see 45.43.	45420000
		45.43	Floor and wall covering	This class includes: — laying, tiling, hanging or fitting in buildings or other construction projects of: — ceramic, concrete or cut stone wall or floor tiles, — parquet and other wood floor coverings carpets and linoleum floor coverings, — including of rubber or plastic, — terrazzo, marble, granite or slate floor or wall coverings, — wallpaper.	45430000
		45.44	Painting and glazing	This class includes: — interior and exterior painting of buildings, — painting of civil engineering structures, — installation of glass, mirrors, etc. This class excludes:	45440000

NACE					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				— installation of windows, see 45.42.	
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> — installation of private swimming pools, — steam cleaning, sand blasting and similar activities for building exteriors, — other building completion and finishing work n.e.c. <p>This class excludes:</p> <ul style="list-style-type: none"> — interior cleaning of buildings and other structures, see 74.70. 	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <ul style="list-style-type: none"> — renting of construction or demolition machinery and equipment without operators, see 71.32. 	45500000

ANNEX II

LIST OF SERVICES II A and II B

Annex II A

Category No	Subject	CPC ² Reference No	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1
2	Land transport services ³ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9
4	Transport of mail by land ⁴ and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: (a) Insurance services (b) Banking and investment services ⁵	ex 81, 812, 814	From 66100000-1 to 66720000-3
7	Computer and related	84	From 50310000-1 to 50324200-4

² CPC – Provisional Central Product Classification of the United Nations. In the event of any difference between the CPV and the CPC, the CPC nomenclature will apply.

³ Except for rail transport services covered by category 18.

⁴ Except for rail transport services covered by category 18..

⁵ Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded: services involving the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act.

Category No	Subject	CPC² Reference No	CPV Reference No
	services		from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services ⁶	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 polling services	864	From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6
11	Management consulting services ⁷ and related services	865, 866	From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 71000000-8 to 71900000-7 (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	874, 82201 to 82206	From 70300000-4 to 70340000-6, and

⁶ Research and development services where the benefits accrue exclusively to the contracting authority/entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority/entity. To other research and development services this Act shall not apply.

⁷ Except arbitration and conciliation services.

Category No	Subject	CPC² Reference No	CPV Reference No
	services		from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6, and from 79970000-4 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0

Annex II B

Category No	Subject	CPC ⁸ Reference No	CPV Reference No
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (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 ⁹	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 armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 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	Recreational, cultural and sporting services ¹⁰	96	From 79995000-5 to 79995200-7, and from

⁸ CPC – Provisional Central Product Classification of the United Nations. In the event of any difference between the CPV and the CPC, the CPC nomenclature will apply.

⁹ Except employment contracts.

¹⁰ Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

			92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	Other services ¹¹		

¹¹ Services which are not listed in Annex II A and nor in Annex II B to this Act shall be considered services within the meaning of Annex II B to this Act.

ANNEX III

LIST OF MILITARY EQUIPMENT

1. Portable and automatic firearms, such as rifles, carbines, revolvers, pistols, sub-machine guns and machine guns, except for hunting weapons, pistols and other low calibre weapons of the calibre less than 7mm.
2. Artillery and smoke, gas and flame-throwing weapons, such as:
 - a) cannon, howitzers, mortars, artillery, anti-tank guns, rocket launchers, flame-throwers, recoilless guns;
 - b) military smoke and gas guns.
3. Ammunition for the weapons listed in points 1 and 2 of this List.
4. Bombs, torpedoes, rockets and guided missiles:
 - a) bombs, torpedoes, grenades, including smoke grenades, smoke bombs, rockets, mines, guided missiles, underwater grenades, incendiary bombs;
 - b) military apparatus and components specially designed for the handling, assembly, dismantling, firing or detection of the articles under a).
5. Military fire control equipment:
 - a) firing computers and guidance systems in infra-red and other night guidance devices;
 - b) telemeters, position indicators, altimeters;
 - c) electronic tracking components (gyroscopic, optical and acoustic);
 - d) bomb sights and gun sights, periscopes for the equipment specified in this List.
6. Tanks and specialist fighting vehicles:
 - a) tanks;
 - b) military type vehicles, armed or armoured, including amphibious vehicles;
 - c) armoured cars;
 - d) half-tracked military vehicles;
 - e) military vehicles with tank bodies;
 - f) trailers specially designed for the transportation of the ammunition specified in points 3 and 4 of this List.
7. Toxic or radioactive agents:
 - a) toxic, biological or chemical agents and radioactive agents adapted for destructive use in war against persons, animals or crops;

b) military apparatus for the propagation, detection and identification of substances listed under a);

c) counter-measures material for items listed under a).

8. Powders, explosives and liquid or solid propellants:

a) powders and liquid or solid propellants specially designed and constructed for use with the material listed under points 3, 4 and 7 of this List;

b) military explosives;

c) incendiary and freezing agents for military use.

9. Warships ships and their specialist equipment:

a) ships of all kinds for military purposes;

b) equipment specially designed for laying, detecting and sweeping mines;

c) underwater cables.

10. Aircrafts, helicopters and equipment for military use.

11. Military electronic equipment

12. Camera equipment specially designed for military use.

13. Other equipment and material.

14. Specialised parts and items of material included in this List insofar as they are of a military nature.

15. Machines, equipment and items exclusively designed for the study, manufacture, testing and control of arms, munitions and apparatus of an exclusively military nature included in this List.

ANNEX IV

TECHNICAL SPECIFICATION

For the purpose of this Act:

1. (a) *technical specification in the case of public works contracts*, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) *technical specification in the case of public supply or service contracts*, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;

2. *standard* means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

– *international standard*: a standard adapted by an international standards organisation and made available to the general public,

– *European standard*: a standard adopted by a European standards organisation and made available to the general public,

– *national standard*: a standard adopted by a national standards organisation and made available to the general public;

3. *European technical approval* means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;

4. *Common technical specification* means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Union;

5. *technical reference* means any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs.

ANNEX V
INFORMATION TO BE INCLUDED IN PUBLIC PROCUREMENT NOTICES

ANNEX V A

NOTICE OF THE PUBLICATION OF A PRIOR (INFORMATION NOTICE) ON A BUYER
PROFILE

1. Country of the contracting authority.
2. Name of the contracting authority.
3. Internet address of the "buyer profile" (URL).
4. CPV Nomenclature reference No(s).

PRIOR (INFORMATION) NOTICE

1. The name, address, telephone number, fax number and email address of the contracting authority and, if different, of the service from which additional information may be obtained and, in the case of services and works contracts, of the services, e.g. the relevant governmental internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed. Activity of the contracting authority.

2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

3. In the case of public works contracts: the nature and extent of the works and the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference No(s).

In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference No(s).

In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts by category.

5. Where appropriate, indicate whether a framework agreement is involved.

6. Where appropriate, other information.

7. Date of dispatch of the notice or of dispatch of the notice of the publication of the prior (information) notice on the buyer profile.

8. Indicate whether the contract is covered by the Agreement on Government Procurement (GPA).

ANNEX V B

NOTICE OF THE PUBLICATION OF A PRIOR (INDICATIVE) NOTICE ON A BUYER PROFILE NOT USED AS A MEANS OF CALL FOR COMPETITION

1. Country of the contracting entity.
2. Name of the contracting entity.
3. Internet address of the 'buyer profile' (URL).
4. CPV Nomenclature reference No(s).

PRIOR (INDICATIVE) NOTICE

I. HEADINGS TO BE COMPLETED IN ALL CASES

1. Name, address, electronic address, telephone number and fax number of the contracting entity or the service from which additional information may be obtained and the activity of the contracting entity.

2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).

(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).

(c) For service contracts: intended total procurement in each of the service categories listed in Annex II A (nomenclature reference No(s)).

3. Date of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.

4. Date of receipt of the notice by the Electronic Public Procurement Classifieds of the Republic of Croatia, or Office for Official Publications of the European Communities (to be supplied by those Offices).

5. Any other relevant information.

II. INFORMATION WHICH SHOULD BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS THE REDUCTION OF THE TIME LIMITS FOR THE RECEIPT OF TENDERS

6. A reference to the fact that interested suppliers should advise the contracting entity of their interest in the contract or contracts in writing.

7. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

8. Time limit for the receipt of applications for an invitation to tender or to negotiate.

9. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex II A and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.

10. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.

11. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

12. Address to which interested undertakings should send their expressions of interest in writing.

Time limit for receipt of expressions of interest.

Language or languages authorised for the presentation of candidatures or tenders.

13. Reasons for exclusion, legal and business capacity, financial and technical and professional ability, and financial guarantees and information required of suppliers.

14. (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known);

(b) Type of award procedure (restricted or negotiated);

15. Where appropriate, particular conditions to which performance of the contract is subject.

16. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

17. Where known, award criteria: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Article 126 paragraph 2 or in the invitation tender or to negotiate.

ANNEX V C

CONTRACT NOTICE

Open and restricted procedure, negotiated procedure with prior publication, competitive dialogue:

1. Name, address, telephone number, fax number and email address of the contracting authority/entity, and the activity of the contracting authority/entity.

2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

3. (a) The award procedure chosen;

(b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedure with prior publication);

(c) Where appropriate, indicate whether a framework agreement is involved;

(d) Where appropriate, the holding of an electronic auction (in the event of open, restricted or negotiated procedure with prior publication, in the situation covered by Article 40 paragraph 1 or Article 116 paragraph 4).

4. Form of the contract.

5. Place of execution/performance of the works, for delivery of products or of the provision of services.

6. Estimated value of procurement.

7. (a) Public works contracts:

— nature and extent of the works and general nature of the work. Indication in particular of options concerning supplementary works, and, if known, the provisional timetable for recourse to these options as well as the number of possible renewals, if any. If the work or the contract is subdivided into several lots, the size of the different lots. Nomenclature reference number(s),

— information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,

— in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.

(b) Public supply contracts:

— nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these, nomenclature reference number. Quantity of products to be supplied, indicating in

particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. Nomenclature reference number(s),

— in the case of regular or renewable contracts during the course of a given period, indicate also, if known, the timetable for subsequent contracts for purchase of intended supplies,

— in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.

(c) Public service contracts:

— category and description of service. Nomenclature reference number(s). Quantity of services to be provided. Indicate in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. In the case of renewable contracts over a given period, an estimate of the time frame, if known, for subsequent contracts for purchase of intended services;

— in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,

— indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession. Reference to the law, regulation or administrative provision.

— indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.

8. If the contracts are subdivided into lots, indication of the possibility of tendering for one, for several or for all the lots.

9. Any time limit for completion of works/supplies/services or duration of the works/supply/services contract; where possible any time limit by which works will begin or any time limit by which delivery of supplies or services will begin.

10. Admission or prohibition of alternative tenders (*variants*).

11. Where applicable particular conditions to which the performance of the contract is subject.

12. In the case of open procedures tender documents and any supplementary documents shall be unrestricted and fully accessible by electronic means in the Electronic Public Procurement Classifieds of the Republic of Croatia, the contract notice shall indicate the internet address at which this documentation is accessible.

13. (a) Time limit for receipt of tenders (open procedure);

(b) time limit for receipt of request to participate (restricted and negotiated procedure with prior publication);

- (c) address where these have to be submitted;
- (d) the language or languages in which they must be drawn up.
- (e) date for dispatch of invitations to tender to negotiate or to participate in the dialogue, if known (restricted, negotiated procedure with prior publication, competitive dialogue).
14. In the case of open procedures date, time and place for public opening of tenders.
15. Where appropriate any deposit and guarantees required.
16. Main terms concerning financing and payment and/or references to the texts in which these are contained.
17. Where applicable, the legal form to be taken by the group of economic operators to whom the contract is to be awarded.
18. Reasons for exclusion of economic operators from public procurement procedure, and required information proving that they do not fall within the cases leading to exclusion. Selection criteria and information concerning the economic operators' suitability. If applicable, minimum levels of financial and technical standards required of the economic operator.
19. If, as of the date of publication of the contract notice, the contracting authority/entity offers unrestricted and full access by electronic means to the tender documents and any supplementary documents relating to the procedure, the information referred to in point 18 does not need to appear in the contract notice, and the reference to those documents shall suffice.
20. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding two or four years.
21. In the case of a competitive dialogue or a negotiated procedure with the prior publication, indicate, if appropriate, recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.
22. In the case of a restricted procedure, a competitive dialogue or a negotiated procedure with prior the publication, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria or rules to be used to choose that number of candidates.
23. Time frame during which the tenderer must maintain its tender (open procedures).
24. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures with prior publication).
25. Award criteria: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

26. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

27. Date(s) of publication of the prior (information) or (indicative) notice in accordance with the technical specifications of publication indicated in Annex VI or statement that no such publication was made.

28. Date of dispatch of the notice.

29. Indicate whether the contract is covered by the GPA.

ANNEX V D

CONTRACT AWARD NOTICE – CONTRACTING AUTHORITY

1. Name and address of the contracting authority, and the activity of the contracting authority.

2. Award procedures chosen.

3. Indication whether the framework agreement is concluded.

4. Estimated value of procurement.

5. Public works contracts: nature and extent of the contract, general characteristics of the work.

Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.

Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.

6. Date of contract award.

7. Contract award criteria.

8. Number of tenders received.

9. Name and address of the successful economic operators.

10. Price or range of prices (minimum/maximum) paid.

11. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.

12. Where appropriate, value and proportion of contract to be subcontracted to third parties.

13. In the case of award of public contracts in negotiated procedure without prior publication, public service contracts from Annex II B to this Act, or where appropriate,

contracts excluded from the application of this Act indication of the relevant provisions of the Act pursuant to which they were awarded.

14. Justification of the contracting authority for the award of contract without prior publication of the contract notice

a) in the case of negotiated procedure without prior publication, justification of the special cases and circumstances which justify they use.

b) in the case of award of public service contracts from Annex II B to this Act, justification for such award

c) where appropriate, justification of award of the contract excluded from the scope of the Act.

15. Date of publication of the contract notice in accordance with the specifications for publication in Annex VI.

16. Date of dispatch of the notice.

17. In the case of award of public service contracts from Annex II B to this Act, an indication of the contracting authority whether it agrees with its publication.

18. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

ANNEX V E

CONTRACT AWARD NOTICE – CONTRACTING ENTITY

1. Information for publication

1. Name, address and the activity of the contracting entity.

2. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).

3. At least a summary indication of the nature and quantity of the products, works or services provided.

4. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic (indicative) notice; contract notice);

(b) Reference of publication of the referred to in a);

(c) In the case of contracts awarded in negotiated procedure without prior publication, public service contracts from Annex II B to this Act, or where appropriate, contracts excluded from the application of this Act, indication of the relevant provisions of the Act pursuant to which they were awarded.

5. Award procedure (open, restricted or negotiated).

6. Estimated value of procurement.
7. Number of tenders received.
8. Date of award of the contract.
9. Price paid for bargain purchases pursuant to Article 117, point 9.
10. Name and address of the economic operator(s).
11. State, where appropriate, whether the contract has been, or will be, subcontracted.
12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
13. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
14. Justification of the contracting entity for the award of contract without prior publication of notice used as the call for competition.
 1. in the case of negotiated procedure without prior publication, justification of the special cases and circumstances which justify they use.
 2. in the case of award of public service contracts from Annex II B to this Act, justification for such award.
 3. where appropriate, justification of award of the contract excluded from the scope of the Act.
15. Optional information:
 - value and share of the contract which has been or will be subcontracted to third parties,
 - award criteria.

II. Information not intended for publication

16. Number of contracts awarded (where an award has been split between several suppliers).
17. Value of each contract awarded.
18. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
19. Which award criteria were used (most economically advantageous; lowest price)
20. Was the contract awarded to a tenderer who submitted an alternative tender (*variant*).
21. Were any tenders rejected on the grounds that they were abnormally low
22. Date of transmission of the notice by the contracting entity.

23. In the case of contracts for services listed in Annex II B, agreement by the contracting entity to publication of this notice.

ANNEX V F

DESIGN CONTEST NOTICE

1. Name, address, telephone number, fax number and email address of the contracting authority/entity and those of the service from which the additional documents may be obtained, and the activity of the contracting authority/entity
2. Description of the project (nomenclature reference No(s)).
3. Type of contest: open or restricted.
4. Estimated value of procurement.
5. In the event of an open contest: time-limit for the submission of projects.
6. In the event of a restricted contest:
 - (a) number of participants contemplated, or range;
 - (b) names of the participants already selected, if any;
 - (c) criteria for the selection of participants;
 - (d) time-limit for requests to participate.
7. If appropriate, indicate that the participation is restricted to a specified profession.
8. Criteria which will be applied in the evaluation of the projects.
9. Names of any members of the jury who have already been selected.
10. Indicate whether the jury's decision is binding on the contracting authority.
11. Number and value of any prizes.
12. Payments to be made to all participants, if any.
13. Indicate whether any contracts following the contest will or will not be awarded to the winner or winners of the contest.
14. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
15. Date of dispatch of the notice.
16. Any other information.

ANNEX V G

NOTICE OF THE RESULTS OF THE DESIGN CONTEST

1. Name and address of the contracting authority/entity, and the activity of the contracting authority/entity.
2. Description of the project.
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Any prizes.
7. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
8. Reference of the contest notice.
9. Date of dispatch of the notice.
10. Any other information.

ANNEX V H

PRIOR NOTICE OF THE INTENTION TO AWARD A CONTRACT (*VOLUNTARY EX ANTE TRANSPARENCY NOTICE*)

1. Name and address of the contracting authority/entity, and the activity of the contracting authority/entity.
2. Description of the object of the contract. Type of the contract. Nomenclature reference number.
3. Estimated value of procurement.
4. Justification of the contracting authority/entity for the award of contract without prior publication of the contract notice.
 - a) In the case of negotiated procedure without prior publication, justification of the special cases and circumstances which justify they use.
 - b) In the case of award of public service contracts from Annex II B to this Act, justification for such award
 - c) Where appropriate, justification of award of the contract excluded form the scope of the Act.

5. The name and contact details of the economic operator in favour of whom a contract award decision has been taken.
6. Information on the value of the contract which it intends to award.
7. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
8. Where appropriate, any other information deemed useful by the contracting authority/entity.

ANNEX V I

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, electronic address, telephone number, fax number of the contracting entity.
2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
3. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system — nomenclature reference No(s)).
4. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
5. Period of validity of the qualification system. Where the qualification system is to be renewed, the formalities for its renewal.
6. Reference to the fact that the notice acts as the call for competition.
7. Address where further information and documentation concerning the qualification system can be obtained (if different from the addresses mentioned under 1).
8. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
9. Where known, award criteria: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
10. Any other relevant information.

ANNEX V J

NOTICE OF THE INTENTION TO AWARD A PUBLIC WORKS CONCESSION

1. Name, address, fax number and email address of the contracting authority.
2. (a) Place of execution
(b) Subject of the concession; nature and extent of the services.
(c) estimated value of procurement.
3. (a) Time limit for the submission of applications (tenders, requests to participate).
(b) Address to which they must be sent.
(c) Language(s) in which they must be written.
4. Personal, technical and financial conditions to be met by the candidates.
5. Criteria which will be applied in the award of the contract.
6. If appropriate, the minimum proportion of the works which will be contracted out.
7. Date of dispatch of the notice.
8. Name and address of the body responsible for appeal. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

ANNEX V K

NOTICE OF THE INTENTION TO AWARD A WORKS CONTRACT BY CONCESSIONARIES WHICH ARE NOT CONTRACTING AUTHORITIES

1. (a) Place of execution
(b) Nature and extent of the services, general characteristics of the works.
(c) estimated value of procurement.
2. Time limit for completion imposed.
3. Name and address of the body from whom the specifications and the additional documents may be requested.
4. (a) Time limit for the receipt of applications to participate and/or the receipt of tenders
(b) Address to which they must be sent
(c) Language(s) in which they must be written.

5. Any deposits or guarantees required.
6. Economic and technical conditions to be met by the contractor.
7. Criteria which will be applied in the award of the contract.
8. Date of dispatch of the notice.

ANNEX VI

FEATURES CONCERNING PUBLICATION

1. Publication of public procurement notices

(a) Public procurement notices are sent by the contracting authorities/entities for publication in the format of standard forms. The prior (information) and prior (indicative) notice which is published on a buyer profile must also use that format, as must the notice of the publication of the prior (information) or the notice of the publication of the prior (indicative) notice on the contracting authority/entity (buyer) profile;

(b) Public procurement notices are published by the Electronic Public Procurement Classifieds of the Republic of Croatia, and public procurement notices for high value procurement Office for Official Publications of the European Communities as well or by the contracting authorities/entities in the event of a prior (information) or a prior (indicative) notice published on a buyer profile.

In addition, contracting authorities/entities may publish this information on the Internet on a "buyer profile" as referred to in Article 22 of this Act.

(c) The Electronic Public Procurement Classifieds of the Republic of Croatia or the Office for Official Publications of the European Communities will give the contracting authority/entity the confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

2. Publication of complementary or additional information

With an obligation in the open procedures, contracting authorities/entities are encouraged to publish in all other procedures the specifications and the additional documents in their entirety on the Internet.

3. The format and procedure for sending notices electronically are accessible at the Internet address <http://simap.europa.eu/> i <http://oglasnik-jn.nn.hr/>.

ANNEX VII

REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AND PLANS AND PROJECTS

Devices for the electronic receipt of tenders, requests to participate, applications for qualification and plans and projects must at least guarantee, through technical means and appropriate procedures, that:

(a) electronic signatures relating to tenders, requests to participate, applications for qualification and the forwarding of plans and projects comply with national provisions which comply with the EU law;

(b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification and the submission of plans and projects can be determined precisely;

(c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

(d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;

(e) only authorised persons may set or change the dates for opening data received;

(f) during the different stages of the contract award procedure, qualification procedure or of the design contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;

(g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;

(h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.