

**IMPORTANT NOTICE:** The English translation of the Act no. 523/2003 Coll. below has been provided for information purposes only. Only the official Slovak text of the Act published in Collection of Laws should be considered authentic.

**ACT No. 523/2003**

**of 24 October 2003**

**on public procurement and on amendment of the Act No. 575/2001 Coll. on the organisation of activities of the government and on the organisation of central state administration, as amended**

The National Council of the Slovak Republic has resolved by decision to adopt this Act:

Article I

PART ONE

FUNDAMENTAL PROVISIONS

Subject of regulation

Article 1

(1) This Act shall govern

- a) methods and procedures for the award of public contract applied by contracting authorities in concluding public supply contracts (hereinafter the contract), public works contracts or public service contracts and
- b) powers of the Public Procurement Office (hereinafter the Office).

(2) In awarding public contracts, the principles of transparency, of equal treatment and of non-discrimination of tenderers and candidates, of competition while being compliant with the principles of economy in expending funds, shall be applied.

(3) This Act transposes the legal acts of the European Communities referred to in Annex 1 into the body of laws of the Slovak Republic.

Article 2

(1) In awarding contracts, the contracting authorities shall be obliged to apply public procurement methods and procedures under this Act.

(2) In awarding contracts, contracting authority may apply the form of joint procurement.

(3) Joint procurement shall mean procurement of several contracting authorities in awarding contracts for agreed subjects of procurement, which are the same.

(4) The obligation of contracting authorities in accordance with paragraph 1 shall apply to the award of contracts for:

- a) the supply of products, equipment and other items marketed and intended for sale (hereinafter the supplies),
- b) building works and incidental contractor works necessary to execute a building construction or a civil engineering structures (hereinafter the works),
- c) the provision of financial services, legal services, design services, engineering services, trade services and other services (hereinafter the services).

(5) The obligation of contracting authorities in accordance with paragraph 1 shall not apply to the award of contracts

- a) the subject of which is declared top secret or secret or the execution of which must be accompanied by special security measures in accordance with generally binding legal regulations<sup>1</sup> or administrative measures where the protection of the basic interests of the Slovak Republic's security so requires,
- b) which are governed by other procedural rules and regulations for the award of contracts following an international agreement of a joint project implementation or exploitation by countries signatory to the agreement; the European Commission shall be notified of such agreement between the Slovak Republic and one or several European Community non-members,
- c) in pursuance of an international agreement relating to the stationing of foreign troops in the Slovak Republic,
- d) which are compliant with procedures defined by an international organisation,
- e) which are concluded by the Ministry of Defence of the Slovak Republic (hereinafter the Defence Ministry) and by organisations within the Defence Ministry's powers, and which relate to the manufacture of weaponry, ammunition or military material or to trade therein; the award of such contracts may not restrict competition in the market of products which are not particularly intended for military purposes,
- f) whose subject is provision of services relating to the acquisition, production and co-production of radio programmes and television programmes by radio companies or television companies,
- g) whose subject is provision of services relating to the broadcasting time of radio and television broadcasting,
- h) whose subject is provision of voice telephony services and data telecommunications services transmitted by cable, by terrestrial circuits or by satellite,

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<sup>1</sup> For instance, the Act of the National Council of the Slovak Republic No. 46/1993 Coll. on the Slovak Intelligence Service, as amended, the Act of the National Council of the Slovak Republic No. 46/1994 Coll. on Military Intelligence Service.

Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Corps, as amended.

- i) relating to services in adjudication matters, or in arbitration matters, or in conciliation procedures,
- j) whose subject is provision of financial services relating to the issue, sale, purchase and transfer of securities,
- k) whose subject is financial services provided by Národná banka Slovenska (the central bank<sup>2</sup>,
- l) whose subject is provision of services in research and development other than those whose benefits accrue exclusively to the contracting authority for its own use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority,
- m) whose subject is acquisition of ownership or rental of immovable property and concerning rights thereon; to conclude financial services contracts, which are concluded at the same time, before or after the contract of purchase or rental of immovable property has been entered into, the contracting authority shall apply the public procurement methods and procedures in accordance with this Act,
- n) whose subject is the establishment, alteration or extinction of employment or of a similar labour law relationship,
- o) whose subject is the procurement of supplies, execution of works or providing of services where the aggregate contract value net of VAT is less than the financial thresholds referred to in Article 16 (5).

(6) The obligation in accordance with paragraph 1 shall not apply to the award of service contracts by contracting authorities referred to in Article 4 (1), with an exclusive right stemming from an authorisation issued by a competent authority in accordance with a generally binding legal regulation or from an administrative regulation published in a publicly accessible way. The generally binding legal regulations and administrative measures must be in compliance with the Treaty establishing the European Communities.

(7) The obligation in accordance with paragraph 1 shall not relate to the award of contracts by the diplomatic corps of the Slovak Republic abroad, where the estimated value of contract is lower than the financial threshold referred to in Articles 22 through 24.

### Article 3

Where a contracting authority referred to in Article 4 grants a natural or a legal person that is not a contracting authority a special right or an exclusive right to provide ~~for~~ services of public interest, the contract or any other document shall stipulate that the person in question would comply with the principle of non-discrimination by nationality where a public supply contracts with a third party is concluded.

### Definitions

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<sup>2</sup> Article 2 of the Act of the National Council of the Slovak Republic No. 566/1992 Coll. on the National Bank of Slovakia, as amended.

## Contracting authority

### Article 4

(1) Contracting authority shall be

- a) the Slovak Republic represented by a state administration body, a body or an authority executing state affairs,
- b) a municipality or a higher territorial unit,
- c) any other organisation governed by public law,
- d) an association of legal persons whose member is at least one of the contracting authorities referred to in (a) through (c).

(2) For the purpose of this Act, any other organisation governed by public law shall mean a legal person founded or established for the special purpose of meeting public interest needs, which does not have industrial character or commercial character and

- a) is financed, wholly or for the most part, by the contracting authority in accordance with paragraph 1 (a) through (c), or
- b) is subject to management or control by the contracting authority in accordance with paragraph 1 (a) through (c), or
- c) more than half of whose members of the managerial or supervisory board are appointed or elected by the contracting authority in accordance with paragraph 1 (a) through (c).

(3) A legal entity or a natural person shall be obliged to proceed in the selection of a contractor in accordance with this Act where the contracting authority has provided the former with more than 50 % of funds for

- a) works listed in Annex 2 in the group of structural engineering and works related to the construction of hospitals, sports facilities, recreational resorts, schools, universities and buildings used for administrative purposes,
- b) services relating to a works contract.

### Article 5

(1) Contracting authority operating in the water, energy, transport and telecommunication sectors shall be

- a) a legal person referred to in Article 4, which executes at least one of activities referred to in paragraph 2,
- b) a legal person, over which the contracting authority referred to in Article 4 (1) exercises directly or indirectly dominant influence by virtue of ownership, financial interest or rules, by which at least one of the activities referred to in paragraph 2 are governed and executed. Dominant influence of a contracting authority over a legal person means that the former:

1. owns a majority of shares or a majority interest, or
  2. controls a major share in the voting rights, or
  3. appoints more than a half of members in the administrative body or executive body or supervisory body,
- c) any other legal person entitled to exploit a special right or an exclusive right in the pursuit of its activities and executes at least one of the activities referred to in paragraph 2.

(2) Activities in the water, energy, transport and telecommunication sectors shall be

- a) the operation or provision of access to fixed public networks intended to supply the public in connection with the production, transport or distribution of:
1. drinking water,
  2. electricity,
  3. gas or heat,
- b) the supply of networks referred to in (a) with:
1. drinking water,
  2. electricity,
  3. gas or heat,
- c) the exploitation of a geographically defined area for the purpose of:
1. exploring for or extracting of oil, gas, coal or other solid fuels, or
  2. the provision of aviation, port or other terminal facilities to carriers by air and carriers by inland waterways,
- d) the operation of ways or provision of public services in the field of urban transport by bus, rail, tramway, trolley bus and cableway and special transport,
- e) the provision of public services in the field of bus transport,
- f) the operation of ways or the provision of public services in the field of railway transport,
- g) the operation of public telecommunication networks or the provision of one or several public telecommunication services.

(3) Contracting authority performing activities in accordance with paragraph 2 (a) (1) and in parallel performing activities relating to

- a) hydraulic engineering projects or irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation of drainage installations, or
  - b) the disposal or treatment of sewage,
- shall be obliged to apply the methods and procedures in accordance with this Act, even in case of the above-mentioned activities.

(4) Special right or exclusive right shall mean a right stemming from authorisations instituted by law or by an individual administrative act issued by a competent authority, which results in a restricted performance of activities referred to in paragraph 2 to one or several entities or which in a considerable way has an influence on the capability to perform such activities by other entities. A special right or an exclusive right may be exploited:

- a) for the purpose of constructing networks or relating facilities taking the advantage of a procedure for expropriation or restriction of ownership right to land or structures<sup>3</sup>, or for the purpose of placing networks or relating facilities on, under or over a highway,
- b) in case of paragraph 2 (a) and (b), where the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights.

(5) Operations under paragraph (2) (d) through (f) shall be considered traffic services provided in the public interest under conditions stipulated by a special regulation.<sup>4</sup>

(6) The following shall not be considered activities in accordance with paragraph 2 (a) and (b) for contracting authorities referred to in paragraph 1 (b) and (c):

- a) in the case of drinking water or electricity, where:
  - 1. the production of drinking water or electricity takes place of reasons inevitable for the execution of activities not referred to in paragraph 2, and
  - 2. the supply for the public network depends solely on its own consumption and shall not exceed 30 % of average of the total drinking water or electricity production over the last three years including the current year,
- b) in case of gas or heat, where
  - 1. the production of gas or heat is the unavoidable consequence of carrying on an activity other than referred to in paragraph 2, and

<sup>3</sup> Article 108 of the Act No. 50/1976 Coll. on Territorial Planning and Building Order (the Building Act), as amended.

<sup>4</sup> Article 24a and Article 30 of the Act of the National Council of the Slovak Republic No. 164/1996 Coll. of Laws on Railways and on Amendment of the Act No. 455/1991 Coll. on Small Trade Business (Trade License Act), as amended.

Article 15 of the Act of the National Council of the Slovak Republic No. 168/1996 Coll. on Road Traffic, as amended.

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 average turnover for the last three years, including the current year.

(7) The provision of bus transport services to the public shall not be considered an activity within the meaning of paragraph 2 (e) where other legal or natural person provides those services either in general or in a particular geographical area, under the same conditions as the contracting authority.

## Article 6

(1) Contracting authority referred to in Article 5 shall not apply the methods and procedures in accordance with this Act in awarding contracts

- a) the subject of which does not relate to activities are carried out in accordance with Article 5(2) or where such activities are carried out in a non-member country provided that the contracting authority does not exploit public networks or a geographically defined area within the European Communities,
- b) for the supply of goods for the purpose of their resale or lease to third parties provided that the contracting authority does not possess a special or exclusive right to sell or lease the subject of contract and any other legal or natural person may sell or lease the subject of contract under the same terms as the contracting authority.

(2) Contracting authority referred to in Article 5 (1) carrying out activities in accordance with Article 5 (2) (g) will not apply the methods and procedures in accordance with this Act in awarding contracts the subject which relates to the provision of one or several telecommunication services provided that any other legal or natural person is allowed to provide such telecommunication services either in general or in a particular geographical area, under the same terms.

(3) Contracting authority referred to in Article 5 (1) carrying out activities in accordance with Article 5 (2) (a) (1) shall not apply the methods and procedures in accordance with this Act in awarding contracts for the purchase of water.

(4) Contracting authority referred to in Article 5 (1) carrying out activities in accordance with Article 5 (2) (a) (2) or (3) shall not apply the methods and procedures in accordance with this Act in awarding contracts for the supply of energy or fuel for the production of energy.

(5) The methods and procedures in accordance with this Act shall not apply to service contracts entered into

- a) by a procuring entity to an affiliated undertaking,
- b) by a legal person founded by several contracting authorities to carry out some of the activities referred to in Article 5 (2) with one of such contracting authorities or with an undertaking affiliated with one of such contracting authorities

provided that at least 80 % of the average annual turnover made by that service provider in the market of European Communities for the preceding three years was provided to the entities with which it is affiliated. Where more than one affiliated undertaking provides the same or similar services, the total turnover derived from the provision of services by those affiliated undertakings shall be taken into account.

(6) In accordance with this Act, affiliated undertaking is any legal person established by a contracting authority referred to in Article 5 (1), the annual accounts of which are consolidated in accordance with a special regulation<sup>5</sup>, or a legal person over which the contracting authority may exercise, directly or indirectly, a dominant influence or which, in common with the contracting authority, is subject to the dominant influence of another legal person by virtue of ownership, financial participation or the rules which govern it.

#### Article 7

##### Tenderer

For the purpose of this Act, a tenderer is any natural person or legal person supplying goods, executing works or providing a service who has submitted a tender.

#### Article 8

##### Candidate

For the purpose of this Act, a candidate is any natural person or legal person supplying goods, executing works or providing a service who is interested in participating in a restricted tender, in a negotiated procedure with prior publication or in negotiated procedure without prior publication.

#### Article 9

##### Concessionaire

For the purpose of this Act, a concessionary is a natural or legal person or a group formed by several persons (hereinafter the group) with whom a concession contract has been concluded while employing the methods and procedures in accordance with this Act. Concessionaire may also be a contracting authority referred to in Article 4 (1).

#### Article 10

##### Contracts

(1) For the purpose of this Act, a public supply contract, a public works contract or a public service contract<sup>6</sup> shall be a contract for pecuniary interest concluded in writing<sup>7</sup> between contracting authority and one or several tenderers.

(2) Contract for the supply of goods (supply contract) is a contract involving a purchase, hire purchase (leasing), purchase of goods on instalments or lease of goods with or without an option to buy. That contract may in addition include siting and installation

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<sup>5</sup> Article 22 of the Act No. 431/2002 Coll. on Accounting.

<sup>6</sup> the Commercial Code, the Civil Code.

<sup>7</sup> Article 39 of the Civil Code



operations where the estimated value of those services does not exceed the estimated value of the goods being supplied.

(3) Works contract is a contract, which has as its object either the execution, or both the execution and design, of work referred to Annex 2, or of works referred to in Annex 2, or of any other result of activity in building construction or civil engineering, which in itself combines the economic and technical function as a whole, or execution of works by means corresponding to the requirements specified by the contracting authority.

(4) Service contract is a contract the subject of which is the provision of a service with the exception of contracts referred to in paragraphs 2 or 3.

(5) Framework agreement is a written agreement concluded between the contracting authority and one or several natural or legal persons authorised to supply goods, execute works or provide services. The purpose of this agreement is to establish the terms, in particular with regard to the prices and, where appropriate, the method of concluding partial contracts within a given period or the quantity envisaged.

(6) Concession contract is a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out is compensated for by the right to exploit the construction for an agreed period, which may be accompanied with payment by the contracting authority referred to in Article 4 (1).

#### Article 11 Tender bond

- (1) Binding nature of the tender may be secured by a bond.
- (2) The bond shall be:
  - a) a bank guarantee provided for the tenderer, or
  - b) a deposit of funds to the contracting authority's bank account.

#### Article 12 Contract documents

For the purpose of this Act, contract documents shall mean written supporting documents or even graphic or other supporting documents necessary to prepare a tender.

#### Article 13 Tender

For the purpose of this Act, tender shall be a manifestation of a tenderer's will who wishes to provide the contracting authority a certain performance for a settlement while being compliant with conditions specified by the contracting authority.

#### Article 14

## Design contest

For the purpose of this Act, design contest is a procedure allowing the contracting authority to acquire a design selected by a jury in a contest, with or without award of prizes, mainly in the field of physical planning, architecture, civil engineering and data processing.

## PART TWO

### METHODS AND PROCEDURES OF PUBLIC PROCUREMENT

#### TITLE ONE

#### PUBLIC PROCUREMENT PROCEDURES

##### Article 15

(1) Public procurement procedures shall be as follows:

- a) open procedure,
- b) restricted procedure,
- c) negotiated procedure with prior publication of a contract notice,
- d) negotiated procedure without prior publication of a contract notice,
- e) design contest.

(2) Contracting authority referred to in Article 4 shall award contracts by open procedure or by restricted procedure; contracts shall be awarded by negotiated procedure with or without prior publication of a contract notice only where at least one of the requirements referred to in Article 61 or in Article 66 are met.

(3) Contracting authority referred to in Article 5 shall award contracts by open procedure, by restricted procedure, or by negotiated procedure with prior publication of a contract notice; contracts shall be awarded by negotiated procedure without prior publication of a contract notice only where at least one of the requirements referred to in Article 66 is met.

(4) Design contest shall be employed as an independent procedure without award of contract, or as a part of procedure leading to award of contract.

(5) To methods and procedures regulated by this Act, the rules of open procedure in accordance with a special regulation<sup>8</sup> shall not apply.

#### Article 16

(1) Depending on the estimated contract value, the public procurement procedures in accordance with Article 15 are: above the threshold, below the threshold, small value contracts with a higher price or small value contracts with a lower price.

(2) A public procurement procedure is designated above the threshold where the estimated contract value applied to a defined group of contracting authorities is equal to or exceeds the financial threshold referred to in Articles 22 through 24 (hereinafter above-the-threshold award procedure).

(3) A public procurement procedure is designated below the threshold where the estimated contract value applied to a defined group of contracting authorities is lower than the financial threshold referred to in Articles 22 through 24, and at the same time exceeds the financial threshold referred to in paragraphs 4 and 5 (hereinafter below-the-threshold award procedure).

(4) A procedure is considered award of small value contract with a higher price where the total of estimated values for equal types of supplies or services net of VAT exceeds SKK 250 000, however, does not exceed SKK 500 000 during a calendar year or during a contract period where the contract is concluded for a period exceeding one calendar year, and of works with estimated value net of VAT exceeds SKK 500 000, however, does not exceed SKK 2 000 000 during a contract period (hereinafter small value contract with a higher price). To conclude a contract, simplified public procurement shall be applied by restricted procedure, by negotiated procedure with prior publication of a contract notice or by negotiated procedure without prior publication of a contract notice laid down in Title Four.

(5) A procedure shall be designated award of small value contract with a lower price where the total of values of equal types of supplies or services net of VAT exceeds SKK 50 000, however, does not exceed SKK 500 000 during a calendar year or during a contract period where the contract is concluded for a period exceeding one calendar year, and of works the aggregate value of which net of VAT exceeds SKK 100 000, however, does not exceed SKK 500 000 during a contract period (hereinafter small value contract with a lower price). To conclude a contract, simplified public procurement shall be applied by negotiated procedure without prior publication of a contract notice laid down in Title Four.

#### Estimated value of contract Article 17

(1) Estimated value of contract shall be established net of VAT.

(2) The contracting authority shall consider if the estimated value of contract has been established correctly prior to publishing a contract notice.

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<sup>8</sup> Articles 281 through 288 of the Commercial Code

(3) The contracting authority shall include the value of recurrent performances in the estimated value of contract if their provision is envisaged.

(4) In case the supply contract provides for the opportunity to exercise option, the basis for determining the estimated value shall be the highest possible contract value including the option.

(5) Public procurement of services listed in Annex 3 and in Annex 4 performed under the framework of a single award procedure shall be considered service contract awarding in accordance with Annex 3 where the estimated value of those services exceeds the estimated value of services listed in Annex 4. Where the estimated value of services listed in Annex 3 is lower than the estimated value of services listed in Annex 4, Annex 4 shall apply to the procurement of services.

(6) Contracting authority shall not be allowed to avoid application of public contract award methods and procedures in accordance with this Act with regard to the financial thresholds fixed, to the method of establishing the estimated value or by subdividing the subject of procurement or contract into lots.

#### Article 18

In the case of contracts for the lease, purchase of goods on instalments, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:

- a) in case of fixed-term contracts where their term is 12 months or less, the total contract value,
- b) in case of fixed-term contracts where their term is more than 12 months, the contract value plus the estimated residual value,
- c) in the case of contracts of indefinite duration, the monthly instalment multiplied by 48.

#### Article 19

(1) For the purposes of calculating the estimated service contract value for the following types of services, account shall be taken of any and all costs relating to the service provision and:

- a) as regards insurance services, of premium payable,
- b) as regards banking and other financial services, of fees, commissions, interest as well as other types of remuneration,
- c) as regards design contest, of the fee and prizes awarded for the designs.

(2) In calculating the estimated service contract value provided on the basis of a contract not stating the total price, the contracting authority shall take into account:

- a) as regards a fixed-term contract with a term of 48 months or less, the total time of the contract performance,
- b) as regards contracts of indefinite duration or with a term of more than 48 months, the monthly instalment multiplied by 48.

#### Article 20

In the case of recurrent contracts or of contracts, which are to be renewed within an agreed time, the estimated value of supplies or services shall be established on the basis of:

- a) either the actual aggregate costs of similar contracts for similar supplies or services awarded over the previous calendar year or over the previous 12 months, adjusted for estimated changes in quantity or value over the twelve months following, or
- b) of the estimated aggregate cost of supplies or services contracted during the twelve months following the first performance or during the contract period, where this exceeds 12 months.

#### Article 21

The estimated value of works shall also include the estimated value of supplies provided by the contracting authority under the framework of the works contract.

#### Financial thresholds

#### Article 22

The financial threshold for the estimated value of supplies shall be:

- a) the equivalent of 130 000 currency units of special drawing rights of the International Monetary Fund (hereinafter referred to as SDR)<sup>9</sup> in EUR for contracting authorities entered in the list of contracting authorities subject to the Treaty of Accession of the Slovak Republic to the European Union; for the Defence Ministry, in case of supplies referred to in Annex 5
- b) the equivalent of SDR 200 000 in EUR for contracting authorities referred to in Article 4 except for contracting authorities entered in the list subject to the Treaty of Accession of the Slovak Republic to the European Union; for the Defence Ministry, in case of supplies not referred to in Annex 5
- c) the equivalent of SDR 400 000 in EUR for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (1) and (2), (b) (1) and (2), (c) (2), (d) and (e)

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<sup>9</sup> International Monetary Fund Agreement, International Bank for Reconstruction and Development Agreement, International Financial Corporation Agreement, International Development Association Agreement, Multilateral Investment Guarantee Agency Agreement (Notification of the Federal Ministry of Foreign Affairs No. 500/1992 Coll. on the accession of the Czech and Slovak Federal Republic to the International Monetary Fund Agreement, to the International Bank for Reconstruction and Development Agreement, to the International Financial Corporation Agreement, to the Multilateral Investment Guarantee Agency Agreement).

- d) EUR 400 000 for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (3), (b) (3) and (c) (1) and (f)
- e) EUR 600 000 for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (g).

### Article 23

- (1) The financial threshold for the estimated value of services shall be
- a) the equivalent of 130 000 SDR in EUR for contracting authorities entered in the list of contracting authorities subject to the Accession Treaty of the Slovak Republic to the European Union; in case of services referred to in Annex 3, with the exception of services referred to in category 8 and telecommunications services<sup>10</sup> referred to in category 5 in accordance with the temporary Central Production Classification positions (hereinafter referred to as CPC)<sup>11</sup> 7524, 7525 and 7526,
  - b) the equivalent of 200 000 SDR in EUR for contracting authorities referred to in Article 4 (1) with the exception of contracting authorities entered in the list of contracting authorities subject to the Treaty of Accession of the Slovak Republic to the European Union; for services referred to in Annex 3, with the exception of services referred to in category 8 and telecommunication services<sup>10</sup> in category 5 in accordance with CPC<sup>11</sup> positions 7524, 7525 and 7526,
  - c) the equivalent of SDR 400 000 in euros for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (1) and (2), (b) (1) and (2), (c) (2), (d) and (e); in the case of services referred to in Annex 3, with the exception of services referred to in category 8 and telecommunications services<sup>10</sup> in category 5 under CPC<sup>11</sup> positions 7524, 7525 and 7526,
  - d) EUR 200 000,
    1. for contracting authorities referred to in Article 4 (3),
    2. for contracting authorities referred to in Article 4 (1); in the case of services referred to in Annex 4 or in the case of services referred to in category 8 and telecommunications services<sup>10</sup> referred to in category 5 of Annex 3 under CPC<sup>11</sup> positions 7524, 7525 and 7526,
  - c) EUR 400 000 for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (1) and (2), (b) (1) and (2), (c) (2), (d) and (e); in case the services are not referred to under (c)
  - d) EUR 400 000 for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (3), (b) (3) and (c) (1) and (f)
  - e) EUR 600 000 for contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (g).

(2) To calculate the estimated value referred to in paragraph 1 where services are subdivided into several lots, of which each is subject of a separate contract, the estimated value of each lot shall be taken into account. Where the value of each lot is not lower than the financial threshold referred to in paragraph 1, a public procurement procedure above the

<sup>10</sup> Act No. 195/2000 Coll. on Telecommunications.

<sup>11</sup> Temporary Central Production Classification of 1991.

threshold shall be applied to all lots. A public procurement procedure below the threshold may be applied to each excluded lot with an estimated value lower than EUR 80,000 where the total estimated value of these lots does not exceed 20 % of the total estimated value of all lots.

#### Article 24

- (2) The financial threshold for the estimated value of works shall be:
- a) the equivalent of SDR 5 000 000 in EUR for contracting authorities referred to in Article 4 (1) and contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (1) and (2), (b) (1) and (2), (c) (2), (d) and (e),
  - d) EUR 5 000 000 for contracting authorities referred to in Article 4 (3) and contracting authorities referred to in Article 5 who pursue their activities in accordance with Article 5 (2) (a) (3), (b) (3), (c) (1) and (f) and (g).

(2) To calculate the estimated value referred to in paragraph 1 where works are subdivided into several lots, of which each is subject of a separate contract, the estimated value of each lot shall be taken into account. Where the value of each lot is not lower than the financial threshold referred to in paragraph 1, a public procurement procedure above the threshold shall be applied to all lots. A public procurement procedure below the threshold may be applied to each excluded lot with an estimated value lower than EUR 1 000 000 where the total estimated value of these lots does not exceed 20 % of the total estimated value of all lots.

## TITLE TWO

### PUBLIC PROCUREMENT PROCEDURES

#### Public procurement notices

##### Article 25

(1) Contracting authority referred to in Article 4 shall make known the award of contracts by publishing a contract notice or by publishing a public works concession notice.

(2) Contracting authority referred to in Article 5 shall make known the contract award by publishing:

- a) a periodic indicative notice with a call for competition (Article 27 ), or
- b) a notice of qualification system (Article 28), or
- c) a contract notice.

(3) Where the estimated contract value equals to the financial threshold referred to in Article 22 through 24 or is higher than the threshold, the contracting authority shall notify the award of contract in the Official Journal of the European Union and in the Public Procurement Journal (hereinafter referred to as the Journal) after the notice has been dispatched to the Publication Office of the European Communities.

(4) Where the estimated value of the contract is lower than the financial threshold referred to in Articles 22 through 24 but higher than the financial threshold referred to in

Article 16 (4) and (5), the contracting authority shall notify the award of contract in the Journal.

(5) Where the contracting authority notifies the award of contract in accordance with paragraph 3, the notice may be published in accordance with paragraphs 1 and 2 in national press, regional press or elsewhere only after its publication in the Official Journal of European Union and in the Journal. This notice shall not include any information other than that dispatched for publication in the Official Journal of European Union.

(6) The contracting authority may not discriminate tenderers or candidates by any conditions contained in the contract notice. In a contract notice, the contracting authority may refer to a rule if required by public interest to apply to the contract award in case that the natural person or the legal person awarded the contract for the delivery of supplies, execution of works or rendering of services should lose the capability to fulfil the contract undertaking in the course of its performance.

(7) In the prior information notice, periodic indicative notice without a call for competition, periodic notice with a call for competition, notice of a qualification system, the contract notice, contract award notice, award notice by design contest, the contracting authority shall classify the subject of procurement in accordance with the classifications in effect.

In case of a contract award procedure above the threshold in accordance with classifications in effect in the European Communities published by the Office in the Journal, in case of a contract award procedure under the threshold in accordance with special regulations<sup>12</sup>.

(8) The contracting authority shall dispatch the Office for Publications of the European Communities an indicative notice, a contract notice, a periodic notice without a call for competition, a periodic notice with a call for competition and notice of qualification system through a channel assuring the fastest possible delivery. Where the contracting authority employs Article 58 (4) or Article 63 (2), the notice shall be transferred by telex, telegram or telefax.

(9) A notice may not exceed one page of the Official Journal of the European Union and shall be not more than 650 words. The costs of a notice publication shall be borne by the European Community. Evidence of the date of dispatch shall be furnished by the contracting authority.

(10) Where the contracting authority notifies award of contract in accordance with paragraph 4, the basis of notification in the Journal shall be the original of the notice dispatched by registered mail, telefax, electronic means or delivered in person. Where the contracting authority employs Article 58 (4) or Article 63 (2), the notice original shall be transferred by telex, electronic means or delivered in person. Evidence of the date of dispatch of the notice original shall be furnished by the contracting authority. The accuracy of content of the source document shall be the responsibility of the one who has dispatched it for publication. The compliance of the data published with the source document provided shall be

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<sup>12</sup> Regulation of the Statistical Office of the Slovak Republic No. 552/2002 Coll. Issuing the Statistical Classification of Economic Activities by Sectors.  
Regulation of the Statistical Office of the Slovak Republic No. 632/2002 Coll. Issuing the Statistical Classification of Production.



the responsibility of the Office. Typographical error in the Journal shall be removed by publishing an editor release concerning their correction. The Office shall be entitled to carry out editor correction of the data to be published in the Journal, without any changes to the material content and sense of the published data or information.

(11) The content and models of prior information notices, contract notices, works concession notices for a contracting authority referred to in Article 4 (1) shall be governed by a generally binding regulation to be issued by the Office.

(12) The content and models of periodic indicative notices without a call for competition, periodic indicative notices with a call for competition, notices of qualification system and contract notices for a contracting authority referred to in Article 5 shall be governed by a generally binding regulation to be issued by the Office.

(13) The content and model of a works notice for a concessionaire, which is not a contracting authority, shall be governed by a generally binding regulation to be issued by the Office.

#### Article 26

(1) Contracting authority referred to in Article 4 shall make known, by means of a prior information notice to be published as soon as possible after the beginning of the calendar year:

- a) the estimated total value of supply contracts to be awarded during a calendar year by applying above-the-threshold award procedure is not less than EUR 750 000,
- b) the estimated total value of contracts for services in each category listed in Annex 3 to be awarded during a calendar year by applying above-the-threshold award procedure is not less than EUR 750 000.

(2) Contracting authority referred to in Article 5 shall make known a periodic indicative notice with a call for competition or a periodic indicative notice without a call for competition at least once a year where:

- a) the estimated total value of supply contracts to be awarded during the following 12 months by applying above-the-threshold award procedure is not less than EUR 750 000,
- b) the estimated total value of contracts for services in each category listed in Annex 3 to be awarded during the following 12 months by applying above-the-threshold award procedure is not less than EUR 750 000.

(3) In awarding works contracts of estimated value equal to or exceeding the financial threshold referred to in Article 24, the contracting authority referred to in Article 4 shall be obliged to publish a periodic indicative notice with a call for competition or a periodic indicative notice without a call for competition.

#### Article 27

##### Periodic indicative notice with a call for competition

(1) Where a contracting authority referred to in Article 5 has made known a periodic indicative notice with a call for competition, this notice must include the following information:

- a) separately data concerning supplies, works or services, for which contracts will be awarded,
- b) information with regard to contracts awarded by restricted procedure or by negotiated procedure with prior publication of a contract notice without their further publishing, and
- c) the time limit for candidates to apply in writing.

(2) The contracting authority shall provide candidates with detailed information on the subject of procurement inviting them at the same time to acknowledge their interest in taking part in contract award procedure. The information shall include in particular:

- a) the type and quantity of the subject of procurement, including the possibility of additional award and in cases where this is possible, the time limit proposed, by which the additional performance may be executed; in case of recurrent procurement, the type and quantity of the subject of procurement and in cases where this is possible, the time limit proposed, by which the award notice would be made known at the latest,
- b) indication whether restricted procedure or negotiated procedure with prior publication of a contract notice would be employed,
- c) the commencement or completion date fixed for the delivery of supplies, services or works,
- d) address and deadline for the submission of applications for participation in the award procedure, as well as the language or languages in which the applications shall be submitted,
- e) identification of the contracting authority and all of information necessary to obtain specifications and other documents,
- f) requirements regarding the economic and financial standing and technical capacity, financial guarantees and other information requested from the candidates,
- g) the amount of settlement and payment terms of each settlement for the provision of contract documents (Article 36) for the selected contract award procedure under (b) and
- h) indication whether the contracting authority requests tenders for purchase, hire purchase, lease or purchase on instalment, or several of these options.

(3) In periodic indicative notice with a call for competition by restricted procedure or by negotiated procedure with prior publication of a contract notice the contracting authority shall give a time limit, by which candidates have to apply in writing in accordance with paragraph 1 or acknowledge their interest in the contract award procedure in accordance with paragraph 2. These time limits may not be shorter than 37 days from the date of dispatch of the periodic indicative notice with a call for competition or from the date of dispatch of the call containing detailed information concerning the subject of procurement, and in exceptional cases, they may not be less than 22 days.

#### Article 28 Qualification system

- (1) Contracting authority referred to in Article 5 may introduce and run a qualification system of natural persons or legal persons who are suppliers, service providers or works contractors (hereinafter the qualified persons). Contracting authority that has introduced a qualification system, shall allow natural or legal persons who are suppliers, service providers or works contractors to apply anytime for qualification.

- (2) A qualification system, which may involve different qualification levels, shall be run on the basis of objective criteria and rules specified by the contracting authority. In a qualification system referring to methods of public procurement above the threshold, the contracting authority shall make references to European standards whenever this is possible. If necessary, the criteria and rules may be amended.
- (3) On request of natural persons or legal persons, the contracting authority must make the criteria and rules of qualification system available. The contracting authority shall notify the qualified persons concerned of amended criteria and rules. Where the contracting authority ascertains that the qualification system used by other entities or bodies complies with his own requirements, he shall notify the names of such entities or bodies to the persons qualified and applicants for qualification
- (4) In a reasonable time, the contracting authority shall inform applicants for qualification seeking the registration in the qualification system about his decision concerning their registration in this system. Where the contracting authority decides within a time limit exceeding six months from the submission of application, he shall inform the applicant for qualification within two months from the submission of application about reasons authorising him to extend the time limit and about a deadline, by which he will approve or reject the application.
- (5) In evaluating the compliance with the qualification conditions or in amending the criteria or rules, the contracting authority must not:
  - a) impose such requirements of administrative, technical or financial nature (Article 29 and 30) on some natural or legal persons interested in being awarded supplies, service or works contracts, which have not been imposed on other persons,
  - b) repeatedly request documents already submitted to him.
- (6) Where the contracting authority rejects an application for registration in the qualification system, he shall inform the applicant for qualification about this decision and, moreover, give reasons for the rejection. In a reasoning statement, the contracting authority shall establish, which criteria of the qualification system specified in accordance with paragraph 2 the applicant failed to satisfy.
- (7) The contracting authority shall take a record in writing and store documents of qualified persons. The list of qualified persons may be structured into the categories depending on the subject of procurement to which the qualification applies.
- (8) Contracting authority shall terminate qualification of a natural person or of a legal persons who is a supplier, service provider or works contractors solely of reasons resulting from the qualification system criteria in accordance with paragraph 2. Contracting authority shall make its intention to terminate qualification known to the qualified person ahead in writing, including the reason or reasons allowing to proceed this way.
- (9) The qualification system shall be subject to publication in periodicals obligatory in accordance with Article 25. The notice must provide a clear and manifest purpose of the qualification system and availability of its rules including their application. Where the qualification system is to last for more than three years, the contracting authority

shall publish a qualification system notice on an annual basis. Where the qualification system is of shorter duration, its initial publication shall suffice.

- (10) Where award of contracts has been notified by a notice of qualification system, candidates are selected by restricted procedure or by negotiated procedure from among qualified persons.

### Criteria for participation in public procurement

#### Article 29

(1) Tenderer or candidate interested in participating in contract award must comply with the following criteria:

- a) is not subject of initiation of bankruptcy or arrangement proceedings, is not bankrupt or being wound up with liquidation, an involuntary petition for bankruptcy order has not been rejected against him due to lack of property, or is not subject of any other similar proceedings under the national laws and regulations in effect in the country in which he is established,
- b) does not have any reported tax arrears in the Slovak Republic or in the country in which he is established which are being recovered by a judgement execution,
- c) does not have any reported arrears of contributions to health insurance, sickness insurance and pension security schemes in the Slovak Republic or in the country in which he is established which are recovered by a judgement execution; in case of establishment in the Slovak Republic, he does not have any reported arrears with regard to contributions to unemployment insurance which are being recovered by a judgement execution,
- d) neither him nor his legal representative, or a member of his representative body has been sentenced for a criminal offence the merit of which relates to enterprise,
- e) is authorised to provide for supplies, works or services,
- f) has not suspended his business activities or is not under a similar situation under the law and regulations applicable in the country in which he is established,
- g) has not gravely violated his professional obligations during the previous five years, which the contracting authority is able to prove,
- h) has not participated in the preparation or production of the tender document for open procedure or restricted procedure.

(2) Tenderer or candidate interested to take part in contract award procedure shall demonstrate his compliance with criteria listed in paragraph 1 by:

- a) subpar. (a) a certificate of a competent court or by an equivalent document issued by a competent court or administrative authority in the country in which he is established,

- b) subpar. (b) a certificate of a competent Tax Authority not older than 3 months,
- c) subpar. (c) a certificate of a competent Authority not older than 3 months,
- d) subpar. (d) an extract from the Penal Registry or by an equivalent document issued by the competent law-court or by public authority in the country in which he is established, not older than 3 months;
- e) subpar. (e) a certificate authorising him to do business, an acknowledgement of a competent authority or a solemn declaration in accordance with the regulations of the country he is established in; in case of certain services, by a certificate of being entered in a trade list or a solemn declaration in accordance with the regulations of the country he is established in,
- f) subpar. (f) by a solemn declaration.

(3) Tenderer or candidate entered in the list of entrepreneurs in public procurement may substitute the documents referred to in paragraph 2 by an acknowledgement of the Office.

(4) Where the tenderer or candidate has not been established in the Slovak Republic and the country in which he is established does not issue any of the documents referred to in paragraph 2, they may be replaced by a solemn declaration in accordance with the regulations in the country in which he is established.

### Article 30

(1) The tenderer's or candidate's financial and economic standing may, as a rule, be supported by:

- a) a statement of his bank,
- b) an acknowledgement concerning business risk indemnity insurance in case of service contracts,
- c) balance sheet or extracts therefrom, where publication of the balance sheets is required under generally binding legal regulations in the country in which the tenderer or candidate is established, or statement of property and commitments,
- d) profit & loss statement or income & expenditure statement as well as turnover relating to the subject of procurement for the three preceding years.

(2) If, for any valid reason, the tenderer or candidate is unable to provide the references regarding his financial and economic standing by a document requested by the contracting authority, he may provide reference by another document which the contracting authority may consider appropriate.

(3) The technical capacity of the tenderer or candidate in executing supply contracts may be supported by documents depending on the type, quantity and purpose of the goods to be supplied, as a rule:

- a) a list of principal deliveries effected in the past three years, with the sums, delivery dates and recipients involved if:

1. the customer was a contracting authority in accordance with this Act, the evidence that the contracts have been effectuated shall be countersigned by the contracting authority,
  2. the customer was a natural or legal person other than a contracting authority, the evidence that the contracts have been effectuated shall be countersigned by the customer; where this is impossible, by a statement of the tenderer or candidate that the contracts have been awarded,
- b) by description of the tenderer's or candidate's technical capacity, by his quality assurance measures and his equipment dedicated to research and development,
  - c) data concerning technicians whether or not belonging directly to the tenderer or candidate, especially those responsible for quality control,
  - d) samples, description or photographs of the products to be supplied, and a certificate of the origin of the goods where requested by the contracting authority,
  - e) certificates drawn up by authorised persons of recognised competence to attest conformity of products to certain specifications or standards identified by references to specifications or standards,
  - f) where the products to be supplied are complex or are intended for special purposes, by a certificate of a check carried out on the production capacities of the tenderer or candidate and where necessary on his research and development facilities and quality assurance measures; the check shall be carried out by the contracting authority or on his behalf by an authorised natural or legal person in the country in which the tenderer or candidate is established and with the former's approval.

(4) The technical capacity of a tenderer or candidate in awarding contracts for works may be supported as a rule by:

- a) data concerning educational and professional qualifications of managerial staff or staff responsible for carrying out the contracted works,
- b) a list of contracts with the same or similar subject of procurement effectuated over the previous five years; in case of works of extraordinary importance, the list shall be appended with certificates of their execution indicating the value, dates and places of delivery, the customer and a statement whether the contracts were carried out according to the rules of the trade and properly completed within the agreed time limits,
- c) a statement of the tools, plant and technical equipment available to the tenderer or candidate for carrying out the work,
- d) a statement of the average annual manpower and the number of managerial staff for the previous three years,
- e) a statement of the technicians that they would be available to carry out the contract, whether or not they belong to the tenderer or candidate.

(5) The capability of a tenderer or candidate to provide a service may be evaluated in particular with regard to his qualification, performance, experience and reliability. The technical capacity may be supported by documents depending on the type, quantity and purpose of the service required, as a rule, by:

- a) data regarding the educational and professional qualification of managerial staff and in particular of the tenderer's or candidate's persons who will be responsible for the service contract execution,

- b) a list of contracts with the same or similar subject of procurement effectuated over the previous three years indicating the values, dates of delivery and contracting entities where:
  - 1. the customer was a contracting authority in accordance with this Act, the evidence that the contracts have been effectuated shall be countersigned by the contracting authority,
  - 2. the customer was a natural or legal person other than a contracting authority, the evidence that the contracts have been effectuated shall be countersigned by the customer; where this is impossible, by a statement of the tenderer or candidate that the contracts have been awarded,
- c) data concerning technicians whether or not belonging directly to the tenderer or candidate, especially those responsible for quality control,
- d) a statement of the average annual manpower and the number of managerial staff for the previous three years,
- e) a statement of the tools, plant and technical equipment available to the tenderer or candidate for carrying out the work,
- f) a description of the tenderer's or candidate's measures of quality assurance and his equipment dedicated to research and development,
- g) where the services to be provided are complex or are intended for special purposes, a certificate of a check carried out on the technical capacity of the tenderer or candidate, where necessary, on his research and development facilities and quality assurance measures; the check shall be carried out by the contracting authority or on his behalf by an authorised natural or legal person in the country in which the tenderer or candidate is established and with the former's approval,
- h) a share of the contract performance, which the tenderer or the candidate envisages to assign to a third party.

(6) Where the contracting authority requests submission of a quality assurance certificate, that certificate must be based on Slovak technical standards. The contracting authority shall recognise an equivalent certificate of member states of the European Communities. The contracting authority shall also accept other evidence of quality assurance measures in case of those tenderers or candidates who do not have an access to such certificates or who do not have the opportunity to obtain them within the time limit required.

(7) In a contract notice or in a call for competition, the contracting authority shall indicate which documents in accordance with paragraphs 1, 3 through 5 he requires to be submitted or which other documents are to be submitted. These documents must relate to the subject of procurement.

(8) The scope of information referred to in paragraphs 1 through 7 must relate to the subject of procurement. The contracting authority shall take into consideration legal interest of tenderer or candidate where it relates to business secret.

#### Article 31

(1) Contracting authority shall eliminate from the contract award procedure a tenderer or candidate who has failed to comply with the criteria for participation in accordance with Article 29 (1) or whose documents submitted have been recognised invalid.

(2) Contracting authority shall eliminate from the contract award procedure a tenderer or candidate who has failed to submit the requested documents or information establishing his financial and economic standing or technical capacity, or who has provided untrue or distorted information.

#### Article 32

(1) Contracting authority shall allow a group participate in contract award procedure. Contracting authority may not request that such group form a certain legal form prior to tender submission. Contracting authority may, however, request that this group do so in case their tender has been selected, and establishment of a certain legal form is necessary for reasons of a due contract performance. A group shall demonstrate their compliance with the participation criteria in accordance with Article 29 for each member of the group separately and in accordance with Article 30 jointly.

(2) Contracting authority may not eliminate tenderers or candidates of member states of the European Communities who are authorised to pursue the required activity on the grounds that – in accordance with generally binding legal regulations of the Slovak Republic – a certain legal form is requested to pursue the required activity.

(3) Contracting authority may, however, request that legal persons in demonstrating their compliance with the participation criteria in contract award procedure indicate names and the necessary professional qualifications of their staff responsible for the contract performance.

#### Article 33

(1) The compliance of tenderers or candidates with the criteria for participation in contract award procedure shall be assessed in compliance with the contract notice and the contract documents. Where the criteria for participation are referred to in contract documents, they may not collide with the contract notice.

(2) Contracting authority may invite a tenderer or candidate to provide explanation or to complete the documents submitted by which the compliance with the criteria for participation in contract award procedure is demonstrated.

(3) After an assessment of compliance with the criteria for participation of tenderers or candidates a list shall be drawn up which contains

- a) a list of all tenderers or candidates,
- b) a list of eliminated tenderers or candidates stating the reason for their elimination,
- c) a list of candidates not invited to submit tenders or to negotiate and justification of their non-invitation.

(4) Contracting authority shall without any delay notify in writing the tenderers or candidates who have been eliminated, that they would not be invited to submit a tender or to negotiate stating reason thereof.



Article 34  
Rules for evaluation of tenders

(1) In the contract notice or in the call for competition, the contracting authority shall specify the criteria for the evaluation of tenders and if possible, their ranking in the descending order of importance.

(2) Where the contracting authority has specified a single criterion for the evaluation of tenders, the criterion shall always be the lowest price.

(3) Where the contracting authority has specified several criteria for the evaluation of tenders, he shall specify the rules of their application in order to select the economically most advantageous tender. In addition to the price, other criteria may be in particular:

- a) as regards supplies, the time of delivery, quality, technical and functional characteristics of the supplies, post-warranty service, technical assistance,
- b) as regards works, the time of construction, quality, the detail of delivery, the design and technical solution,
- c) as regards services, the time of service provision, the service quality and the functional characteristics of the service.

(4) The warranty period may not be a criterion for evaluation of tenders.

Article 35  
Criteria for requesting tender bond

(1) In cases of awarding contracts above the threshold, the contracting authority shall be obliged to request a tender bond. In cases of awarding contracts below the threshold, the contracting authority may request a tender bond. A tender bond may not exceed 5 % of the estimated contract value. A tender bond may not exceed SKK 5 000 000.

(2) Where the contracting authority requires a tender bond, the terms of its deposit and the terms of its release or payback shall be specified in the contract documents. The terms for payment the tender bond need to be specified in a way allowing the tenderer to select the way of its payment.

(3) Where a tender bond has been deposited to the contracting authority's bank account, the contracting authority shall return the bond plus interest accrued in case the bank has provided any. Contracting authority shall release the tender bond not later than seven days after the contract has been concluded.

(4) Tender bond shall forfeit on the contracting authority's behalf where the tenderer has withdrawn from his tender after the final date for submission of tenders.

(5) Contracting authority shall return the bond prior to the expiry of the tender validity period within 15 days from the delivery of a tenderer's request for its return where:

- a) the tenderer has failed to comply with the criteria for participation in the contract award procedure, the contracting authority has excluded him from the notified contract award procedure, and the tenderer has not filed an objection against the contracting authority's proceeding,
- b) his tender has been eliminated during the evaluation of tenders in accordance with Article 43 (4), (5) or (7) and the tenderer has not filed an objection against the contracting authority's proceeding, or
- c) has revoked the notified public award procedure in accordance with Article 48 (1) (d) or (2).

(6) The tender validity period shall commence upon the expiry of the tender submission period and shall expire by the date, which the contracting authority has indicated in the contract award notice or in the tender document. When determining the tender validity period, the contracting authority shall reflect particularly the time necessary for the opening of tenders, the evaluation of tenders and for conclusion of contract. The contracting authority shall notify the tenderers of the anticipated extension of the tender validity period in case review procedures are applied. During the tender validity period, the tenderer shall be bound by his tender.

#### Contract documents Article 36

(1) Contract documents shall contain a detailed specification of the subject of procurement. The subject of procurement shall be described clearly, completely and impartially. Description of the subject of procurement shall contain technical specifications in accordance with Annex 6 drawn up separately for each subject of procurement. In case of an award procedure above the threshold, technical specifications shall be laid down in accordance with Article 37 and Annex 6.

(2) Contracting authority referred to in Article 5 may define the subject of procurement on the basis of performance and functionality criteria; he must, however, define technical specifications in a way to make clear any and all criteria and circumstances significant for the preparation of a tender. The description of the subject of procurement shall make clear its purpose and the criteria of its performance specified from the technical, economic, design, appearance and functionality views. The description of the subject of procurement shall assure that tenders are comparable.

(3) In developing description of the subject of procurement, operational and maintenance works, service performance, quantities of the warehouse stock necessary, waste disposal costs, costs of disposal of the subject of procurement and other costs shall be taken into account in case they also are criteria for the evaluation of tenders. Description of the subject of procurement shall include any and all circumstances significant in the contract execution and – as a result – for preparing a tender.

(4) Contract documents shall further include documentation, plans, models, samples, photographs where necessary for the preparation of tenders, business terms of delivery of the subject of procurement, criteria for the evaluation of tenders, rules of their application and instructions for preparation of tenders. Contracting authority may specify the content of the business terms by a reference made to general business terms.<sup>13</sup> Contracting authority shall further specify which parts of the contract documents shall make part of the contract. It is not allowed to alter those parts. Contracting authority shall request that the tender price and the contract price be stated in Slovak crowns.

(5) The rules determined by contracting authority for criteria evaluation must be non-discriminatory and must support fair competition. The rules for criteria evaluation may not include quadratic, cubic or similar equations.

(6) In the contract documents, contracting authority may request that the tenderers specify the share of the contract performance, which they intend to subcontract to third parties. This statement shall not have any influence on the tenderer's responsibility for the overall contract performance.

(7) Contract documents may not include:

- a) any criteria which are not in compliance with international obligations,
- b) technical specifications of the subject of procurement referring to a specific producer, origin of the subject of procurement, production procedure, brand, patent, type, country of origin or production whenever leading to discrimination or elimination of certain service providers, suppliers or works contractors; contracting authority may use such technical specifications only exceptionally in cases he is unable to give a description of the subject of procurement clearly and understandably; in that case, the description shall be extended by the expression "or equivalent"; this fact shall also be stated in the contract notice,
- c) data protected by the industrial property right and works protected by copyright without the author's approval,
- d) criteria inadequate to the value and scope of the subject of procurement by which participation of tenderers is restricted,
- e) requirements concerning determination of fixed price in case of works contracts with anticipated execution period exceeding 12 months,
- f) requirements concerning even only partial performance of the subject of procurement.

(7) Anyone who has participated in the preparation and drawing up of contract documents shall be obliged to keep them confidential until the date on which they are provided to tenderers. To this end, the contracting authority shall be provided a statement of impartiality and confidentiality of the data processed.

(8) Contracting authority shall provide contract documents to any tenderer or candidate where the criteria laid down in this Act have been met. The recompense for contract documents may not exceed real costs of their duplication.

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<sup>13</sup> Article 273 of the Commercial Code.

(9) In exceptional cases, contracting authority may extend the information contained in the contract documents which shall be demonstrably communicated simultaneously to all tenderers not later than:

- a) six days prior to the expiry of the time limit for the submission of tenders, or
- b) four days prior to the expiry of time limit for the submission of tenders in case of restricted procedure or negotiated procedure with prior publication of a contract notice where the period for the submission of tenders has been specified ten days as a maximum.

Such information may not collide with the contract notice.

(10) Contracting authority shall keep record of tenderers or candidates, to whom tender document has been provided. The record shall read the tenderer's or candidate's business name and the address of his seat and the date, on which the tender document was provided.

#### Article 37

(1) Contracting authority shall draw up technical specifications in accordance with generally binding legal regulations inasmuch as these regulations are in compliance with the European Communities law and with a reference to:

- a) Slovak technical standards or other national standards implementing European standards, or
- b) common technical specifications, or
- c) European technical approvals.

(2) Contracting authority shall not be obliged to proceed in accordance with paragraph 1 where:

- a) Slovak technical standards or other national standards implementing European standards, common technical specifications or European technical approvals do not include any provisions to assure compliance, or where technical means to assure the necessary compliance of products with these standards, common technical specifications or European technical approvals are not available,
- b) procedure in accordance with paragraph 1 does not allow for application of European Communities regulations concerning the initial stage of mutual recognition of type approvals for telecommunications terminal equipment or Council decision concerning standardisation in the field of information technology and telecommunications or other instruments of the European Communities in certain areas of specific services or sectors of production,
- c) application of Slovak technical standards or other national standards implementing European standards, common technical specifications or European technical approvals would force the contracting authority to use products or materials incompatible with the equipment which he uses, or this would entail disproportionate costs or disproportionate technical difficulties, but only as a part of a clearly defined strategy with a view to change-over, within a given period, to European standards, common technical specifications or European technical approvals,
- d) the project concerned is of genuinely innovative nature, for which the use of European standards, common technical specifications or European technical approvals would not be appropriate.

(3) Contracting authority referred to in Article 5 shall also not be obliged to comply with paragraph 1 where the applicable European specification does not suit the intended special use or does not take into consideration the subsequent technical development, which has occurred after its adoption. In this case, the competent standardisation body or any other body authorised to review European specifications shall be notified of reasons why the European specification is considered inappropriate and its revision is requested.

(4) Where European standards, common technical specifications or European technical approvals are absent, technical specifications

- a) are to be specified with a reference to technical specifications effective in the Slovak Republic which comply with the requirements referred to in the European Communities regulations on technical standardisation, in compliance with the procedures laid down in those regulations and in particular in compliance with the procedures laid down in the regulations on building products,
- b) may be specified by making reference to technical specifications effective in the Slovak Republic, which relate to designing, pricing, execution of works and use of materials,
- c) may be specified with a reference to other documents; in this case, it is recommended to refer to these documents in the following order:
  1. Slovak technical standards or other national standards transposing international standards,
  2. other Slovak technical standards and technical approvals effective in the Slovak Republic,
  3. other standards.

(5) Contracting authority referred to in Article 5 shall specify other criteria, which are unavoidable for the completion of European specifications or other standards. In doing so, he shall prefer specifications referring to performance criteria to design or description characteristics, unless the contracting authority has objective reasons why these specifications are not appropriate for the purpose of the contract.

(6) Contracting authority referred to in Article 4 which has used technical specifications in accordance with paragraph 2, shall specify the reasons for doing so in the contract notice or in the part of contract documents, which shall make part of the contract. Contracting authority shall always specify these reasons in his internal documents and upon request submit them to the Office and to the European Commission.

(7) Where the contracting authority referred to in Article 5 has drawn up technical specifications in accordance with paragraphs 2 and 3, he shall refer to this in the contract notice or in a periodic notice with a call for competition in accordance with Article 27.

(8) Contracting authority referred to in Article 5 shall apply paragraphs 1 through 5 and 7 without prejudice to other binding technical regulations insofar as these regulations are compatible with the European Communities law.

#### Article 38 Explanations

Contracting authority shall demonstrably notify all tenderers or candidates of an explanation of criteria for participation of tenderers or candidates in the award of contracts or

of contract documents within six days from the delivery of a request for explanation, however, not later than six days prior to the expiry of the time limit for the submission of tenders or the period for submission of documents demonstrating the compliance with the criteria for participation in public procurement.

#### Article 39 Means of communication

(1) Notices, handing over of supporting documents and other communication between contracting authority and the tenderer or candidate shall be carried out in a way, which allows a permanent record of their content so that the genuine and confidential nature of the information intermediated is guaranteed and is equally accessible to any tenderer or candidate. Communication may be channelled through mail, telefax, by electronic means or by personal delivery.

(2) Tenders shall be submitted in written form, in person or by mail. Contracting authority may allow submission of tender also by other means provided that:

- a) each tender would contain any information necessary for its evaluation,
- b) the confidentiality of tenders shall be preserved until they are evaluated,
- c) in case of necessity for reason of legal evidence, the tenders dispatched in this way shall be confirmed in writing or by dispatching a confirmed copy as soon as possible,
- e) tenders shall be opened upon the expiry of the tender submission period in accordance with Article 43.

#### Article 40 Language in public procurement

(1) Tenders and other supporting documents in public procurements shall be submitted in the official language. In the contract notice, contracting authority may allow that the tenders are also submitted in another language.

(2) Documents demonstrating the compliance with the participation criteria for tenderers or candidates who are established outside the Slovak Republic must be submitted in the original language and – at the same time – officially translated in the Slovak language. Where differences in their content are identified, the translation in the Slovak language shall prevail.

#### Article 41 Tender submission

(1) Tender has to be delivered within the time limit for the submission of tenders in a closed envelope indicating the business name and the place of establishment or the place of business of the tenderer, marked súťaž (tender) followed by the title of tender. A tender shall also contain the tenderer's statement of agreement with the terms specified by the contracting authority, signed by the tenderer or a person authorised to act on the tenderer's behalf. Where the tender is delivered in person, the contracting authority shall countersign its receipt, stating the date, time and place of the tender delivery.

(2) Any tenderer may submit one tender only. In case the contracting authority is to accept the tender, which is economically most advantageous, variants specified in the tender may be evaluated where they comply with the minimal requirements specified by the contracting authority in the contract documents. In case the contracting authority has not allowed submission of variant solutions in tenders, this must be specified in the contract notice and in the contract documents. Contracting authority may not eliminate a variant specified in a tender solely on the ground that it has been prepared on the basis of technical specifications referring to European specifications or to Slovak technical standards or other national standards implementing European standards.

(3) Tenderer may additionally alter or amend his tender submitted within the time limit for the submission of tenders only, in a way referred to in paragraph 1.

(4) Contracting authority shall keep every tender submitted in an intact envelope until the time limit for the submission of tenders has expired.

(5) Contracting authority shall return each tender submitted after the expiry of the time limit for the submission of tenders to the tenderer without opening it.

(6) Tenderer may indicate his tender or certain parts thereof confidential, with the exception of data, which are published.

#### Article 42 Commission

(1) Contracting authority shall be obliged to establish a commission of at least three members to evaluate the tenders. The commission members must have professional training or professional experience relevant to the subject of procurement. The commission shall be qualified to evaluate the tenders submitted where the majority of its members, however, not less than three are present simultaneously.

(2) To assure transparency of the award procedure, contracting authority may appoint additional members of the commission not possessing the right to evaluate the tenders.

(3) A commission member must be a person of integrity and may not be a tenderer or partial with regard to the tenderers. Neither a commission members nor his close person<sup>14</sup> may be a legal representative body or a member of a legal representative body of the tenderer, or a partner in the legal person who is a tenderer. A commission member may neither be a person who is employed by the tenderer, employed by an interest association of entrepreneurs of which the tenderer is a member, or who is employed by the Office.

(4) Having studied the list of tenderers who have submitted their tenders, commission member shall confirm in a solemn declaration to the contracting authority that not any facts have occurred, which may prevent him from being the commission member, or he shall inform the contracting authority that facts have occurred which prevent him from being the commission member. Where in this way, the number of the commission members would

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<sup>14</sup> Article 116 of the Civil Code.

decrease to less than three, the contracting authority shall renew the commission with a new member.

#### Article 43

##### Opening of envelopes and evaluation of tenders

(1) Contracting authority shall be obliged to allow all tenderers who have submitted tenders by the final date fixed of the time limit for the submission of tenders to take part in the opening of envelopes. The commission shall make known information concerning the business names, addresses or places of establishment of all tenderers and their proposals to comply with the different criteria specified by the contracting authority for the evaluation of tenders (Article 34). Other data contained in the tenders shall not be made known.

(2) The commission shall open the envelopes in the place and at the time stated in the contract notice. After the opening of envelopes, the commission shall check the tenders submitted on their completeness and mark each checked tender with a serial number.

(3) Within seven days from the opening of envelopes, the contracting authority shall deliver all tenderers who have submitted their tenders by the final date of the time limit for the submission of tenders, a report drawn up on the opening of envelopes. The report shall include a list of tenderers and their proposals to comply with the different criteria specified by the contracting authority for the evaluation of tenders.

(4) Evaluation of tenders by commission shall be closed and tenderers shall not be allowed to participate. Commission shall evaluate the tenders with regard to their compliance with the contracting authority's requirements for the desired subject of contract and shall eliminate tenders, which fail to comply with the requirements specified in the contract notice and in the contract documents.

(5) Where a tender quotes an unusually low price, the commission shall be obliged to invite the tenderer to explain his price quotation. The request to explain the price quotation is to be focused on those items of price stated in the tender, which he may consider decisive with regard to the overall value, and the commission consider them on the basis of the explanation provided. Commission shall eliminate a tender where it considers the explanation of the price quotation in accordance with paragraph 6 insufficient or where the tenderer does not provide an explanation of his price quotation within the period fixed by the commission or, where the commission has not fixed a period, within seven days from the delivery date of the request.

(6) Commission shall take into consideration explanations of a price quotation relating in particular to

- a) the economics of the manufacturing process, the economics of the services provided or the economics of the construction methods, or
- b) the technical solution chosen or exceptionally favourable conditions available to the tenderer for the supply of goods, execution of works or provision of services, or
- c) specific features of the supplies, works or services proposed by the tenderer.



(7) The commission may invite the tenderers to provide a written explanation of their tenders. The commission may, however, neither instigate a tenderer nor accept a tenderer's proposal to alter his tenderer whereby the tender would be favoured. The commission shall eliminate a tender where the tenderer has failed to submit an explanation within a period fixed by the commission or, where the commission has not fixed the period, within seven days from the date of the request delivery.

(8) In the evaluation of tenders which have not been eliminated, the commission shall proceed solely in accordance with Article 34 and in a way defined in the tender document. Every commission member shall evaluate every tender separately. Where the submission of variants has been allowed, the commission shall evaluate every variant of a tender with the same, comparable or higher parameters.

(9) The commission shall communicate the list of eliminated tenders stating the reason for their exclusion to the contracting authority. Contracting authority shall be obliged to notify the eliminated tenderers stating the reasons for their exclusion.

(10) The commission shall draw up a report on the evaluation of tenders, which shall include in particular:

- a) a list of commission members,
- b) a list of all tenderers who have submitted their tenders identifying the tenderers' proposals to comply with the different criteria for the evaluation of tenders,
- c) a list of eliminated tenderers stating the reason for their elimination,
- d) identification of the successful tenderer; for the remaining tenderers whose tenders were evaluated, reasons for the rejection of tenders, for each tenderer separately, shall be stated in comparison to the successful tender.

(11) All accessory commission members shall ratify the report on the evaluation of tenders. The chairman of the commission hands the ratified report with tenders up to the contracting authority.

(12) In the course of evaluation of tenders, the commission members may not provide any information concerning the content of the tenders and their evaluation.

#### Article 44

##### Evaluation of certain tenders for the supply of goods

(1) Contracting authority referred to in Article 5 may eliminate a tender for the supply of goods where more than a half of its total value is made by supplies originating in third countries which have not entered into a bilateral or multilateral agreement with the European Communities assuring a similar access of suppliers to the markets of such third countries.

(2) Where two or several tenders are equivalent from other aspects, in evaluating the tenders in accordance with Article 43 the tender shall be preferred, which cannot be

eliminated in accordance with paragraph 1 and the difference in the value does not exceed three percent.

(3) Contracting authority shall not apply paragraph 2 in case – as a result – he would be obliged to acquire supplies of technical characteristics different from the supplies already acquired and which could thus not be used due to technical problems in the operation and maintenance or would entail disproportionate costs.

(4) Paragraphs 1 through 3 shall not apply where – in compliance with a decision of a body of the European Communities – a multilateral or bilateral agreement with a third country has been concluded which guarantees the European Community contractors/suppliers a comparable and effective access to that country's market, without prejudice to the obligations of the European Communities or its Members States in respect to that country.

#### Article 45

##### Communication on the results of evaluation of tenders

After the evaluation of tenders, contracting authority shall be obliged to dispatch a communication on the results of evaluation of tenders to all tenderers without any delay. The successful tenderer shall be informed that his tender has been accepted. Other tenderers shall be notified that their tenders have been rejected. In the communication, reasons shall be given why their tenders have been rejected. The contracting authority must be able to supply proof that the communication has been dispatched to all tenderers simultaneously.

#### Article 46

##### Conclusion of contract

(1) Contracting authority shall conclude contract during the tender validity period. The contract concluded may not collide with the tender document and with the tender submitted by the successful tenderer.

(2) Contracting authority may conclude contract with the successful tenderer not earlier than on the tenth day from the day of dispatch of the notification of outcome of the evaluation of tenders to all tenderers whose tenders were evaluated, unless request for remedy or protests were filed in accordance with Article 107 (4) (c).

(3) Where a request for remedy has been filed, the contracting authority may conclude contract with the successful tenderer not earlier than on the tenth day after the expiry of the remedy period in accordance with Article 105 (7) (a), unless protests have been filed in accordance with Article 107 (4) (a).

(4) Where a request for remedies has been rejected, the contracting authority may conclude contract with the successful tenderer not earlier than on the tenth day from the delivery of the notice that the request for remedy in accordance with Article 105 (7) (b) has been rejected, unless protests have been filed in accordance with Article 107 (4) (a).

(5) Where contracting authority did not act in the matter of a request for remedy and protests in accordance with Article 107 (4) (b) have not been filed, contracting authority may conclude contract with the successful tenderer not earlier than on the tenth day after the expiry

of the period fixed for the settlement of requests for remedies in accordance with Article 105 (7).

(6) Where protests have been filed in accordance with Article 107 or a motion for audit in accordance with Article 117, the contracting authority may conclude contract with the successful tenderer not earlier than on the fourteenth day from the delivery of the Office decision or pursuant to the result of the Office action.

(7) The contracting authority may not use a tender or its part without an approval of the tenderer.

#### Article 47 Contract award notice

(1) Contracting authority referred to in Article 4 shall dispatch the contract award notice above the threshold to be published in the Official Journal of the European Union and in the Journal not later than 48 days from the contract conclusion.

(2) Contracting authority referred to in Article 5 shall dispatch the contract award notice above the threshold to be published in the Official Journal of the European Union and in the Journal not later than two months from the contract conclusion.

(3) Where awarding contracts below the threshold, contracting authority shall dispatch a contract award notice to be published in the Journal not later than 48 days after the contract has been concluded.

(4) In the contract award notice in case of service contracts referred to in Annex 4, the contracting authority shall indicate whether he agrees with its publication.

(5) To contract award notices above the threshold, Article 25 (9) shall equally apply.

(6) The contract award notice may not contain any information which – in the event of its publication – might collide with the generally binding legal regulations, with the public interest, with the competition rules or might otherwise damage the business interests of tenderers.

(7) The content and model of a contract award notice shall be regulated by a generally binding legal regulation to be issued by the Office.

#### Article 48 Termination of a notified contract award procedure

(1) Contracting authority shall terminate a notified contract award procedure where:

- a) not a single tender has been received,
- b) none of the tenders submitted comply with the criteria specified in the contract notice or in the contract documents,

- c) none of the tenderers or candidates managed to comply with the criteria for participation in the contract award procedure,
- d) its termination has been ordered by the Office.

(2) The contracting authority may terminate the notified contract award procedure also where circumstances under which it had been notified have materially changed and could not be foreseen.

(3) Contracting authority shall be obliged to notify tenderers and candidates of termination of the contract award procedure and specify the reason for termination or specify the award procedure to be applied to award the original contract.

(4) Where the contracting authority does not conclude a contract above the threshold, the Office for Publications of the European Communities shall be notified of the reasons or of a decision concerning a contract award procedure to be used to conclude the original contract.

(5) Contracting authority shall dispatch the Office a notice of termination of a notified contract award procedure to be published in the Journal.

#### Article 49

##### Documentation in public procurement

(1) The contracting authority shall record any and all documents from the contract award procedure employed and store them four years from the expiry of the tender validity period.

(2) The documents of the contract award procedure employed shall be appended in accordance with Article 61 and Article 66 with a justification of its selection.

(3) Contracting authority shall submit the complete documentation upon request to the Office and the Antimonopoly Office of the Slovak Republic, as well as to other bodies of audit, to courts and to prosecution bodies.

#### Article 50

(1) Contracting authority referred to in Article 4 (1) shall publish the public works concession notice in accordance with Article 25. The period for submission of participation applications may not be less than 52 days from the date of the notice dispatch for publication.

(2) In contract award procedure leading to the conclusion of a concession contract, contracting authority referred to in Article 4 (1) may:

- a) request that the concessionaire award contracts representing a minimum of 30 % of the total value of the work to third parties, at the same time provide for the option to increase this percentage; this minimum percentage shall be specified in the concession contract, or
- b) request that tenderers for concession contract specify in their tenders the percentage of the total value of the work, which they intend to assign to third parties.

(3) Where the concessionaire is himself a contracting authority referred to in Article 4 (1), he shall comply with public procurement methods and procedures in the award of contracts for works to be carried out by third parties in accordance with this Act.

(4) Where the concessionaire is not a contracting authority referred to in Article 4 (1), he shall comply with public procurement methods and procedures in accordance with this Act in the award works contracts with an estimated value net of VAT equal to or exceeding EUR 5 000 000 to be carried out by third parties. A concessionaire shall be obliged to:

- a) comply with the provisions of Article 25 relating to publishing of contract notices above the threshold; publishing of a notice shall not be required where the contracting authority employs Articles 66 and Article 67,
- b) request the verification of the compliance with the criteria for participation in the contract award procedure according to Article 30 only,
- c) fix a time period to deliver the application for participation and documents to demonstrate the compliance with the participation criteria not less than 37 days from the date of dispatch of the contract notice referring to award of contract above the threshold and a time limit for the submission of tenders not less than 40 days from the date of dispatch of the contract notice above the threshold or call for competition.

(5) Tenderers or candidates who have formed a group of tenderers or candidates or an undertaking affiliated with the tenderers or candidates, shall not be considered third parties. In accordance with this Act, affiliated undertaking shall mean a legal person established by a concessionaire, the annual accounts of which are consolidated in accordance with a special regulation<sup>5</sup>), or a legal person over which the concessionaire may exercise, directly or indirectly, a dominant influence or which, in common with the concessionaire, is subject to the dominant influence of another legal person by virtue of ownership, financial participation or the rules which govern it. Dominant influence of concessionaire over a legal person shall mean that he:

- a) owns a majority of shares or a majority interest, or
- b) controls a major share in the voting rights, or
- c) appoints more than half of members in the administrative body or executive body or supervisory body.

(6) A detailed list of the group of tenderers or candidates or undertakings affiliated with the tenderers or candidates must be enclosed in the tender. This list needs to be updated on the occasion of any change.

(7) Concession period shall mean the period fixed in the concession contract, during which the concessionaire shall be entitled to use the subject of concession contract. The concession period shall commence on the first day of the month following after the building approval of the work, or after its commissioning, or after another event in accordance with the concession contract where the concessionaire has already had or could have had gainings from operating the work. The concession period shall expire on the last day of the month of the fixed period.

(8) A concession period may not exceed 30 years.

(9) By concluding a contract, the concessionaire shall acquire rights and obligations of a property manager and may not alienate, burden, sell by auction, or assign management of the property to another legal person or natural person.

(10) During the concession period, the contracting authority may not transfer ownership of the work contracted and of the building plot to any other legal person or natural person.

#### Article 51

(1) In awarding of contract, the subject of which is design document and public housing construction whose scope, complex nature and estimated construction period require a close cooperation within a group composed of the contracting authority's representatives, designers and contractors, the contracting authority referred to in Article 4 (1) may opt to employ a special procedure in the selection of contracting parties to be included in the group.

(2) In his contract notice of restricted procedure, the contracting authority shall give a detailed description of works to allow candidates acquire a realistic picture of the subject of procurement. Simultaneously, criteria for participation of candidates in accordance with Articles 29 and Article 30 shall be stated.

#### Article 52

##### Obligations of contracting authority with regard to the Office

(1) As early as possible after the beginning of a calendar year, however, not later than the end of April, the contracting authority shall provide the Office with a list of subjects to be procured within the calendar year by employing contract award procedures above the threshold, stating the estimated quantities and the estimated values.

(2) Contracting authority shall draw up a report concerning each contract awarded above the threshold. Such reports shall be submitted to the Office not later than the end of January for the preceding calendar year. A report shall include in particular:

- a) identification of the contracting authority, subject and type of contract, contract value,
- b) date of the notice publication in the Journal,
- c) identification of selected tenderers or candidates and justification of their selection,
- d) identification of eliminated tenderers or candidates and justification of their exclusion,
- e) identification of candidates not invited to submit tenders or to negotiate and justification of their non-invitation.
- f) identification of the successful tenderer and justification of selection of his tender; the share of contract to be provided for by a third party, if any, shall be given,
- g) justification of the use of negotiated procedure with prior publication of a contract notice or of negotiated procedure without prior publication of a contract notice.

(3) The Office may additionally request that the contracting authority provide other additional data or information.

(4) The Office may request that the contracting authority submit a statistical report on the contract award procedures employed.

(5) Upon a tenderer's or candidate's request, the contracting authority shall countersign references relating to contracts effectuated and send the original of the statement to the Office within 15 days.

### Article 53

#### Obligations of contracting authority with regard to the European Commission

(1) Upon request made by the European Commission, the contracting authority shall provide a report or a part thereof, drawn up in accordance with Article 52 (2).

(2) Upon request made by the European Commission, the contracting authority referred to in Article 5 shall report on:

- a) activities considered exempted in accordance with Article 6 (1) (a),
- b) kinds of supplies or activities considered exempted in accordance with Article 6 (1) (b),
- c) services considered exempted in accordance with Article 6 (2).

(3) Upon request made by the European Commission, the contracting authority referred to in Article 5 shall communicate information resulting from the application of Article 6 (6). The information shall include:

- a) identification of legal persons,
- b) type of contract and contract value,
- c) an evidence that the relationship between the legal person and the contracting authority complies with requirements contained in Article 6 (6).

### Open procedure

#### Article 54

Open procedure shall mean a method of public procurement which is notified for an unrestricted number of tenderers to submit tenders for the award of supplies contracts, works contracts or services contracts.

### Article 55

(1) The time limit for the submission of tenders shall be not less than:

- a) 52 days from the date of dispatch of the contract notice referring to award by open procedure, or
- b) 36 days from the date of the contract notice referring to award by open procedure where

- 1. the contracting authority referred to in Article 4 had published a prior information notice,
  - 2. the contracting authority referred to in Article 5 had published a periodic indicative notice without a call for competition,
- not earlier than 12 months and not later than 52 days prior to the date of dispatch of the contract notice.

(2) Where the contracting authority has called to an open procedure for the award of contract for the delivery of supplies, execution of works or providing of services below the threshold, the time limit for the submission of tenders may be shortened to 36 days.

(3) The time limit for the submission of tenders shall commence on the date following the day of dispatch of the contract notice referring to award by open procedure and shall expire on the last day of the time limit for the submission of tenders.

(4) Where drawing up a tender requires studying bulky documentation or inspection on the spot for the delivery of the subject of contract, the contracting authority shall extend the time limit for the submission of tenders accordingly.

(5) The contracting authority shall provide contract documents within six days from the receipt of a candidate's request.

(6) A tender may only be submitted by a tenderer who has requested the contract documents and to whom the contract documents have been handed out by the contracting authority.

#### Article 56

(1) The commission shall evaluate compliance with the participation criteria by tenderers in accordance with Article 33 and propose to eliminate tenderer who has failed to comply.

(2) Tenders submitted by tenderers who have complied with the participation criteria shall be evaluated by a commission in accordance with Article 43 (4) through (12).

#### Restricted procedure

##### Article 57

(1) Restricted procedure shall mean a method of public procurement, which is notified by contracting authority for an unrestricted number of candidates; the contracting authority may restrict the number of candidates who are invited to submit tenders, the lowest number being 5 and the highest number being 20.

(2) Contracting authority shall determine the method of selecting candidates in his contract notice referring to award by restricted procedure.

#### Article 58

(1) In the contract notice referring to award by restricted procedure, the contracting authority shall fix:

a) the way for selecting candidates and



- b) the time limit, within which the candidates are obliged to submit documents proving their compliance with the criteria for participation in the restricted procedure.

(2) The time limit for the submission of documents may not be less than 37 days.

(3) The time limit for the submission of documents shall commence on the date following the day of dispatch of the contract notice referring to award by restricted procedure and shall expire by the expiry of the last day of the time limit for the receipt of documents.

(4) Where the contracting authority procures supplies, works or services under a time pressure, which he is clearly not responsible for, the time limit for the submission of documents may be shortened. The time limit for the submission of documents may not be less than 15 days from the date of dispatch of the contract notice referring to award by restricted procedure.

#### Article 59

(1) Contracting authority shall evaluate compliance with the criteria for participation of candidates in the restricted procedure in the way indicated in the contract notice referring to award by restricted procedure.

(2) Contracting authority may establish a commission to evaluate compliance with the criteria. Contracting authority shall notify each candidate of the result of evaluation.

(3) Contracting authority shall dispatch a call for the submission of tenders to selected candidates only, which have complied with the criteria for participation in the restricted procedure.

#### Article 60

(1) The invitation to tender shall contain:

- a) the place and time for handing out contract documents unless they are included in the call,
- b) price of contract documents, if applicable,
- c) identification of additional documents, if necessary, which are intended to support the statements submitted by the candidate in accordance with the contract award notice or to complete the information requested by the contract award notice; no other requests may be made relating to the financial and economic standing and the technical qualifications of the candidate that those initially specified by the contracting authority,
- d) time limit for the submission of tenders, the place of submission of tenders and the language or languages in which tenders may be submitted,
- e) information on contract notice referring to award by restricted procedure in the Journal and in case of contracts above the threshold, the name of non-national press media, in which the contract notice referring to award by restricted procedure was published,
- f) criteria used for evaluation of tenders unless already specified in the contract notice referring to award by restricted procedure,
- g) other necessary information.

(2) Where contract documents are not included in the call, the contracting authority shall make them available to tenderers in accordance with Article 55 (5) within six days from their delivery of their requests.

(3) The time limit for submission of tenders fixed by the contracting authority referred to in Article 4 shall be not less than:

- a) 40 days from the dispatch of the call to selected candidates,
- b) 26 days from the dispatch of the call to selected candidates where the contracting authority referred to in Article 4 has published a prior information notice not earlier than 12 months and not later than 52 days prior to the date of the dispatch of the contract notice.

(4) Contracting authority referred to in Article 5 may fix the time limit for the submission of tenders in agreement with the selected candidates only where all are allowed the same time for drawing up and submission of tenders. Where agreement on the time limit for the submission of tenders cannot be reached, the contracting authority shall fix a time period, which may not be less than 24 days and, in exceptional cases, not be less than ten days from the date of dispatch of the invitation to tender.

(5) Where the contracting authority has notified award of contract for the delivery of supplies, execution of works or providing of services below the threshold by restricted procedure, the time limit for the submission of tenders may be shortened to 26 days.

(6) Where the contracting authority referred to in Article 4 procures supplies, works or services under a time pressure, which he is clearly not responsible for, the time limit for the submission of tenders may be shortened. The time limit for the submission of tenders may not be less than 10 days from the dispatch of the invitation to tender. The contracting authority shall provide explanations of the contract documents not later than four days prior to the expiry of the time limit for the submission of tenders.

(7) The time limit for the submission of tenders fixed by the contracting authority must take into consideration the time necessary to study the necessary documentation, bulky technical specifications, visit the place of delivery of the contract subject or check the documents necessary to prepare a tender.

#### Negotiated procedure with prior publication of a contract notice Article 61

Negotiated procedure with prior publication of a contract notice is a contract award procedure, which the contracting authority may employ where at least one of the following requirements has been met:

- a) in the event all tenders submitted in a preceding open procedure or restricted procedure were irregular or otherwise unacceptable and provided that as the original terms of contract are not substantially changed; In this case, the contracting authority shall not be obliged to publish a notice, if all candidates are invited to negotiate who have complied with the participation criteria in the preceding open procedure or restricted procedure in accordance with Article 29 and Article 30 and have submitted tenders compliant with the requirements of the contracting authority,

- b) the requirements for the services procured, in particular of financial services cannot be defined with sufficient precision,
- c) the works procured are carried out purely for the purpose of research and development, and not to generate profit, or to cover the costs of research and development,
- d) in exceptional cases, when the works or services or the risks attaching thereto do not allow specify the prior overall pricing.

#### Article 62

(1) Negotiated procedure with prior publication of a contract notice shall mean a contract award procedure which is made known by contracting authority for a unrestricted number of candidates; the contracting authority may restrict the number of candidates who are invited to negotiate, the lowest number being three.

(2) The contracting authority shall determine the method for selecting candidates in his contract notice referring to award by negotiated procedure with prior publication.

#### Article 63

(1) In the contract notice referring to award by negotiated procedure with prior publication, the contracting authority shall fix a time limit, by which the candidates are obliged to submit documents proving their compliance with the criteria for participation in the negotiated procedure. The time limit for the submission of documents may not be less than 37 days. To the time limit for the submission of documents, Article 58 (3) shall apply.

(2) Where the contracting authority procures supplies, works or services under a time pressure, which he is clearly not responsible for, the time limit for the submission of documents may be shortened. The time limit for the submission of documents may not be less than 15 days from the date of dispatch of the contract notice.

#### Article 64

(1) The contracting authority shall evaluate the compliance with the criteria for participation of candidates in the negotiated procedure with prior publication of a contract notice in the way indicated in the contract notice. Contracting authority may establish a commission to evaluate their compliance.

(2) Contracting authority shall notify all candidates of the result of evaluation of compliance with the criteria for participation of candidates in the negotiated procedure with prior publication of a contract notice and invite the selected candidates to negotiate.

(3) With the tenderers, the contracting authority negotiates the terms of contract, in particular technical, administrative and financial terms.

(4) Negotiations are held jointly with all tenderers. Contracting authority shall draw up a report of each negotiation, which is signed by all negotiation participants.

(5) Contracting authority shall invite tenderers in writing to submit tenders. The invitation to tender shall contain:

- a) the time and place where contract documents may be handed over unless they are included in the invitation to tender,
- b) identification of additional documents, if necessary, which are intended to support the statements submitted by the candidate in accordance with the contract award notice or to complete the information requested by the contract award notice; no other requests may be made relating to the financial and economic standing and the technical qualifications of the candidate that those initially specified by the contracting authority,
- c) time limit for the submission of tenders, the place of submission of tenders and the language or languages in which tenders may be submitted,
- d) criteria for tender evaluation, unless they have been published in the contract notice,
- e) other necessary information.

(6) Where contract documents are not included in the invitation, the contracting authority shall provide them within six days from the receipt of a tenderer's request.

#### Article 65

(1) The time limit for submission of tenders fixed by the contracting authority referred to in Article 4 shall be not less than:

- a) 40 days from the dispatch of the call to selected candidates,
- b) 26 days from the dispatch of the call to selected candidates where the contracting authority referred to in Article 4 has published a prior information notice not earlier than 12 months and not later than 52 days prior to the date of the dispatch of the contract notice.

(2) Contracting authority referred to in Article 5 may fix the time limit for the submission of tenders in agreement with the selected candidates only where all are allowed the same time for drawing up and submission of tenders. Where agreement on the time limit for the submission of tenders cannot be reached, the contracting authority shall fix a time period, which may not be less than 24 days and, in exceptional cases, not be less than ten days from the date of dispatch of the invitation to tender.

(3) Where the contracting authority referred to in Article 4 procures supplies, works or services under a time pressure, which he is clearly not responsible for, the time limit for the submission of tenders may be shortened. The time limit for the submission of tenders may not be less than ten days from the dispatch of the calls to tender. The contracting authority shall provide explanations of the contract documents not later than four days prior to the expiry of the time limit for the submission of tenders.

(4) The time limit for the submission of tenders fixed by the contracting authority must take into consideration the time necessary to study the necessary documentation, bulky technical specifications, visit the place of delivery of the contract subject or check the documents necessary to prepare a tender.

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

##### Article 66

(1) Negotiated procedure without prior publication of a contract notice is a contract award procedure, which the contracting authority may employ only where at least one of the following requirements has been met:

- a) when, for technical reasons or artistic reasons or for reasons connected with the protection of exclusive rights, the supplies, works or services may only be provided by a particular supplier, works contractor or service provider,
- b) where the supplies, works or services are procured for reasons of an extraordinary event for which the contracting authority is clearly not responsible and neither open procedure nor restricted procedure nor negotiated procedure with prior publication of a contract notice are possible with regard to time pressure,
- c) this is a recurrent contract awarded for works or services of the same or similar type to the initial contract party, and
  - 1. the information concerning the award of successive contracts by negotiated procedure without prior publication of a contract notice was contained in the contract notice for the award of the initial contract and
  - 2. the initial contract was awarded by open procedure or restricted procedure and the contract of repetitive performance is concluded within three years from the award of the initial contract,
- d) additional works or services not included in the initial contract are procured, whose necessity has resulted additionally due to unforeseeable circumstances, and the new contract is awarded to the initial contract party and the estimated value of works or services shall not exceed 50 % of their values by the initial contract, where the additional works or services:
  - 1. cannot be technically or economically separated from the initial performance, or
  - 2. may be technically or economically separated from the initial performance, however, are unavoidable for further stages of performance under the initial contract,
- e) in a preceding open procedure or restricted procedure, no tender was submitted or none of the tenders submitted complies with the requirements of the contracting authority and, provided, that the initial contract terms are not substantially changed,

- f) in case of a tenderer whose design has been evaluated by the jury is the winner or one of the winners in a design contest; where there are several winning candidates, contracting authority must invite all of them to negotiate,
- g) the supplies contracted are used purely for the purpose of research and development, and not to generate profit,
- h) in the case of procuring complementary supplies from the initial supplier, intended as a partial replacement of usual supplies or equipment, or extension of supplies or equipment already delivered, where a change in the contract supplier would force the contracting authority acquire supplies of differing technical parameters, which may cause incompatibility or disproportionate technical difficulties in operation or maintenance; the contracting authority referred to in Article 4 shall award the contract for complementary supplies within three years from the award of the initial contract,
- i) the supplies contracted are purely used to make material reserves of the state.<sup>15</sup>

(2) Contracting authorities referred to in Article 5 may employ negotiated procedure without prior publication of a contract notice where at least one of the following requirements is complied with:

- a) in the case of subcontracts on the basis of an effective framework agreement,
  - b) in the case of complementary performance by the initial contractor intended for
    - 1. a partial substitution of usual supplies or works, or
    - 2. an extension of supplies or works already delivered where a change in the contractor would force the contracting authority acquire supplies or works technically different to such an extent that disproportionate technical difficulties would result in his operation or maintenance,
- in case of contract for the supply of goods at a discounted price, which is lower than the market price and is effective during a short time period only,
- d) in the case of acquisition of goods from a liquidator, bankruptcy trustee or executor offered at beneficial terms,
  - e) in the case of acquisition of supplies in the commodity exchange.

(3) Contracting authorities referred to in Article 4 may award contracts below the threshold where at least one of the requirements given in paragraph 2 is fulfilled.

## Article 67

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<sup>15</sup> Article 3 and Article 5 of the Act of the National Council of the Slovak Republic No. 82/1994 Coll. of Laws on Material Reserves of the State, as amended, and Act No. 241/2001 Coll. of Laws on Protection of Classified Information and on the Amendment of Certain Acts, as amended by the Act No. 418/2002 Coll. of Laws

To the compliance with criteria for participation, to negotiation and call to tender, the contracting authority shall apply Article 64 accordingly.

### TITLE THREE

#### DESIGN CONTEST

##### Article 68

(1) A design contest shall be made known as award of contract above the threshold where

- a) it makes part of a procedure leading to the award of a service contract and the estimated value net of VAT equals or exceeds the financial threshold referred to in Article 23 (1) (a) through (c), (2) (e) through (g),
  - b) the total sum of prizes and remunerations equals or exceeds the financial threshold referred to in Article 23 (1) (a) through (c), (2) (e) through (g),
- Otherwise, a contract below the threshold shall be awarded.

(2) Design contests are made known for an unrestricted number of candidates or tenderers.

(3) Contracting authority may restrict the number of candidates to not less than five. In the notice of design contest, the contracting authority shall specify clear and non-discriminatory criteria for participation to assure a sufficient number of candidates who will submit their designs. The access of candidates or tenderers from the Member States of the European Communities in a design contest may be restricted neither by a reference to a certain territory or a part thereof nor by a requirement of a certain legal form. Restriction shall not be a requirement of membership in a professional organisation or a trade chamber.

(4) Contracting authority shall make known a design contest by publishing a design contest notice in accordance with Article 25. The notice shall read if the tender document has been verified by the relevant professional organisation.<sup>14)</sup>

(5) The content and model of a design contest notice shall be regulated by a generally binding legal regulation to be issued by the Office.

##### Article 69

(1) Contracting authority shall be obliged to establish a jury of at least five members to evaluate the designs. Not less than one third of the jury members must have an equal or similar professional qualification to that required from the candidates or tenderers. Jury members shall comply with the criteria for members of a tender evaluation commission in accordance with Article 42 (3).

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<sup>14</sup>) Article 24 (2) (j) of the Act of the Slovak National Council No. 138/1992 Coll. on authorised architects and authorised civil engineers, as amended.

(2) In its decision-making and positions, the jury shall be independent. Designs, which are submitted anonymously, shall be evaluated solely in accordance with the criteria specified in the design contest notice.

(3) Contracting authority shall award the contract to the tenderer whose design has been evaluated by the jury as winner in case the design is a part of procedure leading toward a contract award.

#### Article 70

The content and model of the notice of a design contest result shall be regulated by a generally binding legal regulation to be issued by the Office.



## TITLE FOUR

## SIMPLIFIED PROCEDURES IN PUBLIC PROCUREMENT

## Article 71

(1) In awarding small value contracts with a higher price, the contracting authority shall proceed accordingly, applying titles one through five, with the exception of Article 17 (2), Articles 20 through 29, Article 33 (1), Article 35, Article 38, Article 43 (5) and (6), Article 45, Article 46 (1) through 5, Article 47, Article 48 (1) (d) and (4) and (5), Article 50, Article 51, Article 52 (1), (2), (4) and (5), Articles 53 through 59, Article 60 (1) (c) and (e) and (2) through (7), Articles 61 through 63, Article 64 (1), (2) and (5) (b), Article 65, Article 66 (3), Articles 67 through 70.

(2) In case of small value contracts with a lower price, contracting authority shall employ Article 76 and Article 77.

## Volume One

## Small value contracts with a higher price

## Article 72

In awarding small value contracts with a higher price, contracting authority:

- a) shall establish the estimated value of contract in accordance with the criteria effective on the day of dispatch of the invitation to tender or on the day of dispatch of the invitation to negotiate,
- b) shall request a certificate authorising to pursue business or other documents in accordance with Article 30 to demonstrate the compliance with the criteria for participation in contract award procedure,
- c) shall assess compliance with the criteria for participation in the award of contracts in compliance with the invitation,
- d) in the contract documents, shall indicate business terms and a detailed description of the subject of contract by which tenderers may not be discriminated,
- e) provide explanations of the data contained in the invitation to tender within three working days from the delivery of request for explanation to all tenderers; a tenderer may seek explanation not later than six working days prior to the expiry of the time limit for the submission of tenders,
- f) may establish a commission to evaluate the tenders; if established, the commission shall be governed by Article 42,

- g) in the evaluation of tenders, proceed solely in accordance with the criteria specified in the invitation to tender,
- h) conclude a contract within the tender validity period with the successful tenderer and simultaneously inform the remaining tenderers that they have not succeeded; where termination of the contract award has been decided, all tenderers or candidates shall be notified thereof without any delay and upon request, reasons of the termination shall be communicated,
- i) fix a time limit for the submission of tenders while taking into consideration the time necessary to prepare tenders and to explain the criteria and contract documents,
- j) fix the tender validity period while taking into consideration the time necessary to evaluate the tenders and conclude a contract with the successful tenderer.

#### Article 73

(1) The contracting authority shall dispatch the invitation to tender by restricted procedure to not less than three tenderers and publish it an open way.

(2) Contracting authority may restrict the number of tenderers in restricted procedure to not less than six. The restriction shall be notified in the invitation to tender.

#### Article 74

(1) Contracting authority shall dispatch an invitation to negotiate by a negotiated procedure with a prior publication of a contract notice to not less than three candidates and publish it in an open way.

(2) Contracting authority may restrict the number of candidates in negotiated procedure with a prior publication of a contract notice to not less than six. The restriction shall be notified in the invitation to negotiate.

(3) Contracting authority shall assess compliance with the criteria for participation in the contract award procedure from the documents submitted in the negotiation.

(4) Contracting authority shall provide explanations of the data specified in the invitation to negotiate during the negotiations with candidates.

#### Article 75

(1) Contracting authority may award contract by negotiated procedure without prior publication of a contract notice where at least one of the requirements referred to in Article 66 (1) and (2) has been met.

(2) Contracting authority shall select a tenderer by negotiated procedure without prior publication of a contract notice on the grounds of information concerning the subject of contract obtained by market research.

(3) In negotiated procedure without prior publication of a contract notice, the contracting authority shall invite the selected candidate to submit his authorisation to pursue business and negotiates the contract terms with him.

## Volume Two

### Small value contracts with a lower price

#### Article 76

(1) In negotiated procedure without prior publication of a contract notice in accordance with Article 75 (2) the contracting authority proceeds in a way to secure an adequate ratio of the costs expended on the acquisition of the subject of contract to its quality and value. Contracting authority shall – depending on its requirements – establish a financial threshold or a subject-matter threshold below which no market research is performed.

(2) In awarding contracts, the written form of contract is not required, except for contracts in case of which generally binding regulations require to do so.

(3) The contract awarded by the contracting authority shall not be published in the Journal.

#### Article 77

(1) In negotiated procedure without prior publication of a contract notice, the contracting authority shall not be obliged to have the contract awarded by a person professionally qualified in public procurement.

(2) Contracting authority shall record any and all documents in the contract award procedure and store them four years from the conclusion of contract.

## TITLE FIVE

### PROFESSIONAL QUALIFICATION IN PUBLIC PROCUREMENT

#### Article 78

(1) Contracting authority shall be obliged to perform the contract award activities through natural persons who are professionally qualified in public procurement in accordance with this Act (hereinafter the professional qualification) and are enrolled in the list of professionally qualified persons; the list shall be held by the Office.

(2) Professional qualification shall mean a sum of professional knowledge and practical experience necessary to provide for the contracting authority's tasks in the public procurement.

#### Article 79

##### Criteria for acquiring professional qualification

(1) The criteria for acquiring professional qualification shall be the following:

- a) integrity of the applicant,
- b) tertiary education and two years of vocational experience in the public procurement, or completed secondary education and four years of experience in the public procurement or in purchasing goods, investment construction projects and services,
- c) participation in professional training,
- d) passing of the examination.

(2) Integrity shall be demonstrated by an extract from the judicial record.

#### Article 80

##### Application of entry in the list

(1) The application of entry in the list shall contain the following items:

- a) name, family name and title of the applicant and his birth registration number,
- b) address of his permanent residence,
- c) business name and address of employer in the case of an employee or, business name and address of place of business in the case of an entrepreneur, where the applicant may provide them.

(2) The application shall be appended with a certificate of the examination passed.

#### Article 81

##### Professional training

(1) Professional training of applicants is performed by a training centre within a scope agreed with the Office and under the surveillance of the Office. The Office shall not take into account any other professional training than that performed by the training centre.

(2) Professional training may be attended by applicant who has submitted the training centre the following by the date of the training commencement:

- a) an extract from the judicial record not older than three months,
- b) certificate of education obtained,

- c) a chronological summary of the course of previous employments allowing to ascertain the duration and subject-matter of professional experience,
- d) possibly other certificates of vocational specialisation in the award of contracts, if any.

(3) The certificate of participation in professional training issued by the training centre shall be a prerequisite for the applicant to be allowed and take the examination.

#### Article 82 Examination board of the Office

- (1) The examination shall be taken with the examination board of the Office.
- (2) The examination board of the Office shall be qualified to perform examination and decide on an examination outcome where no less than three of its examiners are present at the same time; its decisions are taken by the majority of votes of the examiners present.
- (3) The examiners in the examination board of the Office and its chairman are appointed and removed by the chairman of the Office
- (4) Details concerning the activities of the examination board of the Office are regulated by the examination board statutes to be issued by the chairman of the Office.

#### Examination Article 83

(1) Examination may only be taken by an applicant who has participated in the professional training and has applied with the Office to sit for the examination. The certificate of completion of professional training is to be delivered to the examination board of the Office no later than the examination beginning.

- (2) The examination is taken for free.
- (3) The examination dates are announced by the Office. The Office shall communicate the applicant an invitation to examination no later than ten days prior to its date.
- (4) Before the examination is commenced, the examination board of the Office shall establish the applicant's identity.
- (5) The examination shall consist of
  - a) a written test, which is to verify the specialised knowledge and familiarity with legal regulations relating to public procurement,
  - b) an oral part, which comprises additional questions of the Office examiners.

#### Article 84

(1) The examination board of the Office shall evaluate each part of the examination separately, with a statement either "passed" or "failed". The examination board of the Office shall draft minutes of the course of the examination and of its evaluation, which shall be signed by all Office examiners present.

- (2) The applicant has passed the examination where both parts of his examination have been marked with the statement “passed”.
- (3) The chairman of the examination board of the Office shall issue a certificate of a passed examination immediately after its completion.
- (4) The course of examination shall be governed by the examination order to be issued by the chairman of the Office.

#### List of professionally qualified persons

##### Article 85

(1) The list of professionally qualified persons is a public list, which anyone may consult and make excerpts thereof.

(2) The Office shall enter in the list anyone who has passed the examination, applied for entry in the list and paid an administrative fee.

##### Article 86

(1) The list of professionally qualified persons shall contain the following data:

- a) name, family name and title of the professionally qualified person,
- b) address of his permanent residence,
- c) date of the examination,
- d) date of issuance of the professional qualification certificate,
- e) registration number.

(2) A professionally qualified person shall be obliged to inform the Office of any change in the data entered in the list and any change in the criteria for professional qualification without any delay.

##### Article 87

An administrative fee shall be paid for entry in the list.

##### Article 88

(1) The Office shall delete from the list of professionally qualified persons anyone who:

- a) has died or has been declared dead,
- b) has been deprived of his legal capacity or whose legal capacity has been restricted,
- c) has unreasonably not participated in additional training,
- d) has applied with the Office in writing to be removed from the list,

- e) has been rightfully sentenced for a wilful crime related to public procurement,
- f) has not exercised contract award procedure activities for more than three years,
- g) has failed to inform the Office about changes in his data,
- h) has repeatedly infringed law in the execution of activity related to public procurement,
- i) has been additionally identified by the Office as one not compliant with the professional qualification criteria.

(2) Where there is a reason for deletion from the list of professionally qualified persons in accordance with paragraph 1 (c), (f), (g), (h) and (i), the Office shall within seven days from identification of the reason notify in writing the one to whom the deletion may apply, and invite him to make a statement with regard to the reason within 15 days from the date of delivery. Where the person fails to make the statement or the statement would not ascertain that there is not any reason for deletion, the Office shall delete the professionally qualified person from the list and invite him to return his professional qualification certificate by a specified deadline.

#### Article 89 Professional qualification certificate

(1) The Office shall issue anyone who has been entered in the list of professionally qualified persons a professional qualification certificate within 30 days from the entry.

(2) The professional qualification certificate shall contain the following data:

- a) name, family name and title of the professionally qualified person,
- b) address of his permanent residence,
- c) date of issuance of the professional qualification certificate,
- d) name of the Office and a print of the official seal of the Office,
- e) registration number,
- f) signature of the Office chairman or of a person authorised by the former.

(3) The certificate certifies that its holder is a person professionally qualified in public procurement.

(4) The certificate shall lose its validity by loss, theft, destruction and deletion of the professionally qualified person from the list.

(5) A professionally qualified person shall be obliged to

- a) immediately inform the Office of a loss, theft or destruction of his professional qualification certificate,
- b) return the professional qualification certificate if invited by the Office to do so,
- c) if requested by the Office, provide information on activities he used to perform in the award of contracts.

#### Article 90 Additional training

(1) The Office shall order additional training of all or of certain groups of professional qualified persons where major changes in legal regulations concerning public procurement have occurred.

(2) Additional training shall be performed by a training centre in accordance with training programmes approved by the Office.

(3) A professionally qualified person shall be obliged to participate in additional training if invited by the Office to do so.

## TITLE SIX

### LIST OF ENTREPRENEURS AND THE JOURNAL

#### Article 91

(1) The Office shall maintain a list of entrepreneurs who have qualified for the award of public contracts and who have applied for being entered in the list. An entry in the list of entrepreneurs shall entitle an entrepreneur to take part in the contract award procedures without any need to demonstrate his compliance with the criteria for participation in public procurement in accordance with Article 29.

(2) The list of entrepreneurs is a public list, which anyone may consult and make excerpts thereof.

(3) The data contained in the list shall have effect on every contracting authority and do not need to be verified in the public award procedures.

(4) An entrepreneurs to whom the entry applies may not object against a contracting authority acting in good faith in the entry in the list that the entry does not correspond with the reality.

(5) Entry in the list shall be made with a validity of one year.

#### Application of entry

#### Article 92

The application of entry in the list shall feature the following

- a) business name and seat of the entrepreneur,
- b) subject of business,
- c) legal form of the entrepreneur,
- d) company identification number,
- e) a list of members of its authorised representative body stating their names, family names and birth registration numbers,
- f) impression of a seal and signature of a member of the entrepreneur's legal representative,



g) documents in accordance with Article 29 paragraph 2.

#### Article 93

(1) Where the application fails to possess all its items, the office shall invite the entrepreneur to complete them within by specified deadline. Where the entrepreneur fails to complete them by the specified deadline, the Office shall return his application including enclosures and terminate the procedure.

(2) The Office shall enter the entrepreneur in the list within 15 days from the date of delivery of the application; where the application was not complete, from the date on which it has been completed.

(3) The Office shall not enter in the list of entrepreneurs an entrepreneur who has failed to comply with the criteria for participation in the public procurement in accordance with Article 29.

#### Article 94

##### List of entrepreneurs

The list of entrepreneurs shall specify the following:

- a) business name and place of establishment of the entrepreneur,
- b) subject of business,
- c) company identification number,
- d) registration number.

#### Article 95

##### Change of data

(1) The entrepreneur shall be obliged to inform the Office in writing of changed data which are specified in the application within 30 days and support them by documents.

(2) The Office shall update the data contained in the list of entrepreneurs following the changes notified and documents delivered.

(3) Where an entrepreneur wishes to extend the validity of entry in the list of entrepreneurs, he must submit a new application appended by documents in accordance with Article 29 (2) not later than 30 days from the expiry of the entry.

#### Article 96

##### Acknowledgement of entry in the list of entrepreneurs

(1) The Office shall issue the entrepreneur an acknowledgement within seven days from the date of his entry in the list of entrepreneurs.

(2) The acknowledgement of the Office shall include the data held in the list of entrepreneurs. The acknowledgement shall be issued on an official form of the Office.

#### Article 97 Deletion from the list of entrepreneurs

(1) The Office shall delete from the list of entrepreneurs anyone who:

- a) has ceased to comply with the criteria for participation in public procurement in accordance with Article 29,
- b) has failed to comply with the obligation to report on a change of data,
- c) has used documents for the entry in the list, which proved to be forged or invalid,
- d) who has applied in writing to do so.

(2) The Office shall inform the entrepreneur about his deletion from the list of entrepreneurs within 15 days from the deletion.

(3) Where the entrepreneur has been deleted of a reason referred to in paragraph 1 (b) or (c), the Office may decide to exclude him from the possibility of being re-entered in the list of entrepreneurs for a certain time, not exceeding five years.

#### Article 98 Journal

(1) The Journal shall publish in particular:

- a) notices used in public procurement,
- b) a list of non-national press media, in which the publication of notices relating to the contract award procedures is recommended,
- c) a list of entrepreneurs and changes therein,
- d) a list of entrepreneurs who have been deleted from the list of entrepreneurs kept in accordance with Article 94 for reasons referred to in Article 97 (1) (b) or (c),
- e) a list of training centres and data relating to professional training and additional training,
- f) examination dates,
- g) the use of classifications in public procurement,
- h) a list of contracting authorities subject to the Government Procurement Agreement,
- i) additional information as decided by the Office.

(2) The Journal shall be issued by the Office. The source for publication in the Journal shall be the original notification. The Office shall publish a notification no later than 12 days from the date of its dispatch. In case of shortened periods for the submission of documents or for the submission of tenders in accordance with Article 58 (4) or Article 63 (2), the deadline for publishing shall be shortened to five days.

## PART THREE

## ADMINISTRATION ON PUBLIC PROCUREMENT

## TITLE ONE

## OFFICE

## Article 99

(1) The central administration authority for public procurement shall be the Office for Public Procurement.

(2) The Office shall be seated in Bratislava.

(3) The Office may establish its permanent or temporary workplaces. These workplaces shall not possess legal personality.

## Article 100

(1) The Office is headed by a chairman who is appointed and removed by the Government of the Slovak Republic (hereinafter the Government).

(2) The deputy chairman is appointed and removed by the Government following a proposal by the Office chairman.

(3) The office period of the chairman and the deputy chairman shall be five years. Both the chairman and the deputy chairman may be appointed to their offices for two successive periods of office only.

## Article 101

(1) The Government shall remove the chairman or the deputy chairman from his office where he:

- a) has been rightfully sentenced for an intentional crime,
- b) executes an office or performs an activity incompatible with the office of chairman or deputy chairman.

(2) The Government may suspend the execution of office by the chairman or by the deputy chairman where criminal prosecution in relation with the execution of their offices has been commenced against them.

Article 102  
Powers of the Office

The Office shall:

- a) prepare concepts of public procurement,
- b) execute state administration in public procurement,
- c) execute surveillance of public procurement,
- d) not less than once a year, submit a report on its activities to the Government and, upon request, to committee of the National Council of the Slovak Republic,
- e) notify conversions of financial thresholds for contracts above the threshold in the Slovak currency,
- f) gather and publish in the Journal information on contracts intended in the relevant year,
- g) issue the Journal,
- h) issue non-periodicals,
- i) maintain the list of entrepreneurs,
- j) draw up programmes of professional training and additional training,
- k) issue certificates of professional qualification and run a list of professionally qualified persons,
- l) provide methodology guidance to those participating in public procurement,
- m) impose fines,
- n) perform other activities under this Act.

Article 103

(1) By 31 October each year, the Office shall prepare and submit the European Commission statistical reports on the supplies, works and service contracts awarded by contracting authorities in the preceding year. The report shall contain:

- a) in case of contracting authorities subject to the Government Procurement Agreement:
  - 1. the estimated total value of contracts below the threshold awarded separately for supplies, works and services and separately for each contracting authority,
  - 2. the number and total value of contracts above the threshold awarded separately for supplies, works and services and for each contracting authority; the contracts shall be structured by the categories of supplies, works or services and by the nationality of contractors to whom the contract has been awarded; in case of contracts awarded by negotiated procedure with prior publication of a contract notice or by negotiated procedure without prior publication of a contract notice, the contracts shall be structured in accordance with Article 61 and Article 66, stating the number and value of contracts awarded to non-nationals, separately for each Member State and each non-member country.
- b) in case of other contracting authorities referred to in Article 4 and Article 5 a, data under (a) (2) for each category of contracting authorities separately,
- c) in case of contracting authorities subject to the Government Procurement Agreement for contracts awarded on the grounds of exemptions laid down by the Government Procurement Agreement, the number and total value of contracts awarded separately for supplies, works and services and for each contracting authority; in case of other contracting authorities referred to in Article 4 and Article 5, the total value of contracts

awarded on the grounds of exemptions laid down by the Government Procurement Agreement for each category of contracting authorities separately,  
 d) additional statistical data requested by the European Commission.

- (2) Statistical reports in accordance with paragraph 1 shall not apply to contracts for:
- a) services referred to in category 8, Annex 3,
  - b) telecommunications services<sup>10</sup> referred to in category 5 of Annex 3 under CPC<sup>11</sup> positions 7524, 7525 and 7526,
  - c) services referred to in Annex 4 assuming that the estimated value of those contracts net of VAT is less than EUR 200 000.

## TITLE TWO

### REVIEW PROCEDURES

#### Article 104

Review procedures under this Act shall be as follows:

- a) dealing with requests for remedies by the contracting authority prior to conclusion of contract (hereinafter the request for remedy),
- b) surveillance of public procurement.

#### Volume One

#### Request for remedy

#### Article 105

(1) Filing a request for remedy shall be a prerequisite for proceeding of the Office in accordance with Volume 1 Part 2 of this Title prior to the conclusion of contract. Where the contracting authority has employed restricted procedure in accordance with Article 58 (4) and Article 60 (6) and negotiated procedure with prior publication of a contract notice in accordance with Article 63 (2) and Article 65 (3), the prerequisite of exercise of a request for remedy shall not be necessary for proceeding of the Office in accordance with Volume 2 Part 2 of this Title prior to the conclusion of contract.

(2) A tenderer, candidate or person whose rights or rightfully protected interests have or may have been affected by the contracting authority's acting (hereinafter referred to as the claimant) may file his request for remedy against:

- a) the terms specified to in a notice in accordance with Article 25,
- b) the terms specified in the contract documents or other documents provided by the contracting authority during the period for the submission of tenders,
- c) the terms specified in the invitation to tender,
- d) the selection of candidates by restricted procedure referred to in Article 57 (1) or by negotiated procedure with prior publication of a contract notice referred to in Article 62 (1),
- e) the exclusion of a tenderer or of a candidate,
- f) the result of evaluation of tenders,

- g) the employment of negotiated procedure without prior publication of a contract notice,
- h) any other act of the contracting authority.

(3) The request for remedy must specify the following:

- a) identification data of the claimant,
- b) identification data of the contracting authority,
- c) indication of the contract award procedure, in which the claimant requests for remedy,
- d) indication of the infringement of procedure referred to in paragraph 2,
- e) description of decisive facts and indication of evidence,
- f) a proposal by the claimant how to settle the request for remedy,
- g) signature of the claimant or of a person authorised to act on the claimant's behalf.

(4) A written request for remedy must be delivered to the contracting authority

- a) within seven days from publication of the notice referred to in Article 25 where the objections are made against the requirements referred to in the notice,
- b) within seven days from the date of taking over the contract documents or other documents provided by the contracting authority within the tender submission period where the request for remedy is made against the requirements referred to in the contract documents or other documents provided by the contracting authority within the tender submission period,
- c) within seven days from the date of taking over the call for submission of tenders where the request for remedy is made against the requirements referred to in the call for submission of tenders,
- d) within seven days from the date of receipt of the notification on outcome of the selection of candidates in restricted procedure in accordance with Article 57 (2) or in negotiated procedure with prior publication in accordance with Article 62 (1), where the request for remedy is made against the selection of candidates in restricted procedure or negotiated procedure,
- e) within seven days from the data of receipt of a notification of elimination of tenderer or candidate where the request for remedy is made against the elimination of tenderer or candidate,
- f) within seven days from the data of receipt of a notification of results of evaluation of tenders where the request for remedy is made against the results of evaluation of tenders.
- g) anytime prior to contract conclusion where the request for remedy is made against employment of negotiated procedure without prior publication or against any other act of the contracting authority.

(5) Where the request for remedy fails to specify the items identified, the contracting authority shall no later than three working day after the delivery of the request for remedy invite the claimant to remove the deficiencies within three days from the delivery of the invitation.

(6) Where the claimant fails to deliver the request for remedy within the periods in accordance with paragraph 4, the contracting authority shall refuse the request for remedy and deliver written dismissal of the request for remedy to the claimant along with a reasoning within five days from receipt of the request for remedy. The right to file objections in accordance with Article 107 shall extinct where a request for remedy has not been filed within the period referred to in paragraph 4.

(7) Within five days from the delivery of a complete request for remedy filed within the period referred to in paragraph 4, the contracting authority shall deliver:

- a) the claimant and any known tenderers or candidates, a written communication concerning the outcome of the request settlement stating the reason and the deadline for execution of remedy, or
- b) the claimant a written communication rejecting his request for remedy stating the reason.

(8) The contracting authority shall not consider a request for remedy in the same matter, which he has already dealt with in accordance with paragraph 7. Within a period in accordance with paragraph 7, the contracting authority shall inform the claimant of that fact and indicate how the matter has been settled. This notice shall be considered a notice communicating the outcome of settlement of the request for remedy.

(9) Delivery of the notice communicating the outcome of settlement of a request for remedy or a failure of the contracting authority to comply with his obligation in accordance with paragraph 7 or 8 shall entitle the claimant to file objections in the subject matter.

## Volume Two

### Surveillance of Public Procurement

#### Article 106

##### Surveillance and its scope

(1) The compliance of contracting authorities with their obligations under this Act shall be surveyed by the Office.

(2) In exercising surveillance, the Office shall:

- a) decide on protests of tenderers, candidates or persons who have or may have been affected by the contracting authority's acting,
- b) audit the acting of contracting authorities in accordance with this Act,
- c) impose fines in accordance with this Act,
- d) perform other activities in accordance with this Title.

(3) The execution of surveillance in accordance with this Act shall not affect the powers of internal bodies of audit of the contracting authority and other bodies of audit, which carry out audit under special regulations<sup>16</sup>.

## Volume One

### Protest proceedings

#### Protest proceedings prior to contract conclusion

##### Article 107

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<sup>16</sup> For instance, the Act of the National Council of the Slovak Republic No. 369/1990 Coll. on the Municipal System, as amended, the Act of the National Council of the Slovak Republic No. 39/1993 Coll. on the Supreme Audit Office of the Slovak Republic, as amended.

(1) A tenderer, candidate or person whose rights or rightfully protected interests have or may have been affected by the contracting authority's acting (hereinafter referred to as the claimant) may protest prior to the contract conclusion:

- a) the terms specified to in a notice in accordance with Article 25,
- b) the terms specified in the contract documents or other documents provided by the contracting authority during the period for the submission of tenders,
- c) the terms specified in the invitation to tender,
- d) the selection of candidates by restricted procedure referred to in Article 57 (1) or by negotiated procedure with prior publication of a contract notice referred to in Article 62 (1),
- e) the exclusion of a tenderer or of a candidate,
- f) the result of evaluation of tenders,
- g) the employment of negotiated procedure without prior publication of a contract notice,
- h) any other act of the contracting authority.

(2) The parties of the proceedings shall be the claimant and the contracting authority.

(3) The protest proceedings shall be commenced by the date of delivery of the protest to the Office.

(4) The claimant shall deliver his protest in writing to the Office and to the contracting authority:

- a) not later than seven days from the delivery of communication concerning the outcome of settlement of the request for remedy, or
- b) not later than seven days from the expiry of the time limit for the delivery of communication concerning the outcome of settlement of the request for remedy, where the contracting authority has failed to comply with his obligations referred to in Article 105 (7) or Article 105 (8), or
- c) not later than ten days from the dispatch of the result of the tender evaluation in restricted procedure in accordance with Article 58 (4) or in accordance with Article 60 (6), or in negotiated procedure with a prior publication of contract notice in accordance with Article 63 (2) or in accordance with Article 65 (3).

(5) Protests filed with the Office must specify the following:

- a) identification data of the claimant,
- b) identification data of the contracting authority,
- c) identification of the contract award procedure which is protested,
- d) indication, which facts in accordance with paragraph 1 are protested,
- e) description of decisive facts and indication of evidence,
- f) a proposal how to settle the protests,
- g) a communication concerning the outcome of settlement of the request for remedy or a proof of delivery of the request for remedy unless settled by the contracting authority by a time limit stipulated by law,
- h) a proof that the protest has been filed with the contracting authority,
- i) signature of the claimant or of a person authorised to act on the claimant's behalf,
- j) a document demonstrating the authority to act, unless submitted to the contracting authority.

Protests filed with the Office in restricted procedure referred to in Article 58 (4) and Article 60 (5) and in negotiated procedure with prior publication of a contract notice referred to in



Article 63 (2) and Article 65 (3) must specify items listed in this paragraph with the exception of (g).

(6) Protests filed with the contracting authority must specify items referred to in paragraph 5 with the exception of (g), (h), and (j).

(7) Contracting authority shall be obliged to deliver the Office a written statement concerning the protests filed, citing estimated value of the subject of procurement, and complete documentation within two working days from the protests delivery. Where the contracting authority fails to fulfil the above obligation, the Office shall suspend the procedure by a decision until impediments are removed, for which the procedure have been suspended. The time limits referred to in Article 108 (5) shall not pass until the documentation has been delivered. Hereby, the suspensory effect of protests shall not be affected.

(8) Contracting authority shall not be allowed continue the contract award procedure until the Office decision concerning protests referred to in paragraph 1 (a) through (g) has been delivered. During this period, time limits for the contracting authority shall not pass.

(9) Protests in accordance with paragraph 1 (h) shall not have a suspensory effect on acting of the contracting authority. Prior to a decision concerning protests in accordance with paragraph 1 (h), the Office may issue a decision of interim measure, by which the acting of the contracting authority shall be suspended no longer than the Office will have decided the protests. During this period, time limits for the contracting authority shall not pass.

(10) By a decision, the Office may withdraw the suspensory effect of protests in accordance with paragraph 1 (a) through (g), if there is a threat that its negative impacts would threaten public interest. There is no remedy against the Office decision to withdraw the suspensory effect. Withdrawal of the suspensory effect shall not have any effect on a decision in the matter itself.

(11) Filing of protests against the acting of the contracting authority may not harm the claimant.

#### Article 108

- (1) The Office shall discontinue protest proceedings by its decision where:
- a) protests have not been filed by the claimant or
  - b) were filed after the deadline referred to in Article 107 (4) or
  - c) fail to specify all items referred to in Article 107 (5), or
  - d) the claimant has withdrawn the protest filed prior to a decision in the matter itself.

(2) Where in the protest proceedings the Office ascertains that this Act has been infringed by the contracting authority's acting and the infringement may have had a material effect on the result of contract award procedure, its decision shall:

- a) order to cancel the contract award procedure,
- b) order to cancel the discriminatory technical, economic or financial criteria of the contracting authority specified in the contract notice, in the contract documents or any other document, which relates to the contract award,

- c) cancel the contracting authority's decision concerning a tenderer's or candidate's exclusion and order to include the excluded tenderer or candidate in the contract award,
- d) cancel the contracting authority's decision concerning the selection of candidates and order to repeat the selection,
- e) cancel the contracting authority's decision concerning the evaluation of tenders and order to re-evaluate the tenders.

(3) Where the infringement of this Act could not have affected the result of the contract award, the Office may order by virtue of a decision to remove the permanent injury.

(4) Where the Office does not ascertain any infringement of this Act protested by the claimant in the protest filed in accordance with Article 107 (5) (d), the protest shall be rejected. Hereby, the authority of the Office as referred to in paragraph 2 shall not be affected.

(5) The Office shall decide on protests

- a) in accordance with Article 107 (1) (a) through (g) within 30 days from the protest delivery to the Office,
- b) in accordance with Article 107 (1) (h) within 14 days from the protest delivery to the Office,
- c) in accordance with Article 107 in restricted procedure referred to in Article 58 (4) and Article 60 (5) and in negotiated procedure with prior publication of a contract notice as referred to in Article 63 (2) and Article 65 (3) within 14 days from the protest delivery to the Office.

(6) The decision shall be delivered to the claimant and to the contracting authority. In addition, the decision in accordance with paragraph 2 shall be delivered to any tenderers and candidates known to the Office.

## Protest proceedings after a contract conclusion

### Article 109

(1) In public procurement, protests may be filed after a contract has been concluded, against the contracting authority's acting leading to a contract conclusion, where it was impossible to protest in accordance with Article 107 (1).

(2) The juristic persons shall be the contracting authority and anyone claiming to have suffered damage due to improper acting by the contracting authority (hereinafter the objector).

(3) The protest proceedings shall be commenced by the date of delivery of the protest to the Office.

(4) The protests must be filed with the Office in writing, no later than 60 days after publishing of the result of public procurement.

(5) Protests must specify the following:

- a) identification data of the objector,
- b) identification data of the contracting authority,
- c) identification of the contract award procedure and of the contract protested,
- d) the reason not allowing to file a protest in accordance with Article 107 (1),
- e) provision of the Act, which has been violated,
- f) description of decisive facts and indication of evidence,
- g) a proposal how to settle the protests,
- h) signature of the objector or of a person authorised to act on the objector's behalf,
- i) document proving the authority to act.

(6) The Office shall invite the contracting authority to submit complete documentation, citing the estimated value of the contract, within ten days from the invitation delivery. Where the contracting authority fails to comply with the said obligation, the Office may act in accordance with Article 123 (2).

### Article 110

(1) The Office shall discontinue protest proceedings by its decision where:

- a) protests have not been filed by the objector, or
- b) were filed after the deadline referred to in Article 109 (4) or
- c) fail to specify all particulars referred to in Article 109 (5), or
- d) the objector has withdrawn the protest filed prior to a decision in the matter itself.

(2) In the protest proceeding after the contract conclusions in accordance with Article 109, the Office shall decide if the procedure of the contracting authority leading to contract conclusion has violated the Act. Authority of the Office as referred to in Article 123 shall remain unaffected.

(3) The Office shall decide protests within 30 days, in particularly complicated cases, which have been approved by the Chairman of the Office, within 60 days from the protest delivery. The decision shall be delivered to the objector and to the contracting authority.

## Common provisions concerning protest proceedings

### Article 111

(1) Procedure of the contracting authority may not be objected in the simplified contract award procedure, with the exception of protesting the subdivision of contract aiming at application of Title 4 of Part 1.

(2) The decision of the Office concerning objections shall be valid by the date of its delivery and enforceable by the expiry of its execution period.

(3) The Office decision of protests may be reviewed by court where the action has been filed within ten days from the decision delivery.

(4) The Office shall decide in protest proceedings in commissions, save the decisions in accordance with Article 108 (1) and Article 110 (1).

(5) For contract awards above the threshold, the commission shall consist of the commission chairman and four commission members. The commission chairman and at least two commission members shall be the Office employees.

(6) For contract awards below the threshold, the commission shall consist of the commission chairman and two commission members. The commission chairman and at least one commission member shall be the Office employees.

(7) The commission chairman and commission members shall be appointed by the Chairman of the Office. The commission chairman must be a graduated lawyer.

(8) Details of the commission activities shall be governed by statutes and the standing order to be issued by the Chairman of the Office.

### Article 112

(2) The office shall order an oral trial<sup>17</sup> in the protest procedure where the contracting authority employed a contract award procedure above the threshold. The Office shall draw up a record of the oral trial<sup>18</sup>.

### Article 113

#### Delivery in protest procedure

(1) Important written documents, particularly decisions in protest procedure shall be delivered in one's own hands.

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<sup>17</sup> Article 21 of the Act No. 71/1967 Coll. on Administrative Proceedings (Rules of Administrative Procedure).

<sup>18</sup> Article 22 of the Act No. 71/1967 Coll.

- (2) Written documents shall be delivered in the own hands of the proceeding parties.
- (3) A written document shall be considered delivered where
  - a) a proceeding party or a person authorised to act on behalf of a proceeding party has taken over the written document, the date of takeover of the written document shall be considered the date of delivery,
  - b) a proceeding party has not taken over a written document during the depositing period after an unsuccessful attempt for its delivery, even if not informed about its depositing, the last day of such period shall be considered the date of delivery,
  - c) a proceeding party has refused to take over a written document being delivered, the written document shall be considered delivered on the day, on which the proceeding party refused its takeover.

#### Article 114 Time limits

- (1) Where necessary in protest procedure, the Office shall fix an adequate time limit for execution of an act, unless provided by this Act.
- (2) The day, on which the fact determining the beginning of the time limit has occurred, shall not be included in the time limit. The time limits determined by weeks, months or years shall end by the expiry of the day, the indication of which is the same as that of the day, on which the fact determining the beginning of the time limit occurred; where the month does not feature such day, the time limit shall end by the last day of the month. Where the end of a time limit falls upon a holiday, the last day of the time period shall be the nearest future working day.
- (3) The time limit for filing of protests in accordance with Article 107 (4) and in accordance with Article 109 (4) shall be maintained where the submission is filed with the Office and the contracting authority or where it is handed over for mail delivery on the last day of the time limit.
- (4) The time limit for issuing a decision in protest procedures shall commence on the day following the delivery of protests to the Office.
- (5) The time limit for issuing a decision in protest procedures shall be maintained where the decision is issued on the last day of the time limit for issuing a decision.
- (6) In case of doubts, the time limit is considered maintained, unless the contrary has been demonstrated.

#### Article 115 Items of decisions in protest procedures

- (1) A decision must contain a statement, reasoning and instruction.

- (2) The statement contains a decision on a matter indicating the provision of this Act, under which the decision was taken. Where a decision imposes an obligation on the contracting authority to perform an act, the Office shall determine an adequate time limit.
- (3) In the reasoning of a decision, the Office shall specify, which facts became the grounds for the decision and on the basis of which documentary evidence the decision was taken.
- (4) The instruction contains the data if the decision is final, or if it is appealable and where the appeal may be filed.
- (5) The written version of a decision shall read the date of the decision issuance and identification of the parties to the proceedings. A decision must be provided with an official stamp and signature, indication of name, family name and office of the authorised person.
- (6) Mistypings, miscalculations and other obvious inaccuracies in the written version of a decision shall be considered formal deficiencies, which the Office shall correct any time even without a motion and inform the parties of the proceedings thereof. Formal deficiencies shall not affect the validity and enforcement of a decision.

## Volume Two

### Audit in Public Procurement

#### Article 116

(1) The Office shall exercise audit of contracting authorities' acting based on motions of persons who are not authorised to protest in accordance with Article 107 (1) and Article 107 (2) (hereinafter the mover), or in its own initiative.

(2) In its exercise of audit, the Office shall in addition pursue the observance of orders imposed by the Office decisions.

### Audit prior to Contract Conclusion

#### Article 117

(1) A mover may file a written motion against the contracting authority's acting (hereinafter the motion) prior to contract conclusion.

(2) The audit shall commence by the motion delivery to the Office.

(3) A motion must specify the following:

- a) identification data of the mover,

- b) identification data of the contracting authority,
- c) description of material facts,
- d) signature of the mover.

(4) Where a motion fails to specify items in accordance with paragraph 3 and points out an infringement in the contracting authority's acting, the Office may audit the contracting authority's acting in accordance with that provision and Article 118. The Office shall inform the mover of the fact.

(5) A motion shall not have a suspensory effect on the contracting authority's acting. Until the completion of audit, the Office may decide an interim measure suspending the contracting authority's acting for no longer than 30 days. During this period, time limits for the contracting authority shall not pass.

(6) The Office shall invite the contracting authority to submit complete documentation within ten days from the invitation delivery. Where the contracting authority fails to fulfil the above obligation, the Office shall suspend the procedure by a decision until impediments are removed, for which the procedure have been suspended. The time limit referred to in Article 118 (3) shall not pass until the documentation has been delivered.

#### Article 118

(1) Where the Office ascertains that this Act has been infringed by the contracting authority's procedure and the infringement may have had a material effect on the result of contract award procedure, its decision shall:

- a) order to terminate the contract award procedure,
- b) order to remove the discriminatory technical, economic or financial requirements of the contracting authority specified in the contract notice, in the contract documents or any other document, which relates to the contract award,
- c) cancel the contracting authority's decision concerning a tenderer's or candidate's exclusion and order to include the excluded tenderer or candidate in the contract award,
- d) cancel the contracting authority's decision concerning the selection of candidates and order to repeat the selection,
- e) cancel the contracting authority's decision concerning the evaluation of tenders and order to re-evaluate the tenders.

(2) Where the infringement of this Act could not have affected the result of the contract award, the Office may order by virtue of a decision to remove the permanent injury.

(3) The Office shall decide in accordance with paragraphs 1 or 2 within a period of 30 days from the motion delivery to the Office.

(4) The decision shall be delivered to the contracting authority and to all tenderers or candidates known to the Office. The Office shall deliver a written notice of issuance of a decision to the mover.

(5) Where audit has not ascertained violation of the act, the Office shall inform the mover and the contracting authority of the fact in writing without any delay.

(6) In the exercise of audit prior to the contract conclusion, Articles 111 through 115 shall be applied accordingly.

Article 119  
Audit after Contract Conclusion

In auditing the contracting authority's acting after the contract conclusion, a special regulation<sup>19</sup> shall be applied. Authority of the Office to impose a fine in accordance with Article 123 shall remain unaffected hereby.

Article 120  
Audit of simplified contract award procedure

The audit of simplified contract award procedure shall be performed by the contracting authority's internal body of audit. The authorities of the Office and of other bodies of audit shall not be affected hereby.

Article 121  
Cooperation with bodies of audit

Bodies of audit shall be obliged to cooperate with the Office in the fulfilment of their auditing tasks.

Article 122  
Motion of to declare a contract void

Where a contracting authority has concluded a contract contradictory to this Act, the Office may file a motion with the court to declare the contract void within a period of one year from the contract conclusion.

Article 123

Fines

- (1) The Office shall impose the contracting authority a fine amounting to:
- a) 5% of the contract value where the contracting authority has avoided the obligation to award contract under this Act or, where he failed to comply with the notified criteria for the evaluation of tenders or, where he concluded the contract by negotiated procedure without prior publication of a contract notice or by negotiated procedure and the conditions for their employment were not met,

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<sup>19</sup> Articles 8 through 16 of the Act of the National Council of the Slovak Republic No. 10/1996 Coll. on Audit in State Administration, as amended.



- b) 5 % of the sum of contract values where the contracting authority would subdivide a contract to the effect of avoiding the employment of contract award procedure above the threshold,
- c) SKK 500 000 where the procuring entity would not publish a contract notice referring to award of contract above the threshold in accordance with Article 25 (3),
- d) up to SKK 500 000 where the contracting authority did not comply with an order imposed by a decision of the Office.

(2) The Office may impose a fine up to SKK 500 000 on a contracting authority for infringement of other provisions of this Act.

(3) When imposing fines, the Office shall consider in particular the nature, extent of fault, gravity, manner and consequences of failure to comply with an obligation.

(4) The Office may commence procedure to impose a fine within one year from the date being informed about an infringement of law, however, no later than three years from the date the infringement has occurred.

(5) The fines shall make state budget revenues.

### TITLE THREE

#### NON-STATE AUDIT

##### Article 124

##### Attestation

(1) Contracting authority referred to in Article 5 may submit its contract award methods and procedures used in concluding of contracts above the threshold to a regular review to the end of obtaining a certificate of attestation (hereinafter referred to as the certificate).

(2) For the purpose of this Act, attestation shall be a verification of compliance of contract award methods and procedures with this Act and with the European Communities law performed by an accredited person in accordance with a special regulation.<sup>20</sup>

(3) The accredited person shall inform the contracting authority of the attestation outcome. Prior to issuing a certificate, the accredited person shall assure himself that the contracting authority has removed any deficiencies identified by himself and has adopted effective measures to prevent recurrence of the deficiencies identified.

(4) The contracting authority that has obtained a certificate referred to in paragraph 1 may in the notices used in public procurement give the following statement: “The contracting authority is a holder of attestation as of ..... (date) in accordance with the Council Directive 92/13/EEC, which means that the contract award procedures used by the same in concluding of contracts are compliant with the European Communities law applicable to

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<sup>20</sup> Articles 22 through 29 of the Act No. 264/1999 Coll. on Technical Requirements Concerning Products and on Conformity Assessment and on Amendment of Certain Acts, as amended.

public procurement and with the generally binding legal regulations of the Slovak Republic implementing the European Communities law.”

#### Article 125 Corrective Mechanism

(1) Where a competent body of the European Communities notifies the Slovak Republic and the contracting authority reasons which have led to a conclusion that the European Communities law applicable to public procurement has been infringed and requests its correction, paragraphs 2 through 5 shall be applied.

(2) The Office shall communicate to the competent body of the European Communities:

- a) information that the infringement has been corrected and attach an evidence of the fact or,
- b) a reasoned submission as to why no correction has been made or,
- c) a notice to the effect that the contract award procedure has been suspended on the basis of review procedures being applied.

(3) The time limit for notification in accordance with paragraph 2 shall be:

- a) 21 days from the delivery of the notice in accordance with paragraph 1 in case of contract award procedures performed by contracting authorities referred to in Article 4,
- b) 30 days from the delivery of the notice in accordance with paragraph 1 in case of contract award procedures performed by contracting authorities referred to in Article 5.

(4) A reasoned submission in accordance with paragraph 2 (b) shall in particular specify that the subject infringement was subject to review procedures. The Office shall inform the competent body of the European Communities of the result of those proceedings as soon as it becomes known.

(5) Following the information in accordance with paragraph 2 (c), the Office shall be obliged to immediately inform the competent authority of the European Communities of a continuation in the contract award process suspended as a result of application of review procedures or of a commencement of a new contract award method, partially or wholly relating to the preceding public procurement. The new information shall state if remedy has been made or a reasoning why remedy has not been made.

#### Article 126

#### Conciliation

(1) Tenderer, candidate or any person who, in relation to the acting of contracting authority referred to in Article 5 contrary to this Act or to the European Communities law in public procurement has been or risks being harmed, may request the competent body of the European Communities to take the conciliation procedure. The request shall be submitted to a competent body of the European Communities or authority, which shall transfer it to the competent body of the European Communities.

(2) Being requested by the competent body of the European Communities, the contracting authority communicates its willingness to take part in the conciliation procedure. The conciliation procedure may not be taken without the contracting authority's agreement.

(3) Conciliator is proposed by the competent body of the European Communities. Each party of the conciliation procedure shall make a statement if he agrees with the conciliator proposed and designate another conciliator. The conciliators may invite not more than two experts for specialised cooperation. The parties to the conciliation procedure and the competent body of the European Communities may refuse any expert invited by the conciliators.

(4) The conciliation parties, as well as tenderers or candidates participating in the contract award procedure, which is the subject of the conciliation procedure, may make representations on the matter either orally or in writing.

(5) The conciliators shall endeavour as quickly as possible to reach an agreement between the parties, which is in accordance with this Act.

(6) The conciliators shall report to the competent body of the European Communities on their findings and on the result achieved by the conciliation procedure.

(7) The conciliation parties shall have the right to withdraw their consent with the conciliation procedure at any time. By a withdrawal of the consent, the conciliation procedure shall be terminated.

(8) Unless the parties agree otherwise, none of the parties shall be entitled to a reimbursement of their own expenditures linked with the conciliation procedure. The costs of the conciliation procedure shall be borne by the parties in equal shares, excluding the costs of other involved persons.

(9) The contracting authority shall be obliged to inform the conciliators of the commencement of any court or out-of-court procedure concerning a contract award procedure, which is subject to a conciliation procedure, where the motion to open the court or out-of-court procedure has been filed by a person who is not a party to the conciliation procedure. The conciliators shall inform the person who has filed the motion to open a court or out-of-court procedure of the conciliation procedure and invite him to give his approval to the conciliation procedure within a fixed time limit. Where the approval was denied or given after the time limit fixed and the participation of this person in the conciliation procedure is necessary, the conciliations may adopt a decision to terminate the conciliation procedure by majority of votes. The conciliators shall report to the competent body of the European Communities on termination of the procedure with a reasoned submission.

- (10) The steps in accordance with paragraphs 1 through 9 shall not have any effect on
- a) the steps in accordance with Article 226 and 227 of the Treaty establishing the European Union or on the steps in accordance with Article 125 and
  - b) the rights of the conciliation parties or of any other persons affected.

#### PART FOUR

## FINAL PROVISIONS

### Article 127

#### Proceedings

The proceedings decided by the Office shall be governed by the general regulations of administrative proceedings<sup>21</sup>, with the exception of the proceedings in accordance with Articles 82 through 84, proceedings in accordance with Articles 107 through 111 and Articles 113 through 115 and proceedings in accordance with Articles 117 and 118.

### Article 128

#### Transitional Provisions

(1) The open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice or design contest invited to by the contracting authority prior to 1 January 2004 shall be finalised in accordance with the existing regulations.

(2) The negotiated procedure without prior publication of a contract notice commenced by the contracting authority provably prior to 1 January 2004 shall be finalised in accordance with the existing regulations.

(3) In procedures commenced by the Office prior to 1 January 2004, the existing regulations shall be applied.

(4) In proceedings to be commenced by the Office after 1 January 2004, which relate to contract award methods in accordance with paragraphs 1 and 2, the existing regulations shall be applied.

(5) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the financial threshold for the estimated value of supplies for a contracting authority referred to in Article 4 (1) (a) and for the Ministry of Defence in case of goods listed in Annex 5 shall be the equivalent of SDR 130 000 in EUR.

(6) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the financial threshold for the estimated value of supplies for a contracting authority referred to in Article 4 (1) (b) through (d) and paragraph (3) and for the Ministry of Defence in case of goods listed in Annex 5 shall be the equivalent of SDR 200 000 in EUR.

(7) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the financial threshold for the estimated value of services for a contracting authority referred to in Article 4 (1) (a) in case of services listed in Annex 3 with the exception of services listed in category 8 and telecommunications services<sup>10</sup> listed in category 5 in accordance with CPC<sup>11</sup> positions 7524, 7525 and 7526 shall be the equivalent of SDR 130 000 in EUR.

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<sup>21</sup> Act No. 71/1967 Coll. on Administrative Proceedings (Rules of Administrative Procedure).

(8) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the financial threshold for the estimated value of services for a contracting authority referred to in Article 4 (1) (b) through (d) in case of services listed in Annex 3 with the exception of services listed in category 8 and telecommunications services<sup>10</sup> listed in category 5 in accordance with CPC<sup>11</sup> positions 7524, 7525 and 7526 shall be the equivalent of SDR 200 000 in EUR.

(9) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, in notices used in the contract awarding, the contracting authority shall classify the subject of procurement in accordance with the classifications in effect.<sup>12</sup>

(10) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the contracting authorities shall publish their contract notices referring to award of contracts above the threshold in the Journal and in non-national press.

(11) Until the effectiveness date of the Accession Treaty of the Slovak Republic to the European Union, the contracting authorities shall publish their contract award notices referring to award of contracts above the threshold in the Journal and in non-national press not later than 48 days from the contract conclusion.

## Article 129

### Repealing provision

The following shall be repealed:

1. the Act No. 263/1999 Coll. on public procurement and on amendment of certain acts, as amended by the Act No. 557/2001 Coll. and by the Act No. 530/2002 Coll.,
2. the Act of the National Council of the Slovak Republic No. 119/1996 Coll. on concession procurement, as amended by the Act of the National Council of the Slovak Republic No. 222/1996 Coll. and the Act No. 263/1999 Coll.,
3. the Decree of the Government of the Slovak Republic No. 389/2000 Coll. on the notification of indicative notices, contract notices, contract documents and contract award notices, as amended by the Decree of the Government of the Slovak Republic No. 721/2002 Coll.,
4. the Regulation of the Ministry of Construction and Public Works of the Slovak Republic No. 357/1996 Coll. implementing the Act of the National Council of the Slovak Republic No. 119/1996 Coll. on concession procurement, as amended by the Act of the National Council of the Slovak Republic No. 222/1996 Coll.,
5. the Regulation of the Office for Public procurement No. 722/2002 Coll. concerning the subject-matter of indicative notices, tender notices, contract award notices and award notices by design contest.

## Article II

The Act No. 575/2001 Coll. on organisation of activities of the government and on organisation of central state administration, as amended by the Act No. 143/2002 Coll., the Act No. 411/2002 Coll. and the Act No. 465/2002 Coll., is modified as follows:

In Article 31, the expression “and for concession procurement” is deleted.

### Article III

This Act shall come into effect on 1 January 2004 with the exception of Article 2 (5) (b) the second sentence, Article 2 (6) the second sentence, Article 6 (1) (a), Article 22 (a) and (b), Article 23 (1) (a) and (b), Article 25 (3), (5), (7) the last sentence and (8), Article 36 (1) the last sentence, Article 37, Article 44, Article 48 (4), Article 53, Article 103, Article 124, Article 125, Article 126 and Annex 6, which shall come into effect on the effectiveness date of the Treaty of Accession of the Slovak Republic to the European Union.

## Annex 1 of the Act No. 523/2003 Coll.

## List of transposed directives

This Act fully transposes the following directives:

1. Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (Public Supply Directive)
2. Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (Public Works Directive)
3. Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (Public Service Directive)
4. Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (Public Utilities Directive)
5. Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (Public Remedies Directive)
6. Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (Public Utilities Remedy Directive)
7. European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively
8. Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors
9. Translations of the above directives are available at the Central Translation Unit of the Institute for Approximation of Law, Office of the Government of the Slovak Republic.

Annex 2  
of the Act No. 523/2003 Coll.

List of professional activities as set out in the General Industrial Classification of Economic Activities within the European Communities (NACE 70)

| C<br>l<br>a<br>s<br>s<br>e<br>s | G<br>r<br>o<br>u<br>p | Subgroups<br>and items | Description   |
|---------------------------------|-----------------------|------------------------|---|
| 50                              |                       |                        | BUILDING AND CIVIL ENGINEERING  |
|                                 | 500                   |                        | General building and civil engineering work (without any particular specification) and demolition work  |
|                                 |                       | 500.1                  | General building and civil engineering work (without any particular specification)  |
|                                 |                       | 500.2                  | Demolition work   |
|                                 | 501                   |                        | Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential                                       |
|                                 |                       | 501.1                  | General building contractors  |
|                                 |                       | 501.2                  | Roofings  |
|                                 |                       | 501.3                  | Construction of chimneys, furnaces and kilns  |
|                                 |                       | 501.4                  | Water-proofing and damp-proofing  |
|                                 |                       | 501.5                  | Restoration and maintenance of outside walls (repointing, cleaning, etc.)   |
|                                 |                       | 501.6                  | Erection and dismantlement of scaffolding   |
|                                 |                       | 501.7                  | Other specialised activities relating to construction works (including carpentry)   |
|                                 | 502                   |                        | Civil engineering: construction of roads, bridges, railways, etc.   |
|                                 |                       | 502.1                  | General civil engineering works   |
|                                 |                       | 502.2                  | Earth-moving (navvying and reclamation)   |
|                                 |                       | 502.3                  | Construction of bridges, tunnels and shafts; drillings  |
|                                 |                       | 502.4                  | Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)   |
|                                 |                       | 502.5                  | Road building (including specialised construction of airports and runways)  |
|                                 |                       | 502.6                  | Specialised construction work relating to water (i.e. to irrigation, land drainage, water supply, sewerage systems, wastewater treatment, etc.) |
|                                 |                       | 502.7                  | Specialised activities in other areas of civil engineering  |
|                                 | 503                   |                        | Installation (fittings and fixtures)  |
|                                 |                       | 503.1                  | General installation work   |
|                                 |                       | 503.2                  | Gas fitting and plumbing, and the installation of   |



|  |     |       |   |
|--|-----|-------|---|
|  |     |       | sanitary equipment  |
|  |     | 503.3 | Installation of heating and ventilation apparatus (central heating, air-conditioning, ventilation)              |
|  |     | 503.4 | Sound and heat insulation; insulation against vibration   |
|  |     | 503.5 | Electrical fittings   |
|  |     | 503.6 | Installation of aerials, lightning conductors, telephones, etc.   |
|  | 504 |       | Building completion work  |
|  |     | 504.1 | General building completion work  |
|  |     | 504.2 | Plastering  |
|  |     | 504.3 | Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring) |
|  |     | 504.4 | Painting. Glazing and paper-hanging   |
|  |     | 504.5 | Tiling and otherwise covering floors and walls  |
|  |     | 504.6 | Other building completion work (putting in fireplaces, etc.)  |



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| Category No. | Subject   | CPC <sup>11</sup> reference No. |
|--------------|---|---------------------------------|
| 1            | Maintenance and repair services   | 6112, 6122, 633,886             |
| 2            | Land transport services (except railway transport services falling into category 18) including armoured car services, and courier services, except transport of mail  | 712 (except 71235), 7512, 87304 |
| 3            | Air transport services of passengers and freight, except transport of mail  | 73 (except 7321)                |
| 4            | Transport of mail by land and by air  | 71235, 7321                     |
| 5            | Telecommunication services (except voice telephony, telefax and radiotelephony and satellite services)  | 752                             |
| 6            | Financial services<br>a) Insurance services<br>b) Banking and investment services (except financial service orders related to the issuance, sale, purchase or transfer of securities or other financial instruments, except central bank services)                | ex 81<br>812, 814               |
| 7            | Computer and related services   | 84                              |
| 8            | Research and development (except research and development services other than those where the revenues are exclusively used to cover the costs of the contracting authority under condition that the service rendered is fully paid by the contracting authority) | 85                              |
| 9            | Accounting, audit and bookkeeping services  | 862                             |
| 10           | Market research and public opinion polling services   | 864                             |
| 11           | Management consultant services (except arbitration and adjudication services) and related services  | 865, 866                        |
| 12           | Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services                              | 867                             |
| 13           | Advertising services  | 871                             |
| 14           | Building cleaning and property management   | 874<br>82201 through 82206      |
| 15           | Publishing and printing services on a fee or contract basis   | 88442                           |
| 16           | Sewage and refuse disposal services; sanitation and similar services  | 94                              |



Annex 4  
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| Category No. | Subject   | CPC <sup>11</sup> reference No. |
|--------------|---|---------------------------------|
| 17           | Hotel and restaurant services                                     | 64                              |
| 18           | Rail transport services   | 711                             |
| 19           | Water transport services  | 72                              |
| 20           | Supporting and auxiliary transport services                       | 74                              |
| 21           | Legal services  | 861                             |
| 22           | Personnel placement and supply services                           | 872                             |
| 23           | Investigation and security services, except armoured car services | 873 (except 87304)              |
| 24           | Education and vocational education services                       | 92                              |
| 25           | Health and social services  | 93                              |
| 26           | Recreational, cultural and sporting services                      | 96                              |
| 27           | Other services  |                                 |

## Annex 5

of the Act No. 523/2003 Coll.

## LIST OF GOODS

1. Chapter 25 Salt; sulphur; earth and stone; plastering materials, lime and cement
2. Chapter 26 Minerallic ores, slag and ash
3. Chapter 27 Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes  
except: ex 2710: special engine fuels
4. Chapter 28 Inorganic chemicals: organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes  
except: ex 2809: explosives  
2813: explosives  
2814: tear gas  
2828: explosives  
2832: explosives  
2839: explosives  
2850: toxic products  
2851: toxic products  
2854: explosives
5. Chapter 29 Organic chemicals  
except: ex 2903: explosives  
2904: explosives  
2907: explosives  
2908: explosives  
2911: explosives  
2912: explosives  
2913: toxic products  
2914: toxic products  
2915: toxic products  
2921: toxic products  
2922: toxic products  
2923: toxic products  
2926: explosives  
2927: toxic products  
2929: explosives
6. Chapter 30: Pharmaceutical products
7. Chapter 31: Fertilizers
8. Chapter 32: Tanning and dyeing extracts; tannings and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks;
9. Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations
10. Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes"
11. Chapter 35: Albuminoidal substances; glues; enzymes
12. Chapter 37: Photographic and cinematographic goods

13. Chapter 38: Miscellaneous chemical products  
except: ex 3819: toxic products
14. Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers; articles thereof  
except: ex 3903: explosives
15. Chapter 40 Rubber, synthetic rubber, factice, and articles thereof  
except: ex 4011: bullet-proof tyres
16. Chapter 41: Raw hides and skins (other than furskins) and leather
17. Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)
18. Chapter 43: Furskins and artificial fur; manufactures thereof
19. Chapter 44: Wood and articles of wood; wood charcoal
20. Chapter 45: Cork and articles of cork
21. Chapter 46: Manufactures of straw, of esparto and of other plaiting materials; basketware and wickerwork
22. Chapter 47: Paper-making material
23. Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
24. Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
25. Chapter 65: Headgear and parts thereof
26. Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
27. Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
28. Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
29. Chapter 69: Ceramic products
30. Chapter 70: Glass and glassware
31. Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
32. Chapter 73: Iron and steel and articles thereof
33. Chapter 74: Copper and articles thereof
34. Chapter 75: Nickel and articles thereof
35. Chapter 76: Aluminium and articles thereof
36. Chapter 77: Magnesium and beryllium and articles thereof
37. Chapter 78: Lead and articles thereof
38. Chapter 79: Zinc and articles thereof
39. Chapter 80: Tin and articles thereof
40. Chapter 81: Other base metals employed in metallurgy and articles thereof
41. Chapter 82: Tools, implements, cutlery; spoons and forks, of base metal; parts thereof  
except: ex 8205: tools  
8207: tools, parts
42. Chapter 83: Miscellaneous articles of base metal
43. Chapter 84: Boilers, machinery and mechanical appliances; parts thereof  
except: ex 8406: engines  
8408: other engines  
8445: machinery  
8453: automatic data-processing machines  
8455: parts of machines under heading No. 84.53  
8459: nuclear reactors
44. Chapter 85: Electrical machinery and equipment, parts thereof

- except: ex 8513: telecommunication equipment
- 8515: transmission apparatus
- 45. Chapter 86: Railway and tramway locomotives; rolling stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)
  - except: ex 8602: armoured locomotives, electric
  - 8603: other armoured locomotives
  - 8605: armoured wagons
  - 8606: repair wagons
  - 8607: wagons
- 46. Chapter 87: Vehicles, other than railway or tramway rolling stock, and parts thereof
  - except: ex 8701: tractors
  - 8702: military vehicles
  - 8703: breakdown lorries
  - 8708: tanks and other armoured vehicles
  - 8709: motorcycles
  - 8714: trailers
- 47. Chapter 89: Ships, boats and floating structures
  - except: ex 8901: warships
- 48. Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
  - except: ex 9005: binoculars
  - 9011: microscopes
  - 9013: miscellaneous instruments, lasers
  - 9014: telemeters
  - 9028: electrical and electronic measuring instruments
  - 9017: medical instruments
  - 9018: mechano-therapy appliances
  - 9019: orthopaedic appliances
  - 9020: X-ray apparatus
- 49. Chapter 91: Clocks and watches and parts thereof
- 50. Chapter 92: Musical instruments, sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles
- 51. Chapter 94: Furniture and parts thereof; beddings, mattresses, mattress supports, cushions and similar stuffed furnishings;
  - except: ex 9401: aircraft seats
- 52. Chapter 95: Articles and manufactures of carving or moulding material
- 53. Chapter 96: Brooms, brushes, powder-puffs and sieves
- 54. Chapter 98: Miscellaneous manufactured articles



## TECHNICAL SPECIFICATIONS

1. For the purpose of this Act, **technical specifications** shall mean technical requirements contained in particular in the tender documents, defining the characteristics of works, supplies or services, and enabling works, supplies or services to be described in a manner, such that it fulfils the use laid down by the contracting authority. These technical specifications also include product characteristics in accordance with a special regulation.<sup>22</sup> In the case of works contracts, technical specifications may also include rules for the design and costing, the test conditions, inspection and acceptance conditions for works as well as techniques and methods of construction and all other technical conditions which the contracting authority is in position to prescribe on the basis of generally binding legal regulations or technical standards, in relation to the finished works and to materials or parts which they involve.
2. For the purpose of this Act, **standard** shall mean a technical standard in accordance with a special regulation.<sup>23</sup>
3. For the purpose of this Act, **European standard** shall mean a technical standard in accordance with a special regulation.<sup>23</sup>
4. For the purpose of this Act, **European technical approval** shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for construction, by means of inherent characteristics of the product and the defined conditions of application and use, as provided for in harmonised generally binding legal regulations and administrative provisions in the member states of the European Communities relating to construction products. European technical approval shall be issued by a competent body of the Member State.
5. For the purpose of this Act, **common technical specification** shall mean a technical specification drawn up in accordance with a procedure recognised by the Member States with a view to uniform application in all Member States and published in the Official Journal of the European Union.
6. For the purpose of this Act, **European specification** shall mean a common technical specification, a European technical approval or a Slovak technical standard or a non-national standard<sup>23</sup> implementing a European standard.
7. For the purpose of this Act, **essential requirements** shall mean requirements relating to safety, health and certain other aspects in the public interest that construction must meet.

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<sup>22</sup> Article 2 (1) (i) of the Act No. 264/1999 Coll. on technical requirements concerning products and on conformity assessment and on amendment of certain acts, as amended by the Act No. 436/2001 Coll., as amended

<sup>23</sup> Article 5 of the Act No. 264/1999 Coll. on technical requirements concerning products and on conformity assessment and on amendment of certain acts, as amended by the Act No. 436/2001 Coll., as amended