

# **LAW FOR THE PUBLIC PROCUREMENT**

*Prom. SG. 28/6 Apr 2004, amend. SG. 53/22 Jun 2004, amend. SG. 31/8 Apr 2005, amend. SG. 34/19 Apr 2005, amend. SG. 105/29 Dec 2005, amend. SG. 18/28 Feb 2006, amend. SG. 33/21 Apr 2006, amend. SG. 37/5 May 2006, amend. SG. 79/29 Sep 2006*

In force from 1st of October 2004

## **Part one. GENERAL RULES**

### **Chapter one. GENERAL PROVISIONS**

#### **Section I. Objective and principles**

Art. 1. This law determines the principles, the terms and the order of assigning public procurement for the purpose of providing efficiency in spending the budget and non-budget funds, as well as of resources related to implementation of activities of public importance defined by the law.

Art. 2. (1) (Prev. text of art. 2, amend. - SG 37/06, in force from 01.07.2006) The public procurement shall be assigned by way of the procedures stipulated by this law, in compliance with the following principles:

1. publicity and transparency;
2. (amend. - SG 37/06, in force from 01.07.2006) free and loyal competition;
3. (amend. - SG 37/06, in force from 01.07.2006) equality and non-admission of discrimination.

(2) (new - SG 37/06, in force from 01.07.2006) When an assignor provides special or exclusive rights for carrying out service to a person, who is not an assignor, the act, with which the rights are being provided, must require this person to observe the principle of non-admission of discrimination on the basis of nationality at assigning contracts for deliveries to third persons as a part of the activity, related to these rights.

#### **Section II. Objects and Subjects of Public Procurement**

Art. 3. (1) Objects of public procurement are:

1. (amend. - SG 37/06, in force from 01.07.2006) the delivery of goods, which are being carried out by virtue of purchase, leasing, renting, with or without a right of purchase or

installment plan, as well as all necessary preliminary activities related to the use of the goods, such as set up, testing of machines and equipment and other;

2. providing services;

3. construction including:

a) building or engineering (designing and building) of a construction;

b) (suppl. – SG 37/06, in force from 01.07.2006) fulfilment or designing and fulfilment with any resources of one or several building and mounting works according to Appendix No 1 related to the construction, reconstruction, restructuring, maintenance, restoration or rehabilitation of buildings or construction facilities;

c) (suppl. – SG 37/06, in force from 01.07.2006) engineering and fulfilment with any resources of one or more activities related to a construction of a building in compliance with the requirements of the assignor, such as feasibility study, designing, organisation of the construction, delivery and mounting of machines, facilities and technological equipment, preparation and commissioning of the site.

(2) (revoked - SG 37/06, in force from 01.07.2006).

Art. 4. Shall not be object of public procurement:

1. (suppl. – SG 37/06, in force from 01.07.2006) acquiring or renting of land, existing buildings or other real estates, as well as establishing title over limited real rights, except for the financial services, related to these transactions;

2. acquisition, creation, production and co-production of programmes by radio and television operators and submission of programme time;

3. (amend., SG 53/04, SG 34/2005; suppl. - SG 18/06, amend. - SG 37/06, in force from 01.07.2006) financial services related to the issuance and transfer of securities or other financial instruments; the services provided by the Bulgarian National Bank; the services provided in connection with the management of the government debt, at buying and qualifying of production, approving of warehouses for storing and carrying out auctions at intervention of the markets for agricultural production referred to in the Law for Encouragement of Agriculture Producers;

4. (amend. - SG 37/06, in force from 01.07.2006) scientific research and experimental works, when the assignor pays the service in full, but the benefits from them does not remain explicitly for the assignor in fulfilment of his activity;

5. (new, SG 53/04, amend. - SG 37/06, in force from 01.07.2006) the choice of arbitration court and the conciliation services;

6. (new - SG 37/06, in force from 01.07.2006) the labour contracts.

Art. 5. (1) Public procurement for services, depending on the order by which they are assigned, are divided into:

1. (amend. - SG 37/06, in force from 01.07.2006) public procurement for services, included in appendix No 2, assigned by way of:

a) open or limited procedure by assignors under art. 7, items 1 – 4;

b) open procedure, limited procedure or procedure of negotiation with announcement by assignors under art. 7, items 5 and 6;

2. (amend. - SG 37/06, in force from 01.07.2006) public procurement for services, included in Appendix No 3, which shall be assigned by way of open procedure, limited procedure or procedure of negotiation with announcement.

(2) (amend. - SG 37/06, in force from 01.07.2006) Public procurement including simultaneously services under Appendices No 2 and 3 shall be assigned by the order, provided for the services of higher cost.

Art. 6. (suppl. – SG 37/06, in force from 01.07.2006) Subjects of the procedures for assigning public procurement are the assignors, the participants and the contractors.

Art. 7. (amend. - SG 37/06, in force from 01.07.2006) Assignors of public procurement are:

1. the bodies of state power, the President of the Republic of Bulgaria, the Bulgarian National Bank, as well as other state institutions, established by a normative act;
2. the diplomatic and consular representations of the Republic of Bulgaria abroad, as well as the permanent representations of the Republic of Bulgaria to the international organisations;
3. the public organisations;
4. the associations of subjects under item 1 or 3;
5. the public enterprises and their associations, where they carry out one or several of the activities under art. 7a – 7e;
6. the traders or other persons, who are not public enterprises, when on the grounds of special or exclusive rights they carry out one or several of activities under art. 7a – 7e.

Art. 7a. (new - SG 37/06, in force from 01.07.2006) (1) Activities, connected with natural gas, heating or electric power, are:

1. the provision or the exploitation of fixed networks for public services, related to the production, transfer or the distribution of natural gas, heating or electric power, the production of heating or electric power with the purpose of delivery to these networks or

2. the delivery of natural gas, heating or electric power to such networks.

(2) The delivery of natural gas or heating power to fixed networks for public services shall not be deemed as activity within the meaning of par. 1, in case:

1. the production of natural gas or heating energy is a result from the implementation of activity, other than the activities under par. 1 or art. 7b – 7e, and

2. the delivery to these networks aims solely the economical exploitation of the production of natural gas or heating energy, provided that the amount of the deliveries is not more than 20 percent of the average annual turnover of the producer in the last three years, including the current year.

(3) The delivery of electric power to fixed networks for public services shall not be deemed as activity within the meaning of par. 1, in case:

1. the production of electric power is designated for implementation of an activity, different from the activities under art. 7b – 7e, and

2. the deliveries to the network for public services depend entirely on the own consumption of the producer and do not exceed 30 percent of the average annual production in the last three years, including the current year.

Art. 7b. (new - SG 37/06, in force from 01.07.2006) (1) Activities, connected to drinking water, are:

1. the provision or the exploitation of fixed networks for public services, related to the production, transfer or the distribution of drinking water, or

2. the delivery of drinking water to such networks.

(2) The persons, carrying out activity under par. 1, shall apply the provisions of the law also to activities, related to:

1. irrigation, drainage or other hydro-technical activities, provided that the amount of water, designated for drinking needs is more than 20 percent of the total quantity of water,

supplied via these activities, or

2. the discharge or the purifying of waste waters.

(3) The delivery of drinking water to fixed networks for public services shall not be considered as activity within the meaning of par. 1, in case:

1. the production of drinking water is necessary for implementation of activity, different from the activities under par. 1 or art. 7a, art. 7c – 7e, and

2. the deliveries to the network of public services depend entirely on the own consumption of the producer and do not exceed 30 percent of the average annual production in the last three years, including the current year.

Art. 7c. (new - SG 37/06, in force from 01.07.2006) (1) Activities, related to transport services, are the exploitation of networks for public services in the field of the railway, tramway, trolley or the bus transport, as well as automated transport systems or rope-lines.

(2) Activity in the meaning of para 1 shall not be considered the providing of bus transport services to the population, in case other persons may freely provide these services under the same terms as the assignor.

Art. 7d. (new - SG 37/06, in force from 01.07.2006) (1) Activities, related to providing universal post service, are the services, referred to in art. 34 of the Law on postal services.

(2) The persons, who carry out the activities under par. 1, shall apply the provisions of the law to their overall activity.

Art. 7e. (new - SG 37/06, in force from 01.07.2006) Activities, related to the exploitation of definite geographical area, are:

1. prospecting, exploration for or production of oil, natural gas, coal or other solid fuel;

2. the operation of aerodromes, ports or other terminal bases, used during air, water or internal water ways transport;

Art. 8. (1) (new - SG 37/06, in force from 01.07.2006) The assignors shall be obliged to conduct a procedure for assigning public procurement, if the grounds, provided for in the law, are present.

(2) (Prev. text of par. 1, amend. - SG 37/06, in force from 01.07.2006) The assignors or officials, authorized by them, shall organise and carry out the procedures for assigning public procurement and shall conclude the contracts for them. The authorization may not be used with the purpose of separation of the procurement.

(3) (new - SG 37/06, in force from 01.07.2006) If the assignor is a collective body, the authorities under par. 2 shall be carried out by the person, who represents it.

(4) (Prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) Upon a proposal by the Minister of Economy and Energy the Council of Ministers may establish central body for public procurement for the necessities of the bodies of the executive power, and the mayors of municipalities – for the necessities of the municipalities.

(5) (new - SG 37/06, in force from 01.07.2006) The central body for public procurement is an assignor, who may conduct procedures and conclude contracts for public procurement or frame agreements.

(6) (Prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) Two or more assignors may take a decision for carrying out a joint procedure for assigning public

procurement.

Art. 9. (amend. - SG 37/06, in force from 01.07.2006) A candidate or a participant in a public procurement procedure may be any Bulgarian or foreign natural or legal person, as well as their associations.

Art. 10. (amend. - SG 37/06, in force from 01.07.2006) A contractor of a public procurement shall be a participant in a public procurement procedure, with whom the assignor has concluded a public procurement contract.

Art. 11. (amend. - SG 37/06, in force from 01.07.2006) The acts of the assignors of public procurement, adopted in connection with the public procurement procedures, are individual administrative acts.

Art. 12. (1) The law shall not apply for:

1. (amend. - SG 37/06, in force from 01.07.2006) contracts for granting a concession for construction within the meaning of the Law for the concessions;

2. (amend. - SG 37/06, in force from 01.07.2006) contracts, which the assignors under art. 7, item 5 or 6 conclude in connection with activity, other than the activities under art. 7a – 7c and art. 7e or in connection with some of these activities, carried out in a third country and a network or geographic region in a Member state of the European Union are not used;

3. (amend. - SG 37/06, in force from 01.07.2006) contracts for delivery, concluded by an assignor under art. 7, item 5 or 6 for the purpose of sale or renting the object of the contract to third persons, in case that the assignor has no special or exclusive rights to sell or rent the object of such contracts, and other persons may freely carry out this activity under the same terms;

4. (amend. - SG 37/06, in force from 01.07.2006) contracts for supply of water, energy or fuel for production of energy, concluded by assignors under art. 7, item 5 or 6, carrying out activity under art. 7a;

5. (new - SG 37/06, in force from 01.07.2006) contracts for supply of water, concluded by assignors under art. 7, item 5 or 6, carrying out activity under art. 7b;

6. (prev. text of item 5, amend. - SG 37/06, in force from 01.07.2006) contracts for services concluded by an assignor under art. 7, item 5 or 6 with a related enterprise, on condition that at least 80 percent of his average annual turnover from the sale of services, deliveries or construction in the Republic of Bulgaria in the last three years comes from their provision to related enterprises;

7. (prev. text of item 6, amend. - SG 37/06, in force from 01.07.2006, and with regards to second sentence - in force from 01.01.2007) contracts, assigned by association, established by assignors for carrying out activity under art. 7a – 7e, to one of the participants in it;

8. (new - SG 37/06, in force from 01.07.2006) contracts, assigned by a participant in association, established by the assignor for carrying out activity under art. 7a -7e, to the association, if it has been established with the purpose to carry out the respective activity for a period of at least three years and the constituent act provides that the assignors will participate in it during the same period;

9. (prev. text of item 7, amend. - SG 37/06 and from 01.01.2007 with regards to second sentence) contracts for deliveries, assigned by one assignor to another assignor under

art. 7, item 1 and 3 or to association of such assignors, who have exclusive rights to provide such services by virtue of a law, by law or administrative act, the act for providing the exclusive rights shall be issued, observing the provisions of the Treaty Establishing the European Community;

10. (prev. text of item 8, amend. - SG 37/06, in force from 01.07.2006) contracts for deliveries, services or construction, financed for over 50 percent by other countries or by international or foreign organisations where the person providing the financing has chosen the contractor or has pointed out the manner of choosing;

11. (prev. text of item 9 - SG 37/06, in force from 01.07.2006) contracts of the National Health Insurance Fund for medicines under art. 45, para 6 of the Law for the health insurance.

(2) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 1, item 6, when the related enterprise has not achieved turnover for the precedent three years because of the date of its establishment or the initial moment of its activity, it is enough its business plans to provide for at least 80 percent of its average annual turnover to be achieved from the deliveries, the services or the construction, which shall be provided to related enterprises.

(3) (new - SG 37/06, in force from 01.07.2006) If one or more than one enterprise, related to the assignor, provides the same or similar services, deliveries or construction, the value under par. 1, item 6 shall be calculated, taking into account the total turnover, achieved respectively from the provision of services, deliveries, or construction to these related enterprises.

(4) (Prev. text of par. 2 - SG 37/06, in force from 01.07.2006) The assignors shall notify the Public Procurement Agency, upon its request, of:

1. (amend. - SG 37/06, in force from 01.07.2006) the cases for which the exceptions under para 1, item 2 shall apply;

2. the subject of the contracts under para 1, item 3;

3. (amend. - SG 37/06, in force from 01.07.2006) the name of the related enterprise, the object and the cost of the contract, as well as proof of the presence of the circumstances under para 1, items 6, 7 and 8 in the cases where these exceptions apply.

Art. 13. (1) (amend. - SG 37/06, in force from 01.07.2006) The procedures under the law shall not apply to public procurement:

1. (amend. - SG 37/06, in force from 01.07.2006) related to the defence and security of the country within the meaning of art. 296 of the Treaty Establishing the European Community;

2. (amend. - SG 37/06, in force from 01.07.2006) which are object of classified information representing a state secret or where the fulfilment of a public procurement must be accompanied by special security measures in compliance with the current legislation;

3. in fulfilment of an international agreement, concluded in compliance with the provisions of the Treaty Establishing the European Community between the Republic of Bulgaria and a third country, which stipulates deliveries, services or construction of sites for joint realization or operation by the parties, who have signed it;

4. assigned by way of a special procedure to an international organisation where it provides more than 50 percent of the financing;

5. assigned in fulfilment of an international agreement related to the dislocation of troops and providing the participation of armed forces and police contingencies in international missions and drills.

(2) (suppl. – SG 37/06, in force from 01.07.2006) The terms and the order of assigning public procurement in the cases of para 1, item 1 and 2 shall be determined by an

ordinance adopted by the Council of Ministers, at a proposal of the Minister of Interior, the Minister of Defence, the Minister of Economy and Energy and the Minister of Finance. The ordinance shall also determine the terms and the order of concluding compensatory (offset) agreements, as well as the cases where they will be admitted.

(3) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 1, items 3 and 4 the assignors shall notify the Public Procurement Agency of the concluded contracts within 7 days term.

Art. 14. (10 The terms and the order of assigning public procurement determined by this law shall apply obligatorily in assigning public procurement of the following cost without VAT:

1. for construction – over 1 800 000 BGN, and where the procurement has a place of fulfilment outside the country – over 5 000 000 BGN;

2. for deliveries – over 150 000 BGN, and where the procurement has a place of fulfilment outside the country – over 250 000 BGN;

3. for services – over 90 000 BGN, and where the procurement has a place of fulfilment outside the country – over 250 000 BGN;

4. project competition – over 30 000 BGN.

(2) (suppl. – SG 37/06, in force from 01.07.2006) In assigning public procurement, including simultaneously a delivery of goods and provision of services and the cost of the services is greater than the cost of the goods, para 1, item 3 shall apply.

(3) (new - SG 37/06, in force from 01.07.2006) In case an object of public procurement is provision of services, however including construction also, which ensues from the main object of the procurement, it shall be assigned as a public procurement for service.

(4) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) When assignors under art. 7, item 1 – 4 finance by more than 50 percent a construction contract, the persons, who obtain the financing and assign the contract, shall be obliged to observe the law where the total value of the contract, without VAT, is above the threshold determined by para 1, item 1.

(5) (prev. text of par. 4, amend. - SG 37/06, in force from 01.07.2006) When assignors under art. 7, item 1 – 4 finance by more than 50 percent a services contract, related to the construction contract, the persons who obtain the financing and assign the contract for services shall be obliged to observe the provisions of this law where the total value of the contract without VAT is above the threshold determined by para 1, item 3.

(6) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 4 and 5 the assignors shall be obliged to exercise control for observing the law over the persons, who have acquired the financing.

(7) (prev. text of par. 5, amend. - SG 37/06, in force from 01.07.2006) The terms and the order of assigning public procurement above the thresholds under para 1 shall be determined by an ordinance adopted by the Council of Ministers at a proposal of the Minister of Economy and Energy.

Art. 15. (1) The cost of the public procurement shall be determined by the date of the decision for opening the procedure for assigning public procurement.

(2) For determining the order of assigning public procurement under art. 14 the cost of the public procurement shall be calculated as follows:

1. (amend. - SG 37/06, in force from 01.07.2006) for a contract for delivery through leasing, renting with or without a right of purchase, as well as for purchase on the installment plan, in case the term:

a) (suppl. – SG 37/06, in force from 01.07.2006) is up to one year – the total cost for the term of its validity;

b) (suppl. – SG 37/06, in force from 01.07.2006) is more than one year – the cost for the term of its validity plus the reference remaining value of the delivery;

c) (new - SG 37/06, in force from 01.07.2006) is not fixed or can not be fixed – the monthly value, multiplied by the figure 48;

2. for periodical contracts for delivery and/or service – on the basis of:

a) the actual total value of similar contracts concluded during the preceding financial year and adjusted by the provided changes in the quantity or value of the respective delivery or service; or

b) the expected value of the delivery and/or services during the next 12 months after the first delivery or service or for the period of the deliveries and/or services when it is longer than 12 months;

3. (amend. - SG 37/06, in force from 01.07.2006) for a contract for delivery, service and/or construction, providing options – amounting to the maximum admissible total value, including the option clauses;

4. for a contract for service which does not determine a total price:

a) if it is for a period of up to 4 years – the total value of the contract for the term of its validity;

b) (amend. - SG 37/06, in force from 01.07.2006) if the term could not be fixed in advance or it is longer than 4 years – the value of the monthly payment multiplied by the figure 48;

5. (suppl. – SG 37/06, in force from 01.07.2006) for a contract for insurance service – the due insurance premium and other payments;

6. (suppl. – SG 37/06, in force from 01.07.2006) for a contract for financial service – the price of the service, including the fees, commissions and interest and other payments;

7. for a contract for service preceded by a project competition, as well as for a project competition followed by a contract for service, the value shall be determined by the price of the service and the total value of the awards and other payments to the participants in the competition;

8. for a construction contract – on the basis of the value of the construction and the delivery of all goods and services for fulfilment of the construction, where they are provided by the assignor;

9. for a project competition the value of the procurement shall include the total value of the awards and other payments to the participants in the competition.

10. (new - SG 37/06, in force from 01.07.2006) for a frame agreement or dynamic system for deliveries – on the basis of the maximum value expected, without VAT, of all contracts, envisaged to be concluded within the term of effect of the agreement or the system;

(3) (amend. - SG 37/06, in force from 01.07.2006) In determining the value of a public procurement shall be included all payments without VAT to the provider of the public procurement, including the options provided and repeat of the service or the construction under art. 90, par. 1, item 9 and art. 103, par. 2, item 8.

(4) (amend. - SG 37/06, in force from 01.07.2006) Where the public procurement includes several detached positions, each of them being object of a contract, the value of the procurement shall be equal to the sum of the values of all positions. If the total value of the positions is equal to or exceeds the limits under art. 14, par. 1, upon the assignment of the procurement at each detached position shall be observed the procedure, applicable to the total cost of the procurement.

(5) The choice of a method for determining the value of the contract for public procurement shall not be used for the purpose of avoiding the application of the law.



(6) Not admitted shall be the partition of a public procurement for the purpose of avoiding the application of the law, including through a progress construction, where the concluded stage cannot obtain a permit for using as an individual site.

(7) (new - SG 37/06, in force from 01.07.2006) At determination of the value of a construction contract the including of deliveries or services, which are not necessary for its fulfilment, shall not be admitted.

### Section III. Types of Procedures

Art. 16. (1) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The public procurement shall be assigned by way of holding an open procedure, a limited procedure, competitive dialogue and procedures of negotiation.

(2) (revoked - SG 37/06, in force from 01.07.2006)

(3) (revoked - SG 37/06, in force from 01.07.2006)

(4) Open procedure is the procedure whereupon all interested persons may file offers.

(5) Limited procedure is the procedure whereupon offers may be filed only by candidates having received invitation from the assignor upon a preliminary selection.

(6) (new - SG 37/06, in force from 01.07.2006) Competitive dialogue is a procedure, where every interested person can submit application for participation and the assignor conducts a dialogue with the candidates, admitted upon a preliminary selection, with the purpose of definition of one or more proposals, which meet his/her requirements and after that he/she invites the candidates with suitable proposals to submit offers.

(7) (prev. text of par. 6 - SG 37/06, in force from 01.07.2006) The procedures of negotiation are:

1. (amend. - SG 37/06, in force from 01.07.2006) procedure of negotiation with announcement, whereupon the assignor holds negotiations for determining the clauses of the contract with one or more participants chosen by him/her upon a preliminary selection;

2. procedure of negotiation without announcement, whereupon the assignor holds negotiations for determining the clauses of the contract with one or more concretely chosen persons.

(8) (prev. text of par. 7, amend. - SG 37/06, in force from 01.07.2006) The assignors under art. 7, items 1 – 4 shall take a decision for assigning public procurement by way of open procedure and limited procedure at all times, when the conditions for conducting competitive dialogue or procedures of negotiation are not present.

Art. 16a. (new - SG 37/06, in force from 01.07.2006) Project competition is the procedure whereupon the assignor acquires a plan or a project, chosen by an independent jury on the grounds of a competition with or without adjudgement of awards.

Art. 16b. (new - SG 37/06, in force from 01.07.2006) (1) The assignors may choose a contractor of a public procurement by way of open, limited procedure or procedures of negotiation with announcement in the cases under art. 84, item 1, using electronic auction, as well as in the cases under art. 93c, par. 2 and art. 93i, if the technical specifications for the public procurement can be precisely defined.

(2) Object of electronic auction may not be public procurement for service and construction, whose subject is intellectual activity such as designing construction sites.

(3) The use of electronic auction shall be indicated in the announcement for public procurement.

(4) The electronic auction may not be applied, if it prevents, restricts or violates the competition, provided that it also may not change the object of the procurement, indicated in the promulgated announcement and in the specifications.

(5) The terms and the order for application of the electronic auction shall be settled by the Regulations for implementation of the law.

Art. 16c. (new - SG 37/06, in force from 01.07.2006) (1) The assignor shall keep his/her right to participate in procedures for assigning public procurement for specialized enterprises or cooperations of persons with handicaps, in case the object of the procurement is included in a list, approved by the Council of Ministers, or the procurement is being fulfilled according to programmes for protection of the employment of persons with handicaps.

(2) The assignor must point out the requirement under par. 1 in the announcement for opening the public procurement.

## Chapter two. BODIES. PUBLIC PROCUREMENT REGISTER

### Section I. Bodies

Art. 17. (amend. - SG 37/06, in force from 01.07.2006) The Minister of Economy and Energy shall carry out the state policy in the sphere of public procurement.

Art. 18. (1) (suppl. – SG 37/06, in force from 01.07.2006) Established with the Minister of Economy and Energy shall be Public Procurement Agency, called hereinafter "the Agency", which shall support him in implementing the state policy in the sphere of public procurement.

(2) The Agency is a corporate body with a seat in Sofia.

(3) (amend. - SG 37/06, in force from 01.07.2006) The financial support of the Agency shall be formed by budget revenue and own revenue from carrying out activities, connected to manufacture accessories and provision of services in the sphere of public procurement.

(4) The activity, the structure, the organisation of the work and the number of personnel of the Agency shall be determined by structural regulations adopted by the Council of Ministers.

Art. 19. (1) (suppl. – SG 37/06, in force from 01.07.2006) The Agency shall be managed and represented by an executive director who shall be appointed by the Minister of Economy and Energy.

(2) The executive director of the Agency shall:

1. issue methodological instructions on the implementation of the law and the related by laws;

2. address the competent bodies for exercising control over the observance of the law;

3. (amend. - SG 37/06, in force from 01.07.2006) appeal before the Commission for

protection, upon received signal, announcements for opening of procedures, containing terms or requirements, which give privileges or restrict the participation of persons in the public procurement without a ground;

4. lay claims in court for declaring nil and void public procurement contracts in cases of violation of the law;

5. (amend. - SG 37/06, in force from 01.07.2006) work out draft normative acts and give opinion on international agreements in the sphere of public procurement;

6. keep Public Procurement Register;

7. (amend. - SG 37/06, in force from 01.07.2006 and from 01.01.2007 in the part, regarding the notification of the European Commission of amendments in the lists) maintain lists of the assignors under art. 7 and notify the European Commission of amendments in the lists;

8. (amend. - SG 37/06, in force from 01.07.2006) maintain, with the assistance of the professional associations and organisations in the respective branch, a list of persons who may be used by the assignors as external experts in holding public procurement procedures;

9. (amend. - SG 37/06, in force from 01.07.2006) work out forms of announcements, of statistical accounts and of information for the assigned public procurement and for the conducted project competitions;

10. (amend. - SG 37/06, in force from 01.07.2006) co-ordinate the activity, connected to the training of the subjects of the public procurement;

11. participate in the international cooperation of the Republic of Bulgaria with organisations from other countries in the sphere of public procurement;

12. (suppl. – SG 37/06, in force from 01.07.2006) present to the Minister of Economy and Energy an annual report for the activity of the Agency;

13. (suppl. – SG 37/06, in force from 01.07.2006) compile and summarise the practice of applying the law and implement monitoring of the public procurement;

14. (amend. - SG 37/06, in force from 01.07.2006) implement co-operation in the sphere of public procurement with branch organisations;

15. (new - SG 37/06, in force from 01.07.2006) provide generalized information according to criteria announced by the Public Procurement Register;

16. (new - SG 37/06, in force from 01.07.2006) support the process of electronical assignment of public procurement;

17. (new - SG 37/06, in force from 01.07.2006) notify the European Commission of all contracts under art. 13, par. 1, item 3;

18. (new - SG 37/06, in force from 01.07.2006) send upon request of the European Commission the information under art. 12, par. 4;

19. (new - SG 37/06, in force from 01.07.2006) send to the European Commission annual statistical accounts;

20. (new - SG 37/06, in force from 01.07.2006) notify the European Commission of legal or factual problems in connection to participation of Bulgarian persons in procedures for assigning public procurement for services in third countries;

21. (new - SG 37/06, in force from 01.07.2006) notify the European Commission of legal or factual problems in connection to participation of Bulgarian persons in procedures for assigning public procurement in third countries, which are result of non-observance of the provisions of the international labour law;

22. (new - SG 37/06, in force from 01.07.2006) may determine on his/her own initiative or upon request by the assignor, experts from the Agency, who participate as observers during conducting procedures for assigning public procurement, whose values exceed the ones, indicated in art. 45a, par. 1 and 2;

23. (new - SG 37/06, in force from 01.07.2006) popularize the Good practices in the

sphere of public procurement.

(3) In connection with the implementation of his legal capacity the executive director of the Agency shall have the right to require from the assignors of public procurement the necessary information.

(4) The assignors shall be obliged to submit the required information under para 3 within a period set by the executive director of the Agency.

(5) (amend. - SG 37/06, in force from 01.07.2006) The information under para 2, item 1, 6 – 8, 12 and 13, as well as the approved forms under item 9 and the Public Procurement Classifier shall be published in Internet.

(6) (new - SG 37/06, in force from 01.07.2006) Every year till the 31st of March the Minister of Economy and Energy shall submit the annual report under par. 2, item 12 to the Council of Ministers for approval;

(7) (new - SG 37/06, in force from 01.07.2006) The forms under par. 2, item 9 shall be approved by the Minister of Economy and Energy and shall be promulgated in State Gazette.

Art. 20. (amend. - SG 37/06, in force from 01.07.2006) (1) The executive director shall exercise his/her authority under art. 19, par. 2, item 3 till the expiry of the term for receipt of:

1. offers or projects –for open procedure or open project competition;
2. applications for participation – for the other procedures.

(2) The executive director shall exercise his/her authority under art. 19, par. 2, item 3, if the signal for the offence is received no later than 10 bays prior to the expiry of the terms under par. 1.

Art. 20a. (new - SG 37/06, in force from 01.07.2006) (1) The observers under art. 19, par. 1, item 22 shall be present during the work of the commission, appointed by the assignor, at conducting procedure for assigning public procurement and shall see to the observance of the requirements of the law.

(2) The executive director of the Agency shall send a statement to the assignor in reference to the work of the commission upon each procedure in which observers took part.

(3) The order for determining observers and the rules for their work shall be settled by the regulation for implementation of the law.

## Section II. Public Procurement Register

Art. 21. (1) Created shall be Public Procurement Register.

(2) The Public Procurement Register shall be open for the public.

(3) The assignors shall be obliged to send the information required for entry in the Public Procurement Register to the executive director of the Agency.

(4) (new - SG 37/06, in force from 01.07.2006) The assignors shall be obliged to present annual statistical accounts for the assigned public procurement, following a procedure, determined by the regulation for implementation of the law.

Art. 22. The Public Procurement Register shall contain:

1. (amend. - SG 37/06, in force from 01.07.2006) the decisions for opening and

termination of procedures for assigning public procurement, as well as the decisions for prolonging the term for submission of offers or applications for participation;

2. the announcements required for entry in the register;
3. the information regarding the assigned public procurement;
4. other information determined by the regulations for implementation of the law.

## Part two.

# ASSIGNING PUBLIC PROCUREMENT

## Chapter three.

# GENERAL RULES FOR ASSIGNING PUBLIC PROCUREMENT

## Section I.

### Advance announcement

Art. 23. (1) (suppl. SG 31/05, in force from May 1, 2005, amend. - SG 37/06, in force from 01.07.2006) The assignors shall send for promulgation in the electronic site of State Gazette and to the Agency for entry in the Public Procurement Register or publish in the buyer profile an advance announcement for all procedures for assigning public procurement or for concluding frame agreements, which they intend to open in the following 12 months:

1. for delivery of goods and for services under art. 5, para 1, item 1 in categories, when the total value without VAT of the respective category of goods or services is equal to or bigger than 450 000 BGN;

2. for construction, where the total value of the procurement without VAT is equal to or bigger than the thresholds under art. 14, para 1, item 1.

(2) (new - SG 37/06, in force from 01.07.2006) When publishing advance announcement at the buyer profile, the assignors shall send via electronic means to the agency and to State Gazette a notice according to a confirmed form. The advance announcements may not be published in the buyer profile before the date of sending the notice.

(3) (new - SG 37/06, in force from 01.07.2006) The announcements, indicated in par. 1, and the notice under par. 2 for deliveries and services must be sent till the 1st of March.

(4) (suppl. SG 31/05, in force from May 1, 2005, prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) In case the assignors intend to use the short terms under art. 64, par. 2, they shall send an advance announcement for promulgation also for public procurement whose total value, without VAT, is below the values under para 1.

(5) (prev. text of par. 3, suppl. - SG 37/06, in force from 01.07.2006) In the cases under para 1, item 1 the category of goods shall be determined by the assignors according to the nomenclature of the Public Procurement Classifier, and the category of services – according to Appendix No 2..

(6) (prev. text of par. 4 - SG 37/06, in force from 01.07.2006) The promulgation of an advance announcement shall oblige the assignor to carry out the respective procedures for assigning public procurement.

Art. 24. (amend. - SG 37/06, in force from 01.07.2006) The advance announcement shall be worked out according to the form under art. 19, par. 7 and shall contain up to 650 words. The assignors shall send the announcement to the State Gazette and to the Agency in

electronic form as well.

## Section II.

### Decision for Opening a Public Procurement Procedure and Announcement for Public Procurement

Art. 25. (1) The assignor shall take a decision for opening a procedure for assigning public procurement by which shall approve the announcement for public procurement and the documentation for participation in the procedure. The decision and the announcement shall be sent to the Agency for entry in the Public Procurement Register in electronic form as well.

(2) The announcement for public procurement shall contain at least the following information:

1. name, address, telephone, fax, electronic address of the assignor and a person for contact;

2. type of the procedure;

3. object of the procurement and quantity or volume, including of detached positions;

4. code of the nomenclature of the Public Procurement Classifier;

5. place and term of fulfilment of the procurement;

6. (amend. - SG 37/06, in force from 01.07.2006) minimal requirements for the economic and financial status of the candidate or the participant or his/her technical capacities and qualification, where the assignor has set such, as well as indication of the documents proving them;

7. terms and size of the guarantee for participation and of the guarantee for fulfilment of the contract;

8. terms and way of payment;

9. term of validity of the offers;

10. criterion for assessment of the offers;

11. (new - SG 37/06, in force from 01.07.2006) opportunity for providing options in the offers;

12. (new - SG 37/06, in force from 01.07.2006) opportunity the participants to submit offers only for one, for all or for one or more detached positions – in case the object of the procurement includes several detached positions;

13. (prev. text of item 11 - SG 37/06, in force from 01.07.2006) place and term of receiving, price and way of payment of the documentation for participation in the procedure;

14. (prev. text of item 12, amend. - SG 37/06, in force from 01.07.2006) place and term of receiving the applications or the offers;

15. (prev. text of item 13 - SG 37/06, in force from 01.07.2006) place and date of opening the offers;

16. (prev. text of item 14 - SG 37/06, in force from 01.07.2006) date of promulgation of the advance announcement under art. 23, if there is any;

17. (prev. text of item 15 - SG 37/06, in force from 01.07.2006) the date of sending the announcement.

(3) The announcement of the assignor may also stipulate:

1. (amend. - SG 37/06, in force from 01.07.2006) opportunity for conducting electronic auction;

2. (amend. and suppl. - SG 37/06, in force from 01.07.2006, amend. and suppl. - SG 37/06, in force from 01.07.2006) requirement for establishing a legal person where the participant, appointed for a contractor, is an association of natural and/or legal persons. The

newly established legal person shall be bound by the offer, submitted by the association;

3. (revoked - SG 37/06, in force from 01.07.2006);

4. the indices for determining the complex assessment of the offer where the criterion of assessment is economically the most favourable offer.

(4) (new - SG 37/06, in force from 01.07.2006) In case of limited procedures, procedures of negotiation with announcement and competitive dialogue procedures the assignors may also include in the announcement a restriction of the number of candidates, who shall be invited to present offers, to negotiate or to take part in a dialogue, provided that there is sufficient number of candidates, meeting the requirements. In these cases in the announcement shall be pointed out objective and non-discriminatory criteria or rules, which the assignors intend to apply, the minimum number of candidates, who will be invited, and in the assignor`s opinion – also the maximum number.

(5) (prev. text of par. 4 - SG 37/06, in force from 01.07.2006) The assignors shall not have the right to include terms or requirements, giving privilege or restricting the participation of persons in the public procurement without a ground, in the decision, announcement or documentation.

(6) (prev. text of par. 5, amend. - SG 37/06, in force from 01.07.2006) The requirements under par. 2, item 6, the scope of the information and the documents, required according to the announcement, must correspond to and be in compliance with the complexity of the subject and the size of the public procurement.

Art. 26. (1) (prev. text of art. 26, amend. - SG 37/06, in force from 01.07.2006) The assignor may also provide for in the announcement under art. 25 additional requirements for the fulfilment of the public procurement, related to the protection of the environment, the unemployment and the opening of new positions for handicapped persons, in compliance with the requirements of art. 25, para 5

(2) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 1, at preparation of the offer the participants shall also specify the manner of fulfillment of the additional requirements.

Art. 27. (1) (amend. - SG 37/06, in force from 01.07.2006) The announcement under art. 25, para 2 shall contain up to 650 words and shall be worked out according to the form under art. 19, item 7.

(2) (amend. SG 31/05, in force from May 1, 2005) The announcement for public procurement shall be sent in electronic form and shall be promulgated in the electronic site of State Gazette in 5 days after sending it.

(3) (amend. SG 31/05, in force from May 1, 2005) After the promulgation of the announcement in the State Gazette the assignor may publish information regarding the public procurement in one local newspaper or national daily newspaper. The publication shall indicate at least the object of the public procurement and the date of promulgation of the announcement in the electronic site of State Gazette and it cannot include information not contained in the announcement.

### Section III.

#### Documentation for Participation in the Public Procurement Procedure

Art. 28. (1) The documentation for participation in public procurement procedure

shall contain:

1. the decision for opening public procurement procedure;
  2. the announcement for the public procurement;
  3. the full description of the object of the procurement, including the detached positions;
  4. the technical specifications;
  5. (new - SG 37/06, in force from 01.07.2006) the minimum requirements, which the options must meet, and the special requirements for their presentation, in case the assignor admits options;
  6. (prev. text of item 5, amend. - SG 37/06, in force from 01.07.2006) the investment projects when public procurement for construction requires such;
  7. (prev. text of item 6 - SG 37/06, in force from 01.07.2006) the indices, their relative weight and the methodology for determining the complex assessment of the offer when the criterion for the assessment is economically the most favourable offer;
  8. (prev. text of item 7 - SG 37/06, in force from 01.07.2006) a form of the offer, as well as instructions for its preparation;
  9. (prev. text of item 8 - SG 37/06, in force from 01.07.2006) the draft contract;
  9. (revoked - SG 37/06, in force from 01.07.2006).
- (2) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The methodology under para 1, item 7 shall contain exact instructions for determining the assessment by each indicator and for determining the complex assessment of the offer, including of the relative weight, with which the assignor awards each of the indices for assessment of the most favourable offer economically. The relative weight of the individual indices may be expressed by maximum values within the frames of the general assessment.
- (3) (suppl. – SG 37/06, in force from 01.07.2006) The price of the documentation for participation may not be higher than the actual expenses related to its preparation. Upon request by the interested person the assignor may not refuse the sending of the documentation at the expense of the person, who has addressed the request.
- (4) (amend. - SG 37/06, in force from 01.07.2006) The documentation for participation may be purchased till the expiry of the term for filing the offers or the applications. The persons shall have the right to examine the documentation on the spot, before purchasing it.

Art. 29. (1) (amend. - SG 37/06, in force from 01.07.2006) Within up to 10 days before the expiration of the term for filing the offers or the applications the persons may request in writing from the assignor elucidations on the documentation for participation. The assignor shall be obliged to answer within three days from receiving the request.

(2) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The assignor shall send the elucidation under para 1 to all persons having bought documentation for participation and having indicated an address for correspondence, without noting in the reply the person who has made the request. The elucidation shall also be attached to the documentation which is to be bought by other candidates.

## Section IV. Technical Specifications

Art. 30. (amend. - SG 37/06, in force from 01.07.2006) (1) In the documentation for participation in public procurement procedure the assignor shall determine the technical



specifications by indicating:

1. Bulgarian standards introducing European, international standards, European technical approvals or general technical specifications, or other technical standards of European standardization authorities, adding the words "or equivalent";

2. Bulgarian standards, technical approvals or specifications, as regards to the designing, the method of calculation and performance of the construction, as well as to the materials used, adding the words "or equivalent" where there are no standards under item 1;

3. operative characteristics or functional requirements, allowing exact definition of the procurement's object; the functional requirements may include requirements for protection of the environment;

4. operative characteristics or functional requirements under item 3 by reference to specifications under item 1 or 2, the compliance with which is considered compliance with the operative characteristics or the functional requirements;

5. the specifications under item 1 or 2 – for certain characteristics, and for others – by reference to operative characteristics or functional requirements under item 3.

(2) In the cases under par. 1, item 3, when the assignor has provided requirements for protection of the environment, he/she may use specifications or parts of European or national ecolabels or other ecolabels, meeting simultaneously the following requirements:

1. the specifications are suitable for determining the characteristics of the deliveries and the services;

2. the requirements for the label are prepared on the basis of scientific information;

3. the labels are accepted following a procedure, in which all interested parties must take part – state bodies, consumers, producers, distributors and organizations for protection of the environment;

4. they are accessible to all interested parties.

(3) The assignor may point out that the goods and the services having ecolabel are considered to correspond to the technical specifications, provided in the documentation for participation in a procedure for assigning public procurement.

(4) In the cases under par. 2 the assignor shall accept as proof the technical dossier of the producer or a protocol from testing, or a certificate, issued by recognized body.

Art. 31. (amend. - SG 37/06, in force from 01.07.2006) (1) At providing technical specifications to the candidates or the participants in the procedures and at concluding the public procurement contract the assignor may point out which part of the information, provided to them, is of confidential nature.

(2) The candidates or the participants shall not have right to disclose the information under par. 1.

Art. 32. (1) (suppl. – SG 37/06, in force from 01.07.2006) The technical specifications shall provide equal access of the candidates or the participants for participation in the procedure and shall not create obstacles to the competition without a ground.

(2) (amend. - SG 37/06, in force from 01.07.2006) The technical specifications shall not be determined by indicating a specific model, source, process, trade mark, patent, type, origin or production, which would lead to the provision of privilege or the elimination of certain persons or goods. In exclusive cases, where it is impossible for the object of the procurement to be described precisely and clearly by the order of art. 30, such indication is admissible, provided that the words "or equivalent" are obligatorily added.

Art. 33. (1) (amend. - SG 37/06, in force from 01.07.2006) In the cases of art. 30, para 1, item 1 or 2 the assignor may not reject an offer on the grounds that the offered goods or services do not correspond to the technical specifications he indicated where the participant proves by his offer that the solution offered by him meets the requirements determined by these technical specifications.

(2) (amend. - SG 37/06, in force from 01.07.2006) In the cases of art. 30, para 1 the assignor may not reject an offer corresponding to a Bulgarian standard introducing an European standard, European technical approval, general technical specification, international standard or technical model, established by European organization for standardization, where the participant proves by his offer that these standards regard the requirements for operative characteristics and functional requirements determined by the assignor.

(3) (amend. - SG 37/06, in force from 01.07.2006) In the cases of para 1 and 2 the participant shall produce as a proof a technical dossier of the producer or testing records or a certificate, issued by a recognized body.

(4) (amend. - SG 37/06, in force from 01.07.2006) When submitting the offer the participant may point out which part of it is of confidential nature and require from the assignor not to disclose it.

(5) (new - SG 37/06, in force from 01.07.2006) The assignor shall not have right to disclose information, provided to him/her by candidates and participants, indicated by them as confidential with regards to technical or commercial secrets, except for the cases under art. 44 and art. 73, par. 4 and 5.

## Section V.

### Consideration, Assessment and Rating of the Offers

Art. 34. (1) The assignor shall appoint a commission for holding a public procurement procedure, determining its members and reserve members.

(2) The commission shall consist of at least three members, one of whom shall obligatorily be a qualified lawyer, and the others shall be persons having the necessary professional qualification and practical experience in compliance with the object and the complexity of the procurement.

(3) The assignor may draw in as members or consultants of the commission outside experts as well.

(4) (amend. - SG 37/06, in force from 01.07.2006) In case of open procedure the commission shall be appointed by the assignor upon expiration of the term for accepting the offers, and in case of limited procedure, competitive dialogue or procedure of negotiation - upon expiration of the term for accepting the applications for participation.

(5) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall set a term for conclusion of the work of the commission which must be in accordance with the specific nature of the public procurement and may not be longer than the term of validity of the offers.

(6) The remuneration of the members of the commission and all expenses related to its activity shall be for the account of the assignor.

Art. 35. (1) (amend. - SG 37/06, in force from 01.07.2006) Members of the commission or consultants may be persons who declare that:

1. they have no material interest in the assignment of the public procurement to a definite candidate or participant;

2. they are not "related persons" in the meaning of the Commercial Law with a

candidate or a participant in the procedure or with subcontractors appointed by him/her, or with members of their management or control bodies.

(2) The members of the commission and the consultants shall be obliged to keep secret the circumstances they have learned in connection with their work in the commission.

(3) The members of the commission and the consultants shall present to the assignor a declaration for compliance of the circumstances under para 1 and for observance of the requirements under para 2 in their appointment and at each stage of the procedure where a change of the declared circumstances occurs.

Art. 36. (1) The decisions of the commission shall be taken by a majority of its members. When a member of the commission is against the decision taken he/she shall sign the records with reservation and shall present his/her motives in writing.

(2) Where, due to objective reasons, a member of the commission cannot fulfil his/her duties and he/she cannot be substituted by a reserve member, the assignor shall issue an order for appointing a new member.

(3) (new - SG 37/06, in force from 01.07.2006) Members of the commission shall not be entitled to take an application or offer out of the premises where the session is conducted.

Art. 37. (1) (prev. text of art. 37, amend. - SG 37/06, in force from 01.07.2006) The assignor shall determine the contractor of the public procurement on the grounds of an assessment of the offers by one of the following criteria, indicated in the announcement:

(2) (new - SG 37/06, in force from 01.07.2006) If the chosen criterion is economically the most favourable offer, the assignor shall be obliged to determine the indices, their relative weight and methodology for determining the assessment by each index. Where, due to objective reasons, it is impossible the relative weight to be indicated, the assignor shall arrange them by importance in descending order.

(3) (new - SG 37/06, in force from 01.07.2006) The criteria under par. 1 shall be applied only with regards to the offers of the participants, who are not dismissed from participation in the procedure on the grounds, announced by the assignor, stipulated by art. 46 – 48, and which meet the requirements for economical and financial status, their technical capacity and/or qualification.

(4) (new - SG 37/06, in force from 01.07.2006) If the chosen criterion is economically the most favourable offer and the assignor has indicated in the announcement that he/she admits presentation of options, subject to assessment shall be all options proposed, which meet the announced requirements under art. 28, par. 1, item 5.

(5) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 4 the participant shall take part in the rating only with the option, which has acquired the highest assessment

Art. 38. (amend. - SG 37/06, in force from 01.07.2006) The procedure for assigning public procurement shall wind up by:

1. concluding a contract with the contractor appointed or a frame agreement, or
2. a decision for its termination.

Art. 39. (1) The assignor shall terminate the public procurement procedure by a motivated decision when:

1. (amend. - SG 37/06, in force from 01.07.2006) not a single offer or application for participation has been filed or not a single candidate or participant has been admitted;

2. (amend. - SG 37/06, in force from 01.07.2006) all offers or applications for participation do not meet the requirements announced by the assignor in advance;

3. all offers meeting the requirements announced in advance by the assignor exceed the financial resource he can provide;

4. (amend. - SG 37/06, in force from 01.07.2006) the first or the second rated participant refuses to conclude a contract;

5. (amend. - SG 37/06, in force from 01.07.2006) there is no more a necessity of holding the procedure as a result of substantial change of the circumstances, including in case of impossibility of providing financing for fulfilment of the procurement for reasons which the assignor could not have foreseen;

6. (amend. - SG 37/06, in force from 01.07.2006) violations in its opening and holding are established, which cannot be removed without changing the terms under which the procedure has been announced;

7. (new - SG 37/06, in force from 01.07.2006) due to presence of some of the grounds under art. 42, public procurement contract is not concluded.

(2) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The assignor shall be obliged, within 3 days from the decision under para 1, to notify the candidates or the participants of the termination of the public procurement procedure, as well as to send a copy of it to the executive director of the agency.

(3) In the cases of para 1, item 3 the assignor shall obligatorily include in the decision the lowest offered price and he may not conclude a contract for the same object at a price equal or higher than the one indicated by the decision, on holding another procedure within the same year.

(4) (suppl. – SG 37/06, in force from 01.07.2006) On termination of the public procurement procedure under para 1, item 3, 5 and 6 the assignor shall reimburse to the candidates or the participants the expenses incurred by them for buying the documentation for participation in the procedure within 14 days from the decision under para 1.

Art. 40. (amend. - SG 37/06, in force from 01.07.2006) The assignor may open a new public assignment procedure for the same object only where the initially announced procedure has been terminated and the decision for termination has not been appealed or if so the dispute has been settled.

## Section VI. Public Procurement Contract

Art. 41. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor shall conclude a written public procurement contract with the participant, chosen for contractor as a result of conducted procedure.

(2) The public procurement contract shall obligatorily include all proposals of the offer of the participant, on the ground of which he/she is chosen for contractor.

(3) The assignor shall conclude the contract under para 1 within one month from the expiry of the term for appeal of the decision for choosing a contractor in the cases when an appeal is not submitted, or it is, but imposing of a temporary measure is not requested.

(4) In case an appeal against the decision for determining a contractor is lodged and a request for imposing temporary measure is made, the assignor shall conclude a contract within one month term from the entry into force of the definition, with which the request for imposing temporary measure is rejected.

(5) Not admitted shall be the conclusion of termless public procurement contracts.

Art. 42. (amend. - SG 37/06, in force from 01.07.2006) The public procurement contract shall not be concluded with a participant chosen for contractor who, on signing the contract:

1. does not present a document for registration in compliance with the requirement of art. 25, para 3, item 2;
2. does not fulfil the obligation under art. 47, para 9 and art. 48, para 2;
3. does not present the fixed guarantee for performance of the contract.

Art. 43. (1) (amend. - SG 37/06, in force from 01.07.2006) The parties to the public procurement contract may not amend it.

(2) (new - SG 37/06, in force from 01.07.2006) Amendment of a concluded public procurement contract shall be admitted by way of an exception:

1. in case as a result of insurmountable force an amendment of the contract's terms is necessary, or
2. upon change of prices, regulated by the state, or reduction of the contracted prices in assignor's interest.

(3) (prev. text of par. 2- SG 37/06, in force from 01.07.2006) The assignor may terminate the public procurement contract if, as a result of circumstances having occurred after its conclusion, he/she is not in a position to fulfil his obligations. In this case the assignor shall owe to the contractor indemnification for suffered damages from the conclusion of the contract.

Art. 44. (1) (suppl. – SG 37/06, in force from 01.07.2006) The assignor shall be obliged to send an information for every concluded public procurement contract or for concluded frame agreement to the Agency for entry in the Public Procurement Register not later than 7 days from the conclusion of the contract or of the frame agreement.

(2) (amend. - SG 37/06, in force from 01.07.2006) The information under para 1 shall be worked out in the form under art. 19, par. 7.

(3) (amend. - SG 37/06, in force from 01.07.2006) Information under par. 1, whose announcement contradicts the law, shall not be entered in the Public Procurement Register. In this case the assignor shall provide reasons before the Agency.

(4) (new - SG 37/06, in force from 01.07.2006) Information, which, according to the form under art. 19, par. 7, is not designated for publishing, shall be used for statistical objectives.

(5) (new - SG 37/06, in force from 01.07.2006) The information about concluded contracts on the basis of dynamic system for deliveries may be sent once in a quarter. In this case the assignor must send the information within 7-days term after the end of each quarter.

(6) (new - SG 37/06, in force from 01.07.2006) The assignors shall be obliged to send to the Agency information about every contract, concluded on the grounds of a frame agreement, within 7-days term after its conclusion.

(7) (new - SG 37/06, in force from 01.07.2006) The assignors shall be obliged to notify the Agency in the cases, when they have received a notice from the European commission for offences during the implementation of the procedure for assigning public procurement, established by it.

(8) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 7 the assigners shall send the whole file along with a written statement on it in three days term.

Art. 45. For all unsettled issues in connection with the conclusion, fulfilment and termination of the public procurement contracts shall apply the provisions of the Commercial Law and of the Law for the obligations and contracts.

## Section VII.

### Sending information to the European commission (new - SG 37/06, in force from 01.01.2007)

Art. 45a. (new - SG 37/06, in force from 01.01.2007) (1) The assignors under art. 7, items 1 – 4 shall be obliged to send to the European commission the announcements for opening of procedure and information about a concluded contract, if the public procurement have equivalent in BGN, equal to or higher than:

1. 137 000 euro – for deliveries, services under Appendix No 2, to art. 5, par. 1, item 1 and project competition, as well as for deliveries of goods under Appendix No 4;
2. 211000 euro – for services under Appendix No 3 to art. 5, par. 1, item 2;
3. 5 278 000 euro – for construction;
4. 211 000 euro - for deliveries of goods, not indicated in the list under Appendix No 4, when the delivery is implemented by assignors, carrying out activities in the field of defence of the country;

(2) The assignors under art. 7, items 5 and 6 shall be obliged to send to the European commission the announcements for opening a procedure and the information about a concluded contract, if the public procurement have equivalent in BGN, equal to or higher than:

1. 422 000 euro – for deliveries, services, project competition;
2. 5 278 000 – for construction.

(3) The assignors shall be obliged to send to the European commission or to publish in the buyer profile advance announcements, if the public procurement have equivalent in BGN, equal to or higher than:

1. 750 000 euro – by categories of deliveries and services under Appendix No 2 to art. 5, par. 1, item 1;
2. 5 278 000 - for construction.

(4) The information under par. 1 and 2 shall be sent according to the requirements under art. 44, par. 2 – 5.

(5) The announcements under par. 1 and 2 shall be sent by electronic means, by post or by fax for publishing in Official Journal of the European Union. In the cases under art. 76, par. 3 and art. 86, par. 3 the announcement shall be sent by fax or by electronic means.

(6) Assignors, who publish advance announcements in their buyer profile, shall send to the European Commission by electronic means an announcement according to an approved form. The advance announcements may not be published in the buyer profile prior to the date of sending the announcement.

(7) The announcements, prepared and sent by electronic means, shall be published in Official Journal of the European Union no later than 5 days after their sending. Announcements, which are not transmitted by electronic means, shall be published not later than 12 days after their sending, and in the cases under art. 76, par. 3 and art. 86, par. 3 – not later than 5 days after their sending. In exclusive cases upon request of assignors under art. 7, item 5 or 6 the announcements, send via fax, shall be published in 5-days term.

(8) The announcements shall be sent for publishing in full in one official language of the European Union, chosen by the assignor, as this original version in the respective language is the only authentic text.

(9) The announcements and their contents may not be published in the Republic of Bulgaria before the date of the sending to the European commission.

(10) The announcements, published in the country, may not contain information, other than the one, which is contained in the announcements, sent to the European commission, however, they must include the date of the sending of the announcement to the commission.

(11) The assignors shall be obliged to present upon request proofs of the dates, on which the announcements are sent, and the confirmation of the date of their promulgation, provided by the European commission.

## Chapter four. GENERAL RULES FOR PARTICIPATION IN A PUBLIC PROCUREMENT PROCEDURE

### Section I.

#### Requirements to the Candidates and the Participants (Title amend. - SG 37/06, in force from 01.07.2006)

Art. 46. (suppl. – SG 37/06, in force from 01.07.2006) Participant in a public procurement procedure may be every candidate or participant who meets the requirements announced in advance.

Art. 47. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor shall remove from participation in a public procurement procedure a candidate or participant who:

1. has been convicted by an enacted sentence, unless rehabilitated, for:
  - a) a crime against the financial, tax or insurance system, including money laundering;
  - b) bribe under art. 301 – 307 of the Penal code;
  - c) participation in a criminal organisation under art. 321 – 321a from the Penal code;
  - d) a crime against the property under art. 194 – 217 from the Penal code;
  - e) offence against the economy under art. 219 – 252 from the Penal code;
2. has been declared bankrupt;
3. is in liquidation proceedings or in a similar procedure according to the national laws and by laws.

(2) The assignor may remove from participation in the public procurement procedure a candidate or a participant who:

1. is in initiated bankruptcy proceedings or has concluded out-of-court settlement with his/her creditors within the meaning of art. 740 of the Commercial law, in case the candidate or the participant is a foreign person - is in a similar procedure according to the national laws and by laws, including when his/her activity is under court injunction, or the candidate or participant has discontinued his/her activity;
2. is divested of the right to practice a definite profession or activity according to the legislation of the country, where the violence is committed;
3. has monetary liabilities to the state or to a municipality in the meaning of art. 162, par. 2 of the Tax-insurance Procedure Code established by an act of a competent body, unless deferring or postponement of the liability has been admitted, or monetary liabilities, related to the payment of instalments for the social insurance or of taxes according to the legal norms of

the state, where the candidate or the participant is established.

(3) In the announcement for public procurement the assignor shall specify the circumstances under par. 2, the presence of which leads to elimination of the candidate or the participant.

(4) The requirements of para 1 and 2, item 2 and 3, specified in the announcement, shall also regard the managers or the members of the management bodies of the candidates or the participants, and if members are legal persons – their representatives in the respective management body.

(5) May not participate in a procedure for assigning public procurement candidates or participants, whose member of a management or control body, as well as one, temporary executive of such position, is a related person within the meaning of § 1 of the Law for the civil servant with the assignor or with employees, holding managerial position at his/her organization.

(6) In the cases under art. 90. par. 1, item 12 and art. 103, par. 2, item 11 the requirements under par. 1, item 2 and 3 and par. 2, item 1 shall not apply.

(7) In case the candidate or the participant provides for the participation of subcontractors in the fulfilment of the procurement, the requirements under par. 1 and 5 and the ones, indicated in the announcement under par. 2 shall also be applied to the subcontractors.

(8) In filing the offer or application for participation the candidate or the participant shall certify by a declaration the absence of the circumstances under para 1 and 5 and the requirements, indicated in the announcement under par. 2.

(9) At signing the public procurement contract the participant chosen for a contractor shall be obliged to present documents by the respective competent bodies for certifying the absence of the circumstances under para 1 and 2.

Art. 48. (1) (amend. - SG 37/06, in force from 01.07.2006) A foreign natural or legal person, for whom in the state, where he/she is established, a circumstance under art. 47, par. 1 and 2 is present, may not participate in a procedure for assigning public procurement.

(2) (amend. - SG 37/06, in force from 01.07.2006) At signing the public procurement contract the participant, chosen for a contractor, shall be obliged to present documents for certifying the absence of the circumstances under art. 47, para 1 and the ones, indicated in the announcement under art. 47, par. 2, issued by a competent body, or an extract from a court register or an equivalent document by a judicial or administrative body in the country where he/she is established.

(3) (new - SG 37/06, in force from 01.07.2006) In case the documents under par. 2 are not being issued in the respective country or if they do not include all cases under art. 47, par. 1 and 2, the participant shall present an affidavit, if such is of legal importance according to the law of the country, where he/she is established.

(4) (new - SG 37/06, in force from 01.07.2006) If the affidavit is of no legal importance according to the respective national law, the participant shall present an official application, made before judicial or administrative body, notary or competent professional or commercial authority in the country where he/she is established.

Art. 49. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor may require from every candidate or participant to prove his/her registration in some of the professional or commercial registers in the country where he/she is established, or to present a declaration or a certificate for the presence of such registration by the competent authorities according to the national legislation.



(2) In the procedures for assigning public procurement for services, as far as the candidates or the participants must have a special permission or must be members of a definite organization in order to fulfil the respective service in their country, the assignor may require from them to prove the presence of such permission or membership.

Art. 50. (1) (suppl. – SG 37/06, in force from 01.07.2006) For proving the economic and financial status of the candidates or the participants, the assignor may require from them the presentation of one or several of the following documents:

1. certificates by banks or a copy of insurance for professional liability;
2. (amend. and suppl. - SG 37/06, in force from 01.07.2006) an annual financial report or some of its constituents when their publication is required by the legislation of the state in which the candidate or the participant has been established;
3. (suppl. – SG 37/06, in force from 01.07.2006) information for the total turnover and for the turnover of goods, services or construction, which are object of the procurement, for the last three years depending on the date, on which the candidate or the participant has been constituted or has started his/her activity.

(2) (suppl. – SG 37/06, in force from 01.07.2006) Where, for objective reasons, the candidate or the participant cannot produce the documents required by the assignor he may prove his economic and financial status by any other document accepted by the assignor as appropriate.

(3) (suppl. – SG 37/06, in force from 01.07.2006) The requirements for the economic and financial status of the candidates or the participants determined by the assignor shall be consistent with the value of the object of the public procurement.

Art. 51. (1) (prev. text of art. 51, suppl. – SG 37/06, in force from 01.07.2006) For proving the technical capacity and/or the qualification of the candidates or the participants the assignor may, depending on the nature, the quantity and the object of the procurement, require from them to produce one or several of the following documents:

1. (amend. - SG 37/06, in force from 01.07.2006) a list of the basic contracts for deliveries and services fulfilled during the last three years, including the values, the dates and the recipients, accompanied by references for good fulfilment;
2. (new - SG 37/06, in force from 01.07.2006) a list of the contracts for construction, fulfilled during the last 5 years, accompanied by references for good fulfilment for the most important construction sites; these references indicate the value, the date and the place of the construction, as well as whether it is performed professionally and in compliance with the normative requirements;
3. (prev. text of item 2, amend. - SG 37/06, in force from 01.07.2006) a description of the technical equipment for providing the quality and the equipment for testing and studying;
4. (prev. text of item 3 - SG 37/06, in force from 01.07.2006) a list of technical persons, including those in charge of the quality control;
5. (prev. text of item 4 - SG 37/06, in force from 01.07.2006) samples, description and/or photos of the goods to be supplied, whose authenticity must be proven if the assignor so requires;
6. (prev. text of item 5, amend. - SG 37/06, in force from 01.07.2006) certificates issued by accredited institutions or agencies for quality management, certifying the compliance of the goods with the respective specifications or standards;
7. (prev. text of item 6, amend. - SG 37/06, in force from 01.07.2006) documents certifying the degree of education and professional qualification of the candidate or the participant and/or of his managerial employees, or of the persons in charge of the fulfilment of

the service or construction, as well as the delivery, in case it includes services and/or the preparation and entering the site into exploitation;

8. (prev. text of item 7, amend. and suppl. - SG 37/06, in force from 01.07.2006) declaration for the average annual number of workers and employees and for the number of managerial employees of the candidate or the participant during the last three years;

9. (new - SG 37/06, in force from 01.07.2006) a declaration of the technical equipment, which the candidate or the participant possesses for fulfilment of public procurement for services or construction;

10. (prev. text of item 8, suppl. - SG 37/06, in force from 01.07.2006) data for own or hired technical persons to be used by the candidate or the participant for the construction;

11. (new - SG 37/06, in force from 01.07.2006) for the public procurement for construction - a description of the measures for protection of the environment, which the candidate or the participant shall apply in fulfilment of the procurement, if the assignor has provided such in the announcement.

(2) (new - SG 37/06, in force from 01.07.2006) In the procedures for assigning public procurement for deliveries, which require research of the terrain or installation work, provision of services and/or fulfilment of construction, the assignors can lay down requirements to the candidates or the participants with regards to their skills, efficiency and reliability to provide the service or to implement the mounting or the construction works.

Art. 51a. (new - SG 37/06, in force from 01.07.2006) Candidate or participant may use the resources of other natural or legal persons in fulfilment of the procurement, on the condition that he/she proves that he/she will have at his/her disposal these resources.

(2) The terms under par. 1 shall also apply when a candidate or a participant in the procedure is an association of natural and/or legal persons.

Art. 52. (suppl. – SG 37/06, in force from 01.07.2006) Where the object of a public procurement is complex or of special designation the assignor may inspect the technical capacity of the candidate or the participant and, where necessary, the equipment for testing and studying and the possibilities of providing the quality. The assignor may also require this from a competent body of the state where the candidate or the participant is established, if this body agrees to carry out inspection on behalf of the assignor.

Art. 53. (1) (suppl. – SG 37/06, in force from 01.07.2006) Where the assignor requires presentation of certificates issued by independent persons certifying the compliance of the candidate or the participant with standards of systems of quality management the assignor shall indicate the systems of quality management through the respective series of European standards.

(2) (new - SG 37/06, in force from 01.07.2006) In the cases under art. 51, par. 1, item 11 the assignor shall require the submission of certificates, prepared by independent persons, certifying the compliance of the candidate or the participant with certain standards for protection of the environment, and shall indicate the Eco-Management and Audit Scheme of the European Union (EMAS) or the standards for protection of the environment via the respective European or international standards.

(3) (prev. text of par. 2, suppl. – SG 37/06, in force from 01.07.2006) The independent persons under para 1 and 2 must be accredited according to the respective series of European standards by Executive Agency "Bulgarian Accreditation Service" or by a foreign accreditation body who is a full member of the European Cooperation for Accreditation.

(4) (prev. text of par. 3, amended. – SG 37/06, in force from 01.07.2006) The assignor shall accept equivalent certificates, issued by authorities, established in other Member States, as well as other proof of equivalent measures for ensuring the quality or for protection of the environment.

Art. 53a. (new - SG 37/06, in force from 01.07.2006) (1) Candidate or participant may present a certificate for registration in official list of approved economic entities of a Member state of the European Union.

(2) In the cases under par. 1 the assignor may not remove a candidate or a participant from procedure for assigning public procurement or to refuse to conclude a contract with him/her on the ground that he/she has not presented some of the documents under art. 48, par. 2, art. 50, par. 1 and 2, art. 51 and art. 53, par. 1, if the fact is proved by the presented certification.

## Section II. Offer

Art. 54. (amend. - SG 37/06, in force from 01.07.2006) (1) In working out the offer every participant shall comply exactly with the requirements announced by the assignor.

(2) Until the expiration of the term for filing the offers every participant in the procedure may amend, supplement or withdraw his offer.

Art. 55. (1) (amend. - SG 37/06, in force from 01.07.2006) Every participant in the public procurement procedure shall have the right to present only one offer.

(2) (amend. - SG 37/06, in force from 01.07.2006) When the criterion for assessment of the offers is the economically most favourable offer and the assignor has admitted presentation of options, the participant may propose several options in his/her offer.

(3) (new - SG 37/06, in force from 01.07.2006) Admitted for consideration shall be only the options, which meet the minimum requirements, set by the assignor.

(4) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) A person who has given consent and is in the offer as a subcontractor of another participant may not present an independent offer.

Art. 56. (1) Every offer shall contain:

1. (amend. - SG 37/06, in force from 01.07.2006) a document for registration of the participant, and where it is an individual – an identification document;

2. a document for guaranteeing participation;

3. proof of the economic and financial status under art. 50, indicated by the assignor in the announcement for public procurement;

4. proof of the technical capacity and/or qualification under art. 51 indicated by the assignor in the announcement for public procurement;

5. (suppl. – SG 37/06, in force from 01.07.2006) declaration for absence of the circumstances under art. 47, para 1, 2 and 5;

6. (revoked - SG 37/06, in force from 01.07.2006);

7. (amend. - SG 37/06, in force from 01.07.2006) the subcontractors who will participate in the fulfilment of the procurement, and the share of their participation, if the participant plans to use subcontractors;

8. term of fulfilment of the procurement;
9. offered price;
10. declaration stating that the offered price complies with the requirement for minimal labour price – in the cases where the public procurement is for construction;
11. other information indicated in the announcement or documentation for participation;
12. (amend. - SG 37/06, in force from 01.07.2006) list of the documents contained in the offer signed by the participant.
  - (2) (amend. - SG 37/06, in force from 01.07.2006) Where the participant plans a participation of subcontractors the documents under para 1, item 1, 3, 4, 5, 6 and 10 shall be presented for each of them.
  - (3) (amend. - SG 37/06, in force from 01.07.2006) Where a participant in the procedure is an association which is not a corporate body the documents under para 1, item 1, 3, 4, 5 and 10 shall be presented by each individual or corporate body included in the association.
  - (4) (amend. - SG 37/06, in force from 01.07.2006) Where the candidate in a procedure is a foreign individual or corporate body or their associations the offer shall be filed in Bulgarian language, the document under para 1, item 1 shall be presented in legalized translation and the documents under para 1, item 3, 4, 5, 6 and 10 which are drawn in foreign language shall also be presented in translation. If the participant is an association the documents shall be presented by each natural or legal person, included in the association.

Art. 57. (1) (amend. - SG 37/06, in force from 01.07.2006) The offer shall be filed in a sealed opaque envelope by the participant or by a representative authorised by him personally or by return mail. The participant shall indicate on the envelope an address for correspondence, telephone and, where possible, fax and e-mail, and where the offer regards individually detached positions – the positions it regards.

(2) The offered price shall be filed in an individual sealed opaque envelope with inscription "Offered price", placed in the envelope containing the offer.

(3) On accepting the offer the envelope shall be marked by the serial number, the date and the hour of receipt and the indicated data shall be entered in an incoming register for which a document shall be issued to the bearer.

(4) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The assignor shall not accept for participation in the procedure, and shall return immediately to the participants the offers filed after the expiration of the deadline for receiving or presented in unsealed or torn envelope. These circumstances shall be noted in the register under para 3.

(5) (new - SG 37/06, in force from 01.07.2006) The offer may also be presented by electronic means under the conditions and by the order of the Law for the electronic document and the electronic signature. In this case the participant shall be obliged to present to the assignor all contracts, which are not in electronic form, following the procedure of par. 1, prior to the expiration of the term for receiving the offers.

(6) (new - SG 37/06, in force from 01.07.2006) The terms and the procedure for receiving and preserving the offers, sent by electronic means, shall be settled by the regulation of implementation of the law.

Art. 58. (1) (amend. - SG 37/06, in force from 01.07.2006) The term of validity of the offers shall be the time during which the participants are bound with the terms of the offers they have filed.

(2) The assignor shall determine the term under para 1 in calendar days.

(3) (amend. - SG 37/06, in force from 01.07.2006) The assignor may require from the rated participants to extend the term of validity of their offers until the moment of conclusion of the public procurement contract.

Art. 58a. (new - SG 37/06, in force from 01.07.2006) (1) The preparation and implementation of the procedures shall be carried out by the assignor. The latter shall be responsible for the acceptance and the preservation of the applications for participation, the offers and the projects.

(2) The exchange of information may be implemented by post, via fax, by electronic means under the conditions and following the procedure of the Law for the electronic document and the electronic signature or by combination of these means by choice of the assignor. The chosen means of communication must be accessible to all.

(3) The exchange and the preservation of information in the course of conducting the procedure for assigning public procurement shall be carried out in a way, ensuring the integrity, the authenticity and the confidentiality of the applications for participation and the offers.

(4) All actions of the assignor towards the candidates or the participants shall be in writing.

(5) The decisions of the assignor, about which he/she shall be obliged to inform the candidates or the participants, shall be handed over personally against signature or shall be sent by registered letter with return of service, via fax or by electronic means under the conditions and following the procedure of the Law for the electronic document and the electronic signature.

(6) The assignor shall be obliged to preserve the overall documentation for the implementation of every procedure for assigning public procurement for at least 4 years after concluding the fulfilment of a contract.

### Section III. Guarantees

Art. 59. (1) (suppl. – SG 37/06, in force from 01.07.2006) The candidate or the participant shall file a guarantee for participation in the public procurement procedure, and the chosen contractor shall file a performance guarantee on signing the contract.

(2) The assignor shall set the terms and the size of the guarantee for participation in an absolute sum, but no more than 1 percent of the value of the procurement.

(3) The assignor shall set the terms and the size of the performance guarantee under the contract as a percentage of the value of the public procurement, but no more than 5 percent of the value of the procurement.

(4) The assignor shall also require other performance guarantees in the cases determined by a law.

(5) (revoked - SG 37/06, in force from 01.07.2006).

Art. 60. (1) The guarantees shall be presented in one of the following forms:

1. cash;
2. bank guarantee.

(2) (suppl. – SG 37/06, in force from 01.07.2006) The candidate, the participant or the chosen contractor himself shall choose the form of the participation, respectively

performance guarantee.

Art. 61. (1) (suppl. – SG 37/06, in force from 01.07.2006) The assignor shall have the right to retain the guarantee for participation when the candidate or the participant in a public procurement procedure:

1. (amend. - SG 37/06, in force from 01.07.2006) withdraws his/her application after the expiration of the term for receiving applications or withdraws his/her offer after the expiration of the term for receiving the offers;

2. (amend. - SG 37/06, in force from 01.07.2006) appeals the decision of the assignor, with which the results from the preliminary selection are announced – until the settlement of the dispute;

3. (amend. - SG 37/06, in force from 01.07.2006) has been chosen for contractor but he does not fulfil his obligations to conclude a public procurement contract.

(2) (suppl. – SG 37/06, in force from 01.07.2006) In the cases under para 1, item 1 and 3 where the candidate or the participant has presented a bank guarantee, the assignor shall have the right to start exercising the rights thereon.

Art. 62. (1) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall release the guarantees for participation:

1. of the excluded candidates within three working days from expiration of the term for appealing the decision of the assignor for preliminary selection;

2. of the excluded and the rated participants within three working days from expiration of the term for appealing the decision of the assignor for choosing a contractor.

(2) (revoked - SG 37/06, in force from 01.07.2006).

(3) (amend. - SG 37/06, in force from 01.07.2006) On termination of the public procurement procedure the guarantees of all candidates or participants shall be released within three working days after the expiration of the term for appealing the decision for termination.

(4) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall release the guarantees under para 1, without owing interest for the period during which the funds have legally be held by him.

Art. 63. The terms and the conditions of keeping or releasing the performance guarantee shall be settled by the public procurement contract.

## Chapter five. OPEN PROCEDURE

### Section I. Preparation of the Open Procedure

Art. 64. (1) (suppl. SG 31/05, in force from May 1, 2005, amend. - SG 37/06, in force from 01.07.2006) In holding an open procedure the assignor shall send the announcement for the public procurement simultaneously to the State Gazette for promulgation in its electronic site and to the Registry Agency in the Public Procurement Register not later than 52 days before the deadline for receiving of the offers.

(2) (amend. - SG 37/06, in force from 01.07.2006) The term under para 1 may be

reduced to 36 days where the advance announcement has been sent for promulgation from 52 days to 12 months before the date of sending the announcement under para 1 and contains the information, available by the date of its sending.

(3) (new - SG 37/06, in force from 01.07.2006) The term under para 1 and 2 may be reduced by 7 days, if the announcement has been sent by electronic means, and by 5 more days, if from the date of promulgation of the announcement in electronic form the assignor provides full access via electronic means to the documentation for participation in the procedure and in case an Internet address has been indicated in the announcement, where the documentation can be found.

(4) (new - SG 37/06, in force from 01.07.2006) In the cases under par. 1, 2 and 3 the term for receiving offers may not be shorter than 22 days.

Art. 65. (amend. - SG 37/06, in force from 01.07.2006) (1) In determining the term for receiving the offers the assignor shall take into account the complexity of the procurement and the time, necessary for working out the offers.

(2) The assignor shall be obliged to extend the term for receiving the offers by not more than 30 days, in case the term, fixed initially is inadequate for necessity of:

1. examination on the spot of additional documents to the documentation;
2. inspection of the place of performance.

(3) The assignor may extend term for receiving the offers by not more than 30 days, in case within the term, determined for receiving the offers, no offer has been filed.

(4) Every change of the term of receiving the offers must be promulgated and entered in the register. When the extended period is set in days, it shall start running from the date of promulgation in the electronic site of State Gazette.

Art. 66. (revoked - SG 37/06, in force from 01.07.2006)

Art. 67. (revoked - SG 37/06, in force from 01.07.2006)

## Section II.

### Considering, Assessment and Rating of the Offers

Art. 68. (1) (amend. - SG 37/06, in force from 01.07.2006) The commission appointed by the assignor for consideration, assessment and rating of the offers shall start its work upon receipt of the list of participants and the filed offers.

(2) (amend. - SG 37/06, in force from 01.07.2006) For change of the data and hour of opening the offers, the participants shall be notified in writing.

(3) The commission shall open the envelopes by the order of their filing and shall check up the correspondence of the offers with the list under art. 56, para 1, item 12.

(4) (new - SG 37/06, in force from 01.07.2006) Upon the opening of the offers at least three members of the commission shall sign the envelope with the proposed price, and when the criterion for the assessment is economically the most favourable offer, all appendices, which the commission will assess according to the criteria announced, shall also be signed.

(5) (prev. text of par. 4, amend. and suppl. - SG 37/06, in force from 01.07.2006) The participants in the procedure, or their authorised representatives, may attend the actions of the commission under para 3 and 4.

(6) (prev. text of par. 5 - SG 37/06, in force from 01.07.2006) The commission shall check up the compliance of the offers with the terms announced in advance by the assignor.

(7) (prev. text of par. 6, amend. and suppl. - SG 37/06, in force from 01.07.2006) The commission may, at any time, check up the data declared by the participants, require elucidations on the certificates and the documents, presented as per art. 50 – 53, as well as require a written presentation of additional evidence of the circumstances, indicated in the offer, within a set term.

(par. 7, revoked - SG 37/06, in force from 01.07.2006).

Art. 69. (1) (amend. - SG 37/06, in force from 01.07.2006) The commission shall propose for removal from the procedure a participant:

1. (suppl. – SG 37/06, in force from 01.07.2006) who has not presented some of the necessary documents under art. 56;

2. (amend. - SG 37/06, in force from 01.07.2006) for whom present are circumstances under art. 47, para 1 and 5 and the ones, indicated in the announcement under art. 47, para 2;

3. (amend. and suppl. - SG 37/06, in force from 01.07.2006) who has filed an offer which does not meet the terms of the assignor announced in advance;

4. (suppl. – SG 37/06, in force from 01.07.2006) who has filed an offer which does not meet the requirements of art. 57, para 2.

(2) (amend. - SG 37/06, in force from 01.07.2006) The commission may not propose for removal from the procedure a participant, in case in the Member state, where he/she is established, he/she is entitled to provide the respective service, regardless of his/her status or the legal-organizational form.

(3) (amend. and suppl. - SG 37/06, in force from 01.07.2006) The participants shall be obliged, in the process of holding the procedure, to inform the assignor for all occurring changes in circumstances under art. 47, par. 1 and 5 and the ones, indicated in the announcement under art. 47, par. 2, within 7 days from their occurrence.

Art. 70. (1) (amend. - SG 37/06, in force from 01.07.2006) If some of the participants offers a price lower by more than 30 percent of the average price of the other offers for the concrete public procurement the commission shall require from him a detailed written substantiation of the offered price. The commission shall set a reasonable term for producing the substantiation, which may not be shorter than three working days after the receipt of the request for that.

(2) (amend. - SG 37/06, in force from 01.07.2006) The commission may accept the written substantiation under para 1 and not remove the offer when objective circumstances are pointed out related to:

1. an original solution of fulfilment of the public procurement;

2. the offered technical resolution;

3. (amend. - SG 37/06, in force from 01.07.2006) the presence of exceptionally favourable conditions for the participant;

4. frugal fulfilment of the public procurement;

5. (new - SG 37/06, in force from 01.07.2006) providing government support.

(3) (amend. - SG 37/06, in force from 01.07.2006) Where the participant does not present the written substantiation in time or the commission deems that the pointed circumstances are not objective, the commission shall propose the participant for removal from the procedure.

(4) (new - SG 37/06, in force from 01.07.2006) If the commission establishes that the offer of a participant is with unusually low price because of government support provided, the



legal ground of which is not possible to be proved within the fixed term, it may propose the offer to be rejected and the participant - removed.

Art. 71. (1) The commission shall consider the admitted offers and shall assess them in compliance with the terms announced in advance.

(2) (amend. - SG 37/06, in force from 01.07.2006) Where the assignor has admitted presenting options in the offer, the commission may not reject an option only on the grounds that the choice of this option would lead to a conclusion of a contract for services instead of a contract for delivery and vice versa.

(3) (amend. - SG 37/06, in force from 01.07.2006) The commission shall rate the participants by the degree of compliance of the offers with the terms announced by the assignor in advance.

Art. 72. (1) The commission shall draw up written records for the consideration, assessment and rating of the offers, containing:

1. members of the commission and a list of the consultants;
2. (amend. - SG 37/06, in force from 01.07.2006) a list of the participants and of the offers, proposed for removal from the procedure and the motives for their removal;
3. statements by the consultants;
4. (amend. - SG 37/06, in force from 01.07.2006) the results from the consideration and the assessment of the admitted offers, including a brief description of the offers of the participants and the assessment by each index where the criterion of assessment is economically the most favourable offer;
5. (amend. - SG 37/06, in force from 01.07.2006) the rating of the participants whose offers have been admitted to consideration and assessment;
6. date of drawing the written records.

(2) The written records of the commission shall be signed by all members and shall be submitted to the assignor along with the whole documentation.

(3) The commission shall conclude its work by submitting the written records to the assignor.

### Section III. Choosing Contractor of the Public Procurement

Art. 73. (1) (amend. - SG 37/06, in force from 01.07.2006) Within 5 working days after the conclusion of the work of the commission, the assignor shall issue a motivated decision, announcing the rating of the participants and the participant, chosen for a contractor.

(2) (amend. - SG 37/06, in force from 01.07.2006) Pointed in the decision under para 1 shall be the participants and offers removed from participation in the procedure and the motives for their removal.

(3) (amend. and suppl. - SG 37/06, in force from 01.07.2006 and from 01.01.2007 regarding second sentence) The assignor shall send the decision under para 1 to the participants within three days from its issuance. The assignor shall notify the European commission in the cases under art. 70, par. 4.

(4) (amend. - SG 37/06, in force from 01.07.2006) Upon a written request by a participant the assignor shall be obliged, within three days from the receipt, to provide for him/her access to the written records. The assignor may refuse access to information contained

in the written records when its submission contradicts a normative act or prevents, restricts or violates the competition.

(5) (new - SG 37/06, in force from 01.07.2006) Upon a written request by a participant the assignor shall be obliged to provide a copy of the written records under the conditions of par. 4 within three days from receiving the request.

Art. 74. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor shall conclude a public procurement contract with the participant, rated first by the commission and chosen for contractor.

(2) On refusal by the participant, chosen for a contractor, to conclude a contract the assignor may bring to a close the procedure and choose for contractor the second rated participant and conclude a contract with him/her.

## Chapter six. LIMITED PROCEDURE

Art. 75. (1) (prev. text of art. 75, amend. - SG 37/06, in force from 01.07.2006) In the announcement for public procurement assigned by way of a limited procedure, the assignor may limit the number of candidates he/she intends to invite to present offers, provided that this number may not be less than 5. The assignor may also point out the maximum number of candidates. The number of the invited candidates must be sufficient in order to guarantee free and loyal competition.

(2) (new - SG 37/06, in force from 01.07.2006) The assignor shall point out in the announcement for public procurement objective and non-discriminatory criteria or rules, which shall be applied in the selection of the candidates under par. 1.

Art. 76. (1) (suppl. SG 31/05, in force from May 1, 2005) The assignor shall send the announcement for public procurement simultaneously to the State Gazette for promulgation in its electronic site and to the Registry Agency in the Public Procurement Register at least 37 days before the deadline for receiving the applications for participation in the preliminary selection of candidates.

(2) (new - SG 37/06, in force from 01.07.2006) The term under par. 1 may be reduced by 7 days, if the announcement is sent by electronic means also.

(3) (prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) Upon occurrence of circumstances of exceptional urgency, as a result of which it is impossible to meet the deadline under para 1, the assignors under art. 7, items 1 - 4 may determine a term for receiving the applications for participation in the preliminary selection, not shorter than 15 days from the date of sending the announcement – or not shorter than 10 days, if the announcement is also sent by electronic means.

(4) (prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) In the cases of para 3 the assignor shall be obliged to indicate in the announcement for public procurement the concrete circumstances of exceptional urgency.

(4) (revoked - SG 37/06, in force from 01.07.2006).

Art. 77. (1) The assignor shall carry out a preliminary selection for the purpose of determining the candidates having the necessary financial and technical resources to fulfil the public procurement.

(2) Every candidate may file an application for participation in the preliminary selection.

(3) The application for participation in the preliminary selection shall contain:

1. a document for registration of the candidate if he is a corporate body, or an identification document if he is an individual;

2. (suppl. – SG 37/06, in force from 01.07.2006) a declaration for absence of the circumstances under art. 47, para 1, 2 and 5;

3. (revoked - SG 37/06, in force from 01.07.2006);

4. proof of the economic and financial status under art. 50, indicated by the assignor in the announcement for public procurement;

5. proof of the technical capacity and/or qualification under art. 51 indicated by the assignor in the announcement for public procurement;

6. the subcontractors who will participate in fulfilment of the procurement and the share of their participation when participation by subcontractors is planned;

7. document for guarantee for participation.

(4) (amend. - SG 37/06, in force from 01.07.2006) Where the candidate plans a participation of subcontractors the documents under para 3, item 1, 2, 4 and 5 shall be produced for each of them.

(5) (amend. - SG 37/06, in force from 01.07.2006) When a candidate in the procedure is an association which is not a corporate body the documents under para 3, item 1, 2, 4, 5 and 6 shall be filed by every individual or corporate body included in the association.

(6) (new - SG 37/06, in force from 01.07.2006) At determining the term for receiving the applications for participation the assignor must take into consideration the complexity of the procurement and the time, necessary for preparation of the applications.

(7) (new - SG 37/06, in force from 01.07.2006) The assignor may prolong the term for receiving the applications for participation by up to 30 days, in case within the fixed term there are no applications received.

Art. 78. (1) (amend. - SG 37/06, in force from 01.07.2006) The application shall be produced by the order of art. 57, para 1, 3, 4 and 5, by fax or announce on the phone.

(2) (new - SG 37/06, in force from 01.07.2006) When the application for participation is announced on the phone, the candidate must confirm it in writing before the expiry of term for receiving applications.

(3) (new - SG 37/06, in force from 01.07.2006) When the application for participation is sent via fax, the assignor may oblige the candidate to confirm it by a letter, sent with return of service or by electronic means. This requirement, as well as the term for receiving the written confirmation, must be pointed out in the announcement for public procurement.

(4) (new - SG 37/06, in force from 01.07.2006) The conditions and the procedure for receiving and preserving the applications, sent by electronic means or via fax, shall be settled by the regulation for implementation of the law.

(5) (prev. text of par. 2 - SG 37/06, in force from 01.07.2006) During the preliminary selection the assignor shall not have the right to require, and the candidate shall not have the right to present an offer.

Art. 79. (1) (amend. - SG 37/06, in force from 01.07.2006) For conducting the procedure the assignor shall appoint a commission by the order of art. 34 - 36.

(2) (suppl. – SG 37/06, in force from 01.07.2006) The commission shall consider the filed applications and shall make a selection of the candidates on the grounds of the documents, presented according to the announcement, certifying their economic and financial

status, their technical capacity and/or qualification for fulfilment of the public procurement. The candidates or their authorized representatives may be present at opening of the applications.

(3) (new - SG 37/06, in force from 01.07.2006) In case the assignor has not included in the announcement a restriction of the number of candidates, who shall be invited to submit offers, he/she shall be obliged to invite all candidates, who meet the criteria for selection and the minimum requirements of technical resources.

(4) (new - SG 37/06, in force from 01.07.2006) In case the assignor has included in the announcement a restriction of the number of candidates, who shall be invited to submit offers, he/she shall be obliged to invite a number of candidates, at least equal to the minimum, determined in advance.

(5) (amend. - SG 37/06, in force from 01.07.2006) When in the cases under art. 4 the number of the candidates, who meet the requirements, indicated in the announcement for a limited procedure, exceeds the announced maximum number of persons, who shall be invited to present offers, the commission shall implement a selection on the basis of the objective and non-discriminatory criteria, pointed out in the announcement.

(6) (new - SG 37/06, in force from 01.07.2006) In case the number of the candidates, meeting the criteria for selection and the minimum requirements of technical resources, is below the minimum, indicated in the announcement, the assignor may continue the procedure by inviting all candidates, who meet the criteria for selection and possess the required technical resources. In this case the assignor may not invite to present offers other persons, who have not declared participation, or candidates, who do not possess the required technical resources.

(7) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) The commission shall work out written records for the results from the selection under para 2 which shall contain:

1. members of the commission and a list of the consultants;
2. list of the candidates not meeting the requirements announced by the assignor, as well as the motives thereof;
3. list of the candidates meeting the requirements under para 2 and who will be invited to present offers, and when their number exceeds the number of candidates to be invited to present offers – the chosen candidates on the grounds of the objective and non-discriminatory criteria, indicated in the announcement;
4. date of issuance of the written records.

(4) Within 7 days from the date of the written records the assignor shall announce by a decision the candidates proposed by the commission to be invited to present offers. The decision shall also include the candidates who do not meet the requirements announced by the assignor and the reasons for that.

(8) (prev. text of par. 4, amend. - SG 37/06, in force from 01.07.2006) Within 5 working days from the date of the written records the assignor shall announce by a decision the candidates proposed by the commission to be invited to present offers. The decision shall also include the candidates who do not meet the requirements announced by the assignor and the motives thereof.

(9) (prev. text of par. 6, amend. - SG 37/06, in force from 01.07.2006) Within three days from taking the decision under par. 8 the assignor shall send it to the Agency and to the candidates, who have not been admitted, and to all chosen candidates he/she shall send simultaneously a written invitation for presenting offers.

Art. 80. (amend. - SG 37/06, in force from 01.07.2006) The invitation for presenting

offers for participation in the limited procedure shall contain:

1. term and place of filing the offers;
2. (amend. - SG 37/06, in force from 01.07.2006) number and date of promulgation of the announcement for public procurement;
3. (new - SG 37/06, in force from 01.07.2006) a copy of the specifications and all additional documents, if they are not included in the documentation for participation, or electronic address for access to the specifications and additional documents, in case they are provided by electronic means;
4. (new - SG 37/06, in force from 01.07.2006) the indices, their relative weight and the methodology for determining the complex assessment of the offer, arranged in descending order, in case they are not pointed out in the announcement for public procurement.

Art. 81. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor shall set, in the invitation under art. 80, a term for receiving of the offers which may not be shorter than 40 days from the date of the sending.

(2) The term under para 1 may be reduced up to 22 days when the advance announcement has been sent for publication from 52 days to 12 months prior to the date of sending the announcement under art. 76, para 1 and shall contain the information, available by the date of its sending.

(3) The term under par. 1 may be reduced by 5 days, if from the date of promulgation of the announcement the assignor provides full access to the documentation for participation in the procedure by electronic means, provided that he/she shall point out an Internet address, where it could be found.

(4) In the cases under art. 76, para 3 the assignor may set a term for receiving the offers not shorter than 10 days from the date of sending the invitation under art. 80.

(5) In the cases under art. 76, para 3 up to 7 days before the expiration of the term for receiving the offers, every candidate may request in writing from the assignor elucidation on the documentation for participation. The assignor shall be obliged to answer within three days from receiving the request and to notify the other candidates by the order of art. 29, para 2.

(6) When fixing the term for receiving the offers the assignor must take into account the complexity of the procurement and the time, necessary for preparation of the offers.

(7) The assignor shall be obliged to prolong the term for receiving the offers by not more than 30 days upon necessity of:

1. considering on the spot additional documents;
2. visiting the place of fulfilment.

Art. 82. (1) Every offer must meet the requirements of art. 56.

(2) (amend. - SG 37/06, in force from 01.07.2006) The participant may not produce repeatedly the documents he has produced by the application for participation in the preliminary selection.

Art. 83. (amend. - SG 37/06, in force from 01.07.2006) (1) The consideration, assessment and rating of the offers shall be carried out by the order of art. 68 - 72.

(2) The determining of a contractor of the public procurement and the conclusion of the contract shall be carried out by order of art. 73 and 74.

## Chapter six.

## "A" COMPETITIVE DIALOGUE (NEW - SG 37/06, IN FORCE FROM 01.07.2006)

Art. 83a. (new - SG 37/06, in force from 01.07.2006) (1) The assignor may assign public procurement by way of competitive dialogue, in case the procurement is extremely complex, due to which its assignment by way of open or limited procedure is impossible.

(2) The public procurement is extremely complex, in case the assignor can not determine for objective reasons:

1. the technical specifications under art. 30, and/or
2. the financial or the legal framework of the procurement.

(3) In the decision for assigning public procurement by way of competitive dialogue the assignor shall give reasons for the choice of this procedure and shall approve the announcement and a descriptive document.

(4) The assignor shall define his/her necessities and the requirements in the announcement for public procurement and/or in the descriptive document, which substitutes the technical specifications.

(5) Upon assignment of public procurement by way of competitive dialogue the assignor shall assess the offers only according the criterion economically the most favourable offer.

Art. 83b. (new - SG 37/06, in force from 01.07.2006) (1) The assignor shall send the announcement for public procurement to State Gazette for promulgation in its electronic site and simultaneously to the agency for entry into the Public Procurement Register at least 37 days prior to the deadline for receiving the applications for participation in the competitive dialogue.

(2) The deadline under par. 1 may be reduced by 7 days, if the announcement has been sent also by electronic means.

(3) When fixing the term for receiving the applications for participation the assignor must take into account the complexity of the procurement and the time, necessary for preparation of the applications.

Art. 83c. (new - SG 37/06, in force from 01.07.2006) (1) The assignor may point out in the announcement the minimum and maximum number of candidates, who he/she intends to invite to take part in a competitive dialogue, provided that the minimum number may not be less than three. The number of the invited candidates has to be sufficient in order free and loyal competition to be guaranteed.

(2) The assignor may consider the competitive dialogue to be implemented at consecutive stages in order to reduce the number of the proposals which are to be discussed during the dialogue, by applying the criteria, indicated in the announcement or in the descriptive document.

Art. 83d. (new - SG 37/06, in force from 01.07.2006) (1) The preliminary selection of the candidates, who have submitted an application, shall be implemented by the order of art. 79, par. 1 – 6.

(2) The commission shall compile a written report for the results of the selection, which shall contain:

1. board of the commission and a list of the consultants;

2. a list of the candidates, who do not meet the requirements, announced by the assignor, as well as the motives thereof;

3. a list of the candidates, who do meet the requirements and will be invited to take part in a dialogue;

4. date of compiling the written report.

(3) Within 5 working days from the date of the written reports the assignor shall announce by a decision the candidates, proposed by the commission, who shall be invited to participate in a dialogue. In the decision shall also be included the candidates, who do not meet the requirements, announced by the assignor, as well as the motives thereof

(4) Within three days from conclusion of the preliminary selection the assignor shall send invitations in writing simultaneously to the chosen candidates for participation in a dialogue, and to the agency and to the candidates, who are not admitted – the decision under par. 3.

Art. 83e. (new - SG 37/06, in force from 01.07.2006) The invitation for participation shall contain at least:

1. number and date of promulgation of the announcement for public procurement;

2. a copy of the descriptive document and all additional documents or an electronic address for access to them, if they are provided by electronic means.

3. date and place of conducting the dialogue;

4. the indices, their relative weight and the methodology for determining the complex assessment of the offer, arranged in descending order, in case they are not pointed out in the announcement for public procurement or in the descriptive document;

Art. 83f. (new - SG 37/06, in force from 01.07.2006) (1) The commission, which has implemented the preliminary selection, shall conduct a dialogue with each of the approved candidates with the purpose of determining the parameters of the procurement, which meet to a greater extent the demands of the assignor.

(2) During the dialogue all basic characteristics of the procurement may be discussed.

(3) To all candidates, participating in the dialogue, equality shall be guaranteed, by providing them with the same information.

(4) The commission shall not be entitled to provide the offers or other confidential information, obtained from a candidate, participating in the dialogue, to the other candidates, without his/her permission.

(5) The offers made and the agreements reached with each candidate shall be depicted in an individual written report, which shall be signed by the members of the commission and by the candidate.

(6) After concluding the dialogue with all candidates, the commission shall compile a written report to the assignor, in which shall be proposed the candidates, which will be invited to present offers.

Art. 83g. (new - SG 37/06, in force from 01.07.2006) (1) Within 5 working days from presenting the written report of the commission the assignor shall announce by a decision that the dialogue is concluded and shall determine the candidates, who shall be invited to present offers.

(2) In three days term from the decision under par. 1 the assignor shall send it simultaneously to the agency and to all candidates, who have participated in the dialogue, and to the determined candidates he/she shall also send a written invitation for presenting offers.

(3) In the invitation under par. 2 the assignor shall point out deadline for receiving the offers and the address, where they must be sent.

(4) The offer must meet the requirements of the assignor and contain all proposals for fulfilment of the offer, made in the course of the dialogue.

(5) Upon request by the commission the offers can be amended, supplemented and clarified. These amendments, supplements and clarifications may not amend the basic characteristics of the offer or of the invitation for presenting an offer, if this would lead to restriction of the competition or to discrimination of the candidates.

(6) The commission shall assess the received offers according to the indices, defined in the announcement or in the descriptive document, and shall choose economically the most favourable offer.

(7) The commission may require from the participant, who has presented the most favourable offer economically, to clarify some of the characteristics of the offer or to confirm his/her obligations concerning it, on the condition that this will not lead to amendment in the basic characteristics of the offer or of the invitation for presenting an offer, as well as to restriction of the competition or to discrimination of the candidates.

Art. 83h. (new - SG 37/06, in force from 01.07.2006) The assignor shall determine the contractor of the public procurement and shall conclude a contract with him/her by the order of art. 73 and 74.

## Chapter seven. PROCEDURES OF NEGOTIATION

### Section I. Procedure of Negotiation with Announcement

Art. 84. The assignors may assign public procurement by way of procedure of negotiation with announcement only where:

1. (amend. and suppl. - SG 37/06, in force from 01.07.2006) the open or limited procedure or the competitive dialogue have been terminated according to art. 39, para 1, item 2 and the initially announced terms have not been substantially changed;

2. (suppl. – SG 37/06, in force from 01.07.2006) as an exception the nature of the service, delivery or of the construction, or the risks related to them, do not allow pre-determining of the value;

3. the nature of the service does not allow sufficiently exact determining of the technical specifications in order to assign the procurement by the order of the open or limited procedure;

4. the procurement regards services under art. 5, para 1, item 2;

5. carried out in the sphere of construction is research, experimental or development non-profit activity or does not aim at reimbursement of the expenses thereof.

Art. 85. In the decision under art. 25, para 1 the assignor shall be obliged to motivate the choice of the procedure of negotiation with announcement.

Art. 86. (1) (suppl. SG 31/05, in force from May 1, 2005) The announcement for



public procurement shall be sent simultaneously to the State Gazette for promulgation in its electronic site and to the Registry Agency in the Public Procurement Register not later than 37 days before the deadline for receiving the applications for participation in the procedure.

(2) (new - SG 37/06, in force from 01.07.2006) The term under par. 1 may be reduced by 7 days, if the announcement has also been sent by electronic means.

(3) (prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) Upon occurrence of circumstances of exceptional urgency, as a result of which the compliance with the term under para 1 is impossible, the assignors under art. 7, items 1 - 4 may set a term for receiving applications for participation in the procedure of negotiation not shorter than 15 days from the date of sending the announcement or not shorter than 10 days, in case the announcement has been sent by electronic means.

(4) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) In the cases of para 2 the assignor shall be obliged to indicate in the announcement for public procurement the concrete circumstances of exceptional urgency.

(5) (new - SG 37/06, in force from 01.07.2006) In the announcement for public procurement the assignor may restrict the number of the candidates, who he/she intends to invite to take part in the negotiations, provided that this number may not be less than three. The assignor may also point out the maximum number of candidates. The number of the candidates must be sufficient in order to guarantee free and loyal competition.

(6) (new - SG 37/06, in force from 01.07.2006) The assignor shall point out in the announcement for public procurement objective and non-discriminatory criteria or rules, which shall be applied in the selection of the candidates under par. 5.

(7) (new - SG 37/06, in force from 01.07.2006) In the announcement for public procurement the assignor may provide the negotiations to be held at several consecutive stages, provided that at each following stage the number of the offers considered shall be reduced with the purpose of achieving possibly the most complete correspondence of the offers with the announced requirements.

(8) (new - SG 37/06, in force from 01.07.2006) At determining the term for receiving the applications for participation, the assignor must take into account the complexity of the procurement and the time, necessary for the preparation of the applications.

(9) (new - SG 37/06, in force from 01.07.2006) The assignor may prolong the term for receiving the applications for participation by not more than 30 days, in case within the fixed term no applications have been submitted.

Art. 87. (1) The application for participation in a procedure of negotiation with announcement has to meet the requirements of art. 77, para 3 – 5.

(2) The application shall be presented by the order of art. 57, para 1, 3, 4 and 5 by fax or it shall be announced by phone.

(3) (new - SG 37/06, in force from 01.07.2006) Where the application for participation is announced by phone, the candidate shall confirm it in writing before the expiry of the term for receiving applications.

(4) (new - SG 37/06, in force from 01.07.2006) Where the application for participation is sent via fax, the assignor may oblige the candidate to confirm it by a letter, sent with return of service or by electronic means. This requirement, as well as the term for receiving the written confirmation, have to be indicated in the announcement for public procurement.

Art. 88. (1) (amend. - SG 37/06, in force from 01.07.2006) For holding the procedure the assignor shall appoint a commission by the order of art. 34 - 36.

(2) (suppl. – SG 37/06, in force from 01.07.2006) The commission shall consider the received applications and shall carry out a selection of the candidates on the grounds of the filed according to the announcement documents for their economic and financial status, technical capacity and/or qualification for fulfilment of the public procurement. The candidates or their authorized representatives may be present during opening of the applications.

(3) (new - SG 37/06, in force from 01.07.2006) In case the assignor has not included in the announcement a restriction of the number of the candidates, who shall be invited to take part in the negotiation, he/she shall be obliged to invite all candidates, who meet the criteria for selection and the minimal requirements for technical capacity.

(4) (new - SG 37/06, in force from 01.07.2006) In case the assignor has included in the announcement a restriction of the number of the candidates, who shall be invited to take part in the negotiation, he/she shall be obliged to invite a number of candidates, at least equal to the minimum, fixed in advance.

(5) (amend. - SG 37/06, in force from 01.07.2006) Where, in the cases, pursuant to para 4, the number of candidates, who meet the criteria, indicated in the announcement for a procedure of negotiation with announcement, exceeds the announced maximum number of persons, who shall be invited to take part in the negotiation, the commission shall implement a selection on the basis of the objective and non-discriminatory criteria, provided in the announcement.

(6) (new - SG 37/06, in force from 01.07.2006) In case the number of the candidates, meeting the selection criteria and the minimum requirements for technical resources, is below the minimum indicated in the announcement, the assignor may continue the procedure, by inviting all candidates, who meet the selection criteria and possess the necessary technical resources. In this case the assignor may not invite for participation in the negotiations other persons, who have not announced participation, or candidates, who do not possess the necessary technical resources.

(7) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) The commission shall draw up a written record for the results from the selection under para 2, containing:

1. the members of the commission and a list of the consultants;
2. a list of the candidates who do not meet the requirements announced by the assignor, as well as the motives for that;
3. a list of the candidates, who meet the requirements of para 2 and who will be invited to take part in the negotiations, and where the number of the candidates is bigger than three – the chosen candidates on the grounds of the objective and non-discriminatory criteria, indicated in the announcement;
4. the date of drawing up the written record.

(8) (prev. text of par. 4, amend. - SG 37/06, in force from 01.07.2006) Within 5 working days from the date of the written record under para 7 the assignor shall announce by a decision the candidates proposed by the commission who will be invited for participation in the negotiating. The decision shall also include the candidates who do not meet the requirements announced by the assignor and the motives for that.

(9) (prev. text of par. 6, amend. - SG 37/06, in force from 01.07.2006) Within three days term from taking the decision under par. 8 the assignor shall send to the Agency and to the candidates, who have not been rated, and to all candidates under par. 7, item 3 he/she shall send simultaneously written invitations for participation in the negotiations.

Art. 89. (1) The invitation for participation in the negotiating shall contain:

1. date and place of holding the negotiating;
2. requirement for extra evidence for the declared circumstances, where necessary;
3. requirement for presentation of initial offer;
4. the date of promulgation of the announcement under art. 86.

(2) The commission shall hold the negotiating with the invited candidates for determining the clauses of the contract according to the announced requirements.

(3) The proposals made and the achieved agreements with each candidate shall be indicated in individual written records to be signed by the members of the commission and by the candidate.

(4) After holding the negotiations with all invited candidates the commission shall work out a report to the assignor proposing the rating of the candidates.

(5) The assignor shall chose for contractor of the public procurement the candidate rated first by the commission by the order of Chapter Five, Section III.

## Section II. Procedure of Negotiation without Announcement

Art. 90. (1) The assignors may assign public procurement through a procedure of negotiation without announcement only where:

1. (amend. - SG 37/06, in force from 01.07.2006) the open or the limited procedure is terminated as per art. 39, par. 1, item 1 and the initially announced conditions are not amended essentially;

2. (amend. - SG 37/06, in force from 01.07.2006) in the cases under art. 39, par. 1, item 3, they invite for participation in the procedure only the candidates who have presented offers and meet the requirements, indicated in the announcement for the open or limited procedure or the competitive dialogue;

3. the assigning the public procurement to another person would lead to violation of copyright or other rights of intellectual property, or of exclusive rights acquired by virtue of a law or administrative act;

4. due to insurmountable force the terms of holding an open or limited procedure or a procedure of negotiation with announcement cannot be met;

5. the goods subject to delivery are produced for the purpose of research, experimenting, scientific or development activity and are of limited quantity which does not allow the formation of a market price or reimbursement of the expenses thereof;

6. extra deliveries by the same supplier are necessary for partial replacement or for increase of the deliveries should the replacement of the supplier compel the assignor to acquire goods of different technical characteristics which will lead to incompatibility or to technical difficulties in the operation and maintenance;

7. the service is assigned upon holding a project competition, sending invitations for participation in the negotiating to all rated participants in compliance with the terms of the competition;

8. due to unforeseen circumstances it is necessary to assign an extra service or construction to the same contractor under the following terms:

a) the extra service or construction may not, technically or economically, be separated from the object of the main contract without considerable difficulties for the assignor or, although they may be separated, they are essentially necessary for the fulfilment of the procurement;

b) the total value of the extra service or construction is not more than 50 percent of

the value of the basic procurement;

9. necessary is the repetition of a service or construction by the same contractor not later than three years from the assigning of the first procurement in the presence of the following terms:

a) the first procurement has been assigned by way of open or limited procedure and the announcement for it indicates a possibility of such assigning;

b) the total value of this procurement is included in determining the value of the first procurement;

c) the new procurement corresponds to the basic project, in fulfilment of which the first procurement has been assigned;

10. (revoked - SG 37/06, in force from 01.07.2006);

11. object of the procurement is the delivery of goods determined in a list proposed by the State Commission for the commodity exchanges and marketplaces and approved by the Council of Ministers with the regulations for implementation of the law.

12. (new - SG 37/06, in force from 01.07.2006) for a short period of time arise favourable conditions for delivery of goods at prices, lower than the market ones, achieved at an auction for sale of the property of trade companies, announced in liquidation or bankruptcy proceedings.

(2) (amend. - SG 37/06, in force from 01.07.2006) In the cases of para 1, items 6 and 9 the contract for additional procurement, may not be longer than three years.

Art. 91. (1) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall motivate in the decision for assigning public procurement through a procedure of negotiation without announcement the choice of this procedure and shall approve the invitation for participation.

(2) (amend. - SG 37/06, in force from 01.07.2006) In the invitation for participation in a procedure of negotiation without announcement the assignor shall determine the object of the procurement, as well as requirements for its fulfilment. In the invitation may also be included requirements for the economic and financial status under art. 50 and for the technical capacity and/or qualification of the candidate under art. 51.

Art. 92. (amend. - SG 37/06, in force from 01.07.2006) The invitation for participation in a procedure of negotiation without announcement shall be sent to the selected persons and to the Agency with exception of the cases under art. 90, par. 1, item 11 and 12.

Art. 93. (1) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall appoint a commission by the order of art. 34 – 36 for holding the procedure.

(2) (revoked - SG 37/06, in force from 01.07.2006).

(3) (amend. - SG 37/06, in force from 01.07.2006) The commission shall hold the negotiations with the candidates for determining the terms of the contract according to the requirements of the assignor indicated in the invitation for the participation.

(4) (amend. and suppl. - SG 37/06, in force from 01.07.2006) In case the assignor has invited more than one candidate, the proposals made and the reached agreements with each of them shall be indicated in individual written records to be signed by the members of the commission and by the candidate.

(5) (amend. - SG 37/06, in force from 01.07.2006) After holding the negotiations the commission shall work out a report to the assignor proposing the rating of the participants.

(6) (amend. - SG 37/06, in force from 01.07.2006) The assignor shall choose for

contractor of the public procurement the participant rated first by the commission by the order of art. 73 and 74.

(7) (amend. - SG 37/06, in force from 01.07.2006) In the cases under art. 90, par. 1, item 11 the provisions of para 1 – 6 shall not apply and the contract shall be concluded by the order of the Law for the commodity exchanges and marketplaces.

(8) (new - SG 37/06, in force from 01.07.2006) ) In the cases under art. 90, par. 1, item 12 the provisions of para 1 – 6 shall not apply and the contract shall be concluded by the order of the Commercial law.

## Chapter seven.

### "A" FRAME AGREEMENT (NEW - SG 37/06, IN FORCE FROM 01.07.2006)

Art. 93a (New – SG 37/06, in force from 01.07.2006) (1) Frame agreement is the agreement, concluded between one or more assignors and one or more potential contractors of public procurement, whose purpose shall be to determine in advance the terms of the contracts, which the parties intend to conclude for certain period of time, not longer than 4 years, including with regard to the prices, and if possible – the amounts provided. As an exception the term of the frame agreement may be longer than 4 years, provided that the assignor shall point out the motives for that in the announcement.

(2) When the assignor concludes frame agreement with several persons, they may not be less than threesome, on the condition that there is sufficient number of potential contractors, who meet the preliminary announced conditions of the assignor

(3) The assignors may conclude frame agreement for assignment of public procurement on the basis of each conducted procedure, excluding the procedure of negotiation without announcement. At concluding a frame agreement, the criteria under art. 37 shall be applied.

(4) In the cases of concluding a contract on the basis of frame agreement, the parties shall not be entitled to change essentially the conditions, specified by the frame agreement.

(5) The frame agreement may not be concluded or applied, if it prevents, restricts or violates the competition.

Art. 93b. (New – SG 37/06, in force from 01.07.2006) When all conditions have been determined in the frame agreement, the assignor shall conclude a public procurement contract, and shall apply these conditions.

Art. 93c. (New – SG 37/06, in force from 01.07.2006) (1) When the frame agreement has been concluded with one person and not all the conditions have been specified in it, the assignor shall request in writing this person to fill up her/his offer.

(2) When the frame agreement has been concluded with more than one person and not all of the conditions have been specified in it, the assignor shall:

1. send a written invitation to all parties to the frame agreement for each contract, which is about to be concluded;

2. fix appropriate term for submitting offers, and shall take into account the object and the time, necessary for the offers to be sent.

3. keep in secret the contents of the offers, submitted in writing, until the expiration of the term for receiving offers;

4. choose as a contractor of the relevant contract the participant, who has proposed the best offer according to the criteria, included in the frame agreement.

Art. 93d. (New – SG 37/06, in force from 01.07.2006) The assignor shall chose a contractor by the order of art. 73 and shall conclude a contract by the procedure of art. 74.

## Chapter seven.

### "b" DYNAMIC SYSTEMS FOR DELIVERIES (NEW – SG 37/06, IN FORCE FROM 01.07.2006)

Art. 93e. (New – SG 37/06, in force from 01.07.2006) (1) The dynamic system for deliveries is entirely electronic process for performing customary deliveries, whose market characteristics respond to the assignor's requirements. The system acts for a period not longer than 4 years and during the term of its effect is open for including every candidate, who meets the criteria for selection and has presented an advance offer, which corresponds to the specifications. In extraordinary cases the term of action of the system may be prolonged, provided that the prolongation is motivated.

(2) The dynamic system for deliveries shall be created by way of open procedure.

(3) In the system shall be included every candidate, who:

1. meets the requirements of the assignor, pointed out in the announcement;

2. has presented an advance offer, that corresponds to the specifications, defined by the assignor;

3. has presented all documents, pointed out by the assignor in the announcement

(4) The advance offers under par. 3, item 2 may be amended at any time during the term of action of the system in such manner, as to correspond to the specifications.

(5) At generating a system under par. 1 and assigning public procurement via it the assignors shall use electronic means only.

Art. 93f. (New – SG 37/06, in force from 01.07.2006) (1) At creating dynamic system for deliveries the assignors shall:

1. publish announcement for public procurement, in which shall be explicitly pointed out the creation of the system;

2. define the technical specifications under the procedure of art. 30-33, the type of the deliveries, as well as the whole necessary information regarding the system, the kind and the technical characteristics of the used electronic means.

(2) From the publishing of the announcement for creation to the expiry of the term of action of the system the assignors shall provide via electronic means full, direct and unlimited access to the technical specifications, as well as to all additional documents, provided that in the announcement obligatory shall be indicated the internet address, where they shall be accessible.

Art. 93g. (New – SG 37/06, in force from 01.07.2006) (1) The advance offer for participation in the dynamic system for deliveries may be submitted at any time during the term of action of the system.

(2) For considering the offers under par. 1 the assignor shall appoint a commission by the procedure of art. 34-36.

(3) The commission shall consider any advance offer submitted and on the basis of

the announced criteria and rules, shall propose to the assignor to include or to refuse inclusion of the candidate in the dynamic system for deliveries.

(4) The assignor shall be obliged to take a decision in 15 days period of time, considered from the submitting the advance offer and to notify the candidate of his/her including in the dynamic system for deliveries or of the refusal to be included in three days term from the date of the decision.

Art. 93h. (New – SG 37/06, in force from 01.07.2006) (1) Before assignment of each public procurement contract for delivery the assignor shall publish simplified announcement, with which shall invite all interested persons to present advance offers in compliance with art. 93f, par. 1, item 2 and shall fix a term for submitting the advance offers, which shall not be shorter than 15 days from the sending of the announcement.

(2) The advance offers shall be assessed and the candidates shall be included in the system by the procedure of art. 93g, par. 2-4.

Art. 93i. (New – SG 37/06, in force from 01.07.2006) (1) After taking the decisions under art. 93g, par. 4 the assignor shall send to everybody included in the dynamic system for deliveries an invitation to present offers for each individual public procurement contract for delivery within the frames of the system.

(2) In the invitation under par. 1 the assignor shall fix term for presenting the offers and may make additional clarifications in connection with the criteria for assigning the public procurement contract.

Art. 93j. (New – SG 37/06, in force from 01.07.2006) (1) The commission under art. 93g, par. 2 shall consider and classify rate the offers and shall propose to the assignor to conclude a public procurement contract for delivery with the participant, whose offer has received the highest assessment on the basis of the criteria, specified in the announcement or in the invitation under art. 93i.

(2) The assignor shall choose a contractor by the procedure of art. 74.

Art. 93k. (New – SG 37/06, in force from 01.07.2006) (1) The dynamic system for deliveries may not be applied if it prevents, restricts or violates the competition.

(2) The access to the dynamic system for deliveries and the participation in it shall be liberated and free of charge for all interested persons.

## Chapter eight. PROJECT COMPETITION

### Section I. Preparation of a Project Competition

Art. 94. (1) (new - SG 37/06, in force from 01.07.2006) The provisions of this chapter shall apply at conducting project competition:

1. organized as a part of procedure for assigning public procurement for service;
2. with awarding prizes and/or payments for the participants in the competition.

(2) (prev. text of art. 94 - SG 37/06, in force from 01.07.2006) Project competition shall be held for acquiring:

1. development concept for working a development scheme, development plan, land reallocation plan, or forest development project;
2. initial project for working out projects, including landscape, architectural, constructive, technological, installation, as well as projects for works of art and for restoration and rehabilitation of cultural monuments;
3. project in the sphere of data processing;
4. other projects.

(3) (new - SG 37/06, in force from 01.07.2006; amend. SG. 79/06) The terms and the procedure for conducting competitions in the spatial planning and investment designing, shall be determined by an ordinance of the Council of Ministers.

Art. 95. (1) The project competition may be open or limited.

(2) (amend. - SG 37/06, in force from 01.07.2006) In an open competition all interested persons may present projects;

(3) In a limited competition projects may be presented only by candidates who, on the grounds of a preliminary selection, have been invited by the assignor.

Art. 96. (1) The assignor shall take a decision for holding a project competition by which he shall approve the announcement for participation and the competition programme.

(2) The competition programme shall contain:

1. the project task and instructions for its fulfilment;
2. all technical data necessary for the fulfilment of the project;
3. the criteria for assessment of the project, their relative weight and the method of determining the complex assessment of the project.

(3) The price of the competition programme may not be higher than the actual cost of its working.

Art. 97. (1) (suppl. SG 31/05, in force from May 1, 2005) The assignor shall send an announcement for holding a project competition simultaneously to the State Gazette for promulgation in its electronic site and to the Registry Agency in the Public Procurement Register at least:

1. fifty two days before the deadline for receiving the projects in an open competition;
2. thirty seven days before the deadline for receiving applications for participation in a limited competition.

(2) (amend. - SG 37/06, in force from 01.07.2006) The announcement for a project competition shall contain up to 650 words and shall be worked out according to the form under art. 19, para 7.

(3) (revoked - SG 37/06, in force from 01.07.2006)

(4) In a limited competition the assignor may restrict by the announcement the number of the participants to be invited to present projects, but their number may not be less than 5.

(5) (new - SG 37/06, in force from 01.07.2006) In the announcement for a limited competition the assignor shall point out objective and non-discriminatory criteria or rules, which shall be applied in the selection of the candidates.

## Section II.



## Holding a Project Competition

Art. 98. (1) (new - SG 37/06, in force from 01.07.2006) The applications for participation in a limited project competition may be submitted in writing by the order of art. 57, par. 1, 3, 4 and 5, by fax or by telephone. If the application has been submitted by telephone, it must be confirmed in writing before the deadline for receiving the applications.

(2) (new - SG 37/06, in force from 01.07.2006) In the applications for a limited project competition the assignor may include a requirement that the applications for participation, sent by fax, must be confirmed by post or by electronic means.

(3) (prev. text of art. 98, amend. - SG 37/06, in force from 01.07.2006) The assignor shall implement a preliminary selection and shall send invitations to the approved candidates to present projects by the order of art. 79, 80 and art. 81, par. 1.

Art. 99. (1) For considering and rating the projects the assignor shall appoint a jury consisting of at least three members.

(2) The members of the jury shall meet the requirements of art. 35.

(3) When the participants in the competition are required to have a certain professional qualification or legal capacity at least 1/3 of the members of the jury shall have the same or equivalent qualification or legal capacity.

(4) (new - SG 37/06, in force from 01.07.2006) At taking decisions and expressing opinion on the projects the jury shall be independent.

Art. 100. (1) (suppl. – SG 37/06, in force from 01.07.2006) The assignor shall appoint an official who will accept the competition projects, which shall be presented by the order of art. 57, par. 1 or 5.

(2) The person under para 1 shall be obliged to keep secret the circumstances having become known to him in connection with the competition projects, for which he shall present a written declaration.

(3) (amend. - SG 37/06, in force from 01.07.2006) The presented competition projects shall be numbered by the order of their receiving and a list of the numbers and their corresponding names of the participants shall be made. The list shall be put in an envelope which shall be sealed and should not be opened until the date of announcing the results from the competition.

(4) In an open competition the participants shall present data and proof of their professional qualification and legal capacity in a separate opaque envelope which shall be opened after rating the projects.

Art. 101. (amend. - SG 37/06, in force from 01.07.2006) (1) The jury shall consider the projects and shall draw up written records for their rating. The rating of the projects shall be carried out in compliance with the criteria, indicated in the announcement for opening the procedure.

(2) The jury shall compile a written statement on the rating of the projects, signed by all members.

(3) In the written statement shall also be indicated the remarks of the commission and the issues, which must be additionally elucidated or clarified, if necessary.

(4) In the cases under par. 3 the jury shall inform the participants and shall give them a chance to answer the questions, after which it shall amend or supplement the written statement, if necessary.

(5) Upon open competition the jury shall propose for removal from the rating of the participants in the competition, who do not meet the requirements under par. 1.

(6) The assignor shall announce by decision the rating of the participants in the competition, according to the written statement of the jury, as well as the prizes and/or the other payments.

(7) The assignor shall send information about the conducted competition to the Agency for entering in the Public Procurement Register not later than 7 days after taking the decision under par. 6.

(8) The information under par. 7 shall be prepared according to the form under art. 19, par. 7.

(9) The information under par. 7, the announcement of which contradicts a law, shall not be entered in the Public Procurement Register. In this case the assignor shall provide reasons for that before the Agency.

### Part three.

## ASSIGNING PUBLIC PROCUREMENT BY ASSIGNORS CARRYING OUT ACTIVITIES OF WATER SUPPLY, POWER SUPPLY, TRANSPORT AND POSTAL SERVICES

### Chapter nine.

## GENERAL RULES FOR ASSIGNING PUBLIC PROCUREMENT

### Section I.

## General Provisions

Art. 102. (amend. - SG 37/06, in force from 01.07.2006) (1) The provisions of Part Three shall be applied by:

1. the assignors under art. 7, items 5 and 6;
2. the assignors under art. 7, items 1, 3 and 4 at carrying out some of the activities under art. 7a – 7e.

(2) Public procurement, whose object comprises activities under art. 7a – 7e and other activities according to the law, shall be subject to the rules, applicable to the activity, which is the main object of the procurement.

(3) In case with respect to one of the activities – object of public procurement, are applicable the special regulations of this Chapter, and with regards to the other activity – the general provisions of the law, and if it is impossible objectively to define which one of the activities is the main object of the public procurement, it shall be assigned by the order of the general provisions of the law.

(4) In case with respect to one of the activities – object of public procurement, are applicable the special regulations of this Chapter, and the other activity is neither subject to the general, nor the special provisions of the law, and if it is impossible objectively to define which one of the activities is the main object of the public procurement, it shall be assigned by the order of this Chapter.

Art. 103. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignors shall take

a decision for assigning public procurement by way of open procedure, limited procedure and procedure of negotiation with announcement in all cases when the prerequisites for conducting procedure of negotiation without announcement are not present.

(2) The assignors shall take a decision for assigning public procurement by way of procedure of negotiation without announcement only in case:

1. the open procedure, the limited procedure or the procedure of negotiation with announcement has been terminated since no offer or application for participation has been filed or no candidates or participants have been admitted and the initially announced terms have not been changed substantially;

2. the assigning of the public procurement to another person would lead to violation of copyright or other rights of intellectual property or of exclusive rights acquired by virtue of a law or administrative act;

3. by reason of insurmountable force the terms for holding an open or limited procedure or a procedure of negotiation with announcement cannot be met;

4. the subject of the contract aims research, experimenting, scientific or development activity and does not aim profit or reimbursement of the expenses for this activity and as far as the assigning of such contract does not harm the competitive assignment of subsequent contracts, which are especially aimed at the achievement of these goals;

5. necessary are extra deliveries by the same supplier designated for a partial replacement or for increase of the deliveries, whereas the change of the supplier will compel the assignor to acquire goods with different technical characteristics, which will lead to incompatibility or to technical difficulties in the operation and maintenance;

6. the service is assigned by way of a project competition, sending invitations for participation in the negotiations to all rated participants in compliance with the terms of the competition;

7. due to unforeseen circumstances it is necessary to assign an extra service or construction to the same contractor under the following terms:

a) the extra service or the construction cannot, technically or economically, be separated from the object of the basic contract without considerable difficulties for the assignor or, although they can be separated, they are essentially necessary for the fulfilment of the procurement;

b) the total value of the extra service or construction is not more than 50 percent of the value of the basic procurement;

8. necessary is a repetition of construction by the same contractor in the presence of the following terms:

a) the first procurement has been assigned by an open procedure, limited procedure and procedure of negotiation with announcement and the announcement for it indicated the possibility of such assignment;

b) the total value of this procurement is included in determining the value of the first procurement;

c) the new procurement corresponds to the basic project in fulfilment of which the first procurement was assigned;

9. object of the procurement is the delivery of goods determined by a list, proposed by the State Commission for the commodity exchanges and marketplaces and approved by the Council of Ministers with the regulations for implementation of the law;

10. the procurement shall be assigned on the basis of a frame agreement concluded by the order of the law;

11. for a brief period occur favourable conditions for delivery of goods at prices lower than the market prices, including at sale of property of trade companies announced in liquidation or in bankruptcy.

(3) In the cases of para 2, item 5 and 8 the contract for additional procurement may not be longer than three years.

(4) In the cases under par. 2, item 9 the contract shall be concluded by the order of the Law for the commodity exchanges and market-places.

(5) In the cases under par. 2, item 11 the contract shall be concluded by the order of the Commercial law.

Art. 104. (amend. - SG 37/06, in force from 01.07.2006) (1) In open procedure, when the assignors have sent an advance announcement, the term for receiving offers may be reduced to 22 days from the date, on which the announcement for opening the procedure has been sent.

(2) In case the announcement for opening the procedure has also been sent by electronic means, the term under par. 1 may be reduced by 7 days.

Art. 104a. (new - SG 37/06, in force from 01.07.2006) The term for receiving applications for participation in limited procedures and procedures of negotiation with announcement may not be shorter than 37 days from the date, on which the announcement has been sent.

(2) The term under par. 1 may be reduced by 7 days, if the announcement has also been sent by electronic means.

(3) The term for receiving offers in limited procedure and procedure of negotiation with announcement may be fixed by an agreement between the assignor and the candidates, determined at the preliminary selection. An agreement shall be admitted only on the condition that all candidates are given the same term for preparation and submission of offers.

(4) In case an agreement under par. 3 has not been reached, the term shall be determined by the assignor and may not be shorter than 24 days from the date of sending the invitation for presenting offers or for participation in the negotiations.

(5) In the cases under par. 4, when the assignor provides full access to the documentation for participation by electronic means and if in the announcement has been pointed out an electronic address, where it can be found, the term may be reduced by 5 days.

## Section II. System of Preliminary Selection of Contractors

Art. 105. (1) The assignors may create and use systems of preliminary selection of contractors of public procurement.

(2) (new - SG 37/06, in force from 01.07.2006) The systems of preliminary selection may include different stages of selection.

(3) (prev. text of par. 2, amend. - SG 37/06, in force from 01.07.2006) The systems of preliminary selection shall be based on objective criteria and rules, which shall be determined by the assignor and can be amended by him/her if necessary.

(4) (prev. text of par. 3, amend. - SG 37/06, in force from 01.07.2006) The criteria and the rules for selection shall include requirements for economic and financial status under art. 50, para 1, and/or technical capacity and/or qualification under art. 51, par. 1 and may also include the requirements of art. 47, par. 1 and 2.

(5) (new - SG 37/06, in force from 01.07.2006) Where the criteria and the selection rules include technical specifications, the provisions of art. 30 – 32 shall be applied.

(6) (new - SG 37/06, in force from 01.07.2006) In case the selection criteria of the candidates contain requirements for economic and financial status and technical capacities, and/or qualification, the candidate may refer to the resources of third persons, regardless of the legal relations between him/her and the third persons. In these cases the candidate must provide the assignor with evidence that the resources are available within the whole term of validity of the system of preliminary selection. In case the candidate is an association of natural and/or legal persons, he/she may refer to the resources of a person, included in the association, or to third persons under the same conditions.

(7) (new - SG 37/06, in force from 01.07.2006) The criteria and the rules for selection under par. 3 shall be provided upon request by the candidates. The actualization of these criteria and rules shall be announced to the persons, included in the system of preliminary selection.

(8) (prev. text of par. 4, amend. - SG 37/06, in force from 01.07.2006) The assignors shall send an announcement for the systems of preliminary selection, created by them, to contractors for promulgation in the electronic site of State Gazette and to the Agency for entering in the Public Procurement Register. Where the system has a term of more than three years, the announcement shall be promulgated every year.

(9) (prev. text of par. 5, amend. - SG 37/06, in force from 01.07.2006) The announcement under para 8 shall be worked out according to the form under art. 19, par. 7.

(10) (prev. text of par. 6 - SG 37/06, in force from 01.07.2006) Where the description of the object of the system of preliminary selection and/or of the criteria and rules for selection is of a big volume the assignor shall include in the announcement a brief description, and the detailed requirements shall be included in the documentation.

(11) (prev. text of par. 7 - SG 37/06, in force from 01.07.2006) When the assignor uses a system of preliminary selection he/she shall choose the candidates for participation in limited procedures and procedures of negotiation in compliance with the requirements of this system.

(12) (prev. text of par. 8, amend. - SG 37/06, in force from 01.07.2006) When an assignor considers that the system of preliminary selection of another person meets his requirements, he shall notify the interested persons that he will use it.

Art. 106. (1) Application for participation in the system of preliminary selection may be filed at any time within the term of validity of the system.

(2) (amend. - SG 37/06, in force from 01.07.2006) For considering the applications for participation in the system of preliminary selection the assignor shall appoint a commission by the order of art. 34 - 36.

(3) (suppl. - SG 37/06, in force from 01.07.2006) The commission shall consider every filed application and, on the grounds of the announced objective criteria and rules, shall propose to the assignor to include or refuse the inclusion of the candidate in the system of preliminary selection.

(4) The assignor shall be obliged to take a decision within 6 months from filing the application for inclusion in the system of preliminary selection.

(5) Where the decision under para 4 requires more than 4 months the assignor shall notify the candidate within two months from filing the application for the reasons and for the date by which the decision will be taken.

(6) Within 15 days from the date of the decision under para 4 the assignor shall notify the candidate about his inclusion in the system of preliminary selection or his refusal to do so. The refusal shall be motivated.

(7) (amend. - SG 37/06, in force from 01.07.2006) In taking a decision under para 4

or when the criteria and rules are changed the assignors may not:

1. impose on the candidates requirements of administrative, technical or financial nature which do not regard the other candidates;

2. require inspections or proof repeating already presented by the candidate evidence.

(8) (amend. - SG 37/06, in force from 01.07.2006) The assignors shall maintain lists of the candidates included in the systems of preliminary selection of contractors of public procurement who may be divided into categories depending on the object of the procurement which the system concerns. In the cases of art. 105, para 12 the assignor shall be obliged to submit information for the system and the lists to other assignors.

(9) The assignor may terminate the participation in the system of preliminary selection of a candidate who has ceased to meet the announce criteria. He shall be obliged to inform him about that at least 15 days before the date of termination motivating it.

### Section III.

#### Frame Agreement (revoked - SG 37/06, in force from 01.07.2006)

Art. 107. (revoked - SG 37/06, in force from 01.07.2006)

Art. 108. (revoked - SG 37/06, in force from 01.07.2006)

### Chapter ten.

#### SPECIAL RULES

Art. 109. (1) (suppl. SG 31/05, in force from May 1, 2005, prev. text of art. 109, amend. - SG 37/06, in force from 01.07.2006) Under the terms of art. 23 the assignors as per art. 7, items 5 and 6 may send for promulgation in the electronic site of State Gazette and to the Registry Agency in the Public Procurement Register a preliminary announcement or preliminary announcement-invitation for the planned public procurement or frame agreements for the next 12 months. The type of the announcement shall be chosen by the assignor.

(2) (new - SG 37/06, in force from 01.07.2006) The assignors may publish in the buyer profile the preliminary announcement for the planned procurement or frame agreements for the following 12 months under the terms of art. 23, par. 2.

Art. 110. (amend. - SG 37/06, in force from 01.07.2006) When the assignors publish a preliminary announcement for large projects, which have been included in previous advance announcement, they may not repeat this information by indicating the announcement containing it.

Art. 111. (suppl. – SG 37/06, in force from 01.07.2006) The assignors may announce the assignment of public procurement by way of a limited procedure or a procedure of negotiation with announcement and by:

1. (revoked - SG 37/06, in force from 01.07.2006);

2. (amend. - SG 37/06, in force from 01.07.2006) preliminary announcement-invitation promulgated by the order of art. 23;

3. (amend. - SG 37/06, in force from 01.07.2006) announcement of the system of

preliminary selection under art. 105, para 9.

Art. 112. (1) (amend. - SG 37/06, in force from 01.07.2006) The preliminary announcement-invitation shall serve as an invitation for declaring interest in participation in the procedure by the potential candidates.

(2) (amend. - SG 37/06, in force from 01.07.2006) The preliminary announcement-invitation shall contain up to 650 words and shall be prepared according to the form under art. 19, par. 7.

(3) The preliminary announcement-invitation shall also contain the following information, if available by the date of its ending:

1. possibility of concluding frame agreements;
2. possibility of assigning an extra procurement;
3. initial or final date of fulfilment of the procurement;
4. term of the contract;
5. requirements for the economic and financial status of the candidate, as well as for his technical capacity and/or qualification;
6. terms and size of the guarantee for participation and of the performance guarantee for fulfilment of the contract;
7. (new - SG 37/06, in force from 01.07.2006) criteria for selection of a contractor and the relative weight of the indices in the complex assessment of the offer;
8. (prev. text of item 8 – SG 37/06, in force from 01.07.2006) place and term of obtaining, price and way of payment of the documentation for participation in the procedure;
9. (prev. text of item 8, suppl. – SG 37/06, in force from 01.07.2006) other information determined by the form approved by the Minister of Economy and Energy.

Art. 113. (amend. - SG 37/06, in force from 01.07.2006) (1) The assignor shall provide upon request by the interested persons the technical specifications, which he/she uses frequently in the contracts for delivery, construction or the technical specifications, which he/she intends to apply at assignment of public procurement, provided for in the preliminary announcements.

(2) In case the technical specifications are based on documents, which the interested persons have at their disposal, the indication of these documents shall be enough.

Art. 114. (amend. - SG 37/06, in force from 01.07.2006) (1) Where the procedure of negotiation with announcement or the limited procedure has been announced by a preliminary announcement-invitation the assignor shall send an invitation for participation in the procedure to all candidates having declared interest within the term, indicated in the advance announcement-invitation.

(2) The invitation for participation in the procedure shall be sent simultaneously to all candidates not later than 12 months from the date of sending the preliminary announcement-invitation. The invitation shall be sent at least 37 days before the deadline for receiving applications for participation, and if it is sent by electronic means, the term for receiving applications may be reduced by 7 days.

(3) Where the preliminary announcement-invitation does not contain the information under art. 112, para 3 the assignor shall submit this information to the candidates by the invitation under para 1, also indicating:

1. address and date of submission of an application for participation;
2. documents, which shall be attached to the application for participation.

(4) Where from the date of publishing the preliminary announcement-invitation, the assignor has provided direct and unlimited access to the information under art. 112, par. 3 by electronic means, in the invitation for participation in the procedure shall be indicated the Internet address where this information is provided.

(5) The assignor shall hold the preliminary selection by the order of art. 77 - 79.

(6) During the selection of the candidates in a limited procedure or a procedure of negotiation with announcement the assignor may not:

1. impose to a candidate terms of administrative, technical or financial nature, which do apply to the other candidates;

2. require checks or proof, which reiterate evidence, already presented by the candidate.

Art. 115. Where the procedure of negotiation or the limited procedure has been announced through an announcement for a system of preliminary selection the assignor shall make a preliminary selection of the candidates for participation according to the requirements of this system.

Art. 116. (revoked - SG 37/06, in force from 01.07.2006)

Art. 117. (1) (amend. - SG 37/06, in force from 01.07.2006) The consideration, assessment and rating of the offers and the choosing of a contractor of the procurement in a limited procedure shall be carried out by the order of art. 68 - 74.

(2) (amend. - SG 37/06, in force from 01.07.2006) The consideration, assessment and rating of the offers and the choosing of a contractor of the procurement in a procedure of negotiation shall be carried out by the order of art. 88 - 89.

Art. 118. (1) (amend. - SG 37/06, in force from 01.07.2006) The assignor may remove an offer for delivery where the share of the goods with origin from third countries outside exceeds 50 percent of the total value of the goods included in it.

(2) (new - SG 37/06, in force from 01.07.2006) The provision of par. 1 shall not apply, if there is a contract concluded between the European Union or the Republic of Bulgaria and a third country, which provides for Bulgarian persons comparable and efficient access to participate in public procurement in this country.

(3) (prev. text of par. 2 - SG 37/06, in force from 01.07.2006) The origin of the goods shall be determined in compliance with the current customs legislation.

(4) (prev. text of par. 3 - SG 37/06, in force from 01.07.2006) Where two or more offers are equivalent regarding the criterion for assessment of the offers rated with priority shall be the offers which cannot be removed according to para 1. The prices of the offers shall be considered equivalent if the difference between them does not exceed three percent.

(5) (prev. text of par. 4, amend. - SG 37/06, in force from 01.07.2006) One offer may not be preferred to another according to para 4 when its acceptance would oblige the assignor to buy goods with technical characteristics which differ from those of the existing ones, which would lead to incompatibility or to technical difficulties of operation and maintenance.

Art. 118a. (new - SG 37/06, in force from 01.07.2006) (1) Where a public procurement is assigned, whose object is research and development activity, by way of open, limited procedure or procedure of negotiation with announcement, the assignors may not point



out object and quantity in the information of a concluded contract, in case their publishing would violate the trade secret. In such cases the information shall contain all data from the announcement.

(2) Where a public procurement is assigned, whose object is research and development activity, by way of procedure of negotiation without announcement under art. 103, par. 2, item 4, the assignors may not point out object and quantity in the information of a concluded contract.

(3) In case of concluded contract by means of system of preliminary selection, the information for concluded contract shall contain at least the data for the contractor, included in the list under art. 106, par. 8.

Art. 118b. (new - SG 37/06, in force from 01.07.2006) (1) In case an activity under art. 7a – 7e is subject to competition, the supervising authority in the respective sphere may notify the Agency by sending a statement, along with proof for excluding this activity of the application field of the law.

(2) Within one month term the Agency shall send the documents under par. 1 to the European commission for taking a decision.

Art. 119. For all unsettled issues in Part Three shall apply the provisions of Part Two respectively.

#### Part four.

### APPEAL AND CONTROL (TITLE AMEND. - SG 37/06, IN FORCE FROM 01.07.2006)

#### Chapter eleven.

### APPEAL (TITLE AMEND. - SG 37/06, IN FORCE FROM 01.07.2006)

Art. 120. (amend. - SG 37/06, in force from 01.07.2006) (1) Every decision, action or inaction of the assignors in a procedure for assigning public procurement till the conclusion of the contract or the frame agreement shall be subject to appeal with regards to its legal compatibility before the Commission for protection of the competition.

(2) An appeal may be lodged by every interested person in 10 days term from the notification of the respective decision or action, and if he/she has not been informed – from the date of becoming aware thereof or from the date, on which the term for performing the respective action has expired.

(3) An appeal before the Commission for protection of the competition may not be lodged after the conclusion of a public procurement contract or of a frame agreement.

(4) The appeal shall not stop the procedure for assigning public procurement, unless the Commission for protection of the competition imposes a temporary measure "stay".

Art. 120a. (new - SG 37/06, in force from 01.07.2006) (1) Every interested person may lodge a claim for ascertaining invalidity of a public procurement contract, as well as to claim compensation for damages, suffered as a result of breaches of the law at conducting procedure for assigning public procurement, by the order of the Civil Procedure code.

(2) A public procurement contract shall be invalid, in case it has been concluded

without conducting a procedure according to the law at the presence of a ground thereof.

Art. 121. (amend. - SG 37/06, in force from 01.07.2006) (1) The appeal shall be submitted to the Commission for protection of the competition along with a copy to the assignor, whose decision, action or inaction is being appealed.

(2) The complaint shall be written in Bulgarian language and shall contain:

1. name of the authority, before which it is lodged;
2. name, seat and address of management and information of the court registration of the appellant – legal person; the name, the address and information of the identity of the appellant, if he/she is a natural person;
3. name, address and information of the court registration of the assignor;
4. information of the public procurement and the decision, the action or inaction, which is appealed;
5. the complaints and the request of the appellant;
6. signature of the person, lodging the complaint, or his/her proxy.

(3) A request for a temporary measure shall be made simultaneously with the submission of the appeal.

(4) To the appeal shall be attached the proof, which the appellant possess, and a document for paid state fee, determined by a tariff, approved by the Council of Ministers.

(5) If the appeal does not meet the requirements under par. 2 or a document for paid state fee has not been presented, the Commission for protection of the competition shall inform the appellant thereof and shall provide him/her with three days term for removal of the irregularities.

(6) The Commission for protection of the competition shall not initiate proceedings, in case:

1. the appeal has been lodged after the expiry of the term under art. 120, par. 2;
2. the irregularities have not been removed within the term under par. 5;
3. a document for paid state fee has not been presented;
4. the appeal has been lodged after conclusion of the public procurement contract.

(7) In the cases under par. 6, the chairperson of the Commission for protection of the competition shall return the appeal by an order, which shall be subject to appeal before a three-member board of the Supreme Administrative Court within 7 days term from its announcement.

(8) The assignor can eliminate the offence himself till the pronouncement of the Commission for protection of the competition on the appeal.

Art. 121a. (new - SG 37/06, in force from 01.07.2006) Upon motivated request by the appellant the Commission for protection of the competition may impose a temporary measure – stay of the procedure for assigning public procurement. At pronouncement on the request the Commission shall consider the negative consequences from the delay of the procedure and the actual danger of serious harm of the public interest or of the interests of the parties.

(2) For imposing a temporary measure the appellant shall be obliged to provide a security amounting to one percent of the value of the public procurement, not more than 50 000 BGN, in the form of a monetary deposit on account of the Commission for protection of the competition or in a form of a bank guarantee.

(3) The Commission for protection of the competition shall determine an amount of the security up to 50 000 BGN, if the value of the public procurement can not be specified.

Art. 122. (amend. - SG 37/06, in force from 01.07.2006) (1) Within three days term from receipt of the appeal or from removal of the irregularities thereof, the chairperson of the Commission for protection of the competition shall initiate proceedings and assign a reporter.

(2) Within 7 days term from the initiation of the proceedings the Commission for protection of the competition shall pronounce at closed session on the request for imposing a temporary measure.

(3) The Commission for protection of the competition shall pronounce by a definition on admission of a temporary measure and on the amount of the security, which shall be provided by the appellant in 5 days term from the announcement.

(4) The temporary measure shall be considered to be imposed from the date of providing the security.

(5) The Commission for protection of the competition shall inform the parties and the Public Procurement Agency of the temporary measure imposed on the day of its imposing.

(6) The definition for imposing a temporary measure shall be subject to appeal before a three-member board of the Supreme Administrative Court within 7 days term from the announcement thereof to the parties. The appeal of the definition shall not suspend the proceedings before the Commission for protection of the competition, and the execution of the temporary measure imposed.

(7) The security shall be subject to return by an order of the chairperson of the Commission for protection of the competition within 7 days term from the entry into force of the definition, with which the imposed temporary measure has been repealed, or from the entry into force of the decision, with which the appeal under art. 120 has been respected. Upon rejection of the appeal the security provided shall be transferred to the state budget as income.

Art. 122a. (new - SG 37/06, in force from 01.07.2006) (1) The reporter shall implement research of the circumstances with respect to the appeal, supported by the administration of the Commission for protection of the competition.

(2) In the proceedings before the Commission for protection of the competition shall be admitted written and oral evidence, as well as expert statements.

(3) Where using expert statements in the proceedings before the Commission for protection of the competition, the sums designated for consideration of the experts shall be deposited in advance by the party, who has demanded the expertise. Upon instituting an expertise at the initiative of the Commission for protection of the competition, the expenses for the expert consideration shall be assigned to the appellant, if the appeal has been left without consideration or the proceedings have been terminated, and to the assignor – in the cases under art. 122d, par. 1, item 2.

(4) The parties to the proceedings, the state bodies and the officials shall be obliged to provide support to the Commission for protection of the competition in fulfilment of its liabilities, assigned by the law.

(5) All evidence, collected in connection to the proceedings, may not be announced, if they represent production, trade or other secret, protected by a law. In case they contain data, representing classified information, shall be applied the procedure, stipulated by the Law for the protection of the classified information.

(6) After concluding the research, the parties shall be given a chance to get acquainted with the evidence collected concerning the file.

(7) The parties shall be obliged to present all evidence not later than the day before the session for consideration of the appeal.

Art. 122b. (new - SG 37/06, in force from 01.07.2006) (1) After the conclusion of the

research the reporter shall present the file to the chairperson, who shall fix the date for open session for its consideration.

(2) The parties shall be summoned by the order of the Civil procedure code. At the summoning the term under art. 41, par. 5 of the Civil procedure code shall not be applied.

(3) The parties may use attorney defence.

Art. 122c. (new - SG 37/06, in force from 01.07.2006) (1) The sessions shall be valid, when at least five of the members of the Commission for protection of the competition are present.

(2) The Commission for protection of the competition shall take decision by open voting and a majority of 4 votes. In case at the session are present less than 7 members and majority of 4 votes can not be reached, it is deemed that the appeal is left without consideration or that the request for imposing a temporary measure is rejected.

(3) Member of the Commission shall be obliged to ask to be struck off in one of the following cases:

1. when he/she has been a proxy of one of the parties;

2. when he/she has had legal terms of employment or civil employment relations with some of the parties;

3. when, due to other circumstances, he/she may be considered prejudiced or directly or indirectly interested in the outcome of the case.

(4) The session shall begin with considering the preliminary issues regarding the regularity of the procedure.

(5) In presence of the grounds under par. 3, the parties can request a member to be stuck off.

(6) The parties in the proceedings may be asked questions by an order determined by the chairperson.

(7) When it is considered that the circumstances regarding the appeal are clarified, the chairperson shall give the parties an opportunity to express their opinion.

(8) Upon clarification of the dispute from factual and legal point of view the chairperson shall close the session.

Art. 122d. (new - SG 37/06, in force from 01.07.2006) (1) The Commission for protection of the competition at closed session shall pronounce a decision, with it which shall:

1. leave the appeal without consideration;

2. repeal the illegal decision of the assignor or establish the illegal action or inaction and shall return the file for continuation of the procedure for assigning public procurement from the last legal decision or action.

(2) In the cases under par. 1, item 2 the Commission for protection of the competition may provide obligatory instructions concerning the course of the procedure for assigning public procurement.

(3) In case proceedings before the Commission for protection of the competition have been initiated and no temporary measure has been imposed, the assignor shall be obliged to notify the commission, if he/she concludes a public procurement contract before its pronouncing on the appeal.

(4) In the cases under par. 3, where no contract has been concluded, the Commission for protection of the competition shall leave the appeal without consideration or shall establish the illegal action or inaction of the assignor. The concluded public procurement contract shall preserve its effect and the interested persons shall be entitled to demand compensation by the order of the Civil procedure code..

(5) The decision of the Commission for protection of the competition shall be in writing and shall contain:

1. the name of the body who has issued it;
2. the factual and the legal grounds for its issuance;
3. motives;
4. the exposition;
5. the body before which the decision can be appealed and the term thereof.

(6) A member of the commission, who does not agree with the decision, shall sign it with reserves, which shall be attached to it.

Art. 122e. (new - SG 37/06, in force from 01.07.2006) (1) The Commission for protection of the competition shall pronounce on the appeal in two months term from initiating the proceedings.

(2) The decision, along with the motives, shall be worked out and announced not later than 14 days from the pronouncing on the appeal.

Art. 122f. (new - SG 37/06, in force from 01.07.2006) (1) The decision of the Commission for protection of the competition shall be subject to appeal before three-member board of the Supreme Administrative Court within 14 days term after it has been announced to the parties.

(2) The decision of the Supreme Administrative Court shall be final.

Art. 122g. (new - SG 37/06, in force from 01.07.2006) (1) The Commission for protection of the competition shall terminate the proceedings by a definition:

1. upon establishing inadmissibility of the appeal;
2. if the appellant – natural person, has died, or the legal person has been terminated.;
3. upon withdrawal of the appeal.

(2) The definitions under par. 1 shall be subject to appeal by the order of art. 122, par. 6.

Art. 122h. (new - SG 37/06, in force from 01.07.2006) To all unsettled issues, regarding the procedure of appealing before the Commission for protection of the competition, shall be applied the order for appealing individual administrative acts.

Art. 122i. (new - SG 37/06, in force from 01.07.2006) The Commission for protection of the competition shall send its decisions under art. 122 to the Public Procurement Agency in 7 days term from their announcement.

Art. 122k. (new - SG 37/06, in force from 01.07.2006) (1) The terms and the procedure for appeal under this law shall be applied respectively to public procurement, determined by the ordinance under art. 14, par. 7.

(2) At appealing the acts of the assignors upon assignment of public procurement, determined by the ordinance under art. 13, par. 2, shall be applied the order for appealing individual administrative acts.

Art. 122l. (new - SG 37/06, in force from 01.07.2006) (1) Every assignor and participant in a procedure for assigning public procurement may propose the conclusion of arbitration agreement for considering disputes between them regarding a concluded public

procurement contract or a frame agreement.

(2) The assignor may propose arbitration agreement in the documentation, which the participant can sign and present along with the offer. In the arbitration agreement shall be indicated the selected arbitration court.

(3) The disputes before the arbitration court shall be considered by the order of the Law on the international commercial arbitration and the regulations of the respective arbitration court.

## Chapter twelve. CONTROL

Art. 123. (1) (amend. - SG 33/06) The control over the fulfilment of this law shall be exercised by the Audit Office and by the bodies of the Agency for state financial inspection.

(2) (amend. - SG 37/06, in force from 01.07.2006) Subject to control by the Audit Office shall be the assignors under art. 7, who fall within the jurisdiction of the Law for the Audit Office.

(3) (amend. - SG 33/06, amend. - SG 37/06, in force from 01.07.2006) The assignors under art. 7, falling within the jurisdiction of the Law of the state financial inspection shall be inspected by the bodies of the Agency for state financial inspection for the observance of this law within the frames of financial inspection.

(4) (amend. - SG 33/06) Assignors who are not subject to financial inspection under the Law of the state financial inspection shall be inspected by the bodies of the Agency for state financial inspection regarding the observance of the regime of the public procurement through inspections.

(5) (amend. - SG 33/06) The orders for carrying out inspections by the bodies of the Agency for state financial inspection shall be issued by the director of the Agency or by official authorised by him.

(6) The orders under para 5 shall not be subject to appeal.

(7) (amend. - SG 33/06) The director of the Public procurement Agency may require from the bodies of the Agency for state financial inspection to exercise their legal capacity in a concrete case.

Art. 124. (1) (amend. - SG 33/06) In carrying out inspections under art. 123 the bodies of the Agency for state financial inspection shall have the right:

1. to free access to the inspected object;
2. to inspect the whole documentation related to the assignment of public procurement and to activities requiring assigning of public procurement;
3. to require from the officials in the inspected objects documents, information and references in connection with the public procurement.

(2) (amend. - SG 33/06, amend. - SG 37/06, in force from 01.07.2006) The persons in the inspected objects shall be obliged to render assistance to the bodies of the Agency for state financial inspection and to submit the necessary documents, information and references related to the public procurement.

Art. 125. In carrying out inspections under art. 123 the control bodies shall be obliged:

1. to legitimize themselves by official cards and by an order for carrying out the

inspection;

2. to register precisely the results from the control activity;
3. not to make public and not to distribute information having become known to them on carrying out the inspections.

Art. 126. (1) (amend. - SG 33/06) For the results from the inspection the control bodies of the Agency for state financial inspection shall work out a report containing the findings supported by proof.

(2) The report under para 1 shall be presented to the assignor.

(3) For established administrative offences the control bodies shall issue acts for administrative offences.

(4) In the presence of data for committed offences the materials from the inspection shall be sent to the prosecution.

(5) (amend. - SG 33/06) For found violation of the procedures for assigning public procurement the respective parts of the report for the financial inspection carried out and of the report under para 1 for the established violation of the procedures shall be sent in due time to the director of the Public Procurement Agency.

(6) (amend. - SG 33/06) Information for the results from the control exercised regarding the observance of this law may be submitted only by the director of the Agency for state financial inspection or by officials authorised by him, as well as by the director of the Public Procurement Agency the cases under para 5.

## Chapter thirteen. ADMINISTRATIVE PENAL PROVISIONS

Art. 127. (1) (amend. - SG 33/06, amend. - SG 37/06, in force from 01.07.2006) The acts for establishing offences under this law shall be drawn up by officials of the Agency for state financial inspection within 6 months from the day on which the violator has been discovered, but not later than three years from its commitment.

(2) The penal provisions shall be issued by the Minister of Finance or by officials authorised by him.

(3) The establishing of offences, the issuance, the appeal and the fulfilment of the penal provisions shall be carried out by the order of the Law for the administrative offences and sanctions.

Art. 127a. (new - SG 37/06, in force from 01.07.2006) (1) Upon non-fulfilment of decisions and/or definitions of the Commission for protection of the competition, which have entered into force, or of the obligation under art. 122, par. 4, a fee shall be imposed on natural persons, respectively a property sanction on legal persons and sole traders, amounting from 5 000 to 100 000 BGN.

(2) The Commission for protection of the competition shall establish the committed offence and impose the penalties under par. 1, which shall be subject to appeal before the Supreme Administrative Court.

(3) The property sanctions and the fees under decisions of the Commission for protection of the competition, which have entered into force, shall be collected by the order of the Tax-insurance procedure code.

Art. 127b. (new - SG 37/06, in force from 01.07.2006) The Commission for protection of the competition shall send the decisions under art. 127a, par. 2 to the Public Procurement Agency in 7 days term from their announcing.

Art. 128. (amend. - SG 37/06, in force from 01.07.2006) An assignor who violates the prohibition of art. 15, para 4 - 7 shall be punished by a property sanction amounting from 2000 to 10 000 BGN, and the persons under art. 8, para 1 shall be punished by a fine of 200 to 1000 BGN.

Art. 128a. (new - SG 37/06, in force from 01.07.2006) An assignor who violates the terms under art. 64, art. 76, par. 1 – 3, art. 81, par. 1 – 3, art. 83b, par. 1 and 2, art. 86, par. 1 – 3, art. 93h, par. 1, art. 104, art. 104a, par. 1, 2 and 4 and art. 114, par. 2 at conducting procedure, shall be punished by a property sanction amounting from 1000 to 2000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 200 to 1000 BGN.

Art. 128b. (new - SG 37/06, in force from 01.07.2006) (1) An assignor who violates the prohibition under art. 25, par. 5, shall be punished by a property sanction amounting from 2000 to 10 000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 500 to 3000 BGN.

Art. 128c. (new - SG 37/06, in force from 01.07.2006) An assignor who determines technical specifications in violation of art. 32, par. 2, shall be punished by a property sanction amounting from 1000 to 3000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 500 to 1000 BGN.

Art. 128d. (new - SG 37/06, in force from 01.07.2006) A member of the commission for conducting public procurement, who in violation of art. 36, par. 3 takes an application or an offer out of the premises, where the session of the commission is held, shall be punished by a fine, amounting from 100 to 500 BGN.

Art. 128e. (new - SG 37/06, in force from 01.07.2006) An assignor, who concludes a contract in violation of art. 41, par. 2, shall be punished by a property sanction amounting from 5000 to 20 000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 1000 to 3000 BGN.

Art. 129. (1) (prev. text of art. 129, amend. - SG 37/06, in force from 01.07.2006) An assignor, who does not conduct a procedure for assigning public procurement in presence of a ground for that, or who amends or supplements a public procurement contract in violation of art. 43, par. 1, shall be punished by a property sanction amounting from 10 000 to 50 000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 1000 to 5000 BGN.

(2) (new - SG 37/06, in force from 01.07.2006) The penalties under par. 1 shall also be imposed on an assignor or a person under art. 8, par. 2 or 3, who on the basis of frame agreement concludes a contract, in which the terms differentiate substantially from the ones, defined in the frame agreement.

Art. 129a. (new - SG 37/06, in force from 01.07.2006) (1) An assignor, who does not



send the information under art. 45a, par. 1 and 2, shall be punished by a property sanction amounting from 5000 to 10 000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 200 to 1000 BGN.

(2) An assignor, who does not send the information under art. 122d, par. 3 to the Commission for protection of the competition, shall be punished by a property sanction amounting from 1000 to 3000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 100 to 500 BGN.

Art. 129b. (new - SG 37/06, in force from 01.07.2006) An assignor, who does not preserve the documentation for conducting public procurement within the term under art. 58a, par. 6, shall be punished by a property sanction amounting from 1000 to 3000 BGN, and the person under art. 8, par. 2 or 3 – by a fine amounting from 200 to 1000 BGN.

Art. 130. (1) (amend. - SG 37/06, in force from 01.07.2006) An assignor under art. 7, item 1 – 4 who holds a procedure of negotiation in the absence of the preconditions under art. 84 or 90 shall be punished by a property sanction from 5000 to 20 000 BGN, and the person under art. 8, para 1 – by a fine of 500 to 3000 BGN.

(2) (amend. - SG 37/06, in force from 01.07.2006) An assignor under art. 7, item 5 and 6, who holds a procedure of negotiation without announcement in the absence of the preconditions under art. 103, par. 2 shall be punished by a property sanction of 5000 to 20 000 BGN, and the person under art. 8, para 1 – by a fine of 500 to 3000 BGN.

Art. 131. (1) (amend. - SG 37/06, in force from 01.07.2006) A person under art. 8, para 2 or 3, who terminates a procedure in the absence of the grounds under art. 39, para 1 shall be punished by a fine amounting from 500 to 1000 BGN.

(2) (amend. - SG 37/06, in force from 01.07.2006) A person under art. 8, para 2 or 3, who opens a new procedure in violation of art. 40 shall be punished by a fine amounting from 200 to 500 BGN.

(3) (new - SG 37/06, in force from 01.07.2006) A person under art. 8, para 2 or 3, who concludes a public procurement contract in violation of art. 42, shall be punished by a fine amounting from 1000 to 5000 BGN.

Art. 132. (1) (prev. text of art. 132, amend. - SG 37/06, in force from 01.07.2006) A person under art. 8, para 2 or 3, who does not send in time the information, subject to entry in the Public Procurement Register, shall be punished by a fine amounting from 500 to 1000 BGN.

(2) (new - SG 37/06, in force from 01.07.2006) A person under art. 8, para 2 or 3, who does not send in time the information, indicated in art. 19, par. 6 and in art. 44, par. 7, or other information, required by the executive director of the Public Procurement Agency, shall be punished by a fine amounting from 500 to 1000 BGN.

Art. 132a. (new - SG 37/06, in force from 01.07.2006) A person, who does not present documents, pieces of information and references to the bodies of the Agency for the state financial inspection within the terms, fixed by them, in violation of art. 124, par. 2, shall be punished by a fine amounting from 100 to 200 BGN.

Art. 133. (amend. - SG 37/06, in force from 01.07.2006) Where the offences under

art. 128 – 132a are repeated the offenders shall be punished by a fine, respectively a material sanction in double size.

## Additional provisions

§ 1. (amend. - SG 37/06, in force from 01.07.2006) In the meaning of this law:

1. "Public procurement contract" shall be a written contract against payment between one or more contractors, whose object is construction, delivery of goods or provision of services, concluded following a procedure, conducted according to the law.

2. "European technical approval" shall be a positive technical assessment of the suitability of a product for a definite purpose, which shall be based on the fulfilment of the essential requirements to the constructions by the inherent characteristics of the product and the defined requirements for application and use. The European technical approvals shall be issued by authorities, determined by the Member state for this purpose.

3. "Operation of aerodromes" is carrying out activities of: maintaining the air field and the development of the infrastructure of the aerodrome, the restriction and removal of obstacles, maintenance of the visual signal devices, the emergency and rescue and fire safety provision of the flights on the territory of the aerodrome and in its vicinity, the guarding of the aerodrome; the safety of the flights; assigning the working out and updating of the general and cadastre plan of the aerodrome.

4. "Operation of ports" is carrying out activities of: maintenance of: the adherent aqua terry of the ports for public transport, the navigation and approach channels, the fulfilment of measuring and dredging activities, the maintenance of quay walls, diverting facilities, port industrial railways and under crane roads, fire fighting, water supply and sewage network, electric supply network – high and low voltage, road covers for public transport on the territory of the ports.

5. "Electronic auction" is a repeating (standardized) process, which includes electronic device for presentation of new lower prices and/or new values for some positions of the offers after the initial overall assessment of the offers, which gives the opportunity the latter to be rated by using methods of automatic assessment.

6. "Electronic means" is electronic equipment for processing (including digital compression) and preserving data, which are transmitted, announced and received via cable, radio waves, by optical means or other electromagnetic means.

7. "Law of the country, where the candidate or the participant is established" is:

a) for the natural persons – their native law within the meaning of art. 48 of the Code of the international civil law;

b) for the legal persons – the law of the country, determined according to art. 56 of the Code of the international civil law;

c) for the associations, which are not legal persons – the law of the country, where they are registered or constituted.

8. "Economically most favourable offer" is the offer which meets to the greatest extent the indices determined preliminary by the assignor and their weight, directly related to the object of public procurement with respect of quality, price, technical advantages, aesthetic and functional characteristics, characteristics related to the protection of the environment, operative expenses, guarantee service and technical aid, term of fulfilment and other.

9. "Candidate" is a natural or legal person, who has submitted an application for participation in a limited procedure, procedure of negotiation with announcement, competitive dialogue or limited project competition.

10. "Public Procurement Classifier" is a reference nomenclature, which is used for defining the object at assigning public procurement and which is an equivalent of the conventional terminology for public procurement of the European Union - Common Procurement Vocabulary (CPV). Upon established differences between the CPV and NACE (Nomenclature generale des activities economiques dans les Communautés Europeennes) nomenclatures or between the CPV and CPC (Central Product Classification) nomenclatures, the NACE and CPC nomenclatures respectively shall have privilege.

11. "Compensatory (offset) agreement" is a contract whereby a contractor of a public procurement is obliged before the assignor to make investments, to conclude and fulfil contracts for delivery of Bulgarian goods or for services or construction by Bulgarian companies, to submit to Bulgarian companies technological equipment, technologies, licences for using rights on objects of industrial property or to transfer to them rights on objects of intellectual property.

12. "Minimal labour price" is the minimal size of payment of the manpower, determined as a minimal monthly size of the insurance income in activities and groups of professions according to art. 8, item 1 of the Law for the budget of the state public insurance for the respective year.

13. "Transport network" is a network whose terms of operation are determined by the state or the municipality and includes the scheme of the route, the capacity of providing transport service and frequency of the servicing.

14. "Insurmountable force" shall be circumstances of emergency nature, which the assignor could not or was not obliged to foresee or prevent at taking the due care.

15. "General technical specification" is a technical specification, prepared in accordance with a procedure, recognized by a Member state and promulgated in Official Journal of the European Union.

16. "Detached position" is such a part of the object of the public procurement which is connected systematically with the other positions of the object of public procurement, though practically it may be an individual object of public procurement.

17. "In writing" or "written form" is every expression, compound of words or figures, which can be read, reproduced and announced. It may include information, transmitted and preserved by electronic means.

18. "Acknowledged body" is a person, accredited by the Executive Agency "Bulgarian Accreditation Service" or by a foreign accreditation body, which is a full member of the European Cooperation for Accreditation (European Cooperation for Accreditation).

19. "Repeated offence" is a violation, committed by the same person in one year term from the entry into force of the penal provision, with which a penalty has been imposed to him/her for the same kind of offence.

20. "Buyer profile" shall be an Internet address of the assignor, which may contain the advance announcements, information about the invitations for presentation of offers, the concluded contracts, the terminated procedures and any general useful information such as: contact person, telephone and fax number, post and electronic mail address.

21. "Public legal organisation" is a legal person, which is independent from its trade or production nature and is established with the purpose of satisfaction of public interests and for which at least one of the following conditions is met:

a) more than half of its incomes for the precedent budget year are financed by the state budget, by the budgets of the state public insurance or the National Health Insurance Fund, by the municipal budgets or by assignors under art. 7, item 1 or 3;

b) more than half of the members of its managing or control body are determined by assignors under art. 7, item 1 or 3;

c) it is subject to managerial control on behalf of assignors under art. 7, item 1 or 3;

managerial control is present in case a person can exercise in one or another way dominating impact over the activity of another person.

Public legal organisation shall also be a medical establishment – a trade company, more than 30 percent of the incomes for the precedent year of which are at the expense of the state and/or the municipal budget, and/or the budget of the National Health Insurance Fund.

22. "Dominating impact" is present where assignors under art. 7, item 1 or public organisations or other persons:

- a) posses over 50 percent of the capital of the enterprise, or
- b) posses blocking quota in the capital of the enterprise, or
- c) may appoint more than half of the members of the management or control bodies of the enterprise.

23. "Public enterprise" is an entrepreneur in the meaning of the Commercial Law or according to the legislation of a Member state, over whom assignors under art. 7, item 1, 3 or 4, may exercise direct or indirect dominating impact.

24. "Related enterprise" is an enterprise:

- a) which draws up a consolidated financial report with the assignor, or
- b) on which the assignor may exercise direct or indirect dominating impact, or
- c) may exercise a dominating impact on an assignor under art. 7, item 5 or 6, or
- d) which, along with an assignor under art. 7, is an object of a dominating impact of another enterprise.

25. "Specialized enterprises or cooperations of persons with handicaps" are the ones within the meaning of art. 28, par. 1 of the Law of integration of the people with handicaps or their equivalent according to the legislation of a Member state.

26. "Special or exclusive rights" are rights provided by a law or by a competent state body on grounds stipulated by a law, as a result of which the implementation of activities, including the ones, indicated in art. 7a – 7e, is reserved for one or more persons and the possibility other persons to perform such activities is considerably limited.

27. "Standard" is a technical specification, approved by a recognized organization for standardization, for repetitive or continuous application, the compliance with which is not obligatory and which does not come under one of the following categories:

- a) international standard: a standard which is approved by an international organisation for standardization and is generally accessible;
- b) European standard: a standard which is approved by European organisation for standardization and is generally accessible;
- c) national standard: a standard, a standard which is approved by a national organisation for standardization and is generally accessible.

28. "Construction" is the result of over ground, semi-underground or underground construction, which is enough in itself to perform economic or technical function.

29. "Technical standard" is each product, created by European organizations for standardization, different from the official standards, according to the adopted procedures for stimulation of the market necessities.

30. "Technical specification for construction" is the combination of technical prescriptions, indicated in the documentation for participation, which determines the requirements for characteristics of the materials and goods in such a way as to suite the application stipulated by the assignor. These characteristics shall include a level of fulfilment according to the requirements for protection of the environment, designing, which shall meet all of the requirements, including access for persons with handicaps, and an assessment of the compliance, working characteristics, safety or sizes, including the procedures regarding the provision of quality, terminology, symbols, testing and testing methods, packing, marking, labelling. They shall also include rules for designing, testing, construction supervision and

terms of accepting construction works and methods or technologies of construction and all other technical requirements which the assignor may prescribe by virtue of a law or of bylaws regarding a completed construction and the materials and parts included in it.

31. "Technical specification for services or goods" is a specification of a document determining the requirements for characteristics of goods or service, such as: level of quality, levels of protection of the environment, design, meeting all the requirements, including access for persons with handicaps, and an assessment of the compliance, process or method of production, usage, safety, sizes, requirements regarding the name under which the goods are sold, terminology, symbols, testing and testing methods, packing, marking, labelling, instructions for using, procedures of assessment of the compliance.

32. "Third country" is a country, which is not a member of the European Union.

33. "Participant" is a natural or legal person or their association, who has presented an offer or a project.

34. "Fixed networks for public services" are:

a) the transfer or distribution networks within the meaning of the Law of the energy sector – with regard to the activities under art. 7a;

b) the water supply system and the sewerage system within the meaning of § 1, par. 1, items 32 and 33 of the Additional provisions of the Law for the waters – with regard to the activities under art. 7b.

## Transitional and concluding provisions

§ 2. This law revokes the Law for the public procurement (prom., SG 56/99; amend., SG 92 and 97/00, SG 43 and 45/02, SG 109/03).

§ 3. The Council of Ministers shall adopt regulations for implementation of the law, as well as the ordinances under art. 13, para 2 and art. 14, para 5 and the tariff under art. 20, para 6 by October 1, 2004.

§ 4. (1) The Council of Ministers shall adopt structural regulations of the Public Procurement Agency within two months from the promulgation of the law in the State Gazette.

(2) The Public Procurement Agency shall be a legal successor of all rights over the current Public Procurement Register, including over the technical devices for its maintenance.

(3) The Council of Ministers shall take a decision for submitting an appropriate building to the Public Procurement Agency within two months from the promulgation of the law in the State Gazette.

§ 5. (1) In assessing the offers of a candidate who is a small- or medium-size enterprise in the meaning of the Law for the small- and medium-size enterprises the price offered by him shall be accepted as the lowest if it exceeds the lowest price offered by another candidate by no more than:

1. fifteen percent – for the public procurement assigned in 2004;

2. ten percent – for the public procurement assigned in 2005;

3. five percent – for the public procurement assigned in 2006.

(2) Para 1 shall apply where the assessed offers belong to candidates from countries not included in the list under art. 19, para 1, item 14.

(3) The provisions of para 1 and 2 shall apply until January 1, 2007.

§ 6. In the cases of § 9 of the transitional and concluding provisions of the Law for protection of the environment, where the government finances measures for removal of ecological damages caused by past actions or inactions of the government, the contractors shall be chosen by the order of Part Two, and where the assignors are persons under art. 7, para 1, item 5 – by the order of Part Three.

§ 7. The public procurement procedures for which a decision is taken to be opened before the enactment of this law shall be concluded by the previous order.

§ 8. The Council of Ministers shall adopt the regulations and the statute and shall appoint the chairman of the arbitration court by September 1, 2004.

§ 9. The following amendments and supplements are introduced to the Law for the health insurance (Prom. SG. 70/19 Jun 1998, amend. SG. 93/11 Aug 1998, amend. SG. 153/23 Dec 1998, amend. SG. 62/9 Jul 1999, amend. SG. 65/20 Jul 1999, amend. SG. 67/27 Jul 1999, amend. SG. 69/3 Aug 1999, amend. SG. 110/17 Dec 1999, amend. SG. 113/28 Dec 1999, amend. SG. 1/4 Jan 2000, amend. SG. 64/4 Aug 2000, suppl. SG. 41/26 Apr 2001, amend. SG. 1/4 Jan 2002, amend. SG. 54/31 May 2002, amend. SG. 74/30 Jul 2002, amend. SG. 107/15 Nov 2002, amend. SG. 112/29 Nov 2002, amend. SG. 119/27 Dec 2002, amend. SG. 120/29 Dec 2002, amend. SG. 8/28 Jan 2003, suppl. SG. 50/30 May 2003, amend. SG. 107/9 Dec 2003, suppl. SG. 114/30 Dec 2003):

1. In art. 45:

a) para 4 is amended as follows:

"(4) The Council of Ministers shall adopt an ordinance for the order and the terms of contracting the medicines for which NHIF pays in full or partially. The ordinance shall contain the procedure and the criteria for contracting the concrete medicines, as well as the methodology of determining the level of their payment. The draft of the ordinance shall be worked out by NHIF, coordinated with the Commission for Transparency under art. 85b of the Law for the medicines and pharmacies in the human medicine and shall be put forward in the Council of Ministers by the Minister of Health."

b) in para 5 the words "the producers and wholesale vendors of medicines" are replaced by "the holders of permit for using medicines or their authorised representatives on the territory of the Republic of Bulgaria under art. 17 of the Law for the medicines and pharmacies in the human medicine";

c) para 6 is created:

"(6) Upon contracting according to para 5 NHIF shall conclude with the holders of permit for using medicines or their authorized representatives on the territory of the Republic of Bulgaria according to art. 17 of the Law for the medicines and pharmacies in the human medicine contracts for the concrete medicines under para 1, item 10 and their prices."

2. Created in the transitional and concluding provisions is §19b:

"§ 19b. The Council of Ministers, by April 30, 2004, shall adopt and promulgate in the State Gazette the ordinance under art. 45, para 4."

§ 10. New item 4 is created in art. 6 of the Law for the public procurement (prom., SG 56/99; amend., SG 92 and 97/00, SG 43 and 45/02, SG 109/03):

"4. of the National Health Insurance Fund for the medicines for home therapy on the territory of the country."

§ 11. In art. 126a, para 3 of the Civil Procedure Code (Prom. SG. 12/8 Feb 1952, amend. SG. 92/7 Nov 1952, amend. SG. 89/6 Nov 1953, amend. SG. 90/8 Nov 1955, amend. SG. 90/9 Nov 1956, amend. SG. 90/11 Nov 1958, amend. SG. 50/23 Jun 1961, amend. SG. 90/10 Nov 1961, corr. SG. 99/12 Dec 1961, amend. SG. 1/4 Jan 1963, amend. SG. 23/22 Mar 1968, amend. SG. 27/3 Apr 1973, amend. SG. 89/9 Nov 1976, amend. SG. 36/8 May 1979, amend. SG. 28/8 Apr 1983, amend. SG. 41/28 May 1985, amend. SG. 27/4 Apr 1986, amend. SG. 55/17 Jul 1987, amend. SG. 60/5 Aug 1988, amend. SG. 31/21 Apr 1989, amend. SG. 38/19 May 1989, amend. SG. 31/17 Apr 1990, amend. SG. 62/2 Aug 1991, amend. SG. 55/7 Jul 1992, amend. SG. 61/16 Jul 1993, amend. SG. 93/2 Nov 1993, suppl. SG. 87/29 Sep 1995, amend. SG. 12/9 Feb 1996, amend. SG. 26/26 Mar 1996, amend. SG. 37/30 Apr 1996, amend. SG. 44/21 May 1996, amend. SG. 104/6 Dec 1996, amend. SG. 43/30 May 1997, suppl. SG. 55/11 Jul 1997, amend. SG. 124/23 Dec 1997, amend. SG. 21/20 Feb 1998, amend. SG. 59/26 May 1998, suppl. SG. 70/19 Jun 1998, suppl. SG. 73/26 Jun 1998, amend. SG. 64/16 Jul 1999, suppl. SG. 103/30 Nov 1999, amend. SG. 36/2 May 2000, suppl. SG. 85/17 Oct 2000, amend. SG. 92/10 Nov 2000, amend. SG. 25/16 Mar 2001, amend. SG. 105/8 Nov 2002, amend. SG. 113/3 Dec 2002, suppl. SG. 58/27 Jun 2003, amend. SG. 84/23 Sep 2003) after the words "the Law for collecting state receivables" is added "and under art. 120 of the law for the public procurement".

§ 12. This law shall enter into force on October 1, 2004 with exception of the provisions of art. 13, para 2, art. 14, para 5, art. 17, item 3 and 4, art. 18, art. 19, para 1 and para 2, item 5, 9 – 11, art. 20, § 3, § 4, para 1 and 3, § 8, § 9 and § 10 which shall enter into force on the day of promulgation of the law in the State Gazette.

The law was passed by the 39th National Assembly on March 24, 2004 and was affixed with the official seal of the National Assembly.

### Transitional and concluding provisions TO THE TAX-INSURANCE PROCEDURE CODE

(PROM. – SG 105/05, IN FORCE FROM 01.01.2006)

§ 88. The code shall enter in force from the 1st of January 2006, except Art. 179, Para 3, Art. 183, Para 9, § 10, item 1, letter "e" and item 4, letter "c", § 11, item 1, letter "b" and § 14, item 12 of the transitional and concluding provisions which shall enter in force from the day of promulgation of the code in the State Gazette.

### Transitional and concluding provisions TO THE LAW FOR AMENDMENT AND SUPPLEMENT OF THE LAW FOR THE PUBLIC PROCUREMENT

(PROM. - SG 37/06, IN FORCE FROM 01.07.2006)

§ 148. (1) The procedures, opened by a decision prior to the entry into force of this

law, shall be completed by the previous order.

(2) The disputes over procedures under par. 1 shall be solved by the previous order before regional and district courts.

§ 149. The pending cases before the courts and before the Arbitration court at the Public Procurement Agency, initiated before the entry into force of this law, shall be completed by the previous order.

§ 150. (1) The Council of Ministers shall set the issued subordinate normative acts in compliance with the provisions of this law in two months term from its promulgation in State Gazette.

(2) The Council of Ministers shall discharge the chairman of the Arbitration court at the Public Procurement Agency in one month term from the entry into force of this law.

.....

§ 160. The law shall enter into force from the 1st of July 2006, except for § 12, item 1, letter "a" (with regards to item 2) and letter "g" (with regards to second sentence), § 13, item 1, letter "c", § 20, item 2, letter "c" (in the part regarding the notifying of the European commission about amendments of the lists) and letter "i" (with regards to items 17 - 22), § 46, item 4 (with regards to para 7), § 47, § 78, item 3 (with regards to second sentence) and § 125, which shall enter into force from the 1st of January 2007.

Appendix No 1 of art. 3, para 1, item 3, item b

Section	Group	Class	Name of the position
45			Construction and mounting works
	45.1		Works for the preparation of the construction plot
		45.11	Works for demolishing and cleaning of buildings; earth works
		45.12	Drilling and boring works
	45.2		Construction and mounting works of buildings and construction facilities or parts of them
		45.21	Construction and mounting works for general construction of buildings and construction facilities
		45.22	Roof and hydro-insulating works
		45.23	Construction and mounting works of roads, aircraft runways and sport terrains
		45.24	Construction and mounting works of hydro-technical facilities
		45.25	Other specialised construction and mounting works
	45.3		Construction and mounting works of installations
		45.31	Construction and mounting works of electric installations
		45.32	Insulation construction works
		45.33	Construction and mounting works of pipeline



		installations
	45.34	Construction and mounting works of other installations
45.4		Finishing construction works
	45.41	Works for placing of plasters
	45.42	Mounting works of woodwork, interior and other finishing elements
	45.43	Works for placing of floor covers and wall coating
	45.44	Works for painting and glass mounting
	45.45	Other finishing construction works
45.5		Services for renting construction machinery and facilities, with operator
	45.50	Services for renting construction machinery and facilities, with operator

Note. The section, group, class and name of the position, pointed out in the table, are in compliance with the National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).

Appendix No 2 of art. 5, para 1, item 1

Category	Services	Code of NCPEA-2003(1)
1.	Services for maintenance and repair (including installing) of machines and Facilities	50.20, 50.40.4, 52.7 All sub-categories of sector D, which Refer to repair, maintenance and installing
2.	Services of the road transport (2), including services with armoured automobiles and courier services	60.21.3, 60.21.4, 60.21.5, 60.22.1, 60.23.1, 60.24.1, 60.24.22, 60.24.30, 64.12.1, 74.60.14
3.	Services of the air transport for Transport of passengers and cargos	62.10.1, 62.10.22, 62.10.23, 62.20, 62.30
4.	Transport of post on land (2) and by air	60.24.21, 60.10.21
5.	Telecommunication services	64.20.1, 64.20.2
6.	Financial services a) insurance services (3) b) bank and investment services (3)(4)	66.01, 66.02, 66.03, 67.20 65.12, 65.2, 67.1, 67.2
7.	Computer and related services	72.21.1, 72.22, 72.30, 72.40, 72.50, 72.60
8.	Scientific research and	73.10, 73.20

	experimental developments (5)	
9.	Accounting and auditing services	74.12.1, 74.12.2
10.	Services for marketing research and opinion pools	74.13.1
11.	Consultancy services for management and economic activity (6)	74.14.1, 74.14.2, 74.15
12.	Architectural and engineering services; services for urban development and park architecture, engineering oriented scientific and technical consultancy services; technical trials and analyses	74.20.2, 74.20.3, 74.20.4, 74.20.5, 74.20.6, 74.20.7, 74.30
13.	Advertisement services	74.30
14.	Services for cleaning of buildings and management of immovable properties	74.70, 70.31, 70.32
15.	Printing services and services for reproduction of recorded carriers against remuneration or under a contract	22.21, 22.22.3, 22.23, 22.24, 22.25, 22.3
16.	Services for collecting and treatment of solid and liquid waste, including sewer waters; sanitary and cleaning services	90.01, 90.02, 90.03

Notes:

1. National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).

2. except the railroad transport services, including in category 18.

3. Including financial services, connected with the acquisition or leasing of land, existing buildings or other immovable properties, as well as in establishing of limited real rights under art. 4, item 1.

4. Except these of art. 4, item 3.

5. Except these of art. 4, item 4.

6. Except services, connected with arbitration and conciliation.

Appendix No 3 of art. 5, para 1, item 2

Category	Services	Code of
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No		NCPEA-2003(*)
17.	Services of hotels and restaurants	55
18.	Services of the railway transport (including metropolitan)	60.10, 60.21.1
19.	Services of the water transport	61
20.	Auxiliary services in transport; services of tourist agencies	63
21.	Legal services	74.11
22.	Intermediate services for collecting, directing and conceding of manpower, without the services of the Agency for employment	74.50
23.	Detective and guarding services, except the services with armoured automobiles	74.60 (except 74.60.14)
24.	Educational services	80
25.	Services for health care and social activities	85
26.	Services in the field of culture, sport and entertainment	92 (except 92.11.1, 92.11.2, 92.31.1)
27.	Other services	

Note. (\*)National classification of the products by economic activities, approved by the chairman of the National Statistics Institute pursuant to art. 9, item 5 in connection with art. 7, para 1, item 6 of the Law of statistics, promulgated as supplement of State Gazette (SG 1/03).

Appendix No 4 to art. 45a, par. 1, item 1, letter "a"  
(New - SG 37/06, in force from 01.07.2006)

List of the goods, assigned by assignors in the sphere of defence

Chapter 25	Salt, sulphur, soil and stones, plaster, lime and cement
Chapter 26	Coppers, slag and cinders
Chapter 27	Fossil fuels and products from their distillation, bituminous substances, mineral wax
except for:	
ex 27.10	special fuels for engines
Chapter 28	Inorganic chemical products, organic and inorganic compounds of precious metals, of rare metals, of radioactive elements and of isotopes
except for:	
ex 28.09	explosives
ex 28.13	explosives
ex 28.14	tear gas
ex 28.28	explosives
ex 28.32	explosives
ex 28.39	explosives
ex 28.50	toxic products
ex 28.51	toxic products

ex 28.54	explosives
Chapter 29	Organic chemicals
except for:	
ex 29.03:	explosives
ex 29.04:	explosives
ex 29.07:	explosives
ex 29.08:	explosives
ex 29.11:	explosives
ex 29.12:	explosives
ex 29.13:	toxic products
ex 29.14:	toxic products
ex 29.15:	toxic products
ex 29.21:	toxic products
ex 29.22:	toxic products
ex 29.23:	toxic products
ex 29.26:	explosives
ex 29.27:	toxic products
ex 29.29:	explosives
Chapter 30:	pharmaceutical products
Chapter 31:	Fertilizers
Chapter 32	Tanning and tinctorial extracts, tanning substances and their derivatives, paints and varnishes, putty, fillings and agers, inks
Chapter 33:	Ethereal oils and thermoactive resins, perfumery, cosmetic and toilet preparations
Chapter 34:	Soap, organic surface-active substances, preparations for washing, lubricating preparations, candles, mould clues and "tooth resins"
Chapter 35:	Albumen substances, glues, enzymes
Chapter 37:	Photographic and cinema goods
Chapter 38:	Various chemical products
except for:	
ex 38.19:	toxic products
Chapter 39:	Artificial resins and synthetic materials, cellulose esters and their derivatives
except for:	
ex 39.03:	explosives
Chapter 40:	Natural rubber, synthetic natural rubber, factice and their derivatives
except for:	
ex 40.11:	bullet-proof tyres
Chapter 41:	Raw leather (other than the leather with fur) and processed leather
Chapter 42:	Leather products, saddler goods and draught ammunitions, products for travel, bags, etc. Such products made of animal insides (except for the articles, produced from silkworms)
Chapter 43:	Leathers with fur and artificial leathers and their derivatives
Chapter 44:	Wood and products from wood, charcoal
Chapter 45:	Cork and products from cork
Chapter 46:	Products from straw, wicker-work and products from osier
Chapter 47:	Paper production
Chapter 48:	Paper and cardboard, products from wood-pulp, paper or cardboard
Chapter 49:	Printed books, newspapers, paintings or other products of the print industry, manuscripts, documents, written by a typewriter, and drawings

Chapter 65:	Halters and parts of them
Chapter 66:	Umbrellas, sunshades, walking sticks, whips and parts of them
Chapter 67:	Processed feathers and down and goods, made of feathers or down, artificial flowers, products, made of human hair
Chapter 68:	Products from stone, gypsum, cement, asbestos, mica and similar materials
Chapter 69:	Ceramic goods
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals and products from such; artificial jewellery
Chapter 73:	Iron and steel and products from them
Chapter 74:	Copper and products from it
Chapter 75:	Nickel and products from it
Chapter 76:	Aluminium and products from it
Chapter 77:	Magnesium and beryllium and products from them
Chapter 78:	Lead and products from it
Chapter 79:	Zink and products from it
Chapter 80:	Tin and products from it
Chapter 81:	Other non-precious metals, used in metallurgy, and the products from them
Chapter 82:	Instruments, tools, cutler's articles, spoons and forks, as well as parts of them
except for:	
ex 82.05:	instruments
ex 82.05:	Instruments, parts
Chapter 83:	Various articles made of base metals
Chapter 84:	Boilers, equipment, mechanical devices and parts of them
except for:	
ex 84.06:	engines
ex 84.08:	other engines
ex 84.45:	machinery
ex 84.53:	machines for automatic processing of data
ex 84.55:	parts of the machines according to subdivision No 84.53
ex 84.59:	nuclear reactors
Chapter 85:	Electrical facilities and equipment and parts of them
except for:	
ex 85.13	telecommunication equipment
ex 85.15:	radio and television equipment
Chapter 86:	Railway and tram locomotives, rolling stocks and parts of them, fixing and mounting elements for railway and tram rails, signals for regulation of the traffic of any kind (without electrical supply)
except for:	
ex 86.02:	armoured locomotives, electrical
ex 86.05:	armoured carriages
ex 86.06:	repair carriages
ex 86.07:	carriages
Chapter 87:	Means of transport, other than railway or tram rolling stocks and parts of them
except for:	
ex 87.08:	tanks and other armoured means of transport

ex 87.01:	tractors
ex 87.02:	military means of transport
ex 87.03:	automobiles for technical aid
ex 87.09:	Motorcycles
ex 87.14:	trailers
Chapter 89:	Ships, boats and sailing vessels
except for:	
Ex 89.01 A:	military ships
Chapter 90:	Optical, photographic, cinema, measuring, testing, precise, medical and surgical instruments and equipment, parts of them
except for:	
ex 90.05:	binoculars
ex 90.13:	various instruments, lasers
ex 90.14:	telemeters
ex 90.28:	electrical and electronic measuring instruments
ex 90.11:	microscopes
ex 90.17:	medical instruments
ex 90.18:	mechanical therapy appliances
ex 90.19:	orthopaedic devices
ex 90.20:	Roentgen equipment
Chapter 91:	Manufacture of watches
Chapter 92:	Musical instruments, sound-recording and play-back devices, sound recording mechanisms, devices recording television images, parts and accessories of these articles
Chapter 94:	Furniture and furniture parts, bed linen, mattresses, bed-springs, pillows and similar fittings
except for:	
ex 94.01	aircraft seats
Chapter 95:	Articles and products of carving and moulding material
Chapter 96:	Brooms, brushes, filters
Chapter 98:	Various ready-made goods