

THE LAW ON PUBLIC PROCUREMENT

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Pursuant to Article 82 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the Parliament of Montenegro, at its 26th Convocation, at the Sixth Sitting of the Second Regular (Autumn) Session in 2019, on 17 December 2019, adopted the following:

THE LAW ON PUBLIC PROCUREMENT¹

I. BASIC PROVISIONS

1. Scope of the Law, Obligated Entities and Definitions

Scope of the Law

Article 1

This Law shall govern the rules of public procurement procedures for concluding contracts or framework agreements on public procurement of goods, works or services, protection of rights in public procurement procedures and other matters relevant to public procurement.

Obligated Entities

Article 2

Entities obliged to apply this Law are public and sectoral contracting authorities (hereinafter: the contracting authority).

Public contracting authorities shall be:

- 1) State authority;
- 2) local self-government unit;
- 3) public service, i.e., a company that:
 - has the status of a legal entity,

¹ Official Gazette of Montenegro, No. 074/19 of 30.12.2019, 003/23 of 10.01.2023, 011/23 of 27.01.2023, 084/24 of 06.09.2024.

- was founded to meet the needs of the public interest, which does not have an industrial or commercial character,
- in which the state and/or local self-government unit owns more than 50% of the shares or shares or which is financed with more than 50% from the budget of Montenegro and/or the budget of the local self-government unit and other public revenues or over which the public contracting authority exercises control or which has more than half of the members of the management body or supervisory body appointed by the public contracting authority;

4) an association, i.e., an organization founded by two or more contracting authorities.

Sectoral contracting authority shall be:

- 1) a public contracting authority that performs one of the sectoral activities established by this Law,
- 2) a company in which the public contracting authority has a predominant influence and which performs sectoral activity, or
- 3) another economic operator that performs a sectoral activity based on special or exclusive rights granted to them by the competent state authority or the competent authority of the local self-government unit.

The public contracting authority shall have the predominant influence referred to in paragraph 3 item 2 of this Article if it:

- has, directly or indirectly, a major share of the registered capital of the company,
- or
- controls the majority of votes related to shares issued by the company, or
 - may apitem more than half of the members of the supervisory, administrative, or other body responsible for the management and management of the company's affairs.

Special or exclusive rights referred to in paragraph 3 item 3 of this Article shall be the rights granted by the competent state authority or the competent authority of the local self-government unit based on a law or other regulation, with the effect to limit the performance of sectoral activities to one or more economic operators and which significantly affect the possibility other economic operators to perform that activity.

The rights referred to in paragraph 5 of this Article shall not be considered to be the rights granted based on a publicly conducted procedure in which objective criteria for the award of those jobs were determined.

Procedures referred to in paragraph 6 of this Article shall be:

- 1) procedures carried out in accordance with the provisions of this Law, regulations governing public procurement for defense and security, or regulations governing the awarding of concessions and public-private partnerships provided that tender documentation, i.e., a public invitation or a concession act in accordance with the law, has been previously published;
- 2) procedures that ensure appropriate prior transparency for granting authorization based on objective conditions for:
 - a) granting of authorization for work at gas plants in accordance with the procedures established by special regulations regulating the gas market field;
 - b) authorization or tender documentation for the construction of new facilities for the production of electricity in accordance with the regulations governing the area of the electricity market;
 - c) granting of authorization for postal services that are not or shall not be reserved, in accordance with the procedures established by the regulations

governing the provision of postal services;

d) granting of approval for the continuation of hydrocarbon production activities in accordance with the regulations governing the exploration and production of hydrocarbons;

e) conclusion of contracts on public procurement of public passenger transport services by bus or rail, which were awarded based on a competitive negotiated procedure.

The newly established contracting authority shall, within 30 days from the date of acquisition of the status of the contracting authority, apply to the state administration body responsible for public procurement affairs (hereinafter: the Ministry) for the purpose of its registration on the list of contracting authorities.

The contracting authority shall apply this Law even if it is not recorded in the list referred to in paragraph 8 of this Article.

The entity obliged to apply this Law shall also be a natural or legal person that is not the contracting authority referred to in paragraphs 1 and 2 of this Article for the procurement of:

- 1) works that are directly subsidized or co-financed by the public contracting authority with more than 50% and whose estimated value is equal to or greater than the value referred to in Article 26, paragraph 1 item 6 of this Law,
- 2) services related to the works contract referred to in item 1 of this paragraph, which are directly subsidized or co-financed by the public contracting authority with more than 50% and whose estimated value is equal to or greater than the value referred to in Article 26, paragraph 1, item 6 of this Law.

The public contracting authority that subsidizes or co-finances works or services, shall inspect the implementation of the procedure and the use of funds referred to in paragraph 10 of this Article in accordance with this Law.

Public Procurement, Affairs and Public Procurement Activities

Article 3

Public procurement is a set of actions and activities carried out by the contracting authority, in accordance with this Law, to procure goods, provide services or execute works for which funds are provided, regardless of whether the goods, services or works have a public purpose.

The affairs of public procurement are the following: procurement planning, conducting a public procurement procedure, preparation of tender documents and other documents, preparation of public procurement contracts and monitoring of the implementation of public procurement contracts, as well as other tasks related to the public procurement procedure.

If centralized public procurement is carried out, the contract implementation referred to in paragraph 2 of this Article shall be monitored by the contracting authority for whom the public procurement has been carried out.

Public procurement affairs include provision of technical and expert support and advice in the preparation and implementation of public procurement procedures on one's own behalf or on behalf and for the account of a specific contracting authority.

Definitions

Article 4

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

- 1) state body is: the Parliament of Montenegro, the President of Montenegro, the

Government of Montenegro, the Constitutional Court of Montenegro, the Judicial Council, the State Audit Institution, the Protector of Human Rights and Freedoms, the State Prosecutor's Office, the Council of Prosecutors, the Protector of Property and Legal Interests, the Central Bank of Montenegro, court, ministry, administrative body and other body and organization founded by the state;

2) the unit of local self-government is: a municipality, Capital City and the Old Royal Capital, in accordance with the law;

3) public service is the University of Montenegro, a public institution, the state fund and other body or organization exercising public powers, founded by the state, or a local self-government unit;

4) economic operator is a company, entrepreneur, institution and other legal and physical entity that bids goods, services and/or works on the market;

5) the candidate is an economic operator that has qualified for the next stage of the multi-stage public procurement procedure;

6) e-Certis is an electronic system, an online database of the European Commission that contains information of the evidence submitted in the public procurement procedure and the authorities responsible for issuing it in the Member States of the EU;

7) equivalence is the possession of the same or better technical characteristics of the bided goods or services than the characteristics of the procurement object required by the technical specification;

8) electronic public procurement system (hereinafter: EPPS) is a public procurement system that applies information and communication means;

9) electronic communication service is a service provided for a fee or free of charge and which consists entirely or predominantly of the transmission of signals via electronic communication networks, including telecommunications services and transmission services in networks used for broadcasting, excluding the provision of services, or the performance editorial supervision over content transmitted using electronic communication networks and services;

10) electronic means is electronic processing equipment including digital compression (data compression) and storage of data sent, transmitted and received by wire, radio, optical or other electromagnetic means;

11) innovation is the practical application of new or significant improvement of existing products, goods, services, procedures, processes, organization and marketing, which contribute to the creation of new value and quality in its application;

12) public communication network is an electronic communication network that is used entirely or predominantly for the provision of electronic communication services;

13) authorized person of the contracting authority is the head of the authority or public service, the executive director of a company or legal entity or a person authorized by them to take actions on their behalf in the public procurement procedure;

14) authorized person of the economic operator is the executive director, or the person authorized by them or the management body to undertake actions in the public procurement procedure;

15) military equipment is equipment specially designed or adapted for military needs and intended for use as a weapon, ammunition or military material, including its every part or component thereof;

16) life cycle of the subject of public procurement means all successive and/or interconnected phases, including research and development, production, trade and terms of trade, transportation, use and maintenance throughout the existence of the product, provision of service or works, from procurement of raw materials or generation of resources to disposal, withdrawal, execution or use of the procurement subject;

17) bidder is an economic operator that submitted a bid or several economic operators that submitted a joint bid in a public procurement procedure;

18) subcontractor is an economic operator to which the bidder has entrusted the implementation of part of the procurement subject or part of the public procurement contract;

19) centralized procurement activities are activities that the authorized contracting authority continuously carries out for the procurement of goods and/or services intended for other public contracting authorities by concluding contracts, or framework agreements;

20) a technical reference is a product standard developed by European accreditation bodies, different from European norms, in accordance with procedures adapted to the development of market needs;

21) security-sensitive equipment, security-sensitive works and security-sensitive services are equipment, works and services that are procured for security purposes, which include, or which require data that is marked with a degree of confidentiality in accordance with the law regulating data confidentiality;

22) special risks associated with the subject of public procurement represent the risks that exist in the procurement of services in the area of the Law on the Protection of the Population from Infectious Diseases ("Official Gazette of Montenegro", No. 12/18, 64/20 and 59/21) and the Law on Health Care ("Official Gazette of Montenegro", No. 3/16, 39/16, 2/17, 44/18, 24/19, 82/20 and 8/21);

23) common procurement vocabulary is the nomenclature of goods, services and works that is applied in the public procurement procedure and which ensures compliance with other nomenclature.

Language in a Public Procurement Procedure

Article 5

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 2)

The contracting authority shall prepare the tender documentation and conduct the procedure in Montenegrin language or another language that is in official use in Montenegro.

The contracting authority may prepare tender documentation or individual parts of tender documentation in the language used in international trade.

Qualification application and bid shall be drawn up in the language stipulated by the tender documentation.

The contracting authority may allow qualification application and bid to be made in the language used in international trade entirely or partially, in the part related to technical characteristics, quality and technical documentation.

If the bidder submits a part of the bid in the language used in international trade in accordance with the tender documentation, the contracting authority shall provide translations by a certified interpreter of all documents that are not in the language referred to in paragraph 1 of this Article, in the event of a complaint.

Currency

Article 6

In public procurement procedures, the currency shall be the Euro.

If no currency is specified in the tender documentation, bid, decision, contract or other act related to public procurement, it shall be considered that the estimated value, bided price and/or contracted price is expressed in euros.

2. Principles of Public Procurement

The Principle of Cost-Effectiveness, Efficient and Effective Use of Public Funds

Article 7

In the public procurement procedure, the contracting authority shall ensure the cost-effective, efficient and effective use of public funds and the procurement of goods, services, i.e. works, of appropriate quality taking into consideration the purpose, use and estimated value of the public procurement.

Principle of Ensuring Competition

Article 8

The contracting authority shall ensure competition between economic operators in the public procurement procedure, in accordance with the law.

The contracting authority may not restrict or prevent competition between economic operators, and in particular may not prevent the participation of the economic operator in the public procurement procedure by unjustified application of the negotiation procedure or by the application of discriminatory conditions and criteria or measures that favor individual economic operators.

Principle of Transparency of Public Procurement Procedure

Article 9

The contracting authority shall conduct public procurement procedures in a transparent manner.

The transparency referred to in paragraph 1 of this Article is ensured by publishing the documentation necessary for conducting and implementation of the public procurement procedure in the EPPS, in accordance with this Law.

Principle of Equality, Freedom and Prohibition of Discrimination

Article 10

The contracting authority shall ensure that all economic operators are treated equally in the public procurement procedure.

Contracting authority shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operator, or discrimination which would arise from the classification of business activity carried out by an economic operator.

Contracting authority shall not restrict the free movement of goods, depending on the place of registration of the economic operator and the place of performance of works and provision of services.

In the public procurement procedure, the contracting authority shall not provide information in a discriminatory manner, which would provide an advantage to a particular participant in the procedure over the other participants.

Principle of Environmental Protection, Social and Labor Law and the Promotion of Energy Efficiency

Article 11

The contracting authority shall ensure in the public procurement procedure that all economic operators comply with applicable obligations in the fields of environmental protection, social and labor law, including collective agreements, in accordance with the law and ratified international conventions on environmental protection and social and labor law.

The contracting authority shall procure goods, services or works while ensuring an adequate reduction in energy consumption, i.e., compliance with the principles of energy efficiency.

Principle of Proportionality

Article 12

The contracting authority shall establish the conditions for participation in the public procurement procedure, related to the economic-financial and professional-technical ability of the economic operator, proportionally to the complexity of the procurement subject, the execution of the public procurement contract and the estimated value of the public procurement.

3. Exemptions from Application of the Law

Exceptions under Concluded International Agreements

Article 13

This Law shall not apply to procurement of goods, services or works carried out:

- 1) according to the particular rules of an international organization, based on a ratified international agreement with that international organization;
- 2) in accordance with the procedures established differently from this Law, based on legal instruments establishing international legal obligations, such as international agreements between Montenegro and one or more Member States of the European Union or third countries, for procurements that the contracting parties will jointly realize or use;
- 3) according to particular rules established by an international organization or an international financial institution, which fully finances or provides financing for the project, unless otherwise agreed.

In terms of procurements referred to in paragraph 1 item 3 of this Article that are co-financed by more than 50% by an international organization or an international financial institution, the contractual parties shall mutually determine the rules of the public procurement procedure they will apply.

Legal instruments that establish international legal obligations and procedures that are applied to conclude contracts referred to in paragraph 1 item 2 of this Article are implemented in accordance with the principles of equal treatment, non-discrimination and transparency.

The contracting authority shall notify the Ministry on concluded contracts or the agreements referred to in paragraph 1 of this Article, within 30 days of signing thereof.

The Government of Montenegro (hereinafter: the Government) shall notify the European Commission that the contract referred to in paragraph 1 item 2 of this Article has been concluded.

Exemptions for Procurement of Specific Items

Article 14

This Law shall not apply to:

- 1) acquisition or lease of land, existing buildings or other immovable property or concerning rights thereof;
- 2) acquisition, development, production or co-production of program material intended for audiovisual media services or radio media services procured by providers of audiovisual or radio media services;
- 3) services of providing radio-television or program broadcasting which are contracted with providers of audiovisual or radio media services;
- 4) arbitration or peaceful dispute resolution services,
- 5) legal services namely:
 - a) lawyer services in:
 - representation in arbitration or peaceful settlement of disputes in Montenegro, a member state of the European Union, a third country or international arbitration; or
 - representation before courts and other bodies in Montenegro, a member state of the European Union or in a third country, before international courts and other institutions;
 - b) advisory services of a lawyer in order to prepare for the representation referred to in sub-item a of this item;
 - c) notary services or other legal services related to the exercise of entrusted public powers;
- 6) procurement of services of the Central Bank of Montenegro;
- 7) services related to the issuing, sale, purchase or transfer of securities or other financial instruments, financial and legal services and other services related to securities or other financial instruments, in accordance with the law regulating the capital market;
- 8) loans, credits and other financial derivatives, regardless of whether they are related to the issuing, sale, purchase or transfer of securities and other financial instruments;
- 9) financial and legal assistance, i.e. other actions related to loans, credits and other financial derivatives from item 8 of this paragraph;
- 10) financial, legal or other services in the process of privatization of the economy;
- 11) services related to employment;
- 12) civil protection and rescue services covered by the CPV under codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 8514 3000-3 provided by non-profits organizations or associations;
- 13) research and development services, except services included in the CPV under codes: 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5, if these services are fully financed by the contracting authority and used for their own needs;
- 14) public transportation of passengers by rail, underground railway or trolley;
- 15) political campaign services, covered by the CPV codes 9341400-0, 92111230-3 and 92111240-6, if procured by a political party within the framework of an election campaign;
- 16) procurement of election material;

17) tasks of preparation and adoption of planning documents stipulated by the law governing spatial planning.

Exemption for Procurement of Postal Services

Article 15

This Law shall not apply to procurements made by a sectoral contracting authority that provides postal services referred to in Article 165, paragraph 2, item b of this Law, for the following:

- 1) services provided entirely by electronic means, including secure transmission of encrypted documents by electronic means, address management services and sending of registered electronic mail;
- 2) financial services covered by CPV under codes from 66100000-1 to 66720000-3 and financial services related to securities or other financial instruments from Article 14 paragraph 1 item 7 of this Law, including postal money orders and postal giro transfers;
- 3) philatelic services, or
- 4) logistics services (combination of physical delivery or storage and other non-postal functions).

Exemptions for Procurement in the Field of Electronic Communications

Article 16

This Law shall not apply to procurement whose purpose is to enable the contracting authority to provide or use a public electronic communication network or to provide the public with one or more electronic communication services, in accordance with the law regulating electronic communications.

Exemptions for Procurement of Services Based on Exclusive Right

Article 17

This Law does not apply to the procurement of services that a public contracting authority assigns to another public contracting authority or a group of public contracting authorities based on an exclusive right established in accordance with the law or another regulation.

Exemption for Procurement in the Public Sector

Article 18

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 3)

This Law does not apply to procurement of goods, services and works awarded by the public contracting authority to another legal entity, if:

- 1) independently or together with another public contracting authority supervises that legal entity;
- 2) that legal entity performs more than 80% of the activities in the execution of tasks entrusted by one or more public contracting entities or other legal entities over which those public contracting entities supervise; and
- 3) there is no direct participation of private capital in a legal entity, except for the participation of private capital in accordance with the law and founding acts of that legal entity, and that does not significantly participate in controlling, nor does it have restricting rights and does not exert a decisive influence on that legal entity.

The public contracting authority shall be deemed to independently manage the legal entity

referred to in paragraph 1 item 1 of this Article if it has a decisive influence on the management and management of the affairs of that economic operator, i.e., on making important decisions and determining the strategic goals of the economic operator.

Joint management referred to in paragraph 1 item 1 of this Article shall be considered management, if:

- 1) the management bodies of the economic operator are made up of representatives of public contracting authorities, with the fact that an individual representative can represent several or all public contracting authorities;
- 2) public contracting authorities together have a decisive influence on strategic goals and significant decisions in that economic operator; and
- 3) that economic operator does not pursue interests different from those of the public contracting authorities who supervise it.

The provision of paragraph 1 of this Article also applies if the legal entity over which supervision is exercised is a public contracting authority, and it awards a contract to a public contracting authority which supervises it or to another legal entity over which that public contracting authority exercises control, provided that in the legal entity which the contract is awarded there is no direct participation of private capital, except for the participation of private capital in accordance with the law and founding acts of that legal entity, which does not have a significant participation in controlling and the strength of restrictions and which does not exert a decisive influence on that legal entity.

Exemptions for Procurement between Public Contracting Authorities

Article 19

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 4)

This Law shall not apply to procurements that are carried out exclusively between two or more public contracting authorities if:

- 1) a contract concluded establishes or implements the cooperation of public contracting authorities, in order to provide a public service that achieves their common goals;
 - 2) cooperation is carried out in order to achieve and/or protect the public interest;
- and
- 3) those public contracting authorities perform on the market less than 20% of the activities to which the cooperation referred to in item 1 of this paragraph refers.

Determining the percentage share of the activities referred to in paragraph 1 item 3 of this Article and Article 18 paragraph 1 item 2 of this Law is done on the basis of the average of the total turnover or another measure such as the costs incurred by the ordering parties for the provision of services, the procurement of goods and the performance of works for the period of three years preceding the year in which the contract is concluded.

If for the public contracting authority that was founded or started to perform its activity or due to the reorganization of that contracting authority, turnover data for the three years preceding the year in which the contract is concluded is not available, the fulfilment of the required conditions is proven by the contracting authority's economic projections.

Exemptions for Procurement for the Pursuit of Sectoral Activity of Resale or Lease

Article 20

This Law shall not apply to procurements made by the sectoral contracting authority:

- 1) for the purpose of resale or leasing of procurement subjects if the sector

purchaser does not have a special or exclusive right to sell or lease procurement subjects and if other subjects can freely sell or lease these items under the same conditions as the sector procurement entity, or

2) if the sectoral activity is directly exposed to competition in markets where access is not restricted, in accordance with Art. 170 and 171 of this Law.

3)

Exemptions for Procurement of Water, Energy or Fuel for Energy Production

Article 21

This Law shall not apply to:

- 1) procurement of energy or fuel for energy production carried out by a sectoral contracting authority that performs activities from Article 159, or Article 160 paragraph 1, Article 161 paragraph 1 or Article 166 of this Law;
- 2) the procurement of water carried out by the sectoral contracting authority that performs the activity referred to in Article 162 paragraph 1 of this Law;
- 3) procurement from an associated company or on the basis of a joint venture from Article 167 of this Law.

Exemptions for Procurement in the Field of Defense or Security

Article 22

This Law shall not apply to defense and security procurements that contain elements referred to in Art. 175, 176 and 177 of this Law.

Exemptions for Simple Procurements

Article 23

This Law shall not apply to procurement referred to in Article 26, paragraph 1, items 1, 2 and 3 of this Law (hereinafter: simple procurement).

4. Special public procurement

Procurement for Diplomatic-consular Missions and Military-diplomatic Representatives

Article 24

The method of conducting procurement of goods and services with an estimated value of less than 40,000.00 euros or procurement of works with an estimated value of less than 100,000.00 euros and reporting on the procurements carried out for diplomatic and consular missions of Montenegro abroad, military and diplomatic representatives and units of the Army of Montenegro in international forces and peacekeeping missions is prescribed by the Government, unless otherwise stipulated by an international agreement or contract.

Reserved Public Procurements

Article 25

The contracting authority may, in the tender documentation, establish the right to participation of economic operators that perform professional rehabilitation and employment of persons with disabilities, as well as persons in a disadvantageous social position in accordance with a special law, if these persons make up at least 30% of the employees, while all participants in the joint bid shall belong to that group.

The economic operator referred to in paragraph 1 of this Article may hire a subcontractor who does not meet the conditions referred to in paragraph 1 of this Article, whose participation in the public procurement shall not exceed 20% of the value of the

procurement.

The economic operator referred to in paragraph 1 of this Article shall submit proof of fulfilment of the conditions referred to in paragraph 1 of this Article along with the application for qualification and the bid.

5. Thresholds, Participation in a Procedure and Data Protection

Thresholds

Article 26

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 5)

Procurements shall be classified into:

- 1) procurement of goods, services and works with an estimated annual value of up to EUR 8,000.00;
- 2) procurement of goods and services with an estimated annual value equal to and greater than EUR 8,000.00 and less than EUR 25,000.00;
- 3) procurement of works with an estimated annual value equal to or greater than EUR 8,000.00 and less than EUR 40,000.00;
- 4) public procurement of goods and services with an annual estimated value equal to or greater than 25,000.00 euros;
- 5) public procurement of works with an annual estimated value equal to or greater than 40,000.00 euros;
- 6) public procurement of goods, services and works of estimated annual value equal to or greater than the thresholds of the European Union.

The thresholds referred to in paragraph 1 item 6 of this Article are published by the Ministry.

Application of Regulations

Article 27

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 6)

The method of conducting simple procurements referred to in Article 26 paragraph 1 items 1, 2 and 3 of this Law are prescribed by the Ministry.

The contracting authority shall conduct purchases referred to in Article 26 paragraph 1 items 4, 5 and 6 of this Law according to the procedure stipulated by this Law.

The contracting authority shall not divide the procurement subjects in order to avoid the application of this Law.

The contracting authority may conduct simple purchases referred to in Article 26 paragraph 1 items 1, 2 and 3 of this Law according to the procedures referred to in Article 51 of this Law.

The provisions of the law governing the administrative procedure shall apply to matters of the protection of rights in public procurement procedures that are not regulated by this Law, except in the part of the implementation of the public procurement procedure, until the protection of rights is achieved.

Application of this Law to Public-Private Partnership

Article 28

The provisions of this Law shall apply accordingly to the awarding of public-private partnership contracts, unless otherwise stipulated by a separate law.

Right to Participate in a Public Procurement Procedure

Article 29

An economic operator may participate in the public procurement procedure independently or jointly with one or more economic operators in accordance with this Law.

Data Protection

Article 30

An economic operator may mark certain data that represent a business secret in the application for qualification, and the bid, as confidential, except for the bided price, the catalogue, the financial part of the bid, data that are evaluated according to the criteria for selecting the most advantageous bid, public documents and evidence of the fulfilment of the conditions in public procurement procedure.

The contracting authority shall not disclose the data of the economic operator that are listed as economic secrets.

The contracting authority shall not disclose or forward certain data or solutions to other candidates and bidders in the negotiation procedure without prior publication of the call for tenders, competitive negotiated procedure, competitive dialogue, partnership for innovation or negotiation procedure with prior publication of the call for public tenders, communicated by a candidate or bidder participating in negotiations or dialogue, without their written consent.

The contracting authority may, in the tender documentation, establish as confidential certain data which they make available to economic operators in the public procurement procedure, in accordance with the law governing data confidentiality.

11. COMMUNICATION, CONFLICT OF INTEREST AND ANTI-CORRUPTION ACTIVITIES

1. Communication Between Contracting Authorities and Economic Operators

Electronic Communication

Article 31

The contracting authority and economic operators exchange information and data in the public procurement procedure electronically in accordance with the regulations governing electronic administration, electronic identification and electronic signature, electronic document, electronic trade and information security.

Notwithstanding paragraph 1 of this Article, the contracting authority and economic operators exchange information and data in the public procurement procedure in another manner if:

- 1) the exchange of information and data electronically would require special electronic means or the use of file formats that are not generally available or not supported by generally available applications;
- 2) the exchange of information and data electronically supports the use of file formats, which may be used to describe bids, but shall not be downloaded or used remotely by the contracting authority ;
- 3) the use of electronic means requires specialized office equipment that is not

generally available to the contracting authority;

4) samples, models, original documents or other evidence, not submitted by electronic means, are submitted in the public procurement procedure;

5) the regulation regulating public procurement for the needs of defense and security or the regulation governing public procurement for the needs of diplomatic-consular missions and military-diplomatic representatives abroad is applied to procurement.

Communication in the case referred to in paragraph 2 of this Article takes place through an authorized postal service provider or other appropriate courier service, by fax, by electronic mail or by combining them with electronic means.

If in the public procurement procedure, a document is sent electronically by the contracting authority or an economic operator, it is considered that the delivery has been made properly if the recipient confirms receipt of the document by an action that materially confirms the receipt of the electronic document, including automated systems for confirming receipt.

The sent electronic document is considered received when the sender receives a confirmation of receipt from the recipient.

If the document, for technical reasons, shall not be read, the economic operator, the applicant for the qualification, or the bidder, can request that the document be delivered to them in another appropriate form.

Electronic Means of Communication

Article 32

Electronic means of communication, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with information and communication technology products in general use and shall not restrict the access of economic operators to the public procurement procedure.

Communication, exchange and storage of information and data in the public procurement procedure shall be conducted in a way that ensures the integrity and confidentiality of data from applications for qualification, bids, plans and projects.

Powers of Contracting Authority

Article 33

The contracting authority shall not be obliged to exclusively request electronic communication in the public procurement procedure in the event of:

1) the existence of a risk of violation of the security of electronic means of communication or

2) the need to protect sensitive information that requires a high level of protection, and not sufficiently provided by electronic tools and devices that are generally available to economic operators or may be made available to them in another way, by an alternative means of access.

Alternative Means of Access

Article 34

The contracting authority may require the use of electronic means that are not widely available, provided that it bids an alternative means of access.

The contracting authority shall be deemed to have bided an alternative means of access if:

1) provide unlimited, complete and free direct access to those means electronically,

from the date of publication or sending of the tender documentation, if the tender documentation specifies the Internet address at which the electronic funds are available;

- 2) ensures that an economic operator that does not have access to electronic means or does not have the possibility to obtain them within a certain time limit, can participate in the public procurement procedure by using free access available via the Internet, established by the contracting authority;
- 3) supports an alternative channel for electronic submission of bids.

Special Requirements for the Use of Electronic Means

Article 35

The contracting authority may, in the case of procurement of works, plans and projects, require the use of special electronic means such as virtual representations of the building model or similar, whereby it shall provide an alternative means of access, until such means become generally available.

Electronic means for transmitting and receiving applications for qualification, bids, plans and projects shall ensure that:

- 1) the exact time and date of receipt of applications for qualification, bids, plans and projects may be accurately determined;
- 2) before the set deadline, no one can have access to the data transferred referred to in item 1 of this paragraph;
- 3) only authorized person of the contracting authority can determine or change the date set for the opening of the received data, access to all submitted data or their parts in different stages of the public procurement procedure, as well as access to the transferred data;
- 4) data received and disclosed in accordance with this Law shall be made available only to persons authorized to acquaint themselves therewith;
- 5) a violation and prohibition or conditions referred to in items 1, 3 and 4 of this paragraph are clearly detectable.

In addition to the requirements referred to in paragraph 2 of this Article, electronic means for transmitting and receiving applications for qualification, bids, plans and projects must ensure that:

- 1) data related to the specifications required for the electronic delivery of applications for qualification and tenders, including encryption and electronic time stamping, shall be available to economic operators;
- 2) in different stages of the specific public procurement procedure, the contracting authority may require a certain level of security of the means of electronic identification;
- 3) if the contracting authority concludes that the level of risk, assessed in accordance with item 2 of this paragraph, is such that a qualified electronic signature is required, it shall accept a qualified electronic signature in accordance with the regulation governing electronic identification and electronic signature.

The contracting authority shall explain the reasons for the use of non-electronic means of communication referred to in Articles 31 and 33 of this Law in the tender documentation and other documents in the public procurement procedure.

Written Communication

Article 36

Written communication in the public procurement procedure between contracting parties and economic operators is conducted by mail, courier service or in another appropriate way stipulated by the tender documentation.

Verbal Communication

Article 37

Notwithstanding Art. 31 and 36 of this Law, the contracting authority may communicate verbally with the economic operator, if the communication does not relate to the key elements of the public procurement procedure, provided that the content of the communication is documented in an essential part by making an official note or audio recording by the contracting authority.

The key elements of the public procurement procedure referred to in paragraph 1 of this Article are the tender documentation, the conditions for participation in the public procurement procedure, the application for qualification and the bid.

2. Prevention of Corruption and Conflicts of Interest

Obligations of the Contracting Authority

Article 38

During the public procurement procedure, the contracting authority shall take measures to prevent and eliminate the consequences of corrupt activities.

The contracting authority shall:

- 1) exclude from the public procurement procedure an economic operator, an applicant for qualification, i.e., a bidder found to have directly or indirectly given, bided, promised or in some other way presented a gift or other benefit to a public procurement officer, a member of the commission for the implementation of the public procurement procedure procurement, to a person who participated in the preparation of tender documentation, to a person who participates in procurement planning, or to another person, with the aim of obtaining confidential information or influencing the actions of the contracting authority;
- 2) records the cases referred to in item 1 of this paragraph, makes an official note, submits a report to the competent state authorities in order to take measures in accordance with the law and notifies the Ministry;
- 3) performs risk analysis and control in public procurement procedures.

A public procurement contract concluded in violation of the anti-corruption rule is void (anti-corruption clause).

The Ministry prescribes the way of management, the content of records on conflicts of interest, i.e. the violation of anti-corruption rules and the methodology of risk analysis in the exercise of control in public procurement procedures, for the purpose of proactive action in the prevention and early detection of corrupt acts and other acts characterized by corruption.

Obligation to Report Corruption

Article 39

A person employed in public procurement or another person employed by the contracting authority, who has knowledge of corruption in public procurement, is obliged, depending on who the knowledge relates to, to inform the authorized person of the contracting

authority, the Ministry, the body responsible for preventing corruption and the competent state prosecutor.

Obligation to Prevent Conflict of Interest

Article 40

The contracting authority shall take appropriate measures to effectively prevent, recognize and remove conflicts of interest related to a public procurement procedure.

Conflict of Interest Between Contracting Authority and Economic Operator

Article 41

A conflict of interest between the contracting authority and the economic operator exists if:

- 1) representative of the contracting authority acting in the name and/or on behalf of the contracting authority, conducting the public procurement procedure, has a direct or indirect financial, economic or other personal interest that may affect their impartiality and independence in conducting the public procurement procedure, particularly if:
 - participate in the management of an economic operator or
 - their participation in ownership stake or shares exceeds 2.5% of the capital or another right on the basis of which they can participate in the management of economic operator's activity;
- 2) authorized person of the economic operator:
 - has an ownership or shares of the contracting authority that exceeds 2.5% of the capital value or
 - is a spouse or common-law partner to the contracting authority's representative, regardless if the union still exists, is a relative in the direct line or in the collateral line up to the fourth degree, in-laws up to the second degree or as an adoptive parent or adoptee.

The representative of the contracting authority referred to in paragraph 1 item 1 of this Article shall be:

- 1) authorized person of the contracting authority ;
- 2) public procurement officer, member of the commission for implementing the public procurement procedure, a person participating in the preparation of tender documentation and a person participating in procurement planning;
- 3) the person referred to in item 1 and 2 of this paragraph, acting in the name and/or on behalf of the contracting authority in joint procurement.

The provision of paragraph 1 item 2 of this Article also applies to the authorized person of the candidate, bidder, member of the joint bid and/or subcontractor.

The provision of paragraph 1 item 1 of this Article applies to relatives in the direct line and in the collateral line up to the fourth degree, relatives by in-laws up to the second degree, spouse or common-law partner, regardless of whether the marriage has ended, adoptive parents and adoptees and representatives of the contracting authority referred to in paragraph 2 item 1 of this Article.

The transfer of ownership shares or shares to another legal entity or natural person in accordance with regulations on the prevention of conflicts of interest does not exclude the existence of a conflict of interest while the transfer of shares lasts.

Conflict of Interest Arising from Prior Activities of Economic Operator With Contracting Authority

Article 42

An economic operator or a person created or participated in creating technical documentation or audited technical documentation and an economic operator whose authorized person or expert participated in the creation or revision of technical documentation, used to prepare the technical specification in the tender documentation or documentation under which the contract on public procurement is executed, or for the execution of works and/or the performance of expert supervision over the execution of works is implemented, and the person participated in technical consultations or technically advising the contracting authority, shall not participate in the public procurement procedure for the execution of works and/or the performance of expert supervision over the execution of works as a bidder, member of a joint bid or subcontractor and shall not cooperate with the bidder, the submitter of a joint bid, or a subcontractor on the preparation of the bid, unless:

- 1) the subject-matter of the procurement is the preparation of technical documentation and the execution of works according to that technical documentation;
- 2) the subject-matter of the procurement is the development of the main project, based on the previously prepared conceptual solution, or the conceptual project or individual documents related to technical documentation in accordance with the law;
- 3) the entire content of technical consultations and technical advice is an integral part of the tender documentation.

Preventing and Recording Conflicts of Interest

Article 43

The representative of the contracting authority referred to in Article 41 paragraph 2 of this Law shall, before the start of the public procurement procedure, sign a statement declaring absence of a conflict of interest or notify the authorized person of the contracting authority that they are in a conflict of interest, and if a conflict of interest occurs during the public procurement procedure, to submit a request for exemption without delay.

An economic operator that intends to participate in the public procurement procedure shall, within the deadline for appealing the tender documentation, request the contracting authority to exclude the person referred to in Article 41 paragraph 2 of this Law, who is in conflict of interest from the public procurement procedure.

Exemption of the authorized person of the contracting authority shall be determined by the authority that appointed or elected them, and the exemption of other representatives of the contracting authority shall be decided by the authorized person of the contracting authority, no later than eight days from the date of submission of the request for exemption.

The contracting authority shall submit requests for exemption due to conflict of interest and register them in the records of conflict of interest and shall notify the Ministry and the authority responsible for the prevention of corruption without delay.

An economic operator participating in the public procurement procedure shall declare in the statement of the economic operator whether its authorized person is in a conflict of interest referred to in Article 41 paragraph 1 item 2 of this Law and whether there is a conflict of interest in line with Article 42 of this Law.

III. AUTHORITIES IN CHARGE OF CONDUCTING PUBLIC PROCUREMENT PROCEDURES

Tasks in the Public Procurement Field

Article 44

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 7)

The Ministry shall perform the following administrative and associated professional tasks in the field of public procurement systems:

- 1) monitoring;
- 2) issue professional guidelines on application of this Law;
- 3) monitor the compliance of the regulations governing public procurement with the regulations of the European Union;
- 4) issue opinion to the contracting authorities on the fulfilment of the conditions for the implementation of the negotiation procedure, without prior publication of the call for tenders, in accordance with this Law;
- 5) provide advisory assistance to contracting authorities and economic operators upon request;
- 6) organize and carry out professional training and education of the contracting parties' staff and other persons for performing public procurement tasks;
- 7) organize the taking of professional exam for conducting tasks in public procurement and issues certificates for tasks in public procurement field;
- 8) establish, maintain and manage the EPPs and monitors its use;
- 9) establish and maintain records of registered bidders in the EPPS;
- 10) publish procurement plans, tender documentation, decisions and other acts of the contracting authority issued in the public procurement procedure, including their amendments, public procurement contracts and framework agreements, contract amendments and notices of complaints submitted to the EPPS;
- 11) enable the contracting authority to receive applications for qualifications, bids, projects and solutions through the EPPS;
- 12) compile, publish and update the list of contracting authorities registered at the EPPS, and the list of public procurement officials;
- 13) prepare and publish a Common Procurement Vocabulary on its website, in accordance with European Union regulations;
- 14) cooperate and exchange information with international organizations, institutions, the European Commission and experts in the public procurement field;
- 15) cooperate and exchange information with the competent authorities of other countries and organizations within the framework of its jurisdiction;
- 16) inform inspection and other competent authorities about observed irregularities in public procurement procedures;
- 17) prepare and submit reports to the Government in accordance with this Law;
- 18) perform other tasks in accordance with the law.

EPPS

Article 45

EPPS through electronic means shall, in particular, enable:

- 1) preparation and publication of tender and other procurement documentation;
- 2) when announcing procurements above the value class referred to in Article 26 paragraph 1 item 6 of this Law, submitting of procurement notification to the European Union Publication Office for publication in the Official Journal of the

European Union;

- 3) free access, search, review and download of published tender and other documentation on the implementation of public procurement procedures;
- 4) compiling, sending, receiving, assessing and evaluating applications for qualification, bids, plans, projects and solutions, free of charge;
- 5) registering and keeping records of bidders;
- 6) competent state authorities access to EPPS data;
- 7) access to data from Article 46 of this Law.

The user shall be responsible for the accuracy of the data entered in EPPS.

Funds for financing EPPS shall be provided from the Budget of Montenegro and from the dedicated revenue based on the fee for using EPPS, which is used for investment, research, development, improvement and maintenance of EPPS.

The processing, exchange and publication of data in electronic form in EPPS shall be carried out in accordance with the laws governing electronic administration, electronic identification and electronic signature, electronic document, electronic commerce and information security.

The Ministry shall prescribe the operating conditions and use of EPPS.

Compulsory Data Access Provision

Article 46

State administration bodies and other bodies, organizations and bodies that keep public records or registers in electronic form, shall provide access to data from records or registers through electronic means of communication for the purposes of the EPPS, in accordance with the law regulating electronic administration.

Public Procurement Officer

Article 47

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 8)

The contracting authority shall designate at least one person to perform the tasks of a public procurement officer, from among the employees, or a person who is hired for public procurement tasks in accordance with the law.

The public procurement officer shall have completed the VII1 level of the national qualification framework and a certificate of passing the professional examination for performing public procurement tasks.

The public procurement officer participates in the preparation of the public procurement plan, issues a part of the tender documentation that contains secret information in accordance with the law to interested economic operators, keeps records of public procurements, prepares reports on the public procurement procedures, performs administrative tasks in the implementation of the public procurement procedure and other affairs in accordance with this Law and by-laws.

The contracting authority shall submit to the Ministry a decision on the appointment of a public procurement officer.

Commission for Conducting Public Procurement Procedure

Article 48

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 9)

The Commission for conducting the public procurement procedure (hereinafter: the Commission) shall be established by the decision of the authorized person of the contracting authority.

The Commission shall conduct the public procurement procedure in accordance with this Law.

The Commission shall consist of an odd number of members.

At least one member of the Commission shall be employed by the contracting authority.

The contracting authority's public procurement officer may be a member of the Commission.

The contracting authority can appoint a vice-president and a member of the Commission. The Commission shall prepare the tender documentation and amendments to the tender documentation and provides clarifications, reviews, assessments and evaluates bids, or applications for qualification, draws up minutes on the review, assessment and evaluation of bids, prepares and proposes a decision on exclusion from the public procurement procedure procurement to the authorized person of the contracting authority, the decision on the selection of the most advantageous bid and the decision on the annulment of the procedure, prepares a proposal for a response to the appeal and performs other tasks in accordance with this Law.

The Commission shall cease its work by concluding a contract on public procurement, or by making an executive decision on the cancellation of the public procurement procedure. More detailed criteria for the Commission's education shall be prescribed by the Ministry.

Professional Exam for Work in Public Procurement

Article 49

The professional exam for work in public procurement (hereinafter: professional exam) shall be taken before the commission for passing the professional exam.

The commission for taking the professional exam referred to in paragraph 1 of this Article shall be established by the Ministry and consists of at least three members.

Administrative and other tasks for the needs of the commission from paragraph 1 of this Article shall be performed by the secretary of the commission.

The president, members and secretary of the commission from paragraph 1 of this Article shall have the right to compensation for their work.

The costs of taking the professional exam for work in public procurement shall be borne by the person who applied for the professional exam.

The program and method of taking the professional exam, the composition and method of education of the commission from paragraph 1 of this Article, the costs of taking the professional exam, the compensation for the work of the president, members and secretaries of the commission, the issuing of certificates and the form of the certificate of passing the professional exam shall be prescribed by the Ministry.

Professional Training and Education

Article 50

Persons employed by the contracting authority in public procurement shall undergo professional training and development.

The contracting authority shall provide professional training and education for the public procurement officer and other persons employed by the contracting authority engaged in public procurement.

Professional training and education in the field of public procurement shall be carried out on the basis of professional training and development programs.

Professional training and education referred to in paragraph 2 of this Article shall be organized and implemented by the Ministry for the needs of contracting authorities.

The Ministry can organize and implement professional training and education for economic operators and other persons.

The program and method of professional training and education in the public procurement field shall be determined by the Ministry.

IV. PUBLIC PROCUREMENT PROCEDURES

1. Types, Selection and Initiation of the Public Procurement Procedure

Types of Procedures

Article 51

Public procurement procedures are:

- 1) open procedure;
- 2) restricted procedure;
- 3) competitive negotiated procedure;
- 4) negotiated procedure without prior publication of invitations to tender;
- 5) Innovation partnership;
- 6) competitive dialogue;
- 7) negotiated procedure with prior publication of invitations to tender.

Selection of Procedure

Article 52

The contracting authority shall choose the public procurement procedure depending on the type, essential characteristics and special conditions of the public procurement subject.

Initiation of Proceedings

Article 53

The public procurement procedure shall be initiated by publishing or sending of tender documents containing the invitation to tender, technical specification of the procurement subject, bid evaluation methodology, instructions for making bids and instructions on means of legal protection, in accordance with this Law.

The invitation referred to in paragraph 1 of this Article shall contain in particular: information about the contracting authority, the type of procedures, the subject of the procurement, the estimated value of the public procurement, the conditions for participation, the deadline for submitting the application/bid, the time of opening the application/bid and other data necessary for more complete information of the bidder on the subject and public procurement procedure.

The content and form of the tender documentation referred to in paragraph 1 of this Article, depending on the type of public procurement procedure, shall be prescribed by the Ministry.

Open Procedure

Article 54

(Law on Amendments to the Law on Public Procurement, Official Gazette of

Montenegro, No. 3/2023 as of 10 January 2023, Article 10)

Open public procurement procedure may be conducted for each procurement subject, in which any economic operator can submit a bid, in accordance with the tender documentation.

The open procedure is initiated by publishing of tender documentation on EPPS, for the purpose of submitting bids.

Bids in the open procedure of public procurement of goods and services, thresholds:

- 1) up to 150,000.00 euros, or works up to 500,000. 00 euros, shall be submitted within a period not shorter than 15 days from the date of publication of the tender documentation;
- 2) equal to or more than EUR 150,000.00, or works with a value equal to or more than EUR 500,000.00, shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

Notwithstanding paragraph 3 item 2 of this Article, the contracting authority may set a shorter deadline for submission of bids, not shorter than 15 days, from the date of publication of the tender documents, if it is required by reasons of public procurement urgency that are not caused by the contracting authority's fault.

The contracting authority shall explain in the tender documentation the reasons for the urgency due to which it shortened the deadline for submitting bids from paragraph 4 of this Article.

Restricted Procedure

Article 55

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 11)

A restricted public procurement procedure may be carried out for each procurement subject, in which an application for qualification may be submitted by an economic operator, in accordance with the call for tenders.

The first phase of the restricted procedure shall be initiated by publishing the tender documents on the EPPS, for the purpose of submitting applications for qualification.

Applications for qualification in the restricted procedure of public procurement of goods and services, thresholds:

- 1) up to 150,000.00 euros, or works up to 500,000. 00 euros, shall be submitted within a period not shorter than 15 days from the date of publication of the tender documentation;
- 2) equal to or more than EUR 150,000.00, or works with a value equal to or more than EUR 500,000.00, shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

Notwithstanding paragraph 3 item 2 of this Article, the contracting authority may set a shorter deadline for application submission, not shorter than 15 days, from the date of publication of the tender documents, if it is required by reasons of public procurement urgency that are not caused by the contracting authority's fault.

The contracting authority shall explain in the tender documentation the reasons for the urgency due to which it shortened the deadline for submitting bids referred to in paragraph 4 of this Article.

Second Stage of Restricted Procedure

Article 56

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 12)

The second stage of the restricted public procurement procedure shall be initiated by sending the invitation to the candidates to submit a bid.

The contracting authority shall submit the invitation from paragraph 1 of this Article to all candidates individually on the same day, via EPPS.

The invitation referred to in paragraph 1 of this Article shall contain the deadline and method of submitting the bid, in accordance with the tender documentation.

Bids in the restricted procedure of public procurement of goods and services, thresholds:

- 1) up to 150,000.00 euros, or works up to 500,000. 00 euros, shall be submitted within a period not shorter than 15 days from the date of publication of the tender documentation;
- 2) equal to or more than EUR 150,000.00, or works with a value⁴⁴ equal to or more than EUR 500,000.00, shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

Notwithstanding paragraph 4 item 2 of this Article, the contracting authority may set a shorter deadline for submission of bids, not shorter than 10 days, from the day of delivery of the invitation to submit bids, if it is required by reasons of public procurement urgency that are not caused by the contracting authority's fault.

In the invitation to submit bids, the contracting authority shall explain the reasons for the urgency due to which he shortened the deadline for submitting bids referred to in paragraph 4 item 2 of this Article.

Competitive Negotiated Procedure

Article 57

A competitive negotiated procedure may be carried out for the procurement of goods, services and works, if:

- 1) the needs of the contracting authority cannot be met without adjusting the existing solutions of the procurement subject;
- 2) the subject of procurement includes design or innovative solutions;
- 3) due to the specifics of the procurement subject, which relate to the nature, complexity, legal or financial conditions of the procurement subject or the risks associated with them, the public procurement cannot be successfully implemented without prior negotiations;
- 4) the contracting authority cannot precisely determine the technical specifications of the procurement subject with regard to standards, a common technical specification or a technical reference, or
- 5) in the open or restricted public procurement procedure, all bids were incorrect.

The first phase of the competitive negotiated procedure shall be initiated by the publication of the tender documents on EPPS, in order to submit the application for qualification.

The contracting authority shall describe the subject of the procurement in the tender documentation in such a way as to define its needs and minimum requirements regarding the elements and characteristics of the subject of the procurement, which shall be fulfilled by all bids, so that economic operators can recognize the nature and scope of the

procurement and decide whether will submit an application for qualification.

Every economic operator shall have the right to submit an application for qualification, in accordance with the tender documentation.

Applications for qualification shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

Notwithstanding paragraph 5 of this Article, the contracting authority may set a shorter deadline for submitting applications, not shorter than 15 days, from the date of publication of the tender documents, if it is required by reasons of public procurement urgency that are not caused by the contracting authority's fault.

The contracting authority shall explain in the tender documentation the reasons for the urgency due to which he shortened the deadline for submitting bids referred to in paragraph 6 of this Article.

The Second Stage of the Competitive Negotiated Procedure

Article 58

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 13)

The second stage of the competitive negotiated procedure shall be initiated by sending the candidates an invitation to submit an initial bid, which shall be the basis for negotiations.

The contracting authority shall deliver the invitation from paragraph 1 of this Article to all candidates individually, electronically, on the same day.

The invitation referred to in paragraph 1 of this Article contains the deadline and method of submitting the initial bid, in accordance with the tender documentation.

The deadline for submitting the initial bid shall not be shorter than 30 days, from the day of the invitation to submit the initial bids.

Notwithstanding paragraph 4 of this Article, the contracting authority may set a shorter deadline for the submission of initial bids, not shorter than 10 days, from the date of delivery of the invitation to submit bids, if it is required by reasons of public procurement urgency that are not caused by the contracting authority's fault.

The contracting authority shall explain the reasons for the urgency in the invitation to submit bids, due to which he shortened the deadline for submitting bids referred to in paragraph 5 of this Article.

The contracting authority shall negotiate individually with the bidders on the initial and subsequent bids, in order to improve their content and determine the final requirements and specifications for submitting the final bid.

The subject of negotiations referred to in paragraph 7 of this Article shall not be:

- reduction of minimum requirements regarding the subject of public procurement,
 - mandatory conditions for participation in the procedure,
 - conditions of ability of the economic operator provided for in the tender documentation,
 - increasing of the amount of the estimated value of the subject of public procurement.
- with the negotiations referred to in paragraph 7 of this Article, the contracting authority shall keep special minutes.

The contracting authority can conduct several consecutive negotiations, in order to reduce the number of bids that need to be negotiated further, with the application of the

criteria for selecting the most advantageous bid provided by the tender documentation.

The contracting authority shall:

- 1) notify electronically bidders who shall not be invited to further negotiations, no later than 24 hours before the start of the next negotiations;
- 2) electronically and at the same time notify all bidders that will be invited to further negotiations about all changes to technical specifications or other parts of the tender documentation and to set an appropriate deadline for drafting and submitting the amended bid;
- 3) notify the bidders referred to in item 2 of this paragraph of the end of negotiations and to provide them with the final technical specification and other elements related to the subject of procurement that are required for the preparation of the final bid and set the deadline for submission of the final bid.

The content and form of the invitation referred to in paragraph 2 and the minutes referred to in paragraph 9 of this Article shall be prescribed by the Ministry.

tender Negotiated Procedure Without Prior Publication of Invitations to Tender

Article 59

A negotiation procedure without prior publication of a call for tenders may be conducted for the procurement of goods, services or works if:

- 1) in the open public procurement procedure, no or no correct bid was submitted, or in the restricted public procurement procedure, no or no correct application for qualification was submitted, provided that the subject of the procurement and the content of the tender documentation have not been significantly changed, in which case the contracting authority shall the procedure also invites all bidders who submitted an bid in the open or restricted procedure;
- 2) only a certain economic operator can realize the procurement in the case of:
 - a) that the goal of the procurement is the creation of a unique work of art or the artistic request of the subject of the procurement,
 - b) lack of market competition for technical reasons, or
 - c) protection of exclusive rights, including intellectual property rights;
- 3) to the extent that it is necessary, due to the extreme urgency caused by an event that the contracting authority could not foresee, and which was not caused by the contracting authority 's actions, it is not possible to proceed within the deadlines prescribed for the open, limited or competitive negotiated procedure;
- 4) is the subject of procurement of goods that were produced exclusively for the purposes of research, experimentation, study or development, provided that it is not a serial production of goods with the aim of making a profit or reimbursing the costs of research and development;
- 5) it is about additional deliveries of goods during the performance of contractual obligations from the bidder, with whom the public procurement contract was concluded in accordance with this Law, which are intended for the partial replacement of goods or installations or the expansion of the scope of existing deliveries of goods or installations, if a change of bidder , or goods, caused technical problems in functioning and maintenance, provided that the total value of additional deliveries of goods does not exceed 20% of the value of the concluded contract, and from the date of conclusion of the basic contract, the duration of those contracts, as well as recurring contracts, must not be longer than three years;
- 6) goods are procured on commodity exchanges;
- 7) goods are procured under particularly advantageous conditions, from a bidder

who has permanently suspended economic activities or who is in the process of bankruptcy, i.e. liquidation, in accordance with the law;

8) is the subject of the procurement of services, which refers to the continuation of similar services carried out through a project competition in accordance with Article 156 of this Law, and the contract on public procurement is concluded with the selected, i.e. with one of the selected economic operators, on the condition that the contracting authority includes in the negotiation process all selected economic operators;

9) is the subject of the procurement of services and/or works that represent a repetition of similar services or works entrusted to the bidder with whom the contracting authority concluded the basic contract, provided that the services and/or works are in accordance with the basic contract concluded after the procedure referred to in Article 51 of this Law, if the tender documentation states the possibility of additional services or works and that the total value of additional services or works is not greater than 20% of the value of the concluded basic contract and that no more than three years have passed since the conclusion of the basic contract.

The Method of Conducting the Negotiation Procedure Without Prior Publication of the Call for Tenders

Article 60

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 14)

The negotiation procedure without prior publication of the call for tenders shall be initiated, depending on the conditions referred to in Article 59 of this Law, by submitting the tender documents to one or more economic operators, directly or electronically, in order to submit the initial bid.

The tender documentation referred to in paragraph 1 of this Article shall be delivered individually to all economic operators on the same day.

The contracting authority shall specify in the tender documentation the subject of negotiations, the method of negotiation and the appropriate deadline for submitting the initial bid, not shorter than eight days from the date of delivery of the tender documentation, except in the case referred to in Article 59 paragraph 1 item 3 of this Law. The initial bid may be submitted by the economic operator to which the contracting authority submitted the tender documentation independently or together with one or more economic operators.

The contracting authority shall negotiate with bidders in order to improve the terms of the bid in order to prepare the final bids.

- with the negotiations referred to in paragraph 5 of this Article, the contracting authority shall draw up a record.

The subject of negotiations referred to in paragraph 6 of this Article shall not be:

- reduction of minimum requirements regarding the subject of public procurement,
- mandatory conditions for participation in the procedure,
- conditions of ability of the economic operator provided for in the tender documentation,
- increasing of the amount of the estimated value of the subject of public procurement.

The contracting authority can conduct several consecutive negotiations, in order to

reduce the number of bids to be negotiated, with the application of the criterion for selecting the most advantageous bid provided by the tender documentation.

The contracting authority shall notify:

- 1) bidders who shall not be invited to the continuation of negotiations electronically, no later than 24 hours before the start of the next negotiations;
- 2) all bidders whose bids have not been rejected by electronic means at the same time of all changes to technical specifications or other parts of the tender documentation that are the result of negotiations and to set an appropriate deadline for preparing and submitting an amended or new bid.
- 3) bidders of the conclusion of negotiations and to set a deadline for submission of final bids.

Competitive Dialogue

Article 61

A competitive dialogue may be conducted for the procurement of goods, services or works in cases referred to in Article 57 paragraph 1 of this Law.

The first phase of the competitive dialogue is initiated by the publication of the tender documents on the EPPS in order to submit applications for qualification.

The contracting authority shall specify in the tender documentation the needs and requirements related to the subject of the procurement and the framework period for the realization of the procurement, as well as the elements, needs and characteristics of the goods, services or works that represent the minimum requirements that all bids must meet and that shall not change during the procedure, conditions for participation and criteria for choosing the most advantageous bid.

Applications for qualification shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

The Second Phase of the Competitive Dialogue

Article 62

The second phase of the competitive dialogue is initiated by sending the candidates an invitation to dialogue on the subject of the procurement in order to define the final conditions and requirements regarding the subject of the procurement necessary for making a bid.

The contracting authority shall deliver the invitation referred to in paragraph 1 of this Article to all candidates individually, electronically, on the same day.

The invitation referred to in paragraph 1 of this Article shall contain the deadline and manner of conducting the dialogue, in accordance with the tender documentation.

The contracting authority can conduct several dialogues with the candidates, individually, until it determines the final solution that satisfies the requirements regarding the subject of the procurement, on the basis of which the candidates shall submit an bid.

During the dialogue, the contracting authority, with the bidders, shall consider all essential elements of the procurement subject and shall provide equal treatment to the bidders and must not provide data and information that provide an advantage to individual candidates.

The reduction of the number of proposed solutions of the procurement subject shall be carried out by applying the criteria for selecting the most advantageous bid.

The contracting authority shall keep special records of the conducted dialogues.

The contracting authority shall notify:

- 1) candidates who shall not be invited to further dialogue electronically, no later than 24 hours before the start of the next dialogue;

- 2) electronically, at the same time, all candidates who will be invited to the next dialogue of all the changes to technical specifications or other parts of the tender documentation and set them an appropriate deadline for drafting and submitting the amended solution;
- 3) notify the candidates of the conclusion of the dialogue and invite them to, within a reasonable period of time, not shorter than eight days from the date of delivery of the invitation, submit a bid in relation to the final solution to the subject of procurement determined in the dialogue.

The contracting authority may require the bidder to clarify, specify and adjust the bid or to provide additional information, which does not change the basic elements of the bid, provided that such clarification does not result in distortion of competition or discrimination of the bidder.

In the competitive dialogue, the proposed solutions for procurement and tenders shall be evaluated based on the criteria of price and quality ratio.

After evaluating the correctness of the bids, the contracting authority may negotiate with the bidder who submitted the most advantageous bid based on the ratio of price and quality in order to confirm financial obligations and/or other terms of the bid and specify the terms of the contract, provided that this does not result in changes to the basic elements of the bid or of the procurement subject, including the needs and requirements established in the tender documentation, as well as not to distort competition and cause discrimination.

The contracting authority can provide the tender documents with awards for the offered solutions and/or compensation for the costs of the candidate's participation in the dialogue.

The content and form of the invitations referred to in paragraph 3 and the minutes referred to in paragraph 7 of this Article shall be prescribed by the Ministry.

Partnership for Innovation

Article 63

The contracting authority may implement the innovation partnership procedure if it has a need for innovative goods, services or works, which cannot be satisfied with the procurement of goods, services or works that are available on the market.

The innovation partnership aims at the development of innovative goods, services or works and their subsequent procurement, provided that it is in accordance with the level of development and the maximum costs agreed between the contracting authority and the participants in the innovation partnership.

The Innovation Partnership shall be launched by publishing the tender documents on the EPPS for the submission of applications for qualification.

Applications for qualification shall be submitted within a period not shorter than 30 days from the date of publication of the tender documentation.

The contracting authority shall describe in the tender documentation the need for innovative goods, services or works, as well as the minimum requirements regarding the elements of the procurement subject that the bids should satisfy, the bidder's ability conditions related to research, development and implementation of innovative solutions and the way in which intellectual property rights will be regulated.

The data referred to in paragraph 5 of this Article shall be sufficiently precise, so that economic operators can recognize the nature and scope of the procurement subject and decide whether to submit an application for qualification.

The estimated value of the procurement subject referred to in paragraph 1 of this Article

shall be proportionate to the necessary investments required for research and development of an innovative solution to the procurement subject.

The contracting authority may decide to establish a partnership for innovation with one or more candidates, who meet the requirements referred to in paragraph 5 of this Article, for the purpose of conducting separate research and development activities.

The partnership referred to in paragraph 8 of this Article shall be established by concluding a contract that regulates the mutual rights and obligations of the contracting authority and the candidate.

On the same day, the contracting authority shall individually invite all candidates with whom he has concluded a partnership agreement for innovation to submit their initial bids within a certain period of time, without the possibility of viewing data on other candidates.

The innovation partnership shall take place in successive stages, following the sequence of steps in the research and innovation process that may include the production of goods, the provision of services or the implementation of works.

In the innovation partnership procedure, temporary goals shall be determined that the partners should achieve in certain stages of the procedure, as well as the payment of compensation in appropriate amounts.

Based on the objectives referred to in paragraph 12 of this Article, the contracting authority may terminate the innovation partnership after each phase or, in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts, provided that this possibility has been foreseen in the tender documentation.

The contracting authority shall negotiate the initial and all subsequent bids with the bidders in order to improve their content and reduce the number of bids that need to be further negotiated, except in the case of the final bid, for which a record is drawn up.

It is not possible to negotiate a reduction in the minimum requirements of the subject of procurement and a change in the criteria for selecting the most advantageous bid from the tender documentation.

The contracting authority shall:

- 1) with the bidder who shall not be invited to the next stage of negotiations, terminate the innovation partnership agreement,
- 2) notify bidders with whom the innovation partnership agreement has not been terminated about the conclusion of negotiations and to set a deadline for submission of the final bid not shorter than eight days from the date of delivery of the invitation.

In the Innovation Partnership, bids shall be evaluated solely on the basis of the offered price/quality ratio.

Negotiated Procedure with Prior Publication of Invitations to Tender

Article 64

The negotiation procedure with prior publication of the call for tenders may be carried out by the sectoral contracting authority for the procurement of goods, works and/or services that are necessary for the performance of sectoral activities.

The negotiation procedure with prior publication of the call for tenders shall be conducted in accordance with Art. 57 and 58 of this Law.

Obtaining an Opinion Beforehand

Article 65

The contracting authority shall obtain the opinion of the Ministry before starting the negotiation procedure without prior publication of the call for tenders, except in the case

referred to in Article 59 paragraph 1 item 3 of this Law.

To obtain the opinion referred to in paragraph 1 of this Article, the contracting authority shall submit a written request that contains: the legal basis for conducting the procedure, the name of the subject of the procurement, the estimated value of the public procurement, the position from the procurement plan, source, i.e. the method of providing financial resources, reasons and evidence of the fulfilment of the conditions for the implementation of the procedure.

The Ministry shall issue an opinion referred to in paragraph 2 of this Article, without an investigation procedure, based on the submitted evidence, within eight days from the day of receipt of complete documentation.

Application for Qualification

Article 66

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 15)

An application for qualification shall be a statement of the intention of an economic operator to participate in a restricted procedure, a competitive negotiated procedure, a competitive dialogue, a partnership for innovation or a negotiated procedure with the prior publication of a call for tenders, in accordance with the conditions established by the tender documentation.

In order to participate in the procedure referred to in paragraph 1 of this Article, an economic operator shall submit an application for qualification (hereinafter: the applicant). With the application for the qualification referred to in paragraph 2 of this Article, the following shall be submitted:

- statement of the economic operator referred to in Article 111 paragraph 1 of this Law,
- evidence on the basis of which candidates are ranked, if the number of candidates is limited by the tender documentation.

The qualification of the applicant shall be carried out in relation to the mandatory and special grounds for the exclusion of an economic operator from the procedure, which are provided for in the tender documentation, and which are applicable in the first phase of the two-phase public procurement procedure.

The application for qualification, the statement of the economic operator and the evidence from paragraph 3 of this Article shall be submitted through EPPS, within the time limit stipulated in the tender documentation.

After the opening of applications for the qualification referred to in paragraph 5 of this Article, the commission reviews and evaluates the applications, without the presence of the authorized representatives of the applicants.

During the review and assessment of the applications from paragraph 6 of this Article, the commission shall determine whether:

- 1) the application was made in accordance with the tender documentation;
- 2) the statement of the economic operator and the evidence for the ranking of the applicants provided for in the tender documentation were submitted with the application;
- 3) the statement of the economic operator was properly made and whether it contains all the required information and data;
- 4) due to the content of the statement of the economic operator, there is a basis referred to in Art. 108 and 110 of this Law for the exclusion of bidders from the public

procurement procedure, provided for in the tender documentation that is applicable in this stage of the public procurement procedure.

If the number of candidates is limited by the tender documentation, the committee shall verify the accuracy of the statement of the economic operator of each ranked candidate.

An applicant whose application is incorrect or who has not met the qualification requirements or who is not ranked within the established number of candidates shall be excluded from the further public procurement procedure.

In the case referred to in paragraph 9 of this Article, the decision on exclusion from the procedure shall be submitted to the applicant for qualification, in accordance with this Law.

The application form for the qualification shall be prescribed by the Ministry.

Limitation of the Number of Qualified Applicants

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 16)

Article 67

The contracting authority can limit the number of qualified candidates through the tender documentation, with the fact that this number shall not be less than five candidates in a restricted public procurement procedure and less than three in a competitive negotiated procedure, competitive dialogue and innovation partnership.

In the case referred to in paragraph 1 of this Article, the selection of the anticipated number of candidates shall be made according to the number and/or amount of references for proving the required conditions of ability for qualification.

If the number of qualified candidates is less than the number stipulated in the tender documentation, the contracting authority may continue the public procurement procedure, if it has foreseen this possibility in the tender documentation.

After evaluating the correctness of the applications for the qualification, the contracting authority shall rank the correct applications.

2. Special Forms of Public Procurement *Framework Agreement*

Article 68

A framework agreement shall be an agreement between one or more contracting parties and one or more bidders, which determines the conditions for concluding a public procurement contract for a specific period, a specific price and quantity as needed.

The framework agreement may be concluded by implementing the procedures from Article 51 of this Law, except for the negotiation procedure without prior publication of the call for tenders.

The framework agreement may be concluded for a maximum of four years, except for procurement that is necessary for the performance of sectoral activities and in specially justified cases related to the subject of public procurement, which the contracting authority must explain.

Public procurement contracts that are concluded on the basis of a framework agreement shall be concluded before the expiration of the term for which the framework agreement was concluded, with the provision that the duration of individual contracts concluded on the basis of that agreement does not have to coincide with the duration of the framework agreement, but may last longer if necessary or shorter, but not longer than 12 months from the expiration of the term for which the framework agreement was concluded.

The contracting authority shall establish in the tender documentation that it will conclude a framework agreement and the number of bidders with which it intends to conclude a framework agreement.

The contracting authority shall specify in the tender documentation whether the signatories of the framework agreement shall execute it and to determine the procedure for concluding the contract based on the framework agreement, and in the case of centralized or joint procurement to specify the names of the contracting entities covered by the framework agreement.

Public procurement contracts based on the framework agreement may be concluded by the contracting parties who concluded the framework agreement, the contracting parties on whose behalf the framework agreement was concluded and the contracting parties for whom it may be clearly established from the tender documentation that the framework agreement is intended for them.

A contracting authority which intends to conclude a framework agreement with several bidders may also conclude a framework agreement with a smaller number of bidders, i.e. with one bidder, if he does not receive a predetermined number of bids that meet the conditions for awarding a framework agreement and if he has foreseen this possibility in the tender documentation.

The provisions of Art. 150 and 151 of this Law shall also apply to termination and changes to the framework agreement.

Conclusion of a Public Procurement Contract based on a Framework Agreement

Article 69

If the framework agreement is concluded with one bidder, the contract is concluded directly on the basis of the conditions stipulated in the framework agreement.

If the framework agreement was concluded with several bidders, contracts based on that agreement are concluded:

- 1) according to the terms of the framework agreement, without rebidding, if that agreement establishes all the necessary conditions for the performance of works, the provision of services or the delivery of goods and the conditions of capabilities established in the tender documentation;
- 2) by re-tendering the signatories of the framework agreement, if the framework agreement does not specify all conditions for the performance of works, provision of services or delivery of goods;
- 3) partially without re-tendering from item 1 of this paragraph, and partially with re-tendering of the signatories of the framework agreement from item 2 of this paragraph, if all the conditions for the performance of works, provision of services or delivery of goods are determined by the framework agreement, if this possibility is determined by the tender documentation and if conditions and criteria that will be applied in the re-bidding are determined.

The re-tendering referred to in paragraph 2 item 2 of this Article shall be carried out on the basis of the conditions stipulated in the tender documentation for the conclusion of the framework agreement and, if necessary, on the basis of more precisely defined other conditions from the tender documentation, as follows:

- the contracting authority shall invite all bidders from the framework agreement in writing for the conclusion of each contract;
- the contracting authority shall set an appropriate deadline for the submission of bids for each contract it concludes, in accordance with the complexity of the procurement subject and the time required for submitting the bid;

- the content of bids shall be kept secret until the deadline for opening bids expires;
- the contracting authority concludes an individual contract with the bidder who submitted the most advantageous bid based on the criteria for selecting the most advantageous bid determined by the tender documentation;

Dynamic Procurement System

Article 70

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro 011/2023 as of 27 January 2023)

The contracting authority can procure goods, services and works that are generally available on the market using a dynamic procurement system, with the application of the rules of restricted procedure.

The dynamic procurement system shall be established and managed electronically, free of charge, during the entire validity period, and is open to all economic operators that meet the conditions established by the tender documentation.

If the contracting authority applies a dynamic procurement system divided by type of item, it shall determine with the tender documentation, for each item of public procurement separately, the conditions that each economic operator must fulfil.

In the dynamic procurement system, each economic operator can submit an application for qualification during the entire period of the system, in accordance with the tender documentation.

Each qualified candidate shall be provided with access to the dynamic procurement system throughout its duration.

The contracting authority in the dynamic procurement system may not limit the number of qualified candidates.

In order to award a public procurement contract within the framework of the dynamic procurement system, the contracting authority shall:

- 1) state in the tender documentation that it is establishing a dynamic procurement system and its duration;
- 2) in the tender documentation, specify the basic information on the nature and estimated quantity of individual procurements and all necessary information related to the dynamic procurement system, including information on the way the dynamic procurement system is run, the electronic equipment used and technical connections and specifications;
- 3) specify the division into types of items of goods, works or services and the essential characteristics that define them and determines the mandatory conditions and conditions of ability of economic operators, for each type of procurement subject;
- 4) provide unlimited, complete and immediate access to tender documentation by electronic means of communication during the entire period of the dynamic procurement system.

The contracting authority shall evaluate the received applications for qualification in the dynamic system in accordance with the conditions established by the tender documentation within ten days from the day of their receipt.

The deadline referred to in paragraph 8 of this Article may be extended by five days if it is justified in the specific case, due to the need to study additional documentation or to check the fulfilment of the mandatory requirements and conditions of ability of economic operators.

Notwithstanding paragraph 9 of this Article, if no call for tenders has been sent for the first

special procurement within the dynamic public procurement system, the contracting authority may extend the evaluation period of the application for qualification, provided that no call for tenders has been sent during the extended evaluation period, with the fact that the contracting authority states in the tender documentation the time for which he intends to extend that period.

After the assessment of the application for qualification, the contracting authority shall deliver to the applicant, without delay, a notice on access to the dynamic procurement system or a notice on the prohibition of access to the dynamic procurement system.

Contracting authority shall simultaneously, by electronic means of communication, invite all candidates who have access to the dynamic procurement system to submit an bid for each individual procurement within the system.

After the completion of each individual procurement within the framework of the dynamic procurement system, the contracting authority shall announce the decision on the selection of the most advantageous bid.

Over the course of the dynamic procurement system duration, the contracting authority may require all candidates who have access to the dynamic system to submit updated and updated declarations of the economic operator within five days from the date of request submission.

If the dynamic procurement system is divided into procurement subject types for goods, works or services, the contracting authority shall invite candidates who have access to the item type corresponding to that procurement to submit a bid.

The contracting authority selects the most advantageous bid within the dynamic procurement system based on the criteria for selecting the most advantageous bid specified in the tender documentation.

The provisions of Article 134 of this Law shall apply throughout the entire period of the dynamic procurement system.

If, during the duration of the dynamic procurement system, the contracting authority changes the duration of the system, it shall inform the candidates of the changes in the duration.

After the completion of the dynamic procurement system, the contracting authority shall publish a notification on the termination of the dynamic system.

Electronic Auction

Article 71

Contracting authority may, in an open procedure, a restricted procedure, a competitive negotiated procedure, a negotiated procedure with prior publication of a call for tenders, in a re-tendering referred to in Article 69 paragraph 2 items 2 or 3 of this Law and in the dynamic procurement system, determine that the conclusion of the public procurement contract is preceded by an electronic auction, if the tender documentation provides for that possibility and if the technical specification is precisely determined.

An electronic auction may be conducted after the evaluation of bids, as an electronic process that repeats, in order to achieve new prices, modified downwards and/or new thresholds of certain elements of the bid, which enables the ranking of bids using automatic evaluation methods.

The electronic auction shall be based on one of the following criteria, provided that the criteria may be expressed in numbers or percentages, or are suitable for automatic evaluation using electronic means, without the intervention of the contracting authority:

- price, if the selection of bids is conducted on the basis of price only,
- the price and/or the new value determined by the tender documentation, if the selection of the bid is made on the basis of the criteria of the ratio of price and quality

in the proportion determined by the contracting authority or on the basis of the lowest cost applying the cost-effectiveness approach.

Before the beginning of the electronic auction, the contracting authority shall evaluate the bids based on the conditions for participation in the public procurement procedure determined by the tender documentation, which is recorded in the minutes.

If the evaluation referred to in paragraph 4 of this Article determines that there is only one valid bid, the electronic auction shall not be conducted, and the contracting authority can make a decision on choosing the most advantageous bid or cancel the public procurement procedure.

The manner of conducting and terminating the electronic auction shall be prescribed by the Ministry.

Electronic Catalogue

Article 72

The contracting authority may require with the tender documentation that the bid will be submitted in the form of an electronic catalogue or that the bid contains an electronic catalogue.

Other documentation may be attached to the bid referred to in paragraph 1 of this Article.

The electronic catalogue shall be compiled by the bidder in accordance with the technical specifications and in the form determined by the contracting authority in the tender documentation.

In the tender documentation referred to in paragraph 1 of this Article, the contracting authority specifies the necessary information about the form of the electronic catalogue, the electronic equipment used, technical connections and specifications for the electronic catalogue.

If the framework agreement was concluded with several bidders by submitting bids in the form of electronic catalogues, the contracting authority may determine that a new tender for the conclusion of the contract based on the framework agreement is conducted on the basis of updated catalogues.

In the case referred to in paragraph 5 of this Article, the contracting authority may:

- 1) invites bidders to resubmit electronic catalogues adapted to the new requirements in order to conclude the contract, or
- 2) notify the bidders that it intends to collect the information necessary for the preparation of bids adapted to the contracting authority's requirements from the submitted electronic catalogues, if this possibility is foreseen in the tender documentation for the framework agreement.

In the case referred to in paragraph 6, item 2 of this Article, the contracting authority shall inform all the signatories of the framework agreement about the date and deadline in which it intends to collect the information necessary for the preparation of bids adapted to the requirements of the contract.

The contracting authority shall determine an appropriate period from the moment of notifying the signatories of the framework agreement to the actual collection of information.

Before concluding the contract, the contracting authority shall inform the signatories of the framework agreement on the collected information and enable them to state whether the bid contains material errors.

The dynamic procurement system may also be implemented by submitting an bid in the form of an electronic catalogue in accordance with the tender documentation.

The contracting authority may conclude contracts based on a dynamic procurement

system in accordance with paragraph 6 item 2 and paragraphs 7, 8 and 9 of this Article, provided that the bid in the dynamic procurement system is accompanied by an electronic catalogue in accordance with the technical specifications and in the form determined by the contracting authority .

3. Joint and Centralized Procurement

Joint Procurement

Article 73

Two or more contracting parties may conclude an agreement on the implementation of joint public procurement, which determines mutual rights and obligations.

If the public procurement procedure referred to in paragraph 1 of this Article is carried out in its entirety in the name and on behalf of all purchasers participating in joint procurement or if one purchaser alone carries out the procedure on behalf of all purchasers, all purchasers shall be deemed jointly responsible for fulfilling their obligations in accordance with this Law.

If the public procurement procedure referred to in paragraph 1 of this Article is not carried out in its entirety in the name and on behalf of all the contracting parties participating in the joint procurement, the contracting parties shall be deemed jointly responsible only for those parts of the public procurement procedure that they carry out together, while each contracting party shall be considered independently responsible for the fulfilment of its obligations in accordance with this Law for those parts of the procedure that it carries out in its own name and on its own behalf.

Centralized Public Procurement

Article 74

Public procurement for the needs of state administration bodies and public services founded by the state may be carried out by a contracting authority determined by a Government regulation.

Public procurement for the needs of local government bodies and public services, whose founder is the local self-government, may be carried out by the contracting authority determined by the regulation of the competent local self-government body.

The manner of planning and implementation of centralized public procurement is prescribed by the Government, or the competent authority of the local self-government unit.

V. SUBJECT OF PROCUREMENT

1. Types of Procurement Subjects

Procurement of Goods

Article 75

The subject of the procurement of goods shall be the purchase, hire-purchase or leasing of goods, with or without the right of redemption, which may include the placement and installation of goods as a secondary subject of procurement.

Procurement of Services

Article 76

The subject of procurement of services shall be services from the fields of: traffic, finance, information and communication technologies, education, science, research, accounting and auditing, consulting, design, professional supervision, catering, healthcare, social

protection, as well as other services, except services that are covered by the procurement of goods referred to in Article 75 of this Law.

Procurement of Works

Article 77

The subject of procurement of works shall be:

- 1) works;
- 2) design and execution of works;
- 3) execution of works or works on the construction of a buildings and/or civil engineering facility, as a whole that meets all the economic and technical requirements of the contracting authority.

The list of works and jobs referred to in paragraph 1 of this Article that may be the subject of procurement and the list of works and jobs referred to in Article 2 paragraph 10 of this Law shall be prescribed by the Ministry, with the previously obtained opinion of the state administration authorities responsible for traffic and building construction.

Mixed Procurement

Article 78

Where the subject of procurement consists of two or more items referred to in Art. 75, 76 and 77 of this Law, the subject of procurement shall be determined according to the main subject of procurement.

The main subject of procurement referred to in paragraph 1 of this Article shall be the subject with the highest estimated value.

In the case of a mixed procurement, the subject of which is partly a service and partly goods, if both objects have equal value, the main object shall be the goods.

In the case of mixed purchases, the subject of which are partly services, and partly social and other special services referred to in Article 153 of this Law, if both subjects have equal value, the main subject shall be the service.

If different parts of the subject of a mixed procurement are objectively separable, the contracting authority may decide to conclude separate contracts for separate parts of the mixed procurement or to conclude a single contract.

If the contracting authority decides to conclude separate contracts for separate parts of the mixed procurement, the provisions of this Law relating to those parts of the procurement subject matter shall apply to each of the special contracts, taking into account their technical characteristics.

If the contracting authority decides to conclude a single contract for all items of mixed procurement, they shall apply the provisions, which regulate the procedures from Article 51 of this Law.

If the contracting authority decides to conclude a single contract for mixed procurement, which also includes items of procurement from the field of defense and security, they shall apply the provisions of this Law governing procurement from the field of defense and security, if the item of procurement represents a single entity in terms of its content.

Determining the Subject of Procurement

Article 79

The subject of procurement shall be determined by type and name, in such a way that it represents a technical, technological, functional or other entity and enables the preparation of an appropriate bid.

Determining the Subject of Procurement by Lots

Article 80

The subject of procurement may be divided into lots, according to the type, properties, purpose, place or time of execution of the contract, provided that the subject and value of each individual lot is determined, taking into account the possibility of participation of small and medium-sized economic operators in the public procurement procedure.

If the contracting authority has not divided the subject of procurement into lots, it shall state the reasons for that decision in the tender documentation.

The bidder can submit a bid for one or more lots.

If the tender documentation foresees the possibility of awarding several lots to the same bidder, the contracting authority may conclude a public procurement contract for each lot separately or by combining several or all lots of the procurement object.

Mandatory Use of a Common Procurement Vocabulary

Article 81

The contracting authority shall use the names and designations from the common procurement vocabulary when determining the subject of the procurement.

Estimated Value of the Procurement Subject

Article 82

The contracting authority shall state the estimated value of the public procurement in the public procurement plan, tender documentation, decision on the selection of the most advantageous bid and decision on cancellation of the procedure.

The contracting authority may not use a method of determining the estimated value of the procurement that avoids the application of this Law.

The estimated value of the public procurement shall be expressed in euros, excluding value added tax (hereinafter: VAT), including all costs, awards and possible contract renewals based on the framework agreement.

The estimated value of public procurement shall be determined based on the methodology prescribed by the Ministry.

VI. CONDUCTING A PUBLIC PROCUREMENT PROCEDURE

1. Launching of a Public Procurement Procedure

Conditions for Launching the Public Procurement Procedure

Article 83

The contracting authority may initiate the public procurement procedure only for procurements that are determined by the public procurement plan for the current year and for which financial resources are provided by the budget or otherwise in accordance with the law.

Financial resources referred to in paragraph 1 of this Article shall also include resources for VAT on the estimated value of the procurement subject.

If the public procurement lasts for several years, financial resources for the following years are provided in accordance with the law regulating the budget, or the regulation governing the financial operations of economic operators.

Public Procurement Plan

Article 84

The contracting authority shall prepare and submit a public procurement plan to the

Ministry by January 31 of the current financial year, for publication on EPPS.
The public procurement plan shall be a preliminary information notice for the initiation of the public procurement procedure, containing:

- 1) information on the contracting authority;
- 2) the code and name of the subject of procurement in accordance with the common procurement vocabulary;
- 3) estimated procurement value for each procurement subject individually;
- 4) VAT value;
- 5) the total estimated value of the procurement for the duration of the framework agreement;
- 6) type of public procurement procedure;
- 7) the budget position, or the position of the financial plan, where the means for procurement are planned.

The public procurement plan shall be adopted by the authorized person of the contracting authority.

The contracting authority may make changes, or supplement the procurement plan, no later than five days before the start of the public procurement procedure.

The contracting authority shall submit changes or additions to the public procurement plan to the Ministry for publication, within the deadline referred to in paragraph 4 of this Article.

Consent to the public procurement plan and amendments to the public procurement plan of users of the budget of Montenegro, except for the Parliament of Montenegro and judicial authorities, shall be given by the Ministry, and for users of the budget of local self-government, the competent body of local self-government, while for companies founded by the state or local self-government unit, consent shall be given by the management authorities, in accordance with the law.

The subject of the procurement determined by the tender documentation and other acts of the contracting authority shall be in accordance with the established procurement plan.

The procurement plan shall be drawn up on the procurement plan form prescribed by the Ministry.

Market Research

Article 85

Before preparing the procurement plan and starting the public procurement procedure, the contracting authority may conduct market research to determine the subject of the procurement and its estimated value.

The contracting authority may request the opinion of independent experts, competent authorities or potential market participants on the subject of procurement.

The opinion referred to in paragraph 2 of this Article may be used in the planning and implementation of procurements, provided that they do not lead to a violation of the principles of market competition, prohibition of discrimination and transparency.

Method of Preparing Tender Documentation

Article 86

The contracting authority shall prepare the tender documentation in a clear, precise and comprehensible manner, which enables the submission of appropriate and comparable applications for qualification, or bids.

The tender documentation shall contain all the data on the basis of which the bidder will

be aware of all the costs that may occur with the subject of the public procurement.

Technical Specification

Article 87

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 18)

Technical specifications shall determine the characteristics required for goods, services and works.

The contracting authority shall provide equal access to all economic operators in the procurement process with the technical specification without restricting market competition.

The technical specification, depending on the type of procurement object, shall contain a description, or the name of the procurement object as a whole, by lot and by item, essential characteristics of the procurement object (quality, dimensions, shape, safety, performance, labelling, expiration date, unit of measure, quantity and etc.) and requirements regarding the manner of execution of procurement subjects that are essential for making a bid and executing the contract, including requirements for environmental protection, energy efficiency, social protection and/or protection and transfer of intellectual property rights.

The technical specification of the subject of procurement shall be determined:

- 1) as a requirement related to performance or a functional requirement, in such a way that the required parameters are defined precisely enough so that the bidders can make a suitable bid, and the contracting authority makes a proper selection of the most advantageous bid;
- 2) by referring to Montenegrin standards, norms or related documents, technical regulations and technical specifications related to design, execution of works or use of goods, which are harmonized with European standards, technical regulations or common technical specifications, with the mention of the word "or equivalent", and if such norms, technical regulations and technical specifications do not exist in Montenegro, by referring to European standards, technical regulations, common technical specifications, international norms and other technical reference systems established by European standardization bodies;

In the case referred to in paragraph 4 item 1 of this Article, the contracting authority may not reject a bid for works, goods and services that correspond to the standard, technical regulation and technical specification referred to in paragraph 4 item 2 of this Article.

In the case referred to in paragraph 4 item 2 of this Article, the contracting authority may not reject the bid because the bided works, goods or services do not correspond to the technical specification, if the bidder submits the proof of quality (test report, certificate, certificate, etc.) that the bid equivalently meets the requirements stipulated in the technical specification.

If, due to the specificity of the subject of public procurement, the exact quantity of the subject of procurement shall not be determined, the subject of procurement shall be determined by the unit of measure in relation to which the bid is made, taking into account the total estimated value of the procurement.

Use of Technical Characteristics

Article 88

Description and essential characteristics of the subject of procurement shall not not be

adapted to a specific economic operator or a specific product.

In the technical specification, the contracting authority may not use or refer to technical characteristics, trademark, patent or type, special origin or production that indicate goods, services or works, if such designation would give an advantage to a particular bidder or could unjustifiably exclude another bidder.

Notwithstanding paragraph 2 of this Article, if it is not possible to accurately and comprehensibly describe the subject of procurement in accordance with article 87 paragraph 4 of this Law, elements such as trademark, patent, type or manufacturer may be specified, provided that such a statement is followed with the words "or equivalent".

In the case referred to in paragraph 3 of this Article, the contracting authority shall specify in the tender documentation the criteria for determining the equivalence of the subject of procurement or to specify the standard that the subject of procurement should meet.

Requirements Concerning Execution of Procurement Subject

Article 89

Requirements regarding the execution of the procurement subjects shall be the requirements regarding: deadline and place of execution, quality control, testing and testing methods, warranty period, handover and commissioning, trial work and professional training, marking or labelling, packaging, terms and methods of payment.

The requirements regarding the performance of the works may also include the calculation of costs, construction techniques and methods, test work and acceptance conditions.

Special Requirements

Article 90

The contracting authority shall specify special requirements related to safety and protection of public interest in the technical specification.

The contracting authority can establish with the tender documentation that the bidder bears the costs of compensation for the use of patents, as well as the responsibility for the violation of the protected intellectual property rights of third parties.

Label Requirements

Article 91

A label is a proof (confirmation, certificate or other document) confirming that certain works, goods, services, processes or procedures meet certain requirements.

If the contracting authority intends to procure goods, services or works with certain environmental or other characteristics, they may, in the technical specification, criteria for the selection of the most advantageous bid or conditions for the execution of the contract, also require proof that the goods, services or works have the characteristics of a certain label, if:

- 1) the requirements for the label refer only to the criteria that are related to the subject of procurement and are suitable for determining its characteristics;
- 2) the requirements for the label are based on criteria that may be objectively verified and that are not discriminatory;
- 3) a label is established in a transparent procedure in which all interested entities, such as state authorities, consumers, social partners, producers, distributors and non-governmental organizations, can participate;
- 4) a label is available to all economic operators;
- 5) requirements for the label are determined by a third party over whom the

economic operator requesting the award of the label shall not exercise decisive influence.

The contracting authority may demand that the goods, services or works meet only the requirements of the label, which are necessary for the subject of procurement.

The contracting authority which requires a special label shall accept any equivalent label that confirms that the goods, services or works meet the requirements for the requested label.

If the economic operator, for reasons not caused by its actions, is not able to obtain the label specified by the contracting authority or an equivalent label within certain deadlines, the contracting authority shall accept another way of proof, such as the manufacturer's technical documentation, provided that the economic operator proves that the goods, services or works it bids meet the requirements for a specific label or the requirements specified by the contracting authority.

If the label, in addition to the conditions from paragraph 2 items 2 to 5 of this Article, also represent requirements that are not related to the subject of the procurement, the contracting authority may not require that label, but determines the technical characteristics by referring to the detailed specification of the label or, if necessary, its parts that are related to the subject of the procurement and that are suitable for determining the characteristics of the subject of procurement.

Test Report, Certificates and Other Means of Proof

Article 92

The contracting authority may request that the bidder submit evidence (report, confirmation, certificate, etc.) issued by an accredited certification body confirming compliance with the requirements or criteria established in the technical specifications and criteria for the selection of the most advantageous bid or conditions for the execution of the contract.

Publishing and Supplying Tender Documentation

Article 93

The contracting authority shall publish the tender documentation referred to in Article 86 of this Law on EPPS, except for the tender documentation for conducting the negotiation procedure without prior publication of the invitation to tender, which is delivered directly to the economic operator.

If part of the tender documentation contains confidential information, the contracting authority shall indicate in the part of the tender documentation that it publishes the manner economic operators may take over the part of the tender documentation that contains confidential information.

Amendments to Tender Documentation

Article 94

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 19)

The contracting authority may make changes and/or amendments to the tender documentation no later than 15 days before the deadline for submission of applications for qualification or bids expires, without the obligation to extend the deadline for submission of applications for qualification or bids.

Where the contracting authority changes and/or supplements the tender documentation after the deadline referred to in paragraph 1 of this Article has expired, it shall extend the

deadline for submitting applications for qualification, or bids, in such a way to ensure a minimum of 15 days from the date of publishing the changes and/or supplements to the tender documentation, until the deadline for submission of bids.

Notwithstanding para. 1 and 2 of this Article, the contracting authority may amend and/or supplement the tender documentation for the negotiation procedure without prior publication of the call for tenders no later than eight days before the deadline for submission of bids, and in the case referred to in Article 59 paragraph 1 item 3 of this Law no later than 24 hours before expiration of the deadline for submission of bids.

The economic operator can propose the contracting authority to amend and/or supplement the tender documentation, within eight days from the date of publication, or delivery of the tender documentation.

The proposal referred to in paragraph 4 of this Article shall contain reasons for eliminating irregularities, shortcomings or illegalities of the tender documentation or amendments to the tender documentation, but the proposal shall not contain specific changes and/or additions.

The contracting authority shall, within three days from the date of receipt of the proposal referred to in paragraph 4 of this Article through the EPPS, notify the party having submitted the proposal whether it will make changes and additions to the tender documentation in the proposed part.

Extension of the deadline for submitting applications for qualification, or bids, shall not be considered an amendment to the tender documentation.

When making changes and/or supplements to the tender documentation, the contracting authority shall provide an instruction on the means of legal protection.

The provisions of Article 93 of this Law shall apply to changes and additions to the tender documentation.

Clarifying Tender Documentation

Article 95

Economic operator shall have the right to ask the contracting authority for clarification of the tender documentation, or changes and/or additions to the tender documentation during the deadline for submission of applications for qualification or bids, and no later than ten days before the end of the deadline set for submission of applications for qualification or bids.

The contracting authority shall, depending on the type of public procurement procedure, publish the clarification of the tender documentation, or submit it through EPPS with no delay, and no later than five days from the date of receipt of the request from paragraph 1 of this Article.

Clarification of tender documentation shall not be used as a means of amending the tender documentation.

2. Means of Financial Security *Obligations of Contracting Authority*

Article 96

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 20)

The contracting authority shall request the tender documentation for public procurements with an estimated value equal to or greater than EUR 40,000.00 to submit a bid guarantee, a guarantee for the good performance of the public procurement contract and

framework agreement and other means of financial security, in accordance with the law. Notwithstanding paragraph 1 of this Article, the contracting authority shall not request a bid guarantee in the case referred to in Article 59 paragraph 1 item 3 of this Law.

The contracting authority may establish the obligation in the tender documentation to provide a guarantee and other means of financial security from paragraph 1 of this Article for public procurements whose estimated value is below EUR 40,000.00.

The contracting authority shall specify in the tender documentation the type, period of validity and conditions for activating the means of financial security referred to in paragraph 1 of this Article.

The contracting authority shall activate the means of financial security from paragraph 1 of this Article, if the case for which it is requested occurs.

Bid Guarantee

Article 97

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 21)

The bid guarantee is a means of protecting the contracting authority if the bidder:

- 1) abandons its bid while it is still valid
- 2) refuses to conclude a public procurement contract or framework agreement.

The bid guarantee shall be determined in the amount of 2% of the estimated value of the public procurement subject, or the lot, if the public procurement subject is divided into lots.

If a framework agreement is concluded in the public procurement procedure, the percentage of the value of the bid guarantee shall be determined based on the estimated value of the subject of the public procurement for the duration of the framework agreement as a whole, or the estimated value of the lot for which the bid is submitted, in accordance with the methodology for estimating the value of the subject public procurement.

The duration of the bid guarantee shall be determined in accordance with the validity period of the bid, including the deadline for possible activation, not shorter than five days, nor longer than 15 days from the date of expiry of the bid validity period.

In case of an extension of the bids' submission deadline referred to in Article 94 paragraphs 3 and 7 and Article 115 paragraph 7 of this Law, a bid guarantee that is correctly made in relation to the previous bid validity period is valid, provided that the bidder is obliged, after the opening of bids, at the request of the contracting authority, to extend the validity of the guarantee until the required term.

The bidder may submit a bid guarantee with a validity period longer than the term referred to in paragraph 5 of this Article.

At the bidder's request, the contracting authority shall return the bid guarantee to the bidder within ten days from the date of conclusion of the public procurement contract or framework agreement, and he shall keep a copy of the guarantee in the public procurement documentation.

Means of Financial Security of Public Procurement Contracts

Article 98

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 22)

Means of financial security of public procurement contracts are:

- 1) guarantee for the good performance of the contract, if the termination of the contract was due to non-fulfilment of contractual obligations caused by the bidder's actions or omissions;
- 2) advance payment guarantee, where advance payment is foreseen;
- 3) a guarantee for the elimination of irregularities within the guarantee period, in case that the selected bidder fails to fulfil the obligations to which the guarantee refers within the guarantee period;
- 4) professional liability insurance policy, in accordance with the law;
- 5) other types of guarantees in accordance with the law.

The guarantee referred to in paragraph 1 item 1 of this Article shall be determined in an amount that may not exceed 10% of the value of the contract.

3. Conditions for Participation in a Public Procurement Procedure and Grounds for Exclusion

Mandatory Conditions

Article 99

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 23)

Only an economic operator which fulfils the following can participate in the public procurement procedure:

- 1) has not been the subject of a conviction by final judgement, and the executive director of which has not been the subject of a conviction by final judgement for a criminal offence with the following elements:
 - a) criminal association;
 - b) creation of a criminal organization;
 - c) active bribery;
 - d) passive bribery;
 - e) active bribery in business sector;
 - f) passive bribery in business sector;
 - g) evasion of taxes and contributions;
 - h) fraud;
 - i) terrorism;
 - j) financing of terrorism;
 - k) terrorist association;
 - l) participation in foreign armed formations;
 - m) money laundering;
 - n) human trafficking;
 - o) trafficking in minors for the purpose of adoption;
 - p) establishment of slavery and transportation of persons in slavery;
- 2) has settled all due obligations on the basis of taxes and contributions for pension and health insurance, records of which are kept by the administrative authority responsible for the collection of tax revenues, i.e. the competent authority of the state in which the economic operator has its headquarters.

Proof of Compliance with Mandatory Requirements

Article 100

Deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 23)

Capability Requirements of Economic Operator

Article 101

In accordance with the subject of the public procurement, the contracting authority may, in the tender documentation, require that the economic operator fulfils the following conditions:

- 1) for pursuing professional activities,
- 2) economic and financial standing, and/or
- 3) professional and technical ability.

Requirements referred to in paragraph 1 of this Article may be required at a minimum level that ensures the capability of the economic operator to be able to successfully execute the public procurement contract in its entirety or partially, depending on whether the bid is submitted for the subject of procurement in its entirety or for a specific lot/s.

Capability requirements for economic operators referred to in paragraph 1 of this Article shall be logically connected and proportionate to the procurement subject.

Capability to Pursue Professional Activity

Article 102

The contracting authority may, in the tender documentation, specify, as a condition referred to in Article 101 paragraph 1 item 1 of this Law:

- 1) registration in the Central Registry of Commercial Entities or another appropriate register in the country where the economic operator has its headquarters, and/or
- 2) possession of authorization (permit, license, approval or other act) in accordance with the law.

Proof of Compliance with the Requirements for Performing an Activity

Article 103

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 24)

Economic and Financial Standing

Article 104

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 25)

The tender documentation, as a condition referred to in Article 101 paragraph 1 item 2 of this Law, can determine the following:

- 1) the minimum amount of turnover achieved in the previous two years;
- 2) the ratio between the value of assets and liabilities and/or
- 3) another financial parameter, in accordance with the law.

The minimum amount referred to in paragraph 1 item 1 of this Article shall not be greater

than twice the estimated value of the subject of procurement, unless it is necessary due to special risks associated with the subject of procurement, which the contracting authority shall explain in the tender documentation.

In the public procurement procedure with the conclusion of a framework agreement, which stipulates re-tendering, the minimum amount referred to in paragraph 2 of this Article shall be determined based on the expected maximum value of individual contracts that will be concluded on the basis of the framework agreement or on the basis of the established value of the framework agreement.

In the public procurement procedure using a dynamic system, the maximum annual turnover referred to in paragraph 2 of this Article shall be calculated based on the expected maximum value of individual contracts that will be concluded during the validity period of that system.

If the subject of procurement is divided into lots, the conditions referred to in paragraph 1 of this Article shall be determined proportionally to the value of each lot individually.

Proof of Economic and Financial Standing

Article 105

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 26)

Professional and Technical Ability

Article 106

As a condition referred to in Article 101 paragraph 1 item 3 of this Law, the tender documentation may determine the following:

- 1) experience in high-quality and successful execution of the same or similar activities in the field of procurement subject;
- 2) professional and personnel capacities required for the execution of the contract;
- 3) mechanical, technical equipment and/or other capacities required for the timely and high-quality execution of the contract;
- 4) established quality management system in the field of procurement;
- 5) established environmental protection system and/or
- 6) description and characteristics of procurement subject.

The contracting authority may, with the tender documentation for mixed procurement, establish as prerequisite the professional and technical ability of the economic operator referred to in paragraph 1 of this Article for each part of the procurement subject.

Proof of Technical and professional Ability

Article 107

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 26)

4. Grounds for Exclusion From the Procedure

Grounds for Mandatory Exclusion from the Public Procurement Procedure

Article 108

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 27)

The contracting authority shall exclude the economic operator from the public procurement procedure if they establish that:

- 1) it exerted undue influence pursuant to Article 38 paragraph 2 item 1 of this Law;
- 2) it is in a conflict of interest referred to in Article 41 paragraph 1 item 2 or Article 42 of this Law;
- 3) it has failed to meet the requirement referred to in Article 99 of this Law;
- 4) it has failed to meet the requirement referred to in Art. 102, 104 or 106 of this Law provided for in the tender documentation;
- 5) it has failed to submit the statement of the economic operator or the submitted statement does not contain the information and data required by the tender documentation or was incorrectly prepared;
- 6) there is a reason based on which it is deemed that it abandoned the application, or the bid, stipulated by Article 120 paragraph 15 of this Law;
- 7) failed to submit the bid guarantee or failed to submit the bid guarantee in the manner requested by tender documentation in accordance with Article 122 para. 2, 3 or 4 of this Law or has submitted a bid guarantee for a lower amount than the one requested or that the said guarantee is incorrect; and or
- 8) there is another reason prescribed by this Law.

Exception to Mandatory Exclusion

Article 109

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 28)

Notwithstanding Article 108 paragraph 1 items 2 and 3 of this Law, the contracting authority shall not be obliged to exclude an economic operator from the public procurement procedure, if there are important requirements related to the public interest, such as public health or environmental protection, unless the economic operator is excluded from participation in the procedure, public-private partnership or concession award a final judgment, while that exclusion is in effect in a country of the passed judgment.

Notwithstanding Article 108 paragraph 1 item 3 of this Law, the contracting authority shall not exclude from the public procurement procedure an economic operator due to outstanding tax and contribution obligations, which proves that, in accordance with the regulations, it is not obliged to pay taxes and contributions or that it has been granted a postponement of tax and contribution payments, which it executes in a timely manner.

Special Grounds for Exclusion from the Public Procurement Procedure

Article 110

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 29)

The contracting authority can provide in the tender documentation that it will exclude an economic operator from the public procurement procedure, which:

- 1) is the subject of bankruptcy or liquidation proceedings;
- 2) has committed a serious professional lapse that calls into question their integrity,

in accordance with the law;

3) has an established responsibility based on the decision of the competent authority for the protection of competition because they concluded an agreement or negotiated with other economic operators, for the purpose of distorting competition, in the three previous years until the deadline for submitting an application, or an bid;

4) In three previous years until the deadline for submission of applications, or bids, has a public-private partnership contract or a concession contract with that or another contracting authority, or for which a means of financial security of the contract has been activated, damages have been charged or other sanction in accordance with the law, due to significant and permanent deficiencies during the implementation of key requirements from the previous public procurement contract, public-private partnership contract or concession contract;

5) has, in the period of three previous years until the deadline for submitting applications, i.e. bids in previous public procurement procedures, submitted false information to that contracting authority that is necessary to verify the fulfilment of the conditions for participation in the procedure, i.e. the absence of grounds for exclusion from the procedure, or has not submitted the required evidence.

Professional negligence shall be an unjustified violation of the obligations established by the public procurement contract by the bidder, including the refusal to conclude a public procurement contract, as well as a violation of regulations in the areas of: environmental protection, social protection and labor relations, including collective agreements, competition protection or intellectual property rights.

Notwithstanding paragraph 1 item 1 of this Article, the contracting authority shall not be obliged to exclude an economic operator that proves that it will be capable of executing a public procurement contract.

5. Method of Proving Compliance with Conditions *Statement of the Economic Operator*

Article 111

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 30)

The applicant for qualification, i.e. the bidder submits a statement of the economic operator guaranteeing that during the duration of the public procurement procedure and the execution of the public procurement contract, they shall comply with all the conditions for participation in the public procurement procedure and that there is no reason for exclusion from the public procurement procedure, provided for in the tender documentation (hereinafter: statement of the economic operator).

The applicant for the qualification, or the bidder, shall provide complete, clear and accurate information in the statement of the economic operator.

If submitting a joint bid, the statement of the economic operator shall be provided by each member of the joint bid, and if the bid is submitted with a subcontractor, by each subcontractor.

The statement of the economic operator shall be made in electronic form, on the template prescribed by the Ministry.

Verification of the Accuracy of the Statement

Article 112

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 9)

Records of Registered Bidders in EPPS

Article 113

The records of registered bidders in the ESPP shall contain consolidated information on bidders with whom the public procurement contracts were concluded.

The Ministry shall be obliged to, at the request of the competent authority of another country, provide access to the information from the records referred to in paragraph 1 of this Article, for the purpose of their registration in the corresponding list maintained in that country.

The form of the record referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Quality Assurance and Environmental Protection

Article 114

The contracting authority may, through the tender documentation, request the submission of evidence, i.e. certificates, on the fulfilment of the conditions of quality of the procurement object and environmental protection, issued by accredited certification bodies.

Evidence issued by accredited certification bodies of foreign countries shall be recognized in accordance with the law governing technical requirements for products and conformity assessment.

The contracting authority shall accept other evidence on the fulfilment of the conditions of quality and environmental protection, if the economic operator proves that it does not have access to the evidence from para. 1 and 2 of this Article or for justified reasons shall not obtain them within the appropriate period, provided it proves that they are equivalent to the evidence from para. 1 and 2 of this Article.

6. Deadlines in the Public Procurement Procedure Method of Determining Deadlines

Article 115

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 32)

In order to undertake certain actions in the public procurement procedure, the contracting authority shall determine the deadlines, in accordance with this Law.

The deadlines referred to in paragraph 1 of this Article shall be determined by days (calendar or working), months and years, and may also be determined by hours and minutes.

The contracting authority shall set an appropriate deadline for the submission of applications for qualification, i.e. bids, taking into account the complexity of the public procurement subject and the time required to prepare the application, i.e. bid, in accordance with the minimum deadlines prescribed by this Law.

In case of interruption of work or technical limitations in the work of the EPPS, the deadlines in the public procurement procedure shall be extended for the duration of the

interruption, and at least 24 hours from the establishment of the work of the EPPS, and for the remaining part of the deadline if the interruption of work or technical limitation in the work of the EPPS lasted longer than the remaining part of the term.

Calculating Deadlines

Article 116

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 33)

If the deadline is set to:

- calendar days, the beginning of the term shall be counted as of the next day,
- working days, the start of the term shall be counted from the next working day.

The deadline, which is set in months or years, shall end with the expiration of the day of the month or year that corresponds to the day when the notification was made, i.e. the day on which the event occurred from which the duration of the deadline is calculated, and if that day is not of the last month, the deadline shall expire on the last day of that month as well.

Public holidays, Saturdays and Sundays shall not affect the start of the deadline, unless the deadline is set on working days.

If the last day of the deadline falls on a national holiday, Saturday or Sunday, the deadline shall expire on the next working day.

The deadline set for a specific day, hour and minute shall expire at the end of the last scheduled minute.

If the duration of the deadline is determined in hours and/or minutes, the deadline shall start from the moment of setting it and expire at the end of the last scheduled minute.

7. Criteria for Selecting the Most Advantageous Bid *Criteria for Selecting the Most Advantageous Bid*

Determining the Criteria

Article 117

The contracting authority shall select the most economically advantageous bid in the public procurement procedure, applying the cost-effectiveness approach, based on the following criteria:

- 1) price,
- 2) price-quality ratio or
- 3) life-cycle cost.

The contracting authority shall specify the criteria and determine the methodology for the evaluation of bids in the tender documentation.

The criteria for choosing the most advantageous bid shall be described, determined by items, related to the subject of procurement and must not be discriminatory.

The criteria for selecting the most advantageous bid shall be related to the subject of procurement if its parameters relate to the requirements of the subject of procurement in any respect and at any stage of its life cycle including factors related to a specific production process, execution of works, delivery or trading of goods or services or to a certain process of some other phase of their life cycle, even if these factors are not part of their material content.

The criteria for choosing the most advantageous bid shall not be deemed discriminatory if all its parameters are available to bidders under equal conditions.

The bid evaluation methodology shall contain the method and the maximum number of items that may be awarded to the bid according to the established criteria and according to each foreseen parameter.

The parameters of the criteria for the selection of the most advantageous bid and the bid evaluation methodology shall be defined in a way that provides an objective and accurate presentation of the number of items and the ranking of the bids.

The contracting authority may determine the price as a criteria for choosing the most advantageous bid in the negotiation process only, without prior publication of the call for tenders, in the process of concluding the contract based on the framework agreement in accordance with Article 69 paragraph 2 items 2 or 3 of this Law, electronic auction or dynamic procurement system, in the procedure for awarding contracts for social and other special services, in the case of public procurement for the needs of defense and security or for the needs of diplomatic missions, consular missions and military-diplomatic representatives abroad, unless the price of the procurement subject is determined in advance.

The methodology of bid evaluation shall be prescribed by the Ministry.

Price-Quality Ratio

Article 118

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 34)

The price-quality ratio shall be determined based on parameters that may include:

- 1) quality, including technical, aesthetic and functional characteristics, availability of solutions for all users, social, ecological and innovative characteristics of trade and trading conditions;
- 2) the organization, qualifications and experience of the person who will be entrusted with the execution of the procurement object, when the experience of the person may have a significant influence on the level of success of the execution of the procurement object or
- 3) after-sales service and technical assistance, terms of delivery, such as delivery time, delivery process, delivery time or performance time.

The contracting authority shall, as parameters referred to in paragraph 1 item 2 of this Article, which refer to the organization, predict the percentage of:

- women participation in the number of persons that the bidder shall engage in the execution of the procurement;
- women participating in the total number of bidders employees;
- the share of women in the bidders' ownership structure.

The amount of items based on the parameters referred to in paragraph 2 of this Article shall not exceed 5% of the total determined maximum number of items.

If the price is determined in advance, the bids shall only be evaluated based on quality parameters.

The price-quality ratio shall be determined in a way that the amount of items based on the price shall not exceed 90% of the total determined maximum number of items.

Life-Cycle Cost

Article 119

Life cycle cost shall include all or part of the following costs:

- 1) costs borne by the contracting authority or other user, such as:
 - acquisition or purchase costs;
 - usage costs, such as consumption of energy and other resources;
 - maintenance costs;
 - costs associated with the end of the life cycle, such as collection and recycling costs;
- 2) the costs of removing the impact of the procurement object during its life cycle on the environment, if their monetary value may be determined and verified, and which may include the costs of reducing the effects of gas emissions or emissions of other pollutants, as well as other costs of mitigating climate change.

If the contracting authority uses the life cycle cost criterion, it shall specify in the tender documentation the data to be submitted by the bidders on the costs referred to in paragraph 1 item 2 of this Article and the methodology that will be used to determine the life cycle costs based on that data.

The methodology referred to in paragraph 2 of this Article shall be based on objectively verifiable and non-discriminatory criteria and must not unjustifiably favor or disadvantage certain bidders and all bidders should be able to provide the requested data without major difficulties.

8. Bid and Qualification Application

Bid

Article 120

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 35)

A bid shall be a statement of the bidder's intention to deliver goods, provide services or perform works for a certain price and under certain conditions, in accordance with the tender documentation.

The bid may be independent or joint.

The bidder may submit only one bid, in accordance with the tender documentation.

The following shall not participate in the same public procurement procedure as a member of a joint bid or a subcontractor:

- 1) a bidder who submitted an independent bid;
- 2) economic operator as a member of the second joint bid.

A bidder, or an economic operator that has not acted in accordance with paragraph 4 of this Article, shall be excluded from the public procurement procedure.

The price referred to in paragraph 1 of this Article includes all costs related to the subject of the procurement and are determined by the tender documentation, excluding the amount of VAT.

The offered price shall be expressed numerically in euros.

The offered price shall be expressed for the entire procurement subject in accordance with the tender documentation.

Notwithstanding paragraph 8 of this Article, if the subject of procurement is determined only by unit of measure in accordance with Article 87 paragraph 7 of this Law, the total bid price shall be expressed as a sum of unit prices per item.

The bidder may change or withdraw the bid within the deadline set for submission of bids.

If the bidder changes the bid within the deadline for submission of bids, the bid shall be

deemed submitted at the time of submission of the last bid amendment.

The bid shall be binding until the expiration of its validity.

The bidder shall extend the validity period of the bid at the request of the contracting authority, if the request is submitted to the bidder via the EPPS no later than three days before the expiration of the bid validity period.

In the event of an extension of the validity period of the bid, the contracting authority shall request from the bidder an extension of the validity period of the bid guarantee.

If the bidder does not act in accordance with the requirements of the contracting authority referred to in para. 13 and 14 of this Article, it will be considered to have given up.

Along with the bid, the bidder shall submit the following:

- 1) statement of the economic operator;
- 2) bid guarantee;
- 3) evidence for the evaluation of the bid;
- 4) the contract referred to in Article 126 paragraph 1 of this Law, in case of submission of a joint bid;
- 5) evidence of the quality of the procurement subject and evidence of the fulfilment of other conditions stipulated in the tender documentation, which are not included in the statement of the economic operator.

Upon the deadline for submission of bids, the following may not be changed and/or supplemented:

- 1) information about the bidder, except in the case of changes in accordance with a special law;
- 2) the final bid, except in the case of elimination of a calculation error;
- 3) statement of the economic operator of the bidder;
- 4) joint performance contract;
- 5) evidence and data on the basis of which the bid is evaluated;
- 6) bid guarantee, except in the cases referred to in Article 97 paragraph 5 and Article 120 paragraph 14 of this Law.

The tender form and instructions for preparing the tender shall be prescribed by the Ministry.

Submission of the Bid Directly or by Post

Article 121

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 36)

Submitting of Bid

Article 122

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 37)

The bid shall be made and submitted electronically through EPPS.

The statement of the economic operator and the bid guarantee shall be submitted in electronic form through EPPS.

Notwithstanding paragraph 2 of this Article, if the bidder shall not submit the bid guarantee in electronic form, they shall submit a copy of the bid guarantee through the EPPS, and deliver the original bid guarantee to the contracting authority directly or by registered mail

before expiration of the deadline for submission of bids at the latest.

Evidence referred to in Article 120 paragraph 16 items 3, 4 and 5 of this Law shall be submitted via EPPS in electronic form or as a scanned copy of the original.

In the case referred to in paragraph 3 of this Article, the original of the bid guarantee in written form shall be submitted in an envelope, on which the following is stated: the name and headquarters of the contracting authority, the number of the tender documentation for which the guarantee is submitted, the name, headquarters and address of the bidder and the indication "bid guarantee" and "do not open before the bid opening deadline".

On the delivery of the bid guarantee, in accordance with para. 3 and 5 of this Article, the contracting authority shall draw up a certificate and attach it as a scanned copy to the EPPS, along with the record of opening of bids, on the same day when the opening of bids took place.

Submission of Bids by Lots

Article 123

The bidder may submit a bid for one or more lots, in accordance with the tender documentation and shall indicate in the bid for which lots it is submitting the bid.

If the bidder submits a bid for several lots, the bid shall be prepared in such a way that the bid may be evaluated for each lot separately.

Submission of Bid with Variants

Article 124

In the tender documentation the contracting authority may foresee the submission of bids with variants.

A bid with variants bids a subject of procurement that meets the minimum technical and functional requirements, i.e. the standards established by the contracting authority in the tender documentation, with technical characteristics different from the characteristics given by the technical specification.

The contracting authority shall ensure that the criterion for selecting the most advantageous bid is also applied to the variants of the bid that meet the minimum requirements in accordance with paragraph 2 of this Article.

Timely Bid

Article 125

A bid submitted directly or by mail is deemed timely if it is delivered to the contracting authority before the deadline for submission of bids established by the tender documentation, i.e. the invitation to submit bids.

A bid in electronic form is deemed timely if it is submitted to the EPPS within the period specified in the tender documentation.

An untimely bid shall be the one delivered to the contracting authority, or submitted to the EPPS after the deadline from para. 1 and 2 of this Article.

Submission of a Joint Bid

Article 126

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 38)

A joint bid may be submitted by two or more economic operators that have concluded a

contract on joint participation.

The contract referred to in paragraph 1 of this Article shall regulate mutual rights and obligations, determine the holder of the joint bid, the part of the procurement subject for which each of the members of the joint bid is responsible and their percentage participation in the total value of the bid.

In the case of submitting a joint bid, each member of the joint bid shall fulfil the mandatory conditions for participation in the public procurement procedure referred to in Article 99 of this Law.

The member of the joint bid must fulfil the condition referred to in Article 102 paragraph 1 item 2 and the conditions referred to in Article 106 of this Law for the part of the procurement subject for which it is in charge in accordance with the contract on joint performance, except for the part for which it hires a subcontractor.

The applicants of the joint bid meet the requirements referred to in Article 104 of this Law, if individually or cumulatively meet the economic and financial conditions.

A member of the joint bid may use the capacities of another member of the joint bid, which was made available to them in the joint performance contract, to prove the fulfilment of the conditions of professional and technical ability.

The contracting authority may not require that the submitters of the joint bid have a specific organizational form.

The contracting authority shall in the tender documentation how the submitters of the joint bid fulfil the condition referred to in Article 102 paragraph 1 item 1 of this Law.

Relying on Other Entities' Capacities

Article 127

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 39)

If the conditions of economic-financial and professional-technical ability are required by the tender documentation, the bidder can, in order to fulfil those conditions, use the ability of another entity.

Notwithstanding paragraph 1 of this Article, if the conditions referred to in Article 106 paragraph 1 items 1 and 2 are required by the tender documentation, the bidder, in order to fulfil those conditions, can use the ability of another entity, provided that that entity performs works or provides services for which that ability is required.

In the case referred to in para. 1 and 2 of this Article, the bidder must, in the process of verifying the statement of the economic operator, provide proof that the other entity will make available the necessary capacities, or resources for the execution of the contract.

In accordance with Article 134 of this Law, the contracting authority shall check whether the entity whose capacity is used by the bidder who submitted the most economically advantageous bid has the capacities that it makes available and whether it meets the required conditions of capacity for the part of the procurement subject that it will implement, as well as to whether there is a reason for the exclusion of that entity from the procedure provided for in the tender documentation.

If the contracting authority determines that the entity referred to in paragraph 1 of this Article does not have the capacity that the bidder intends to use or if there are reasons for excluding that entity from the procedure, it shall inform the bidder about this through the EPPS and enable it, within eight days from the date of notification, or the publication of the notice, to replace that subject with another subject who possesses the necessary capacity and on whose side there is no basis for exclusion from the procedure.

If the bidder does not inform the contracting authority of the new entity whose capability he intends to use within the time limit referred to in paragraph 5 of this Article and does not provide evidence that the entity possesses the capability that he makes available to them or that there is no mandatory reason for exclusion, the contracting entity will exclude that bidder from the procedure public procurement.

In the event that the bidder uses the economic and financial capacity of another entity, the contracting authority may, through the tender documentation, demand that the bidder and that entity be jointly and severally liable for the execution of the contract.

If the performance of works, the performance of services or the procurement of goods includes installation or installation work, the contracting authority may require that certain works be performed exclusively by the bidder or a member of the joint bid.

Subcontracting

Article 128

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 40)

The bidder may assign a part of the public procurement subject to a subcontractor in the bid, in accordance with this Law.

The contracting authority may not require the bidder to subcontract part of the subject matter of the procurement or to hire certain subcontractors, nor may it limit them in doing so, unless otherwise determined by a special law or a ratified international agreement.

In order to participate in the public procurement procedure, the subcontractor shall meet the mandatory conditions for participation in the public procurement procedure referred to in Article 99 of this Law, the condition referred to in Article 102 paragraph 1 item 2 and the conditions referred to in Article 106 of this Law for the part of the procurement subject assigned to them.

The bidder who intends to hire a subcontractor shall state in the bid and statement of the economic operator:

- 1) part of the procurement subject, which intends to assign, with data on the name and description of the part of the procurement subject and to specify the percentage share in the procurement subject, and
- 2) information about the subcontractor (name, registered office, tax identification number, account number, name of the authorized person).

If the bidder assigns part of the procurement subject to a subcontractor, the data referred to in paragraph 4 of this Article shall be specified in the public procurement contract.

An economic operator may be engaged as a subcontractor only in the bid of one bidder, except in the case referred to in paragraph 10 items 1 and 2 of this Article and Article 120 paragraph 4 of this Law.

If an economic operator participates as a subcontractor in the bid of two or more bidders, the contracting authority shall inform the bidders through the State Public Service of Public Affairs to replace that subcontractor with another, within eight days from the date of notification.

If the contracting authority determines that there is a reason for the exclusion of a subcontractor, it shall submit to the bidder a request for the replacement of that subcontractor within eight days from the date of submission of that request.

If in the case referred to in para. 7 and 8 of this Article, if the bidder does not hire a new subcontractor within the prescribed period, the contracting authority shall exclude that bidder from the public procurement procedure.

During the performance of the public procurement contract, the bidder may submit a request for consent to the contracting authority, for the purpose of:

- 1) replacement of the subcontractor for the part of the contract on public procurement that he previously concluded with the subcontractor;
- 2) engagement of one or more new subcontractors whose total share shall not exceed 30% of the value of the public procurement contract without VAT;
- 3) taking over the execution of a part of the contract on public procurement that he had previously concluded with a subcontractor.

Along with the request from paragraph 10 of this Article, the bidder shall provide evidence of fulfilling the conditions from paragraph 3 of this Article for the new subcontractor, or for themselves, in accordance with this Law.

The contracting authority shall decide on the request within eight days from the day of receipt of the orderly request.

Receipt and Registration of the Offer

Article 129

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 41)

Opening of Bids

Article 130

The opening of bids is carried out by EPPS at the moment of expiry of the deadline for submission of bids, without the presence of the authorized representatives of the bidders.

Minutes on the Opening of Bids

Article 131

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 43)

The record of the opening of bids shall be created by EPPS immediately after the opening of bids and forwarded to all bidders, jointly or individually, depending on the type of public procurement procedure.

The record of the opening of bids shall be drawn up on the form prescribed by the Ministry.

Correct Bid

Article 132

A correct bid is a bid that does not contain reasons for incorrectness from Article 133 of this Law.

Invalid Bid

Article 133

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 44)

An invalid bid is shall be considered a bid:

- 1) which was not made in the manner determined by the tender documentation in accordance with this Law;
- 2) if it is not provided in accordance with the technical specification or the

requirements for the subject of procurement are unclear, and these deficiencies shall not be eliminated by clarifying the bid referred to in Article 134 paragraph 3 of this Law;

3) in which the amount of the bided price exceeds the estimated value of the procurement;

4) in which an unrealistic price was bided, which the bidder did not justify in accordance with Article 139 of this Law;

5) in which there is a calculation error, and the bidder does not agree to the proposed correction of the calculation error in accordance with Article 134 paragraph 6 of this Law.

Bid Review and Evaluation Procedure

Article 134

Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 45)

After opening the bids, the committee shall review and evaluate the bids, without the presence of the authorized representatives of the bidders.

In the bid review process, the commission determines whether:

1) all the evidence referred to in Article 120 paragraph 16 of this Law has been submitted with the bid;

2) the bid guarantee was submitted in the manner provided for in the tender documentation in accordance with Article 122 para.

2, 3 or 4 of this Law;

3) is the bid guarantee issued for the requested amount and whether it is correct;

4) is the statement of the economic operator properly made and whether it contains all the required information and data;

5) due to the content of the statement of the economic operator, there is a basis referred to in Art. 108 and 110 of this Law for the exclusion of bidders from the public procurement procedure.

After reviewing the bid referred to in paragraph 2 of this Article, the commission evaluates the correctness of the bid in relation to the reasons referred to in Article 133 of this Law.

If any of the evidence referred to in Article 120 paragraph 16 item 5 of this Law is not submitted with the bid or the submitted evidence is incomplete or unclear, the commission will inform the bidder about this through the EPPS and give them a period of eight days to submit new evidence or to supplement the existing evidence.

If the bidder referred to in paragraph 4 of this Article does not submit the required evidence within the deadline or submits inadequate evidence, the bid of that bidder will be deemed invalid in accordance with Article 133 paragraph 1 item 1 of this Law.

In the process of reviewing and evaluating bids, the Commission may hire a professional, or an expert in the appropriate profession and/or request the opinion of a competent body or organization.

Evaluation of Bids

Article 135

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 46)

After reviewing and evaluating the bids, the commission for the implementation of the

public procurement procedure evaluates and ranks the correct bids.

Each member of the commission from paragraph 1 of this Article performs a separate (individual) evaluation of correct bids based on the criteria established by the tender documentation.

Based on the evaluation results referred to in paragraph 2 of this Article, the average of the number of items awarded to the bids and the ranking list of bidders in descending order is determined.

If two or more bids have the same number of items based on the criteria for selecting the most advantageous bid, the contracting authority will call bidders whose bids have the same number of items and make the selection by lot.

The drawing of lots referred to in paragraph 4 of this Article is carried out by the president of the commission.

Verification Economic Operator's Statement

Article 135a

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 47)

After evaluating the bids, the commission checks the data contained in the statement of the economic operator of the bidder whose bid is the most economically advantageous, namely:

- 1) obtaining publicly available evidence;
- 2) by inspecting the evidence at his disposal, if they are relevant at the time of the check; or
- 3) by obtaining evidence from competent authorities, organizations or other legal entities.

The contracting authority shall attach the evidence obtained in the manner referred to in paragraph 1 of this Article to the EPPS.

If a framework agreement is concluded with several bidders in the public procurement procedure, the contracting authority shall check the data contained in the statement of the economic operator of each bidder ranked within the number provided for concluding the framework agreement, before making a decision on the selection of the most advantageous bid.

If the contracting authority shall not provide proof in accordance with paragraph 1 of this Article, it will ask the bidder to, within eight days from the date of submission of the request, submit the original or a copy of the requested proof, except for the proof related to the special grounds for exclusion from the public procedure, through the EPPS procurement.

If the bidder referred to in paragraph 4 of this Article does not submit the required evidence within the prescribed period or the submitted evidence is unclear or incomplete, the procuring entity shall inform the bidder about this through the EPPS and to give them an additional period of five days to submit the appropriate evidence.

If the bidder does not act in accordance with para. 4 and 5 of this Article, the contracting authority shall exclude it from the public procurement procedure, unless the bidder proves that the required evidence is not available to them because it is not issued in the country where he has his seat.

If by checking the statement of the economic operator in the manner referred to in para. 1 and 4 of this Article determines that there is a reason for the exclusion of the bidder from the procedure or the bidder is excluded from the procedure in accordance with

paragraph 6 of this Article, the contracting authority shall verify the statement of the economic operator of the bidder whose bid is ranked next, and if there is no such bid, it will cancel the public procedure procurement.

The contracting authority shall specify in the tender documentation the evidence that he will request to verify the statement of the economic operator whose bid is the most economically advantageous.

The contracting authority shall not be obliged to check the statement of the economic operator in the case referred to in Article 59 paragraph 1 item 3 of this Law.

Evidence to Verify Accuracy of Economic Operator's Statement

Article 135b

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 47)

In the process of verifying the statement of the economic operator, the commission may request the submission of the following evidence, namely:

- 1) certificate, certificate or other act of the competent authority issued on the basis of criminal records, in accordance with the regulations of the state in which the economic operator has its seat, i.e. in which the authorized person of that economic operator has a residence, in order to determine the fulfilment of the conditions referred to in Article 99 paragraph 1 item 1 of this Law ;
- 2) certificate, certificate or other document issued by the administrative authority responsible for the collection of tax revenues, i.e. the competent authority of the state in which the economic operator has its seat, in order to determine the fulfilment of the conditions referred to in Article 99 paragraph 1 item 2 of this Law;
- 3) proof of registration in the Central Register of economic operators or another appropriate register in the country where the economic operator has its headquarters, with data on the authorized person, i.e. the executive director of the economic operator, in order to determine the fulfilment of the conditions referred to in Article 102 paragraph 1 item 1 of this Law;
- 4) proof of authorization to perform the activity that is the subject of procurement (permit, license, approval or other act of the competent authority), in accordance with the law, in order to determine the fulfilment of the conditions referred to in Article 102 paragraph 1 item 2 of this Law;
- 5) financial statements for the two previous financial years, depending on the date of establishment or start of activity, with the report of the authorized auditor in accordance with the law regulating audit, which was accepted by the competent authority of the state in which the economic operator has its seat, in order to determine the fulfilment of the conditions referred to in Article 104 paragraph 1 of this Law;
- 6) a certificate issued by the investor, i.e. the user, about the goods delivered, the services provided or the works performed, during the previous years but no longer than five years, including the year in which the public procurement procedure was started, which contains the description and value of the procurement object, the time of realization of the contract and the statement that the contract was executed in a timely and quality manner, in order to determine the fulfilment of the conditions referred to in Article 106 paragraph 1 item 1 of this Law;
- 7) proof of the professional and personnel capacities of the engaged workforce, namely:
 - a) professional qualification (diploma, certificate, certificate or other

- appropriate act of the competent authority or organization);
- b) professional qualification (certificate, certificate or other act of the competent authority or organization);
 - c) professional experience related to the subject of the procurement (certificate or other act of the competent authority, investor or user);
 - d) the way of hiring the workforce (application for employee insurance, employment contract, agreement on hiring an employee, contract on using the abilities of another entity or other act in accordance with the law);
- 8) a list of fixed assets and equipment owned or provided by relying on the ability of another subject or provided in another way, in accordance with the law, for proof, in order to determine the fulfilment of the requirements referred to in Article 106 paragraph 1 item 3 of this Law;
- 9) a certificate or other act issued by the competent authority or authorized organization on the established quality management system in the area of the subject of procurement, in order to determine the fulfilment of the conditions referred to in Article 106 paragraph 1 item 4 of this Law;
- 10) certificate or other document issued by the competent authority or authorized organization on the established system of environmental protection, in order to determine the fulfilment of the requirements referred to in Article 106 paragraph 1 item 5 of this Law;
- 11) a sample, catalogue or photo of the subject of procurement, the authenticity of which the bidder shall confirm, if requested by the contracting authority, in order to determine the fulfilment of the conditions referred to in Article 106 paragraph 1 item 6 of this Law.

If the evidence referred to in paragraph 1 items 1 and 2 of this Article is not issued in the state of the seat of the economic operator or the state in which the authorized person of the economic operator resides or if that evidence does not include all the information referred to in Article 99 of this Law, the requested evidence can replace or supplement the act of the competent authority of the state of the economic operator's headquarters or the embassy of that state in Montenegro, which confirms that the requested evidence is not issued or that is not issued with all the required data.

Record of Review, Assessment and Evaluation of Bids

Article 136

The commission for the implementation of the public procurement procedure shall prepare a report on the review, assessment, comparison and evaluation of bids.

A member of the commission who does not agree with the conducted procedure of review, assessment, evaluation of bids or with the proposed decision on the selection of the most advantageous bid or the decision on the annulment of the public procurement procedure, has the right to separate his opinion.

In the case referred to in paragraph 2 of this Article, the separate opinion of the commission member is entered into the minutes after the proposal for making a decision on the selection of the most advantageous bid or a decision on the cancellation of the public procurement procedure.

The form of minutes on the review, assessment and evaluation of bids shall be prescribed by the Ministry.

Appropriate Implementation

Article 137

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 48)

The provisions of Articles 120, 122, 126, 127, 128, 130, 131, 134, 135, 135a of this Law shall apply accordingly to the application for qualification, if this Law does not prescribe otherwise.

Notification of Non-participation in Further Proceedings

Article 138

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 49)

In a competitive negotiated procedure, a competitive dialogue, a partnership for innovation, a negotiation procedure with prior publication of a call for tenders and a negotiation procedure without prior publication of a call for tenders, the contracting authority shall notify the candidate, i.e. the bidder, that it shall not be invited to further negotiations, or a dialogue, the instruction states that the right to protection may be exercised by appealing the decision on the selection of the most advantageous bid, or, the decision on the annulment of the public procurement procedure.

Unrealistic Bid

Article 139

An unrealistic bid shall be a bid of which the offered price is at least 30% lower than the average price of all valid bids, including that bid.

The contracting authority shall demand from the bidder who submitted an unrealistic bid that, within five days, from the day of submission of the request, to submit an explanation of the bided price in terms of:

- 1) economics of the production process, procurement conditions, service provision technology and/or construction methods;
- 2) technical solutions and advantageous conditions for the delivery of goods, the performance of services or the performance of works;
- 3) originality of goods, licensing of services and their products, techniques and technology of performance of bided works;
- 4) compliance of obligations with subcontractors;
- 5) state aid and subsidies.

If the bidder does not submit the explanation of the unrealistically low bid within the period referred to in paragraph 2 of this Article, he will be excluded from the further public procurement procedure.

The contracting authority shall check the explanation of the unrealistic bid in relation to the elements referred to in paragraph 2 of this Article and if he finds that the reasons and evidence for the offered price are not justified, reject the bid as incorrect.

The contracting authority shall reject an unrealistic bid if he determines that the bid price is extremely low for the reason that it is not in accordance with the obligations in the area of environmental protection, social and labor law, including collective agreements, in accordance with the law and confirmed international agreements.

Reasons for Annulment of Public Procurement Procedure

Article 140

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 50)

The contracting authority shall cancel the public procurement procedure if:

- 1) before the expiry of the deadline for submitting the application for qualification, i.e. bid, assess that it is necessary to significantly change the tender documentation;
 - 2) no application for qualification has been submitted;
 - 3) there is not a sufficient number of qualified candidates in accordance with the tender documentation;
 - 4) no or no valid bids were submitted or bidders were excluded from the procedure;
 - 5) the stipulated number of bids was not submitted in the case of concluding a framework agreement, except in the case of Article 68 paragraph 8 of this Law;
 - 6) before deciding on applications, i.e. bids, objective circumstances occur (organizational changes, rationalization or provision of the subject of procurement on another basis), due to which the need for the subject of procurement has ceased, with the fact that in that case the contracting authority shall not perform the procurement in question in the current year;
 - 7) is the subject of the procurement as a whole or for the most part realized on the basis of a public procurement contract that was concluded on the basis of an executive decision on the selection of the most advantageous bid, if that decision was later annulled by legal force;
- 7a) if by using EPPS the public procurement procedure was carried out in such a way that there were obstacles, limitations and actions of the contracting authority not subsequently corrected or repeated;
- 8) there are other reasons established by this Law.

In the case referred to in paragraph 1 of this Article, the contracting authority may cancel the public procurement procedure in its entirety or partially, if the subject of the procurement is divided into lots.

The provision of this Article accordingly applies to the procedure of public procurement for social and other special services, as well as procurement by design competition.

9. Decisions of the Contracting Authority

Decision Making

Article 141

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 51)

The contracting authority shall:

- 1) make the decision on exclusion from the public procurement procedure within 30 days, from the day of the opening of applications for qualification and deliver it to the applicant within three days from the date of adoption,
- 2) the decision on the selection of the most advantageous bid, i.e. the decision on the annulment of the public procurement procedure, shall be made within 60 days from the day of opening of bids and published in the EPPS within three days from the date of adoption.

The decision referred to in paragraph 1 of this Article is made by the authorized person

of the contracting authority, upon the proposal of the commission for the implementation of the public procurement procedure.

By publishing the decision in the EPPS, it is considered that it was delivered to all participants in the public procurement procedure on the following day from the day of publication.

The decision referred to in paragraph 1 item 2 of this Article that has not been published does not produce legal effect.

If certain data from the decision are secret in accordance with the law regulating the confidentiality of data, the decision shall be published in a way that will adequately protect that data.

Decision on Exclusion from Public Procurement Procedure

Article 142

The decision on exclusion from the public procurement procedure shall contain:

- 1) information on the contracting authority;
- 2) data on the type of public procurement procedure, the name and description of the procurement subject as a whole and by lots and the number of the tender documentation;
- 3) the total estimated value of the procurement subject as a whole and by lots;
- 4) the name of the applicant for qualification who is excluded from the public procurement procedure and the reasons for exclusion;
- 5) instruction on legal protection;
- 6) the date of the decision and the signature of the authorized person of the contracting authority.

The decision on exclusion from the public procurement procedure is enforceable upon the expiration of the deadline for submitting an appeal, if the appeal has not been filed, or on the next day, from the day of publication of the decision rejecting the appeal.

The form of the decision referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Decision on Choosing the Most Advantageous Bid

Article 143

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 52)

The decision on the selection of the most advantageous bid decides on the most advantageous bid, correct and incorrect bids, the exclusion of bidders, as well as the exclusion of candidates and bidders who have been notified that they shall not be invited to further negotiations or dialogue, in accordance with this Law.

The decision on the selection of the most advantageous bid, which was made without a previously conducted public procurement procedure, shall be null and void if the contracting authority was obliged to conduct a public procurement procedure in accordance with this Law before its adoption.

The decision on the selection of the most advantageous bid, in particular, contains:

- 1) information on the contracting authority;
- 2) data on the type of public procurement procedure, the name and description of the procurement subject as a whole and by lots and the number of the tender documentation;

- 3) the total estimated value of the procurement subject as a whole and by lots;
- 4) data on bidders, or candidates who were excluded from the public procurement procedure with reasons for exclusion;
- 5) data on the exclusion of candidates and bidders who were notified that they shall not be invited to further negotiations or dialogue, with the reasons for exclusion;
- 6) data on bids that are incorrect with the reasons for the incorrectness;
- 7) data on valid bids;
- 8) data on evaluation and ranking of bids;
- 9) data on the most advantageous bid, including bids in case of concluding a framework agreement with one or more bidders;
- 10) instruction on legal protection;
- 11) the date of the decision and the signature of the authorized person of the contracting authority.

If the subject of procurement is divided into lots, the contracting authority may reach a decision on choosing the most advantageous bid for each lot separately, for several lots or for all lots.

The form of the decision referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Decision on Annulment of Public Procurement Procedure

Article 144

The decision on annulment of the public procurement procedure, depending on the reason for annulment, shall contain:

- 1) information on the contracting authority;
- 2) data on bidders;
- 3) reasons for exclusion from the public procurement procedure;
- 4) reasons for annulment of the public procurement procedure in its entirety or for a certain part of the public procurement;
- 5) data on the type of public procurement procedure, the name and description of the procurement subject as a whole and by lots and the number of the tender documentation;
- 6) the total estimated value of the procurement subject as a whole and by lots;
- 7) instruction on legal protection;
- 8) date of adoption and signature of the authorized person of the contracting authority.

The form of the decision referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Access to Public Procurement Procedure Documents

Article 145

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 53)

The contracting authority shall, following the publication of the decisions referred to in Articles 143 and 144 of this Law in the EPPS, until the expiry of the time limit for lodging an appeal, upon request of the concerned tenderers and candidates submitted via the ESSP, enable access to the complete electronic documentation of the public procurement procedure, within two days from the date of submission of the request, for a period of no

less than 24 hours, as well as direct access to the documentation which has not been submitted via the ESSP, within two days from the date of submission of the request, for a period which shall not be shorter than two hours.

An official note on the performed access referred to in paragraph 1 of this Article shall be made, containing the information on the following: time of access, the person having performed the access, the person in whose presence the access was performed, parts of documents which were inspected, the reasons why a person having performed the access refused to sign an official note, as well as other facts relevant to the credibility of these actions..

Enforceability of Decision on Selection of the Most Advantageous Bid

Article 146

The decision to choose the most advantageous bid shall become enforceable:

- 1) upon expiry of the deadline for filing an appeal, if the appeal has not been filed;
- 2) on the following day from the date of publication of the appeal decision, which rejects the appeal or suspends the appeal proceedings, in accordance with this Law.

The contracting authority may not conclude a contract on public procurement or a framework agreement before the execution of the decision on the selection of the most advantageous bid, unless:

- 1) only one bidder participated in the public procurement procedure;
- 2) the public procurement contract is concluded on the basis of a framework agreement with one bidder or a dynamic procurement system with one bidder;
- 3) a public procurement is conducted in accordance with Article 59 paragraph 1 item 3 of this Law.

Enforceability of Decision on Annulment of Public Procurement Procedure

Article 147

The decision to cancel the public procurement procedure shall become enforceable:

- 1) on the following day from the day of publication in EPPS, if not a single application for qualification, i.e. bid, has been submitted;
- 2) upon expiry of the deadline for filing an appeal, if the appeal has not been filed;
- 3) on the following day from the date of publication of the appeal decision, which rejects the appeal or suspends the appeal proceedings, in accordance with this Law.

Ending the Decision-making Process on Applications for Qualification or Bids

Article 148

The public procurement procedure shall end with the adoption of a decision on the selection of the most advantageous bid or a decision on the cancellation of the public procurement procedure.

The procedure for deciding applications for qualification shall be completed when the decision on exclusion from the public procurement procedure becomes enforceable.

The procedure for deciding on bids shall be completed when the decision on the selection of the most advantageous bid, or the decision on the cancellation of the public procurement procedure, becomes enforceable.

Contract on Public Procurement

Article 149

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 54)

The contracting authority shall conclude a contract on public procurement in written or electronic form with the bidder whose bid was selected as the most advantageous, after the execution of the decision on the selection of the most advantageous bid.

The public procurement contract shall be concluded and implemented in accordance with the conditions established by the tender documentation, the selected bid and the decision on the selection of the most advantageous bid.

In the public procurement contract, the contracting authority shall declare the amount of VAT.

The contracting authority shall sign and deliver the public procurement contract to the bidder whose bid was selected as the most advantageous, no later than 15 days from the date of execution of the decision on the selection of the most advantageous bid.

The bidder referred to in paragraph 4 of this Article shall sign and return the delivered contract to the contracting authority together with a guarantee for the good performance of the contract and/or other means of financial security required by the tender documentation, within 15 days from the date of delivery of the contract.

The bidder referred to in paragraph 4 of this Article shall not be obliged to sign a public procurement contract that is not in accordance with paragraph 2 of this Article.

The bidder can start the implementation of the procurement subject if he has submitted to the contracting authority a signed contract on public procurement, a guarantee for the good performance of the contract and/or other means of financial security required by the tender documentation within the period referred to in paragraph 4 of this Article.

If the bidder does not act in the manner referred to in paragraph 4 of this Article, it is considered that he has refused to conclude the public procurement contract.

In the case referred to in paragraph 7 of this Article, the contracting authority shall activate the bid guarantee of the bidder whose bid was chosen as the most advantageous, i.e. in the event that the bid guarantee expires, to demand compensation for damages in the amount of 10% of the bided bid amount, and the bidder shall pay the damages compensate the contracting authority.

In the case referred to in paragraph 7 of this Article, the contracting authority may conclude a contract with the second-ranked bidder, provided that the price of his bid is not higher than 10% compared to the originally selected bid, or he may cancel the public procurement procedure.

In the case referred to in paragraph 10 of this Article, the contracting authority shall check the accuracy of the statement of the economic operator of the bidder with whom it intends to conclude the contract before concluding the contract.

The price determined in the public procurement contract shall not be higher than the price specified in the decision on the selection of the most advantageous bid.

If the tender documentation foresees a change in the price and variant, the contracting authority may foresee in the contract that the agreed price will depend on the price of materials, work and other elements that can affect the amount of production costs in a certain period of time and on a certain market.

The contracting authority shall publish the contract on public procurement in EPPS within three days from the date of delivery of the concluded contract.

The contracting authority shall designate the person responsible for the implementation of the public procurement contract, or the framework agreement, within the period referred to in paragraph 14 of this Article.

Where the tender documentation stipulates the application of economic customs (customs) in accordance with special regulations, the contracting authority may stipulate in the contract that economic customs (customs) will be applied during the implementation of the contract.

The provisions of the law governing contractual obligations shall be applied accordingly to the performance and responsibility of the contracting parties for the fulfilment of obligations from public procurement contracts.

Termination of the Public Procurement Contract

Article 150

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 55)

The contracting authority shall terminate the public procurement contract, especially if:

- 1) circumstances arise that result in a significant change to the contract that requires the implementation of a new public procurement procedure;
- 2) there is a reason that is the basis for mandatory exclusion from Article 108 of this Law or from Article 110 of this Law, which is provided for in the tender documentation.

A significant change to the contract referred to in paragraph 1 item 1 of this Article shall be considered to be a change in the nature of the contract in the material sense in relation to the contract that was originally concluded if one or more of the following conditions are met:

- 1) the amendment introduces conditions that, if they had been part of the original public procurement procedure, would have enabled the inclusion of other economic operators in relation to the selected bidders or the acceptance of a different bid in relation to the accepted one or would have enabled greater competitiveness in the public procurement procedure that preceded the conclusion of the contract;
- 2) the amendment changes the economic balance of the contract in favor of the economic operator with which the contract was concluded in a manner not provided for in the original contract;
- 3) the amendment significantly increases the scope of the contract;
- 4) change of the economic operator with which the public procurement contract was concluded, except in the case referred to in Article 151 paragraph 1 item 4 of this Law;
- 5) when the bidder does not fulfil the contractual obligations and in other cases determined by the tender documentation in accordance with the law.

When terminating the contract, the contracting authority shall publish the notice of termination of the contract on EPPS within ten days from the date of termination of the contract.

Amendments to Public Procurement Contracts

Article 151

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 56)

The public procurement contract during its duration may be amended without conducting a new public procurement procedure:

- 1) when the changes, regardless of their value expressed in money, are provided for in the tender documentation and the public procurement contract and include a change in the price or variant, with the established scope and nature of possible changes or variants, as well as the conditions under which the changes may be made, provided that the contract does not provide for changes that change the overall nature of the public procurement contract, and that the increase in the value of the contract does not exceed 20% of the value of the original contract,
- 2) for the procurement of additional goods, services or works, which have become necessary, and which were not included in the original public procurement contract, if the change of the economic operator with which the contract was concluded is not possible for economic or technical reasons, such as compatibility requirements with the existing equipment, services or works procured as part of the original procurement and may cause significant difficulties or a significant increase in costs for the contracting authority and the increase in the value of the contract does not exceed 20% of the value of the original contract,
- 3) when the need to change the contract arose due to circumstances that the contracting authority could not foresee at the time of concluding the contract, and the change does not change the nature of the contract and the increase in the value of the contract does not exceed 20% of the value of the original contract,
 - 3a) when the need to change the contract arose due to circumstances that the contracting authority could not foresee at the time of concluding the contract, and the change does not change the nature of the contract, but only reduces the contracted value,
 - 3b) when the subcontractor is replaced, in accordance with Article 128 para. 10, 11 and 12 of this Law,
- 4) if the economic operator, after restructuring, including takeover, merger, purchase or bankruptcy, is completely or partially replaced by a new legal successor, i.e. an economic operator that fulfils the originally determined conditions of the concluded public procurement contract, and the changes are provided for in the tender documentation, provided that they do not make other significant changes to the contract referred to in Article 150 paragraph 2 of this Law.

If it is necessary to make significant changes in the public procurement contract referred to in Article 150 paragraph 2 of this Law, the contracting authority will initiate a new contract award procedure.

If several changes are made, the value of the public procurement contract shall be estimated based on the net cumulative value of all changes.

The contracting authority shall publish the amendment of the contract on EPPS within three days from the date of conclusion of the amendment of the contract.

The provisions of para. 1 to 4 of this Article shall also apply to changes to the framework agreement during its duration.

Control and Report on the Implementation of Public Procurement Contracts **Article 152**

The contracting authority shall:

- 1) control the execution of the concluded contract on public procurement;

- 2) prepare a report on the implementation of the contract and publish the report in EPPS, within 30 days from the date of implementation of the contract on public procurement.

The content of the report form referred to in paragraph 1 item 2 of this Article shall be prescribed by the Ministry.

VII. PARTICULAR FORMS OF SERVICE PROCUREMENT

1. Procurement of Social and Other Special Services

Procurement Procedure

Article 153

For the procurement of social and other special services, the value of which is equal to or greater than the value referred to in Article 26 paragraph 1 item 2 of this Law, the contracting authority shall publish the tender documentation in the EPPS, unless it conducts a negotiation procedure without prior publication of the call for tenders.

In the public procurement of services referred to in paragraph 1 of this Article, the contracting authority shall act in accordance with the principles of public procurement.

Applications for qualification and bids shall be submitted within a period not shorter than 15 days from the date of publication of the call for tenders.

In the process of procuring services referred to in paragraph 1 of this Article, the contracting authority is not obliged to apply the grounds for exclusion, nor to require that the application for qualification and the bid be submitted by electronic means of communication.

The list of services referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

2. Reserved Procurements

Conditions for Applying Reserved Procurement

Article 154

The contracting authority may reserve the right to participate in the public procurement procedure for services referred to in Article 153 paragraph 1 of this Law, which are determined by codes: 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000 8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000- 7, 98133000-4 and 98133110-8 of a single dictionary of public procurement, for organizations:

- 1) which perform the tasks of providing public services;
- 2) the profits of which are reinvested in order to achieve the organization's goal;
- 3) whose management or ownership structures are based on employee ownership or the participation of employees, users or interested persons; and
- 4) to which the contracting authority has not awarded a reserved contract for the services referred to in this paragraph during the previous three years.

The duration of individual reserved procurement for services referred to in paragraph 1 of this Article shall not be longer than three years.

In the tender notification, the contracting authority shall state that the public procurement procedure for the procurement of health, social or cultural services from paragraph 1 of this Article is reserved exclusively for organizations that meet the conditions from paragraph 1 item. 1 to 4 of this Article.

3. Project Competition

Conditions for Implementation

Article 155

For the purpose of procurement of services in the field of architecture, construction, engineering and IT, the contracting authority may conduct a project competition:

- 1) which precedes the conclusion of the contract on public procurement of services;
- 2) with rewards or compensation to participants.

In the case referred to in paragraph 1 item 1 of this Article, the estimated value of the public procurement is based on the estimated value of the services, including possible awards, i.e. fees to the participants.

In the case referred to in paragraph 1 item 2 of this Article, the estimated value of the public procurement is based on the total amount of awards, i.e. fees to the participants, including the estimated value of the public procurement of services that may be subsequently awarded in the negotiation procedure referred to in Article 59 paragraph 1 item 8 of this Law, if the contracting authority foresaw this possibility in the notification on the launch of the project competition.

The contracting authority shall publish the notification about the launch of the project competition in the EPPS.

The contracting authority shall state in the project tender, when it intends to subsequently award a contract for the public procurement of services, that the negotiation procedure referred to in Article 59 paragraph 1 item 8 of this Law is applied.

The contracting authority who conducted the project competition shall publish a notification about the results of the project competition in the EPPS.

Implementation of the Project Competition and Selection of Participants

Article 156

The contracting authority may not limit participation in the project competition:

- referring to the territory or part of the territory of the state,
- in such a way that a special form of organization is required from the participants of the competition, unless otherwise determined by law.

The project competition may be conducted in an open or restricted procedure.

If the number of participants in the competition is limited, the contracting authority shall determine clear and non-discriminatory criteria for the selection of participants.

The notification on the launch of the project competition, the procedure for opening bids, the content, the method of preparation and submission of the minutes shall be prescribed by the Ministry in cooperation with the state administration body responsible for spatial planning and building construction.

Composition and Work of the Jury

Article 157

The project competition shall be conducted by an expert jury apitemed by the contracting authority from among experts in the field that is the subject of the project competition.

The jury shall consist of an odd number of members.

If the participants of the project competition are required to have special professional qualifications or professional experience, at least one third of the jury members must have the same or equivalent qualifications or professional experience.

The members of the jury individually and together shall evaluate the received projects in accordance with the project competition.

The jury shall consider the projects while ensuring the anonymity of the participants and

exclusively on the basis of the criteria specified in the project competition.

The jury shall draw up a report on the ranking of the projects, which is ranked according to the characteristics of each project, including notes on the elements that need to be clarified, and then draw up an opinion with a proposed decision.

The minutes referred to in paragraph 6 of this Article shall be signed by the members of the jury.

The jury shall submit the minutes and opinion with the proposed decision referred to in paragraph 6 of this Article to the contracting authority for further processing.

The contracting authority shall make a decision based on the opinion of the jury and publishes the decision on the results of the project competition in EPPS within three days, from the day of delivery of the opinion of the jury.

The form of the invitation to participate in the project competition, minutes and notifications about the results of the project competition shall be prescribed by the Ministry.

VIII. PUBLIC PROCUREMENT FOR SECTORAL CONTRACTING

1. Procurement for Performing Sectoral Activities *Obligation to Apply in the Field of Sectoral Activity*

Article 158

The sectoral contracting authority shall publicly procure goods, services and works for the performance of sectoral activities referred to in Art. 159 to 166 of this Law is implemented in accordance with the provisions of Art. 167 to 173 of this Law.

Sectoral Activity

Article 159

Sectoral activities, in terms of this Law, are activities in the fields of: electricity, gas and thermal energy, water management, transport, airports and seaports, postal services, research and production of oil, coal and other solid fuels.

Activity in the Field of Electricity

Article 160

Sectoral activity in the field of electricity, in the sense of this Law, shall include:

- 1) production, transmission or distribution and/or delivery for the sale of electricity;
- 2) provision of services for the use of fixed networks or management of fixed networks intended for the provision of public services in connection with the production, transmission or distribution of electricity;
- 3) delivery of electricity to networks referred to in item 2 of this paragraph.

The delivery of electricity by a sectoral contracting authority who is not a public contracting authority to fixed networks that provide a public service shall not be considered a sectoral activity referred to in paragraph 1 of this Article, if:

- 1) the production of electricity by the sectoral contracting authority is performed for the purpose of consumption for the performance of an activity that is not an activity referred to in paragraph 1 of this Article or referred to in Art. 161, 162 and 163 of this Law, i
- 2) delivery to the fixed network depends only on the sectoral contracting authority's own consumption and does not amount to more than 30% of its total average electricity production for the last three years, including the current year, unless it produces production in a period of less than three years when the production

achieved is proven based on economic projections for the time since the establishment, i.e. the start of production.

Activity in Gas and Thermal Energy Fields

Article 161

Sector activity in the field of gas and thermal energy, in the sense of this Law, shall include:

1) provision of services for the use of public infrastructure (hereinafter: fixed networks) or management of fixed networks intended to provide services to the public in connection with the production, transmission or distribution of natural gas or thermal energy;

2) delivery of natural gas or thermal energy to networks from item 1 of this paragraph.

Delivery of gas or thermal energy by a sectoral contracting authority that is not a public contracting authority through fixed networks shall not be considered an activity from paragraph 1 of this Article, if:

- production of gas or thermal energy is an activity of the sectoral contracting authority that is not covered by paragraph 1 of this Article or Art. 160 and 162 of this Law, i

- the exclusive purpose of delivery to the fixed network is the commercial exploitation of production from sub-paragraph 1 of this paragraph, which does not amount to more than 20% of the average turnover of that sectoral contracting authority, taking into account the average production in the last three years, including the current year.

Activities in Water Management Field

Article 162

The sectoral activity in the field of water management in the sense of this Law shall include:

1) provision of services for the use of fixed networks or management of fixed networks intended for the provision of services related to the production, transmission or distribution of drinking water,

2) delivery of drinking water to the networks referred to in item 1 of this paragraph.

The provisions of this Law shall apply to public procurement procedures or project tenders carried out by a sectoral contracting authority that performs the activity referred to in paragraph 1 of this Article, which is related to:

1) hydraulic engineering projects, by irrigation or drainage of land, provided that the amount of water to be used for the delivery of drinking water represents more than 20% of the total amount of water obtained by the implementation of those projects or by means of irrigation or drainage installations,

2) disposal or processing of waste water.

The supply of drinking water by a sectoral contracting authority, who is not a public contracting authority, to fixed networks that provide service to the public shall not be considered an activity referred to in paragraph 1 of this Article, if:

1) the production of drinking water by the sectoral contracting authority is carried out for the purpose of consumption required for the performance of activities that are not activities from para. 1 and 2 of this Article or Art. 160, 163 and 164 of this Law,

2) delivery to the network depends only on the sector's own consumption and does not amount to more than 30% of the total average production of drinking water from

the last three years, including the current year.

Activities in Traffic Service Field

Article 163

The sectoral activity in the field of transport in the sense of this Law shall be an activity related to the provision of services for the use of fixed networks or the management of networks that provide services to the public in the field of transportation by railway, automated systems, bus or cable car.

The network referred to in paragraph 1 of this Article shall be considered to be the services that are provided under the conditions established by the carrier in accordance with the law.

Activities in the Field of Airports and Seaports

Article 164

Sector activity in the field of airports and seaports in the sense of this Law shall be an activity related to the provision of airport services and services in seaports or other terminal equipment to carriers in air and sea traffic.

Activity of Postal Services

Article 165

Sector activity in the field of postal services in the sense of this Law shall include the provision of:

- 1) postal services,
- 2) other services, except postal services referred to in paragraph 2 item b of this Article if the sectoral activity is not directly exposed to market competition from Article 170 of this Law.

In terms of paragraph 1 of this Article:

- a) postal item is an item addressed in the final form in which it is to be delivered, including letters, books, catalogues, newspapers, magazines and postal packages containing goods with or without commercial value, regardless of their weight,
- b) postal services are services that include the reception, sorting, transfer and delivery of postal items, which include services covered and not covered by the universal service, in accordance with the regulation governing postal services,
- c) other services, except postal services, are:
 - postal service management services (both pre- and post-shipment services, including postal receiving service management services),
 - services related to postal items that are not included in item a of this paragraph.

The Activity of Exploration and Production of Oil, Gas, Coal or Other Solid Fuels

Article 166

The activities of exploration and production of oil, gas, coal or other solid fuels shall include the exploitation of a certain geographical area for the purpose of:

- 1) oil or gas production,
- 2) exploration or exploitation of coal or other solid fuels.

2. Associated Companies and Joint Ventures

Procurement from a Related Company or on the Basis of a Joint Venture

Article 167

Procurement from an associated economic operator or on the basis of a joint venture of

several sectoral contracting authorities shall be a procurement that a sectoral contracting authority carries out for the purpose of carrying out sectoral activities from a commercial company that is connected to one of those sectoral contracting authorities, namely for the procurement of:

- 1) of goods, if at least 80% of the average total turnover of the affiliated company for the previous three years was achieved by delivering goods to the sectoral contracting authority or other companies with which it is affiliated;
- 2) services, if 80% of the average total turnover of the associated company for the previous three years was achieved by providing services to the sectoral contracting authority or other companies with which it is associated;
- 3) works, if 80% of the average total turnover of the associated company for the previous three years was achieved by the performance of works for the sectoral contracting authority or other companies with which it is associated.

If the associated company was founded or started to perform activities, i.e. to generate income in a period shorter than the period referred to in paragraph 1 of this Article, the realized turnover is proven on the basis of economic projections for the time since the establishment, i.e. the start of activities.

If two or more companies, related to the sectoral contracting authority with which they form an economic community, provide the same or similar services, goods or works, the average total turnover referred to in paragraph 1 of this Article shall be calculated based on the sum of their total turnover from the provision of services, delivery of goods or execution of works.

Associated Company

Article 168

An associated company referred to in Article 167 of this Law shall be a company whose annual financial statements are consolidated into the annual financial statements of the sectoral contracting authority in accordance with the law regulating accounting.

If the obligation to consolidate the annual financial statements with the annual financial statements of the sectoral contracting authority shall not apply to the related company referred to in paragraph 1 of this Article, the related company shall be a any company that:

- 4) may be directly or indirectly under the dominant influence of the sectoral contracting authority, or
- 5) may have a dominant influence on the sectoral contracting authority, or
- 6) together with the sectoral contracting authority is under the dominant influence of another company on the basis of ownership, financial share or on the basis of the articles of incorporation of those companies.

Joint Venture

Article 169

A joint venture, in the sense of this Law, shall be an association of sectoral contracting entities that was established with the aim of performing sectoral activities for a period of at least three years and whose act of establishment stipulates that each sectoral contracting entity that forms a joint venture will be part of it at least for a period of three years.

3. Procurement for Carrying Out Sectoral Activities is Directly Subject to Market Competition

Sector Activity Directly Subject to Market Competition

Article 170

A sectoral activity shall be directly subject to market competition, if on the geographically relevant market several economic operators perform or have the possibility to perform that activity under equal conditions and access to the market is not limited.

The sectoral activity that is subject to market competition shall be determined in accordance with the law regulating the protection of competition on the relevant market, taking into account the nature and characteristics of products or services, the existence of entry barriers or contracting authority preferences, significant differences in the market shares of economic operators between that area and neighbouring areas or significant price differences.

This Law does not apply to the awarding of contracts and the implementation of project tenders intended for the performance of sectoral activities if the competent state administration body that supervises the sectoral contracting authority or the sectoral contracting authority proves that the sectoral activity carried out in Montenegro is directly exposed to competition on the market in which access is not restricted.

The competent authority of the state administration that supervises the sectoral contracting authority or the sectoral contracting authority in the proof procedure referred to in paragraph 3 of this Article shall obtain the opinion of the independent regulatory authority responsible for the sectoral activity that supervises that sectoral activity and the authority responsible for competition affairs.

The sectoral activity referred to in paragraph 3 of this Article may be part of a larger sector or may be performed only in a certain area of Montenegro.

The assessment of market competition referred to in paragraph 3 of this Article shall be determined in accordance with this Law and the law regulating the protection of competition on the market.

The assessment of market competition shall be carried out in relation to the relevant product market of the activity in question and the relevant geographic market in accordance with para. 7 to 10 of this Article.

The direct exposure of the activity to market competition shall be decided on the basis of criteria that are harmonized with the competition rules of the European Union.

The criteria referred to in paragraph 8 of this Article may include the characteristics of the products or services in question, the existence of alternative products or services that are considered substitutable on the supply or demand side, prices, as well as real or potential competition from more than one product supplier or service provider.

The relevant geographic market, on the basis of which the exposure to competition was assessed, represents the territory in which certain economic operators participate in the supply and demand of products or services, in which the conditions of market competition are sufficiently homogeneous and which may differ from other neighbouring territories, especially in that conditions of market competition in that territory are significantly different.

When assessing market competition, special consideration shall be given to the nature and characteristics of the products or services in question, the existence of entry barriers or contracting authority preferences, significant differences in the market shares of entrepreneurs between the subject territory and another neighbouring territory, or significant differences in prices.

Access to the market shall not be limited in the sense of paragraph 1 of this Article if the regulations regulating the sector activity are harmonized with the regulations of the European Union.

If free access to a certain market shall not be determined in accordance with paragraph 12 of this Article, the sectoral contracting authority shall provide evidence that access to that market is factually and legally free.

Procedure for Determining the Direct Exposure of Sectoral Activities to Market Competition

Article 171

If the competent authority of the state administration that supervises the sectoral contracting authority or the sectoral contracting authority determines that, based on the criteria from Article 170 para. 7 to 10 of this Law, a certain activity directly exposed to competition on markets where access is not restricted, it may submit a request to the European Commission, for the purpose of assessing whether the sectoral activity performed in Montenegro is directly exposed to competition on a market where access is not restricted.

In accordance with the law, the request referred to in paragraph 1 of this Article shall be accompanied by the opinion of the independent regulatory body responsible for the sectoral activity that supervises that sectoral activity.

The requirements referred to in paragraph 1 of this Article may refer to activities that are part of a larger sector or that are performed only in a certain area of Montenegro.

In the request referred to in paragraph 1 of this Article, the competent state administration body that supervises the sectoral contracting authority or the sectoral contracting authority shall inform the European Commission of all important facts, and in particular of all laws, regulations, administrative acts or agreements related to compliance with the conditions referred to in Article 170 paragraphs 3 to 6 of this Law.

At the request of the European Commission, the competent body of the state administration that supervises the sectoral contracting authority and the sectoral contracting authority shall supplement the request referred to in paragraph 1 of this Article, if this request is not accompanied by the opinion of the regulatory authority that, in accordance with the law, supervises that sectoral activity, in accordance with Article 170 para. 7 to 10 of this Law, which analyzes in detail the conditions for the exclusion of sectoral activity from the application of this Law.

4. Selection of the Procedure, Techniques in the Public Procurement Procedure and the Application of the Qualification System

Selecting the Type of Procedure

Article 172

For public procurement for performing sectoral activities, the sectoral contracting authority can use:

- 1) open procedure, restricted procedure, negotiation procedure with prior publication of invitations to tender and competitive dialogue, for the procurement of each item of procurement;
- 2) partnership for innovation, if it has a need for innovative goods, services or works not satisfied by the procurement of goods, services or works that are already available on the market;
- 3) negotiation procedure without prior publication of the call for tenders in accordance with Article 59 of this Law.

In the case referred to in paragraph 1 of this Article, the sectoral contracting authority may, as a means of initiating the public procurement procedure, use:

- 1) notification on the establishment of a qualification system, if it implements a restricted procedure, a negotiated procedure with prior publication of a call for tenders, a competitive dialogue or an innovation partnership;
- 2) tender documentation in all public procurement procedures.

The sectoral contracting authority can use the procedures referred to in paragraph 1 of

this Article to conclude a framework agreement, a dynamic procurement system, an electronic auction and an electronic catalogue, in accordance with this Law.

Qualification system

Article 173

The sectoral contracting authority can establish and manage the qualification system of economic operators, with the obligation to publish a notification about this in the EPPS.

The sectoral contracting authority that establishes or manages the qualification system shall ensure that economic operators can request qualification at any time.

The qualification system may include different stages of qualification.

The qualification system shall be implemented on the basis of the mandatory conditions and conditions of the ability of economic operators established by the contracting authority for the qualification of economic operators, including the requirements for enrolment in the system and periodic updating of qualifications, if they exist.

The sectoral contracting authority shall make the conditions referred to in paragraph 4 of this Article available to economic operators and inform all economic operators about changes in the conditions.

If the conditions referred to in paragraph 5 of this Article include technical specifications, the provisions of art. 87 to 92 of this Law.

The sectoral contracting authority shall keep written records of qualified economic operators.

Records may be divided into categories according to the type of procurement subject to which the qualification applies.

If a notice establishing a qualification system is used as a means of calling for tenders, contracts for goods, services or works covered by a qualification system shall be concluded by means of a restricted or negotiated procedure, in which bidders are selected from among candidates already qualified in accordance with that system.

The sectoral contracting authority that establishes and manages the qualification system shall inform the applicants for the qualification about the decision rejecting the applications for the qualification within six months from the date of submission of the application for the qualification.

If it takes more than four months from the submission of the application for qualification to make a decision, the contracting authority shall inform the applicant within two months, from the submission of the application, of the reasons for extending the deadline for decision-making, as well as the date by which it will decide on his application.

The sectoral contracting authority shall deliver the decision on the rejection of the application for qualifications with the explanation of the reasons for the rejection to the applicant, without delay, and no later than within 15 days from the date of adoption.

The sectoral contracting authority that establishes and manages the qualification system can exclude an economic operator from the qualification only for reasons based on the conditions for qualification referred to in paragraph 4 of this Article.

The contracting authority shall inform the economic operator about the intention to end the qualification no later than 15 days before the day set for deciding on the qualification, stating the reason for the end.

The costs charged in relation to submitting a qualification application or updating a qualification application in accordance with the system are determined in proportion to the actual costs.

The notification form referred to in paragraph 1 of this Article is prescribed by the Ministry.

IX. PROCUREMENT IN THE FIELD OF DEFENSE AND SECURITY

Application Obligation in the Field of Defense and Security

Article 174

Public procurement in the field of defense and security shall be carried out in accordance with the provisions of this Law, except in the cases referred to in Art. 175, 176 and 177 of this Law.

Subject of Procurement

Article 175

The subject of public procurement in the field of defense and security, in terms of this Law, shall be:

- 1) military equipment, with all parts, components or subassemblies;
- 2) safety sensitive equipment, with all parts, components or subassemblies;
- 3) goods, services and works that are directly related to the equipment referred to in items 1 and 2 of this paragraph, during the whole or part of the life cycle;
- 4) services and works for military purposes only;
- 5) security sensitive services.

The list of military equipment and products referred to in paragraph 1 of this Article shall be prescribed by the Government.

Special Public Procurement in the Field of Defense and Security

Article 176

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 57)

Special public procurements in the field of defense and security shall be the procurements:

- 1) which are governed by special procurement regulations, in accordance with an international agreement or contract concluded between Montenegro and one or more countries;
- 2) which are regulated by special procurement regulations, in accordance with an international agreement or contract related to the stationing of troops and refer to companies registered in Montenegro, a member state of the European Union or another state, which participate in the public procurement procedure;
- 3) which Montenegro is obliged to allocate in accordance with the special rules of the international organization;
- 4) in which the application of the provisions of this Law would oblige Montenegro to provide information, the disclosure of which is contrary to the vital interests of its security;
- 5) for the purposes of intelligence activities;
- 6) within cooperation programs based on research and development of a new product jointly implemented by Montenegro and at least one member state of the European Union and, when necessary, for later stages of the entire or part of the life cycle of that product;
- 7) assigned in a third country, including those for civilian purposes, where forces are deployed outside the territory of the European Union, if operational needs require that contracts be concluded with economic operators located in the area of operations;
- 8) which are carried out by the state authorities of Montenegro with the state

authorities of the member states of the European Union or third countries, and refer to:

- a) procurement of military equipment or security-sensitive equipment;
 - b) works and services directly related to the equipment from sub-item a of this item; or
 - c) works and services for expressly military purposes or security-sensitive works and security-sensitive services;
- 9) if the protection of the essential security interests of Montenegro cannot be ensured by determining the requirements in order to protect the secrecy of the data that the contracting authority makes available to bidders in the manner prescribed by this Law;
- 10) which have been declared secret or which shall be accompanied by special security measures in accordance with the law or an act of the competent authority or refer to the safety of the protected persons of Montenegro, provided that Montenegro has determined that essential security measures and interests cannot be protected by measures referred to in item 9 of this Article;
- 11) goods and services referred to in Article 175 of this Law whose estimated value is equal to or less than EUR 25,000.00, or works whose estimated value is equal to or less than EUR 40,000.00.

Implementation and Reporting

Article 177

Implementation, reporting and record keeping of procurements referred to in Articles 175 and 176 of this Law shall be carried out in the manner and according to the procedure determined by the regulation adopted by the Government.

Verification of Fulfilment of the Conditions for Participation in Procurement for the North Atlantic Alliance

Article 178

The procedure for verifying the fulfilment of the conditions for the participation of economic operators registered in Montenegro and issuing a certificate for participation in procurement for the needs of the North Atlantic Alliance shall be prescribed by the state administration body responsible for economic affairs.

X.

PUBLIC PROCUREMENT RECORDS, REPORTING AND STORING OF DOCUMENTATION

Records of public procurement procedures

Article 179

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 58)

The contracting authority shall keep records of the implemented public procurement procedure and simple procurement by entering it directly into the EPPS.

The records referred to in paragraph 1 of this Article, for each purchase, shall contain:

- 1) name and address of the contracting authority;
- 2) type of public procurement procedure;
- 3) date of publication of the tender documentation;
- 4) type of procurement subject;

- 5) description of the subject of procurement;
- 6) the estimated value of the procurement;
- 7) number of bids submitted;
- 8) the name of the selected bidder;
- 9) the date of conclusion of the public procurement contract;
- 10) contracted value.

Article 180

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 59)

Storage of Documentation

Article 181

The contracting authority shall keep the complete documentation created in public procurement procedures carried out in accordance with this Law.

The contracting authority shall keep the documentation referred to in paragraph 1 of this Article for at least four years from the date of execution of the public procurement contract or framework agreement.

The documentation referred to in paragraph 1 of this Article, which is recorded in the EPPS, is kept for at least five years from the conclusion of the public procurement contract or framework agreement in a way that allows preserving the integrity of the data.

Statistical Reporting on Public Procurement

Article 182

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 60)

The contracting authority shall submit to the Ministry a report on the implemented public procurement procedures and concluded public procurement contracts, as well as a report on implemented procurements and concluded contracts/invoices for simple procurements, namely:

- 1) semi-annual report for the period from January 1 to June 30 of the current year to July 31 of the current year;
- 2) annual report for the previous year by February 28 of the current year.

The reports referred to in paragraph 1 of this Article shall be submitted through EPPS.

The Ministry shall publish instructions to contracting authorities on the content and method of submission of the statistical report on public procurement on its website.

The Ministry shall prepare a statistical report on public procurement on an annual basis for the previous year and submit the report to the Government no later than May 31 of the current year and publishes it on its website after adoption.

The Ministry shall submit, upon request, a statistical report on public procurement to the European Commission.

The statistical report shall also contain other statistical data that are required in accordance with confirmed international agreements.

The Ministry shall prepare and submit to the Government a semi-annual report on implemented public procurement procedures and concluded public procurement contracts, as well as a report on implemented procurements and concluded contracts/invoices for simple procurements.

The form of the report referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

XI. PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT PROCEDURE

1. Rights Protection Procedure and Decision-making Authority

Provision of Protection

Article 183

The protection of the rights of participants in public procurement procedures, in accordance with this Law and the regulation governing public procurement in the field of defense and security, shall be carried out before the Commission for the Protection of Rights in Public Procurement Procedures (hereinafter: Commission for the Protection of Rights).

Article 184

It's deleted. (Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 64)

Initiation of Rights Protection Procedure

Article 185

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 62)

The procedure for the protection of rights shall be initiated by a complaint submitted to the Commission for the Protection of Rights, through the contracting authority.

The appeal referred to in paragraph 1 of this Article shall be submitted through the EPPS. Complaints may be filed against:

- 1) tender documentation;
- 2) changes and/or additions to the tender documentation;
- 3) decisions on exclusion from the public procurement procedure;
- 4) decisions on choosing the most advantageous bid,
- 5) decisions on annulment of the public procurement procedure.

With the appeal referred to in paragraph 3 items 1 and 2 of this Article, the legality of the tender documentation, or changes and/or additions to the tender documentation, may be disputed.

An appeal against the amendment and/or amendment of the tender may not be contested against the part of the tender documentation that has not been amended.

An appeal may not challenge the change in the tender documentation made by the contracting authority in the second phase of the competitive negotiated procedure, competitive dialogue and innovation partnership.

An appeal referred to in paragraph 3, item 3 of this Article may challenge:

- 1) the procedure for receiving an application for a qualification;
- 2) procedure for opening an application for qualification;
- 3) procedure of assessment and evaluation of application for qualification;
- 4) the legality of the decision to exclude the applicant from the qualification procedure.

The appeal referred to in paragraph 3 items 4 and 5 of this Article may dispute:

- 1) the procedure for submitting invitations to submit bids, or invitations to dialogue;

- 2) procedure for receiving bids;
 - 3) tender opening procedure;
 - 4) content and method of submission of minutes on the opening of bids;
 - 5) procedure for review and evaluation of bids;
 - 6) negotiation and dialogue procedure;
 - 7) bid evaluation procedure;
 - 8) reasons for the exclusion of candidates, ie bidders from the procedure;
 - 9) the legality of the decision on the selection of the most advantageous bid;
 - 10) the legality of the decision to cancel the public procurement procedure
- Right to Appeal and Deadline for Appeal*

Article 186

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 63)

Appeal referred to in Article 185 paragraph 3 items 1 and 2 of this Law may be declared by an economic operator:

- 1) within 20 days from the date of publication, i.e. delivery of tender documentation or amendment of tender documentation, if the deadline for submitting applications for qualification, i.e. bid is at least 30 days from the date of publication, i.e. delivery of tender documentation or amendment of tender documentation;
- 2) within ten days from the date of publication, i.e. delivery of tender documentation or amendments to tender documentation, if the deadline for submitting applications for qualification, i.e. bids is at least 15 days from the date of publication, i.e. delivery of tender documentation or amendments to tender documentation;
- 3) until half of the deadline for submitting applications for qualification, i.e. bids, if the deadline for submitting applications for qualification, i.e. bids is shorter than 15 days from the date of publication, i.e. delivery of tender documents or amendments to tender documents, and in the event that the last day of the deadline for submission of bids shorter than 24 hours, the deadline is considered to expire at the end of that day.

An appeal referred to in Article 185 paragraph 3 item 3 of this Law may be filed by the applicant for qualification within ten days from the date of delivery of the decision on exclusion from the public procurement procedure.

Appeal referred to in Article 185 paragraph 3 items 4 and 5 of this Law may be declared by the candidate, or the bidder, within ten days from the date of publication of the decision on the selection of the most advantageous bid, or the decision on the annulment of the public procurement procedure.

If the economic operator fails to file an appeal referred to in Article 185 paragraph 3 items 1 and 2 of this Law, declare within ten days before the day set for the opening of applications for qualifications, i.e. tenders, as an applicant for qualifications, a candidate or a bidder, the reasons, illegalities of the tender documentation, i.e. changes or additions to the tender documentation, presents in the appeal against the decision of the contracting authority referred to in Article 185 paragraph 3 items 3, 4 and 5 of this Law.

After the expiration of the period referred to in para. 2 and 3 of this Article, the appeal shall not be amended or supplemented.

Effect of Appeal

Article 187

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 64)

The appeal shall interrupt further actions of the contracting authority in the public procurement procedure until the decision on the appeal is made, except in the case referred to in Article 59 paragraph 1 item 3 of this Law.

Content of the Appeal

Article 188

The complaint, depending on the stage of the public procurement procedure, shall contain:

- 1) information about the complainant (name and seat, or name and address);
- 2) name and headquarters of the contracting authority;
- 3) number and date of publication, i.e. submission of tender documentation or amendments to tender documentation;
- 4) the number and date of the decision on exclusion, the decision on the selection of the most advantageous bid or the decision on the cancellation of the public procurement procedure;
- 5) reasons for appeal with explanation;
- 6) evidence;
- 7) appeal request;
- 8) authorized signature.

The complainant who does not have a registered office in the territory of Montenegro shall appoint a proxy for receiving letters in the territory of Montenegro, specifying all the data required for communication with the authorized person, or to designate another way of delivering letters that shall not delay the delivery procedure.

The complainant shall attach to the complaint the proof of payment of the fee for initiating the appeal procedure, in the amount of 1% of the estimated value of the public procurement, or to submit this proof no later than the expiry of the deadline for the appeal. The amount of compensation referred to in paragraph 3 of this Article shall not exceed EUR 20,000.00.

If in the appeal procedure it was decided in favor of the complainant, the Commission for the Protection of Rights shall return to the complainant the amount of compensation referred to in paragraph 3 of this Article, within 15 days from the date of finality of the appeal decision.

If the complainant has submitted proof of the payment of compensation referred to in paragraph 3 of this Article in a smaller amount than prescribed, the Commission for the Protection of Rights will return the amount of funds paid to the complainant.

Funds from compensation that were not returned to the complainant in accordance with paragraph 5 of this Article shall be the income of the budget of Montenegro.

Action of Contracting Authority Upon Appeal

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 65)

Article 189

The contracting authority shall publish in the EPPS a notice that the appeal has been filed and that further actions in the public procurement procedure have been suspended until the decision on the appeal is made, within three days from the date of the appeal.

The contracting authority may, within eight days from the date of filing the complaint, reject the complaint with a decision as follows:

- 1) impermissible, if it refers to the decision or action of the contracting authority in relation to which the appeal is not allowed or if it was not submitted in accordance with Article 185 paragraph 2 of this Law;
- 2) untimely, if it was declared after the expiration of the prescribed period;
- 3) declared by an unauthorized person, if it was declared by a person who is not authorized to declare a complaint in accordance with Article 186 of this Law, or if it was declared by a bidder who did not submit a bid guarantee with the bid or submitted a bid guarantee for a smaller amount than requested, or defective bid guarantee or did not submit the bid guarantee in the manner provided for in the tender documentation in accordance with Article 122 para. 2, 3 or 4 of this Law;
- 4) incomplete, if proof of payment of the fee for conducting the appeal procedure in accordance with Article 188 paragraph 3 of this Law was not submitted with the appeal or within the deadline for filing the appeal, or proof of payment of the fee for conducting the appeal procedure was submitted in a smaller amount than prescribed.

The contracting authority may, within 30 days from the date of filing the appeal, adopt the appeal as a whole and, depending on which stage of the public procurement procedure the appeal refers to, cancel the disputed decision or replace it with another decision, amend and/or supplement the tender documentation in accordance with the request from the appeal or cancel the public procurement procedure in part or in whole.

If several appeals are submitted, which are accepted as a whole, the contracting authority can use the right referred to in paragraph 3 of this Article.

The contracting authority which acted in accordance with paragraph 4 of this Article shall:

- 1) amend and/or supplement the tender documentation in accordance with the requirements of the appeal and to state the reasons for the validity of the appeal allegations, as well as to issue and publish a decision to decide on the costs of the procedure in the name of drawing up the appeal, if the appeal was made by a lawyer;
- 2) make a new decision in accordance with all allegations and demands of the appeal and to evaluate each appeal allegation with that decision and state the reasons for accepting the appeal, as well as to decide on the costs of the procedure in the name of drafting the appeal, if the appeal was made by a lawyer.

The contracting authority shall submit the act referred to in paragraphs 2 and 5 of this Article shall be published in the EPPS within three days from the date of its adoption, unless the appeal is against the decision on exclusion from the procedure, when he shall deliver the decision to the applicant for the qualification to whom it relates.

On the day of publication of acts referred to in paragraphs 2 and 5 of this Article in the EPPS shall be considered to have been duly delivered to the complainant.

The contracting authority shall, within three days from the date of publication, or delivery of the act referred to in paragraphs 2 and 5 of this Article inform the Commission for the Protection of Rights that a complaint has been filed and that he has acted on that complaint.

Against the act referred to in paragraphs 2 and 5 of this Article, an appeal may be filed, in accordance with this Law.

The contracting authority shall not accept an appeal that is illegal, untimely, with which proof of payment of the fee for conducting the appeal procedure has not been submitted in accordance with Article 188 paragraph 3 of this Law, or that has been submitted by an unauthorized person.

If the contracting authority does not use the right referred to in paragraphs 2 and 3 of this Article shall submit to the Commission for the Protection of Rights through the EPPS the appeal and all attachments submitted by the complainant with the appeal, as well as the documentation of the public procurement procedure in which the appeal was filed, within eight days from the date of filing the appeal, except for the samples of the bided item of procurement, which he shall deliver directly or by registered mail.

Along with the complaint, the contracting authority may also submit a response to the complaint and evidence disputing the complainant's complaints.

Waiver of Appeal

Article 190

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 66)

The complainant may withdraw the appeal until the day of publication of the decision on the appeal, or until the day of delivery of the decision if the appeal was filed against the decision on exclusion from the public procurement procedure.

The motion to withdraw from the appeal shall be submitted in the manner prescribed by Article 185 paragraph 2 of this Law.

If the appeal is filed by a bidder who submitted a joint bid, or application for qualification, the withdrawal of the appeal produces a legal effect if all members of the joint bid, or application, waive the appeal or if the member of the joint bid, or application who is authorized to submit the appeal, waives the appeal.

An appellant who waived an appeal is not entitled to a refund of the funds paid for the appeal handling fee, unless the appeal waiver was filed on the same day the appeal was filed.

Proceedings in Case of Non-submission of Documents

Article 191

If the contracting authority does not submit complete documentation of the public procurement procedure with the appeal, within the time limit and in the manner prescribed by Article 189 of this Law, the Commission for the Protection of Rights will warn the contracting authority and give them a deadline of five days to submit the documentation, with a warning that otherwise it will accept the appeal and annul the procedure or part of the procedure to which the appeal refers.

Decision-making by the Commission for the Protection of Rights

Article 192

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 67)

In the appeal procedure, the Commission for the Protection of Rights shall decide on:

- 1) suspend the appeal procedure, if the complainant abandons the stated appeal;

- 2) rejection of the appeal as impermissible, if it refers to a decision or action of the contracting authority in relation to which the appeal is not allowed, or if it was not submitted in accordance with Article 185 paragraph 2 of this Law;
- 3) rejecting the appeal as untimely, if it was filed after the expiration of the prescribed period;
- 4) rejection of a complaint was filed by an unauthorized person, if it was filed by a person who is not authorized to file a complaint in accordance with Article 186 of this Law or if it was filed by a bidder who did not submit a bid guarantee with the bid or submitted a bid guarantee for a smaller amount from the requested party or the defective bid guarantee or did not submit the bid guarantee in the manner provided for in the tender documentation in accordance with Article 122 paragraphs 2, 3 or 4 of this Law;
- 5) rejection of the appeal as incomplete, if proof of payment of the fee for conducting the appeal procedure in accordance with Article 188 paragraph 3 of this Law is not submitted with the appeal or within the deadline for filing the appeal prescribed;
- 6) rejection of the appeal as irregular, if the appellant does not remove the defect that prevents the appeal from being acted upon within the deadline;
- 7) rejecting the appeal as unfounded, when it determines that the appeal allegations are unfounded as a whole;
- 8) acceptance of the appeal in whole or in part and annulment of the decision or procedure or action of the contracting authority in the part in which illegality was established.

Notwithstanding paragraph 1 item 7 of this Article, the appeal against the decision on the selection of the most advantageous bid will be rejected as unfounded, if the applicant:

- 1) does not dispute its exclusion from the public procurement procedure or the incorrectness of its bid, and does not prove that the first-ranked bidder should be excluded from the public procurement procedure or that all other bids are incorrect;
- 2) does not prove that there is no reason for his exclusion from the public procurement procedure and that his bid is the most advantageous.

The contracting authority shall act according to the decision referred to in paragraph 1 item 8 of this Article within 15 days, from the date of publication of the decision, or delivery of the decision, and to inform the Commission for the Protection of Rights about it within the prescribed period.

If the contracting authority does not act in accordance with paragraph 3 of this Article, the Commission for the Protection of Rights shall inform the Ministry and the public procurement inspector.

The contracting authority shall not, by the decision made in the procedure of execution of the decision from paragraph 3 of this Article, item out the reasons for the incorrectness of the complainant's bid and/or the exclusion of the complainant from the procedure that he did not specify in the annulled decision, but he shall give orders and instructions for the elimination of the identified irregularities, in relation to each bid and each bidder in the subject public procurement procedure.

The complainant against whom the decision referred to in paragraph 3 of this Article was made does not have the right to contest the decision in the appeal against the decision that was made in the execution of that decision in the part where it is not factually different from the original decision.

If the Commission for the Protection of Rights rejects an appeal against the tender documentation or suspends the procedure due to the complainant's withdrawal from the

appeal, the contracting authority shall publish a notice in the EPPS about setting a new deadline for submitting bids, not shorter than eight days.

The notification referred to in paragraph 7 of this Article does not constitute an amendment to the tender documentation.

If the Commission for the Protection of Rights annuls the public procurement procedure, the contracting authority shall publish the notice of annulment of the procedure in the EPPS within five days from the date of delivery of the decision.

Deadlines for Reaching a Decision

Article 193

The Commission for the Protection of Rights shall issue:

- 1) the decision referred to in Article 192 paragraph 1 item 1, within eight days from the day of receipt of the submission on the withdrawal of the complainant;
- 2) the decision referred to in Article 192 paragraph 1 items 2 to 6 within eight days from the date of delivery of the appeal and complete case files.
- 3) decision referred to in Article 192 paragraph 1 item 7 and 8 within 30 days from the date of delivery of the appeal and complete case files.

The deadline referred to in paragraph 1 item 3 of this Article may be extended by a maximum of ten days if it is necessary to hire an expert, obtain opinions from competent authorities and due to the volume of documentation in the public procurement procedure, which the complainant and the contracting authority are informed about.

The Commission for the Protection of Rights shall publish the decision referred to in paragraph 1 of this Article in the EPPS and on its website, within three days from the date of its adoption, unless the decision was decided upon an appeal against the decision to exclude the applicant from the public procurement procedure, which was obliged to deliver to the complainant and the contracting authority, within three days from the date of adoption.

On the day the decision is published in the EPPS, it shall be considered that the decision has been duly delivered to the parties in the proceedings.

Until the day of the establishment of the EPPS, it shall be considered that the decision has been duly delivered to the parties in the proceedings when it has been published on the Public Procurement Portal and the website of the Commission for the Protection of Rights.

Rules of Proof

Article 194

The complainant shall prove in the complaint the existence of the facts on which he bases his complaints.

The Commission for the Protection of Rights may hire an expert to clarify a specific professional issue or request the opinion of a competent state administration body or an organization that exercises public powers.

Significant Violations of the Rules of Procedure

Article 195

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 68)

A significant violation of the rules of the public procurement procedure shall exist if:

- 1) the contracting authority carries out the public procurement procedure referred to in Article 59 of this Law that is not in accordance with the opinion of the Ministry, except in the case referred to in Article 59 paragraph 1 item 3 of this Law;
- 2) the tender documentation does not contain mandatory conditions for participation in the public procurement procedure and/or mandatory grounds for exclusion from the public procurement procedure;
- 3) the contracting authority continues the procedure before making a decision on the appeal, which is not in accordance with Article 187 paragraph 1 of this Law;
- 4) the decision on the selection of the most advantageous bid did not decide on the submitted bids;
- 5) the contracting authority does not act in accordance with Article 95 paragraphs 2 and 3 of this Law, if it has a significant impact on fulfilling the conditions for participation in the public procurement procedure, making an bid in accordance with the technical specification of the procurement subject and/or executing the public procurement contract;
- 6) in the implementation of the public procurement procedure, the representative of the contracting authority from Article 41 paragraph 2 of this Law participated, who did not sign a statement on the absence of a conflict of interest or who had to be excluded from the public procurement procedure due to a conflict of interest;
- 7) the contracting authority does not act in accordance with Article 145 paragraph 1 of this Law.

If a significant violation of the rules of procedure referred to in paragraph 1 of this Article can subsequently be remedied, the Commission for the Protection of Rights will examine the complaints, decide on significant violations of the law that the complainant did not item out in the appeal, and cancel the action, decision or part of the procedure to which the significant violation refers.

In the event of a significant violation of the rules of procedure referred to in paragraph 1 of this Article is not remedied subsequently, and the complainant did not item it out in the appeal, the Commission for the Protection of Rights will, on the occasion of the appeal, without examining the appeal allegations, annul the public procurement procedure as a whole, i.e. the procedure for the specific party to which the complaint relates.

Acting Ex Officio

Article 196

The Commission for the Protection of Rights, ex officio, shall take into consideration significant violations from Article 195 of this Law, irrespective of the part of the public procurement procedure an appeal has been filed against.

Judicial Protection

Article 197

An administrative dispute may be initiated against the decision of the Commission for the Protection of Rights.

The lawsuit filed against the decision of the Commission for the Protection of Rights shall have no suspensive character for the public procurement contract conclusion.

The Commission for the Protection of Rights shall publish the notification on the initiated administrative dispute from paragraph 1 of this Article and the decision on the lawsuit on its website and on the EPPS.

Any person who has suffered damages due to violations of this Law has the right to file a lawsuit for damages before the competent court in accordance with the law.

2. Organization and Status of the Commission for the Protection of Rights *Status of the Commission for the Protection of Rights*

Article 198

The Commission for the Protection of Rights shall be the authority responsible for the protection of rights in public procurement procedures and procedures for awarding public-private partnership contracts.

The seat of the Commission for the Protection of Rights shall be in Podgorica.

The Commission for the Protection of Rights shall be autonomous and independent in performing the functions established by this Law.

Funds for the work of the Commission for the Protection of Rights shall be provided by the budget of Montenegro.

Composition of the Commission for the Protection of Rights

Article 199

The Commission for the Protection of Rights shall have a president and six members, who perform their duties professionally.

The president of the Commission for the Protection of Rights shall represent the Commission for the Protection of Rights, manage its work and perform other tasks in accordance with the law and the Rules of Procedure.

The Commission for the Protection of Rights may have a deputy president, in accordance with the Rules of Procedure.

Appointment and Term of Office

Article 200

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 69)

The president and members of the Commission for the Protection of Rights shall be appointed by the Parliament of Montenegro (hereinafter: the Parliament) on the proposal of the competent working body, based on a public invitation.

The president and members of the Commission for the Protection of Rights shall be appointed for a period of five years and may be reappointed.

The Parliament, or the competent working body, shall initiate the procedure for determining the proposal for the election of the president or member of the Commission for the Protection of Rights no later than six months before the end of their mandate, with the fact that the appointment shall be made no later than 15 days before the end of the mandate.

Terms of Appointment

Article 201

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 70)

A person with a completed VII1 level of the national qualifications framework, a law school and at least five years of work experience, of which at least three years of work experience in the field of public procurement, may be appointed as the president of the Commission for the Protection of Rights.

Two members of the Commission for the Protection of Rights must have a bar exam and

three years of work experience or a bar exam and at least three years of work experience in the field of public procurement.

Two members of the Commission for the Protection of Rights shall be persons with a completed VII1 level of the national qualifications framework, a law school, a passed exam for work in state bodies and two years of work experience in the field of public procurement.

Two members of the Commission for the Protection of Rights may be persons with a completed VII1 level of the national qualifications framework, two years of work experience, of which at least one year of work experience in the field of public procurement and a passed exam for work in state bodies.

Prevention of Conflicts of Interest and Exemption

Article 202

The president and member of the Commission for the Protection of Rights may not hold any other public function, nor a function in a political party.

The president and member of the Commission for the Protection of Rights shall make no decisions in the procedure for the protection of rights if there are reasons that cast doubt on his impartiality in accordance with the law.

Term of Office and Dismissal

Article 203

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 71)

The term of office of the president and member of the Commission for the Protection of Rights shall end:

- 1) at the end of the term for which he was appointed;
- 2) on personal request;
- 3) resolution.

The president and member of the Commission for the Protection of Rights will be dismissed before the end of the mandate, if:

- 1) has been legally sentenced for a criminal offense to an unconditional prison sentence of at least six months or if he has been convicted of a criminal offense that makes them unfit to hold office;
- 2) is deprived of economic capacity by a final decision;
- 3) performs another public function or professionally performs another activity;
- 4) does not perform, negligently or untimely performs official duties.

If there is a reason for dismissal referred to in paragraph 2 of this Article, the president of the Commission for the Protection of Rights shall submit a proposal for the dismissal of a member of the Commission for the Protection of Rights to the Parliament of Montenegro, and for the dismissal of the president, a proposal for dismissal is submitted by the majority of the members of the Commission for the Protection of Rights to the Parliament of Montenegro.

The method of Work of the Commission for the Protection of Rights

Article 204

The Commission for the Protection of Rights work and makes decisions at sessions that shall not be public.

The method of work of the Commission for the Protection of Rights shall be governed by the Rules of Procedure.

Competences and Powers of the Commission for the Protection of Rights

Article 205

Commission for the Protection of Rights shall:

- 1) decide on appeals filed in public procurement and public-private partnership procedures;
- 2) inform inspection and other competent authorities about observed illegal actions in public procurement procedures;
- 3) cooperate and exchange information in the field of public procurement with competent authorities of other countries, international institutions and organizations;
- 4) adopts the Rules of Procedure;
- 5) perform other tasks in accordance with this and a special law.

Costs of Rights Protection Procedure

Article 206

The Commission for the Protection of Rights shall decide on the costs of the appeal procedure.

The costs of the appeal procedure shall be expenses incurred during the rights protection procedure.

Each party shall bear the costs caused by its own actions.

The reward for the lawyer's work shall be determined in accordance with the Lawyer's Tariff and for drafting submissions for non-assessable cases in administrative proceedings and administrative disputes.

The award for other persons shall be determined in accordance with the laws governing administrative proceedings and administrative disputes.

When withdrawing from the appeal or rejecting the appeal, the appellant shall not be entitled to compensation for the costs of the appeal procedure.

Performance Report

Article 207

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 72)

The Commission for the Protection of Rights shall submit to the Parliament a semi-annual report on its work for the periods from January 1 to June 30 and from July 1 to December 31 of the current year, within 30 days from the end of the half-year period.

The Commission for the Protection of Rights submits to the Parliament of Montenegro for adoption an annual report on its work, no later than June 30 of the current year, for the previous year.

The Commission for the Protection of Rights shall submit an annual report on its work to the Government for review.

Professional Service of the Commission

Article 208

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 73)

The Commission for the Protection of Rights shall have a professional service that performs professional and administrative-technical tasks necessary for the work of the Commission for the Protection of Rights.

The professional service shall be managed by the secretary of the Commission for the Protection of Rights.

The secretary of the Commission for the Protection of Rights shall be appointed by the Commission for the Protection of Rights, based on a public competition, on the proposal of the President of the Commission for the Protection of Rights, in accordance with the regulations on civil servants and state employees that refer to the appointment of senior management personnel.

The secretary of the Commission for the Protection of Rights may be appointed a person who is a law graduate with a professional exam for work in state bodies and a professional exam for work in public procurement and who has at least five years of work experience.

The secretary of the Commission for the Protection of Rights shall be appointed for a period of five years and may be re-appointed after the expiry of that term.

The organization and systematization of the expert service of the Commission for the Protection of Rights shall be regulated by the act on internal organization and systematization, which shall be determined by the Commission for the Protection of Rights, with the consent of the competent working body of the Assembly.

The regulations on civil servants and employees shall be applied to the employees of the professional service of the Commission for the Protection of Rights.

XII. SUPERVISION

Authorities that Conduct Supervision

Article 209

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 74)

(Law on Amendments to the law regulating inspection supervision, Official Gazette of Montenegro 084/2024 as of 6 September 2024, Article 2)

Supervision over the implementation of this Law and regulations adopted on the basis of this Law shall be conducted by the Ministry.

Inspection supervision over the implementation of this Law shall be performed by the administrative body responsible for inspection tasks through the public procurement inspector, in accordance with this Law and the law regulating inspection supervision.

The public procurement inspector shall keep records of the performed supervision and the measures taken and prepare a monthly work report to be submitted to the Ministry and a semi-annual performance report to be submitted to the competent working body of the Parliament.

An appeal against the decision of the public procurement inspector may be filed with the Ministry within eight days from the date of delivery of the decision.

If the public procurement inspector does not perform supervision, or does not take measures based on the notification of the Commission for the Protection of Rights in the cases referred to in Article 205 paragraph 1 item 3 of this Law, i.e. does not act in accordance with Article 210 paragraph 2 item 6 of this Law, the Commission for the Protection of Rights shall inform the Parliament, or the competent working body.

Subject of Inspection Supervision

Article 210

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 75)

The inspector for public procurement shall conduct inspection supervision over the work of the contracting authority in relation to:

- 1) drafting and publishing in EPPS reports on market analysis;
- 2) deadlines for adopting, amending, supplementing and publishing the procurement plan;
- 3) fulfilment of the conditions for performing the duties of the public procurement officer and the commission for the implementation of the public procurement procedure;
- 4) fulfilment of the conditions for initiating the public procurement procedure;
- 5) simple procurement procedure;
- 6) implementation of anti-corruption measures and measures to prevent conflicts of interest in the public procurement procedure;
- 7) initiating a public procurement procedure in a competitive negotiated procedure, a negotiation procedure without prior publication of a call for tenders, a partnership for innovation, a competitive dialogue, a negotiation procedure with prior publication of a call for tenders in accordance with the conditions prescribed by this Law (are the reasons for initiating the procedure justified);
- 8) the obligation of the contracting authority to demand the submission of a bid guarantee and means of financial security of the public procurement contract in accordance with this Law;
- 9) compliance with the prescribed deadline for the adoption, submission, or publication and enforceability of the contracting authority 's decision in the EPPS;
- 10) compliance with the prescribed deadline for concluding public procurement contracts, changes to public procurement contracts and publication in the Official Journal of the European Communities;
- 11) enabling candidates and bidders to view public procurement documentation;
- 12) realization of the contract on public procurement, or the framework agreement in accordance with the conditions established by the tender documentation, the decision on the selection of the most advantageous bid and the selected bid;
- 13) the obligation to prepare a report on the implementation of public procurement contracts;
- 14) keeping records on the public procurement procedure, or simple procurement;
- 15) the semi-annual report for the current year and the annual report on the implemented public procurement procedures and concluded public procurement contracts, as well as the report on implemented procurements and concluded contracts/invoices for simple procurements for the previous year;
- 16) keeping documentation on public procurement;
- 17) proceeding according to the decision of the Commission for the Protection of Rights.

When, in the course of the inspection, it is determined that this Law or the by-law for its implementation has been violated, the public procurement inspector shall, depending on the type of violation and the possibility of eliminating the consequences:

- 1) order the contracting authority to remove the established omissions within a

certain period;

- 2) prohibit the public procurement officer who does not meet the conditions the performance of public procurement work until the conditions prescribed by this Law are met;
- 3) submit a request for initiation of misdemeanour proceedings against the perpetrator of the misdemeanour or issues a misdemeanour order to that observer;
- 4) if there is a suspicion that a criminal offense has been committed in the public procurement procedure, report that offense to the state prosecutor;
- 5) inform the authority responsible for preventing corruption about observed violations of anti-corruption rules and violations of conflict-of-interest rules;
- 6) inform the Ministry about the determined irregularities and actions taken from Article 44 paragraph 1 item 16 of this Law, or the Commission for the Protection of Rights in cases from Article 205 paragraph 1 item 2 of this Law.

The Public Procurement Inspectorate shall not carry out inspection supervision during the duration of the public procurement procedure.

XIII. PENAL PROVISIONS **More Serious Offences**

Article 211

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 76)

A legal entity shall be fined in the amount of EUR 5,000.00 to EUR 20,000.00 for a misdemeanour if it:

- 1) does not implement procurement referred to in Article 26 paragraph 1 items 4, 5 and 6 of this Law according to the procedure prescribed by this Law (Article 27, paragraph 2);
- 2) divides procurement subjects in a way that avoids the application of this Law (Article 27 paragraph 3);
- 3) does not register the cases referred to in Article 38 paragraph 2 item 1 of this Law, does not make an official note and does not submit a report to the competent state authorities in order to take measures in accordance with the law and does not notify the Ministry (Article 38 paragraph 2 item 2);
- 4) concludes a contract in violation of the anti-corruption rule (Article 38 paragraph 3);
- 5) does not take appropriate measures to effectively prevent, recognize and remove conflicts of interest in connection with the public procurement procedure (Article 40);
- 6) the public procurement procedure in a competitive negotiated procedure, a negotiation procedure without prior publication of a call for tenders, a partnership for innovation, a competitive dialogue, a negotiation procedure with a prior publication of a call for tenders, is not initiated in cases prescribed by this Law (Articles 57 to 64);
- 7) before starting the negotiation procedure without prior publication of the call for tenders, does not obtain a positive opinion from the Ministry, except in the case referred to in Article 59 paragraph 1 item 3 of this Law (Article 65 paragraph 1);
- 8) concludes a framework agreement contrary to Article 69 of this Law;
- 9) tender documentation for public procurement with an estimated value equal to or greater than EUR 40,000.00 does not require the submission of a bid guarantee, a guarantee for the good performance of a public procurement contract and a framework agreement or other means of financial security, in accordance with the law (Article 96 paragraph 1);

- 10) does not specify the type, period of validity and conditions for activating the means of financial security in accordance with Article 96 paragraph 1 of this Law, in the tender documentation for public procurement (Article 96 paragraph 4);
- 11) does not activate the means of financial security referred to in Article 96 paragraph 1 of this Law, and a case occurred for which security was requested (Article 96, paragraph 5);
- 12) made a decision on the selection of the most advantageous bid without previously conducting a public procurement procedure, and was obliged to conduct a public procurement procedure in accordance with this Law before its adoption (Article 143 paragraph 2);
- 13) before the execution of the decision on the selection of the most advantageous bid, concludes a contract on public procurement or a framework agreement, except in cases prescribed in Article 146 paragraph 2 of this Law;
- 14) the public procurement procedure does not end with the adoption of a decision on the selection of the most advantageous bid or a decision on the cancellation of the public procurement procedure (Article 148 paragraph 1);
- 15) concludes and implements a contract on public procurement that is not in accordance with the conditions established by the tender documentation, the selected bid and the decision on the selection of the most advantageous bid (Article 149 paragraph 2);
- 16) does not keep documentation of public procurement procedures within the time limits established by this Law (Article 181);
- 17) fails to comply with the decision referred to in Article 192 paragraph 1 item 8 of this Law within 15 days from the date of publication of the decision, i.e. delivery of the decision and does not notify the Commission for the Protection of Rights within the prescribed period (Article 192 paragraph 3).

For misdemeanours referred to in paragraph 1 of this Article, a responsible person in a legal entity, in a state body, state administration body, local self-government body and local administration body shall be fined in the amount of EUR 250.00 to EUR 2,000.00.

Minor Offences

Article 212

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 77)

A legal entity shall be liable to a fine from EUR 2,000.00 to EUR 10,000.00 for a misdemeanour, if it:

- 1) fails to submit a report on risk analysis in the exercise of control in public procurement procedures and records on conflict of interest, i.e. violation of anti-corruption rules (Article 38 paragraph 2 items 3 and 4);
- 2) does not designate at least one person who performs the duties of a public procurement officer from among employees, i.e. a person engaged for public procurement duties in accordance with the law, or designates a public procurement officer who does not meet the requirements in accordance with this Law (Article 47 paragraph 1 and 2);
- 3) does not establish the commission for the implementation of the public procurement procedure in accordance with the law and prescribed criteria (Article 48);
- 4) fails to prepare and submit a public procurement plan to the Ministry for

publication on the EPPS by January 31 of the current financial year (Article 84 paragraph 1);

5) does not submit amendments to the public procurement plan to the Ministry no later than five days before the initiation of the public procurement procedure (Article 84 paragraphs 4 and 5);

6) does not make the decision on exclusion from the public procurement procedure within 30 days from the date of opening of applications for qualification and does not deliver it to the applicant within three days from the date of adoption (Article 141 paragraph 1 item 1);

7) the decision on the selection of the most advantageous bid, or the decision on the annulment of the public procurement procedure is not made within 60 days from the day of opening of bids and is not published in EPPS within three days from the day of adoption (Article 141 paragraph 1 item 2);

8) does not provide access to the complete electronic documentation of the public procurement procedure at the request of bidders and candidates to whom the decision refers, submitted through the EPPS, after the publication of decisions from Articles 143 and 144 of this Law in the EPPS until the expiry of the appeal deadline, within two days from the date of submission of the request, for a duration of at least 24 hours, as well as direct inspection of the documentation that was not submitted through the EPPS, within two days from the date submitting a request, for a duration not shorter than two hours (Article 145 paragraph 1);

9) does not publish the contract on public procurement in EPPS within three days from the date of delivery of the concluded contract (Article 149 paragraph 14);

10) amend the public procurement contract during its duration contrary to the provisions of Article 151 paragraph 1 of this Law;

11) does not publish the amendment of the contract in EPPS within three days from the day of conclusion of the amendment of the contract (Article 151 paragraph 4);

12) does not prepare and publish in the State Public Employment Service a report on the implementation of the contract within 30 days from the date of implementation of the contract on public procurement (Article 152 paragraph 1 item 2);

13) does not keep records of public procurement procedures in accordance with this Law (Article 179 paragraph 1);

14) fails to submit the semi-annual report for the period from January 1 to June 30 of the current year by July 31 of the current year (Article 182 paragraph 1 item 1);

15) does not submit the annual report for the previous year by February 28 of the current year (Article 182 paragraph 1 item 2).

For misdemeanours referred to in paragraph 1 of this Article, a responsible person in a legal entity, in a state body, state administration body, local self-government body and local administration body shall be liable for a fine in the amount of EUR 150.00 euros to EUR 1,000.00.

XIV. TRANSITIONAL AND FINAL PROVISIONS **Deadline for adoption of by-laws**

Article 213

By-laws based on the authorizations established by this Law shall be adopted within six months from the date of entry into force of this Law.

Employers shall align public procurement plans with this Law within 15 days from the date of application of this Law.

Passing by-laws

Article 213a

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 78)

By-laws for the implementation of this Law shall be adopted within six months from the date of entry into force of this Law.

Initiated Procedures

Article 214

Public procurement procedures that were initiated prior to the application of this Law shall be completed according to the regulations by which they were started.

The framework agreement concluded after the implementation of the public procurement procedure, until the beginning of the implementation of this Law, shall be terminated according to the regulations according to which they were started.

Contract Validity

Article 215

Contracts on public procurement concluded before the beginning of the application of this Law shall remain in force until the end of the term for which they were concluded.

Concluded Contracts

Article 215a

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 79)

Contracts on public procurement concluded before the date of entry into force of this Law may be changed or terminated in accordance with Art. 150 and 151 of this Law.

Continuation of the work of the Commission for Protection of Rights

Article 216

(Law on Amendments to the Law on Public Procurement, Official Gazette of Montenegro, No. 3/2023 as of 10 January 2023, Article 80)

The Parliament, or the competent working body, shall appoint the president and members of the Commission referred to in Article 200 paragraph 3 of this Law within 90 days from the date of entry into force of this Law.

The mandate of the president and members of the Commission, elected in accordance with the Law on Public Procurement ("Official Gazette of Montenegro", number 74/19) shall be terminated on the day of appointment of the president and members of the Commission in accordance with this Law.

Deadline for establishment of EPPS

Article 217

EPPS shall be established within 18 months from the date of entry into force of this Law. Until the day of establishment of EPPS, the public procurement portal shall be used, and communication in the public procurement procedure shall be done directly in writing or by

mail.

The statement of the economic operator, up to the day of establishment of EPPS, shall be submitted in written or electronic form and shall be submitted in electronic form as of the day of establishment of EPPS.

Cease of Effect

Article 218

The Law on Public Procurement ("Official Gazette of Montenegro", no. 42/11, 57/14, 28/15 and 42/17) shall cease to be valid on the date of commencement of application of this Law.

Entry into Force

Article 219

This Law shall enter into force on the eighth day from the day of its publication in the "Official Gazette of Montenegro".