

# ACT ON AMENDMENTS TO THE PUBLIC PROCUREMENT ACT (OG 125/08)

## Article 1

In the Public Procurement Act (Official Gazette 110/07) in Article 1 after paragraph 1 a new paragraph 2 is added which reads:

"(2) This Act shall also apply to public works concessions award procedures and public works award procedures performed by concessionaires other than contracting authorities within the meaning of this Act, unless provided otherwise in the regulation governing concessions."

The former paragraph 2 becomes paragraph 3.

## Article 2

In 2, item 4 the last sentence is deleted.

In item 5 the words: "to be awarded" are deleted. (language revision)

In item 7 the word: "process" is followed by the words: "in a part of the procedure and/or method of public procurement".

In item 13 the word: "central" is followed by the word: "public".

After item 21, new items 22 and 23 are added and read:

"22. A public works concession is a legal relationship regulated by a contract within the meaning of the regulation governing concessions.

23. A public service concession is a legal relationship regulated by a contract within the meaning of the regulation governing concessions."

## Article 3

In Article 4, paragraph 1, item 2 the word: "Act" is followed by the words: "when procuring products, works or services for the purpose of performing those activities."

Item 3 is amended to read: "3. an operator which performs one or more of the activities referred to in Articles 106 through 111 of this Act by virtue of a special or exclusive right when procuring products, works or services for the purpose of performing those activities and which is not a contracting authority or undertaking within the meaning of item 2 of this paragraph."

## Article 4

Article 5 is amended to read:

„(1) This Act shall not apply to contracting authorities referred to in Article 3 of this Act in:

1. public contracts with international organisations pursuant to international agreements or contracts, or which are implemented pursuant to the particular procedure of an international organisation,
2. public contracts governed by different procedural rules and awarded pursuant to an international agreement, concluded in conformity with the Treaty, establishing the European Community, between the Republic of Croatia and one or more countries intended for the joint implementation or exploitation of a project by the contracting parties. As of the date of accession of the Republic of Croatia to the

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European Union, contracting authorities shall notify the European Commission of the conclusion of any such agreement through the body responsible for the public procurement system,

3. public contracts governed by different procedural rules and awarded pursuant to an international agreement relating to the stationing of troops of the Republic of Croatia, of a Member State or a third country,

4. public service contracts from a contracting authority referred to in Article 3, paragraph 1 of this Act which is providing the service on the basis of a special or exclusive right which it enjoys pursuant to a special law or subordinate regulation. As of the date of accession of the Republic of Croatia to the European Union, the special law or subordinate regulation shall be in line with Treaty establishing the European Community,

5. contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon. This Act shall apply to financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form,

6. contracts for the acquisition, development, production and co-production of programme material intended for broadcasting by radio and television broadcasters and contracts for radio and television broadcasting time,

7. contracts for arbitration and conciliation services,

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

9. employment contracts,

10. research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority,

11. works, supplies and/or services procured by a contracting authority from or through the central public purchasing body, provided that in the public procurement of such works, supplies or services the central public purchasing body complied with the provisions of this Act,

12. public contracts for the principal purpose of permitting the contracting authorities to provide or exploit public electronic communications networks or to provide to the public one or more electronic communications services,

13. by the date of accession of the Republic of Croatia to the European Union, in public contracts for purposes of resale or lease or rental, provided that the contracting entity enjoys no special or exclusive right to sell, lease or rent the subject of such contracts and other entities are free to perform them under the same conditions as the contracting entity,

14. public service concessions, wherein the provisions of this Act relating to legal protection shall apply.

(2) This Act shall not apply to contracting entities referred to in Article 4 of this Act in the events referred to in paragraph 1, items 1 through 12 of this Article, and in the following cases:

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

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2. public contracts for purposes other than the pursuit of their activities in the water, energy, transport and postal services sectors or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Republic of Croatia. The contracting entity shall notify the European Commission at its request of any activities which it regards as excluded,
3. purchase of water which the contracting entity is procuring for the performance of one or both of the activities referred to in Article 106, paragraph 1 of this Act,
4. supply of energy or fuels for the production of energy which the contracting entity is procuring for the performance of one or more of the activities referred to in Article 107, paragraph 1 or paragraph 3 or in Article 108 of this Act.
5. public service and public works concessions if the concessions are granted for the performance of one or more activities within the meaning of Articles 106 through 111 of this Act, wherein the provisions of this Act relating to legal protection shall apply."

Article 5

Article 5 is followed by new Articles 5a, 5b and 5c which read:

"Article 5a

- (1) Public contracts which are designated as classified pursuant to regulations of the Republic of Croatia or implementation of which requires the application of information security measures shall be concluded in accordance with the Regulation on procurement for defence and security purposes.
- (2) The Government of the Republic of Croatia shall adopt the Regulation on procurement for defence and security purposes.

Article 5b

- (1) Public contracts for purposes of diplomatic and consular offices of the Republic of Croatia in foreign countries shall be concluded in accordance with the Regulation on public procurement for purposes of diplomatic and consular offices of the Republic of Croatia.
- (2) The head of the state administration body responsible for foreign affairs shall adopt the Regulation on public procurement for purposes of diplomatic and consular offices of the Republic of Croatia.

Article 5c

- (1) Contracting authorities shall not award public contracts to economic operators if the head of the body or a member of the management or supervisory board of the contracting authority concerned simultaneously:
  - performs management duties in the economic operator concerned, or
  - owns business shares, stock or other rights by virtue of which he/she is involved in the management or the capital funds of the economic operator concerned in a share exceeding 20%.

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(2) Public contracts concluded contrary to the provision of paragraph 1 of this Article shall be null and void.

(3) Contracting authorities shall publish a list of economic operators to which public contracts must not be awarded within the meaning of paragraph 1 of this Article on their websites.

(4) The provisions of this Article shall not apply to public contracts to which this Act does not apply."

Article 6

In Article 6 paragraph 2 is amended to read:

"(2) An economic operator who is entitled to provide the relevant service under the law of the state in which it is established, shall not be excluded from the public procurement procedure solely on the grounds that under the regulations of the Republic of Croatia it would be required to be either a natural or a legal person."

Article 7

Article 8 is amended to read:

"The contracting authority, the candidate and the tenderer shall not disclose, provide access to or forward information relating to the contracting authority, the candidate and the tenderer and to their documentation, which is designated as confidential pursuant to special regulations. The information must bear no influence on the publication of information in accordance with the provision of Article 37 of this Act."

Article 8

In Article 9, paragraph 2 after the word: "authority" a comma is inserted and is followed the words: "and in cases where publication of such notices is not required, at the moment at which the contracting authority commences the public procurement procedure.

In paragraph 3, the words: "and conditions" are deleted.

Paragraphs 5 and 6 are hereby deleted.

Article 9

Article 10 is amended to read:

"(1) This Act shall apply to public contracts awarded by contracting authorities in the field of defence.

(2) Should the contracting authority consider it essential for the protection of the essential security interests of the Republic of Croatia, public contracts for the supply of weapons, military and police equipment and military and police materials listed in Annex III to this Act, directly related public service contracts and public works contracts, certain public contracts which are not for military purposes but contain sensitive information related to the security of the Republic of Croatia shall be concluded in accordance with the Regulation on procurement for defence and security purposes."

Article 10

The heading above Article 11 is amended to read: „Group of tenderers“.

In Article 11, paragraph 2 the second sentence is deleted.

Paragraphs 3, 4 and 5 are hereby deleted.

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Article 11

After Article 11, a new Article 11a is added which reads:

"Involvement in the preparation of a public procurement procedure (technical consultations)

Article 11a

An economic operator which was directly or indirectly involved in technical consultations in the preparation of a public procurement procedure may participate in the public procurement procedure as a tenderer or candidate, provided that the contracting authority ensures that the experience gained during participation in the preparation of the public procurement procedure does not bring any advantage to the economic operator concerned over other economic operators in drawing up their tenders.

Article 12

After Article 12, a new Article 12a is added which reads:

"Article 12a

At least one person who completed a specialised training programme in the field of public procurement must be involved in the preparation and implementation of the public procurement procedure at the contracting authorities bound by this act if the estimated value of procurement exceeds:

- HRK 300,000.00 for goods and services,
- HRK 500,000.00 for works."

Article 13

Article 13 is amended to read:

"(1) Contracting authorities shall prepare and adopt a procurement plan for the accounting or business year which shall include, as a minimum, information concerning:

- the name of the subject-matter of procurement,
- the estimated value of procurement,
- the planned funds and
- the position in the financial plan or the budget to which the funds are planned.

(2) Contracting authorities may initiate a public procurement procedure when a plan for the funds for procurement is in place.

(3) By way of derogation from paragraph 2 of this Article, contracting authorities may initiate a public procurement procedure even if a plan for the funds for procurement is not in place, fully or partially, in the following cases:

- when the public procurement procedure includes the provision of funds for the performance of the public contract,
- when, after the public procurement procedure has been initiated and before a public contract which requires payments in the following years is awarded, special consent is required from the competent body in accordance with the procedure laid down in the regulation governing the budget,
- when the public procurement procedure results in the conclusion of a framework agreement which is not contractually binding,
- when the public procurement procedure results in the set up of a dynamic purchasing system.

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(4) The public procurement procedure shall begin upon the adoption of a decision on the commencement of the public procurement procedure.

(5) The decision on the commencement of a public procurement procedure shall include the information concerning:

- the contracting authority,
- the subject-matter of procurement,
- the estimated value of procurement,
- the source of planned funds,
- the legal basis for conducting the public procurement procedure or for the conclusion of a public service contract listed in Annex II B, to this Act,
- the selected public procurement procedure,
- the contracting authority's authorised representatives in the public procurement procedure,
- the contracting authority's responsible person (name and surname).

(6) The decision on the commencement of a public procurement procedure shall be signed by the contracting authority's responsible person.

(7) Contracting authorities may freely choose between the open and restricted procedure.

(8) In the specific cases and circumstances referred to expressly in Articles 14, 15 and 16 of this Act, contracting authorities may use a negotiated procedure, with or without prior publication of the contract notice.

(9) In the specific circumstances expressly provided for in Article 20 of this Act, contracting authorities may use the competitive dialogue."

Article 14

In Article 22, paragraph 6, item 1 is hereby deleted.

The former items 2, 3, 4, 5, 6 and 7 become items 1, 2, 3, 4, 5 and 6.

Article 15

In Article 23, paragraph 6, item 1 is hereby deleted.

The former items 2, 3, 4, 5, 6 and 7 become items 1, 2, 3, 4, 5 and 6.

Article 16

In Article 24, paragraph 1 is amended to read:

„(1) The number of candidates who will receive an invitation to tender or to negotiate shall be determined in accordance with the subject-matter of procurement and it shall be published by the contracting authority in the contract notice. The number of economic operators to be invited by the contracting authority shall be sufficient to ensure genuine competition. The rules which the contracting authority intends to apply shall be objective and non-discriminating and they shall be included in the contract notice.“

In paragraph 4 the words: "the best" are deleted.

Article 17

Article 25 is amended to read:

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„(1) If the conditions for selecting the negotiated procedure without prior publication of a contract notice allow it, the procedure shall be conducted with several economic operators respecting the principles of equal treatment and non-discrimination.

(2) The contracting authority shall publish a notice on the commencement of the public procurement procedure in the Electronic Public Procurement Classifieds in the Official Gazette which shall contain the information included in Annex V H to this Act.

(3) In the negotiated procedure without prior publication of a contract notice, only candidates that meet the selection criteria shall be invited to negotiate. The suitability of each candidate shall be determined before the notice referred to in paragraph 2 of this Article is sent for publication and minutes shall be drawn up thereof.

(4) The contracting authority shall not proceed with the procedure before the expiry of the standstill period, which shall last for 15 days from the date on which the notice on the commencement of the public procurement procedure was published. If the procedure of legal protection was instituted, the public procurement procedure may proceed upon the delivery of the decision of the State Commission for the Supervision of Public Procurement Procedure dismissing or rejecting the appeal.

(5) After the expiry of the standstill period referred to in paragraph 4 of this Article, the contracting authority shall invite the suitable candidate (or candidates) to negotiate.

(6) The submission of initial tenders may serve as the basis for negotiations. The final tender may be submitted only by an invited economic operator. The contracting authority shall award the contract on the basis of the award criterion specified in the invitation to negotiate.

(7) In the negotiated procedure without prior publication of a contract notice, the initial tender which satisfies all the needs of the contracting authority may also be the final tender.

(8) Provisions of paragraphs 2, 3, 4 and 5 shall not apply to a negotiated procedure without prior publication of a contract notice in cases of extreme urgency brought about by events unforeseeable by the contracting authority in question when the time limit for a public procurement procedure with prior publication of a contract notice cannot be complied with.“.

Article 18

In Article 26, paragraph 6, item 2 is hereby deleted.

The former items 3, 4 and 5 become items 2, 3 and 4.

Article 19

In Article 30, paragraph 7 is amended to read:

(7) The electronic submission of tenders and documents connected with the evaluation of the tender shall be accompanied by an advanced electronic signature or made in such a way as to ensure that the integrity and originality of the content of the submitted electronic document is preserved.

Article 20

In Article 31, paragraph 1, item 6 is amended to read:

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"6. a notice on the commencement of a public procurement procedure in the event of a negotiated procedure without prior publication of a contract notice and of the award of a public service contract referred to in Annex II B to this Act,".

After item 6, new items 7, 8 and 9 are added and read:

- „7. a notice of the publication of a prior (information) notice on a contracting authority (buyer) profile,
- 8. a public works concession notice,
- 9. a public works contract notice of concessionaires who are not contracting authorities.“.

Article 21

In Article 35, paragraph 1 the words: "and in the tender documents" are deleted.

Article 22

In Article 36, paragraph 1 the first sentence is amended to read: "At least once a year, the contracting authority shall publish, by way of a prior (information) notice on its buyer profile:".

Paragraphs 2 and 3 are amended to read:

„(2) The prior (information) notice relating to public supply contracts and public service contracts shall be sent for publication or published on the contracting authority (buyer) profile as soon as possible after the beginning of the budgetary year. The prior (information) notice relating to public works contracts shall be sent for publication or published on the contracting authority (buyer) profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting authorities intend to award.

(3) Contracting authorities which publish the prior (information) notice on the contracting authority (buyer) profile shall send, electronically, notice of the publication of a prior (information) notice on a contracting authority (buyer) profile in accordance with the format and detailed procedures for sending notices indicated in item 3 of Annex VI to this Act. The contracting authority (buyer) profile shall include the date of dispatch of the notice.“.

Article 23

In Article 37, paragraph 1 the words: "the contract award decision is adopted" are replaced by the words: "the public contract is awarded ".

In paragraph 3, subparagraph 1 the words: "each contract award decision is adopted" are replaced by the words: " each public contract is awarded ".

In paragraph 4 the word: "to" is followed by the word: "its". (language revision)

After paragraph 5, a new paragraph 6 is added and reads:

"(6) Contracts awarded based on an exclusion of the application of this Act shall not be published.“.

Article 24

In Article 40, paragraph 1, item 1 the words: "not later than within six" are replaced by the words: "forthwith, and not later than within three".

Article 25

In Article 41, paragraph 3 is amended to read:

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"(3) In the case of public procurement procedures with the estimated value of less than the corresponding lowest amount laid down in the Regulation on public procurement notices and record the minimum time limit for the receipt of tenders shall be:

- in the case of an open procedure, 26 days from the date on which the contract notice is sent,
- in the case of a restricted procedure, 20 days from the date on which the invitation to tender is sent."

Article 26

In Article 42, paragraph 2 is amended to read:

"(2) In the case of public procurement procedures with the estimated value of less than the corresponding lowest amount laid down in the Regulation on public procurement notices and records the minimum time limit for the receipt of requests to participate shall be at least 25 days from the date of dispatch of the contract notice".

Article 27

In Article 43, paragraph 1 is amended to read:

„(1) The time limit referred to in Article 41, paragraphs 1 and 2 of this Act may be shortened to 36 days, provided that the contracting authority sent the prior information notice for publication no less than 52 days and not more than 12 months before the date on which the contract notice was sent, in accordance with the provisions of Article 36 of this Act.“.

Article 28

In Article 46, paragraph 1 is amended to read:

"The contracting authority shall exclude from participation in a public procurement procedure any economic operator:

1. if the economic operator or the person authorised to represent the economic operator has been the subject of a conviction by final judgment for one or more of the following criminal acts: associating for the purpose of perpetrating criminal offences, accepting a bribe in business activities, offering a bribe in business activities, abuse of position and official powers, abuse in performing governmental duty, illegal intercession, accepting a bribe, offering a bribe, fraud, computer fraud, fraud in business activities or concealing unlawfully obtained money, or the corresponding criminal acts in accordance with the legal provisions of the country in which he is established, and/or
2. if the economic operator failed to fulfil the obligation to pay all outstanding tax liabilities and contributions for pension and health insurance."

Article 29

In Article 47, item 5 the words: "and at the time of expiry of the time limit for the receipt of tenders in the case of a repeated invitation to tender," are deleted.

In item 6 the words: "and at the time of expiry of the time limit for the receipt of tenders based on the special invitation to tender in accordance with the provisions of Article 104 of this Act" are deleted.

Article 30

Article 48 is amended to read:

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„(1) The contracting authority shall determine the selection criteria for legal and business capacity and the criteria relating to the non-existence of a criminal record, while the criteria for the financial standing of the economic operator shall be determined in accordance with the provision of Article 51, paragraph 1 of this Act.

(2) In a public procurement procedure, where necessary, the contracting authority may determine the selection criteria:

1. of financial standing of the economic operator in accordance with the provisions of Article 51, paragraph 2 of this Act, and

2. of technical and professional ability of the economic operator.

(3) Evidence and the value indicators thereof which the contracting authority requires to establish the suitability of an economic operator may be required only to the extent to which that is justified by the subject-matter of procurement and the estimated value of procurement.

(4) For the purpose of establishing the suitability of an economic operator, the contracting authority must request the evidence of suitability in accordance with the provisions of this Act.

(5) As of the date of accession to the European Union, the Republic of Croatia shall notify the European Commission of the competent authorities for issuing documents proving the suitability of an economic operator under this Act. Such notifications shall not be contrary to the regulations on data protection.“.

Article 31

In Article 49, paragraph 1 is amended to read:

„(1) The contracting authority must request from the economic operator to provide the following as evidence of his legal and business capacity:

1. the certificate of registration with the business, court (commercial), professional, trades/crafts or other appropriate register or an adequate document, not older than six months on the date on which the notice was sent,

2. the authorisation, approval and the like if an economic operator needs it in the country where he is established in order to perform activities related to the subject-matter of procurement, and

3. the certificate of membership in a specific professional organization if an economic operator needs it in the country where he is established in order to perform activities related to the subject-matter of procurement.“.

Paragraph 3 is amended to read:

„(3) In the event of a joint tender, all members of the group of tenderers shall individually prove their capacity referred to in paragraph 1, item 1 of this Article. The members of the group of tenderers shall prove the capacity referred to in paragraph 1, items 2 and 3 of this Article if it is required for the performance of activities related to the subject-matter of procurement. If the capacity referred to in paragraph 1, items 2 and 3 of this Article is required only to perform a part of the subject-matter of procurement, the member of the group of tenderers which will perform that part of the subject-matter of procurement concerned shall prove such capacity.“.

Article 32

Article 50 is amended to read:

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“(1) The contracting authority shall require from the economic operator a statement that no circumstances contrary to the provision of Article 46, paragraph 1, item 1 of this Act exist, where in the country where that economic operator is established is not possible to obtain certificates or documents verifying such circumstances from the competent body running official evidences.

(2) The statement referred to in paragraph 1 of this Article, signed and certified by a public notary or other competent body, shall be provided by the person authorised to represent the economic operator on behalf of himself and of the economic operator where the operator is a legal person.

(3) The statement referred to in paragraph 1 of this Article shall not be older than 30 days on the date on which the notice was sent.

(4) In the event of a joint tender, all members of the group of tenderers shall individually submit statements referred to in paragraph 1 of this Article.”.

Article 33

The heading above Article 51 and Article 51 are amended to read:

"Proof of the economic operator's financial standing

Article 51

„(1) As proof that there are no reasons for exclusion referred to in the provision of Article 46, paragraph 1, item 2 of this Act, the contracting authority shall require a certificate issued by the tax authority concerning the state of debt or an equivalent document issued by the competent authorities of the country in which the economic operator is established, which may not be older than 30 days on the date on which the notice was sent.

(2) Along with the proof referred to in paragraph 1 of this Article, the contracting authority may require one or more of the following references as proof of the economic operator's financial standing:

1. the balance-sheet, the profit and loss account or an appropriate financial statement, if the publication thereof is required under the law of the country in which the economic operator is established,
2. documents issued by banks or other financial institutions proving the solvency of the economic operator,
3. a guarantee for the coverage of professional risk indemnity insurance,
4. a statement concerning the joint and several liability of a group of tenderers,
5. a guarantee for the tender,
6. a report or statement of the economic operator's overall turnover and, where appropriate, of the turnover of the economic operator generated in the area covered by the procurement in question for a period of one to a maximum of the last three financial years available, or for a shorter period of activity in the event that the economic operator did not trade in the period concerned.

(3) The economic operator may prove his financial standing by any other document, other than the one required by the contracting authority, if the required proof cannot be submitted for any valid reason and if the submitted proof has the same evidentiary weight as the required one.

(4) The contracting authority shall state in the contract notice which evidence referred to in this Article it requires, and make reference to the possibility of proving one's standing by any other document within the meaning of paragraph 3 of this Article.

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(5) In the event of a joint tender, all members of the group of tenderers shall individually prove the financial standing referred to in paragraph 1 of this Article."

Article 34

In Article 55 after paragraph 8 new paragraphs 9 and 10 are added which read:

"(9) Tender documents shall be drawn up in the Croatian language.

(10) When the subject-matter of procurement so requires, the contracting authority may draw up tender documents or a part thereof in a foreign language or languages. In cases of dispute the tender documents drawn up in the Croatian language shall be considered relevant."

Article 35

In Article 57, paragraph 1 is hereby deleted.

The former paragraphs 2 and 3 become paragraphs 1 and 2.

The former paragraph 4 which becomes paragraph 3 is amended to read:

"(3) Information on economic operators who have requested access to the documents or who have taken over the documents shall be recorded and shall be kept confidential until the tenders are opened."

The former paragraphs 5 and 6 become paragraphs 4 and 5.

Article 36

Article 59 is amended to read:

"(1) Contracting authorities may request the tenderers in tender documents to indicate in their tenders any share of the contract which is to be performed by a subcontractor/subsupplier and the data on such subcontractor/subsupplier. Such indications shall be without prejudice to the liability of the tenderer.

(2) Contracting authorities may request the tenderers in tender documents to provide the evidence referred to in Article 49, paragraph 1, item 1, Article 50, paragraph 1 and Article 51, paragraph 1 of this Act for the subcontractor/subsupplier."

Article 37

In Article 60, item 1 the word: "ability" is followed by the words: "within the meaning of Article 89, paragraph 3 of this Act, or fails to provide the performance guarantee".

Article 38

In Article 61, paragraphs 2 and 3 are amended to read:

"(2) If the tenderer agrees to the contracting authority's request for extension of the term of validity of the tender, the validity of the tender guarantee shall be extended in accordance with the extension of the term of validity of the tender.

(3) The contracting authority shall return the tender guarantees to the tenderers within 30 days from the date the award decision becomes final."

Paragraph 4 is hereby deleted.

Article 39

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The heading above Article 67 and Article 67 are amended to read:

"The subject-matter of procurement

Article 67

- (1) The contracting authority shall specify the subject-matter of procurement in the procurement plan.
- (2) The subject-matter of procurement shall include the goods, services or works specified by type, properties or purpose or shall be specified so that it represents a technical, technological, economic, aesthetic, functional and/or other whole.
- (4) The contracting authority shall describe the subject-matter of procurement clearly, comprehensibly and unambiguously, so that tenderers may offer supplies, services or works comparable in terms of their type, quality, price and any other property and condition as may be required."

Article 40

In Article 68, paragraphs 1, 2 and 3 are amended to read:

- "(1) The description of the subject-matter of procurement may be constructive, functional or a combination of both descriptions.
- (2) In the case of a constructive description, the subject-matter of procurement shall be described clearly, fully and neutrally, in a way which ensures the comparability of tenders on the basis of their constructive requirements laid down by the contracting authority. The constructive description of the subject-matter of procurement shall contain technical specifications and, where appropriate, it shall be supplemented with plans, project documents, drawings, models, trials, samples and the like.
- (3) In the case of a functional description of the subject-matter of procurement, the technical specifications shall describe the goal of procurement clearly, fully and neutrally, in a way which ensures the comparability of tenders on the basis of their performance and/or functional requirements laid down by the contracting authority. The description of the subject-matter of procurement must identify the purpose of the subject-matter of procurement and the requirements set for the subject-matter of procurement in terms of its technical, economic, aesthetic and functional aspects. The performance and functional requirements must be sufficiently precise to allow candidates and tenderers to get a clear idea of the contract subject-matter and to allow the contracting authority to award the contract. The functional description of the subject-matter of procurement must contain technical specifications as well as plans, drawings, models, trials, samples and the like, if they are available to the contracting authority.

Article 41

In Article 71, paragraph 3 the numbers: "5 and 6" are replaced by the numbers: "4 and 5".

Article 42

Article 73 is amended to read:

„The tender shall include:

1. the name (the company name or the abbreviated company name) and the place of establishment of the tenderer, and the electronic address of the tenderer or the service of the tenderer authorised to receive mail, and for group of tenderers the information on the joint tenderers, the principal tender for

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the participation in the public procurement procedure and the undersigned party/parties of the public contract;

2. the proof of suitability, unless assessment of the suitability is carried out before tender submission,
3. the required tender parts and/or attachments (guarantees, technical specifications, technical documents, statements, designs, photographs, sketches, samples etc.) if such are required,
4. the tender price,
5. the term of validity of the tender,
6. the signed proposal of the contract or framework agreement, if such is included in the tender documents,
7. a list of all tender parts and/or attachments,
8. other information required in the tender documents, and
9. the date and the signature of the tenderer."

Article 43

In Article 74, paragraph 3 in the second sentence the word: "that" is deleted. (language revision)

Article 44

In Article 77, paragraph 3 is hereby deleted.  
The former paragraph 4 becomes paragraph 3.

Article 45

In Article 79, paragraphs 1 and 2 are amended to read:

"(1) In open and restricted procedures, tenders shall be opened in a public opening of tenders, which shall be documented in the form of minutes. The procedure of the opening of tenders shall commence at the designated place and at the designated time, concurrent with the expiry of the time limit for the receipt of tenders. The tenders shall be opened by at least two authorised representatives of the contracting authority. The public opening of tenders may be witnessed by authorised representatives of the tenderers and persons who either have or do not have the status of an interested party. Only the representatives of the contracting authority and authorised representatives of the tenderer shall have the right to actively participate in the public opening of tenders.

(2) In other public procurement procedures the opening of tenders may be witnessed by authorised representatives of the tenderers which have submitted final tenders. "

Article 46

In Article 81, paragraph 4 the last sentence is deleted.

After paragraph 4, a new paragraph 5 is added which reads:

"(5) Contracting authorities shall notify the European Commission if they reject a tender under the circumstances referred to in paragraph 4 of this Article in case of public procurement procedures subject to the obligation of publication in the Official Journal of the European Union."

Article 47

In Article 84, paragraph 1, item 1 the words: ", paragraph 5" are replaced by the letter: "a".

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After item 13, a new item 14 is added and reads:

„14. any tender by a tenderer who submitted two or more tenders in the status of a tenderer or a member of a group of tenderers, except in the case of the submission of variant if it is allowed,“.

The former item 14 becomes item 15.

Article 48

Article 85 is amended to read:

„(1) After the examination and evaluation of tenders the contracting authority shall adopt the contract award decision or the cancellation decision.

(2) The contract award decision shall be based on the award criterion/criteria.

(3) Only one acceptable tender is needed to make the award.

(4) If two or more acceptable tenders were submitted with the same lowest price when the lowest price criterion is used for award of the contract, the contracting authority shall choose the tender which was received earlier.“.

Article 49

After Article 85, a new Article 85a is added and reads:

"Special programmes

Article 85a

„With the purpose of implementing reconstruction programmes for residential units damaged or demolished during the war and residence allocation programmes, contracting authorities may adopt a contract award decision of the most advantageous tender, or a contract award decision of all suitable tenderers, provided that all suitable tenderers agree to the price and terms of the most advantageous suitable tender.“.

Article 50

In Article 86, paragraph 1, subparagraph 12 the words: "date of expiry of the" are deleted.

Subparagraph 13 is amended to read:

"- the price of the chosen tender, and in the case of the economically most advantageous tender information on the features and advantages of the chosen tender,“.

In subparagraph 15 the word: "certified" is replaced by the words: "seal and" .

Paragraph 3 is amended to read:

"(3) After delivery of the contract award decision or the cancellation decision and until the expiry of the time limit for filing an appeal, contracting authorities must, upon a tenderer's request, provide access to any tender with the exception of information designated as confidential pursuant to the provision of Article 8 of this Act.“.

Article 51

In Article 87, paragraph 3 is hereby deleted.

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Article 52

The heading above Article 88 is amended to read: "Period of standstill and nullity of the contract award decision". (language revision)

In Article 88, paragraph 1 the number: "12" is replaced by the number: "15".

In paragraph 2 the word: "null" is replaced by the word: "null". (language revision)

Paragraph 3 is amended to read:

„(3) The standstill period shall not apply:

a) if only one tenderer participated in the public procurement procedure and he is the one who is awarded the contract,

b) in the case of public contracts based on a framework agreement as provided for in Article 102 and in the case of a specific contracts based on a dynamic purchasing system as provided for in Article 104 of this Act.“.

Article 53

Article 89 is amended to read:

„(1) Upon the expiry of the standstill period referred to in Article 88, paragraph 1 of this Act, unless the procedure of legal protection was instituted, or upon the delivery of the decision of the State Commission for the Supervision of Public Procurement Procedures dismissing or rejecting the appeal, the contract award decision becomes enforceable, resulting in a contractual relationship. If the conclusion of the contract is subject to consent from the competent body, the contractual relationship shall be established at the moment the consent is obtained.

(2) If at the moment referred to in paragraph 1 of this Article, the validity period of the tender expires, the contractual relationship shall be created by a written statement by the tenderer accepting the contract. The tenderer shall be given a reasonable time limit to issue the statement concerned.

(3) Before the expiry of the standstill period, the contracting authority may request the tenderer to whom the contract is awarded to provide the originals or certified copies of the enclosed proof of ability, if so provided in the tender documents.

(4) If the chosen tenderer declines to sign the public contract or the framework agreement or fails to deliver the performance guarantee required in the tender documents, the contracting authority may revoke the contract and adopt a new contract award decision on the subsequent acceptable and suitable tender, or cancel the public procurement procedure.

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

Article 54

In Article 90, paragraph 1 is amended to read:

„(1) The public procurement procedure shall be concluded when contract award decision or the cancellation decision becomes enforceable.“.

Article 55

Article 94 is amended to read:

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„The contracting authority shall cancel the public procurement procedure after the expiry of the time limit for the receipt of tenders for the entire subject-matter of procurement or for each group or lot of the subject-matter of procurement where tenders were allowed for groups or lots of the subject-matter of procurement:

1. if circumstances become known which, had they been known before the commencement of the public procurement procedure, would have resulted in the non-publication of the contract notice, or
2. if circumstances become known which, had they been known before the commencement of the public procurement procedure, would have resulted in the publication of a substantially different contract notice and/or tender documents, or
3. if after the rejection of tenders in the procedure no acceptable tender remains, or
4. if no tender has been submitted, or
5. if a selection cannot be made on the basis of the economically most advantageous tender criterion, or
6. if the total price of the most advantageous tender is higher than the funds planned for the procurement, except in cases referred to in paragraph 3, Article 13 of this Act.".

Article 56

Article 95 is amended to read:

„(1) The contracting authority shall send the cancellation decision together with a copy of the minutes of the examination and evaluation of the tenders to each tenderer without any delay by registered mail with confirmation of delivery or another traceable means of communication.

(2) The provision of Article 86, paragraph 1 of this Act shall correspondingly apply to the content of the cancellation decision. The contracting authority must present reasons for the circumstances referred in the provisions of Article 93 and Article 94, items 1 and 2 of this Act in the decision.

(3) In the case of cancellation of a public procurement procedure pursuant to the provisions of Article 93 and Article 94, paragraph 1, item 4 of this Act, the contracting authority shall publish the cancellation decision in the same way as the contract notice, and shall send the cancellation decision to the economic operators which obtained the tender documents without any delay, by registered mail with the confirmation of delivery or another traceable means of communication.

(4) Before the expiry of the standstill period which shall last for 15 days from the date of the receipt of the cancellation decision by the tenderers, or the date of publication of the cancellation decision in accordance with the provision of paragraph 3 of this Article, a new public procurement procedure for the same subject-matter of procurement shall not be initiated. If the procedure of legal protection was instituted within the prescribed time limit, a new public procurement procedure for the same subject-matter of procurement may be initiated upon the delivery of the decision of the State Commission for the Supervision of Public Procurement Procedures dismissing or rejecting the appeal.

(5) In the case of cancellation of a public procurement procedure, in accordance with the provisions of Article 93 of this Act, the submitted tenders shall not be opened, and shall be returned to the tenderers after the expiry of the standstill period.".

Article 57

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In the heading of Title III, Part 2 of the Act the words: "SPECIAL PROCEDURES" are replaced by the words: "PUBLIC PROCUREMENT METHODS".

Article 58

Article 96 is amended to read:

„(1) Public service contracts which have as their subject-matter services listed in Annex II B to this Act shall be subject solely to the provisions relating to the decision on the commencement of the public procurement procedure, public procurement notices, technical specifications and legal protection referred to in this Act.

(2) Before awarding public contracts referred to in Annex II B of this Act, the contracting authority shall publish the notice on the commencement of the public procurement procedure in the Electronic Public Procurement Classifieds in the Official Gazette, and the decision shall include the information referred to in Annex V H of this Act.

(3) The contracting authority shall not award the public service contract referred to in Annex II B of this Act before the expiry of the standstill period, which shall last for 15 days from the date on which the notice on the commencement of the public procurement procedure was published.

(4) When awarding a public service contract referred to in Annex II B of this Act the contracting authority shall comply with the principles under Article 6 of this Act.“.

Article 59

In Article 98, paragraph 6 the number: "12" is replaced by the number: "15".

In paragraph 7 the number: "12" is replaced by the number: "15".

Article 60

In Article 101, paragraph 1 is hereby deleted.

The former paragraphs 2 and 3 become paragraphs 1 and 2.

In the former paragraph 4 which becomes paragraph 3 the word: "from" is replaced by the word: "to".  
(language revision)

Article 61

Article 102 is amended to read:

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

(2) Public contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 3 to 8 of this Article. Those procedures may be applied only between the contracting authority (authorities) and the economic operator(s) originally party to the framework agreement.

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

(4) Where a framework agreement is concluded with a single economic operator and does not lay down all the terms for the award of the public contract, the public contract may be awarded based on the

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written request of the contracting authority to the economic operator to submit new tender. The written request for tender submission may include, besides the original terms, more precisely formulated terms and supplemented terms, as well as other minor amendments to the terms of the framework agreement stated in the tender documents for the framework agreement.

(5) Where a framework agreement is concluded with several economic operators and lays down all the terms for the award of the public contract, the public contract may be awarded directly based on the original terms and the tenders submitted before award of the framework agreement without a repeated invitation to tender.

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

1. besides the original terms, also, if necessary, more precisely formulated terms for the award of the contract based on the framework agreement, and
2. where appropriate, other terms stated in the tender documents for the framework agreement (such as a corrigendum or amendment).

(7) In a repeated invitation to tender, an electronic auction may be conducted in accordance with the provisions of Articles 97 through 100 of this Act, or a procedure in which the contracting authority:

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

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

(9) The contracting authority may periodically verify the ability of the economic operators to which the framework agreement has been awarded.”.

Article 62

In Article 104, paragraph 6 the number: "41" is replaced by the number: "37".

Article 63

In Article 105, paragraph 1 the word: "hereinafter" is followed by the words: "in this part of the Act".

In paragraph 3 the word: "authorities" is deleted. (language revision)

Article 64

In Article 111, paragraphs 2 and 3 are amended to read:

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„(2) Postal services within the meaning of paragraph 1 of this Article are the services of receipt, handover and clearance of postal items. These services comprise:

1. reserved postal services: postal services which are reserved solely for the public operator in accordance with the Postal Act,
2. postal services provided in the free market in accordance with the provisions of the Postal Act.

(3) Postal item means an item of correspondence, a postal order, a telegram, and a package addressed to a recipient to whom the item is to be served. The provision of paragraph 2 of this Article shall also apply to books, catalogues and press.".

In paragraph 4, item 4 the number: "5" is followed by the words: "paragraph 1,".

Article 65

In Article 114, paragraph 1 the words: "Part Three of" are deleted.

In subparagraph a) the word: "authority" is deleted. (language revision)

In paragraphs 2 and 3 the word: "turnover" is replaced by the word: "income".

Paragraph 4 is amended to read:

„(4) This Act shall not apply to public contracts awarded:

1. to one or more contracting entities by a joint venture, formed exclusively by those contracting entities for the purpose of carrying out activities within the meaning of Articles 106 through 111 of this Act, or
2. by a contracting entity to a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity within the meaning of Articles 106 through 111 of this Act over a period of at least three years, and provided that that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.".

Article 66

The heading above Article 115 is amended to read: "Selection of the public procurement procedure and the public procurement method".

Paragraph 1 is amended to read:

"(1) Contracting entities shall be free to choose between the open procedure, the restricted procedure, the design contest and the negotiated procedure with prior publication of a contract notice.".

After paragraph 2, a new paragraph 3 is added and reads:

"(3) Contracting entities shall be entitled to award framework agreements, conduct electronic auctions and set up dynamic purchasing systems.".

Article 67

In Article 116, item 9 is hereby deleted.

The former items 10, 11 and 12 become items 9, 10 and 11.

Article 68

In Article 117, paragraph 1, item 6 is amended to read:

„6. a notice of the publication of a periodic (indicative) notice on a contracting entity (buyer) profile,".

Item 8 is amended to read:

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„8. a notice on the commencement of a public procurement procedure in the event of a negotiated procedure without prior publication of a contract notice and on the award of a public service contract referred to in Annex II B to this Act.“

In paragraph 2, item 3 the words: "through 4" are replaced by the words: "and 2".

Article 69

In Article 118, paragraphs 2 and 3 are amended to read:

„(2) The periodic (indicative) notice relating to public supply contracts and public service contracts shall be sent for publication or published on the contracting entity (buyer) profile as soon as possible after the beginning of the budgetary year. The periodic (indicative) notice relating to public works contracts shall be sent for publication or published on the contracting entity (buyer) profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting entities intend to award.

(3) Contracting entities which publish the periodic (indicative) notice on the contracting entity (buyer) profile shall send, electronically, the notice of the publication of the periodic (indicative) notice on the contracting entity (buyer) profile in accordance with the format and detailed procedures for sending notices indicated in item 3 of Annex VI to this Act. The contracting entity (buyer) profile shall include the date of dispatch of the notice.“

Article 70

In Article 121, paragraph 2 is amended to read:

"(2) In the case of public procurement procedures with the estimated value of less than the corresponding lowest amount laid down in the Regulation on public procurement notices and records the minimum time limit for the receipt of tenders shall be 26 days from the date on which the contract notice was sent."

Article 71

In Article 122, paragraphs 1 and 2 are amended to read:

"(1) In restricted procedures and in negotiated procedures with prior publication of a contract notice, the time limit for the receipt of requests to participate shall be no less than 37 days from the date on which the notice was sent.

2) In the case of public procurement procedures with the estimated value of less than the corresponding lowest amount laid down in the Regulation on public procurement notices and records the time limit for the receipt of requests to participate shall be no less than 20 days from the date on which the notice was sent."

Paragraph 4 is amended to read:

„(4) Whenever the time limit for the receipt of tenders cannot be set by mutual agreement, the contracting entity shall fix a time limit of at least 24 days, and in the case of public procurement procedures with the estimated value of less than the corresponding lowest amount laid down in the Regulation on public procurement notices and records at least 15 days from the date of the invitation to tender is sent.“

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Article 72

In Article 123, paragraph 1 the first sentence is amended to read: "The time limit for the receipt of tenders referred to in Article 121, paragraph 1 of this Act may be shortened to 36 days:".

In paragraph 3 the word: "public" is followed by the word: "procurement". (language revision)

Article 73

In Article 128 after paragraph 1 a new paragraph 2 is added which reads:

„(2) This part of the Act shall also apply to public works concessions award procedures if the estimated value of the works is equal to or lower than the amount laid down in the regulation governing concessions.“.

The former paragraph 2 becomes paragraph 3.

Article 74

In Article 129, paragraph 1 is amended to read:

„(1) Contracting authorities may use open procedures, restricted procedures, negotiated procedures (with and without prior publication of a contract notice), design contests, framework agreements and electronic auctions in accordance with the conditions laid down in this Act.“.

Article 75

In Article 130, paragraph 3 is amended to read:

„(3) The standstill period shall last for 5 days from the date of the receipt of the contract award decision or the cancellation decision by each tenderer, or from the date of publication of the notice on the commencement of the public procurement procedure in the case of award of public service contracts listed in Annex II B to this Act and negotiated procedures without prior publication of a contract notice.“.

After paragraph 3, a new paragraph 4 is added which reads:

„(4) The standstill period shall not apply:

- a) if only one tenderer participated in the public procurement procedure and he is the one who is awarded the contract,
- b) in the case of public contracts based on a framework agreement as provided for in Article 102 of this Act.“.

Article 76

In Article 138, paragraph 1 the number: "12" is replaced by the number: "15".

In paragraph 2 after the words: "prior publication of a contract notice" the comma is deleted and the words: "an exclusion from the application of this Act" are deleted.

Article 77

Article 140 is amended to read:

"(1) If the contracting entity has failed to apply or has misapplied any of the provisions of this Act during the public procurement procedure to the extent that it influenced or might have influenced the adoption of legal decisions, this shall represent a substantial violation of this Act.

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(2) In public procurement procedures, the following shall represent substantial violations of this Act:

1. conducting a public procurement procedure without the adoption of a decision on the commencement of the public procurement procedure, with the content as provided for in Article 13 of this Act,
2. the tender documents that are not compliant with the law, which resulted or might have resulted in discrimination against some tenderers or restricted competition,
3. contract notices which are not compliant with this Act as regards the method of publication,
4. deficiencies relating to the opening of tenders as regards the lack of information on the participants in the procedure, the tender amounts or the lack of their signatures, as well as the deficiencies relating to the evaluation of the request to participate,
5. deficiencies relating to the procedure of examination and evaluation of tenders and contract award: the lack of reasons and evidence on the basis of which the decision was adopted,
6. the award of contract to a tender the total price of which exceeds the funds dedicated for the procurement, unless stipulated otherwise by this Act,
7. the award of contract to a tender which is not the most advantageous,
8. the award of contract to an unacceptable tender."

Article 78

In Article 141, paragraph 1 after the word: "herein" the full stop is replaced by a comma and is followed by the words:" regardless of the part of the public procurement procedure against which the appeal was filed."

Article 79

In Article 143, paragraph 1, item 10 is amended to read:

"10. the claim for remedy,".

After item 10, a new item 11 is added and reads:

"11. the claim for the compensation of procedural costs,".

The former item 11 becomes item 12.

Article 80

In Article 146, paragraph 1, item 4 the words: "appellant, the chosen tenderer" are replaced by the words: "appellant, the chosen tenderer". (language revision)

Paragraph 2 is amended to read:

"(2) If the contracting authority fails to comply with paragraph 1 of this Article and/or Article 153, paragraph 4 of this Act, the State Commission shall request the documents from the contracting authority and shall continue to proceed ex officio according to the appeal after the expiry of the time limit laid down in Article 154, paragraph 1 of this Act."

Article 81

In Article 147, paragraph 2 the word: "eight" is replaced by the word: "ten".

Item 2 is amended to read:

"2. the public opening of tenders if the appeal concerns the actions, procedures, failures to act relating to the procurement documents and the procedure of opening tenders, and in case the tenders were not

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publicly opened, from the date of delivery of the decision concerning an individual right arising from public procurement and relating to the procedure of examination and evaluation of the suitability of tenderers and the procedure of examination and evaluation of tenders and contract award,".

Article 82

In Article 148, paragraph 1 the word: "where" is preceded by the words: "in the case referred to in Article 138, paragraph 2 of this Act or".

After paragraph 4, a new paragraph 5 is added and reads:

"(5) The State Commission shall pass a decision concerning the request to continue the procedure before the expiry of a period of five days from the date of delivery of the appeal file or it shall postpone the adoption of the decision for valid reasons until a decision on the principal matter is adopted.".

Article 83

In Article 150, paragraph 1 is amended to read:

"(1) The State Commission shall pass a decision concerning the motion for injunction before the expiry of a period of five days from the date of delivery of the appeal file or it shall postpone the adoption of the decision concerning the injunction until a decision on the principal matter is adopted.".

Article 84

In Article 153, paragraph 1 after the words: "an action" the words: "or conduct another procedure" are deleted.

In paragraph 4 the words: "the new decision" are followed by the words: "or the corresponding evidence".

After paragraph 4, a new paragraph 5 is added and reads:

"(5) Where the contracting authority acts in accordance with paragraph 1 of this Article, The State Commission shall verify ex officio whether decisions were adopted pursuant to all requests and shall continue the appeal process in case the contracting authority has not adopted such decisions.".

Article 85

In Article 154, paragraph 2 is amended to read:

"(2) The request referred to in paragraph 1 of this Article shall be submitted to the State Commission and it shall include information referred to in Article 143, paragraph 1, items 1, 3, 4, 5, 6, 9, 10, 11 and 12 of this Act and the evidence of the service of the appeal to the contracting authority.".

Article 86

In Article 159, subparagraph 2 the word: "procurement" is followed by the words: "equal to or".

In subparagraph 3 the word: "procurement" is followed by the words: "equal to or".

Article 87

In Article 164 item 4 the words: "expiry of the" are followed by the word: "mandatory".

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After item 9 the full stop is deleted, a comma is inserted and new items 10, 11 and are added which read:

10. if the content of the public contract is the consequence of a criminal act perpetrated by the tenderer or his authorised person and referred to in Article 46, paragraph 1 of this Act,

11. if it was awarded before the decision became final,

12. if the contracting authority has awarded a contract without prior publication of a public procurement notice without this being permissible in accordance with this Act.

Article 88

Article 165 is hereby deleted.

Article 89

Article 166 is hereby deleted.

Article 90

In Article 168 the word: "competencies" is replaced by the word: "competencies". (language revision)

Article 91

In Article 170, paragraph 2 the word: "authorised" is replaced by the word: "authorised". (language revision)

In paragraph 3 the word: "requested" is replaced by the word: "requested". (language revision)

After paragraph 4, a new paragraph 5 is added and reads:

"(5) Control through the activities of prevention and instruction shall not be implemented if a legal protection procedure was instituted or if the right for legal protection before the body responsible for control of public procurement procedures was not exercised."

Article 92

The heading above Article 171 and Article 171 are amended to read:

"Public procurement reports

Article 171

„(1) Contracting authorities referred to in Article 3 and contracting entities referred to in Article 4 of this Act shall deliver public procurement reports for the preceding year to the body responsible for the public procurement system by 31 March of each year.

(2) The public procurement reports shall detail data relating:

a) the number and total value of awarded contracts covered by this Act, classified according to the:

– public procurement procedures used and where the contracts have been concluded according to the negotiated procedures the circumstances referred to in this Act which justify the use of negotiated procedure with prior publication of the contract notice and negotiated procedure without prior publication of the contract notice and the number and value of contracts awarded by The Republic of Croatia and third country of the successful contractor,

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- products, works as given in Annex I to this Act, services as given in Annex II to this Act identified by category of the Common Procurement Vocabulary (CPV) nomenclature,
  - data relating to contracts awarded based on the framework agreement and data relating to procurement of lesser value, and
  - the nationality of the economic operator to which the contract was awarded,
- b) the number and total value of contracts awarded pursuant to the provision of Article 5a of this Act,
- c) the number and total value of contracts awarded pursuant to derogations to the Agreement of the World Trade Organisation and
- d) all other statistical data required under the Agreement of the World Trade Organisation.
- (3) The content and the method of delivery of public procurement reports for the preceding year shall be prescribed by the Government of the Republic of Croatia in the Regulation on the content and the method of forwarding public procurement reports.
- (4) As of the date of accession of the Republic of Croatia to the European Union, the body responsible for the public procurement system shall forward the public procurement reports to the European Commission by 31 October of each year.“.

Article 93

In Article 172, paragraph 1, item 2 the words: "and the method" are deleted.

In item 3 the number: "4" is replaced by the number: "8".

In item 5 the word: "contract" is followed by the words: "or a framework agreement", and the number: "4" is replaced by the number: "5".

After item 10 the comma is deleted, a full stop is inserted, and item 11 is hereby deleted.

Article 94

In Article 174, item 2 the words: "Article 10, paragraph 2." are deleted.

Item 3 is hereby deleted.

The former items 4, 5, 6, 7 and 8 become items 3, 4, 5, 6 and 7.

Article 95

In Article 177 the words: "Article 5, paragraph 1, items 3 and 5, Article 5, paragraph 2, items 1 and 2, Article 14, paragraph 2, item 1, Article 15, paragraph 2, item 1, Article 16, paragraph 2, item 1,", "Article 36, paragraph 2, Article 48, paragraph 6, Article 54, paragraph 1,", "Article 81, paragraph 4, Article 91, paragraph 2,", "2, 3 and" and "and Article 171, paragraph 1" are deleted.

Article 96

Annex III is amended to read:

"1. Portable and automatic firearms, such as rifles, carbines, revolvers, pistols, sub-machine guns and machine guns, except for hunting weapons, pistols and other low calibre weapons of the calibre less than 7mm.

2. Artillery and smoke, gas and flame-throwing weapons, such as:

- a) cannon, howitzers, mortars, artillery, anti-tank guns, rocket launchers, flame-throwers, recoilless guns;
- b) military smoke and gas guns.

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3. Ammunition for the weapons listed in items 1 and 2 of this List.

4. Bombs, torpedoes, rockets and guided missiles:

- a) bombs, torpedoes, grenades, including smoke grenades, smoke bombs, rockets, mines, guided missiles, underwater grenades, incendiary bombs;
- b) military and police apparatus and components specially designed for the handling, assembly, dismantling, firing or detection of the articles under a).

5. Military and police fire control equipment:

- a) firing computers and guidance systems in infra-red and other night guidance devices;
- b) telemeters, position indicators, altimeters;
- c) electronic tracking components (gyroscopic, optical and acoustic);
- d) bomb sights and gun sights, periscopes for the equipment specified in this List.

6. Tanks and specialist fighting vehicles:

- a) tanks;
- b) military and police type vehicles, armed or armoured, including amphibious vehicles;
- c) armoured cars;
- d) half-tracked military vehicles;
- e) military vehicles with tank bodies;
- f) trailers specially designed for the transportation of the ammunition specified in items 3 and 4 of this List.

7. Toxic or radioactive agents:

- a) toxic, biological or chemical agents and radioactive agents adapted for destructive use in war against persons, animals or crops;
- b) military and police apparatus for the propagation, detection and identification of substances listed under a);
- c) counter-measures material for items listed under a).

8. Powders, explosives and liquid or solid propellants:

- a) powders and liquid or solid propellants specially designed and constructed for use with the material listed under items 3, 4 and 7 of this List;
- b) military explosives;
- c) incendiary and freezing agents for military use.

9. Warships and police ships and their specialist equipment:

- a) warships and police ships of all kinds;
- b) equipment specially designed for laying, detecting and sweeping mines;
- c) underwater cables.

10. Aircrafts, helicopters and equipment for military and police use.

11. Military and police electronic equipment

12. Camera equipment specially designed for military and police use.

13. Other equipment and material.

14. Specialised parts and items of material included in this List insofar as they are of a military or police nature.

15. Machines, equipment and items exclusively designed for the study, manufacture, testing and control of arms, munitions and apparatus of an exclusively military or police nature included in this List."

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Article 97

In Annex V, the heading of Annex V H is amended to read:

"NOTICE OF THE COMMENCEMENT OF A PUBLIC PROCUREMENT PROCEDURE IN THE NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION OF A CONTRACT NOTICE AND OF THE AWARD OF PUBLIC SERVICE CONTRACTS LISTED IN ANNEX II B TO THIS ACT".

Item 6 is hereby deleted.

The former items 7, 8, 9, 10, 11 and 12 become items 6, 7, 8, 9, 10 and 11.

After ANNEX V I new annexes J and K are added which read:

"ANNEX V J

A PUBLIC WORKS CONCESSION NOTICE

1. Name, address, fax number and electronic address of the contracting authority
2. a) Place of execution of the works  
b) Subject-matter of the concession, nature and scope of the activities under the concession
3. a) Time limit for submission of applications  
b) The address where these have to be submitted  
c) The language or languages in which they must be drawn up
4. Economic and technical requirements and financial and technical guarantees required from the economic operators
5. Criteria to be used for award of the contract
6. If applicable, the smallest portion of works to be performed by a subcontractor
7. Date of dispatch of the notice
8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and electronic address of the service from which this information may be obtained.

ANNEX V K

A PUBLIC WORKS CONTRACT NOTICE OF CONCESSIONAIRES WHO ARE NOT CONTRACTING AUTHORITIES

- 1.a) Place of execution of the works  
b) Nature, scope and basic characteristics of the works
2. Time limit for completion of works
3. Name and address of the body from which the tender documents and any supporting documents may be requested,

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- 4.a) Time limit for submission of requests to participate and/or submission of tenders
- b) The address where these have to be submitted
- c) The language or languages in which they must be drawn up
5. If applicable: required guarantees and insurances
6. Economic and technical ability required from the contractor
7. Criteria to be used for award of the contract
8. Date of dispatch of the notice."

Article 98

In the whole text of the Public Procurement Act (Official Gazette 110/07), the words "the Public Procurement Office of the Government of the Republic of Croatia" and "the Public Procurement Office" in various grammatical cases are replaced by the words "the body responsible for the public procurement system" in the appropriate grammatical case.

TRANSITIONAL AND FINAL PROVISIONS

Article 99

- (1) The Government of the Republic of Croatia shall adopt the Regulation on procurement for defence and security purposes referred to in Article 5a and Article 9 of this Act within 12 months from the date of entry into force of this Act.
- (2) The head of the state administration body responsible for foreign affairs shall adopt the Regulation on public procurement for purposes of diplomatic and consular offices of the Republic of Croatia referred to in Article 5b of this Act within 12 months from the date of entry into force of this Act.

Article 100

- (1) Public procurement procedures launched before the entry into force of this Act in which public contracts have not been awarded yet or which are the subject of court or other procedures, shall be concluded pursuant the provisions of the Public Procurement Act which was in force at the time the procurement procedure began.
- (2) This Act shall not apply to public contracts which are designated as classified pursuant to regulations of the Republic of Croatia or whose implementation requires the application of information security measures until the date of entry into force of the Regulation on procurement for defence and security purposes.
- (3) This Act shall not apply to public contracts for purposes of diplomatic and consular offices of the Republic of Croatia in foreign countries until the date of entry into force of the Regulation on public procurement for purposes of diplomatic and consular offices of the Republic of Croatia

Article 101

Article 85a of this Act shall be valid until the date of accession of the Republic of Croatia to the European Union.

Article 102

This Act shall be published in the Official Gazette and enter into force on 1 January 2009, except for Article 12a which shall enter into force on 1 January 2010.

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