

**REPUBLIC OF LITHUANIA**  
**LAW ON PUBLIC PROCUREMENT**

13 August 1996 No I-1491  
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Vilnius

**CHAPTER I**  
**GENERAL PROVISIONS**

**SECTION ONE**  
**SCOPE OF THE LAW, DEFINITIONS, CLASSIFICATION**

**Article 1. Scope of the Law**

1. The objective of this Law shall be to ensure the effective and transparent conduct of public procurement procedures and design contests.

2. This Law shall regulate the procedure for managing and conducting public procurement procedures, including the performance of public sales-purchase contracts and dispute settlement procedures, define the rights, duties and liability of entities of public procurement.

3. The provisions of this Law shall implement the legal acts of the European Union listed in Annex 7 to this Law.

4. When conducting the public procurement procedures regulated by this Law, the provisions of Article 346 of the Treaty on the Functioning of the European Union shall apply.

**Article 2. Definitions**

1. **Conformity assessment body** shall mean, according to Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ 2008 L 218, p. 30), an accredited body that performs conformity assessment activities including calibration, testing, certification and inspection.

2. **Centralised purchasing activities** shall mean activities conducted on a permanent basis, in one of the following forms:

- 1) the acquisition of supplies and/or services intended for contracting authorities;
- 2) the award of public contracts or the conclusion of framework agreements for supplies, services or works intended for contracting authorities.

3. **Central purchasing body** shall mean a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities.

4. **Central Portal of Public Procurement** shall mean a state information system intended for:

- 1) submitting and managing public procurement notices and reports;
- 2) conducting public procurement procedures;
- 3) publishing summaries of scheduled purchases, public procurement documents, public sales-purchase contracts, framework agreements and other information on public procurement;
- 4) archiving and storing public procurement documentation;
- 5) performing other actions established by laws.

5. **Contracting authority outside the system of central entities of state administration** (hereinafter: a ‘sub-central contracting authority’) shall mean a contracting authority not included in the list of contracting authorities of the system of central entities of state administration approved by an institution authorised by the Government of the Republic of Lithuania.

6. **Contracting authority of the system of central entities of state administration** (hereinafter: a ‘central government authority’) shall mean a contracting authority included in the list of contracting authorities of the system of central entities of state administration approved by an institution authorised by the Government of the Republic of Lithuania.

7. **Public works contract** (hereinafter: a ‘works contract’) shall mean a public contract having as its object one of the following:

- 1) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex 1 to this Law;
- 2) the execution, or both the design and execution, of a work (which is the outcome of construction and/or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function);
- 3) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

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

9. **European standard** shall mean a standard adopted by a European standardisation organisation and made available to the general public.

10. **European Technical Assessment** shall mean a document issued by a European Technical Assessment Body and confirming that a construction product has been assessed in accordance with essential characteristics.

11. **Life cycle** shall mean all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, utilisation, clearance or end of service.

12. **Information system “E-invoice”** shall mean a state information system intended for the preparation, submission and storage, by using information technology tools, of invoices for purchased supplies, services and works in relation to performance of the public contracts awarded in accordance with this Law, the Law of the Republic of Lithuania on Public Procurement in the Field of Defence and Security, the contracts awarded in accordance with the Law of the Republic of Lithuania on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors and the contracts for the purchase of water, for the supply of energy or of fuels for the production of energy awarded in accordance with a derogation from the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors, as well as in relation to execution of in-house transactions, also intended for obtaining of information on payment of the submitted invoices.

13. **Common ICT technical specifications** shall mean a document which contains the technical details of information and communication technologies and which is drawn up in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ 2012 L 316, p. 12).

14. **Innovation** means the implementation of a new or significantly improved product, service or process, including production, building, construction or other processes, a new marketing method or a new organisational method in business practices, workplace organisation or external relations, inter alia, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth, endorsed by the Communication of the European Commission of 3 March 2010, COM(2010) 2020 final.

15. **Statement of confidentiality** shall be a statement made in writing by a member or an expert of a public procurement commission or any other person whereby he undertakes not to

furnish information to third parties, where disclosure of such information would be contrary to the requirements of this Law or public interests or would harm the legitimate interests of the economic operators and/or the contracting authority participating in public procurement procedures.

16. **National standard** shall mean a standard adopted by a national standardisation organisation and made available to the general public.

17. **Person of good repute** shall mean a person:

1) who meets the criteria of good repute stipulated by the Law of the Republic of Lithuania on Civil Service (hereinafter: the ‘Law on Civil Service’) set out for a person holding the position of a civil servant;

2) who is not subject to an administrative penalty (except for a warning) for a violation of this Law, the Law of the Republic of Lithuania on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors, the Law on Public Procurement in the Field of Defence and Security, as well as the legal acts implementing these laws or a decision imposing such an administrative penalty came into force or the person executed an administrative instruction earlier than one year ago;

3) who is not recognised as having violated the Law of the Republic of Lithuania on the Adjustment of Public and Private Interests in the Civil Service or in respect of whom a decision to recognise him as having violated this Law was adopted earlier than one year ago.

18. **Unacceptable tender** shall mean a tender which has one or more of the following features:

1) it does not comply with the contracting authority’s procurement documents, including requirements for the economic operator’s exclusion grounds, qualifications, quality assurance standards and/or environmental management standards;

2) the price offered in it exceeds the contracting authority’s budget as determined prior to the launching of the procurement procedure;

3) it was received late;

4) the contracting authority has evidence of collusion or corruption;

5) the economic operator proposes in the tender an abnormally low price which is unjustified or inappropriately justified.

19. **Declaration of impartiality** shall mean a written statement given by a member or expert of a public procurement commission or another person declaring his impartiality with respect to economic operators.

20. **Unsuitable request for participation** shall mean a request for participation where it has been submitted by a candidate in a public procurement procedure to which an economic

operator's exclusion ground specified in the procurement documents of the contracting authority applies or which does not fulfil the qualification requirements set out in the mentioned documents, quality assurance standards and/or environmental management standards.

21. **Unsuitable tender** shall be a tender which is irrelevant to the contract and is manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents in respect of the subject of the contract.

22. **Ancillary purchasing activities** shall mean activities consisting in the provision of support to purchasing activities, in particular in the following forms:

- 1) technical infrastructure enabling the contracting authority to award public contracts or to conclude framework agreements for supplies, services or works;
- 2) advice on the conduct or design of public procurement procedures;
- 3) preparation and management of public procurement procedures.

23. **Provider of ancillary purchasing activity services** shall mean an economic operator which offers ancillary purchasing activities on the market.

24. **Public service contract** (hereinafter: a 'service contract') shall mean a contract having as its object the provision of services other than those referred to in paragraph 26 of this Article.

25. **Contracting authority** shall mean:

- 1) a state or municipal institution;
- 2) a public or private legal person, if all or part of its activities is intended for meeting the needs of general interest, not having an industrial or commercial character (where an entity operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity, the needs in the general interest, that it has been set up to meet or been given the task of meeting, are deemed to have an industrial or commercial character) and if it fulfils at least one of the following conditions:

- 1) the activities thereof are financed, by more than 50%, with state or municipal budget resources, or with resources of other state or municipal funds, or with the resources of other public or private legal persons specified in this paragraph;

- 2) it is controlled/managed by state or municipal institutions or by other public or private legal persons specified in this paragraph;

- 3) it has the administration, a managerial or supervisory body with more than half of the members thereof appointed by state or municipal institutions or by other public or private legal persons specified in this paragraph;

3) any association of the public or private legal persons referred to in point 1 and/or 2 of this paragraph.

26. **Public supply contract** (hereinafter: a ‘supply contract’) shall mean a contract having as its object the purchase, lease, rental or hire-purchase, with or without an option to buy, of a product, also, as an incidental matter, the services of delivery, siting and installation of purchased products and other services of preparation for use thereof.

27. **Framework agreement** shall mean an agreement between one or more contracting authorities and one or more economic operators the purpose of which is to determine the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

28. **Design contest** shall mean a procedure which enables the contracting authority to acquire, mainly in the fields of territorial planning, architecture, engineering, data processing or financial engineering, a plan or design selected by a jury after being put out to competition. Participants in a design contest may be awarded prizes or payments.

29. **Written/in writing** shall mean any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

30. **Standard** shall mean a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory. By the type of the entity adopting a standard, standards may be international, European and national.

31. **Interested tenderer in a public procurement procedure** (hereinafter: an ‘interested tenderer’) shall mean a tenderer other than a tenderer who has been definitively excluded from a procurement procedure, i.e. he has been notified of the rejection of a public procurement tender, and whose exclusion due to the expiration of the term of appeal cannot be disputed or in respect of the validity of whose exclusion there is an effective court judgment.

32. **Interested candidate in a public procurement procedure** (hereinafter: an ‘interested candidate’) shall mean a candidate in a public procurement procedure which has not been notified by the contracting authority of the rejection of his request prior to the sending of a notice of a decision to identify the winning tender to interested tenderers.

33. **International standard** shall mean a standard adopted by an international standardisation organisation and made available to the general public.

34. **Technical specifications:**

1) in the case of public works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a

material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. Those characteristics shall include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works. Those characteristics shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

2) in the case of supply or service contracts, a specification in the procurement documents defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures.

35. **Technical reference document** shall mean a document, other than a European standard, produced and published by a European standardisation body according to procedures adapted to developments in market needs for the purpose of defining a technical specification.

36. **Economic operator** shall mean an economic entity being a natural person, a private or public legal person, another organisation and a division thereof or a group of such persons, including any temporary association of economic entities, which offers the execution of works, the supply of products or the provision of services on the market.

37. **Public procurement** (hereinafter: 'procurement') shall mean the acquisition, by means a public sales-purchase contract/contracts, of supplies, services or works by one or more contracting authorities from the chosen economic operator/operators, regardless of whether the supplies, services or works are intended for a public purpose.

38. **Tenderer in a public procurement procedure** (hereinafter: a 'tenderer') shall mean an economic operator that has submitted a tender.

39. **Public procurement documents** (hereinafter: 'procurement documents') shall mean any document produced or referred to by the contracting authority to describe or determine

elements of the procurement or the procedure, including the contract notice, the prior information notice used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and/or any other documents and clarifications/adjustments of the documents.

40. **Candidate in a public procurement procedure** (hereinafter: a ‘candidate’) shall mean an economic operator that has sought an invitation in writing or has been invited to take part in a dialogue, in the case of a competitive dialogue, or to submit a tender, in the case of a restricted or negotiated procedure, negotiated procedure without publication of a contract notice or an innovation partnership.

41. **Request for participation in public procurement** (hereinafter: a ‘request for participation’) shall mean the totality of documents and data submitted by an economic operator in writing indicating the desire to participate in a procurement that is conducted in the following ways: restricted procedure, negotiated procedure, competitive dialogue or innovation partnership.

42. **Period of deferment of the award of a public sales-purchase contract or conclusion of a framework agreement** (hereinafter: the ‘period of deferment’) is the period specified according to the requirements of this Law, beginning with the sending of a notice of a decision to identify the winning tender from the contracting authority to interested candidates and interested tenderers and closing with the award of the public sales-purchase contract or conclusion of the framework agreement.

43. **Public sales-purchase contract** (hereinafter: a ‘public contract’) shall mean a contract concluded in writing for pecuniary interest in accordance with the procedure laid down by this Law, except in the cases specified in this Law when a public contract may be concluded orally, between one or more economic entities and one or more contracting authorities and having as its object the supply of products, the provision of services or the execution of works. A monetary consideration or other consideration to an economic operator, for example, the right to be exempted from the payment of taxes, to make use of the result of the performance of the public contract, the right to receive income from third parties, etc., shall be considered as pecuniary interest.

44. **Tender** shall mean the totality of the documents and data submitted by an economic operator in writing or an oral offer to supply products, provide services or execute works under the terms fixed in the procurement documents of the contracting authority.

45. **Public subcontracting contract** (hereinafter: a ‘subcontract’) shall mean a contract for pecuniary interest concluded in writing or orally by the successful tenderer and one or more economic entities (hereinafter: ‘subcontractors’) or by a subcontractor and one or more economic



entities (collectively subcontractors) and having as its object the supply of products, the provision of services or the execution of works as specified in the contract concluded by the contracting authority with the successful tenderer.

46. **Label** shall mean any certificate, attestation or other document confirming that the works, products, services, processes or procedures in question meet label requirements.

47. **Label requirements** shall mean the requirements to be met by the products, services, works, processes or procedures in question in order to obtain the label concerned.

48. Other concepts in this Law shall be interpreted as defined in the Criminal Code of the Republic of Lithuania, the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors, the Law of the Republic of Lithuania on the Provision of Information to the Public, the Law of the Republic of Lithuania on Markets in Financial Instruments, the Law of the Republic of Lithuania on Electronic Communications, the Law of the Republic of Lithuania on Management of State Information Resources and the Law of the Republic of Lithuania on Public Administration.

### **Article 3. Classification**

1. Public procurement shall be subject to a classification system based on the Common Procurement Vocabulary (hereinafter: the ‘CPV’) adopted by Regulation (EC) No 2195/2002.

2. In the event of any differences in definitions provided in the CPV and in the Statistical Classification of Economic Activities in the European Community (hereinafter: ‘NACE’) established by Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ 1990 L 293, p. 1), the CPV nomenclature shall apply.

## **SECTION TWO VALUE OF PROCUREMENT**

### **Article 4. Procurement thresholds**

1. Procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following limits shall be considered as a procurement governed by international rules:

1) the thresholds set out in points (a), (b) and (c) of Article 4 of Directive 2014/24/EU, which the European Commission shall review, adjust and publish on a biennial basis in the Official Journal of the European Union. Information on these thresholds shall also be published in the Central Portal of Public Procurement. Where the contracts awarded by contracting

authorities of the national defence system involve products covered by Annex 6 to this Law, the threshold referred to in point (b) of Article 4 of Directive 2014/24/EU shall apply, where the contracts involve other products – the threshold referred to in point (c) of Article 4 of Directive 2014/24/EU. The indicative list of products referred to in Annex 6 to this Law shall be drawn up on the basis of the text of point 3 of Annex 1 to the World Trade Organisation Agreement on Government Procurement;

2) EUR 750 000 (seven hundred and fifty thousand euros) for public contracts for social and other specific services listed in Annex 2 to this Law.

2. Procurements with a value estimated to be below the thresholds referred to in paragraph 1 of this Article and the procurements referred to in Article 5(8) of this Law shall be considered as simplified procurements.

3. Simplified procurements with a value estimated to be below EUR 58 000 (fifty-eight thousand euros) (net of VAT) for supplies or services or EUR 145 000 (one hundred and forty-five thousand euros) (net of VAT) for works, as well as procurements referred to in Article 5(9) of this Law shall be considered as low value public procurements (hereinafter: ‘low value procurement’).

#### **Article 5. Calculation of the estimated value of procurement**

1. The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, including any form of option and any renewals of the contracts which must be explicitly set out in the procurement documents. Where the contracting authority provides for prizes and/or other payments to candidates or tenderers, it must take them into account when calculating the estimated value of the procurement. That estimated value shall be valid at the moment at which the procurement procedure is commenced.

2. Where the contracting authority is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units when calculating the estimated value of the procurement. Where a separate operational unit of the contracting authority is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question. An operational unit of the contracting authority shall be considered as a separate operational unit independently responsible for its procurement or certain categories thereof where it fulfils all of the following conditions:

1) is authorised to independently run the procurement procedures and make the buying decisions;

2) has a separate budget line at its disposal for the procurements concerned;

3) is authorised to independently make decisions on the conclusion of contracts and their financing from a budget which it has at its disposal.

3. The contracting authority shall not have the right to subdivide a procurement with the effect of preventing it from falling within the scope of this Law, unless justified by the reasons stipulated in paragraph 2 of this Article.

4. The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Law.

5. The estimated value of a procurement shall be calculated according to the methods for calculating the value of procurement approved by the Public Procurement Office.

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

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

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

7. Where works or supplies and services of the same type may be purchased by awarding public contracts or concluding framework agreements for individual lots, account shall be taken of all such lots when calculating the estimated value of procurement. When a public contract is to be awarded or a framework agreement is to be concluded for each lot, the provisions of this Law shall apply, taking into consideration the aggregate value of all lots.

8. Notwithstanding the estimated value of a procurement being equal to or exceeding the threshold for a procurement governed by international rules, contracting authorities shall have the right to award contracts for individual lots in accordance with the simplified procedure laid down by this Law, provided that the value net of VAT of each lot concerned is less than EUR 80 000 (eighty thousand euros) for supplies or services of the same type or EUR 1 million (one million euros) for works, where the aggregate value of the lots thus awarded does not exceed 20 % of the aggregate value of all lots.

9. Notwithstanding the estimated value of a procurement being equal to or exceeding the threshold for low value procurements, contracting authorities shall have the right to award low value contracts for individual lots in accordance with the procedure laid down by this Law, provided that the aggregate value net of VAT of such lots is less than EUR 58 000 (fifty-eight

thousand euros) for supplies or services of the same type or EUR 145 000 (one hundred and forty-five thousand euros) for works.

10. Where the estimated value of a procurement is equal to or exceeds the threshold for a procurement governed by international rules and the contracting authority exercises the rights specified in paragraphs 8 and 9 of this Article, the aggregate value of the lots awarded pursuant to paragraphs 8 and 9 of this Article may not exceed 20 % of the aggregate value of all lots.

11. With regard to public works contracts, the calculation of the estimated value shall take account of both the cost of the works and design (when jointly awarding contracts for services of the design of such works) and other services and supplies that are made available to the contractor by the contracting authority provided that they are necessary for executing the works.

12. In the case of contracts for the rental, leasing (financial lease) or hire purchase of products, the estimated contract value shall be calculated as follows:

1) in the case of fixed-term public contracts to be awarded, where that term is less than or equal to 12 months, the total value of the contract to be awarded or, where the term of the contract is greater than 12 months, the total value of the contract to be awarded, including the estimated residual value;

2) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value of the public contract shall be multiplied by 48.

13. With regard to public service contracts, the basis for calculating the estimated contract value shall be the following:

1) insurance services: the premium payable and other forms of remuneration;

2) banking or other financial services: the fees, commissions payable, interest and other forms of remuneration;

3) design contracts: fees, commissions payable and other forms of remuneration;

4) in the case of awarding of a service contract to the winner of a design contest: the estimated value of the services to be procured, including all possible prizes and/or other payments to tenderers;

5) in the case of awarding of a service contract to the winner of a design contest, where the winners or tenderers are awarded prizes or other payments: the total value of such prizes or other payments, including the estimated value of the service contract which may be awarded by a negotiated procedure without publication of a contract notice pursuant to Article 71(4) of this Law, where the contracting authority indicates in a contest notice that such a public contract will be awarded.

14. With regard to public service contracts to be awarded which do not indicate a total price, the basis for calculating the value of procurement shall be the following:

1) in the case of fixed-term contracts, where that term is less than or equal to 48 months: the total value of the public contract to be awarded;

2) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value of the public contract to be awarded multiplied by 48.

15. With regard to framework agreements and dynamic purchasing systems, the estimated value of procurement shall be determined taking into consideration the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

16. In the case of innovation partnerships, the estimated value of procurement shall be determined taking into consideration the maximum estimated value net of VAT of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the innovation partnership.

### **SECTION THREE**

#### **EXCLUSIONS**

##### **Article 6. Specific exclusions for service contracts**

The provisions of this Law shall not apply to:

1) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon. The procedure for such procurement shall be laid down by the Government of the Republic of Lithuania;

2) contracts for the acquisition, development and production of radio and audiovisual media programmes, that are awarded by radio or audiovisual media service providers, and contracts for broadcasting time or programme provision that are awarded to radio or audiovisual media service providers. The procedure for such procurement shall be laid down by the Government of the Republic of Lithuania;

3) contracts for arbitration and conciliation services;

4) any of the following legal services:

a) legal representation in an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance, or legal representation in judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions. The provisions of this Law shall

not apply to the procurement of the services indicated in this sub-point only in the cases when such services are provided by advocates or other lawyers within the meaning of Article 1 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 2004 Special edition, Chapter 6, Volume 01, p. 52), as last amended by Council Directive 2013/25/EU of 13 May 2013 (OJ 2013 L 158, p. 368) (hereinafter: 'Directive 77/249/EEC');

b) legal advice given in preparation of any of the proceedings referred to in sub-point (a) of this point or where there is a tangible indication or high probability that the matter to which the advice relates will become the subject of such proceedings before an arbitration, conciliation or judicial instance. The provisions of this Law shall not apply to the procurement of the services indicated in this sub-point only in the cases when such services are provided by advocates or other lawyers within the meaning of Article 1 of Council Directive 77/249/EEC;

c) document certification and authentication services which must be provided by notaries;

d) legal services provided by trustees or guardians/curators or other legal services the providers of which are designated by a court or tribunal or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

e) other legal services which are connected with the exercise of official authority and the providers of which are designated or selected in a manner which, for reasons beyond the control of the contracting authority, cannot be governed by procurement rules;

5) procurement of financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

6) procurement of central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

7) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

8) employment contracts;

9) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except patient transport ambulance services;

10) procurement of public passenger transport services by rail or metro;

11) procurement of political campaign services covered by CPV codes 79341400-0 (advertising campaign services), 92111230-3 (propaganda film production) and 92111240-6 (propaganda video-tape production), when awarded by a political party;

12) the public service contracts awarded by the contracting authority to another contracting` authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law or a published legal act implementing it which is compatible with the Treaty on the Functioning of the European Union.

**Article 7. Contracts awarded and design contests organised pursuant to international rules**

1. This Law shall not apply to public contracts and design contests which the contracting authority is obliged to award or organise in accordance with other procurement procedures established by any of the following:

1) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the Treaty on the Functioning of the European Union and communicated to the European Commission, between the Republic of Lithuania and one or more third countries or subdivisions thereof and covering supplies, services or works intended for the joint implementation or exploitation of a project by their signatories;

2) an international organisation.

2. This Law shall not apply to public contracts and design contests which the contracting authority awards or organises in accordance with other procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by that organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution, the parties must agree on applicable procurement procedures.

3. This Article shall not apply to contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules in compliance with Article 14 of this Law.

**Article 8. Procurement by contracting authorities operating in the water, energy, transport and postal services sectors**

1. This Law shall not apply to public contracts and design contests which are awarded or organised by contracting authorities operating in the water, energy, transport or postal services sectors:

1) for the pursuit of one or more activities referred to in Articles 5-11 of the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors;

2) to public contracts excluded from the scope of the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors under Articles 14, 18 and 27 thereof.

2. This Law shall neither apply to public contracts and design contests which are awarded or organised by contracting authorities providing the postal services referred to in Article 10(2)(1) of the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors for the pursuit of the following activities:

1) added value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);

2) provision of financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by point 5 of Article 16 of the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors and including in particular postal money orders;

3) provision of services of the issuance of means of postal prepayment and philatelic services;

4) provision of logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

### **Article 9. Procurement in the field of electronic communications**

This Law shall not apply to public contracts and design contests for the principal purpose of permitting the contracting authorities to provide and exploit public communications networks or to provide to the public one or more electronic communications services.

### **Article 10. In-house transactions**

1. An in-house transaction entered into by a contracting authority with another contracting authority shall fall outside the scope of this Law where all of the following conditions are fulfilled:

1) the contracting authority exercises over the other contracting authority a control which is similar to that which it exercises over its own service or unit by exercising a decisive influence over both strategic objectives and significant decisions thereof, including investment, transfer, lease, pledge, mortgage of fixed assets; acquisition or transfer of shares of other economic entities; transfer of the right to manage departments of the economic entity/entities. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority;



2) over 80 % of the average revenue from sales-purchase contracts received over the last three financial years by the controlled contracting authority represents revenue from contracts concluded with the controlling contracting authority or with the legal persons controlled by that contracting authority and intended to meet its/their needs or perform its/their functions. Where the controlled contracting authority has been in operation for less than three financial years, the corresponding performance must be envisaged in its operational plans;

3) there is no direct private capital participation in the controlled contracting authority.

2. An in-house transaction may be entered into only in exceptional cases where the conditions set out in paragraph 1 of this Article are met and it would not be possible to ensure the continuity of provision of services, good quality and accessibility by awarding a public contract.

3. In order to create conditions for the supervision of entry into in-house transactions, the contracting authority shall:

1) when approving the procurement plans for the current calendar year referred to in Article 26(1) of this Law, include information about the scheduled purchases referred to in this Article;

2) require the economic operator to submit VAT invoices, invoices, credit and debit documents and imprest accounts for the in-house transactions using tools of the information system "E-invoice";

3) within 15 days from the entry into an in-house transaction or from any change done thereto, but not later than until the beginning of the first payment thereunder, publish an awarded contract and any changes done thereto in the Central Portal of Public Procurement in accordance with the procedure established by the Public Procurement Office;

4) within 30 days after the close of the reporting calendar year, submit to the Public Procurement Office, in accordance with the procedure established by it, a report on all procurements referred to in this Article made during the calendar year.

4. The requirements set out in this Article shall apply throughout the duration of an in-house transaction.

5. State enterprises, public limited liability companies and private limited liability companies in which the shares held by the State by the right of ownership carry over 1/2 of votes at the general meeting of shareholders may not enter into in-house transactions.

## **SECTION FOUR**

### **FEATURES CONCERNING PROCUREMENT**

#### **Article 11. Mixed procurement**

1. The following rules shall apply to mixed contracts whose separate parts have as their subject-matter the types of procurement which are covered by different provisions of this Law:

1) contracts which have as their subject works and services and/or supplies shall be awarded in accordance with the provisions of this Law applicable to the type of procurement that characterises the main subject of the contract in question;

2) in the case of mixed contracts consisting partly of services within the meaning of Annex 2 to this Law and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest, as compared with other parts of the contract concerned.

2. If, for objective reasons related to the technical and/or economic characteristics of the subject-matter of a contract, separate contracts may not be awarded for a part of the subject-matter covered by provisions of this Law and for the other part covered by provisions of other legal acts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the principal subject-matter of the contract.

3. Where the different parts of a given contract are objectively separable and have as their subject-matter procurement covered by this Law as well as procurement covered by other legal acts, contracting authorities may choose to award a single contract or to award separate contracts for the separate parts. Where the contracting authorities choose to award:

1) contracts for the separate parts, the decision as to the application of this Law to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned;

2) a mixed contract, this Law shall apply irrespective of the value of procurement, unless otherwise provided in Article 13 of this Law;

3) a mixed contract containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with this Law, provided that the estimated value of the part of the contract which constitutes a contract covered by this Law is greater than the threshold for low value procurement set out in Article 4(3) of this Law. However, in the cases when the estimated value of the part of the contract which constitutes a contract covered by this Law is below the thresholds for a procurement governed by international rules as referred to in Article 4(1) of this Law, while the estimated concession value of the part of the subject-matter of a concession contract covered by the Law of the Republic of Lithuania on Concessions is not less than the threshold for international concession, as well as in the cases when the procurement value for the part of the contract which constitutes a contract covered by

this Law is equal to or less than the threshold for low value procurement specified in Article 4(3) of this Law, provisions of the Law of the Republic of Lithuania on Concessions shall apply.

4. If a mixed contract is awarded for a part which is covered by this Law and for the other part which is covered by the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors, irrespective of the provisions of paragraph 3 of this Article, provisions of Articles 20 and 21 of the Law on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors shall apply.

#### **Article 12. Characteristics of procurement involving defence and security aspects**

1. This Law shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the contracts and design contests:

1) falling within the scope of Law on Public Procurement in the Field of Defence and Security;

2) to which the Law on Public Procurement in the Field of Defence and Security does not apply pursuant to Article 3 of the Law on Public Procurement in the Field of Defence and Security.

2. This Law shall not apply to the awarding of public contracts and to design contests organised in the fields of defence and security not otherwise exempted under paragraph 1 of this Article, to the extent that:

1) the protection of the essential security interests of the State cannot be guaranteed by measures other than exclusions from this Law, for instance by imposing requirements aimed at protecting the confidential nature of information;

2) the contracting authority should supply information the disclosure of which would be contrary to the essential interests of the security of the State.

3. Where a procurement, the performance of a public contract or a design contest are declared to be secret or are accompanied by special security measures in accordance with the laws regulating aspects of national security and the legal acts implementing them, this Law shall not apply provided that the essential interests concerned cannot be guaranteed by measures other than exclusions from this Law.

4. A decision on the awarding of contracts referred to in paragraphs 2 and 3 of this Article shall be taken by the Government of the Republic of Lithuania.

#### **Article 13. Mixed procurement involving defence or security aspects**

1. In the case of mixed contracts which have as their subject-matter procurement covered by this Law as well as procurement covered by Article 346 of the Treaty on the Functioning of the European Union or the Law on Public Procurement in the Field of Defence and Security, this Article shall apply.

2. Where the different parts of a given public contract are objectively separable, contracting authorities may choose to award a single contract or to award separate contracts for the separate parts. Where the contracting authorities choose to award:

1) contracts for the separate parts, the decision of which legal act applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned;

2) a single mixed contract and where part of a given contract is covered by Article 346 of the Treaty on the Functioning of the European Union, the contract shall be awarded without applying this Law, provided that the award of the mixed contract is justified for objective reasons;

3) a single mixed contract and where part of a given contract is covered by the Law on Public Procurement in the Field of Defence and Security, the contract shall be awarded in accordance with the Law referred to in this point, provided that the award of the mixed contract is justified for objective reasons. This point shall be without prejudice to the thresholds and exclusions provided for by the Law on Public Procurement in the Field of Defence and Security;

4) point 2 of this paragraph shall apply to mixed contracts to which both point 2 and point 3 of that paragraph could otherwise apply.

3. The decision to award a single mixed contract may not, however, be taken for the purpose of excluding contracts from the application of this Law and the Law on Public Procurement in the Field of Defence and Security.

4. Where, for objective reasons related to the technical and/or economic characteristics of the subject-matter of procurement, separate contracts may not be awarded for a part which is covered by:

1) provisions of Article 346 of the Treaty on the Functioning of the European Union, such a contract shall be awarded without applying this Law;

2) provisions of the Law on Public Procurement in the Field of Defence and Security, such a contract shall be awarded in accordance with the Law referred to in this point.

**Article 14. Public contracts involving defence and security aspects which are awarded pursuant to international rules**

1. This Law shall not apply to public contracts and design contests involving defence and security aspects which the contracting authority is obliged to award or organise in accordance with other procurement procedures established by any of the following:

1) an international agreement or arrangement (or parts thereof), concluded in conformity with the principles stipulated in the Treaty on the Functioning of the European Union between the Republic of Lithuania and one or more third countries and covering supplies, services or works intended for the joint implementation or exploitation of a project by their signatories, provided such procurement is communicated by the contracting authority to the European Commission;

2) an international agreement or arrangement relating to the stationing of troops in foreign states and concerning the undertakings of a Member State or a third country;

3) an international organisation.

2. This Law shall not apply to public contracts and design contests involving defence and security aspects which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts and design contests concerned are fully financed by this organisation or institution. In the case of public contracts and design contests co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable procurement procedures.

#### **Article 15. Research and development services**

1. This Law shall only apply to public service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that all of the following conditions are fulfilled:

1) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs;

2) the service provided is wholly remunerated by the contracting authority.

2. The Government of the Republic of Lithuania or the institutions authorised by it shall approve descriptions of the following procurement procedures:

1) awarding of contracts for research and development services with CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 which fall outside the scope of this Law pursuant to paragraph 1 of this Article and are intended to meet the needs of higher education and research institutions;

2) awarding of contracts for research and development services with CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 which fall outside the

scope of this Law pursuant to paragraph 1 of this Article and are intended to develop an innovative product or service or innovative works (hereinafter: an ‘innovative product’) and thus meet the needs of the public sector.

**Article 16. Public contracts subsidised by contracting authorities**

1. This Law shall apply to the awarding of the following contracts:

1) works contracts which are subsidised directly by contracting authorities by more than 50 %, where those contracts involve one of the following activities:

a) civil engineering activities as listed in Annex 1 to this Law;  
 b) building work for hospitals, school and university buildings, facilities intended for sports, recreation and leisure and buildings used for administrative purposes;

2) service contracts which are subsidised directly by contracting authorities by more than 50 % and which are connected to a works contract as referred to in point 1 of this paragraph.

2. The contracting authorities must ensure compliance of all of the contracts referred to in paragraph 1 of this Article with this Law, notwithstanding the fact that they do not themselves award the subsidised contract or that they award that contract for or on behalf of other entities.

**SECTION FIVE  
GENERAL RULES**

**Article 17. Key principles of procurement**

1. The contracting authority shall ensure, in the course of performance of procurement procedures, compliance with the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

2. The contracting authority must take appropriate measures to ensure that:

1) funds allocated for the purchase of supplies, services or works are used rationally;  
 2) the performance of public contracts would be in conformity with the applicable environmental, social and labour law obligations established by Union law, national law, collective agreements or by the international conventions listed in Annex 5 to this Law.

3. The design and preparation of the procurement may not be made with the intention of excluding it from the scope of this Law or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

4. In so far as they are covered by the WTO Agreement on Government Procurement (GPA) and by the other international agreements by which the Member States are bound,

contracting authorities shall, in the course of performance of procurement procedures, accord equal treatment to the economic operators, works, supplies and services of the third countries being signatories to those international agreements and of the Member States.

#### **Article 18. Economic operators**

1. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service shall not be rejected solely on the ground that, under the law of the Republic of Lithuania, they would be required to be either natural or legal persons. However, in the case of public supply contracts, public service or public works contracts awarded to legal persons, the legal persons may be required to indicate, in the tender or the request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators, including temporary associations of economic operators, may submit a tender or a request for participation. Where such a group is willing to submit a request for participation or a tender, the contracting authority may not require the group to assume a certain legal form, however, once the contracting authority decides to award a public contract to the group in question, it may be required to assume a certain legal form to the extent that such a change is necessary for the satisfactory performance of the public contract.

3. Contracting authorities must clarify in the procurement documents how groups of economic operators are to meet the requirements as to professional qualifications referred to in Article 47 of this Law and, where applicable, to comply with the quality assurance standards and/or environmental management standards required under Article 48 of this Law. Any requirements set for a group of economic operators, also any conditions for the performance of a contract, including requiring from the group of economic operators the appointment of a joint representation or a lead partner or requiring information on the constitution of the group, which are different from the requirements and conditions imposed on individual participants, must be justified by objective reasons and must be proportionate.

#### **Article 19. Public procurement commission, experts, observers**

1. The contracting authority must for the performance of procurement procedures (may for low value procurement procedures, the reopening of competition amongst economic operators under a framework agreement) form a public procurement commission (hereinafter: the 'Commission'), specify its tasks and grant thereto all powers to perform those tasks. Where the contracting authority authorises another contracting authority to perform procurement procedures, these operations shall be carried out by the authorised entity. The Commission shall

operate according to the rules of procedure approved by the contracting authority which has formed the Commission, shall be accountable to it and shall perform only the tasks and obligations set by it in writing.

2. The Commission shall be formed by an order/decreed of the head of the contracting authority and consist of at least three natural persons, namely, the chair of the Commission and at least two members of the Commission (hereinafter collectively: a ‘member of the Commission’, ‘members of the Commission’). These members of the Commission may also be other than employees of the contracting authority forming the Commission. The contracting authority which forms the Commission shall have the right to invite experts for giving consultations on the issue requiring special knowledge or assessment.

3. The head of the contracting authority which has formed the Commission or the employee of this contracting authority or of another contracting authority under its common control as authorised by him shall be appointed chair of the Commission. When appointing members of the Commission, regard must be had to their economic, technical and legal expertise as well as knowledge of this Law and other legal acts regulating public procurement. Only persons of good repute may be members of the Commission. Meetings and decisions of the Commission shall be legitimate where a meeting is attended by more than half of all members of the Commission or, where the Commission consists of three persons, where all members of the Commission are present at the meeting.

4. The contracting authority which has formed the Commission may invite to participate in meetings of the Commission in the capacity of an observer the representatives of state and municipal institutions or bodies subject to presentation of a mandate of the represented entity (hereinafter: ‘observers’).

5. The Commission shall operate from the taking of a decision to form it and assignment of tasks thereto to the taking of a decision to dissolve it or from the assignment thereto of written tasks of the contracting authority which has formed it until it has completed all the tasks assigned thereto or until the taking of a decision to cancel the procurement procedures. The Commission shall adopt decisions at a meeting by a simple majority of roll call votes. Voting shall be possible only for or against the proposed decision. In the event of a tie, the chair of the Commission shall have a casting vote. The Commission’s decisions shall be formalised in the form of minutes. The minutes shall specify the reasons of the Commission’s decision, provide clarifications and the separate opinion of members of the Commission. The minutes shall be signed by all the members present at the Commission’s meeting.

6. Meetings of the Commission may take place by using tools of the Central Portal of Public Procurement.



*Note in the Register of Legal Acts. Paragraph 6 shall enter into force on 1 July 2020.*

## **Article 20. Confidentiality**

1. The contracting authority, the Commission, members thereof or experts and other persons may not disclose to third parties information forwarded by economic operators which they have designated as confidential.

2. The economic operator's tender and request for participation may not be designated as confidential in their entirety, however the economic operator may indicate that certain information contained in its tender is confidential. Confidential information may include, but not be limited to, technical or trade secrets and the confidential aspects of tenders. Information may not be considered confidential:

1) where this would violate the laws setting requirements for the disclosure of information or the right of access to information and implementing legislation;

2) where this would violate the requirements set out in Articles 33 and 58 of this Law regarding the publication of awarded public contracts, the information of candidates and tenderers, including information on the price of supplies, services or works contained in a tender, other than price components;

3) where it is contained in the documents confirming the absence of grounds for economic operators' exclusion, the fulfilment of qualification requirements, quality assurance standards and environmental management standards, other than information the disclosure of which would violate the Law of the Republic of Lithuania on Legal Protection of Personal Data or obligations of the economic operator under contracts with third parties;

4) information on the economic entities involved on whose capacity the economic operator relies and on subcontractors, other than information the disclosure of which would violate the Law on Legal Protection of Personal Data.

3. Where the contracting authority has doubts as to the confidentiality of the information contained in an economic operator's tender, it must request the economic operator to provide evidence of the confidentiality of such information. Where the economic operator fails to provide such evidence within the time limit specified by the contracting authority, which may not be shorter than 5 working days, or provides inappropriate evidence, such information shall be deemed to be non-confidential.

4. No later than six months after the awarding of a public contract, the interested tenderers may request the contracting authority to provide access to the winning tender or request for participation (candidates – to requests for participation submitted by other economic operators who have been invited to submit tenders or to take part in a dialogue), however the

information which the candidates or the tenderers have indicated as confidential, without prejudice to provisions of paragraph 2 of this Article, may not be disclosed.

5. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

#### **Article 21. Conflict of interest**

1. Conflicts of interest arising in the conduct of procurement procedures shall cover any situation where staff members of the contracting authority or of a provider of ancillary purchasing activity services, members of the Commission or experts, observers who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

2. The contracting authority must, in order to prevent conflicts of interest arising in the conduct of procurement procedures, require each person referred to in paragraph 1 of this Article to take part in the procurement procedures or to make procurement-related decisions only upon signing a confidentiality commitment and a declaration of impartiality of the form specified by the Public Procurement Office together with the Chief Official Ethics Commission.

3. Where the reasonable information available to the contracting authority indicates that the person referred to in paragraph 1 of this Article may be in a situation of a conflict of interest and has not withdrawn from the decision-making process related to the procurement in question or from the observation thereof, the contracting authority's manager or his authorised representative shall suspend the participation of the person in the decision-making process related to the procurement in question or in the observation thereof and carry out an inspection of that person's procurement-related activities. The contracting authority, having established that the person has become involved in the situation of a conflict of interest, remove him from the decision-making process related to the procurement in question or from the observation thereof and consider whether the economic operator's exclusion ground referred to in Article 46(4)(2) of this Law applies to the established conflict of interest. If an observer is found to be in a situation involving a conflict of interest, the contracting authority shall inform of a decision taken in his regard the institution or body which has authorised the person to attend the meetings of the Commission in the capacity of an observer.

#### **Article 22. Communication and information exchange**

1. The communication and exchange of information between the contracting authority and an economic operator pursuant to this Law, including the submission of contract notices, calls for tender and other procurement documents, economic operators' requests for participation, proposals, solutions, design contest plans and drafts, shall take place using the tools of the Central Portal of Public Procurement. The requirements laid down in this paragraph may be waived only in exceptional cases specified in this Law.

2. When conducting procurement procedures under a framework agreement concluded by a central purchasing body or a dynamic purchasing system set up thereby, the communication and exchange of information between the contracting authority and an economic operator, including the submission of economic operators' tenders, may take place by electronic means offered by the central purchasing body.

3. When entering into or terminating public contracts and framework agreements, performing and modifying the public contracts, the communication and exchange of information between contracting authorities and economic operators may take place by means other than those of the Central Portal of Public Procurement. In the course of performance of public contracts, VAT invoices, invoices, credit and debit documents and imprest accounts must be made available using tools of the information system "E-invoice", with the exception of the cases set out in paragraph 12 of this Article and when contracts are awarded orally.

4. The tools of the Central Portal of Public Procurement, the electronic means offered by a central purchasing body, the tools of the information system "E-invoice" and their technical characteristics may not discriminate between economic operators, must be accessible to all and compatible with generally used information and communications technology tools and not restrict the economic operators' access to procurement procedures.

5. Contracting authorities shall not be obliged to require the use of tools of the Central Portal of Public Procurement in the process of submission of requests for participation, tenders, solutions, plans and projects in design contests (hereinafter: the 'economic operator's documents') in the following situations:

1) due to the specialised nature of the procurement, this would require the electronic means of communication, devices or file formats that are not generally available or supported by generally available applications;

2) the file formats that are suitable for the preparation of the economic operator's documents can be handled exclusively by applications which are not open or generally available and are under a proprietary licensing scheme and which cannot be made available for downloading or remote use by the contracting authority;

3) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities;

4) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

6. In the cases referred to in paragraph 5 of this Article, the economic operator's documents may be submitted by post or other suitable carrier or by a combination of post or other suitable carrier and means of the Central Portal of Public Procurement.

7. The contracting authority and the economic operator may communicate and exchange information by means other than tools of the Central Portal of Public Procurement, where the nature of the procurement requires the use of the tools and devices of dedicated information systems that are not generally available, such as building information modelling tools for public works contracts or design contests. In this case, the contracting authority must offer alternative means of access to these tools and devices. The contracting authority shall be deemed to offer suitable alternative means of access in any of the following situations, where it:

1) offers unrestricted and full direct access free of charge by electronic means to those tools and devices from the date of publication of the notice or from the date when the invitation to confirm interest is sent, and the text of the notice or the invitation to confirm interest specifies the internet address at which those tools and devices are accessible;

2) ensures that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online;

3) supports an alternative channel for electronic submission of tenders.

8. The contracting authority shall not be obliged to require the use of electronic means of communication in the process of submission of the economic operator's documents to the extent that the use of means of communication other than electronic means (when submitting the documents by post or other suitable carrier) is necessary because of:

1) a breach of security of the electronic means of communication;

2) for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using tools of the Central Portal of Public Procurement or the tools and devices of dedicated information systems that can be made available by alternative means of access to such tools and devices within the meaning of paragraph 7 of this Article.

9. Oral communication and information exchange between contracting authorities and economic operators may be used in respect of the economic operators' requests for participation,

tenders or solutions, provided that the content of such communication and information exchange is documented by means of written or audio records. Oral communications may not be used in respect of the procurement documents, the economic operator's documents, the economic operator's confirmation of interest.

10. Regardless of the means of communication and exchange of information as selected by contracting authorities and economic operators, it must be ensured that the integrity of data and the confidentiality of the economic operator's documents are preserved. It must also be ensured that the contracting authorities could examine the content of the economic operator's documents only after the time limit set for submitting them has expired.

11. The Central Portal of Public Procurement, the electronic means offered by a central purchasing body and other tools and devices of dedicated information systems for the transmission and receipt of an economic operator's documents shall be subject to requirements stipulated in Annex 4 to this Law. Additionally, the following rules shall apply to the use of such tools and devices:

1) information on specifications for the electronic submission of the economic operator's documents, including encryption and time-stamping, must be available to interested parties;

2) contracting authorities may, upon assessing potential risks, require to submit the economic operator's document using the advanced electronic signatures as defined by Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ 2014 L 273, p. 73) (hereinafter: 'Regulation No 910/2014');

3) an advanced electronic signature shall be accepted under the following conditions:

a) the electronic means in place for the submission of the economic operator's documents allow to technically process the advanced electronic signature format required by the implementing acts referred to in Article 27 of Regulation No 910/2014. In case a different format of electronic signature is used for the submission of the economic operator's documents, the electronic signature or the electronic document carrier must include information on existing validation possibilities, which must allow the contracting authority to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate;

b) where the economic operator's documents bear an advanced electronic signature validated by a valid qualified certificate for electronic signatures which has been issued by a certification service provider included on a trusted list established in compliance with the implementing acts referred to in Article 22 of Regulation No 910/2014, no additional requirements that may hinder the use of those signatures shall apply.

12. In the event of mobilisation, a war and state of emergency, damage caused to the Central Portal of Public Procurement or the information system “E-invoice” that prevent communication and exchange of information between the contracting authority and the economic operator using these systems, procurement procedures may be conducted using other electronic means compatible with the requirements set forth in this Article for the Central Portal of Public Procurement, and in performing public contracts value added tax invoices, invoices, credit and debit documents and imprest accounts may be submitted by non-electronic means.

13. The authorities and other entities competent to issue documents used in the context of a procurement procedure may establish the advanced signature format in accordance with the implementing legal acts referred to in Article 27 of Regulation No 910/2014. In this case, the necessary measures and information must be put in place to be able to process that format technically. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities as regards advanced electronic signature that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

### **Article 23. Reserved right to participate in public procurement procedures**

1. The contracting authority may, in the procurement documents, specify such conditions for participation in public procurement procedures which allow participation only of economic operators with the following status:

- 1) a social enterprise;
- 2) a social enterprise of the disabled;
- 3) an economic operator whose employees are convicted persons serving the sentence of arrest, a fixed-term custodial sentence or a life custodial sentence, if they account for more than 50 % of the annual average number of employees on the staff list of that economic operator;
- 4) an economic operator whose members are healthcare establishments employing occupational therapy patients, if they account for at least 50 % of the annual average number of employees on the staff list of that economic operator;
- 5) an economic operator whose employees participate in the active labour market policy measures specified by the Law of the Republic of Lithuania on Employment or a similar legal act of another state, if at least 50 % of the annual average number of employees on the staff list of that economic operator are persons who are additionally supported in the labour market.

2. The contracting authority, with the exception of diplomatic missions of the Republic of Lithuania in foreign states, missions of the Republic of Lithuania to international organisations, consular posts and special missions, also other contracting authorities procuring abroad the

supplies, services or works intended for their divisions, military envoys or special attachés, must, when conducting simplified procurement procedures, reserve at least 2 % of the total value of contracts awarded in simplified procurement procedures to the economic operators referred to in this Article, with the exception of the cases when these economic operators do not produce supplies, do not provide services or do not perform works as required by the contracting authority.

3. The economic operators referred to in paragraph 1 of this Article shall regularly publish the list of their supplies, services or works in the Central Portal of Public Procurement.

4. The procurement documents, including a contract notice or a periodic indicative notice, must make reference to reserved contracts and the requirement to provide evidence of the economic operator's compliance with the requirements of this Article (a document issued by the competent authority or a statement approved by the economic operator shall be presented). The proportion of the employees of the economic operators specified in points 3, 4 and 5 of paragraph 1 of this Article who belong to the respective target group from the annual average number of employees on the staff list shall be calculated according to the procedure established by the Government of the Republic of Lithuania or an institution authorised by it. The procurement documents and the public contract shall also contain the condition for the economic operator to comply with the requirements set out in this Article over the entire period of participation in procurement procedures and performance of the contract.

5. An economic operator who participates in reserved procurement procedures may subcontract a public contract only to the economic operators referred to in paragraph 1 of this Article.

#### **Article 24. Reserved contracts for certain services**

1. The contracting authority may, in procurement documents, reserve the right to participate in procedures for the award of public contracts for those health, social and cultural services which are covered by CPV 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, 98133110-8 exclusively for the economic operators meeting the requirements referred to in Article 2 of this Law. In this case, the maximum duration of the contract shall not be longer than three years.

2. An organisation eligible to participate in procedures for the award of reserved contracts for the services referred to in paragraph 1 of this Article must fulfil all of the following conditions:

1) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1 of this Article;

2) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this must be based on participatory considerations;

3) the structures of management or ownership of the organisation are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders;

4) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

3. Procurement documents, including a contract notice, must make reference to this Article and must require the economic operator to substantiate that it meets the requirements laid down in this Article (a declaration approved by the economic operator shall be submitted).

4. An economic operator participating in procedures for the award of contract pursuant to this Article may subcontract a public contract only to the economic operators meeting the requirements referred to in paragraph 2 of this Article.

### **Article 25. Conduct of procurements governed by to international rules, simplified procurements and low value procurements**

1. Procurements governed by pursuant to international rules or simplified procurements shall be conducted by the contracting authority in accordance with the procedure established by this Law, except in the cases specified in paragraphs 2, 3 and 4 of this Article.

2. In the case of low value procurements, the provisions of Chapter I, Article 31, Article 34, Article 58 (1), Article 82, Article 86(5), (6), (7) and (9), Article 91, Chapter VI and Chapter VII of this Law and the rules stipulated by the Description of the Procedure for Conducting Low Value Procurement as approved by the Public Procurement Office shall apply. If a low value procurement without publication of a contract notice is conducted under the conditions provided for in points 2 and 4 of Article 31(3), Article 71(1)(2), points 2, 3 and 4 of Article 71(3) or Article 71(5) and (6) of this Law, the requirements laid down in Article 22, except for the requirement stipulated in Article 22(3) of this Law, may be waived. The requirements provided for in Article 82 of this Law may also be waived if the low value procurement without publication of a contract notice is conducted in accordance with the provisions of Article 31(3)(4) of this Law.

#### ***Version of paragraph 2 as of 1 January 2020:***

2. In the case of low value procurements, the provisions of Chapter I, Articles 26, 31 and 34, Article 58(1), Article 82, Article 86(5), (6), (7) and (9), Article 91, Chapter VI and Chapter



VII of this Law and the rules stipulated by the Description of the Procedure for Conducting Low Value Procurement as approved by the Public Procurement Office shall apply. If a low value procurement without publication of a contract notice is conducted under the conditions provided for in points 2 and 4 of Article 31(3), Article 71(1)(2), points 2, 3 and 4 of Article 71(3) or Article 71(5) and (6) of this Law, the requirements laid down in Article 22, except for the requirement stipulated in Article 22(3) of this Law, may be waived. The requirements provided for in Article 82 of this Law may also be waived if the low value procurement without publication of a contract notice is conducted in accordance with the provisions of Article 31(3)(4) of this Law.

3. In the case of simplified procurements for diplomatic missions of the Republic of Lithuania in foreign states, missions of the Republic of Lithuania to international organisations, consular posts and special missions, also other contracting authorities procuring abroad the supplies, services or works intended for their divisions abroad, military envoys or special attaché or intended for the development cooperation and other projects being implemented abroad, the provisions of Articles 1 to 17, Article 26, Article 86(7) and Chapter VI of this Law and the rules stipulated in the description of the procedure for conducting such procurements as approved by the Government of the Republic of Lithuania or an institution authorised by it shall apply.

4. In the case of simplified procurements of the supplies, services or works necessary for the organisation of international events of particular importance, the provisions of Articles 1 to 17, Article 26, Article 86(7) and Chapter VI of this Law and the rules stipulated in the description of the procedure for conducting such procurements as approved by the Government of the Republic of Lithuania or an institution authorised by it shall apply. A list of the international events indicated in this paragraph shall be approved by the Government of the Republic of Lithuania.

## **CHAPTER II**

### **PLANNING AND CONDUCT OF PROCUREMENT, PROCUREMENT DOCUMENTS**

#### **SECTION ONE**

##### **PLANNING AND PREPARATION OF PROCUREMENT**

###### **Article 26. Procurement plans**

1. The contracting authority must prepare and approve procurement plans for the current calendar year and publish a summary of scheduled purchases in the Central Portal of Public Procurement in accordance with the requirements and procedure established by the Public

Procurement Office. This summary must be published not later than by 15 March of each year or, in the case of adjustment of procurement plans for the current calendar year, not later than within 5 working days.

2. A summary of scheduled purchases published in accordance with the procedure referred to in paragraph 1 of this Article may additionally be published on the website of the contracting authority, in a specific column (hereinafter: the 'buyer profile'). The published content of the summary of scheduled purchases must be identical everywhere.

### **Article 27. Preparation of procurement**

1. The contracting authority may, with a view to preparing a procurement and informing economic operators of its procurement plans and requirements:

1) seek and accept advice from independent experts, institutions or market participants. That advice shall be used in the conduct of the procurement, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. If the contracting authority decides to publish a call for advice referred to in this point, this call must be published in the Central Portal of Public Procurement in accordance with the procedure established by the Public Procurement Office;

2) publish in advance in the Central Portal of Public Procurement draft technical specifications of contracts. The draft technical specifications shall be published and the comments and proposals regarding these drafts shall be assessed in accordance with the procedure laid down by the Public Procurement Office.

2. Following the publication in the Central Portal of Public Procurement of a call for advice referred to in paragraph 1 of this Article or draft technical specifications, these documents may be additionally published on the buyer profile, elsewhere on the Internet and/or in publications. The content of the same document must be identical everywhere.

3. In cases where a candidate or tenderer or an economic entity cooperating with the candidate or tenderer has assisted in the preparation of a procurement, the contracting authority must take appropriate measures to ensure that competition is not distorted by the participation of such candidates and tenderers. Such measures shall include the communication to the other candidates and tenderers of relevant information received by the economic entities assisting in the preparation of the procurement and its publication in the Central Portal of Public Procurement, as well as the fixing of adequate time limits for the receipt of tenders.

4. Where, in the opinion of the contracting authority, the measures referred to in paragraph 3 of this Article are not sufficient to ensure compliance with the principle of equal treatment of economic operators, it must, when verifying whether there are grounds for the

exclusion of an economic operator, request a candidate or tenderer assisting in the preparation of a procurement to prove in writing that their advice has not been capable of distorting competition. A request for participation or a tender of the candidate or tenderer concerned shall only be rejected where it fails to provide the contracting authority with a reasonable justification.

#### **Article 28. Division of contracts into lots**

1. A procurement governed by international rules must, and a simplified procurement or a procurement of social and other special services listed in Annex 2 to this Law may, be conducted by dividing a contract into lots for which a separate public contract is to be awarded and by determining the size and subject-matter of such lots. The contract shall be divided into lots on a quantitative, qualitative basis or in accordance with different phases of its performance.

2. In the case of a procurement governed by international rules, the obligation to divide a contract into lots referred to in paragraph 1 of this Article shall not apply if the contracting authority justifies in the procurement documents that this would result in restriction of competition amongst economic operators, render the execution of the public contract excessively technically difficult or expensive, the implementation of separate lots of the contract would be closely interrelated and, therefore, the contracting authority would need to coordinate the economic operators for these lots, which would risk undermining the proper execution of the public contract, or indicates other reasonable circumstances that make it inappropriate to divide the contract into lots.

3. In cases when a contract is divided into lots, the contracting authority shall specify in a contract notice, in an invitation to confirm interest or in other procurement documents inviting to participate in a procurement:

1) the number of lots of the contract (one, two or more) for which the same economic operator may submit a tender;

2) the maximum number of lots of the contract for which the same economic operator may be determined as the successful tenderer, if the contracting authority decides to limit this number. The procurement documents shall contain objective and non-discriminatory criteria or rules to be applied for determining which lots of the contract have been awarded to the economic operator, where the evaluation of tenders would result in one economic operator being awarded more lots than the determined maximum number of lots of the contract;

3) whether the contracting authority reserves the possibility to decide on the awarding of a single public contract for the lots or groups of lots specified by it for which the same economic operator may be determined as the successful tenderer according to the procurement documents.

**Article 29. Commencement and completion of procurement procedures**

1. A procurement or design contest procedure shall commence when:

1) the Public Procurement Office sends to the Office of Official Publications of the European Union (in the case of a simplified procurement – publishes in the Central Portal of Public Procurement) a contract notice, a notice of a design contest or a prior information notice submitted by the contracting authority and inviting to participate in the procurement;

2) an invitation is sent to tenderers to participate in a negotiated procedure without publication of a contract notice;

3) the contracting authority takes a decision to conduct the procurement in accordance with Article 72(3) of this Law;

4) an invitation to submit a tender for participation in the reopening of competition amongst economic operators is sent to economic operators parties to a framework agreement;

5) an invitation to submit a tender is sent to the economic operators allowed to participate in a dynamic purchasing system.

2. A procurement (or lot awarding) or design contest procedure shall be completed when:

1) a contract is awarded and, if required, security for the performance of the contract is submitted, a framework agreement is concluded, a dynamic purchasing system is set up or the winner of a design contest is determined;

2) all requests for participation, tenders, design contest plans or designs are rejected;

3) procurement or design contest procedures are terminated;

4) no request for participation, tender, design contest plan or design is submitted within the set deadline;

5) the period of validity of tenders expires and a public contract is not awarded or a framework agreement is not concluded for reasons attributable to the economic operators;

6) all economic operators cancel their tenders, design contest plans or designs or refuse to enter into a public contract.

3. At any time prior to the award of a public contract / conclusion of a framework agreement or determination of the winner of a design contest, the contracting authority shall have the right to terminate the procurement or design contest procedures at its own discretion in the event of emergence of unforeseen circumstances and must do so in the event of a violation of the principles set out in Article 17(1) of this Law and the relevant situation cannot be remedied.

**SECTION TWO**  
**CONTRACT NOTICES**

**Article 30. Prior information notice**

1. The contracting authority may make known its intention of planned procurements through the publication of a prior information notice.

2. The period for which a prior information notice is published may not exceed 12 months from the date of its publication.

3. The contracting authority in the case of a procurement or simplified procurement of the social and other special services listed in Annex 2 to this Law and the sub-central contracting authority in all cases may, by means of a prior information notice, invite economic operators to participate in a restricted procedure or a negotiated procedure with publication of a contract notice, provided that the notice meets the following requirements:

1) it indicates the supplies, services or works for which a contract is to be awarded;

2) it indicates that a restricted procedure or a negotiated procedure without publication of a contract notice will be conducted and that interested economic operators will be invited to express their interest;

3) it contains all information in accordance with the requirements set out in Article 34(2) of this Law;

4) it has been sent for publication not less than 35 days (in the case of a simplified procurement – not less than 15 days) and not more than 12 months before the date on which the invitation to confirm interest is sent.

4. Following the publication of a prior information notice concerning an open procedure, a restricted procedure, a negotiated procedure with publication of a contract notice, the contracting authority may shorten the time limits for the submission of tenders as provided for in Article 60(2) and Article 62(4) of this Law, if such a notice has been published not less than 35 days (in the case of a simplified procurement – not less than 15 days) and not more than 12 months before the date of dispatch of a contract notice from the Public Procurement Office and if it contains the information on the procurement known at the time of publication in accordance with the requirements of Article 34(2) of this Law. The provisions of this paragraph shall apply only in the cases when the prior information notice is not meant to invite to participate in procurement as provided for in paragraph 3 of this Article.

**Article 31. Contract notice and design contest notice**

1. The contracting authority shall invite economic operators to participate in a procurement conducted under this Law by means of a contract notice or a design contest notice, except in the case of a negotiation procedure without publication of a contract notice or when the provisions of Article 30(3) of this Law apply.

2. The contracting authority shall invite economic operators to participate in a low value procurement by means of a contract notice, except in the cases provided for in paragraph 3 of this Article.

3. It shall be possible not to publish a notice of a low value procurement if the conditions set out in Article 71(1)(2), Article 71(2), (3), (5) or (6) of this Law or at least one of the following conditions is met:

1) no requests for participation or tenders have been received in respect of the procurement for which a contract notice has been published or all submitted requests for participation or tenders are unsuitable and the initial terms of procurement are not substantially altered;

2) it is necessary, as a matter of extreme urgency brought about by events unforeseeable by the contracting authority, to procure goods, services or works. The circumstances on which special urgency is based may not be attributable to the contracting authority;

3) the services are procured following a design contest which has been published in the Central Portal of Public Procurement, provided that the contract is awarded in accordance with the rules set out in the design contest and the services are procured from the successful tenderer or one of the successful tenderers. In the latter case, all successful tenderers shall be invited to participate in the negotiated procedure;

4) when the estimated value of the public contract is less than EUR 10 000 (ten thousand euros) (net of value-added tax).

### **Article 32. Voluntary ex-ante transparency notice**

The contracting authority may publish a voluntary ex-ante transparency notice when awarding a contract which it considers as not required to be published by the Publications Office of the European Union and/or which is not required to be published in the Central Portal of Public Procurement.

### **Article 33. Notices of the results of a procurement and of a design contest**

1. In the case of a procurement governed by international rules, the contracting authority must, in accordance with the procedure laid down in this Article, publish a notice of the award of a contract or the conclusion of a framework agreement, a notice of the results of a design contest, a notice of modifications of a contract.

2. A notice of the award of a contract, the conclusion of a framework agreement and results of a design contest shall be published not later than within 30 days after the awarding of

the public contract or the conclusion of the framework agreement or after approval of the results of the design contest. These notices may be grouped and published on a quarterly basis:

1) the award of a public contract after the procurement of the social and other special services specified in Annex 2 to this Law or the award of the public contract on the basis of a framework agreement – not later than within 30 days of the end of the quarter;

2) in the case of the award of a contract based on a dynamic purchasing system – not later than within 48 days of the end of the quarter.

3. If the call for participation of economic operators in the procurement procedure concerned has been made in the form of a prior information notice, as provided for in Article 30(3) of this Law, and the contracting authority has decided that it will not award further contracts during the period covered by the prior information notice, the contract award notice shall contain a specific indication to that effect.

4. A notice of modifications of a public contract or a framework agreement shall be published in the cases specified in points 2 and 3 of Article 89(1) of this Law not later than within 3 working days from the date of modification of the contract or the framework agreement.

5. Certain information on a contract award or the conclusion of a framework agreement or the results of a design contest may be withheld from publication where its release would violate the legal acts regulating information and data protection or be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator or might prejudice fair competition between economic operators.

#### **Article 34. Drawing up and publication of a notice**

1. The notices referred to in Articles 30-33 of this Law shall be published in accordance with the procedure laid down in this Article.

2. The information which must be included in notices, the standard forms of and requirements for the notices, including corrigenda, shall be established:

1) in the case of a procurement governed by international rules – by Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 (OJ 2015 L 296, p. 1);

2) in the case of a simplified procurement – by the legal acts adopted by the Public Procurement Office.

3. Notices of a procurement governed by international rules shall be published through the Publications Office of the European Union and in the Central Portal of Public Procurement. Except as provided for in Article 30(3) of this Law, a prior information notice may be published

on a buyer profile instead of its publication through the Publications Office of the European Union. However, a notice of publication of the prior information notice on the buyer profile must be sent to the Publications Office of the European Union before the date of dispatch of the notice.

4. Notices of a simplified procurement shall be published in the Central Portal of Public Procurement.

5. All notices published through the Publications Office of the European Union and in the Central Portal of Public Procurement shall be drawn up and submitted by the contracting authority to the Public Procurement Office in accordance with procedure established by it using tools of the Central Portal of Public Procurement.

6. The Public Procurement Office, upon receiving the notices submitted by the contracting authority, must:

1) in the case of a procurement governed by international rules, send them to the Publications Office of the European Union within 3 working days from the receipt thereof in the format specified by the European Commission and publish them in the Central Portal of Public Procurement after the lapse of 48 hours from confirmation of the receipt of a notice. The date of publication of a notice shall be the date of publication indicated in the information sent to the contracting authority by the Publications Office of the European Union;

2) in the case of a simplified procurement – within 3 working days, in the case of a low value procurement – within one working day from the receipt thereof, publish them in the Central Portal of Public Procurement. The date of publication of a notice shall be the date of its publication in the Central Portal of Public Procurement.

7. Procurement notices must be published in Lithuanian. In addition, they may be published in other official languages of the institutions of the European Union chosen by the contracting authority. The notice drawn up by the contracting authority shall constitute the sole authentic text.

8. Procurement notices may additionally be published on a buyer profile, elsewhere on the Internet and/or in publications. The buyer profile may additionally publish other procurement information, including information on valid calls for tenders, awarded public contracts and concluded framework agreements, terminated procurement procedures, and other general information (the name of the institution whereat the procurement information is provided, its telephone and fax numbers, postal addresses, e-mail addresses).

9. When publishing notices of a procurement governed by international rules in the Central Portal of Public Procurement, on a buyer profile, elsewhere on the Internet or in publications, the following requirements must be complied with:



1) they must have been previously published by the Publications Office of the European Union;

2) they indicate the date of dispatch of a notice to the Publications Office of the European Union;

3) the content of the same notice must be identical everywhere.

10. Notices of a simplified procurement must be published in the Central Portal of Public Procurement prior to publication on a buyer profile, elsewhere on the Internet or in publications, and the content of the same notice must be identical everywhere.

11. The contracting authority may, in accordance with the procedure laid down in this Article, publish procurement-related notices that are not subject, under this Law, to the requirement of publication through the Publications Office of the European Union or in the Central Portal of Public Procurement.

### **SECTION THREE**

#### **PROCUREMENT DOCUMENTS AND TECHNICAL SPECIFICATIONS**

##### **Article 35. Content of procurement documents**

1. The contracting authority shall provide in the procurement documents all information on the terms and procedures of the procurement.

2. Procurement documents must indicate:

1) requirements for the preparation of tenders;

2) grounds for economic operators' exclusion, qualification requirements and, where applicable, required quality assurance standards and/or environmental management standards, including requirements for individual members of a group of economic operators submitting a joint request for participation or tender;

3) the information that if the economic operator's qualification concerning the right to engage in the respective activity has not been subject to verification or has not been verified to the full extent, the economic operator undertakes to the contracting authority that the contract will be executed only by persons having such right;

4) the procedure for assessing the qualifications of economic operators and the minimum number of candidates to be invited to submit tenders when the contracting authority restricts the number of tenderers in the cases established by this Law;

5) a list of documents supporting the absence of grounds for economic operators' exclusion, the fulfilment of qualification requirements and, where applicable, of required quality assurance standards and/or environmental management standards, the information that the

economic operator must submit a European Single Procurement Document in accordance with the requirements set out in Article 50 of this Law and, in the context of an open procedure, whether the option as provided for in Article 59(4) of this Law to first evaluate the tender submitted by the economic operator and to subsequently examine its qualifications will apply;

6) the information on the options as provided for in Article 46(3) and (8) of this Law to not exclude from the procurement procedure the economic operator not meeting certain requirements set out for it;

7) the information that the contracting authority may decide not to award a contract to the tenderer submitting the most economically advantageous tender if it is established that the tender is not in conformity with the environmental, social and labour law obligations referred to in Article 17(2)(2) of this Act;

8) the name, quantity (volume) of supplies, services or works, the nature of the services to be provided with the supplies, the time limits for the delivery of the supplies, the provision of the services or the performance of the works;

9) the arguments of a decision of the contracting authority not to divide a contract of an international threshold value into lots as set out in Article 28(2) of this Law;

10) technical specifications;

11) criteria and terms of the evaluation of tenders;

12) requirements for and/or criteria of energy consumption efficiency and environmental protection in procuring supplies, services or works in the cases and in accordance with the procedure laid down by the Government of the Republic of Lithuania or an institution authorised by it;

13) the contract performance conditions and/or the draft contract as proposed by the contracting authority in compliance with the requirements of Article 87 of this Law, if such is drawn up. Where a framework agreement is to be concluded, the procurement documents must also contain the terms and conditions of the framework agreement and/or the draft framework agreement, if such is drawn up;

14) legal form requirements, where the contracting authority requires a group of economic operators to acquire a certain legal form after identifying a tender submitted by the group of economic operators as the winning tender and proposing to award a contract. Where the group of economic operators is required to establish a legal person, the obligation shall be placed on the economic operators to provide a security for the obligations of the legal person established by them with regard to contract performance;

15) the requirements for subcontracting as established in compliance with provisions of Article 88 of this Law;

16) the information on whether the contracting authority allows, prohibits or requires variants and requirements for these variants;

17) information about price or costs calculation and the manner of indication thereof in tenders. The price or costs must include all relevant taxes;

18) requirements for ensuring the validity of tenders, if applicable;

19) the deadline for and the place and manner of the submission of tenders;

20) the ways in which economic operators may request clarification of procurement documents and obtain information as to whether the contracting authority intends to arrange a meeting with the economic operators for that purpose, also the ways in which the contracting authority may clarify/adjust the procurement documents on its own initiative;

21) the date by which the tenderer must maintain its tender or a time frame during which the tenderer must maintain its tender;

22) the venue, date, hour and minute fixed for accessing tenders;

23) procedures for access to and examination of tenders;

24) the information that the prices quoted in tenders will be assessed in euros. If the prices quoted in the tenders are expressed in a foreign currency, they will be converted to euros according to the euro foreign exchange reference rate published by the European Central Bank, and in the cases when the European Central Bank does not publish the euro foreign exchange reference rate – according to the euro foreign exchange reference rate set and published by the Bank of Lithuania on the last day of the period fixed for the submission of tenders;

25) the full names and contact details of the civil servants or employees of the contracting authority or members of the Commission (one or more persons) authorised to communicate directly with economic operators and to obtain from them (other than intermediaries) the notices related to procurement procedures;

26) references to the prior information notice published by the Publications Office of the European Union, also published in the Central Portal of Public Procurement, in other publications and on the Internet, if the notice has been published beforehand;

27) information on the application of the period of deferment and the procedure for hearing disputes;

28) information on the voluntary ex-ante transparency notice to be published;

29) the information on whether observers are invited to participate in meetings of the Commission and conditions of participation thereof;

30) the information that the economic operator must indicate whether its tender contains confidential information and which information is confidential in accordance with Article 20(2) of this Law;

31) other information specified by the Public Procurement Office.

3. Procurement documents shall have as their constituent parts a prior information notice and a contract notice. The contracting authority may subsequently choose not to additionally provide the information contained in the notices. In the event that the information given in the contract notice or in the prior information notice inviting tenderers to participate in a restricted or negotiated procedure with publication of a contract notice as referred to in Article 30(3) of this Law does not correspond to the information contained in other procurement documents, the information contained in the contract notice and the prior information notice inviting economic operators to participate in the restricted or negotiated procedure with publication of a contract notice shall be deemed to be correct.

4. The contracting authority shall draw up procurement documents in compliance with the provisions of this Law. The procurement documents must be accurate, clear, unambiguous so that economic operators could submit tenders and the contracting authority could procure what it needs.

5. Procurement documents shall be drawn up in Lithuanian. In addition, the procurement documents may also be drawn up in other languages.

### **Article 36. Submission of procurement documents**

1. The contracting authority shall publish procurement documents in the Central Portal of Public Procurement from the date of publication of a contract notice or dispatch of an invitation to confirm interest or a call for tenders. The procurement documents may also be published on a buyer profile, but not earlier than they are published in the Central Portal of Public Procurement.

2. The Central Portal of Public Procurement must ensure unrestricted and full direct access free of charge to published procurement documents.

3. A contract notice or an invitation to confirm interest must indicate the internet address whereat procurement documents are accessible.

4. If the contracting authority is unable to publish procurement documents in the Central Portal of Public Procurement, because:

1) they cannot be submitted by electronic means for at least one of the reasons specified in Article 22(5) of this Law, the contracting authority may indicate in a contract notice or in an invitation to confirm interest that the procurement documents will be submitted by other means in compliance with the requirements specified in paragraph 5 of this Article;

2) the requirements for the protection of confidential information referred to in Article 20(5) of this Law apply, the contracting authority must indicate in a contract notice or in an

invitation to confirm interest the applicable confidentiality requirements and the manner of accessing the procurement documents.

5. Where additional information concerning procurement documents is requested in a timely manner, the contracting authority shall provide it to all economic operators not later than 6 days before the deadline for the submission of tenders. In cases of an open procedure, a restricted procedure and accelerated negotiated procedure with publication of a contract notice as provided for in Article 60(3) of this Law and Article 62(7) of this Law, this time limit shall be 4 days, in the case of a simplified procurement – 3 days.

6. In the event that the information contained in procurement notices is adjusted, corrigenda shall be published in accordance with the procedure laid down in Article 34 of this Law.

7. If the contracting authority prepares a meeting with economic operators with regard to procurement documents, it shall draw up minutes of that meeting. The minutes shall include all the questions submitted about the procurement documents and the answers thereto provided during this meeting. Information about the planned meeting with the economic operators and an extract from the minutes prepared after the meeting shall be published in the Central Portal of Public Procurement.

### **Article 37. Technical specifications**

1. The characteristics of the purchased supplies, services or works shall be laid down in the technical specifications contained in procurement documents. Definitions of certain technical specifications shall be given in Article 2(10), (13), (30), (34) and (35) of this Law. The technical specifications may also provide the characteristics of the purchased supplies, services or works which also refer to the specific process or method of production or provision of the works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of the material substance of the purchased supplies, services or works. These characteristics must be linked to the subject-matter of the contract and be proportionate to the value of the purchased supplies, services or works and objectives thereof. The technical specifications may also specify whether the transfer or granting of intellectual property rights will be required.

2. For all procurement which is intended for use by natural persons, whether general public or civil servants or employees of the contracting authority, technical specifications should, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users. Where mandatory accessibility criteria for persons with disabilities and design for all users are adopted by a legal act of the European

Union or a national legal act, the contracting authority must refer thereto when drawing up technical specifications.

3. Technical specifications must ensure competition amongst and non-discrimination against economic operators.

4. Without prejudice to mandatory national technical rules, to the extent that they are compatible with EU law, technical specifications may be formulated in one of the following ways or using a combination thereof:

1) in terms of performance or functional requirements for the subject-matter of the contract, including environmental characteristics. Such requirements must be accurate in order to allow economic operators to prepare suitable tenders and the contracting authority – to procure the required supplies, services or works;

2) by reference to a standard, a technical approval or common technical specifications. The technical specifications must comply with the following order of preference: firstly, a Lithuanian standard transposing a European standard, a European Technical Assessment, common ICT technical specifications, an international standard, other technical reference systems established by European standardisation bodies or – when any of those do not exist – national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies. Each reference shall be accompanied by the words ‘or equivalent’;

3) in terms of performance or functional requirements for the subject-matter of the contract as referred to in point 1 of this paragraph, with reference to the technical specifications referred to in point 2 of this paragraph as a means of presuming conformity with such requirements;

4) by reference to the technical specifications referred to in point 2 of this paragraph for certain characteristics of the subject-matter of the contract, and by reference to the performance or functional requirements referred to in point 1 for other characteristics.

5. Unless justified by the subject-matter of the contract, technical specifications may not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain entities or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 4 of this Article is not possible. Such a reference shall be accompanied by the words ‘or equivalent’.

6. Where a contracting authority uses the option of referring to the technical specifications based on the requirements specified in point 2 of paragraph 4 of this Article, it

may not reject a tender on the grounds that the supplies or services or works tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority by any appropriate means, including the means referred to in Article 39 of this Law, that the solutions proposed by him satisfy in an equivalent manner the requirements defined by the technical specifications.

7. Where a contracting authority uses the option laid down in point 1 of paragraph 4 of this Article to formulate technical specifications in terms of performance or functional requirements for the subject-matter of the contract, it may not reject a tender for supplies, services or works which comply with a Lithuanian standard transposing a European standard, a European Technical Assessment, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which the contracting authority has laid down and where in his tender the tenderer proves to the satisfaction of the contracting authority by any appropriate means, including the means referred to in Article 39 of this Law, that the supplies, services or works proposed by him and being in compliance with the technical specifications meet the performance or functional requirements of the contracting authority.

### **Article 38. Labels**

1. Where a contracting authority intends to purchase supplies, services or works with specific environmental, social or other characteristics it may, in the technical specifications, the tender evaluation criteria or the contract performance conditions, require a specific label as means of proof that the supplies, services or works correspond to the required characteristics, provided that all of the following conditions are fulfilled:

1) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the supplies, services or works that are the subject-matter of the contract;

2) the label requirements are based on objectively verifiable and non-discriminatory criteria;

3) the label is established in an open and transparent procedure in which all relevant stakeholders, including government institutions and bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;

4) the label is accessible to all interested parties;

5) the label requirements are set by an institution or body over which the economic entity applying for the label has not exercised a decisive influence.

2. Where a contracting authority does not require the supplies, services or works to be purchased to meet the requirements referred to in paragraph 1 of this Article, it may indicate which label requirements are referred to.

3. A contracting authority shall accept all labels provided by an economic operator that confirm that the supplies, services or works meet equivalent requirements for a specific label required by the contracting authority. Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept any appropriate means of proof provided by the economic operator, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the supplies, services or works to be provided by it fulfil the specific label requirements or the requirements indicated by the contracting authority.

4. Where a specific label fulfils the conditions provided in points 2-5 of paragraph 1 of this Article but also sets out requirements not linked to the subject-matter of the contract, a contracting authority may not require the label as such. However, the contracting authority may define the technical specification by reference to those of the specifications of that label that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

### **Article 39. Means of proof**

1. A contracting authority may require that an economic operator provides a test report from a conformity assessment body established in the Republic of Lithuania or a certificate issued by such a body as means of proof of conformity of supplies, services or works with the requirements or criteria set out in the technical specifications, the tender evaluation criteria or the contract performance conditions. Certificates from equivalent conformity assessment bodies established in other countries shall also be accepted by contracting authorities.

2. A contracting authority shall accept other appropriate means of proof where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1 of this Article, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the supplies, services or works meet the requirements or criteria set out in the technical specifications, the tender evaluation criteria or the contract performance conditions.

## **SECTION FOUR**



## **SUBMISSION OF ECONOMIC OPERATORS' REQUESTS FOR PARTICIPATION AND TENDERS**

### **Article 40. Submission of requests for participation and tenders**

1. A contracting authority must set a sufficient time limit for the submission of requests for participation and tenders in order to allow economic operators to prepare and submit the requests for participation and tenders in a timely and appropriate manner. Such a time limit must be without prejudice to the minimum time limits for the submission of the requests for participation and the tenders referred to in Articles 60, 62, 65, 69 and 74 of this Law. When fixing this time limit, the contracting authority must take into account the complexity of the contract and the time required for drawing up the requests for participation and the tenders.

2. The minimum time limits for the submission of requests for participation and tenders laid down in this Law shall run from the date of dispatch of a notice of a procurement governed by international rules from the Public Procurement Office to the Publications Office of the European Union, the publication of a notice of a simplified procurement in the Central Portal of Public Procurement or the dispatch of a call for requests for participation or tenders to economic operators.

3. Where tenders may be prepared only after visiting the site of provision of services or performance of works or only after having familiarised with the requirements laid down in the procurement documents, a contracting authority shall fix longer time limits for the submission of tenders than those specified in Articles 60, 62, 65, 69 and 74 of this Law, so that all interested economic operators have access to full information required to prepare a tender.

4. The contracting authority must extend time limits for the submission of tenders so that all economic operators wishing to participate in a procurement have access to full information required to prepare a tender in the following cases:

1) if, for any reason, additional information related to the procurement documents is provided less than 6 days before the expiry of a time limit for the submission of tenders, although this information has been requested on time. In an open procedure, a restricted procedure and an accelerated negotiated procedure with publication of a contract notice, as provided for in Article 60(3) and Article 62(7) of this Law, this time limit shall be 4 days, in the case of a simplified procurement – 3 days;

2) if substantial modifications have been made to the procurement documents.

5. When extending a time limit for the submission of tenders in the cases referred to in paragraph 4 of this Article, a contracting authority must take into account the relevance of modifications to the information and the procurement documents. If the additional information

has not been requested on time or does not confer a decisive influence on the preparation of tenders, the contracting authority shall have the right not to extend the time limit for the submission of tenders.

6. Requests for participation and tenders shall be submitted by electronic means in accordance with the requirements set out in Article 22 of this Law.

7. If a contracting authority requires that requests for participation and tenders (or parts thereof) be submitted via a postal service provider or other appropriate carrier as provided for in Article 22(6) and (8) of this Law, they must be submitted in writing and signed by the economic operator or a person authorised by it. In this case, a request for participation or a tender must be submitted in a sealed envelope. The sheets of the tender (with annexes) must be numbered, sewn together and bear the signature of the economic operator or a person authorised by it on the reverse of the last sheet, indicating the full name, position (if any) of the economic operator or the person authorised by it and the number of sheets constituting the tender. A copy of the document evidencing tender security shall be thread-sewn and numbered together with other sheets of the tender. The document evidencing tender security shall not be thread-sewn and numbered, but shall be put into a single envelope. Where the tender is of a considerable volume and comprises several parts, these requirements shall apply to each part of the tender.

8. If a contracting authority intends to evaluate tenders by the price- or cost-quality ratio and the tender selected by it for evaluation is not quantifiable in terms of its technical characteristics, it must indicate in the procurement documents (except in negotiated procedures and dialogues) that economic operators are to submit a tender in two parts, one containing the price or costs and the other – the remaining tender (technical details of the tender, other information and documents). If the contracting authority requires to submit tenders:

1) in the manner referred to in paragraph 6 of this Article, it must be ensured that the contracting authority is able to access the part of the tender containing the price or costs only after the evaluation of the part of the tender containing the technical details of the tender, other information and documents;

2) in the manner referred to in paragraph 7 of this Article, economic operators must be required to submit the specified parts of the tender in separate sealed envelopes placed in a single sealed envelope.

9. An economic operator may submit only one tender, and where the contract is divided into lots for each of which a separate contract is to be awarded, the economic operator may submit to the contracting authority a tender for one, for several or for all the lots as indicated by the contracting authority, except in the cases where variants are authorised in the procurement documents.

10. In the event that the contracting authority does not require to submit tenders by the means of the Central Portal of Public Procurement and an economic operator requests confirmation of receipt of its tender, the contracting authority must provide a written confirmation not later than within one working day from receipt of the request and indicate therein the date, hour and minute of receipt of the tender.

#### **Article 41. Tender validity period, modifying and withdrawing tenders**

1. A tender shall be valid for a period of time specified by an economic operator. This time limit may not be shorter than the one specified in the procurement documents. If the tender does not indicate its validity period, the tender shall be deemed to be valid for as long as it is specified in the procurement documents.

2. During procurement procedures, a contracting authority may request economic operators to extend the period of validity of tenders until a specified date. An economic operator may reject such a request without losing the right to tender security if so requested.

3. An economic operator who agrees to extend the validity of its tender and informs the contracting authority thereof in writing shall extend the period of tender security or submits a new document confirming tender security, if so requested. If the economic operator does not respond to the contracting authority's request to extend the tender security period, does not extend it or does not provide a new tender security, it shall be deemed to have rejected the request to extend the period of validity of its tender.

4. Until the time limit for the submission of tenders has expired, an economic operator may modify or withdraw its tender without losing the right to tender security, if so requested. Any such modification or notification about the tender being withdrawn shall be deemed valid if a contracting authority receives it before the expiry of the time limit fixed for the submission of tenders.

#### **Article 42. Tender security and contract performance security**

1. The contracting authority must in a procurement for works governed by international rules, and may in the case of other procurements, request that the validity of tenders be secured and must request that the performance of a contract be secured by the means of securing the discharge of obligations specified by the Civil Code of the Republic of Lithuania.

2. The contracting authority may not reject a tender security or a contract performance security on the grounds that the security has not been issued by an economic entity of the Republic of Lithuania, where the tender security and the contract performance security and the

economic operator that has issued it fulfil the requirements set out in the procurement documents.

3. Prior to submitting a tender security or a supporting document in relation to a contract performance security, an economic operator may request the contracting authority to confirm that it accepts the proposed tender security or supporting document in relation to the contract performance security. In this case, the contracting authority must respond to the economic operator's request not later than within 3 working days from the receipt of the request. Such confirmation shall not preclude the contracting authority from rejecting the tender security or the contract performance security upon receipt of information that the economic entity providing the tender security or the contract performance security has become insolvent or has failed to discharge its obligations to the contracting authority or to other economic entities, or has discharged them improperly.

#### **Article 43. Variants**

1. The contracting authority may authorise or require economic operators to submit variants. The contracting authority must indicate in a contract notice or in an invitation to confirm interest whether it authorises, does not authorise or requires to submit variants. The variants must be linked to the subject-matter of a contract.

2. The contracting authority shall state in procurement documents the minimum requirements to be met by variants and any specific requirements for their presentation, in particular whether the variants may be submitted only where the main tender has also been submitted. The contracting authority must choose such tender evaluation criteria that can be applied both to main tenders and to variants. Only the variants meeting the minimum requirements shall be taken into consideration.

3. In procedures for awarding public supply or service contracts, a contracting authority that has authorised or required variants may not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or vice versa.

#### **Article 44. Access to requests for participation or tenders**

1. Initial access to requests for participation or tenders shall be provided at a meeting of the Commission. The opening of envelopes with requests for participation or tenders shall be deemed to be initial access to the requests for participation or tenders submitted by non-electronic means.

2. Requests for participation or tenders shall be made accessible on the day and the hour and minute specified in the procurement documents. Where the requests for participation and tenders are submitted by non-electronic means, the date and time of a meeting of the Commission shall coincide with the expiry of a time limit fixed for the submission of the requests for participation or tenders. A modification of this time limit will require a corresponding modification in the timing of provision of access to the requests for participation or tenders. At the set time, initial access must be provided to all requests for participation or tenders received before the expiry of the time limit for their submission.

3. All economic operators who have submitted tenders or their representatives shall be entitled to participate in a meeting of the Commission whereat access is provided to the tenders submitted by non-electronic means, except in the case of a negotiated procedure, a competitive dialogue or an innovation partnership. The economic operators or their representatives who have participated in the negotiated procedure or the dialogue shall have the right to attend the meeting of the Commission only when at the meeting access is provided to the tenders submitted by non-electronic means which indicate the final prices or costs offered by the economic operators and final technical data. The tenders shall also be made available if the economic operators or their representatives do not appear at the meeting of the Commission.

4. When accessing the tenders submitted by non-electronic means, envelopes shall be opened by a member of the Commission in the presence of the economic operators who have submitted their tenders and who attend the meeting of the Commission or their representatives. The members of the Commission attending the meeting shall affix their signatures on the backside of the last sheet of a tender.

5. If a contracting authority evaluates tenders by the price- or cost-quality ratio and the tender selected by it for evaluation is not quantifiable in terms of its technical characteristics, the tenders (except in the case of a negotiated procedure or a dialogue) must be made accessible at two meetings of the Commission. At the first meeting, access shall be provided only to the part of a tender which contains the technical details of the tender and other information as well as documents, at the second meeting – to the part of the tender which quotes prices or costs. The second meeting may take place only after the contracting authority verifies compliance of the technical details of the submitted tenders and the economic operators with the requirements set out in the procurement documents and evaluates the technical merits of the tenders according to the requirements set out in the procurement documents. The contracting authority must notify all economic operators in writing of the results of this verification and evaluation. Where the tenders have been submitted by non-electronic means, the notice shall also include the time and venue of the second meeting. If the contracting authority, after verifying and evaluating the data submitted

by an economic operator at the first meeting, rejects its tender, it shall not access the remaining part of the tender, which shall be kept together with other documents submitted by the economic operator in accordance with Article 97 of this Law.

6. When accessing the tenders submitted by non-electronic means, the economic operators or their representatives attending a meeting of the Commission shall be informed of:

1) the name of an economic operator who has submitted a tender;

2) the price or costs quoted in the tender. If the contract is awarded in separate lots, they shall be informed of the price or cost of each lot. In the event that the price or costs as quoted in the tender and given in numbers do not correspond to the price or costs given in words, the price given in words shall be deemed correct;

3) the key technical characteristics of the tender, where tenders are evaluated by the price- or cost-quality ratio. If at least one of the economic operators or their representatives attending the meeting of the Commission so wishes, all the characteristics of the tenders to be taken into account when evaluating the tenders must be published. However, if these characteristics of the tenders are of a considerable volume, they may be provided to the economic operators in writing not later than within 3 working days after the meeting subject to agreement between the Commission and the economic operators attending the meeting;

4) whether the tender submitted by non-electronic means has been thread-sewn, numbered and signed by an economic operator or a person authorised by it on the backside of the last sheet, whether the full name, position of the authorised person and the number of the sheets constituting the tender are indicated;

5) whether a tender security has been provided, if so required.

7. The interested economic operators or their authorised representatives attending a meeting of the Commission who have submitted a tender by non-electronic means must be allowed to publicly remedy any detected shortcomings in the thread-sewing or formalisation of the tenders that may be remedied during the meeting.

8. At a meeting of the Commission whereat access is provided to the tenders submitted by non-electronic means, each attending economic operator or its representative shall be entitled to review in person the information communicated publicly, however a contracting authority may not disclose the confidential information contained in the economic operator's tender.

9. The Commission shall formalise the results of the procedure of accessing requests for participation or tenders in the form of minutes. The mandatory details of the minutes as regards accessing tenders shall be established by the Public Procurement Office.

10. Where tenders have been submitted by non-electronic means, the results of the procedure of accessing the submitted tenders as formalised in the form of minutes shall be

communicated in writing to the economic operators that have submitted the tenders and so request without disclosing the confidential information contained in an economic operator's tender.

11. Economic operators shall not attend the meetings of the Commission whereat access is provided to the tenders submitted by electronic means as well as the procedures the examination, evaluation and comparison of requests for participation or tenders are carried out.

## **SECTION FIVE**

### **EVALUATION OF AN ECONOMIC OPERATOR AND A REQUEST FOR PARTICIPATION AND TENDER SUBMITTED BY IT**

#### **Article 45. General principles of evaluation of an economic operator and a request for participation and tender submitted by it**

1. The contracting authority shall, acting in compliance with the provisions of Articles 55, 56 and 57 of this Law, identify as the winning tender the most economically advantageous tender if all of the following conditions are met:

1) the tender is in conformity with the requirements, conditions and criteria set out in a contract notice, an invitation to confirm interest and the procurement documents, also having regard to the provisions of Article 43 of this Law, if applicable;

2) the economic operator that has submitted the tender has not been excluded pursuant to Article 46 of this Law;

3) the economic operator that has submitted the tender fulfils the qualification requirements set out in the procurement documents pursuant to Article 47 of this Law and, where applicable, the quality assurance standards and environmental management standards required under Article 48 of this Law, the non-discriminatory rules and criteria established pursuant to Article 54 of this Law;

4) the economic operator that has submitted the tender has adjusted, supplemented, clarified the information indicated in paragraph 3 of this Article within the time limit laid down by the contracting authority;

5) the offered price is not excessive and unacceptable to the contracting authority. The offered price shall be deemed to be excessive and unacceptable if it exceeds a contracting authority's budget for the purchase as determined and specified in the documents drawn up by the contracting authority before the procurement procedure. If the price quoted in the most economically advantageous tender is excessive and unacceptable and the contracting authority

has not indicated in the procurement documents any budget for the purchase, other tenders in the ranking of tenders may not be identified as the winning ones;

6) there are no circumstances specified in Article 57(3) of this Law.

2. The contracting authority may decide not to award a contract to the economic operator submitting the most economically advantageous tender if it establishes that the tender is not in conformity with the environmental, social and labour law obligations referred to in Article 17(2)(2) of this Act.

3. If a candidate or a tenderer has submitted inaccurate, incomplete or incorrect documents or data on compliance with requirements of the procurement documents or such documents or data are missing, the contracting authority must, without prejudice to the principles of equality and transparency, request the candidate or the tenderer to adjust, supplement or clarify such documents or data within a reasonable time limit determined by it. Only documents or data concerning the absence of the economic operator's exclusion grounds, the fulfilment of qualification requirements, quality assurance standards and environmental management standards, the economic operator's authorisation issued for a person to sign a request for participation or a tender, a joint venture agreement, a document confirming a tender security and the documents not related to the subject-matter of the contract, its technical characteristics, contract performance conditions or the price of the tender may be adjusted, supplemented, clarified and submitted from anew. Other documents or data of the economic operator's tender may be adjusted, supplemented or clarified in accordance with Article 55(9) of this Law.

#### **Article 46. Economic operator's exclusion grounds**

1. The contracting authority shall exclude an economic operator from participation in a procurement procedure where it has established, by verifying in accordance with Articles 50 and 51 of this Law, or becomes otherwise aware that the economic operator or its responsible person indicated in point 2 of paragraph 2 of this Article has been the subject of a conviction for one of the following criminal acts:

1) participation in a criminal association, its formation or being in charge thereof;

2) bribery, trading in influence, graft;

3) fraud, misappropriation of property, squandering of property, misleading declaration about the activities of a legal entity, use of a credit, loan or targeted support not in accordance with its purpose or the established procedure, credit fraud, provision of inaccurate data on income, profit or assets, failure to file a tax return or to submit a report or another document, fraudulent management of accounts or abuse, where these criminal acts affect the European



Union's financial interests within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;

- 4) criminal bankruptcy;
- 5) terrorist crime or crime linked to terrorist activities;
- 6) laundering of property as proceeds from crime;
- 7) trafficking in human beings, purchase or sale of a child;

8) a crime committed by an economic operator of another state, as defined in the legal acts of other states implementing the European Union legal acts listed in Article 57(1) of Directive 2014/24/EU.

2. An economic operator or its responsible person shall be deemed to have been convicted of a criminal act referred to in paragraph 1 or 3 of this Article where:

1) a judgment of conviction has been passed and become effective over the past five years against the economic operator being a natural person and this person has an unspent or unexpunged conviction;

2) a judgment of conviction has been passed and become effective over the past five years against the manager of the economic operator being a legal person, another organisation or a unit thereof, a member of another management or supervisory body or another person authorised to represent or control the economic operator, to take a decision or to enter into a transaction on behalf thereof, or an accountant/accountants or another/other person/persons authorised to draw up and sign the economic operator's accounting documents and this person has an unspent or unexpunged conviction;

3) a judgment of conviction has been passed and become effective over the past five years against the economic operator being a legal person, another organisation or a unit thereof or, in the case of paragraph 3 of this Article, an administrative decision having final effect, if such decision is made in accordance with the legal provisions of the country of the economic operator.

3. In the event of a breach of the obligations relating to the payment of taxes, including social security contributions, in accordance with the legal provisions of the country in which the economic operator is established or of the country of the contracting authority, the economic operator shall be excluded from participation in a procurement procedure if the contracting authority becomes aware that the economic operator has been convicted on this ground, as defined in points 1 and 3 of paragraph 2 of this Article or has other evidence of the breach of these obligations. However, this provision shall not apply where:

1) the economic operator has entered into a binding arrangement with a view to paying taxes, including social security contributions, and is therefore deemed to have fulfilled the obligations laid down in this paragraph;

2) the amount of the debt does not exceed EUR 50 (fifty euros);

3) the economic operator was informed of the exact amount due at such time that it did not have the possibility of paying taxes, including social insurance contributions, entering into a tax loan agreement or into any other similar binding arrangement relating to their payment or taking other measures to ensure compliance with the provisions of point 1 of this paragraph before expiration of the deadline for the submission of requests for participation or tenders. The economic operator shall not be excluded from participation in the procurement procedure on this ground where, at the contracting authority's request for the submission of relevant documents pursuant to Article 50(6) of this Law, it provides evidence to the effect that it is already deemed to have fulfilled the obligations relating to the payment of taxes, including social security contributions.

4. The contracting authority shall exclude an economic operator from participation in a procurement procedure where:

1) it has entered into agreements with other economic operators aimed at distorting competition in the purchase concerned, and the contracting authority has sufficiently plausible indications to conclude so;

2) it is in a conflict of interest at the time of the procurement procedure within the meaning of Article 21 of this Law, and the situation cannot be remedied. It shall be deemed that a situation related to a conflict of interest cannot be remedied if the persons subject to the conflict of interest have conferred a decisive influence on the decisions of the Commission or the contracting authority and any modification of such decisions would be contrary to the provisions of this Law;

3) competition has been distorted, as referred to in Article 27(3) and (4) of this Law, and the situation cannot be remedied;

4) the economic operator, in the course of the procurement procedures, withheld information or misrepresented information on conformity to the requirements set out in this Article and in Article 47 of this Law, and the contracting authority can demonstrate this by any appropriate means, or the economic operator is not able to submit the supporting documents required pursuant to Article 50 of this Law due to the misrepresentation of information. The economic operator shall also be excluded from the procurement procedure on this ground if in the course of previous procedures it withheld information or misrepresented information as referred to in this point or the economic operator was not able to submit the supporting

documents required pursuant to Article 50 of this Law due to the misrepresentation of information, which resulted in its exclusion from procurement procedures within the last one year or a judgment being passed and becoming effective within the last one year. The economic operator shall also be excluded from the procurement procedure on this ground where, in accordance with the legal acts of other states in the course of the previous procedures, it withheld information or misrepresented information or was not able to submit supporting documents due to the misrepresentation of information, which resulted in its exclusion from the procurement procedures within the last one year or a judgment being passed and becoming effective or other comparable sanctions being introduced within the last one year;

5) the economic operator undertook at the time of purchase to unduly influence the decision-making process of the contracting authority, to obtain confidential information that would confer upon it undue advantages in the procurement procedure or provided misleading information which may have a material influence on decisions of the contracting authority concerning the exclusion of economic operators, evaluation of their qualifications, determination of the successful tenderer, and the contracting authority can demonstrate this by any appropriate means;

6) the economic operator has failed to perform a public contract, a contract with a contracting entity or a concession contract or has improperly performed it, which has led to a material breach of the contract as stipulated in the Civil Code (hereinafter: a ‘material breach of a contract’) resulting in termination of the contract within the last three years or passing and becoming effective, within the last three years, of a judgment satisfying the claim of the contracting authority, the contracting entity or the awarding authority for damages as a result of the economic operator showing significant or persistent deficiencies in the performance of a substantive requirement under the public contract. The economic operator shall also be excluded from the procurement procedure on this ground where, in accordance with the legal acts of other states, it is established within the last three years that it, under a prior public contract, a prior contract with a contracting entity or a prior concession contract, has shown significant or persistent deficiencies in the performance of a substantive requirement under the public contract which led to early termination of that prior contract, damages or other comparable sanctions. The contracting authority shall also exclude an economic operator from participation in a procurement procedure if it has sufficiently plausible indications to conclude that the economic operator has been established in order to avoid the application of this exclusion ground;

7) the economic operator is guilty of professional misconduct, where an administrative penalty or an economic sanction has been imposed upon the economic operator or the manager thereof in accordance with the laws of the Republic of Lithuania or legal acts of other states for

violations of financial reporting and auditing legislation, and less than one year has lapsed since the entry into force of a decision imposing this sanction or from the date on which the person executed an administrative instruction;

8) the economic operator does not meet the minimum criteria for a reliable taxpayer set out in Article 40<sup>1</sup>(1) of the Law of the Republic of Lithuania on Tax Administration and is therefore deemed to be guilty of grave professional misconduct.

5. The contracting authority may provide for a derogation from the exclusion of an economic operator from participation in a procurement procedure as provided for in paragraph 1, points 1 and 2 of paragraph 3 and paragraph 4 of this Article, on an exceptional basis, in view of the necessity of ensuring protection of the public interest such as public health or protection of the environment.

6. The contracting authority may exclude an economic operator from participation in a procurement procedure where it:

1) has violated at least one of the environmental, social and labour law obligations referred to in Article 17(2)(2) of this Law and on this ground has been imposed an administrative penalty or an economic sanction in accordance with laws of the Republic of Lithuania or legal acts of other states, where less than one year has lapsed since the entry into force of a decision imposing this sanction;

2) is insolvent, is the subject of restructuring or bankruptcy proceedings, winding-up proceedings have been initiated or commenced against it, where its assets are being administered by a court or by a bankruptcy administrator, where it is in an arrangement with creditors (agreement between the economic operator and the creditors to continue the economic operator's activities when the economic operator assumes certain obligations, while the creditors agree to defer, reduce or waive their claims), where its business activities are suspended or restricted or it is in any analogous or similar situation under the legal acts of the country in which it is registered. However, the contracting authority may not exclude from participation in the procurement procedure the economic operator which is in one of the situations referred to in this point, where it has provided sufficient evidence that it will be able to perform the contract;

3) is guilty of grave professional misconduct, which renders its integrity questionable. The economic operator may be excluded from participation in the procurement procedure on this ground if there is at least one of the following irregularities optionally specified by the contracting authority in the procurement documents:

a) a breach of professional ethics, where less than one year has lapsed since the date of acknowledgement of the economic operator's failure to comply with the norms of professional ethics;

b) an infringement of competition, occupational safety and health, protection of information, protection of intellectual property for which the economic operator or the manager thereof has been imposed an administrative penalty or an economic sanction in accordance with laws of the Republic of Lithuania or other states, where less than one year has lapsed since the entry into force of a decision imposing this sanction or from the date on which the person executed an administrative instruction;

c) a violation of the prohibition to enter into prohibited agreements stipulated in the Law of the Republic of Lithuania on Competition or a similar legal act of another state, when less than three years have lapsed since the entry into force of a decision imposing the economic sanction specified by the Law on Competition or the legal act of another state;

d) an economic operator being a natural person or the manager of an economic operator being a legal person, another organisation or a unit thereof, another member of the management or supervisory body or another person entitled to represent or control the economic operator, to enter into a transaction on behalf thereof or a participant holding the majority of votes at the meeting of participants of the legal person has been found guilty of fraudulent bankruptcy, as defined in the Enterprise Bankruptcy Law of the Republic of Lithuania or other states' legal acts of a similar nature, when less than three years have elapsed after the court decision becomes effective;

4) has been punished for issuing a work permit to illegally staying third-country nationals, where an administrative penalty or an economic sanction has been imposed upon the economic operator on this ground in accordance with laws of the Republic of Lithuania or legal acts of other states, and less than one year has elapsed after a decision imposing this sanction becomes effective.

7. At any time during a procurement procedure, the contracting authority shall exclude an economic operator from participation in the procurement procedure where it turns out that it conforms, in view of acts committed or omitted either before or during the procedure, to at least one of the economic operator's exclusion grounds specified in the procurement documents.

8. If an economic operator does not meet the requirements set out in paragraphs 1, 4 and 6 of this Article, the contracting authority shall not exclude it from participation in a procurement procedure where both of the following conditions are fulfilled:

1) the economic operator has provided to the contracting authority evidence to the effect that it has taken the following measures:

a) has voluntarily paid or undertaken to pay compensation in respect of any damage caused by the criminal act or misconduct referred to in paragraph 1, 4 or 6 of this Article, where applicable;

b) has collaborated, actively assisted or taken other measures with a view to investigating, detecting the criminal act or misconduct committed by it, where applicable;

c) has taken technical, organisational and personnel measures that are appropriate to prevent further criminal acts or misconduct;

2) the contracting authority has evaluated the information provided by the economic operator in accordance with point 1 of this paragraph and has taken a reasoned decision that the measures taken by the economic operator are sufficient to demonstrate its reliability. The sufficiency of these measures shall be evaluated taking into account the gravity and particular circumstances of a criminal act or misconduct. The contracting authority must submit to the economic operator the reasoned decision in writing not later than within 10 days from the receipt of the economic operator's information referred to in point 1 of this paragraph.

#### **Article 47. Verification of economic operators' qualifications**

1. The contracting authority must ascertain whether an economic operator is competent, reliable and capable of fulfilling the terms of procurement, therefore it shall have the right to specify in a contract notice or in other procurement documents the minimum qualification requirements of candidates or tenderers and the documents or information confirming compliance with these requirements. The qualification requirements of candidates or tenderers as set by the contracting authority may not artificially narrow competition, must be proportionate and related to the subject-matter of the contract, be precise and clear. In verifying economic operators' qualifications, the following shall be optionally taken into account:

- 1) suitability to pursue the relevant activities;
- 2) financial and economic standing;
- 3) technical and professional capacity.

2. The contracting authority shall have the right to require in procurement documents that an economic operator be suitable to pursue the activities necessary for the performance of the contract. In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to hold such authorisation or membership.

3. In verifying an economic operator's financial and economic standing, the contracting authority may:

- 1) require that economic operators have a certain minimum yearly turnover or a certain minimum turnover in the area covered by the contract. The minimum yearly turnover that economic operators are required to have may not exceed two times the estimated contract value,

except in duly justified cases such as relating to the nature of the purchased supplies, services or works or the risks attached thereto and requiring the economic operators to have a higher rate of the minimum yearly turnover. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or in a report on procedures;

2) have regard to certain financial ratios, including ratios between assets and liabilities. The contracting authority may take into consideration such a ratio, where it specifies transparent, objective and non-discriminatory criteria and methods for consideration of the financial ratio in the procurement documents;

3) require an appropriate level of the economic operator's professional risk indemnity insurance.

4. Where a contract is divided into lots, the requirements set out in this Article shall apply in relation to each individual lot. However, the contracting authority may set the requirement of the minimum yearly turnover referred to in point 1 of paragraph 3 of this Article by reference to the total estimated value of lots in the event that the economic operator is awarded several lots to be executed at the same time.

5. Where a contract based on a framework agreement is to be awarded following a reopening of competition amongst economic operators, the economic operator's maximum yearly turnover requirement referred to in point 1 of paragraph 3 of this Article shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the economic operator's maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under a dynamic purchasing system.

6. With regard to an economic operator's technical and professional ability, the contracting authority may impose requirements ensuring that the economic operator possesses the necessary human and technical resources and experience to perform the contract to an appropriate quality standard set out for the subject-matter of the contract in the procurement documents. The contracting authority may require, in particular, that the economic operator has a sufficient level of experience demonstrated by suitable references from contracts performed in the past. The contracting authority may assume that the economic operator does not possess the required professional ability where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract. In procedures for awarding public contracts having as their object supplies requiring siting or installation work, services or works, the ability of the economic operator to provide the services or to execute the installation and other works may be evaluated in particular with regard to the

skills, efficiency, experience and reliability of the economic operator's workers who will perform the contract.

7. An economic operator's qualification requirements shall be determined in accordance with the methodology for determination an economic operator's qualification requirements approved by the Public Procurement Office.

#### **Article 48. Quality assurance standards and environmental management standards**

1. The contracting authority may require the production by an economic operator of a certificate issued by an independent body attesting that it complies with certain quality assurance standards, including on accessibility for disabled persons. For that purpose, it must refer in the procurement documents to quality assurance systems based on the relevant European standards series certified by a certification body conforming to the requirements set forth by EU legal acts. The contracting authority must recognise equivalent certificates from independent bodies established in other Member States. In simplified procurement procedures or when awarding a contract for the social and other special services referred to in Annex 2 to this Law, the contracting authority shall also accept other evidence of the economic operator's equivalent quality assurance measures to the effect that the proposed quality assurance measures comply with the required quality assurance standards, and in other procurement procedures the equivalent evidence shall be accepted only where the economic operator concerned has no possibility of producing such certificates within the relevant time limits for reasons that are not attributable to it.

2. Where the contracting authority requires the production of certificates issued by independent bodies attesting that an economic operator complies with certain environmental management standards, it must refer in the procurement documents to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ 2009 L 342, p. 1) or other environmental management standards based on the relevant European or international standards by the certification bodies conforming to EU legal acts or relevant European or international certification standards. Contracting authorities shall recognise equivalent certificates from independent bodies established in other Member States. In simplified procurement procedures or when awarding a contract for the social and other special services referred to in Annex 2 to this Law, the contracting authority shall also accept other evidence of



the economic operator's equivalent environmental management measures to the effect that the proposed environmental management measures comply with the required environmental management standards, and in other procurement procedures the equivalent evidence shall be accepted only where the economic operator concerned has no possibility of producing such certificates within the relevant time limits for reasons that are not attributable to it.

#### **Article 49. Reliance on the capacities of other economic entities**

1. With regard to criteria relating to the holding of a particular authorisation or membership of a particular organisation as set out pursuant to Article 47(2) of this Law, to criteria relating to economic and financial standing as set out pursuant to Article 47(3) of this Law or to criteria relating to technical and professional ability as set out pursuant to Article 47(6) of this Law, an economic operator may rely on the capacities of other economic entities, regardless of the legal nature of the links which it has with those economic entities.

2. With regard to criteria relating to the educational and professional qualifications as set out in Article 51(7)(7) of this Law, or to the holding of a particular authorisation or membership of a particular organisation pursuant to Article 47(2) of this Law, an economic operator may only rely on the capacities of other economic entities where these entities will perform the works or services for which these capacities are required. This provision shall apply without prejudice to the requirement set pursuant to paragraph 7 of this Article.

3. Where an economic operator wants to rely on the capacities of other economic entities, it must prove in a tender/request for participation submitted to the contracting authority that in performing a public contract it will have at its disposal the resources of the economic entities on the capacities whereof it relies.

4. The contracting authority shall, in accordance with Articles 50 and 51 of this Law, verify whether the economic entities on whose capacity an economic operator intends to rely fulfil the relevant qualification requirements and whether there are grounds for exclusion of such an economic entity. Where the economic entity does not fulfil the relevant qualification requirements or is in a situation which conforms to at least one exclusion ground specified by the contracting authority pursuant to Article 46 of this Law, the contracting authority must require that the economic operator replaces it with an economic entity which meets the requirements within the time limit laid down by it.

5. Where an economic operator relies on the capacities of other economic entities with regard to criteria relating to economic and financial standing as contained in the procurement documents, a contracting authority may require that the economic operator and the economic entities on the capacities whereof it relies be jointly liable for the execution of the contract.

6. Under the conditions as referred to in this Article, a group of economic operators may rely on the capacities of participants in the group or of other economic entities.

7. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, a contracting authority may require in the procurement documents that the critical tasks indicated by it be performed directly by the economic operator itself or, where the tender is submitted by a group of economic operators, by a participant in that group.

### **Article 50. European Single Procurement Document**

1. At the time of submission of requests for participation or of tenders, a contracting authority shall require an economic operator to submit the European Single Procurement Document (ESPD), consisting of an updated self-declaration as preliminary evidence in replacement of certificates issued by competent authorities confirming that the economic operator and the entities on the capacities whereof it relies fulfil the requirements established in the procurement documents in compliance with Articles 46, 47 and 48 and, where applicable, the requirements set out in Article 54 of this Law. Where the provisions of Article 88(5) of this Law apply, the contracting authority shall require the submission of a European Common Procurement Document by the subcontractors which are known at the time of submission of the tender and on the capacities whereof the economic operator does not rely.

2. A European Single Procurement Document shall be drawn up on the basis of a standard form established by Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ 2016 L 3, p. 16). It must consist of:

1) a formal statement by an economic operator that grounds for the economic operator's exclusion are absent, it fulfils the qualification requirements set out in the procurement documents and, where appropriate, the required quality assurance standards and/or environmental management standards. The document shall also provide the relevant information as required by the contracting authority;

2) the identification of the competent authority or the third party responsible for issuing the supporting documents in relation to the absence of grounds for economic operators' exclusion, the fulfilment of qualification requirements and, where applicable, of quality assurance standards and/or environmental management standards;

3) a formal statement by the economic operator to the effect that it will be able, upon request of a contracting authority and without delay, to provide the supporting documents, as issued by the competent authority or the third party, in relation to the absence of grounds for its

exclusion, the fulfilment of qualification requirements and, where applicable, of quality assurance standards and/or environmental management standards;

4) the Internet address of the database containing the documents or the information confirming the absence of grounds for the economic operator's exclusion, the fulfilment of qualification requirements and, where applicable, of quality assurance standards and/or environmental management standards, any identification data of the economic operator and, where applicable, the economic operator's declaration of consent. Such information shall be provided only where the contracting authority can obtain the documents directly by accessing the database referred to in this point, pursuant to point 1 of paragraph 7 of this Article.

3. Economic operators may reuse a European Single Procurement Document which has already been used by them in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct.

4. The contracting authority may ask candidates or tenderers at any moment during the procurement procedure to submit all or part of the supporting documents in relation to the absence of grounds for their exclusion, the fulfilment of qualification requirements and, where applicable, of quality assurance standards and/or environmental management standards, where this is necessary to ensure the proper conduct of the procurement procedure.

5. The contracting authority, having assessed the information contained in a European Common Procurement Document and, where applicable, the information contained in the documents referred to in paragraph 4 of this Article, shall decide whether each candidate or tenderer who has submitted a request for participation or a tender complies with requirements and, not later than within 3 working days, give a written notice to each of them of the results of this verification in support of the decisions taken. Only candidates or tenderers who meet the requirements set by the contracting authority shall have the right to participate in further procurement procedures.

6. Before awarding a contract, the contracting authority shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with Article 78(4) or Article 78(5)(1) of this Law, require the economic operator that has submitted the most economically advantageous tender to submit up-to-date supporting documents in relation to the absence of grounds for its exclusion and the fulfilment of qualification requirements pursuant to Article 51 of this Law and, where applicable, of quality assurance standards and/or environmental management standards pursuant to Article 48 of this Law.

7. The contracting authority shall not require an economic operator to submit supporting documents in relation to the absence of grounds for its exclusion, the fulfilment of qualification

requirements and, where applicable, of quality assurance standards and/or environmental management standards, as established in paragraphs 4 and 6 of this Article, where it:

1) has the possibility of obtaining these documents or the relevant information directly by accessing a national database in any Member State that is available free of charge or by using the Central Portal of Public Procurement;

2) already possesses these documents from earlier procurement procedures.

### **Article 51. Means of proof of the information contained in a European Single Procurement Document**

1. The contracting authority shall require the supporting documents referred to in this Article and in Article 48 of this Law as evidence for the absence of grounds for an economic operator's exclusion as referred to in Article 46 of this Law, for the fulfilment of the qualification requirements set out in accordance with Article 47 of this Law, of the quality assurance standards and/or environmental management standards pursuant to Article 48 of this Law. In verifying whether the economic operator will have at its disposal the resources of other economic entities on the capacities whereof it relies pursuant to Article 49 of this Law, the contracting authority shall accept from it any appropriate means of proof.

2. Where the contracting authority requires an economic operator to provide proof of the absence of the exclusion grounds referred to in Article 46(1) and (3) and Article 46(6)(2) of this Law, it shall accept as sufficient proof a document issued by a court, the state enterprise Centre of Registers or another competent authority. To prove the mentioned circumstances, the economic operator may submit a document issued by the state enterprise Centre of Registers in accordance with the procedure laid down by the Government of the Republic of Lithuania and attesting to the common data processed by competent authorities.

3. Where an economic operator is unable to submit the documents referred to in paragraph 2 of this Article, because the Member State or the country in question does not issue such documents, or where the documents issued therein do not cover all the cases specified in paragraphs 1 and 2 and point 2 of paragraph 6 of Article 46 of this Law, they may be replaced by:

1) a declaration on oath;

2) a solemn declaration made by the economic operator, where in the country there is no provision for declarations on oath. The solemn declaration must be made before a competent judicial or administrative authority, a notary or a competent professional or trade body in the Member State or country of origin of the economic operator or in the Member State or country where the economic operator is registered.

4. Where the contracting authority requires proof of an economic operator's suitability to pursue the activities necessary for the performance of the public contract, the economic operator shall submit certificates issued by administrators of professional or business registers, the authorities authorised by the State, as laid down in the Member State where it is registered, or a declaration on oath attesting to the economic operator's suitability to pursue the relevant activities. In the case of contracts for services, if economic operators are required to hold a particular authorisation or to be members of certain organisations in order to provide the relevant services in their country of origin, they shall submit such authorisations or proof of membership.

5. The contracting authority may require economic operators to submit the following documents (one or more) as evidence of their financial and economic standing:

- 1) relevant bank certificates;
- 2) appropriate evidence that the economic operator is covered by professional risk indemnity insurance, where such professional risk is covered by insurance;
- 3) a set of financial statements of the economic entity for the last financial year accompanied by an auditor's report (in the cases when the audit has been performed) or an extract thereof, where the law of the country in which the economic operator is registered requires the publication of a set of annual financial statements;
- 4) a statement of the overall turnover of the economic operator's undertaking for a maximum of the last three financial years available and, where the economic entity was registered or commenced activity in the area concerned later, since the date of registration or commencement of the activity of the economic entity in the area covered by the contract or, where appropriate, a statement of turnover relating to a specific activity in the area covered by the contract, as far as the information on these turnovers is available.

6. Where, for any valid reason, an economic operator is unable to provide the references requested by the contracting authority to prove its economic and financial standing, it shall have the right to submit any other document which the contracting authority considers appropriate.

7. The contracting authority may, having regard to the nature, quantity, importance and purpose of the purchased supplies, services or works, require economic operators to provide the following documents (one or more) confirming their technical and professional ability:

- 1) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution and outcome for the most important works. Where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works carried out more than five years before will be taken into account;
- 2) the lists of the principal deliveries effected or the main services provided over the past three years, with the sums, dates and recipients of the supplies or services, whether public or

private, involved. Where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;

3) an indication of the technicians and technical bodies involved in the procurement, whether or not subordinate to the economic operator, especially those responsible for quality control and, in the case of public works contracts, those technicians and technical bodies upon whom the contractor will call in order to carry out the work;

4) a description of the technical facilities and measures used for ensuring quality and study and research facilities;

5) an indication of the supply chain management and tracking systems that the economic operator can apply when performing the contract;

6) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out on the economic operator's production capacities or the technical ability of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate. The check shall be carried out by the contracting authority or on its behalf by a competent official body of the country in which the economic operator is registered;

7) the educational and professional qualifications of the service provider or contractor or those of their managerial staff, provided that they are not evaluated as a tender evaluation criterion;

8) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

9) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;

10) a statement of the tools, plant and technical equipment available to the service provider or contractor for carrying out the contract;

11) an indication of the proportion of the contract which the service provider intends possibly to subcontract;

12) samples, descriptions or photographs of products, the authenticity of which must be certified by the economic operator if the contracting authority so requests;

13) certificates issued by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications and standards.

8. The Public Procurement Office must compile a list of the enterprises and institutions of the Republic of Lithuania competent to issue the documents confirming the absence of an economic operator's exclusion grounds as referred to in paragraph 2 of this Article.

9. The contracting authority shall require primarily such types of certificates and forms of documentary evidence that are covered by the online repository of certificates established by the European Commission, namely, e-Certis.

10. Where the contracting authority has doubts about an economic operator's suitability it must apply to competent authorities in order to be provided with all the required information. Where the required information is related to the economic operator from a state other than that of the contracting authority, it must apply to the relevant competent authorities of that state.

11. The contracting authority shall, not later than within 5 working days from the receipt of an economic operator's request, issue a certificate of satisfactory execution and outcome for the most important works carried out by the economic operator over the past five years under the contracts awarded by the contracting authority.

#### **Article 52. Withholding of information or misrepresentation of information or failure to submit documents**

1. The contracting authority shall, not later than within 10 days, publish in the Central Portal of Public Procurement in accordance with the procedure specified by the Public Procurement Office the information on the economic operator who, in the course of the procurement procedure, withheld information or misrepresented information on compliance with the requirements of Articles 46 and 47 of this Law or on the economic operator who, due to the misrepresentation of information, has failed to submit the supporting documents required pursuant to Article 50 of this Law, when:

- 1) it has been excluded from the procurement procedure;
- 2) a court judgment has been issued.

2. The term referred to in Article 46(4) (4) of this Law and in paragraph 1 of this Article shall be calculated as follows:

- 1) if the economic operator has not lodged a claim or has not referred to the court contesting the decision of the contracting authority regarding its exclusion from the procurement procedure – from the expiry of the term specified in Article 102(1)(1) of this Law;

- 2) if the economic operator has referred to the court contesting the decision of the contracting authority to exclude it from the procurement procedure – from the date of entry into force of the court judgment dismissing the economic operator's claim.

3. Having published the information referred to in paragraph 1 of this Article in the Central Portal of Public Procurement, the contracting authority shall inform the economic operator thereof not later than within 3 working days.

### **Article 53. Certificates issued by certification bodies**

1. Certification bodies may, in compliance with the requirements set out in Articles 46 to 51 of this Law and in this Article, issue certificates to economic operators confirming that there are no grounds for the exclusion of the economic operator and that the economic operator has a particular qualification. These certificates shall be issued according to European certification standards.

2. Where an application for the issue of a certificate referred to in paragraph 1 is lodged by the economic operators belonging to a group of economic operators, they may rely on the capacities of other economic entities in the group. In this case, such economic entities must prove to a certification body that they will be able to draw on the required capacity throughout the validity period of the certificate and that these economic entities will comply with the requirements throughout this period.

3. A certification body shall issue a certificate to economic operators at their request, provided that they provide means of proof of the absence of grounds for an economic operator's exclusion and the fulfilment of qualification requirements pursuant to the provisions of Article 51 of this Law and, where applicable, of quality assurance standards and/or environmental management standards in accordance with the provisions of Article 48 of this Law. Certificates shall be issued to Lithuanian and foreign economic operators on equal terms. Certification bodies shall inform the economic operators of a decision taken on the issue of a certificate without delay.

4. For each purchase, an economic operator may provide a contracting authority with a certificate issued by a certification body specifying the conditions on the basis whereof the economic operator has been issued the certificate.

5. The contracting authority shall, in addition, require the economic operator who has submitted a certificate from a certification body and whose tender has been identified as the winning tender to submit certificates concerning social security contributions or paid taxes. The contracting authority shall not require documents and information in the presence of the circumstances specified in Article 50(7) of this Law.

6. The contracting authority shall not require the economic operators wishing to participate in procurement procedures to hold the certificates referred to in paragraph 1 of this Article. The contracting authority shall recognise the certificate issued by a certification body as



well as the equivalent certificates issued by the certification bodies or competent authorities of other Member States and may not doubt them without just cause. The economic operator may also provide other documents proving that its qualifications meet the requirements set by the contracting authority.

7. The bodies referred to in paragraph 1 of this Article shall communicate their addresses to the European Commission and the Member States.

#### **Article 54. Pre-qualification selection of candidates**

1. In a restricted procedure, a negotiated procedure with publication of a contract notice, a competitive dialogue and an innovation partnership, the contracting authority may limit the number of candidates which it will invite to submit tenders or take part in the dialogue. Such a pre-qualification selection shall be carried out solely from among candidates for which there are no exclusion grounds established by the contracting authority and which fulfil the qualification requirements set by the contracting authority and, where applicable, quality assurance standards and/or environmental management standards.

2. The contracting authority shall set in a contract notice or in an invitation to confirm interest objective and non-discriminatory pre-qualification selection requirements and rules as well as the minimum and, where appropriate, maximum number of candidates to be invited. In restricted procedures, the number of candidates to be invited may not be less than five, in negotiated procedures with publication of a contract notice, competitive dialogues and innovation partnerships – not less than three. The number of candidates to be invited must be sufficient to ensure competition.

3. The number of candidates to be invited to submit tenders or to participate in a dialogue must be at least equal to the minimum number of candidates to be invited as set by the contracting authority. If fewer candidates meet the requirements set forth in relation to exclusion grounds, qualification and, where applicable, quality assurance standards and/or environmental management standards than the specified minimum number of candidates to be invited, the contracting authority shall invite all candidates who fulfil these requirements to participate in the dialogue. During this procedure, the contracting authority may not invite to participate in procurement procedures other economic operators or candidates who have not submitted requests for participation in the contract and who do not fulfil the requirements set out in relation to exclusion grounds and qualifications.

#### **Article 55. Evaluation and comparison of tenders**

1. The contracting authority shall identify the most economically advantageous tender based on:

1) the price- or cost-quality ratio. The evaluation shall take into consideration the price or costs and the criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question and comprising, for instance:

a) technical merit, aesthetic and functional characteristics, accessibility, design for all consumers, social, environmental and innovative characteristics and fair trade conditions. In the case of works contracts, this criterion must be included in the assessment of the extent to which the remuneration offered by the economic operator to the employees performing the public contract exceeds the minimum wages established in the country of origin of the economic operator or the economic entity on the capacities whereof it relies;

b) organisation, qualification and experience of staff assigned to performing the public contract, where this has a significant impact on the quality of performance of the public contract;

c) after-sales service and technical assistance, delivery conditions (for example, delivery date, delivery process, delivery period or period of completion);

2) the costs calculated according to the life-cycle costing method described in Article 56 of this Law;

3) the price.

2. The value of the purchases for which the most economically advantageous tender is selected on the basis of price only may not exceed 70 % of the total value of the contracting authority's purchases for each calendar year, excluding the value of low value procurement and acquisitions made under Article 72(3) of this Law.

3. When evaluating tenders in terms of the price- or cost-quality ratio, the contracting authority may indicate in advance in the procurement documents a fixed price or costs. In this case, economic operators shall compete and the most economically advantageous tender shall be selected on quality criteria only.

4. Tender evaluation criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in the specific process of production, supply, provision, performance or trading or a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

5. Tender evaluation criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority and must ensure the possibility of effective competition amongst economic operators. The tender evaluation criteria must be accompanied by

specifications that allow the information provided in tenders by the economic operators to be effectively verified in order to assess how well the tenders meet the tender evaluation criteria. In case of doubt, the contracting authority must verify the accuracy of the information and proof provided by the economic operator.

6. The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone. The relative weighting of the criteria shall be expressed by a specific amount or by providing for a range with an appropriate maximum spread. Where weighting is not possible due to the characteristics of the subject-matter of the contract, the contracting authority must indicate the criteria as specified in the procurement documents in decreasing order of importance.

7. Where the contracting authority evaluates tenders by the price- or cost-quality ratio and the tender selected by it for evaluation is not quantifiable in terms of its technical characteristics, it must first verify and assess only the technical data of the tenders and, after communicating the results of such verification and assessment to the tenderers, proceed with the overall evaluation of the tenders by the price of each tender.

8. The contracting authority shall, when intending to decide on the successful tenderer, evaluate without delay the tenders submitted by tenderers and produce a ranking of tenders (this does not apply in cases where only one economic operator is invited to tender or a tender is submitted by only one economic operator). The tenders shall be ranked in decreasing order of economic advantage. In the cases when the economic advantage of tenders of several economic operators is the same, the economic operator with the earliest bid shall be ranked first in the ranking of tenders.

9. The contracting authority may, acting in accordance with Article 45(3) of this Law, request tenderers to adjust, supplement or clarify their tenders, however, it may not request, propose or allow changing the subject-matter of a tender submitted in an open or restricted procedure or of a final tender submitted in a competitive dialogue, a negotiated procedure with publication of a contract notice, a negotiated procedure without publication of a contract notice or an innovation partnership, namely, changing the price or making any other modifications which would render a non-conforming tender conforming to the requirements set out in the procurement documents. In the event of establishing errors in the calculation of the price or costs during evaluation of tenders, the contracting authority must request the tenderers to correct, within the time limit set by it, the arithmetic errors identified in a tender without changing the price or costs quoted when accessing the tenders. When correcting the arithmetic errors

identified in the tender, the tenderer may correct the price or cost components, but may not leave out the price or cost components or add new components to the price or costs.

10. The contracting authority may refrain from evaluating the tender as submitted by an economic operator in its entirety where, after verifying a part thereof, it determines that the tender must be rejected in accordance with the requirements of this Law. The provisions of this paragraph shall not apply where the contracting authority intends to use the clause of a negotiated procedure with publication of a contract notice, as laid down in Article 63(1)(2) of this Law, which allows not to repeat publication of a contract notice.

#### **Article 56. Life-cycle costing**

1. Life-cycle costing shall cover parts or all of the following costs over the life cycle of a product, service or works:

1) the costs borne by contracting authorities or other users, such as:

- a) costs relating to acquisition, including the price;
- b) costs of use, such as consumption of energy or other resources;
- c) maintenance costs;
- d) end of life costs, such as collection and recycling costs;

2) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. Such costs may be linked to the reduction of emissions of greenhouse gases and of other pollutant emissions and climate change mitigation.

2. Where the contracting authority intends to assess costs using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided in a tender by an economic operator and the method which the contracting authority will use to determine the life-cycle costs on the basis of the data provided by the economic operator.

3. The method selected by the contracting authority for the assessment of costs imputed to environmental externalities must fulfil all of the following conditions:

1) it must be based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, this method may not unduly favour or disadvantage certain economic operators;

2) it is accessible to all interested parties;

3) the data requested by the contracting authority must be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the Agreement on Government Procurement (GPA) of the World Trade Organization or other international agreements by which the European Union is bound.

4. Whenever a common method for the calculation of life-cycle costs, including the methods approved by the national legal acts implementing Directive 2009/33/EC, has been made mandatory by a legislative act of the Union, that common method must be applied for the assessment of life-cycle costs.

#### **Article 57. Abnormally low tenders**

1. The contracting authority shall require a tenderer to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the supplies, services, works or constituent elements thereof. The price or costs of the supplies, services or works proposed in the tender must in all cases be regarded as abnormally low if they are by 30% or more lower than the arithmetical average of the prices or costs proposed by all economic operators whose tenders have not been rejected on other grounds and whose price does not exceed the amount of funds allocated for the purchase as determined and fixed in the procurement documents drawn up by the contracting authority before commencing the procurement procedure.

2. In order to obtain a justification of the abnormally low price or costs, the contracting authority shall request in writing the tenderer proposing such price or costs to provide details of the tender which it considers relevant, including price or costs elements and calculations. In evaluating the justification of the price or costs, the contracting authority shall take into consideration:

- 1) the economics of the manufacturing process, of the services provided or of the construction method;
- 2) the technical solutions chosen or any exceptionally favourable conditions available for the supply of the products or services or for the execution of the work;
- 3) the originality of the supplies, services or works proposed by the tenderer;
- 4) compliance with provisions of Article 17(2)(2) and Article 88 of this Law;
- 5) the possibility of the tenderer obtaining State aid.

3. The contracting authority must reject the tender proposing an abnormally low price or costs in any of the following cases:

- 1) the tender fails to supply evidence which would satisfactorily account for the low level of price or costs proposed;
- 2) the tender is not in conformity with the environmental, social and labour law obligations referred to in Article 17(2)(2) of this Law.

4. Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone where the latter

is unable to prove, within a sufficient time frame fixed by the contracting authority, that the aid in question has been granted lawfully. Upon rejecting the tender in those circumstances, the contracting authority must inform the European Commission thereof. State aid shall be any measure conforming to the criteria set out in Article 107(1) of the Treaty on the Functioning of the European Union.

#### **Article 58. Informing of the results of a procurement procedure**

1. The contracting authority shall, not later than within 5 working days, inform interested candidates and interested tenderers in writing, except for the cases when the contract is awarded orally, of a decision to identify the winning tender reached concerning the award of the contract, the conclusion of a framework agreement or admittance to a dynamic purchasing system, provide a summary of the relevant information referred to in paragraph 2 of this Article which has not been provided during the procurement procedure and indicate the established ranking of tenders, the winning tender and the precise period of deferment. The contracting authority must also indicate the grounds for any decision not to award the contract or not to conclude the framework agreement or to recommence the procurement procedure or implement the dynamic purchasing system. The requirement contained in this paragraph may be waived when, in the case of a simplified procurement or a procurement of social and other special services listed in Annex 2 to this Law, a contract with an estimated value not exceeding EUR 10 000 (ten thousand euros) (net of value-added tax) is awarded on the basis of a framework agreement.

2. The contracting authority, having received a written request from the candidate or tenderer concerned, shall submit the following detailed information not later than within 15 days from the receipt thereof:

- 1) to any candidate – the reason for rejection of its request for participation;
- 2) to any tenderer that has made an admissible tender:
  - a) the characteristics of the winning tender and the relative advantages of this tender which have enabled it to be recognised as the best, as well as the name of the successful tenderer or the parties to the framework agreement;
  - b) information on the conduct and progress of negotiations and dialogue with tenderers;
- 3) to any unsuccessful tenderer – the reasons for the rejection of its tender, including, where applicable, information on application of provisions of Article 55(10) of this Law, and for the cases referred to in Article 37(6) and (7) of this Law, also the reasons for the decision of non-equivalence or the decision that the supplies, services or works do not meet the performance or functional requirements.

3. The contracting authority may decide to withhold information in the cases referred to in paragraphs 1 and 2 of this Article, where the release of such information would violate the legal acts regulating information and data protection or would be contrary to the public interest, would prejudice the legitimate commercial interests of a particular economic operator or prejudice fair competition between economic operators.

4. Where the contracting authority requests in the procurement documents to provide also samples of the products, it must, after evaluating tenders, establishing the ranking of tenders and taking a decision on the winning tender, allow all the tenderers to examine the samples presented before the award of the contract or conclusion of the framework agreement.

5. Access to all procurement-related information shall be provided only to members of the Commission, the observers participating in meetings of the Commission and experts invited by the contracting authority, representatives of the Public Procurement Office, the head of the contracting authority, the persons authorised by him, other persons and institutions entitled under the laws of the Republic of Lithuania regulating their activities, also the public legal persons administering the financial assistance of the European Union or individual states and authorised by a resolution of the Government of the Republic of Lithuania. Other persons shall only be provided with access to the information related to purchases that is permitted by this Law.

## **CHAPTER III**

### **TYPES OF AWARD PROCEDURES**

#### **SECTION ONE**

#### **OPEN PROCEDURE**

#### **Article 59. Conditions and conduct of an open procedure**

1. Contracting authorities may apply open procedures in all cases.
2. In open procedures, any interested economic operator may submit a tender. The number of tenderers in the open procedure shall be unlimited.
3. The contracting authority shall conduct an open procedure in the following phases:
  - 1) publish a contract notice, inviting economic operators to submit tenders in accordance with the procedure laid down in Articles 31 and 34 of this Law;
  - 2) verify whether there are any grounds for the exclusion of tenderers as laid down in the procurement documents, whether the tenderers fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) examine, evaluate and compare the tenders submitted by the tenderers with regard to the conditions contained in the procurement documents.

4. In open procedures, the contracting authority may disregard the order of the procurement procedures set out in paragraph 3 of this Article and, as a first step, evaluate the tenders submitted by the tenderers and, after considering the tenders, verify whether there are any grounds for the exclusion of the tenderer that has submitted the most economically advantageous tender, whether the qualification of that tenderer is in conformity with the set requirements and, where applicable, whether the economic operator fulfils quality assurance standards and/or environmental management standards. Where the contracting authority makes use of this possibility, it must ensure that the tenderer's verification is carried out in an impartial and transparent manner and a public contract is awarded to or a framework agreement is concluded only with the economic operator meeting the specified requirements.

5. In open procedures, negotiations between the contracting authority and economic operators shall be prohibited.

#### **Article 60. Time limits for the submission of tenders in an open procedure**

1. The contracting authority shall fix a time limit for the submission of tenders in compliance with provisions of Article 40 of this Law. The time limit for the submission of tenders may not be shorter than:

1) for a procurement governed by international rules – 35 days from the dispatch of a notice from the Public Procurement Office;

2) for a simplified procurement – 12 days from the publication of a notice in the Central Portal of Public Procurement.

2. Where contracting authorities have published a prior information notice as laid down in Article 30(4) of this Law, the time limit laid down in point 1 of paragraph 1 of this Article may be shortened to 15 days, while the time limit laid down in point 2 of paragraph 1 of this Article – to 7 days.

3. In cases of urgency, where it is not possible to comply with the time limits laid down in paragraph 1 of this Article, the contracting authority shall have the right to have recourse to the accelerated form of an open tendering procedure indicating beforehand, in the contract notice, the reasons justifying such a choice. In this case, the time limit for submission of tenders shall be not shorter than:

1) for a procurement governed by international rules – 15 days from the dispatch of a contract notice from the Public Procurement Office;



2) for a simplified procurement – 7 days from the publication of a notice in the Central Portal of Public Procurement.

4. Where the contracting authority indicates in a published contract notice that tenders must be submitted by electronic means in accordance with the requirements stipulated in Article 22(1), (7) and (11) of this Law, the time limit for receipt of tenders set out in point 1 of paragraph 1 of this Article may be reduced by 5 days, while the time limit set out in point 2 of paragraph 1 of this Article – by 3 days.

5. If the contracting authority is unable to publish the procurement documents or part thereof in the Central Portal of Public Procurement for the reasons specified in Article 22(5) or Article 20(5) of this Law, it shall extend the time limit for the submission of tenders for at least 5 days, except in the case of urgency referred to in paragraph 3 of this Article.

## **SECTION TWO**

### **RESTRICTED PROCEDURE**

#### **Article 61. Conditions and conduct of a restricted procedure**

1. A restricted procedure may be undertaken by the contracting authority in all cases, taking into account the characteristics of the specific contract.

2. In restricted procedures, any interested economic operator may submit a request for participation, only the candidates invited by the contracting authority may submit tenders. The contracting authority may limit the number of the candidates to be invited to submit tenders in accordance with Article 54 of this Law.

3. The contracting authority shall conduct a restricted procedure in the following stages:

1) publish a contract notice, inviting economic operators to submit requests for participation in accordance with the procedure laid down in Articles 31 and 34 of this Law;

2) verify whether there are any grounds for the exclusion of candidates as laid down in the procurement documents, whether the candidates fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) carry out the pre-qualification selection of candidates according to the established procedures and criteria, if such selection is specified in the procurement documents;

4) simultaneously invite the selected candidates in writing to submit tenders. The invitation shall contain the information indicated in point 1 of Annex 3 to this Law;

5) examine, evaluate and compare the tenders submitted by the invited tenderers with regard to the conditions contained in the procurement documents.

4. The sub-central contracting authority may conduct a restricted procedure in the following stages:

1) publish a contract notice, inviting economic operators to express their interest in accordance with the procedure laid down in Article 30(3) and Article 34 of this Law;

2) simultaneously send written invitations to confirm interest to all economic operators who have expressed interest and invite them to submit requests for participation. An invitation to confirm interest shall contain the information indicated in point 2 of Annex 3 to this Law;

3) continue the procedure in the stages specified in points 2-5 of paragraph 3 of this Article.

5. In restricted procedures, negotiations between the contracting authority and economic operators shall be prohibited.

**Article 62. Time limits for the submission of requests for participation and tenders in a restricted procedure**

1. The contracting authority shall fix time limits for the submission of requests for participation and tenders in compliance with provisions of Article 40 of this Law.

2. The time limit for the submission of requests for participation in procurement procedures may not be shorter than:

1) for a procurement governed by international rules – 30 days from the dispatch of a notice from the Public Procurement Office or from the dispatch of an invitation to confirm interest to economic operators;

2) for a simplified procurement – 10 days from the publication of a notice in the Central Portal of Public Procurement or from the dispatch of an invitation to confirm interest to economic operators.

3. The time limit for the submission of tenders from the dispatch of invitations to submit tenders to economic operators may not be shorter than:

1) 30 days for a procurement governed by international rules;

2) 10 days for a simplified procurement.

4. If the contracting authority has published a prior information notice as provided for in Article 30(4) of this Law, the time limit for the submission of tenders specified in point 1 of paragraph 3 of this Article may be shortened to 10 days, the time limit specified in point 2 of paragraph 3 of this Article – to 5 days.

5. If the contracting authority indicates in a contract notice that tenders must be transmitted by electronic means in accordance with the requirements set out in Article 22(1), (7) and (11) of this Law, the time limit for the submission of tenders referred to in point 1 of

paragraph 3 of this Article may be shortened by 5 days, the time limit referred to in point 2 of paragraph 3 of this Article – by 3 days.

6. The sub-central contracting authority and selected candidates may agree on a time limit for the submission of tenders other than that set out in paragraph 3 of this Article, provided that all selected candidates will have the same time to prepare and submit their tenders. The sub-central contracting authority shall ensure that the selected candidates are not disclosed when agreeing on the time limit for the submission of tenders. If the sub-central contracting authority and the selected candidates do not agree on the time limit for the submission of tenders, this time limit for the dispatch of invitations to submit tenders to economic operators may not be shorter than:

- 1) 10 days for a procurement governed by international rules;
- 2) 7 days for a simplified procurement.

7. In cases of urgency, where it is not possible to comply with the time limits laid down in this Article when conducting procurement procedures, the contracting authority shall have the right to have recourse to the accelerated form of a restricted procedure indicating beforehand, in a contract notice, the reasons justifying such a choice. In such cases:

1) the time limit for the submission of requests for participation may not be shorter than:  
a) for a procurement governed by international rules – 15 days from the dispatch of a contract notice from the Public Procurement Office or from the dispatch of an invitation to confirm interest to economic operators;

b) for a simplified procurement – 7 days from the publication of a notice in the Central Portal of Public Procurement or from the dispatch of an invitation to confirm interest to economic operators;

2) the time limit for the submission of tenders from the dispatch of invitations to submit tenders to economic operators may not be shorter than:

- a) 10 days for a procurement governed by international rules;
- b) 7 days for a simplified procurement.

8. If the contracting authority is unable to publish the procurement documents or part thereof in the Central Portal of Public Procurement for the reasons specified in Article 20(5) or Article 22(5) of this Law, it shall extend the time limit for the submission of tenders by at least 5 days, except in the case of urgency referred to in paragraph 7 of this Article.

### **SECTION THREE**

#### **NEGOTIATED PROCEDURE WITH PUBLICATION OF A CONTRACT NOTICE**

**Article 63. Conditions of a negotiated procedure with publication of a contract notice**

1. The contracting authority may apply to a procurement governed by international rules a negotiated procedure with publication of a contract notice in the following cases:

1) with regard to supplies, services or works fulfilling at least one of the following criteria:

a) the needs of the contracting authority cannot be met without special adaptation of readily available solutions;

b) the supplies, services or works include innovative or design solutions;

c) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal or financial make-up or because of the risks attaching to the supplies, services or works;

d) the technical specifications of the subject-matter of the contract cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common ICT technical specification or technical reference within the meaning of Article 2(10), (13), (30) and (35) of this Law;

2) where no suitable tenders have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered. The contracting authority may choose not to publish a contract notice when inviting to negotiate all tenderers who have submitted tenders in response to the open procedure or the restricted procedure and who meet the requirements, as set by the contracting authority, concerning exclusion grounds, qualifications, if applicable, a quality assurance system and/or environmental management standards as well as formal requirements for a procurement procedure.

2. In all cases, the contracting authority may choose a negotiated procedure with publication of a contract notice when conducting a simplified procurement or awarding a contract for the social and other special services listed in Annex 2 to this Law. The contracting authority may choose not to publish a contract notice where the negotiated procedure with publication of a contract notice is conducted under the conditions laid down in point 2 of paragraph 1 of this Article.

**Article 64. Conduct of a negotiated procedure with publication of a contract notice**

1. In a negotiated procedure with publication of a contract notice, any interested economic operator may submit a request for participation, only the candidates invited by the

contracting authority may submit initial tenders. The contracting authority may limit the number of the candidates to be invited to submit initial tenders in accordance with Article 54 of this Law.

2. In a negotiated procedure with publication of a contract notice, the contracting authority shall identify in the procurement documents the subject-matter of the procurement, tender evaluation criteria and the minimum requirements to be met by all tenders. The information provided must be sufficiently precise to allow economic operators to identify the nature and scope of the procurement and decide whether to submit a request for participation in the procedure.

3. The contracting authority shall conduct a negotiated procedure with publication of a contract notice in the following stages, except for the case referred to in paragraph 4 of this Article:

1) publish a contract notice inviting economic operators to submit requests for participation in accordance with the procedure laid down in Articles 31 and 34 of this Law;

2) verify whether there are any grounds for the exclusion of candidates as laid down in the procurement documents, whether the candidates fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) carry out the pre-qualification selection of candidates according to the established procedures and criteria, if such selection is specified in the procurement documents;

4) simultaneously invite the selected candidates in writing to submit initial tenders. The invitation shall contain the information indicated in point 1 of Annex 3 to this Law;

5) negotiate, in accordance with the procedure laid down in Article 66 of this Law, with the tenderers whose initial and subsequent tenders are in conformity with the minimum requirements specified in the procurement documents and ask them to submit final tenders;

6) evaluate the final tenders and determine the winner.

4. The sub-central contracting authority may conduct a negotiated procedure with publication of a contract notice in the following stages:

1) publish a contract notice inviting economic operators to express their interest in accordance with the procedure laid down in Article 30(3) and Article 34 of this Law;

2) simultaneously send written invitations to confirm interest to all economic operators who have expressed interest and invite them to submit requests for participation. An invitation to confirm interest shall contain the information indicated in point 2 of Annex 3 to this Law;

3) continue the procedure in the stages specified in points 2-5 of paragraph 3 of this Article.

5. When evaluating the tenders containing the final prices or costs proposed by economic operators as well as the final data assessed by the price- or cost-quality ratio, it shall be possible to derogate from the requirements of Article 55(7) of this Law.

**Article 65. Time limits for the submission of requests for participation and initial tenders in a negotiated procedure with publication of a contract notice**

1. The contracting authority shall fix time limits for the submission of requests for participation and tenders in compliance with provisions of Article 40 of this Law.

2. The time limit for the submission of requests for participation in procurement procedures may not be shorter than:

1) for a procurement governed by international rules – 30 days from the dispatch of a notice from the Public Procurement Office or from the dispatch of an invitation to confirm interest to economic operators;

2) for a simplified procurement – 10 days from the publication of a notice in the Central Portal of Public Procurement or from the dispatch of an invitation to confirm interest to economic operators.

3. The time limit for the submission of initial tenders from the dispatch of invitations to submit tenders to economic operators may not be shorter than:

1) 30 days for a procurement governed by international rules;

2) 10 days for a simplified procurement.

4. In determining time limits for the submission of requests for participation and initial tenders, the provisions of Article 62(4) to (8) of this Law shall apply.

**Article 66. Requirements for a negotiated procedure**

1. During the negotiations, the contracting authority must comply with the following requirements:

1) not disclose to third parties any information received from an economic operator without the consent of the economic operator indicating what information is allowed to be disclosed;

2) apply uniform requirements, create equal opportunities and provide identical information to all economic operators; the contracting authority may not provide information in a discriminatory manner;

3) inform all economic operators, whose tenders have not been eliminated pursuant to paragraph 4 of this Article, in writing of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements. The minimum

requirements set by the contracting authority shall not be subject to change. Following changes to the procurement documents, the contracting authority shall provide sufficient time for the economic operators to modify submitted tenders;

4) conduct the negotiations in accordance with the requirements set out in Article 22 of this Law. Where minutes of the negotiations are drawn up, they shall be signed by the chair of the Commission and by the authorised representative of the tenderer participating in the negotiations.

2. The contracting authority shall negotiate with each of economic operators, except in the case provided for in paragraph 3 of this Article, the initial and subsequent tenders submitted by them and terms of the contract in order to achieve the best result in accordance with the requirements of the procurement documents. Negotiated procedures with publication of a contract notice shall not allow negotiations over the minimum requirements set out in the procurement documents, tender evaluation criteria and procedures, the outcome of the negotiations as formalised in the form of minutes or in the final tenders submitted following the negotiations.

3. The contracting authority may choose not to negotiate and award the contract to the economic operator who has submitted an initial tender, also consider the economic operator's initial tender as a final one in the event of its failure to appear for the negotiations and/or failure to submit a final tender, where the contracting authority has indicated such options in a contract notice or in an invitation to confirm interest.

4. A negotiated procedure with publication of a contract notice may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the criteria stated in the procurement documents. In the procurement documents, the contracting authority must indicate whether it intends to conduct the negotiations in stages. Where the negotiations are conducted in stages, the tenderers not invited to the next stage shall, within 3 working days from the taking of the relevant decision, be given a written notice of the tenders which have been chosen and the reasons for such choice. In the final stage of the negotiations, the number of the remaining tenderers must make for competition in so far as there are enough suitable tenders.

5. Where the contracting authority intends to conclude the negotiations, it shall set a deadline for tenderers to submit final tenders and inform all the remaining tenderers thereof. Having verified whether the final tenders are in conformity with the minimum requirements set in the procurement documents and comply with the provisions of Article 45(1) of this Law, the contracting authority shall identify the winning tender on the basis of the tender evaluation procedure and criteria specified in the procurement documents.

## **SECTION FOUR COMPETITIVE DIALOGUE**

### **Article 67. Conditions of the competitive dialogue**

The contracting authority may award a contract by way of competitive dialogue in the cases specified in Article 63(1) of this Law.

### **Article 68. Conduct of the competitive dialogue**

1. In competitive dialogues, any interested economic operator may submit a request for participation, only the economic operators invited by the contracting authority may participate in the dialogue. The contracting authority may limit the number of candidates to be invited to participate in the dialogue in accordance with provisions of Article 54 of this Law.

2. The contracting authority shall conduct the competitive dialogue in the following stages:

1) publish a contract notice in accordance with the procedure laid down in Articles 31 and 34 of this Law and invite economic operators to submit requests for participation. The needs and requirements of the contracting authority, tender evaluation criteria and an indicative timeframe shall be set out in the contract notice and/or in a descriptive document;

2) verify whether there are any grounds for the exclusion of candidates as laid down in the procurement documents, whether the candidates fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) carry out the pre-qualification selection of candidates according to the established procedures and criteria, if such selection is specified in the procurement documents;

4) simultaneously invite the selected candidates in writing to initiate a dialogue and to propose solutions in order to identify and define the means best suited to satisfying the needs of the contracting authority. The invitation shall contain the information indicated in point 1 of Annex 3 to this Law;

5) conduct the dialogue with the tenderers in accordance with the procedure established in Article 70 of this Law and ask them to submit final tenders;

6) evaluate the final tenders and determine the winner.

3. In competitive dialogues, tenders are evaluated by the price- or cost-quality ratio.

4. The contracting authority may specify prizes and payments to participants in the competitive dialogue.



**Article 69. Time limits for the submission of requests for participation in the competitive dialogue**

1. The contracting authority shall fix time limits for the submission of requests for participation in the competitive dialogue according to provisions of Article 40 of this Law.

2. The time limit for the submission of requests for participation in procurement procedures may not be shorter than:

1) for a procurement governed by international rules – 30 days from the dispatch of a notice from the Public Procurement Office;

2) for a simplified procurement – 10 days from the publication of a notice in the Central Portal of Public Procurement.

**Article 70. Requirements for the dialogue**

1. During the dialogue, the contracting authority must:

1) apply uniform requirements, create equal opportunities and provide identical information to all economic operators;

2) not disclose to third parties any information received from an economic operator without the consent of the economic operator indicating what information is allowed to be disclosed;

3) conduct the dialogue in accordance with the requirements set out in Article 22 of this Law. Where minutes of the dialogue are drawn up, they shall be signed by the chair of the Commission and by the authorised representative of the tenderer consulted.

2. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be considered during the competitive dialogue stage by applying the criteria laid down in a contract notice or in a descriptive document. In the procurement documents, the contracting authority must indicate whether it intends to conduct the dialogue in stages. Where the dialogue is conducted in stages, the tenderers not invited to the next stage shall, within 3 working days from the taking of the relevant decision, be given a written notice of the solutions which have been chosen and the reasons for such choice. In the final stage, the number of the remaining tenderers must make for competition in so far as there are enough suitable solutions.

3. The contracting authority shall continue such dialogue until it can identify the solution or solutions capable of meeting its needs.

4. After completing the dialogue, the contracting authority shall notify the remaining tenderers and ask each of them to submit final tenders. This invitation shall specify the deadline

for the submission of the final tenders, the address and the language/languages in which they must be drawn up. The final tenders shall be drawn up on the basis of the solutions presented and specified during the dialogue. These tenders must contain all the elements required and necessary for the performance of the project.

5. The contracting authority may request the tenderers to clarify, adjust and specify tenders, however, such clarification, adjustment, specification or additional information may not involve changes to the essential aspects of the tender or the call for the participation in the dialogue, distort or restrict competition and have a discriminatory effect with respect to economic operators.

6. The contracting authority shall assess submitted final tenders on the basis of the criteria specified in a contract notice or in a descriptive document. The contracting authority may carry out negotiations with the tenderer identified as having submitted the tender presenting the best price- or cost-quality ratio to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the call for the competitive dialogue, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

## **SECTION FIVE**

### **NEGOTIATED PROCEDURE WITHOUT PUBLICATION OF A CONTRACT NOTICE**

#### **Article 71. Conditions of a negotiated procedure without publication of a contract notice**

1. A negotiated procedure without publication of a contract notice may be used for public supply contracts, public service contracts or public works contracts if at least one of the following conditions is fulfilled:

1) when no request for participation or tender or no suitable request for participation or suitable tender has been submitted in response to an open procedure or restricted procedure, whereas the initial conditions of contract are not substantially altered and provided that the European Commission is upon its request given a report about the procurement conducted or the contract awarded on this ground. If the contracting authority intends, on this ground, to apply the negotiated procedure without publication of a contract notice, it must inform all candidates and tenderers in the open procedure or restricted procedure that they have submitted unsuitable requests for participation or unsuitable tenders;

2) where the supplies, services or works can be supplied only by a particular economic operator for any of the following reasons:

a) the purpose of the purchase is to create or acquire a unique work of art or artistic performance;

b) competition is absent for technical reasons;

c) protection of exclusive rights, including intellectual property rights;

3) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or negotiated procedures with publication of a contract notice as stipulated in this Law cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

2. Sub-points b and c of point 2 of paragraph 1 of this Article may be applied only where there is no reasonable alternative or substitute and the absence of competition is not the result of the contracting authority artificially tightening the procurement requirements.

3. The negotiated procedure without publication of a contract notice may be used for public supply contracts also in the presence of at least one of the following conditions:

1) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this point shall not include quantity production to establish commercial viability or to recover research and development costs;

2) where the contracting authority has procured supplies from an economic operator under the original public contract and established the expediency of additional deliveries by the economic operator which are intended either as a partial replacement of existing supplies or installations or as the extension of existing supplies or installations where a change of economic operator would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years following the award of the original contract;

3) for supplies quoted and purchased on a commodity market;

4) for purchase on particularly advantageous terms, from either an economic operator which is being liquidated, restructured, is involved in bankruptcy proceedings, is bankrupt or has entered into an arrangement with creditors, or by following a similar procedure under the legal acts of its country of registration.

4. The negotiated procedure without publication of a contract notice may be used for public service contracts, where the contract concerned follows a design contest organised in

accordance with this Law and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest. In the latter case, all winners shall be invited to participate in the negotiations.

5. The negotiated procedure without publication of a contract notice may be used for new works or services consisting in the repetition of similar services or works entrusted to the same economic operator to which an original contract has been awarded, provided that all of the following conditions are met:

1) all new purchases are in conformity with a basic project for which the original contract has been awarded, and the basic project indicates the extent of possible additional services or works and the conditions under which they will be awarded;

2) as soon as the first project is put up for tender in accordance with the procedure laid down in this Law, the possibility of additional purchases shall be disclosed in a contract notice and the cost of such additional purchases shall be taken into consideration;

3) new purchases may be carried out only during the three years following the conclusion of the original contract.

6. In simplified procurement cases, the negotiated procedure without publication of a contract notice may also be used:

1) where supplies and services are purchased with the funds allocated for representation purposes;

2) where the subject-matter of the contract is museum exhibits, archive and library documents, subscribed papers and magazines;

3) where supplies are purchased from the state reserve;

4) where the subject-matter of the contract is licences to use library documents or databases;

5) where contracts are awarded for services of the training and conferences of judges, prosecutors, servicemen in professional military service, the contracting authority's civil servants and/or staff employed under an employment contract;

6) non-material (intellectual) services provided by expert commissions, committees, council members, as well as by the experts involved by them, the experts required for the control activities of state institutions;

7) expert assessment services in relation to the activities of higher education and research institutions, research, artistic activities, studies, as well as applications of the higher education and research institutions required for the issue of an authorisation to carry out studies and the activities related to studies;

8) the products involved are manufactured purely for the purpose of research, experimentation, study or development and labelled as the products intended exclusively for scientific purposes;

9) financial, credit rating and financial information services required for the performance of the functions of the state treasury;

10) passenger transportation, accommodation and other business trip-related services when purchased from a direct service provider.

#### **Article 72. Conduct of a negotiated procedure without publication of a contract notice**

1. A procurement governed by international rules by way of negotiated procedure without publication of a contract notice may only be commenced with the consent of the Public Procurement Office regarding such choice of the procedure. The consent of the Public Procurement Office shall be required where the contracting authority intends to publish a voluntary ex-ante transparency notice and discloses this in the procurement documents or where the procurement is conducted in accordance with points 1 and 3 of Article 71(1) or Article 71(4) of this Law.

2. The contracting authority shall carry out a negotiated procedure without publication of a contract notice in the following stages:

1) invite the selected economic operators in writing to submit tenders;

2) verify whether there are any grounds for the exclusion of economic operators as laid down in the procurement documents, whether the economic operators fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) conduct the negotiations with the tenderers in accordance with the procedure established in Article 66 of this Law and ask them to submit final tenders. The contracting authority shall not be required to ask to submit a final tender in the case of one economic operator participating in the negotiated procedure without publication of a prior notice;

4) evaluate the final tenders and determine the winner.

3. In the cases of a simplified procurement and a procurement governed by international rules for the social and other special services listed in Annex 2 to this Law, the contracting authority may, in a negotiated procedure without publication of a contract notice conducted under the conditions laid down in points 2 and 3 of Article 71(1), points 2, 3 and 4 of Article 71(3), Article 71(5) and (6) of this Law, award a contract in derogation from the requirements

applicable to the stages referred to in paragraph 2 of this Article and to other procurement procedures.

## **SECTION SIX INNOVATION PARTNERSHIP**

### **Article 73. Conditions and conduct of an innovation partnership**

1. An innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting innovative product, provided that it corresponds to the performance levels and maximum costs agreed between the contracting authority and the participants.

2. In innovation partnerships, any interested economic operator may submit a request for participation, only the candidates invited by the contracting authority may participate in the innovation partnership procedure. The contracting authority may limit the number of candidates to be invited to participate in the innovation partnership procedure in accordance with provisions of Article 54 of this Law.

3. In innovation partnerships, the following information shall be provided by the contracting authority in the procurement documents:

1) the need for an innovative product that cannot be met by purchasing products, services or works already available on the market;

2) a description of the research and experimental development service to be purchased for the development of the innovative product;

3) the minimum requirements to be met by all tenders;

4) the planned phases of the innovation partnership and the duration thereof.

4. The information provided in the procurement documents must be sufficiently precise to allow economic operators to identify the nature and scope of the required solution and decide whether it is appropriate for them to participate in the procedure.

5. The contracting authority shall structure the innovation partnership in the following phases:

1) publish a contract notice inviting economic operators to submit requests for participation in accordance with the procedure laid down in Articles 31 and 34 of this Law;

2) verify whether there are any grounds for the exclusion of candidates as laid down in the procurement documents, whether the candidates fulfil the set qualification requirements and, where applicable, the required quality assurance standards and/or environmental management standards;

3) carry out the pre-qualification selection of candidates according to the established procedures and criteria, if such selection is specified in the procurement documents;

4) simultaneously invite the selected candidates in writing to submit initial tenders, which may include the following descriptions of research and innovation project phases: the concept or prototype of an innovative product, a trial batch of the developed innovative product that may be commercialised. The invitation shall contain the information indicated in point 1 of Annex 3 to this Law;

5) negotiate with the participants whose initial and subsequent tenders meet the minimum requirements set out in the procurement documents in accordance with the procedure established in Article 75 of this Law;

6) evaluate the final tenders and identify one or more winning tenders in accordance with the tender evaluation procedure and criteria set out in the procurement documents;

7) enter into innovation partnership contracts with one or more successful economic operators (partners). These public contracts shall, following the sequence of steps of the research and innovation process, indicate the successive phases of the performance of the contract: the creation and validation of the concept of an innovative product, the creation of a prototype of the innovative product, the creation of a trial batch of the innovative product, the purchase of the developed innovative product. After each of these steps, except for the phase following the creation of a trial batch of an innovative product, negotiations may take place. The contracting authority shall, on the basis of the evaluation criteria for each of the phases as specified in the contracts, decide on the number of partners to carry out the next phase of the innovation partnership;

8) in the case of an innovation partnership with several partners and following the development of a trial batch of an innovative product, a decision shall be made in accordance with the procedure set out in the contract regarding the partner from which the innovative product is to be purchased.

6. In determining the terms of purchase in an innovation partnership, candidates must be subject to a qualification requirement concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions. In the procurement documents, the arrangements applicable to intellectual property rights shall be defined.

7. In innovation partnerships, tenders shall be evaluated by the price- or cost-quality ratio.

8. In the successive phases of an innovation partnership procedure, evaluation criteria for each phase must be determined and the maximum possible remuneration of the partners' performance after each phase of the innovation partnership procedure. The contracting authority

may indicate in the procurement documents that, upon evaluating the attainment of intermediate targets, it may terminate the innovation partnership after each phase or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts.

9. In the case of an innovation partnership with several partners, the contracting authority may not reveal to the other partners any information communicated by a partner in the framework of the partnership or solutions proposed without that partner's agreement with reference to specific information.

10. The contracting authority must ensure that the structure of an innovation partnership and, in particular, the duration and value of the different phases thereof reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of an innovative product should not be disproportionate in relation to the investment required for the development of the product.

#### **Article 74. Time limits for submission of requests for participation and tenders in an innovation partnership**

1. The contracting authority shall fix time limits for the submission of requests for participation and tenders in compliance with provisions of Article 40 of this Law.

2. The time limit for the submission of requests for participation in procurement procedures may not be shorter than:

1) for a procurement governed by international rules – 30 days from the dispatch of a notice from the Public Procurement Office;

2) for a simplified procurement – 10 days from the publication of a notice in the Central Portal of Public Procurement.

#### **Article 75. Requirements for negotiations in an innovation partnership**

1. During the negotiations, the contracting authority must comply with the following requirements:

1) not disclose to third parties any information received from an economic operator without the consent of the economic operator indicating what information is allowed to be disclosed;

2) apply uniform requirements, create equal opportunities and provide identical information to all economic operators; the contracting authority may not provide information in a discriminatory manner;



3) inform all tenderers, whose tenders have not been eliminated pursuant to paragraph 3 of this Article, in writing of any changes to the technical specifications or other procurement documents. The minimum requirements set by the contracting authority shall not be subject to change. Following changes to the procurement documents, the contracting authority shall provide sufficient time for the economic operators to modify submitted tenders;

4) conduct the negotiations in accordance with the requirements set out in Article 22 of this Law. Where minutes of the negotiations are drawn up, they shall be signed by the chair of the Commission and by the authorised representative of the tenderer participating in the negotiations.

2. The contracting authority shall negotiate with each of the economic operators the initial and subsequent tenders submitted by them in order to achieve the best result in accordance with the requirements of the procurement documents. Innovation partnerships shall not allow negotiations over the minimum requirements set out in the procurement documents, tender evaluation criteria and procedures, the outcome of the negotiations as formalised in the form of minutes or in the final tenders submitted following the negotiations.

3. The contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated according to the criteria set in the contract documents. In the procurement documents, the contracting authority must indicate whether it intends to conduct the negotiations in stages.

## **CHAPTER IV**

### **INSTRUMENTS FOR PROCUREMENT, JOINT PROCUREMENT**

#### **SECTION ONE**

#### **DESIGN CONTEST**

##### **Article 76. Conduct of a design contest**

1. This section shall apply to design contests:

1) organised as part of a procedure leading to the award of a public service contract and/or

2) with prizes or payments to participants.

2. A notice of a design contest and the results of the design contest shall be published following the provisions of Article 31, Article 33 and Article 34 of this Law. If the contracting authority intends to continue the procurement of services by way of the negotiation procedure without publication of a contract notice, this shall be indicated in the contest notice.

3. Both legal and natural persons, other organisations, units thereof or a group of such persons shall be allowed to take part in a design contest. The admission of economic operators to design contests shall not be limited by reference to the specific territory or other restriction of discriminatory nature.

4. The contracting authority may decide to conduct pre-qualification selection of candidates to be invited to submit their plans or projects. In such case, the pre-qualification selection criteria set forth by the contracting authority in the procurement documents must be clear, non-discriminatory and ensure genuine competition.

5. Design contests shall be organised in accordance with the provisions of this Section, Chapter I of this Law, except for Article 19, Articles 31, 33 and 34 and the rules for organising a design contest approved by the Government of the Republic of Lithuania or an institution authorised by it.

#### **Article 77. Jury of a design contest**

1. The plans or projects submitted by candidates shall be evaluated by the jury formed by the contracting authority or the authorised body. The contracting authority forming the jury must fully authorise the jury to perform evaluation of the plans or projects and identify the winners.

2. The jury shall be formed by an order/decreed of the head of the contracting authority and be composed of at least three natural persons, namely, the chair of the jury and at least two members of the jury. Meetings and decisions of the jury shall be legitimate where a meeting is attended by more than half of all members of the jury or, where the jury is composed of three persons, where all members of the jury are present at the meeting.

3. The head of the contracting authority which has formed the jury or an employee, as authorised by him, of this contracting authority or of another contracting authority under its common control shall be appointed chair of the jury. The jury must be composed exclusively of natural persons who are independent of tenderers in the contest. The membership of the jury shall not be limited to the staff of the contracting authority forming the jury. Only natural persons of impeccable reputation who have signed a declaration of impartiality and a confidentially commitment shall be appointed chair and members of the jury. Where a particular professional qualification is required from participants in a design contest, at least a third of the members of the jury must have that qualification or an equivalent qualification. Minutes shall be drawn up of meetings of the jury.

4. The jury shall be autonomous in its decisions and adopt them by a simple majority of roll call votes. Voting shall be possible only for or against the decision to be adopted. In the event of a tie, the chair of the jury shall have a casting vote.

5. The submitted plans and projects shall be examined anonymously (members of the jury may find out who has submitted tenders only when the jury reaches a common opinion or decision on the best plan or project) and on the basis of the criteria indicated in the procurement documents, which do not necessarily have to be based on price, costs or the price- or cost-quality ratio. The jury shall record the ranking of projects in minutes signed by its members, made according to the merits of each project, together with its remarks and any points which may need additional clarification.

6. After the jury reaches its opinion or decision, candidates may be invited, if need be, to answer questions which the jury has recorded in minutes. Minutes shall be drawn up of dialogues between jury members and candidates.

## **SECTION TWO**

### **INSTRUMENTS FOR ELECTRONIC AND AGGREGATED PROCUREMENT, PROCUREMENT BY DELEGATION OF AUTHORITY**

#### **Article 78. Framework agreement**

1. Contracting authorities shall have the right to conclude framework agreements, provided that they apply the procedures provided for in this Law.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and in paragraphs 3, 4 and 5 of this Article. Those procedures may be applied only between those contracting authorities clearly identified for this purpose in a contract notice or an invitation to confirm interest and those economic operators party to the framework agreement as concluded.

3. When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial modifications to the terms and conditions of that framework agreement.

4. Where a framework agreement is concluded with a single economic operator, the contracting authority may, when awarding a public contract on the basis of the agreement, consult the economic operator party to the framework agreement in writing requesting it to supplement its tender as necessary and indicating that supplementing the tender may not contradict the terms and conditions of the framework agreement.

5. Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

1) following the terms and conditions of the framework agreement, without reopening competition amongst economic operators. In such a case, the procurement documents must set

out in advance the procedure for determining which of the economic operators, party to the framework agreement, will provide the supplies, services or works concerned and the conditions under which it shall perform this;

2) where not all the terms governing the provision of the supplies, services or works are laid down in the framework agreement, through reopening competition amongst the economic operators. The procedures of reopened competition amongst the economic operators shall include the economic operators parties to the framework agreement;

3) partly with reopening of competition amongst the economic operators, where the procedures described in points 1 and 2 of this paragraph are combined. If the contract is divided into lots for which separate framework agreements are concluded, the contracting authority may apply the partly reopened competition amongst the economic operators only in certain selected framework agreements. When partly reopening competition amongst the economic operators, the procurement documents must indicate in advance the following:

- a) the possibility of partly reopening of competition amongst the economic operators;
- b) objective criteria for determining the choice of whether works, supplies or services shall be acquired following a reopening of competition amongst economic operators or without reopening competition amongst the economic operators directly on the terms set out in the framework agreement for the provision of the works, supplies or services;
- c) which terms will be subject to reopening of competition amongst the economic operators.

6. With regards to the reopening of competition amongst economic operators referred to in point 2 or 3 of paragraph 5 of this Article, the contracting authority must act on the basis of the same terms as applied for the award of the framework agreement or, where appropriate, more precisely formulated terms or other terms referred to in the procurement documents. The contracting authority shall carry out the reopened competition amongst the economic operators in accordance with the following procedure:

1) for every contract to be awarded, consult in writing the economic operators and request to submit tenders in writing before the expiry of the time limit fixed for submission of tenders. The invitation to submit tenders, in addition to other information, must indicate the requirement for an economic operator to confirm that the information contained in a European Single Procurement Document and submitted to the contracting authority in a tender for the conclusion of the framework agreement has not changed or, in the event of any changes, to provide the updated information;

2) fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account the complexity of the subject-matter of the contract, as well as other relevant factors and the time needed to send in tenders;

3) ensure that the content of tenders remains confidential until the stipulated time limit for the submission thereof has expired;

4) select an economic operator who has submitted the winning tender on the basis of the tender evaluation criteria set out in the procurement documents and in the framework agreement and award a public contract to the economic operator who has submitted this tender.

7. The contracting authority may use an electronic catalogue as provided for in Article 81(4) and (5) of this Law for the reopening of competition amongst economic operators referred to in point 2 or 3 of paragraph 5 of this Article.

### **Article 79. Dynamic purchasing system**

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, the contracting authority may use a dynamic purchasing system.

2. In using this system and awarding public contracts on its basis, the contracting authority shall operate the dynamic purchasing system as a completely electronic process.

3. A dynamic purchasing system may be divided into categories of products, services or works that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the specific contracts or to a specific geographic area in which the contracts will be performed.

4. In order to procure under a dynamic purchasing system, the contracting authority shall follow the rules of the restricted procedure. All the candidates satisfying the qualification requirements set by the contracting authority shall be admitted to the dynamic purchasing system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 54 of this Law. Where the dynamic purchasing system is divided into categories, the contracting authority shall specify the applicable qualification requirements for each category.

5. When awarding contracts under a dynamic purchasing system, the following time limits must apply:

1) the minimum time limit for receipt of requests for participation in the case of a procurement governed by international rules must be 30 days from the dispatch of a contract notice from the Public Procurement Office or from the dispatch of an invitation to confirm

interest to economic operators or, in the case of a simplified procurement, 10 days from the publication of the contract notice in the Central Portal of Public Procurement or from the dispatch of the invitation to confirm interest to the economic operators. No further time limits for receipt of requests for participation shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

2) the candidates' requests for participation received by the contracting authority must be assessed not later than within 10 working days. This deadline may be prolonged to 15 working days when assessing initial requests for participation received after the publication of a contract notice or an invitation to confirm interest or because of the need to examine additional documentation or to otherwise additionally verify whether the candidates fulfil qualification requirements. The contract authority may not send an invitation to tender for the first specific procurement under the dynamic purchasing system unless this deadline for the assessment of the economic operators' requests for participation has expired;

3) the minimum time limit for receipt of tenders must be at least 10 days or, in the case of a simplified procurement, at least 7 days from the date on which the invitation to tender is sent. If the contract is awarded by the sub-central contracting authority, the provisions of Article 62(6) of this Law may be apply. Provisions of Article 62(4) and (5) of this Law shall not apply.

6. For the purposes of awarding contracts under a dynamic purchasing system, the contracting authority shall:

1) publish a contract notice in accordance with the procedure laid down in Article 30(3) or Articles 31 and 34 of this Law making it clear that a dynamic purchasing system is involved;

2) indicate in the procurement documents, amongst other matters, the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications; The procurement documents shall also indicate the time limit for the assessment of candidates' requests for participation, including the possibility of prolonging it;

3) indicate, where appropriate, in a contract notice or an invitation to confirm interest any division into categories of products, services or works and the characteristics defining them;

4) indicate in the contract notice or the invitation to confirm interest the internet address offering unrestricted and full direct access by electronic means, as long as the system is valid, to the procurement documents.

7. The contracting authority may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue as indicated in Article 81(6) of this Law.

8. The contracting authority shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting a request for participation and of being admitted to the system under the conditions referred to in paragraphs 4 and 5 of this Article. The contracting authority shall, not later than within one working day from the taking of its decision, inform the economic operator concerned of whether it has been admitted to the dynamic purchasing system or its request for participation has been rejected.

9. The contracting authority shall simultaneously invite all admitted candidates in writing to submit a tender for each specific procurement under the dynamic purchasing system. Where the dynamic purchasing system has been divided into categories, the contracting authority shall invite all candidates having been admitted to the category corresponding to the specific procurement concerned to submit a tender. The invitation shall contain the information indicated in point 1 of Annex 3 to this Law.

10. The contracting authority shall, on the basis of the tender evaluation criteria set out in a contract notice or an invitation to confirm interest, identify the tenderer that submitted the winning tender and award a public contract to it. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender referred to in paragraph 9 of this Article.

11. The contracting authority may, at any time during the period of validity of the dynamic purchasing system, require admitted economic operators to submit a renewed or updated self-declaration as provided for in Article 50(1) of this Law, within 5 working days from the date on which that request is transmitted. Provisions of Article 50(4), (5) and (6) of this Law regarding supporting documents in relation to the economic operators' qualifications shall apply throughout the entire period of validity of the dynamic purchasing system.

12. The contracting authority shall indicate the period of validity of a dynamic purchasing system in a contract notice or an invitation to confirm interest. It shall notify the European Commission of any change in the period of validity, using the following forms:

1) the form of the contract notice or the invitation to confirm interest, whichever is used initially for the call for competition for the dynamic purchasing system. This form shall be used where the period of validity of the dynamic purchasing system is changed without terminating the system;

2) where the system is terminated, the form of a contract award notice.

13. The contracting authority may not bill any charges prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

## **Article 80. Electronic auction**

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented. For this purpose, contracting authorities shall structure the electronic auction as a repetitive electronic process, enabling tenders to be ranked using automatic evaluation methods. An electronic auction may occur only after a full evaluation of the tenders. Certain public service contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

2. In open or restricted procedures or negotiated procedures with publication of a contract notice, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the technical specifications of the subject-matter of the contract concerned can be established with precision. In the same circumstances, the contracting authority may hold an electronic auction on the reopening of competition among the parties to a framework agreement, when the framework agreement is concluded with several economic operators, or for a specific procurement under the dynamic purchasing system.

3. The electronic auction shall be based on one of the following elements of the tenders:

- 1) solely on prices where the contract is awarded on the basis of price only;
- 2) on prices and/or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price- or cost-quality ratio or to the tender with the lowest cost using the life-cycle costing method.

4. The contracting authority which decides to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest, including at least the following information:

1) the values of the tender which will be the subject of electronic auction, provided that they are quantifiable and can be expressed in figures or percentages;

2) any limits on the values of the tender which may be submitted, as they result from the specifications relating to the subject of the contract;

3) the information which will be made available to tenderers in the course of the electronic auction and, where necessary, when it will be made available to them;

4) the information concerning the electronic auction process;

5) the conditions under which the tenderers will be able to bid and, where necessary, the minimum differences between the tenders;

6) the information concerning the electronic equipment used and the arrangements and technical specifications for connection.

5. Before proceeding with an electronic auction, the contracting authority shall:



- 1) make a full initial evaluation of the tenders in accordance with the tender evaluation criteria and with the weighting fixed for them;

- 2) invite simultaneously to participate in the electronic auction all tenderers who meet the requirements set out pursuant to Articles 46, 47 and 48 of this Law and whose tenders are in conformity with the technical specifications without being unacceptable or unsuitable. The invitation shall indicate the date and time and means of connection to the electronic equipment. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than 2 working days after the date on which invitations are sent out.

6. An invitation to participate in an electronic auction shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in Article 55(6) of this Law. The invitation shall also state the mathematical formula to be used to determine the automatic re-rankings of the tenders on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula must incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in a contract notice or in other procurement documents. For that purpose, any ranges must be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

7. Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It may, where this has been indicated in the procurement documents, communicate other information concerning prices or values submitted. The contracting authority may also at any time announce the number of participants in that phase of the auction. In no case, however, may it disclose the identities of the tenderers during any phase of the electronic auction.

8. The contracting authority shall close an electronic auction in one or more of the following manners:

- 1) at the date and time of the closure of the auction previously indicated in the invitation to take part in the auction;

- 2) when it receives no more new prices or new values which meet the requirements set by the contracting authority concerning minimum differences among submitted tender values. In this case, the contracting authority shall, in the invitation to participate in the auction, state the time which it will allow to elapse after receiving the last submission before it closes the electronic auction;

3) when the number of phases in the auction as indicated in the invitation to take part in the electronic auction has been completed. Where the contracting authority intends to close an electronic auction in accordance with this point or in combination with the arrangements laid down in point 2 of this paragraph, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9. After closing an electronic auction the contracting authority shall award the contract in accordance with the requirements set out in Article 55 of this Law on the basis of the results of the electronic auction.

### **Article 81. Electronic catalogue**

1. The contracting authority may require economic operators to present tenders in the format of an electronic catalogue or to include an electronic catalogue. Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be established by economic operators in accordance with the format and technical specifications established by the contracting authority. Electronic catalogues must comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with Article 22 of this Law.

3. Where the contracting authority requires or accepts presentation of economic operators' tenders in the form of electronic catalogues, it must inform thereof in one of the following forms:

1) state so in the contract notice or in the invitation to confirm interest;

2) indicate in the procurement documents all the necessary information pursuant to Article 22(11) of this Law concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the electronic catalogue.

4. Where a framework agreement has been concluded by the contracting authority with more than one economic operator following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that the reopening of competition amongst the economic operators for specific contracts takes place on the basis of updated catalogues. In such a case, the contracting authority shall use one of the following methods:

1) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;

2) notify tenderers that it intends to collect from the electronic catalogues which have already been submitted by them the information needed to constitute tenders adapted to the

requirements of the contract in question. The use of that method must be announced in the procurement documents.

5. Where the contracting authority reopens competition amongst economic operators in accordance with point 2 of paragraph 4 of this Article, it must notify tenderers of the date and time at which it intends to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and must give tenderers the possibility to refuse such collection of information. Such notification must be sent not later than 3 working days prior to the collection of information. The contracting authority may not take a decision on the successful tenderer until it has submitted to the potential winner the tender constituted by it and receives a confirmation that the tender thus constituted does not contain any material errors.

6. When awarding specific contracts based on a dynamic purchasing system, the contracting authority may:

1) require that offers for the contract concerned are to be presented in the format of an electronic catalogue;

2) apply the provisions of point 2 of paragraph 4 and paragraph 5 of this Article provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. That catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in point 2 of paragraph 4 of this Article.

## **Article 82. Centralised purchasing activities and central purchasing bodies**

1. The contracting authority may, and in the case referred to in paragraph 2 of this Article must, acquire supplies and/or services from a central purchasing body. Supplies, services and works may, and in the case referred to in paragraph 2 of this Article must, be acquired:

1) by using contracts awarded by a central purchasing body;

2) by using dynamic purchasing systems operated by a central purchasing body. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities, this must be mentioned in a contract notice;

3) by using a framework agreement concluded by a central purchasing body to the extent set out in Article 78(2) of this Law.

2. Contracting authorities, with the exception of diplomatic missions of the Republic of Lithuania in foreign states, missions of the Republic of Lithuania to international organisations, consular posts and special missions, must acquire supplies, services and works in the manner specified in paragraph 1 of this Article where the supplies or services offered by a central

contracting body operating in the Republic of Lithuania, the supplies, services or works available through a constituted dynamic purchasing system or a concluded framework contract meet the needs of the contracting authority and the contracting authority cannot acquire the supplies, services or works more efficiently and rationally with the funds allocated thereto. The contracting authorities must state the reasons for their decision not to have recourse to a central purchasing body and store a supporting document together with other procurement documents in accordance with the procedure laid down in Article 97 of this Law.

3. The contracting authority shall be deemed to have fulfilled its obligations under this Law if it acquires supplies, services or works from or by having recourse to a central purchasing body in accordance with paragraph 1 of this Article. However, the contracting authority concerned shall be responsible for fulfilling the obligations pursuant to this Law in respect of the parts it conducts itself, such as:

1) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body;

2) conducting a reopening of competition amongst economic operators under a framework agreement that has been concluded by a central purchasing body;

3) pursuant to points 1 and 3 of Article 78(5) of this Law, determining which of the economic operators will be awarded a contract under a framework agreement that has been concluded by a central purchasing body.

4. All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 22 of this Law.

5. Contracting authorities may, without applying the procedures provided for in this Law, award a contract for the provision of centralised purchasing activities by a central purchasing body. A contract for the provision of centralised purchasing activity services may also include the provision of ancillary purchasing activities required for the provision of such services.

6. A decision concerning the establishment of central purchasing bodies, their legal form or the granting to the contracting authority of the right to perform the functions of a central purchasing body shall be taken by the Government of the Republic of Lithuania or an institution/institutions authorised by it and a municipal council within its respective remit.

7. The activities of a central purchasing body shall be financed from the state or municipal budget appropriations and/or other funds allocated to the body which exercises the rights and duties of a participant or owner of a legal person performing the functions of the central purchasing body.

8. A central contracting body must, at the end of the quarter and within 5 working days, provide the Public Procurement Office with information on the centralised purchases by contracting authorities performed during the quarter and also provide information on completed green procurement procedures and their values and the application of energy efficiency requirements.

**Article 83. Granting of powers to conduct procurement procedures to another contracting authority**

1. The contracting authority may authorise another contracting authority to organise procurement, to conduct procurement procedures until the award of a public contract or the conclusion of a framework agreement, as well as to submit a report on completed procurement procedures or a notice of the award of the contract or the conclusion of the framework agreement. To this end, it must assign tasks to the authorised body and grant thereto all the powers to perform those tasks. The granting of the powers shall be formalised in accordance with the procedure set forth in the Civil Code.

2. The responsibility for the tasks assigned by the contracting authority to the authorised body shall rest with the contracting authority, while the authorised body shall be responsible for the performance of these tasks. The contracting authority shall be responsible for the award and performance of a public contract.

**Article 84. Joint procurement**

1. Two or more contracting authorities may agree to perform certain specific procurements jointly.

2. Where the conduct of procurement procedures in its entirety is carried out jointly in the name and on behalf of all the contracting authorities concerned, they shall be jointly responsible for the conduct of the procurement procedures pursuant to this Law. This applies also in cases where one contracting authority manages the procedure, acting on its own behalf and on the behalf of the other contracting authorities concerned.

3. Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting authority shall have sole responsibility in respect of the parts of the procurement procedure it conducts in its own name and on its own behalf.

**Article 85. Joint procurement involving contracting authorities from different Member States**

1. Contracting authorities from the Republic of Lithuania and other Member States may act jointly in the award of public contracts by using one of the means provided for in this Article.

2. Contracting authorities shall not have the right to perform joint procurements for the purpose of avoiding the application of this Law or law provisions in conformity with Union law in other Member States whose contracting authorities perform a joint procurement.

3. Contracting authorities may use centralised purchasing activities offered by a central purchasing body located in another Member State.

4. The provision of centralised purchasing activities by a central purchasing body shall be conducted in accordance with the national provisions of the Member State where the central purchasing body operates. The national provisions of the Member State where the central purchasing body operates shall also apply to the following:

- 1) the award of a contract under a dynamic purchasing system;
- 2) the conduct of a reopening of competition amongst economic operators under a framework agreement;
- 3) the determination pursuant to point 1 or 3 of Article 78(5) of this Law of which of the economic operators, party to the framework agreement, shall perform a given task.

5. Several contracting authorities from different Member States may:

- 1) jointly award a public contract;
- 2) jointly conclude a framework agreement;
- 3) operate a dynamic purchasing system to perform procurements;
- 4) award contracts based on the framework agreement or on the dynamic purchasing system.

6. Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the contracting authorities willing to perform a joint procurement shall conclude an agreement that determines:

1) the responsibilities of the parties and the relevant applicable national provisions of the Member States. The allocation of responsibilities and the applicable national law may be referred to in the procurement documents for each contracting authority involved in the joint procurement;

2) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the supplies, services or works to be procured, and the award of contracts or conclusion of framework agreements.

7. A contracting authority participating in an agreement referred to in paragraph 6 of this Article shall be deemed to fulfil its obligations pursuant to this Law when it purchases supplies, services or works from a contracting authority which is responsible for the procurement procedure.

8. Where several contracting authorities from different Member States have set up a joint entity, including European Groupings of territorial cooperation or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the entity thus set up, agree on the applicable national procurement rules of one of the Member States in the following manner:

1) the national provisions of the Member State where the joint entity has its registered office. This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards;

2) the national provisions of the Member State where the joint entity is carrying out its activities.

## **CHAPTER V**

### **AWARD OF A PUBLIC CONTRACT OR CONCLUSION OF A FRAMEWORK AGREEMENT AND PERFORMANCE THEREOF**

#### **Article 86. Award of a public contract or conclusion of a framework agreement**

1. The successful tenderer shall be invited to enter into a public contract or a framework agreement by a written notice (with the exception of the cases stipulated by this Law when the public contract is awarded orally) and shall be indicated the date by which it is to enter into the public contract or the framework agreement.

2. If the economic operator who has been offered to enter into a public contract or a framework agreement refuses to do so in writing or fails to submit the proof of performance of the contract specified in the procurement documents or fails to sign the contract or the framework agreement by the date indicated by the contracting authority or refuses to enter into the contract or the framework agreement under the terms and conditions set out in this Law and in the procurement documents or a group of economic operators fails to set up a legal person as provided for in paragraph 4 of this Article, it/they shall be deemed to have refused to enter into the public contract or the framework agreement. In that case, the contracting authority shall propose the award of the public contract or the conclusion of the framework agreement to the economic operator whose tender ranks first in the established ranking of tenders following that

of the economic operator refusing to enter into the contract or the framework agreement, provided that the conditions set out in Article 45(1) of this Law are met.

3. When awarding a public contract or concluding a framework agreement, the price quoted in the winning tender, costs or other terms or, in the case of a negotiated procedure or a dialogue, the final negotiated price, costs or other terms as well as the terms of procurement specified in the procurement documents may not be altered. In the event that the contracting authority must, in accordance with the procedure laid down by tax laws and their implementing legal acts, itself pay the value added tax to the state budget for the purchase, this fee, as included in the price or costs of the tender, shall be deducted when awarding the public contract or concluding the framework agreement.

4. Where the contracting authority requires a group of economic operators which has submitted the winning tender to set up a legal person, it shall award a public contract to or conclude a framework agreement with the legal person set up by those economic entities. The entities that have set up the legal person must be liable for the obligations of the legal person set up by them with regard to the fulfilment of the terms of the public contract or of terms and conditions of the framework agreement.

5. The public contract to be awarded must specify a period of not more than three years from the date of award of the contract for the delivery of supplies, provision of services, performance of works, except in duly justified cases when, taking into account the characteristics of the subject-matter of the contract and making rational use of funds, it is necessary to extend this period. Such cases may include public contracts for:

- 1) electricity and heating, gas, hot and cold water, wastewater and waste management services;
- 2) financial services provided by banks and other financial institutions;
- 3) rental, financial lease (leasing), hire purchase of supplies;
- 4) servicing, repair or maintenance, where the subject-matter of the contract covers the execution of these activities;
- 5) document storage services;
- 6) services of technical supervision of construction activities or construction of a construction works;
- 7) services of supervision of the implementation of a design documentation of a construction works or services of supervision of the preparation of a design documentation of a construction works and the implementation of the design documentation of the construction works, when these services are purchased together;
- 8) implementation of investment projects;



9) services of management and/or implementation of financial instruments or a fund of funds as defined in points 11 and 27 of Article 2 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320), financial engineering instruments, including subsidies granted in combination therewith;

10) services of growing of forest planting stock;

11) other supplies and/or services, where the period of delivery of supplies and/or provision of services in excess of three years is economically or socially more beneficial and is justified by the contracting authority.

6. A framework agreement may not be concluded for a period exceeding 4 years, except in justified cases relating to the subject-matter of the contract which are indicated in a contract notice or in an invitation to confirm interest. A public contract may be awarded on the basis of the framework agreement not later than until the expiry of the period of validity of the framework agreement, although the public contract itself may be valid for a longer period.

7. A public contract may be awarded orally only if the value of a simplified public contract is less than EUR 3 000 (three thousand euros) (net of value-added tax). In the cases provided for in the descriptions referred to in Article 25(3) and (4) of this Law, simplified public contracts with a value of up to EUR 10 000 (ten thousand euros) (net of value-added tax) may be awarded orally.

8. A public contract must be awarded or a framework agreement must be concluded immediately, but not earlier than upon the expiry of the period of deferment, which may not be shorter than 10 days (in the case of simplified procurements, not shorter than 5 working days), and if a notice of a decision to identify the winning tender is not sent by electronic means, may not be shorter than 15 days. It shall be possible not to apply the period of deferment where:

1) the sole interested tenderer is the one to which the public contract is to be awarded or with which the framework agreement is to be concluded, and there are no interested candidates;

2) the public contract is concluded on the basis of a dynamic purchasing system or on the basis of the framework agreement;

3) the public contract is awarded orally.

9. The contracting authority must publish in the Central Portal of Public Procurement the winning tender, the awarded public contract, the concluded framework agreement and

modifications thereof, with the exception of information the disclosure whereof would contradict information and data protection legislation or public interest, would prejudice the legitimate commercial interests of a particular economic operator or would adversely affect competition amongst economic operators, not later than within 15 days after the award of the public contract or conclusion of the framework agreement or modification thereof, but not later than until the beginning of the first payment thereunder according to the procedure established by the Public Procurement Office. This requirement shall not apply to purchases when a tender is submitted orally, a contract is awarded orally or to contracts awarded by way of negotiated procedure without publication of a contract notice (in the case of a low value procurement, without publication of a contract notice) under the conditions specified in sub-points b and c of point 2 of Article 71(1) and points 5, 6 and 7 of Article 71(6) of this Law, if the successful tenderer is a natural person, and under the condition specified in sub-point a of point 2 of Article 71(1) of this Law, as well as to parts of the successful tenderer's tender, the public contract or the framework agreement, where there are no technical possibilities to publish information in such a manner. In such a case, the contracting authority must provide means of access to the unpublished parts of the successful tenderer's tender, the public contract or the framework agreement.

#### **Article 87. Content of a public contract**

1. If concluded in writing, a public contract must specify:
  - 1) rights and duties of the parties to the contract;
  - 2) the purchased supplies, services or works, and their estimated or, if possible, exact quantities;
  - 3) pricing rules established in accordance with the methodology approved by the Public Procurement Office;
  - 4) payment arrangements. Payment periods must comply with the requirements set out in Article 5 of the Law of the Republic of Lithuania on the Prevention of Late Payments under Commercial Contracts;
  - 5) time limits for the performance of contractual obligations;
  - 6) contract performance security;
  - 7) terms of review of the contract or options, if any;
  - 8) dispute resolution procedure;
  - 9) cases of termination of the contract, including the cases referred to in Article 90 of this Law, and related procedure;
  - 10) the validity of the contract;

11) subcontractors, if they are involved in the performance of the contract, and the procedure for replacing them;

12) the person, as designated by an order/ordinance of the head of the contracting authority, who is responsible for the performance of the contract, publication of the contract and modifications in accordance with the provisions of Article 86(9) of this Law.

2. The contracting authority may lay down special conditions for the performance of a contract related to economic, innovation, employment, social and environmental requirements, provided that such conditions are:

1) related to the subject-matter of the contract, as provided for in Article 55(4) of this Law;

2) indicated in the procurement documents.

### **Article 88. Subcontracting**

1. The contracting authority may require the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors, if such are known.

2. Where the nature of the contract so allows, the contracting authority must, in the procurement documents, provide for the possibility of transfer of due payments directly to subcontractors and for the arrangements concerning that mode of payment including, in addition to other requirements, the permission for the contractor to object to undue payments. The contracting authority shall, not later than within 3 working days from the receipt of the information referred to in paragraph 4 of this Article, inform the subcontractors in writing of the possibility of such direct payments, whereas the subcontractor willing to avail of this option shall submit a written request to the contracting authority. In the cases when the subcontractor expresses a wish to avail of the direct payment option, a tripartite contract must be concluded between the contracting authority, the contractor whereto the contract has been awarded and its subcontractor, describing the arrangements concerning direct payments to the subcontractor, having regard to the requirements set out in the procurement documents and the subcontracting contract.

3. Paragraphs 1 and 2 of this Article shall be without prejudice to the question of the main contractor's liability for the performance of the contract to be awarded.

4. It must be specified in the procurement documents that, after the award of the contract and at the latest when the performance of the contract commences, the contractor is required to indicate to the contracting authority the name, contact details and legal representatives of its subcontractors, in so far as known at this point in time. The contracting authority shall also

require the contractor to notify the contracting authority of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it intends to subsequently involve. Where the provisions of paragraph 5 of this Article apply, the supporting documents concerning to the absence of grounds for the subcontractor's exclusion shall be submitted along with the information on the new subcontractors.

5. In the cases where the contractor does not rely on the subcontractor's capacities, the contracting authorities may, in order to ensure the proper implementation of the provisions of Article 17(2)(2) of this Law and acting in accordance with Articles 50 and 51 of this Law, verify whether there are grounds for subcontractors' exclusion pursuant to Article 56 of this Law. In such cases, where the subcontractor is in a situation which conforms to at least one exclusion ground specified pursuant to Article 46 of this Law, the contracting authority shall require that the contractor replaces the mentioned subcontractor with a subcontractor which meets the requirements within the time limit set by the contracting authority.

#### **Article 89. Modification of public contracts or framework agreements during their term**

1. Contracts and framework agreements may be modified during their term without a new procurement procedure in accordance with this Law in any of the following cases:

1) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal clauses of review of a public contract or a framework agreement, including price revision, review of staff wages, or options, including modification of the contract term, the quantities to be purchased, the scope, subject-matter of the contract. The procurement documents must state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

2) for additional works, services or supplies by the initial contractor that have become necessary and that were not included in the initial procurement, where that all of the following conditions are fulfilled:

a) where a change of contractor cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement and would cause significant inconvenience or substantial duplication of costs for the contracting authority;

b) the value of each modification shall not exceed 50 %, whereas the total value of individual modifications under this point - 100 % of the value of the original contract or framework agreement. Such modifications shall not be aimed at circumventing the procurement procedure laid down in this Law;

3) the need for modification has been brought about by circumstances which a reasonable and diligent contracting authority could not foresee, and where all of the following conditions are fulfilled:

a) the modification does not alter the overall nature of the contract or the framework agreement;

b) the value of each modification shall not exceed 50 %, whereas the total value of individual modifications under this point – 100 % of the value of the original contract or framework agreement. Such modifications shall not be aimed at circumventing the procurement procedure laid down in this Law;

4) where the party to the public contract or the framework agreement to which the contracting authority has awarded the contract is replaced by a new party to the contract for at least one of the following reasons:

a) in complying with a contract or framework agreement review or option clause clearly formulated beforehand in the procurement documents in accordance with the requirements set out in point 1 of this paragraph;

b) universal or partial succession into the position of the initial contractor, following the initial contractor's reorganisation, liquidation, restructuring or bankruptcy proceedings, of another economic operator that fulfils the qualification requirements initially set out in the procurement documents. Such a change of contractor may not entail other substantial modifications to the contract and shall not be aimed at circumventing the application of this Law;

c) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors. Such modifications of the contract shall be possible where the possibility of direct payments to subcontractors is provided for in the procurement documents pursuant to Article 88(2) of this Law;

5) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 4 of this Article.

2. A public contract or a framework agreement may equally be modified during its term without a new procurement procedure in accordance with this Law also in the absence of the conditions set out under points 1 to 4 of paragraph 1 of this Article, where all of the following conditions are fulfilled:

1) the total value of individual modifications under this point does not exceed the relevant thresholds for a procurement governed by international rules referred to in Article 4(1) of this Law;

2) the total value of individual modifications under this point does not exceed 10 % of the original value of a public contract or a framework agreement for supply or service contracts and 15 % of the original value for works contracts;

3) the modification does not alter the overall nature of the contract or the framework agreement.

3. Where the value of a contract or a framework agreement has been updated in accordance with the price indexation conditions specified therein, for the purposes of points 2 and 3 of paragraph 1 and paragraph 2 of this Article, the updated value of the contract shall apply.

4. A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of point 5 of paragraph 1 of this Article, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2 of this Article, the modification of the contract or the framework agreement shall be considered to be substantial where at least one of the following conditions is met:

1) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates' requests for participation or for the acceptance of other tenderers' tenders or would have attracted additional participants in the procurement procedure;

2) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

3) the modification extends the scope of the contract or framework agreement considerably;

4) where a new contractor replaces the one to which the contract has initially been awarded or with which the framework agreement has been concluded in cases other than those provided for under point 4 of paragraph 1 of this Article.

5. A new procurement procedure in accordance with this Law shall be required for other modifications of the provisions of a public contract or a framework agreement than those provided for under paragraphs 1 and 2 of this Article.

#### **Article 90. Termination of a public contract or a framework agreement**

1. The contracting authority shall have the possibility, in accordance with the procedure laid down in this Article, to unilaterally terminate a public contract, a framework agreement or a contract modifying the public contract or the framework agreement, where:

1) the contract or the framework agreement has been modified in violation of Article 89 of this Law;

2) the contractor to whom the public contract has been awarded or with whom the framework agreement has been concluded ought to have been excluded from the procurement procedure pursuant to Article 46(1) of this Law;

3) it transpires that the contract should not have been awarded to or the framework agreement should not have been concluded with the contractor in view of a failure to comply with the obligations under the Founding Treaties of the European Union and Directive 2014/24/EU as declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU.

2. In the event of termination of a public contract, a framework agreement or a contract modifying the public contract or the framework agreement on the grounds referred to in paragraph 1 of this Article, the following requirements shall be met:

1) the contracting authority must notify the contractor in advance of the termination of the contract within the time limit specified in the contract, and where such a term is not specified in the contract – 30 days in advance;

2) termination of the contract shall release the contracting authority and the contractor from the performance of the contract;

3) termination of the contract shall not affect the validity of the provisions of the contract establishing the dispute settlement procedure and other terms of the contract, if these terms remain valid after the termination of the contract as to their substance;

4) after the contract is terminated, the contractor may require to return to it all that it has transferred to the contracting authority in the performance of the contract while at the same time returning to the contracting authority all that it has received from the latter. When a return in kind is impossible or unacceptable due to a change in the subject-matter of the contract, the monetary value of what has been received shall be reimbursed, unless such reimbursement is contrary to the criteria of reasonableness, good faith and justice. If the performance of the contract is continuous and divisible, it shall only be possible to require return of what has been received after the termination of the contract. Restitution shall not affect the rights and duties of third parties acting in good faith.

3. A public contract, a framework agreement or a contract modifying the public contract or the framework agreement may be terminated in the cases specified in the contract and in cases

other than those referred to in paragraph 1 of this Article and specified in the Civil Code and in accordance with the procedure laid down in the Civil Code.

### **Article 91. Failure to perform or improper performance of a public contract**

1. The contracting authority shall, not later than within 10 days, publish in the Central Portal of Public Procurement in accordance with the procedure established by the Public Procurement Office the information on the contractors who have failed to perform a contract or have performed it improperly (in the case of a group of contractors – on all members of the group), as well as the economic entities on the capacities whereof a contractor relies and who, together with the contractor, have assumed joint and several liability for the performance of the public contract in accordance with Article 49(5) of this Law, if the breach has been committed for the part of the contract to perform which they had been contracted in the cases when:

- 1) the contract has been terminated as a result of a material breach of the public contract;
- 2) a judgment has been passed that satisfies the contracting authority's claim for damages for losses as a result of the contractor's significant or persistent deficiencies in the performance of a substantive requirement under the public contract.

2. The term referred to in Article 46(4)(6) of this Law and in paragraph 1 of this Article shall be calculated as follows:

- 1) if the contractor has not referred to the court contesting the termination of a public contract as a result of a material breach of the public contract – from the expiry of the term specified in Article 102(4) of this Law;

- 2) if the contractor has referred to the court contesting the termination of a public contract as a result of a material breach of the public contract – from the entry into force of a judgment dismissing the contractor's claim;

- 3) from the entry into force of a judgment satisfying the contracting authority's claim for damages for losses as a result of the contractor's significant or persistent deficiencies in the performance of a substantive requirement under the public contract.

3. Having published the information referred to in paragraph 1 of this Article in the Central Portal of Public Procurement, the contracting authority shall inform the contractor thereof not later than within 3 working days.

## **CHAPTER VI**

### **MANAGEMENT OF PROCUREMENT PROCEDURES**

#### **Article 92. Institutions participating in the management of procurement procedures**



1. The ministry responsible for the shaping of public procurement policy shall participate in shaping European Union procurement policy, transpose European Union procurement law into national law, shape public procurement policy of the State and organise, coordinate and control the implementation thereof.

2. Procurement policy shall be implemented by the Public Procurement Office.

3. Supervision of procurement shall be exercised by the Public Procurement Office and state institutions within their remit, also the public legal persons within their respective remit as authorised by a resolution of the Government of the Republic of Lithuania and administering the financial assistance of the European Union or individual states.

4. On the issues of determination of agreements between the economic operators referred to in Article 46(4)(1) of this Law which distort competition amongst economic operators parties to a contract, advice and methodological assistance shall be provided to contracting authorities by the Competition Council of the Republic of Lithuania.

5. Guidelines for detecting the conflicts of interest as indicated in Article 21(1) of this Law shall drawn up by the Chief Official Ethics Commission.

6. The list of central government authorities shall be reviewed, updated and communicated to the European Commission by an institution authorised by the Government of the Republic of Lithuania approving this list.

7. Information in response to enquiries of institutions, contracting authorities or economic operators of other Member States on the application of the provisions of Articles 37, 38, 39, 46, 47, 48, 50, 51, 53 and 57 of this Law shall be provided by state institutions and agencies within their remit and by other persons issuing documents relating to the application of the provisions of the articles referred to in this paragraph. This information must not disclose confidential information and must ensure the protection of personal data in accordance with the law.

8. Copies of decisions made by the court under Article 106(2) of this Law shall be provided to the Public Procurement Office through the Central Portal of Public Procurement by the National Courts Administration.

9. Access to documents or information confirming the absence of the economic operators' exclusion grounds shall be provided free of charge to contracting authorities through the Central Portal of Public Procurement by the institutions managing such data and included in the list drawn up by the Public Procurement Office pursuant to Article 51(8) of this Law.

*Note in the Register of Legal Acts. Paragraph 9 shall enter into force on 1 July 2020.*

10. Data on the performance of public contracts and execution of in-house transactions shall be provided from the information system "E-invoice" to the Central Portal of Public

Procurement by the State Enterprise Centre of Registers. The information to be provided under this requirement shall be determined by the Public Procurement Office.

11. Information on the entities which do not meet the minimum criteria for a reliable taxpayer, as provided for in Article 46(4)(8) of this Law, shall be submitted to the Public Procurement Office by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania.

### **Article 93. Public Procurement Office**

1. The Public Procurement Office shall be a state budgetary body operating under this Law and other laws of the Republic of Lithuania, international obligations and its regulations and financed from the state budget.

2. The Public Procurement Office shall be a public legal person having a bank account and a seal with the emblem of the State of Lithuania and its name. The administrative structure of the Public Procurement Office shall be approved by the Government of the Republic of Lithuania, or the approval thereof shall be entrusted to the Director of the Public Procurement Office. The regulations of the Public Procurement Office shall be approved by the Government of the Republic of Lithuania.

3. The working procedures of the Public Procurement Office shall be laid down in the rules of procedure of the Public Procurement Office. The rules of procedure shall be approved by the Director of the Public Procurement Office.

4. After the end of a calendar year, the Public Procurement Office shall, within 4 months, draw up an annual activity report, publish it on the website of the Public Procurement Office and submit it to the Seimas of the Republic of Lithuania and the Government of the Republic of Lithuania.

5. The Public Procurement Office shall be independent and impartial in its decision-making.

### **Article 94. Director of the Public Procurement Office**

1. The Public Procurement Office shall be headed by the Director. The Director of the Public Procurement Office shall be a state official who is appointed and dismissed by the President of the Republic for a term of 4 years on the recommendation of the Prime Minister of the Republic of Lithuania. The Director of the Public Procurement Office may hold office for not more than two successive terms.

2. The Director of the Public Procurement Office may have deputies. The deputies shall be appointed by the Director of the Public Procurement Office in accordance with the procedure

established by the Law on Civil Service. In the absence of the Director, he shall be substituted by one of his deputies.

3. A person of good repute who is a citizen of the Republic of Lithuania and holds a Master's degree or an equivalent qualification may be the Director of the Public Procurement Office.

4. The Director of the Public Procurement Office shall be released from office on the following grounds:

- 1) at his own request;
- 2) upon the expiry of his term of office;
- 3) when he is elected or appointed to another post;
- 4) when a judgment of conviction concerning him becomes effective;
- 5) if instances of material breach of duties are revealed;
- 6) if he has discredited the name of the state official with his conduct;
- 7) where he does not meet the requirement of good repute;
- 8) where he loses the citizenship of the Republic of Lithuania.

5. The Director of the Public Procurement Office may be released from office for health reasons where he is absent from work due to temporary incapacity for work for more than 120 calendar days in succession or for more than 140 days during the last 12 months. Excluded from this time period shall be the time during which he receives a sickness social insurance allowance for nursing sick family members and a sickness allowance to those removed from the job due to an outbreak of infectious diseases or epidemics.

6. Upon the expiry of his term of office, the Director of the Public Procurement Office shall remain in office until the new Director has been appointed to this office.

7. The Director of the Public Procurement Office and his deputies may not hold any other elective or appointed posts, be employed with business or any other private bodies or enterprises, the only exception being teaching or creative activities.

8. The remuneration of the Director of the Public Procurement Office shall be determined in accordance with the Law of the Republic of Lithuania on the Remuneration of State Politicians and State Officials, whereas his material liability and annual leave – in accordance with the Law on Civil Service. Other employment relationships and social guarantees of the Director shall be governed by provisions of the Labour Code of the Republic of Lithuania.

9. The Director of the Public Procurement Office shall organise the work of the Public Procurement Office, represent it, be directly responsible for implementing the functions specified for the Public Procurement Office by legal acts, issue orders, take decisions on behalf of the Public Procurement Office and decide on the issues assigned to the Public Procurement Office.

**Article 95. Remit of the Public Procurement Office**

1. The Public Procurement Office shall perform the following functions:

1) draft and/or adopt the legal acts indicated in this Law;

2) carry out the prevention of violations of this Law and the legal acts related to its implementation, supervise compliance with the requirements of these legal acts, including requirements of these legal acts for the performance of public contracts and the in-house transactions referred to in Article 10 of this Law;

3) examine cases of administrative offences within its remit;

4) provide methodological assistance, prepare recommendations and guidelines on the application and implementation of this Law, as well as on the issues of procurement planning and conduct, teach contracting authorities and organises their trainings, provide free consultations to contracting authorities and economic operators on the issues of the application of this Law;

5) collect, accumulate and analyse information on procurements, awarded public contracts, concluded framework agreements and the outcome of performance of the public contracts, procurement disputes, detected breaches of procurements procedures and the issues encountered in procurement practice. This information, with the exception of confidential information, shall be published on the website of the Public Procurement Office and/or in the Central Portal of Public Procurement and provided to the European Commission, state and municipal institutions and agencies;

6) analyse and evaluate the procurement system, upon noticing its shortcomings, prepare and submit proposals on improvement thereof to the ministry referred to in Article 92(1) of this Law;

7) cooperate with the European Commission on the application of procurement legislation;

8) forward to the Publications Office of the European Union for publication the notices of contracting authorities and ensure the forwarding of other notices and information transmitted by the contracting authorities;

9) coordinate the provision of information in response to enquiries of institutions, contracting authorities or economic operators of other Member States on the application of the provisions of Articles 37, 38, 39, 46, 47, 48, 50, 51 and 57 of this Law, including the provision of information through the Internal Market Information System developed under Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on

administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ 2012 L 316, p. 1);

10) administer the Central Portal of Public Procurement;

11) administer information published by contracting authorities pursuant to Article 91(1) of this Law regarding the economic operators who have failed to perform or improperly performed a public contract and the information published pursuant to Article 52(2) of this Law regarding the economic operators who, in the course of procurement procedures, withheld information or misrepresented information on compliance with the requirements of Articles 46 and 47 of this Law or regarding the economic operators who, due to the misrepresentation of information, have failed to submit the supporting documents required pursuant to Article 50 of this Law, also publish on its website the information provided by the State Tax Inspectorate regarding the entities which do not meet the minimum criteria for a reliable taxpayer as provided for in Article 46(4)(8) of this Law;

12) annually prepare and submit to the Government of the Republic of Lithuania a report on the procurements referred to in Article 23(2) of this Law;

13) provide and regularly update the information published by the European Commission in the e-Certis online document repository regarding the certificates issued in Lithuania and other documents confirming the absence of an economic operator's exclusion grounds and its qualification, a list of the Lithuanian databases offering open and free access and containing information on economic operators as specified in Article 50(7)(1) of this Law;

14) prepare and submit to the European Commission every three years a procurement monitoring report referred to in Article 98(2) of this Law;

15) provide the European Commission with information on the authorities referred to in Article 92(2) and (3) of this Law, as well as on national initiatives taken to provide guidance to contracting authorities or economic operators, to implement procurement rules or to address the issues encountered in implementing the procurement rules;

16) forward to the European Commission, at the request of the European Commission, the reports referred to in Article 96 of this Law or the substantive information contained therein;

17) annually submit to the European Commission copies of all decisions adopted by the court in accordance with Article 106(2) of this Law and publish these decisions in the Central Portal of Public Procurement;

18) publish in the Central Portal of Public Procurement information on thresholds for a procurement governed by international rules, including information on revised thresholds;

19) perform the functions prescribed by other laws.

2. The Public Procurement Office shall have the right:

1) to independently select the entity to be inspected, the manner of inspecting, its scope and timing;

2) to obtain from the contracting authority or from other persons the information relating to procurement, including performance of a public contract, and the documents required for performance of the functions of the Public Procurement Office, also to temporarily, for a period not exceeding 30 days, seize from the contracting authority the original copies of these documents under a statement of the seizure of the documents. Where necessary, this time limit may be extended for another 30 days;

3) to obtain clarifications of the actions and decisions related to procurement, including the performance of a public contract, from the contracting authority, the Commission or its members, the experts involved in procurement procedures, other persons;

4) to present procurement documents and tenders submitted by economic operators for additional expert examination;

5) if suspecting violations of this Law and the legal acts related to its implementation and acting in compliance with the principles of justice and reasonableness, to place the contracting authority under the obligation to suspend procurement procedures until it evaluates the documents and decisions of the contracting authority, and in the event of establishing such violations – to place the contracting authority under the obligation to terminate the procurement procedures, to modify or annul the unlawful decisions or actions;

6) in the cases specified by this Law, to issue consent for the contracting authority to conduct a negotiated procedure without publication of a contract notice;

7) to institute administrative proceedings against the persons who have violated this Law and who fail to comply with the requirements or decisions of the Public Procurement Office;

8) upon establishing violations of this Law or possible violations of the Law on Competition, corrupt practices or falsification of documents, to forward the material for further investigation to law enforcement institutions or for examination to other state institutions within their remit;

9) upon establishing violations of this Law and the legal acts related to its implementation and acting in the defence of the public interest, to apply to the court for the annulment of a public contract or a framework agreement and/or the imposition of alternative sanctions;

10) upon receipt of an enquiry from the institutions, contracting authorities or economic operators of other Member States regarding the application of the provisions of Articles 37, 38, 39, 46, 47, 48, 50, 51 and 57 of this Law, to forward it to Lithuanian state institutions, agencies or public legal entities which must provide the necessary information within their remit;

11) approve the requirements applicable to the technical specifications of specific supplies, services or works;

12) to return to the contracting authority the notices not complying with the requirements of this Law in accordance with the procedure established by the Public Procurement Office.

3. The Public Procurement Office shall adopt a decision on the consent referred to in point 6 of paragraph 2 of this Article not later than within 10 working days from the receipt of a reasoned request from the contracting authority and shall publish it in the Central Portal of Public Procurement on the day of adoption of this decision. If the contracting authority fails to submit all the necessary documents together with the application, the Public Procurement Office may, not later than within 3 working days from the receipt of the contracting authority's application, request the contracting authority to submit the additional documents necessary for the adoption of the decision not later than within 20 working days from the receipt of the request from the Public Procurement Office. Upon the receipt of a reasoned request from the contracting authority, the Public Procurement Office shall extend this time limit for the duration specified by the contracting authority. There shall be no limit to the number of extensions for the submission of additional documents. The Public Procurement Office shall adopt a decision regarding the consent referred to in point 6 of paragraph 2 of this Article not later than within 10 working days from the receipt of the additional documents. If the contracting authority fails to submit the requested additional documents within the set time limit, the Public Procurement Office shall not consider its request, however this shall not prevent the contracting authority from re-applying to the Public Procurement Office with the same request for the consent referred to in point 6 of paragraph 2 of this Article. If the Public Procurement Office fails to respond within the time limit set out in this paragraph, the consent shall be deemed to have been received. The procedure for applying for the consent referred to in point 6 of paragraph 2 of this Article shall be established by the Public Procurement Office.

4. The Public Procurement Office shall, having imposed an administrative penalty on a civil servant or employee of the contracting authority, notify the head of the contracting authority thereof not later than within one working day from the adoption of a decision imposing the administrative penalty.

5. The Public Procurement Office shall not deal with complaints and reports of potential breaches of procurement procedures or performance of public contracts. The information contained in these complaints and reports shall be used for an analysis of public procurement on the basis of which an inspection of activities of the contracting authority may be initiated in accordance with point 5 of paragraph 2 of this Article.

**Article 96. Registration of contracting authorities and procurement reports**

1. The contracting authority shall register with the Central Portal of Public Procurement in accordance with the procedure established by the Public Procurement Office.

2. Using tools of the Central Portal of Public Procurement, the contracting authority shall provide the Public Procurement Office with:

1) a report on each procurement procedure, including the procurement procedures leading to the conclusion of a framework agreement or the award of a public contract on the basis thereof, the establishment of a dynamic purchasing system or the award of a public contract on the basis thereof, within 15 days after the completion of the procurement procedures, but not later than until the beginning of first payment under the contract thus awarded. This report shall not be submitted where the public contract is awarded following a simplified procurement conducted pursuant to Article 72(3) of this Law, under a framework agreement pursuant to Article 78(4) or Article 78(5)(1) of this Law or when conducting the procurements referred to in Article 25(3) and (4) of this Law and low value procurements;

2) a report, within 30 days after the end of the reference calendar year, on all public contracts awarded during the calendar year for the procurements referred to in Article 25(3) and (4) of this Law or when the award of the public contract is not required to be published in accordance with the provisions of Article 86(9) of this Law.

3. The information to be provided in the reports referred to in paragraph 2 of this Article, requirements for the reports and model forms thereof shall be determined by the Public Procurement Office. If the legal acts of the Public Procurement Office require to include in procurement procedure reports the information already provided in a contract award notice or a notice of the conclusion of a framework agreement drawn up pursuant to Article 33 of this Law, the contracting authority may include a reference to that notice when preparing its report.

4. The reports referred to in paragraph 2 of this Article and the data referred to in Article 92(10) of this Law, with the exception of the information the disclosure whereof would be contrary to information and data protection legislation or public interest, would prejudice the legitimate commercial interests of a particular economic operator or would adversely affect competition amongst economic operators, shall be published in the Central Portal of Public Procurement. The contracting authority may also, in accordance with the requirements set out in this paragraph, publish the reports referred to in paragraph 2 of this Article on the buyer profile.

**Article 97. Documents supporting the progress of procurement procedures and keeping thereof**



1. The contracting authority must document the progress of all procurement procedures, regardless of whether or not those are conducted by electronic means.

2. The authorities supervising procurement procedures shall have the right to monitor all procurement procedures, if necessary, to film Commission meetings and other procurement procedures.

3. Documents of planning of and preparation for procurement, procurement documents, requests for participation, tenders and documents of their examination and evaluation, minutes of Commission decision-making, negotiations, dialogues or other minutes, documents of correspondence with economic operators, other documents related to the procurement shall be kept for at least 4 years after the completion of procurement procedures, and framework agreements, public contracts, their modifications and documents related to their execution – for at least 4 years after the performance of a public contract.

4. The documents referred to in paragraph 3 of this Article shall be kept in accordance with the procedure laid down by the Law of the Republic of Lithuania on Documents and Archives.

#### **Article 98. Procurement monitoring report**

1. A procurement monitoring report shall be drawn up and submitted to the European Commission by the Public Procurement Office.

2. A monitoring report submitted to the European Commission shall include:

1) the most frequent sources of wrong application of this Law and of legal uncertainty, including possible structural or recurring problems;

2) the level of participation of micro, small and medium-sized enterprises in public procurement;

3) information on the prevention, detection and adequate reporting of cases of fraud, corruption, conflict of interest and other serious irregularities;

4) the total value of simplified procurements during the relevant period;

5) other information that may reveal procurement regulatory and practical issues.

3. A monitoring report submitted to the European Commission shall also include the information referred to in Article 95(1)(15) of this Law.

4. At the request of the Public Procurement Office, the authorities exercising procurement supervision as indicated in Article 92(3) of this Law and the public legal persons authorised by a resolution of the Government of the Republic of Lithuania and administering the financial assistance of the European Union or individual states shall submit to the Public Procurement Office information regarding established violations of this Law, instances of fraud,

corruption in procurement and other available information required to produce a monitoring report for the European Commission.

### **Article 99. Examination of infringements of European Union law**

1. Upon receipt of a notice from the Public Procurement Office concerning a serious infringement of European Union law detected by the European Commission, the contracting authority must, not later than within 3 working days from the receipt of the notice, provide the Public Procurement Office in writing with all information relevant to the contract concerned.

2. The contracting authority shall inform the Public Procurement Office of its decisions or actions taken in respect of a serious infringement of European Union law detected by the European Commission not later than within 3 working days from the taking of the relevant decisions or actions.

3. The Public Procurement Office must, within 21 days from the receipt of a notice from the European Commission of a detected serious infringement of European Union law, submit to the European Commission:

- 1) a confirmation that the infringement has been remedied;
- 2) a reasoned clarification for not remedying the infringement if the remedying of the infringement has been refused;
- 3) a notice that the procurement procedures have been suspended by the contracting authority on its own initiative or that a decision to suspend the procurement procedures has been taken by the Public Procurement Office or the court.

4. A reasoned clarification referred to in point 2 of paragraph 3 of this Article may *inter alia* be based on the fact that the alleged infringement is already under investigation by the Public Procurement Office, a court or another law enforcement institution. The Public Procurement Office shall give a notice of the outcome of these proceedings to the European Commission immediately upon becoming aware thereof.

5. Upon giving a notice of suspended procurement procedures as stipulated in point 3 of paragraph 3 of this Article, the Public Procurement Office must additionally notify the European Commission of lifting of the suspension of the procurement procedures or of commencement of a new procurement procedure relating, completely or in part, to the same subject-matter of the contract. Such a notice must serve to confirm the remedying of the alleged infringement or provide a reasoned clarification as to the failure to remedy the infringement.

6. Upon receipt of a notice from the European Commission about a detected serious infringement of European Union law, the Public Procurement Office shall be entitled to file a

claim with the court if it believes that the contracting authority has infringed the provisions of this Law and has failed to remedy the infringement.

## **CHAPTER VII**

### **EXAMINATION OF DISPUTES, DAMAGES, NULLIFICATION OF PUBLIC CONTRACTS, ALTERNATIVE SANCTIONS**

#### **Article 100. Liability of heads or other authorised persons of the contracting authority**

1. Procurements conducted by the contracting authority shall be the responsibility of the head of the contracting authority.

2. Members of the Commission, experts, observers, persons responsible for performance of a contract and other persons shall be held liable for their actions in accordance with laws of the Republic of Lithuania.

#### **Article 101. Right to challenge the actions or decisions of the contracting authority**

1. An economic operator who believes that the contracting authority has not complied with the requirements of this Law or has, without providing justified grounds, terminated a contract as a result of a material breach of a public contract and thus violated or will violate its legitimate interests may, in accordance with the procedure laid down in this Chapter, refer to a regional court as a court of first instance for:

1) annulment or amendment of the decisions of the contracting authority which do not meet the requirements of this Law;

2) damages;

3) nullification of the public contract;

4) imposition of alternative sanctions pursuant to Article 106(1) of this Law;

5) recognition of termination of the public contract as a result of a material breach of the public contract as unjustified.

2. An economic operator may refer to court for application of interim protection measures in accordance with the procedure laid down by the Code of Civil Procedure of the Republic of Lithuania.

3. An economic operator shall, in order to challenge in court the decisions or actions of the contracting authority before the award of a public contract or the conclusion of a framework agreement, lodge a claim with the contracting authority in writing (by fax, by electronic means or against signature via a postal service provider or another appropriate carrier).

**Article 102. Time limits for lodging a claim with the contracting authority, making a request to or bringing a lawsuit before a court**

1. An economic operator shall have the right to lodge a claim with the contracting authority, to make a request to or to bring a lawsuit before a court (except for an action for nullification of a public contract or a framework agreement or an action for recognition of the termination of the public contract as unjustified):

1) within 10 days (in the case of a simplified procurement – within 5 working days) from the date on which a notice of the contracting authority about the decision taken by the contracting authority is sent to economic operators or, if this notice is not sent by electronic means, within 15 days from the date on which the notice is sent to the economic operators;

2) within 10 days (in case of a simplified procurement – within 5 working days) from the date on which a decision taken by the contracting authority is published, if this Law does not require to inform the economic operators in writing about the decisions taken by the contracting authority.

2. If the contracting authority fails to examine a claim lodged with it within the set time limit, an economic operator shall have the right to make a request to or bring a lawsuit before a court within 15 days from the date on which the contracting authority ought to have given a written notice of a decision taken to the economic operator who has lodged the claim, interested candidates and interested tenderers.

3. An economic operator shall have the right to bring a lawsuit for nullification of a public contract or a framework agreement within six months from awarding of the public contract.

4. An economic operator that considers that the contracting authority has unjustifiably terminated a public contract as a result of a material breach of the contract shall have the right to bring a lawsuit before a court within 30 days from the termination of the public contract.

5. In the cases when the damage has been incurred to an economic operator by unlawful actions or decisions of the contracting authority, however this Law does not impose on the contracting authority the obligation to give a written notice to economic operators or to publish its actions or decisions, the periods of limitation for the bringing of a lawsuit as stipulated in the Civil Code of the Republic of Lithuania shall apply. The provisions of this paragraph shall not be apply in the case provided for in paragraph 4 of this Article.

**Article 103. Examination of a claim by the contracting authority**

1. The contracting authority shall examine only those claims of economic operators that were received before the date of award of a public contract or conclusion of a framework agreement and lodged in accordance with the time limits specified in Article 102(1) of this Law. It shall not be mandatory to examine the claims lodged repeatedly concerning a decision or action taken by the same contracting authority.

2. The contracting authority shall, upon receipt of a claim, immediately suspend a procurement procedure pending the examination of the claim and the taking of a decision. The contracting authority may not award a public contract or conclude a framework agreement before the lapse of 10 days (in the case of a simplified procurement – before the lapse of 5 working days) from the date on which a written notice of its decision is sent to an economic operator who has lodged the claim, interested candidates and interested tenderers or, if this notice is not sent by electronic means, before the lapse of 15 days.

3. The contracting authority must examine a claim, take a reasoned decision and notify in writing an economic operator who has lodged the claim, interested candidates and interested tenderers of the decision, also of a change in the previously announced terms of the procurement procedure not later than within 6 working days from the receipt of the claim.

#### **Article 104. Examination of a request made to or a lawsuit brought before a court**

1. Upon making a request to or bringing a lawsuit before a court, an economic operator must, not later than within 3 working days, submit to the contracting authority a copy of the request or the lawsuit with evidence of receipt thereof by the court.

2. Upon receipt of a copy of an economic operator's request or lawsuit, the contracting authority may not award a public contract or conclude a framework agreement until the expiry of the period of deferment or the time limits referred to in Article 103(2), Article 105(2)(3) and Article 105(3)(3) of this Law and until the receipt by the contracting authority of a court's notice of:

- 1) a reasoned ruling refusing to admit the lawsuit;
- 2) a reasoned ruling dismissing the economic operator's request to apply interim protection measures, where this request was made to the court prior to bringing of the lawsuit;
- 3) a resolution of the court admitting the lawsuit without application of interim protection measures.

3. Where the time limits of procurement procedures notified to economic operators are extended due to an economic operator's making of a request to or bringing of a lawsuit before a court, the contracting authority shall send to the economic operators a notice to the effect indicating the reasons for the extension of time limits.

4. Upon receipt of a notice of a court's decision regarding an economic operator's request or lawsuit, the contracting authority shall, not later than within 3 working days, give a written notice of the decisions adopted by the court to interested candidates and interested tenderers.

#### **Article 105. Nullification of a public contract or a framework agreement**

1. A court shall nullify a public contract or a framework agreement in any of the following cases:

1) the contracting authority has awarded the public contract or concluded the framework agreement without publication of a contract notice in the case of a procurement governed by international rules in the Official Journal of the European Union or without publication of a contract notice in the case of a simplified procurement in the Central Portal of Public Procurement, when this is not permitted pursuant to requirements of this Law;

2) the contracting authority has infringed upon the requirements of Article 86(8), Article 103(2) or Article 104(2) of this Law, along with other requirements of this Law, which has impaired the chances of the tenderer who made a request to or brought a lawsuit before the court to be awarded the public contract or to conclude the framework agreement, and this tenderer could not avail of any remedy prior to awarding of the public contract or conclusion of the framework agreement;

3) the contracting authority has infringed upon the provisions of Article 78(6) or Article 79(9) and (10) of this Law and, in awarding the public contract, has invoked a derogation entailing non-application of the period of deferment;

4) upon detecting the infringements of other imperative provisions of this Law which have impaired the chances of the tenderer who made a request to or brought a lawsuit before the court to be awarded the public contract or to conclude the framework agreement, and that tenderer could not avail of any remedies prior to awarding of the public contract or conclusion of the framework agreement.

2. A court may not nullify a public contract or a framework agreement under point 1 of paragraph 1 of this Article, if there are all of the following conditions:

1) the contracting authority decides that this Law permits awarding without publication of a contract notice in the case of a procurement governed by international rules in the Official Journal of the European Union or without publication of a contract notice in the case of a simplified procurement in the Central Portal of Public Procurement;

2) the contracting authority has published a voluntary ex-ante transparency notice;

3) the public contract has been awarded or the framework agreement was concluded not earlier than after the lapse of 10 days (in the case of a simplified procurement – not earlier than

after the lapse of 5 working days) from the publication of the voluntary ex-ante transparency notice.

3. A court may not nullify a public contract or a framework agreement pursuant to point 3 of paragraph 1 of this Article if all of the following conditions are met:

1) the contracting authority considers that it complied with the provisions of Article 78(6) or Article 79(9) and (10) of this Law when awarding the public contract;

2) the contracting authority has sent notices to interested tenderers regarding the decision to identify the winning tender in accordance with the requirements set out in Article 58(1) of this Law;

3) the public contract has been awarded not earlier than after the lapse of 10 days (in the case of a simplified procurement – not earlier than 5 working days) from the date on which notices of a decision to identify the winning tender are sent to interested tenderers or, if these notices are not sent by electronic means, not earlier than after the lapse of 15 days from the date on which these notices are sent by other means.

#### **Article 106. Alternative sanctions and imposition thereof**

1. A court shall impose alternative sanctions according to paragraph 3 of this Article, where the contracting authority infringes upon the requirements of Article 86(8), Article 103(2) or Article 104(2) of this Law, in the absence of other circumstances referred to in Article 105(1)(2) of this Law.

2. A court shall be permitted not to nullify a public contract or a framework agreement and to impose alternative sanctions pursuant to paragraph 3 of this Article, although the public contract has been awarded or the framework agreement has been concluded unlawfully according to provisions of Article 105(1) of this Law, where the effects of awarding of the public contract or conclusion of the framework agreement must be preserved for defence of the public interest, including the economic interest not related to awarding of the public contract or conclusion of the framework agreement due to which nullification of the public contract or the framework agreement would give rise to disproportionate effects. The economic interest directly related to the public contract or the framework agreement shall *inter alia* include the expenses arising from a delay in performance of the public contract, commencement of a new procurement procedure, replacement of the economic operator performing the public contract, and legal obligations arising from nullification of the public contract or the framework agreement.

3. The alternative sanctions imposed by a court must be effective, proportionate and dissuasive. The court shall impose the following alternative sanctions:

1) shortening of the term of a public contract or a framework agreement;

2) the fine imposed on the contracting authority. The fine shall not exceed 10 % of the value of the public contract or the framework agreement.

4. When imposing alternative sanctions, a court must take into account all relevant aspects, including the gravity of the infringement and the conduct of the contracting authority. An alternative sanction imposed by the court, including the amount of a fine imposed upon the contracting authority, must be reasoned by a decision of the court.

**Article 107. Damages for non-compliance with requirements of this Law**

1. A court shall satisfy an economic operator's claim solely as regards damages where a public contract has already been awarded, and compliance with the requirements set forth in Article 50(5), Article 55(8), Article 58(1), Article 86(1) and (8), Article 102, Article 103(2), Article 104(2), Article 105(1), (2) and (3) and Article 106 of this Law has been ensured.

2. An economic operator referring to court for damages may claim damages for direct or indirect losses as a result of a failure of the contracting authority to comply with the requirements of this Law. When the economic operator claims damages including damages for both direct and indirect losses, the court shall satisfy a higher value claim.

3. Where damages are claimed for the same amount as the cost of preparing a tender or participating in a procurement procedure, the economic operator seeking damages must prove the amount of the damage, as well as the fact of infringement of requirements of this Law and impaired chances to be awarded a public contract or to conclude a framework agreement.

*I promulgate this Law passed by the Seimas of the Republic of Lithuania.*

PRESIDENT OF THE REPUBLIC

ALGIRDAS BRAZAUSKAS



**ECONOMIC ACTIVITIES REFERRED TO IN ARTICLE 2(7) OF THE LAW OF THE  
REPUBLIC OF LITHUANIA ON PUBLIC PROCUREMENT**

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
1.	45			Construction	This division includes new construction, restoration and ordinary repair.	45000000
2.		45.1		Site preparation		45100000
3.			45.11	Demolition and wrecking of buildings; earth moving	This class includes: - demolition of buildings and other structures, - clearing of building sites, - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc., - site preparation for mining: - overburden removal and other development and preparation of sites and mineral properties. This class also includes: - building site drainage - drainage of agricultural and forestry land.	45110000
4.			45.12	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: - drilling of production oil and gas wells (see 11.20), - water well drilling (see 45.25), - shaft sinking (see 45.25), - oil and gas field exploration, geophysical, geological and seismic surveying (see 74.20).	45120000

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
5.		45.2		Building of complete constructions or parts thereof; civil engineering		45200000
6.			45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>– construction of all types of buildings, construction of civil engineering constructions:</li> <li>– bridges, including those for elevated highways, viaducts, tunnels and subways</li> <li>– long-distance pipelines and power lines,</li> <li>– urban pipelines, urban communication and power lines,</li> <li>– ancillary urban works,</li> <li>– assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>– service activities incidental to oil and gas extraction (see 11.20),</li> <li>– erection of complete prefabricated constructions from self-manufactured parts not of concrete on the site (see divisions 20, 26 and 28),</li> <li>– construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations (see 45.23),</li> <li>– building installation (see 45.3),</li> <li>– building completion (see 45.4),</li> <li>– architectural and engineering activities (see 74.20),</li> <li>– project management for construction (see 74.20).</li> </ul>	45210000, except for: 45213316, 45220000, 45231000, 45232000
7.			45.22	Erection of roof	This class includes:	45261000

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
				covering and frames	<ul style="list-style-type: none"> <li>– erection of roofs,</li> <li>– roof covering,</li> <li>– waterproofing.</li> </ul>	
8.			45.23	Construction of highways, roads, airfields and sports facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>– construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>– construction of railways,</li> <li>– construction of airfield runways,</li> <li>– construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations,</li> <li>– painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes preliminary earth moving (see 45.11).</p>	45212212 and DA03 45230000, except for: 45231000, 45232000, 5234115
9.			45.24	Construction of water projects	<p>This class includes:</p> <ul style="list-style-type: none"> <li>– construction of:</li> <li>– waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>– dams and dykes,</li> <li>– dredging,</li> <li>– subsurface work.</li> </ul>	45240000
10.			45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>– construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>– construction of foundations, including pile driving,</li> <li>– water well drilling and construction, shaft sinking,</li> <li>– erection of non-self-manufactured steel elements,</li> <li>– steel bending,</li> <li>– bricklaying and stone setting,</li> <li>– scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> </ul>	45250000, 45262000

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
					– installation of chimneys and industrial ovens. This class excludes renting of scaffolds without erection and dismantling (see 71.32).	
11.		45.3		Building installation		45300000
12.			45.31	Installation of electrical wiring and fittings	This class includes: – installation in buildings or other construction projects of: – electrical wiring and fittings, – telecommunications systems, – electrical heating systems, – residential antennas and aerials, – fire alarms, – burglar alarm systems, – lifts and escalator, – lightning conductors, etc.	45213316, 45310000, except for: 45316000
13.			45.32	Insulation work activities	This class includes installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes waterproofing (see 45.22).	45320000
14.			45.33	Plumbing	This class includes: – installation in buildings or other construction projects of: – plumbing and sanitary equipment, – gas fittings, – heating, ventilation, refrigeration or air-conditioning equipment and ducts, – sprinkler systems. This class excludes installation of electrical heating systems (see 45.31).	45330000
15.			45.34	Other building installation	This class includes: – installation of illumination and signalling system for roads, railways, airports and harbours,	45234115, 45316000, 45340000

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
					– installation in buildings and other construction projects of fittings and fixtures n.e.c.	
16.		45.4		Building completion		45400000
17.			45.41	Plastering	– application in buildings and other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
18.			45.42	Joinery installation	This class includes: – installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, – interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes parquet and other wooden floor coverings (see 45.43).	45420000
19.			45.43	Floor and wall covering	This class includes: – laying, tiling, hanging or fitting in buildings or other construction projects of: – ceramic, concrete or cut stone wall or floor tiles, – parquet and other wood floor coverings, carpets and linoleum floor coverings, including of rubber or plastic, – terrazzo, marble, granite or slate floor or wall covering, – wallpaper.	45430000
20.			45.44	Painting and glazing	This class includes: – interior and exterior painting of buildings, – painting of civil engineering structures, – installation of glass, mirrors, etc. This class excludes installation	45440000

Serial No	Economic Activities Listed in the Statistical Classification of Economic Activities in the European Community (NACE Rev. 1)					Reference to the Common Procurement Vocabulary (CPV)
	SECTION F			CONSTRUCTION		
	Division	Group	Class	Title	Notes	
					of windows (see 45.42).	
21.			45.45	Other building completion	This class includes: – installation of private swimming pools, – steam cleaning, sand blasting and similar activities for building exteriors, – other building completion and finishing work n.e.c. This class excludes interior cleaning of buildings and other structures (see 74.70).	45212212 and DA04 45450000
22.		45.5		Renting of construction or demolition equipment with operator		45500000
23.			45.50	Renting of construction or demolition equipment with operator	This class excludes renting of construction or demolition machinery and equipment without operators (see 71.32).	45500000

Annex 2  
to the Law of the Republic of  
Lithuania on Public Procurement

**SOCIAL AND OTHER SPECIAL SERVICES**

Serial No	Reference to the Common Procurement Vocabulary (CPV)	Name of services
1.	75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [supply services of domestic help personnel]; 79624000-4 [supply services of nursing personnel] and 79625000-1 [supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5; 98133000-4; 98200000-5; 98500000-8 [private households with employed persons] and 98513000-2 to 98514000-9 [manpower services for households, agency staff services for households, clerical staff services for households, temporary staff for households, home-help services, domestic services]	Health, social and related services
2.	85321000-5 and 85322000-2; 75000000-6 [Administrative, defence and social services]; 75121000-0; 75122000-7; 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 [Education and training services] to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services]; 79951000-5 [Seminar organisation services]; 79952000-2 [Event services]; 79952100-3 [Cultural event organisation services]; 79953000-9 [Festival organisation services]; 79954000-6 [Party organisation services]; 79955000-3 [Fashion shows organisation services]; 79956000-0 [Fair and exhibition organisation services]	Administrative, social, educational, health and cultural services
3.	75300000-9	Compulsory social security services (the Law of the Republic of Lithuania on Public Procurement shall not apply if these services are organised as non-economic services of public interest)
4.	75310000-2; 75311000-9; 75312000-6; 75313000-3; 75313100-4; 75314000-0; 75320000-5; 75330000-8; 75340000-1	Benefit services
5.	98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services, including services furnished by trade unions, political organisations, youth associations and

Serial No	Reference to the Common Procurement Vocabulary (CPV)	Name of services
		miscellaneous membership organisations services
6.	98131000-0	Religious services
7.	55100000-1 to 55410000-7; 55521000-8 to 55521200-0 55521000-8 [Catering services for private households], 55521100-9 [Meals-on-wheels services], 55521200-0 [Meal delivery services] 55520000-1 [Catering services], 55522000-5 [Catering services for transport enterprises], 55523000-2 [Catering services for other enterprises or other institutions], 55524000-9 [School catering services] 55510000-8 [Canteen services], 55511000-5 [Canteen and other restricted-clientele cafeteria services], 55512000-2 [Canteen management services], 55523100-3 [School-meal services]	Hotel and restaurant services
8.	79100000-5 to 79140000-7; 75231100-5	Legal services other than those outside the scope of Article 6(4) of the Law of the Republic of Lithuania on Public Procurement
9.	75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative and government services
10.	75200000-8 to 75231000-4	Provision of services to the community
11.	75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Imprisonment services, public security and rescue services other than those not specified in point 9 of Article 6 of the Law of the Republic of Lithuania on Public Procurement
12.	79700000-1 to 79721000-4 [Investigation and security services, security services, alarm-monitoring services, guard services, surveillance services, tracing system services, absconder-tracing services, patrol services, identification badge release services, investigation services and detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
13.	98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	Foreign-affairs services
14.	64000000-6 [Postal and telecommunications services]; 64100000-7 [Post and courier services]; 64110000-0 [Postal services]; 64111000-7 [Postal services related to newspapers and periodicals]; 64112000-4 [Postal services related to letters]; 64113000-1 [Postal services related to parcels]; 64114000-8 [Post office counter services];	Postal services



Serial No	Reference to the Common Procurement Vocabulary (CPV)	Name of services
	64115000-5 [Mailbox rental]; 64116000-2 [Post-restante services]; 64122000-7 [Internal office mail and messenger services]	
15.	50116510-9 [Tyre-remoulding services]; 71550000-8 [Blacksmith services]	Miscellaneous services

**CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, TO PARTICIPATE IN  
THE DIALOGUE OR TO CONFIRM INTEREST**

1. The contracting authority shall include in the invitation to submit a tender or to participate in the dialogue the following information:

1) the internet address at which procurement documents are accessible in the Central Portal of Public Procurement or elsewhere;

2) attach procurement documents if they are not published in the Central Portal of Public Procurement for reasons specified in Article 20(5) or Article 22(5) of this Law or access thereto has not been authorised in any other manner;

3) a reference to the published contract notice or prior information notice inviting to participate in the procurement;

4) when inviting to submit tenders – the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up, and in the case of competitive dialogue – the date and the address set for the start of consultation and the language or languages used;

5) where necessary, a reference to any possible adjoining documents to be submitted by economic operators in support of compliance with the specified requirements in relation to exclusion grounds and qualifications;

6) the procedure for evaluating tenders or solutions or final tenders, evaluation criteria and the relative weighting of the evaluation criteria and, where necessary, the descending order of importance for such criteria, where they are not given in the contract notice, in the technical specifications or other procurement documents;

7) minimum requirements not subject to negotiations in a negotiated procedure with publication of a contract notice or an innovation partnership;

8) any other information that the contracting authority deems necessary.

2. The sub-central contracting authority shall include in the invitation to confirm interest at least the following information:

1) the internet address at which procurement documents are accessible in the Central Portal of Public Procurement or elsewhere;

2) attach procurement documents if they are not published in the Central Portal of Public Procurement for reasons specified in Article 20(5) or Article 22(5) of this Law or access thereto has not been authorised in any other manner;

3) where applicable, requirements for the protection of confidential information provided by the sub-central contracting authority pursuant to Article 20(5) of this Law;

4) the address and closing date for the submission of requests for the remaining procurement documents which have not yet been submitted and the language or languages in which such requests are to be drawn up;

5) description of the nature and quantity of the subject-matter of the contract, including all options concerning complementary contracts, and, where possible, the estimated time available for exercising these options and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

6) type of procedure: restricted procedure or negotiated procedure with publication of a contract notice;

7) where appropriate, the date on which the delivery of supplies or the execution of services or works is to commence and terminate;

8) the address of the sub-central contracting authority which is to award the contract;

9) economic and technical conditions, financial guarantees and information required from economic operators;

10) the form of the contract to be awarded: purchase, lease, hire or hire-purchase, or any combination of these;

11) tender evaluation criteria and their weighting or, where necessary, the order of importance of such criteria, where this information is not given in the prior information notice or the technical specifications or in other procurement documents;

12) minimum requirements not subject to negotiations in a negotiated procedure with publication of a contract notice;

13) any other information that the sub-central contracting authority deems necessary.

**REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC  
RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AS WELL AS PLANS  
AND PROJECTS IN CONTESTS**

Tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests must at least guarantee, through technical means and appropriate procedures, that:

1) the exact time and date of the receipt of tenders, requests for participation and the submission of plans and projects can be determined precisely;

2) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

3) only the persons authorised by a state information system administrator or, in the case of a non-state information system, a person performing equivalent functions (hereinafter: 'authorised persons') may set or change the dates for opening data received;

4) during the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons;

5) only authorised persons must give access to data transmitted and only after the prescribed date;

6) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;

7) where the access prohibitions or conditions referred to under points 2, 3, 4, 5 and 6 of this Annex are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS  
REFERRED TO IN ARTICLE 17(2)(2) OF THE LAW OF THE REPUBLIC OF  
LITHUANIA ON PUBLIC PROCUREMENT**

1. ILO Convention 29 of 10 June 1930 on Forced Labour.
2. ILO Convention 87 of 17 June 1948 on Freedom of Association and the Protection of the Right to Organise.
3. ILO Convention 98 of 1 July 1949 on the Right to Organise and Collective Bargaining.
4. ILO Convention 100 of 29 June 1951 on Equal Remuneration.
5. ILO Convention 105 of 25 June 1957 on the Abolition of Forced Labour.
6. ILO Convention 111 of 25 June 1958 on Discrimination (Employment and Occupation).
7. ILO Convention 138 of 26 June 1973 on Minimum Age.
8. Vienna Convention of 22 March 1985 for the Protection of the Ozone Layer and its Montreal Protocol of 16 September 1987 on Substances that Deplete the Ozone Layer.
9. Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.
10. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.
11. ILO Convention 182 of 17 June 1999 on Worst Forms of Child Labour.
12. Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants.

**LIST OF PRODUCTS REFERRED TO IN ARTICLE 4(1)(1) OF THE LAW OF THE  
REPUBLIC OF LITHUANIA ON PUBLIC PROCUREMENT WITH REGARD TO  
CONTRACTS AWARDED BY CONTRACTING AUTHORITIES IN THE FIELD OF  
NATIONAL DEFENCE**

1.	Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
2.	Chapter 26:	Metallic ores, slag and ash
3.	Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes, except: <i>ex 27.10: special engine fuels</i>
4.	Chapter 28:	Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes, except: <i>ex 28.09: explosives</i> <i>ex 28.13: explosives</i> <i>ex 28.14: tear gas</i> <i>ex 28.28: explosives</i> <i>ex 28.32: explosives</i> <i>ex 28.39: explosives</i> <i>ex 28.50: toxic products</i> <i>ex 28.51: toxic products</i> <i>ex 28.54: explosives</i>
5.	Chapter 29:	Organic chemicals, except: <i>ex 29.03: explosives</i> <i>ex 29.04: explosives</i> <i>ex 29.07: explosives</i> <i>ex 29.08: explosives</i> <i>ex 29.11: explosives</i> <i>ex 29.12: explosives</i> <i>ex 29.13: toxic products</i> <i>ex 29.14: toxic products</i> <i>ex 29.15: toxic products</i> <i>ex 29.21: toxic products</i> <i>ex 29.22: toxic products</i> <i>ex 29.23: toxic products</i> <i>ex 29.26: explosives</i> <i>ex 29.27: toxic products</i> <i>ex 29.29: explosives</i>
6.	Chapter 30:	Pharmaceutical products

7.	Chapter 31:	Fertilisers
8.	Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
9.	Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
10.	Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
11.	Chapter 35:	Albuminoidal substances, glues, enzymes
12.	Chapter 37:	Photographic and cinematographic goods
13.	Chapter 38:	Miscellaneous chemical products, except: <i>ex</i> 38.19: toxic products
14.	Chapter 39:	Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except: <i>ex</i> 39.03: explosives
15.	Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof, except: <i>ex</i> 40.11: bullet-proof tyres
16.	Chapter 41:	Raw hides and skins (other than fur skins) and leather
17.	Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
18.	Chapter 43:	Fur skins and artificial fur, manufactures thereof
19.	Chapter 44:	Wood and articles of wood, wood charcoal
20.	Chapter 45:	Cork and articles of cork
21.	Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
22.	Chapter 47:	Paper-making material
23.	Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
24.	Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
25.	Chapter 65:	Headgear and parts thereof
26.	Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
27.	Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
28.	Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
29.	Chapter 69:	Ceramic products
30.	Chapter 70:	Glass and glassware
31.	Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
32.	Chapter 73:	Iron and steel and articles thereof
33.	Chapter 74:	Copper and articles thereof
34.	Chapter 75:	Nickel and articles thereof
35.	Chapter 76:	Aluminium and articles thereof
36.	Chapter 77:	Magnesium and beryllium and articles thereof
37.	Chapter 78:	Lead and articles thereof
38.	Chapter 79:	Zinc and articles thereof
39.	Chapter 80:	Tin and articles thereof

40.	Chapter 81:	Other base metals employed in metallurgy and articles thereof
41.	Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: <i>ex</i> 82.05: tools <i>ex</i> 82.07: tools, parts
42.	Chapter 83:	Miscellaneous articles of base metal
43.	Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: <i>ex</i> 84.06: engines <i>ex</i> 84.08: other engines <i>ex</i> 84.45: machinery <i>ex</i> 84.53: automatic data-processing machines <i>ex</i> 84.55: parts of machines under heading No 84.53 <i>ex</i> 84.59: nuclear reactors
44.	Chapter 85:	Electrical machinery and equipment, parts thereof, except: <i>ex</i> 85.13: telecommunication equipment <i>ex</i> 85.15: transmission apparatus
45.	Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: <i>ex</i> 86.02: armoured locomotives, electric <i>ex</i> 86.03: other armoured locomotives <i>ex</i> 86.05: armoured wagons <i>ex</i> 86.06: repair wagons <i>ex</i> 86.07: wagons
46.	Chapter 87:	Vehicles, other than railway or tramway rolling-stock, and parts thereof, except: <i>ex</i> 87.01: tractors <i>ex</i> 87.02: military vehicles <i>ex</i> 87.03: breakdown lorries <i>ex</i> 87.08: tanks and other armoured vehicles <i>ex</i> 87.09: motorcycles <i>ex</i> 87.14: trailers
47.	Chapter 89:	Ships, boats and floating structures, except: <i>ex</i> 89.01A: warships
48.	Chapter 90:	Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except: <i>ex</i> 90.05: binoculars <i>ex</i> 90.13: miscellaneous instruments, lasers <i>ex</i> 90.14: telemeters <i>ex</i> 90.11: microscopes <i>ex</i> 90.17: medical instruments <i>ex</i> 90.18: mechano-therapy appliances <i>ex</i> 90.19: orthopaedic appliances <i>ex</i> 90.20: X-ray apparatus



		<i>ex</i> 90.28: electrical and electronic measuring instruments
49.	Chapter 91:	Manufacture of watches and clocks
50.	Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
51.	Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: <i>ex</i> 94.01A: aircraft seats
52.	Chapter 95:	Articles and manufactures of carving or moulding material
53.	Chapter 96:	Brooms, brushes, powder-puffs and sieves
54.	Chapter 98:	Miscellaneous manufactured articles

## **LEGAL ACTS OF THE EUROPEAN UNION IMPLEMENTED BY THIS LAW**

1. Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 2004 special edition, Chapter 6, Volume 1, p. 246), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 (OJ 2007 L 335, p. 31) and as last amended by Directive 2014/23/EC of the European Parliament and of the Council of 26 February 2014 (OJ 2014, L 94, p.31).

2. Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ 2004 special edition, Chapter 6, Volume 5, p. 3) as last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny (OJ 2009 L 188, p. 14).

3. Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ 2009, L 120, p. 5).

4. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ 2009 L 168, p. 24).

5. Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012 L 315, p.1).

6. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).