

Public Procurement Law Republic of Montenegro
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AN ACT PROVIDING FOR THE MODERNIZATION OF THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF MONTENEGRO, AND, WHILE TAKING INTO ACCOUNT THE NEED FOR ECONOMIC GROWTH, TO HARMONIZE THE LAW WITH INTERNATIONAL OBLIGATIONS; TO MAKE PROVISIONS FOR THE PUBLIC PROCUREMENT OF GOODS, WORKS AND SERVICES; TO INTRODUCE GREATER TRANSPARENCY AND INTEGRITY; TO ESTABLISH ENTITIES HAVING RESPONSIBILITIES AND AUTHORITIES TO ADMINISTER THE SYSTEM EFFICIENTLY; TO OFFER EQUITABLE ACCESS TO THE PRIVATE SECTOR TO GOVERNMENT CONTRACTS AND, TO RENDER CORRUPTION MORE DIFFICULT.

CHAPTER 1
INTRODUCTION

Article 1
Conditions

The award of works, supplies, plant, equipment, ancillary services and the contracting for consulting services shall be regulated under this Act and shall be undertaken with integrity and transparency, whereby no activity undertaken thereunder shall be initiated without sufficient appropriations. The article 1 shall apply to any procurement activities.

(1) Integrity: Under this Act, all public servants and all participating suppliers shall fight against corruption, graft, collusion, conspiracy, the rigging of bids, conflicts of interest, the lack of integrity and transparency in public procurement activities and shall therefor promote and maintain high standards of open and fair competition with professionalism, ethics, and efficiency in compliance with this Act.

(2) Transparency: All public entities shall contribute to maintain the public procurement system consistent, coherent, responsive, accountable and transparent in compliance with this Act.

(3) Appropriations: No solicitation for quotation, bid, proposal or for any type of offer from a supplier shall be initiated until the public entity has formally ensured that funds have been appropriated therefor in an amount sufficient for fulfillment of any obligation created thereunder.

Article 2 Scope of the Act

Notwithstanding any other enactment, this Act shall apply to Ministries, Departments, Secretariats, Courts, Self-Local Governments, to any public entity deriving public funds for public procurement and to Government owned companies, entities or firms not financially autonomous and not established under civil and commercial law. The article 2 shall apply to any procurement activities.

(1) *Unfair competition:* For a prescribed period not exceeding three years, as may be determined by the Parliament, Government owned companies or firms shall be allowed to offer to any public entity and compete with the private sector only if they do not benefit from public funds whereby *advantagium* obtained therefrom results in unfair competition.

(2) *Privatization and Concessions:* For avoidance of doubt, this Act shall not apply to the tendering or any related activity undertaken for privatization exercises or for any investment under Concessions or under BOT, Built, Operate and Transfer arrangements, tendering thereof being governed by other laws in force *infra civitatem*.

CHAPTER 2 DEFINITIONS AND PRINCIPLES

Article 3 Interpretation and Definitions

Each article of this Act shall be interpreted in light of the others so that each article is given the meaning derived from the Act as a whole. Where the context so permits words importing the singular shall be deemed to include the plural and *vice versa* and words importing the masculine shall be deemed to include the feminine and *vice versa*; words importing persons or parties shall include firms and companies and any organization having legal capacity. The definitions which shall apply to this Act are -

Ancillary services: services referring to any intangible or / and ancillary items or activities delivered by a person, human or corporate, being by nature deliverable under the intellectual or capable guidance for an expert aiming at improving a situation by mainly providing human resources including catering, insurance brokerage, maintenance of building, maintenance of equipment and vehicle, security services, transportation and other services of similar nature;

Artistic items: any object of art, usually protected by intellectual rights or otherwise authorship, delivered by an artist who has the necessary know-how, ingenuity, skill, dexterity, artfulness and creativity;

Bid: a supplier's offer submitted in response to an invitation to offer under competitive bidding;

Bidder (Tenderer): any natural or legal person or group of such persons submitting a bid, with a view to concluding a contract for goods or works; for the purpose of this Act, *bidder* and *tenderer* shall have the same meaning and *vice versa*;

Bid price (Tender price): the sum stated by the bidder in his bid for carrying out the contract;

Bill of quantities: the itemized breakdown of the tasks to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price;

Breakdown of overall price: the itemized list of rates and prices showing the build-up of the price in a lump sum contract, but which does not form part of the contract;

Candidate: a supplier who offers to be prequalified or a consultant who is on a short list;

Commodities: (i) all food items and (ii) goods such as raw materials or an agricultural product for which prices are quoted in established commodity market;

Companies or firms: companies or firms constituted under civil or commercial law, including corporations, whether public law, including corporations, whether public or otherwise, cooperative societies and other legal persons and partnerships governed by public or private law, save for those which are non-profit making;

Communications: certification, notice, amendment, order, clarification and any instruction issued under the contract and shall include any expression or exchange of information by speech, writing or gestures;

Consultant: a person, natural or corporate, delivering consulting services or artistic items;

Consulting services: tasks to be performed by the consultant under a contract;

Contract price for works: the sum stated in the contract representing the initial estimate payable to a contractor for carrying out the works, for him to pay his suppliers or any services provided by them, or such other sum as ascertained at the end of the contract as due to the contractor under the terms and conditions of the contract;

Contracting authority: the Government or the legal person governed by public or private law which concludes the contract or on behalf of which the contract is concluded;

Day: calendar day;

Drawings: a document, plan or scheme, provided by the contracting authority and/or by the supplier in connection with the tender permitting to communicate the design or any related pattern or configuration of elements thereof.

Electronic modes: all modes of communication utilized to transmit information electronically and shall include but not limited to a fax transmission, electronic mail, electronic signature and web site; for court hearings, communication by electronic modes, where they are utilized in compliance with this Act, shall be receivable under this Act as an admissible evidence.

Equipment for works: appliances and other machinery, and where applicable under the law and/or practice of the Republic of Montenegro, the temporary structures on the work site, required for carrying out contract but excluding plant or other items required to form part of permanent works;

Extension of contract: addition to the scope of a contract resulting from a voluntary choice by a public entity; such extension shall be under direct agreement pursuant to article 7 (6);

Financial evaluation: the evaluation of the monetary value of a proposal for consulting services or for artistic items;

Foreign currency: any permissible currency within the meaning of this Act which is not the ones utilized locally, and which has been indicates in the solicitation documents;

Goods: all things, and things that will come into being, including specially manufactured goods that are movable at the time of identification to a contract for sale;

Limited local competitive bidding: a local solicitation to selected or prequalified bidders from the Republic of Montenegro;

Limited international competitive bidding: an international solicitation to selected or prequalified bidders from the Republic of Montenegro and abroad;

Local currency: the currencies of the Republic of Montenegro;

Lots: shall have the same meaning as "slices" and *vice versa*; parts of contracts to be awarded in lots as stipulated in the solicitation documents; an article that is the subject of a separate sale, lease, or delivery, whether or not it is sufficient to perform the contract;

Lowest calculated price: the sum stated by the supplier in his tender for carrying out the contract, thereafter calculated as being the lowest by using predetermined factors;

Offer: any offer to pre-qualify, to quote, to bid or to propose for a purpose of procurement, a promise to do or refrain from doing something in the future, a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a contract;

Open international competitive bidding: an international solicitation opened to bidders, without pre-qualification;

Open local competitive bidding: a local solicitation opened to all suppliers in the Republic of Montenegro;

Performance requirements: the requirements of successful completion of a contractual duty for a qualitative, quantitative, competitive and timely delivery, substantial and future, whereby what is delivered meets the pre - determined requirements.

Plant: machinery, apparatus, components and all items to be provided or incorporated under the contract;

Postqualification: the verification of criteria to be met by a supplier before award;

Prequalification: the verification of the capabilities of suppliers to be eligible to bid;

Prequalified supplier: a supplier who meets predetermined criteria whereby he becomes eligible to bid;

Price schedule: the completed schedule of prices, including the breakdown of the overall price, submitted by the bidder with his bid modified as necessary and forming a part of the unit price contract;

Price revision formula: a formula utilized to revise prices to cover price changes;

Procurement: the act of getting or obtaining something, by any means such as, but not limited to, buying, leasing, renting, contracting, and the management thereof;

Proposal: offer made by a consultant, a consulting firm or an artist to delivered services described by terms of reference;

Public procurement rules and forms; rules and forms made under this Act by the Public Procurement Commission established under this Act;

Public entity: *public entities are courts, bodies of local government, all organizations designated as such by the Decree on organization and methods of works for public administration / Official Gazette of Montenegro no. 8/93, 39/93, 19/95, 13/96, 7/97, 13/98, 27/98, 38/98, 18/99, 31/99 and public entities which performs social duties pursuant to the rules of Social Activity Act (official Gazette of Montenegro No. 19/90, 25/90, 6/91, 27/91,21/95 as well as any other entity which will be established and will utilize public funds.*

Quotation: Following a Request for Quotations, an offer made by a supplier under the shopping method;

Request for proposals: the set of documents enabling a Consultant or an artist to prepare a proposal;

Shopping: the obtaining of written quotations from suppliers; where a quotation is found satisfactory, the acceptance may be communicated by a purchase order issued by the contracting entity;

Solicitation: an invitation made to suppliers to participate in a standardization exercise or, a prequalification exercise, or to quote for goods or for ancillary services or, to bid for goods or works or, to propose for consulting services or artistic items.

Solicitation documents: (Tender documents): all documents necessary for a supplier to prepare a bid for goods or works;

Substantially responsive: an offer that, on examination or evaluation, complies for the major part, the critical aspects of a solicitation, and ignores only the minor aspects;

Successful participating supplier (successful tenderer): the supplier selected after an invitation to offer or, in the case of direct agreement contracts, the supplier who signs the contracts;

Supervisor: the public entity, legal person governed by law, or the natural or legal person designated by the contracting authority in accordance with the law, who is responsible for directing and/ or monitoring the performance of the contract, and to whom the contracting authority may delegate rights and/ or powers under the contract;

Supervisor's representative: any natural or legal person, designated by the supervisor as such under the contract and empowered to represent the supervisor in the performance of his functions, and in exercising such rights and/ or powers as have been delegated to him. Accordingly, where functions rights and/ or power of the supervisor are delegated to the supervisor's representative, references to the supervisor include the supervisor's representative;

Supplier: a natural person, company or firm delivering works or, goods including ancillary services, equipment, plant, supplies, or consulting services including artistic items;

Supplies: all items which the supplier is required to provide to the contracting authority, including, where necessary, but not limited to, items such as installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under a works contract;

Surplus: any goods which has no known use in the next twenty-four months or for which a replacement therefor has been made or for which has become obsolete by reason of change in technology;

Technical evaluation: an evaluation of the capabilities of a supplier of services as per set out criteria;

Tender: for the purposes of this Act, the words *bid* and *tender* shall have the same meaning;

Terms of reference: the statement issued by the contracting authority giving the definition of his requirements and/or objectives of the consulting services, including, where applicable, the methods and means to be used and/ or results to be achieved; any terms of reference to be issued by a contracting authority shall be in the format laid down by the public procurement rules;

Time allocated: those maximum periods determined under the public procurement rules for a public servant to undertake, within this period, stipulated procurement activities or any step thereof;

Time limits: those periods in the contracts which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period;

Two stage bidding: a first solicitation for unpriced bids, followed by a second solicitation for priced bids from selected bidders;

Validity period: the period for the duration of which an offer made by a supplier remains valid as requested in the solicitation documents;

Variation: a minor change in the value at time of execution of a contract that the parties could not foresee at the time the contract was entered into;

Works: means any work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials decoration and finishing as well as drilling, mapping, satellite, photography, seismic investigation, temporary or permanent, and any activity incidental thereto under a contract;

Writing: any handwritten, type written or printed communication including telex, cable or electronic transmission.

Article 4 Eligibility

Natural persons, companies or firms shall not be eligible for the award of contracts where (i) they are bankrupt, (ii) payments to them have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property; (iii) legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property; (iv) save after the completion of any punishment upon them, they have been convicted, by a final judgment,

of any crime or offence concerning their professional conduct; (v) they are guilty of serious misrepresentation with regard to information required for participation in an invitation to offer; (vi) they are in breach of contract on another contract with the contracting authority, only where a final judgement by a court is made that the breach of contract is the responsibility of the suppliers and, (vii) they are found guilty of bribery or kickbacks under international treaties or conventions or, they are ineligible on the same grounds and evidence by any bank, institution or organization providing funds for general development, public investment or reconstruction (viii) and, they have engaged in corrupt or fraudulent practices in competing for the contract in question. The article 4 shall apply to any procurement activities undertaken under this Act.

(1) Evidence: To be eligible for participation in invitations to offer by bid or proposal and thereafter to be a contracting party, participating suppliers shall provide evidence satisfactory to the contracting authority of their eligibility under this Article, proof of compliance with the necessary legal, technical and financial requirements and of their capability and adequacy of resources to carry out the contract effectively.

(2) Information: To this end, any bid or proposal submitted shall include the following information:

(a) a document, dated less than 90 days previously, drawn up in accordance with the suppliers' national law or practice certifying that (i) he meets the conditions laid down in the Article 4, and (ii) none of the situations referred to in Article 4, applies to him;

(b) copies of original documents defining the constitution and/or legal status, and establishing the place of registration and/or statutory seat and, if it is different, the place of central administration of the company, firm or partnership or, if a joint venture, of each party thereto constituting the participating supplier;

(c) details of the experience and past performance of the supplier (or of each party to a joint venture) on contracts of a similar nature within the past five years, and details of other contracts in hand including details of the actual and effective participation in each such contract;

(d) where applicable, the major items of equipment proposed for use in carrying out the contract;

(e) the qualifications and experience of key personnel proposed for administration and performance of the contract, both at and away from the place of performance of the contract;

(f) information relating to the nature, conditions and modalities of subcontracting wherever the subcontracting of any elements of the contract amounting to more than 10 % of the bid or proposal price is envisaged;

(g) reports on the accounting and financial standing of the supplier (or of each party to a joint venture) such as profit and loss statements, balance sheets and auditor's reports for the past five years, an estimated financial projection for the next two years,

and an authority from the participating supplier (or authorized representative of a joint venture) to seek references from the supplier's bankers;

(h) information regarding any current legal or arbitration proceedings or dispute in which the supplier is involved. The information referred to shall be confined to matters of direct interest to the award or performance of the contract; and,

(i) for companies or firms established in the Republic of Montenegro, evidence that previous payments were made or in process to be made for any taxes, customs duties and any other payment due to the Government or to a Self-Local Government.

(3) *Joint ventures:* Suppliers established in the Republic of Montenegro shall be encouraged to participate to any solicitation whereon the Government encourages the development of the economy; they may bid or propose independently or in joint venture with other suppliers established in the Republic of Montenegro or abroad, but such joint venture shall not be, under any solicitation exercise, mandatory or be a condition for eligibility.

Article 5 Equality of Participation

All public entities shall take the necessary measures to (i) ensure the widest possible participation on equal terms in invitations to offer including measures, (ii) where applicable under this Act, ensure proper publication of invitations to offer, (iii) eliminate discriminatory practices or technical specifications written in such a manner resulting in such discriminatory practices, (iv) ensure that all the selection criteria and the methodology for selection are specified in the invitation to offer; (v) ensure that the offer selected conforms to the requirements of the invitation and meets the selection criteria stated therein. The article 5 shall apply to any procurement activities under this Act for goods and works.

(1) *Principles for selection:* Goods and works shall be procured by a search for suppliers offering the right quality to meet identified needs for the needed quantity, at the lowest calculated price and at the right time; ancillary services and consulting services shall be delivered by suppliers of services having the competence, the experience, and the capabilities to address the identified needs in a professional manner. Therefore, solicitation documents shall specify any factors, in addition to price, which will be taken into account in evaluating offers, and how such factors will be quantified or otherwise calculated.

(2) *No unsolicited offer:* Offers can only be received after proper solicitation; due care shall be taken to ensure confidentiality of the content of offers.

(3) *Clarity for equality:* Documents for solicitation shall be so worded as to permit and encourage open competition and equality among participating suppliers. Therefore,

documents shall set forth therein the detailed needs, the place of delivery, the minimum performance requirements, the warranty, the maintenance requirements as well as any other pertinent terms and conditions.

Article 6 Limitation

Notwithstanding any other enactment, no limitation of applicability shall be permitted under this Act except in the case of prevalence on the applicable procurement requirements under treaties or Agreements or in a situation of emergency for direct agreement. The article 6 shall apply to any procurement activities undertaken under this Act.

(1) Conditional procurement guidelines: Notwithstanding any other enactment, this Act shall apply to any public procurement activity undertaken by any public entity, except where the Government enters into any treaty or any other form of agreement with any institution, organization, agency, banks or any bilateral or multilateral body under which conditions are stipulated for the availability of funds; therefore, such conditions shall prevail.

(2) Emergency procurement: Situations of emergency may warrant direct agreement. Procurement under emergency shall be undertaken in such a way as to reflect the urgency of the situation; for the purpose of this Act, where an emergency situation is declared under a public statement of emergency made officially by the Parliament, thereupon emergency procurement shall apply. The procurement activities thereof shall be undertaken with care and proper accountable records shall be kept; emergency procurement shall also apply *mutatis mutandis* where the Republic is confronted with a disaster, catastrophe, war or Act of God, with a situation under which life, the quality of life or the environment may be seriously in danger, or where the condition or quality of goods, equipment, building or publicly owned infrastructure may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness.

Article 7 Competition

Subject to this Act, procurement under this Article shall be effected or initiated on the basis of open solicitation whereby shall be permitted: (i) shopping, (ii) competitive bidding, limited or open, local or international (iii) two-stage bidding, local or international, limited or open (iv) open international prequalification of suppliers for major contracts followed by limited competitive bidding, and, (v) permissible standardization of goods undertaken in compliance with this Act, followed by the shopping method, as per the prescribed amounts. Under circumstantial evidences described hereunder, evidence thereof to be part of procurement records, and for a procurement of a value under the prescribed amount, direct agreement shall be permitted.

For commodities, procurement shall be effected in the manner described hereunder. Leasing or similar arrangements whereby a contract is offered by which a rightful possessor of real property conveys the right to use or occupy that property, shall be permitted under shopping, especially where property needs intensive servicing or where items are governed by many changes or where such alternative result in savings of public funds. The article 7 shall apply to any procured item but shall not apply to consulting services and artistic items.

(1) Shopping: The shopping method shall be the procurement method (i) for small commodities such as food items of a value under the prescribed amount, (ii) where the value of the purchase order for any item is under the prescribed amount, (iii) where the items are urgently needed and the use of longer competitive process may prejudice public interests, conditional to evidence is made thereof and be part of procurement records (iv) for follow-up orders on repetitive procurement such as for maintenance and common use items, (v) for goods being standardized under the requirements of this Act, (vi) for items of certain technical characteristics or from a market structure not amenable to competitive bidding, by evidencing, record thereof to be part of procurement records, that no more advantage, savings or benefits could be obtained from competitive bidding. Under this Act, with the aim to reduce the costs of warehousing, handling, obsolescence, distribution, and robbery, "just in time" contracting arrangements may be offered by shopping where "open contract" is part of the request for quotations, thereby offering larger quantities. In return, the suppliers shall be obligated to: (i) the quality requirements (ii) the maintaining of a minimum stock level (iii) the delivery within a set period of time (iv) to deliver within a set period up to a minimum quantity and not to exceed a maximum quantity and (v) to guarantee a fixed price for the stipulated period.

(2) Competitive bidding: For open competitive bidding, local or international, suppliers shall be invited through advertisement or other forms of public notice authorized under this Act, to make offers for a particular contract, a group of contracts or lots. For limited competitive bidding, local or international, the list of suppliers to be invited to participate shall be determined after consultation with local, regional or, where appropriate, with international trade centers, or after research from buyers guides or trade database or any other reliable source of information; evidence of the results thereof shall be part of procurement records. For limited national or international competitive bidding, only prequalified or pre-selected suppliers shall be invited to offer; limited competitive bidding shall be suitable for repetitive procurement, extension of works, captive technology market or where the structure in technology market environment results in a situation in which only a limited number of suppliers are expected to be capable to participate. A public entity may, for the purposes of determining whether local bidding shall be preferred to international bidding, take into account the fact that foreign bidders may not be interested on account of the fact that (a) the works are spread over geographically within the territory, (b) the contract value is small, (c) the works are labor

intensive, or (d) the goods or works are available locally at a calculated price below the international market.

(3) Two-stage bidding: The two-stage bidding shall be permitted for (i) turnkey contracts or similar contracting arrangements, (ii) large complex plants or works of a special nature and complexity, (iii) items technically sensitive for which it is difficult before inviting suppliers to determine the most suitable technology, (iv) procurement of equipment which is subject to rapid technological advances or changes.

(4) Prequalification of suppliers: Prequalification of suppliers shall be necessary only for (i) large or complex works, (ii) any other circumstances in which the high costs of preparing detailed bids could discourage competition such as for custom-designed equipment, industrial plant (iii) contracts to be let under turnkey, design and built or management contracting.

(5) Standardization of goods: Standardization of goods undertaken under this Act, followed by shopping shall be permitted (i) for common use items listed by the Department for Procurement and Services, (ii) for items procured repetitively by a public entity for which change of technology for a determined period would result in increasing the maintenance costs and the costs of maintaining a higher level of stock.

(6) Direct agreement: Direct agreement with suppliers shall be permitted (i) for any contract of a value under the prescribed amount, (ii) for procurement under emergency as defined under this Act, (iii) where the following circumstances may warrant, with evidence made thereof and to be part of procurement records: (a) an existing contract for goods or works, plant, equipment, supplies and commissioning therefor, awarded in compliance with this Act, to be extended for additional items of similar nature; provisions for such extension shall be added to the original contract, (b) standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier; for such addition, the original equipment shall be suitable, the price shall be competitive and the advantages of another make or source of equipment shall have been considered, (c) the required equipment is proprietary and obtainable only from one source (d) the supplier responsible for a process design requires the purchase of critical items as a condition of a performance guarantee.

(7) For Commodities: Except for commodities such as food products of a low value procured under the shopping method, procurement of commodities for which market prices fluctuate, depending upon the demand and supply at any particular time, for many prices being quite established by commodity markets, procurement often shall involve multiple awards for partial quantities to assure security of supply and multiple purchase over a period of time to take advantage of favorable market and to keep inventories low. Therefore, a list of the pre-selected suppliers shall be drawn up to whom

periodic invitations shall be issued. Thereinafter, suppliers shall be invited to quote prices linked to the market price at the time of or prior to the shipments.

(8) Leasing: Leasing agreement offered by shopping shall be offered to suppliers without advertising where the value and duration of the leasing contract offered is under the prescribed amount or prescribed duration. For any contract of a value above the prescribed amount or above the prescribed duration, the shopping shall be announced by advertising in compliance with the procedures for advertising under the competitive bidding.

Article 8 Design Competition

Where the contracting authority, for technical, aesthetic or financial reasons, considers it appropriate, an invitation may be issued for participation in a design competition. The design competition shall take place on the basis of a schedule and criteria drawn up by the contracting authority. Further, the following shall apply:

(1) Prizes: The schedule may make provision for prizes to be awarded for the best designs. Such prizes shall be specified by the schedule and awarded to the originators of the said proposals in accordance with the order established by the contracting authority. The contracting authority may withhold prizes if the designs are not judged satisfactory.

(2) Copyright: Unless otherwise stated in the invitation, copyright in the designs submitted shall belong to the participants. However, the contracting authority may, with the agreement of the participants, use the proposals for further development.

(3) Development: The contracting authority may invite other offers for further investigation, study and design as may be necessary for further development of the project.

(4) Preparation of documents: Subject to Article 8 (1) and 8 (2) the contracting authority may invite for detailed development of a participant's design and the preparation of documents to the stage where bids for supply or construction may be invited.

(5) Turnkey: The contracting authority may invite offers for design and build designs on a turnkey basis. Such offers shall be of the lump sum type. Offers shall be assessed according to their aesthetic, practical, technical and economic merits. A determined number of prizes shall be offered.

(6) Prior approval: Before initiating a design competition, a public entity shall request in writing the approval of the Pre-investment committee established under this Act; the request shall be accompanied with the grounds to enter into such competition, be

accompanied with the pre-feasibility study, and with the determination of the amounts of the prizes that will be offered and paid by the public entity to the three best architectural designers.

(7) Advertisement: The advertisement for architectural design shall be initiated and handled jointly by the Pre-investment Committee and the public entity; the advertisement shall include but not limited to: (i) the name of the project (ii) the competition number (iii) the exclusion of any persons directly involved in the preparation of the study and the competition, and all selected assessors (iv) the brief description of the architectural project (v) the detailed description of the competition proceedings and rewards, (vi) place where the preliminary study can be made available to participants (vii) date and location for submission of design (viii) contact person for clarification on the study (ix) the amounts of the prizes (x) the selection process for the final design by the pre-investment committee after the architectural competition, (xi) the determination of the rewards by two panels comprising experts on technical matters and experts on financial matters, selected by the public entity jointly with the Pre-investment Committee; (xii) the determined maximum time allocated for oral presentation and location (xiii) the criteria, the points allocated per criterion to determine the best designs (xiv) the requirements of the number of copies of any documents submitted (xv) the "maquettes" of the three winners to remain the property of the Government, others to be returned to the participants after prizes determination. (xvi) the date, time and location for official and public announcement and the giving of the prizes.

Article 9

Currency and payments

Any solicitation document shall state the currency or currencies in which supplier are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing offers, and the currency in which the contract price will be paid. Any solicitation document shall state the term and method of payment. The article 9 shall apply to any procurement activities undertaken under this Act.

(1) Currencies: The solicitation documents shall state if the participating supplier may express the price of his offer in the currency stipulated in the solicitation documents. If the participating supplier wishes to express the price as a sum of amounts in different foreign currencies, he may do so, provided the price includes no more than three foreign currencies.

(2) Exchange rates: In the solicitation documents for works, the public entity may require suppliers to state the bid price entirely in local currency, along with the requirement for payments in up to three foreign currencies of their choice for expected

inputs from outside the Republic of Montenegro, expressed as a percentage of the bid price, together with the exchange rates used in such calculations.

(3) *Currency for comparison of offers:* For purpose of comparing prices, prices shall be converted to a single currency stated in the solicitation documents. The conversion by using the selling, exchange, rates for those currencies quoted by an internationally circulated newspaper for similar transaction on a date selected in advance, such source and date to be specified in the solicitation documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of offers, nor later than the original date for the expiry of the period of bid validity.

(4) *Currency for payment:* Payment of the contract price shall be made in the currency or currencies in which the offer is expressed in the offer of the successful supplier. When the price is required to be stated in the local currency but the supplier has requested payment in foreign currencies expressed as a percentage of the price of the offer, the exchange rate to be used for purposes of payments shall be those specified by the supplier in the offer, so as to ensure that the value of the foreign currency portions of the offer is maintain without loss or gain.

(5) *Terms and method of payment:* Payment term shall be in accordance with the international commercial practices applicable to the specific type of procurement. Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be after the supplier has complied with all its obligations under the contract. Where appropriate, letter of credits shall be issued to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly. Contracts for works shall provide in appropriate case for mobilization advances, advances on Contractor's equipment and reasonable retention amounts to be released upon compliance with the contractor's obligations under the contract. The solicitation documents shall specify the payment method and term offered, whether alternative payment methods and terms would be allowed and, if so, under what circumstances.

(6) *Advance payment:* Any advance payment for mobilization and similar expenses, made upon signature of a contract, shall be related to the estimated amount of these expenses and be specified in the solicitation documents. The solicitation documents shall specify the arrangements for any security required for advance payments.

Article 10

Types of contract

The solicitation documents shall clearly state the type of contract to be entered into and shall contain hereto the proposed contract provisions appropriate therefor that are introduced by the mandatory standard contract form. The article 10 shall apply for any procurement under this Act, except for procurement of consulting services and artistic items.

(1) Permissible types of contract: Types of contracts permitted under this Act shall be:

(a) ***lump sum contract***, where an all-in price shall cover the whole of the works, supplies and ancillary services which are the subject of the contract;

(b) ***unit-price contract or measure and value contract***, where the works, supplies and ancillary services shall be broken down on the basis of the bill of quantities and the proposed unit prices shall be indicated;

(c) ***cost-plus contracts***, where the works, supplies and services shall be priced on the basis of actual costs with an addition for overheads and profit;

(d) ***composite contracts***, where the prices shall be fixed on the basis of at least two of the methods laid down under (b) and (c);

(e) ***provisional price contracts***, where in the exceptional cases, contracts are awarded without prices being predetermined after consultation and agreement between contracting authority and the supplier, and paid for in the manner agreed.

(f) ***market price contract*** under which prices shall be based on published market prices of commodities.

(g) ***turnkey contract***: a fixed price contract for providing in a state of readiness for immediate use;

(h) ***management contract***: in construction works, a management contractor that usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality and timely performance.

(i) ***purchase order***: issued under the shopping method, a contract by being an acceptance of an offer made by a quotation.

(2) Provisional prices: The award of a provisional price contract may only be made (i) where the contract is of a complex nature or involves new techniques presenting considerable technical hazards which necessitate commencement before all conditions of execution can be determined; (ii) in the event of exceptional and unforeseeable circumstances, such as where the contract is urgent or the nature and means of execution are difficult to determine.

(3) **Predetermined prices:** Except for provisional price contracts, contracts shall be awarded on the basis of predetermined prices. These prices may be lump sums or unit prices.

(4) **Statement:** The instructions to the participating suppliers shall (i) state the type of contract; (ii) for cost-plus contracts, state the rules for calculating the costs, overheads and profit; (iii) for composite contracts, state the methods which are to be used for calculating amounts to be paid under the contract.

Article 11

Technical specifications and standards

The technical specifications and methods of testing, checking, acceptance and calculation in each contract, may be defined in order of precedence, by reference to the common standards accepted by the Republic of Montenegro, the European Community, other standard including international standards. No solicitation document shall be issued where the description has the effect of constituting obstacles to fair and open competition. The article 11 shall apply to procurement for goods and works that are undertaken under this Act.

(1) **Prohibition:** Unless it can be justified by the subject of the contract, technical specifications which mention products of a specific make or source, or a particular process, and which therefore favour or eliminate certain products, shall be prohibited. Such prohibition shall cover trade marks, patents or types, or a specific origin or production, nationality of suppliers, testing and test method, certification of conformity, symbol and terminology.

(2) **Equivalent:** However, where products or processes cannot be specified in terms which are sufficiently precise and intelligible, they may be named, provided that the words 'or equivalent` are added.

(3) **Standardization by Montenegrins:** No brand name, catalogue or standard number may be utilized unless a formal standardization of goods has been effected under this Act by the public entity and limited to the period applicable.

Article 12

Notices and written communications

Unless otherwise specified in the solicitation documents, communications between the contracting authority and/or the supervisor on the one hand, and suppliers or the successful supplier on the other hand, shall be sent by post, courier, cable, telex, electronic transmission or personal delivery, to the appropriate addresses designated by

those parties for that purpose. The article 10 shall apply to any procurement activities undertaken under this Act.

(1) Receipt of communication: If the sender requires evidence of receipt, he shall state such requirement in his communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of this communication.

(2) Confidentiality: After any opening of offers, information relating to the examination, clarification and evaluation of offers and recommendations concerning awards shall not be disclosed to participating suppliers or other persons not officially concerned with the process until the successful supplier is notified of award. The same confidentiality shall apply during contract execution until fulfillment of all obligations of the contracting parties.

(3) Approval: Notwithstanding any other enactment and articles under this Act to the contrary, no public entity shall use any procurement procedure, method or form unless it has been approved by the Public Procurement Commission in accordance with this Act.

(4) Fee: A non-reimbursable fee may be charged to suppliers for solicitation documents, standard forms or any other document. The amount of the fee shall be determined by the cost of printing and delivery and shall not be such as to discourage a supplier to make an offer.

(5) Sealed envelope: Only sealed offers shall be considered as receivable; print-outs of all offers received by electronic modes shall be placed in sealed envelopes immediately upon receipt and such envelopes shall be marked as per the instructions of the solicitation documents.

(6) Receipt by hand: A pre-numbered receipt shall be given for any envelope or package containing offers delivered by hand, after ensuring that it is correctly sealed; a member of the Opening Committee shall be responsible for the issuance of receipts and the safekeeping of all offers related to a solicitation exercise; the name of the Officer shall be stipulated in the solicitation documents.

(7) Safeguarding: Unless the solicitation documents require otherwise, public entities shall use containers of a size and type capable of receiving offers safe and sound therein, with a sleeve and a door with locks, both of which could, for reasons of security and confidentiality, be suitably controlled by such number of different keys entrusted to senior officers.

CHAPTER 3: INVITATION TO OFFER

Article 13 Notice of invitation

Notice of invitation for competitive bidding for goods or works shall state the source of funds for the payments to be made under the contract offered. In addition to this requirement, the notice of invitation shall state:

(1) For open competitive bidding: In an open competitive bidding, the notice of invitation shall state: (a) the subject, purpose and extent of the contract; if the contract is subdivided into several lots, the order of magnitude of the different lots and the possibility of offering for one, several or all of the lots; the possibility of submitting variant solutions, where authorized; if the notice concerns an invitation to bid for a design-and-build competition, the design criteria and other requirements necessary for participating suppliers to understand the scope of the contract and to offer accordingly; (b) the eligibility criteria; (c) the location of the project, the period of performance, and in the case of supplies contracts, the place of delivery and/or installation; (d) the contracting authority, and the name and address of the public entity awarding the contract; (e) the procurement method, the place where the solicitation documents may be inspected and the terms on which they may be acquired; (f) the period of validity, from the deadline fixed for receipt of offers to the end of the period during which participating suppliers shall remain bound by their offers; (g) the final date and time fixed for receipt of bids, the address to which they must be sent, the number of copies required and the language in which they must be drawn up; (h) where appropriate, the place, date and time for the opening of the offers; (i) the various guarantees which the contracting authority requires, the amount of each guarantee, where appropriate expressed as a percentage of the offer, and the time when such guarantees are to be presented; (j) the address of the public entity from which participating suppliers may obtain any further information.

(2) For limited competitive bidding: In a limited competitive bidding procedure with pre-selection, the notice shall state in particular: (a) the method of solicitation and the information referred to in Article 13 (1) (a), (b), (c), (d) and (g); (b) the terms on which the solicitation documents may be acquired; (c) where appropriate, the final date for the issue of invitations to offer by the contracting authority; (d) the information to be given in the request to participate, in the form of statements and documents concerning the applicant's standing and ability which the contracting authority requires in accordance with Article 4 together with the economic and technical conditions each applicant must fulfil if he wishes to be considered for selection.

Article 14
Pre - selection or prequalification of suppliers

In a limited competitive bidding with pre-selection of suppliers, a list of suppliers shall be drawn up in accordance with this Act; or, where applicable under this Act, for a prequalification exercise followed by a limited competitive bidding, all suppliers shall be invited by advertising to participate and the criteria for the selection thereof shall be stated in the prequalification documents. The article 14 shall apply for the pre-selection of suppliers under limited competitive bidding for goods or works; for prequalification, article 14 shall apply only to works as defined under this Act for prequalification.

(1) Listing for pre-selection: The list shall be drawn up, *inter alia*, in accordance with the provisions of Article 5 and the necessary eligibility requirements to perform the intended project, in particular the provisions of Article 4.

(2) Pre-qualification of suppliers: The contracting authority shall select the suppliers on the basis of the information given by them in the request made pursuant to Article 13. The prospective suppliers selected shall receive an invitation to bid stating in particular the following: (i) the information given in Article 13 (2) and, (ii) any amendments, as referred to in Article 18. No prequalification of suppliers shall be conducted unless a proper advertisement has been carried out for the purpose.

(3) Criteria for prequalification: Evaluation for prequalification shall be effected strictly according to pass or fail criteria stipulated up-front in the prequalification documents. Any prequalification exercise shall be completed within the period stipulated in the solicitation documents. The candidates shall furnish all such information, documents and provide such evidence as are required for the purpose.

(4) Selection under prequalification: The results of the prequalification exercise shall be determined by an Evaluation Committee, set up under this Act. Subject to any fresh verification of information under this Act, the post-qualification before award, no candidate who has met the criteria set out shall, at selection, be disqualified.

(5) Report on prequalification: The report of the Evaluation Committee shall be signed by all persons who formed part of the evaluation process; the report shall include - (i) introduction to the procurement; (ii) copy of the opening report; (iii) details on candidature examination and rejects; (iv) list of prequalified candidates who pass all criteria and who will be, for a given period, eligible bidders; (v) copy of the prequalification documents; and (vi) the list of candidates under conditional prequalification and the criteria to be met within a set deadline.

(6) Notice to suppliers: A candidate shall be notified in writing of the result of his candidature; candidates who have not been selected under a prequalification exercise shall

be entitled to be given the reason for their disqualification and the criteria on which they failed.

Article 15 **Direct agreement**

Direct agreement with suppliers shall be undertaken only in circumstances laid down under article 7. No direct contracting shall be allowed unless the circumstances are so special that it could not be avoided. The article 15 shall apply to any procurement activities undertaken under this Act.

(1) ***Alteration of offer:*** Except for authorized negotiation with consultants in compliance with this Act, no unsuccessful supplier shall be allowed to negotiate, change or alter an offer so as to render it acceptable; therefore, no direct agreement shall be therefrom initiated or permitted. For the final preparation of contracts, permissible clarification of the offers, whereas no change is resulting thereof in the substance of the offers or in the rank for the award, shall not be, by definition, a negotiation.

(2) ***Lack of planning:*** Evident lack of planning by a public entity shall not be a sufficient ground to justify the use of direct agreement; where derivative evidence is made on the bad faith creating an undue delay, lack of planning shall be considered as a delay, as defined under this Act, and shall be subject to the offences under article 82 hereunder.

(3) ***Admissible evidence:*** Where contracting by direct agreement, a detailed record of the grounds and of the extraordinary circumstances shall be kept; the non verbal statements thereof shall be part of the procurement records, whereby admissible evidence is made.

(4) ***Covering approval:*** Except in the case of emergency as defined under this Act, any direct agreement shall require, before initiating, a covering approval by an award committee established under this Act.

CHAPTER 4: BIDDING DOCUMENTS

Article 16 **Contents of the bidding documents**

The solicitation documents shall contain details of the way in which offers are to be presented, the criteria and the methodology for selection of the successful supplier. The article 16 shall apply for the procurement of goods or works undertaken under this Act.

(1) **Contents:** In addition to the invitation, the bidding documents shall contain:(i) the instructions to the participating suppliers; (ii) all terms and conditions applicable to the particular type of contract offered; (iii) the technical specifications and, for works, the scope of works; (iv) the form for the breakdown of the overall price in the case of lump sum contracts, or the form for the unit price schedules and/or the bill of quantities in the case of unit price contracts; (v) the schedule of requirements or additional information; (vi) where applicable, the drawings; (vii) the form to offer including the mandatory declarations and statements in compliance with this Act; (viii) where applicable, the bid security form; (ix) the contract form; (x) where applicable, the performance guarantee form and, (xi) a description of the evaluation system giving the criteria and the methodology for evaluation and, (xii) declaration of the origin of goods or items for works that are offered.

(2) **General information:** In addition, and depending on the nature of the contract, the solicitation documents, where suppliers from outside the Republic of Montenegro are expected to participate, shall be accompanied by a 'note of general information'. It shall be provided for information only and shall not form part of the contract. It shall include all or part of the following: (i) geographical notes on the Republic of Montenegro including notes on the climate; (ii) precise location of the place of execution of the contract, access routes and other infrastructures which may be used in the performance of the contract; (iii) information concerning customs, tax and any laws or regulations on trade; (iv) wage scales and legal or contractual charges payable by employers, including an indication of minimum or normal wage levels laid down by the law of the Republic of Montenegro or customary of Self Local Government in the place where the contract is to be performed, corresponding to the main local categories of labor required for the contract; (v) information exchange control laws and regulations and the monetary and banking system of the Republic of Montenegro; (vi) any other information relating to the laws and regulations of the Republic of Montenegro which govern the performance of contracts, including details as to the public entities to which application should be made to obtain copies of those laws and regulations.

(3) **Responsibility of the participating suppliers:** The participating suppliers shall carefully examine all instructions, conditions, forms, terms, specifications and drawings or any documents issued for the solicitation. The supplier shall be solely responsible for the responses he provides to the requirements in the solicitation documents and for any omission or errors in his responses. Failure to furnish all information required by the solicitation documents or submission of an offer which is not substantially responsive, shall be at the supplier's own risk and may result in rejection of his offer.

(4) **Force majeure:** The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract shall not be considered a

default if such failure is the result of an event of force majeure as defined in the conditions of contract.

(5) Liquidated damages and bonus clauses: For contract of high complexity and for major works contract, provisions for liquidated damages or similar provisions in a reasonable amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods or works to meet performance requirements would result in extra cost, or loss of revenue or loss of other benefits to the public entity; provision may also be made for a bonus to be paid to supplier from completion of works ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the public entity.

Article 17 Clarification

For the preparation of their offers, all participating suppliers shall be provided the same information and therefore be allowed to obtain, where necessary, clarification on the solicitation documents. Whereas, in response to a participating supplier's queries or otherwise, information regarding the contract to be performed or any other information shall also be issued in writing by the contracting authority to all suppliers provided with a solicitation document. The article 17 shall apply to any procurement activities undertaken under this Act, except for procurement of consulting services and artistic items.

(1) Preparation of quotations: Under the shopping method, the information shall be issued to all participating suppliers within a reasonable time so as to permit suppliers to take into account such information for the preparation of their quotations.

(2) Preparation of bids: Under competitive bidding for goods, the contracting authority shall respond only to those requests for clarification which are received at least ten days prior to the deadline for the submission of sealed bids.

(3) Preparation of bids for works: under competitive bidding for works, limited or open, the solicitation documents shall determine the deadline date and time for receipt of clarification requests which shall not be less than twenty days; the solicitation documents shall also determined the deadline date for the issuance of the clarification which shall not be less than fifteen days.

(4) One amendment to the solicitation documents: For the information provided for clarification under this article, alternatively, the contracting authority may decide to determine a target date and time for receipt of any requests from the participating suppliers and for them to be provided with all answers and any clarifications at a specific date and time under only one amendment.

(5) Prohibition to divulge: For clarification under this article, information shall be provided by amendment but, in any manner and by any mode of communication, the source of the requests shall be divulged to the other participating suppliers.

(6) Wording of the amendment: Any amendment shall include the requests as worded by the participating suppliers; for proper clarification, each request shall be accompanied by a binding answer.

Article 18 Amendments

Any change of any type made to the solicitation documents before the time for submission of offers shall be communicated forthwith in writing to all participating suppliers who have been provided with the solicitation documents, and, where appropriate, together with notice of any extension of the date and time for submission of offers which the contracting authority may consider necessary to enable the participating suppliers to take account of such a change. Any change thereof shall be under an amendment to the solicitation documents. The article 18 shall apply to any procurement activities for goods and works undertaken under this Act.

(1) Dissemination of minutes by amendment: Where a pre-bid conference or a site visit is convened, minutes thereof shall be prepared to record any request for additional information, and, without identifying the source thereof, the minutes shall be made available by an addendum issued to all those who requested the original solicitation documents.

(2) Amendment binding the suppliers: The additional information provided by amendment shall be binding on the participating suppliers.

(3) Right of the contracting authority: At any time prior to the deadline for submission of offers, the contracting entity may, for a valid reason and on its own initiative, by an amendment, amend the solicitation documents, provided that reasonable time is given to all participating suppliers to take into account changes under the amendment; the determination of the reasonable time shall be governed by the consequences of the changes, minor or major, and their impact on the prices of the offers.

CHAPTER 5: INSTRUCTIONS TO BIDDERS

Article 19 Language

The solicitation documents including the contract documents, all correspondence and any documents relating to them shall be in the governing language stated in the

solicitation documents. The article 19 shall apply to any procurement activities for goods and works undertaken under this Act and shall not apply to procurement of consulting services or artistic items.

(1) Governing language: For purpose of interpretation, any solicitation document shall stipulate the governing language. Contracts entered into with local bidders, excluding joint ventures between local and foreign suppliers may, at the contracting authority's option, be in the language, in official use which shall be the governing language for such contracts.

(2) Supporting documents: Any offer, supporting documents and printed literature provided by the participating suppliers in another language shall be accompanied by an accurate translation of the relevant passages in the governing language specified in the solicitation documents, in which case, for purposes of interpretation, the translation shall govern.

Article 20 Contents

The offer to be prepared and submitted by the participating supplier shall, in accordance with the requirements stated in the solicitation documents, comprise: (i) the standard forms duly completed, comprising the offer and appendix thereto, (ii) where required, the bid security, (iii) the breakdown of the overall price in the case of lump sum contracts, or the unit price schedule and/or the bill of quantities in the case of unit price contracts; (iv) the schedules of supplementary information; (v) the documents providing evidence of the standing and ability of the participating supplier referred to in Article 4, save in the event of a limited competitive procedure; (vi) the authorized variant solutions, and any other elements required to be submitted in accordance with the instructions to suppliers embodied in the solicitation documents; (vii) all information necessary to examine, evaluate and compare the offers; (viii) if the instructions specify that an after-sales service is required, a note indicating the means with which the participating supplier shall meet the obligations to provide such after sales services; (ix) where appropriate, additional guarantees proposed by the participating suppliers concerning, *inter alia*, the period of performance and the scope of work; (x) all information on any subcontracting envisaged; (xi) the price of the offer and the method and the currencies of payment. The article 20 shall apply to any procurement activities for goods and works and shall not apply for procurement of consulting services and of artistic items.

(1) Scope of works: The solicitation documents shall clearly define the scope of works to be performed, the goods to be supplied, the rights and obligations of the contracting entity and of the supplier, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the public entity, in the supervision and administration of the contract; such scope of works shall include

complete and detailed description of the works to be undertaken and be accompanied, depending on the type of contract offered, with a detailed bill of quantity; in response to the above, the bidder shall submit a complete, written and detailed description of the works to be undertaken, and, depending on the type of contract offered, with an accompanying equally detailed priced bill of quantities.

(2) *Equipment requiring supplies or maintenance:* Equipment shall be procured on the basis of a calculation which permit to determine the lowest calculated price per unit obtained from the operations of such equipment; this determination shall be made in the manner stipulated in the solicitation documents and shall include, where necessary, the spare parts for preventive maintenance, the after sales services, the payment schedule, the operating costs, the efficiency, the training, the safety, the environmental benefits or any other relevant costs for tabulation; the solicitation documents shall specify the relevant factors in addition to the price of such equipment to be considered at evaluation and the manner in which these factors are to be applied during evaluation; the factors for determination of the lowest calculated price shall be expressed in monetary terms. Any offer for such goods shall be accompanied with a certification duly signed by the manufacturer to confirm the availability of spare parts and after sales services to the public entity for a determined period, usually the period proposed by the manufacturer for a usage under normal conditions.

(3) *Price revision formula:* At time of soliciting for equipment, the solicitation documents shall include provisions for the maximum prices to be paid for the spare parts and for the after sales services for a determined period of operation; to avoid captive market situations, offers for such equipment shall be accompanied with a price revision formula guarantying that prices to be paid during the stipulated period will not exceed the price obtained by using a price revision formula; any price revision formula shall be in the format laid down in the standard procurement forms; for calculation of the maximum prices to be paid at time of using the formula for determination, indices for labour and materials or any other relevant indices shall be indices widely published by independent organizations.

Article 21

Lots

In considering how a project may be carried out, account shall be taken of the advantage, for economic and technical reasons, of dividing the project into homogenous lots / slices which are as large as possible. The article 21 shall apply to any procurement activities undertaken under this Act for goods or works and shall not apply to procurement of consulting services or artistic items.

(1) *Information on lots / slices:* Where a project has been divided into lots, the solicitation documents to the participating suppliers shall state: (i) the number of lots; (ii)

the nature, location and size of each lot and, (iii) where appropriate, the minimum and maximum number of lots for which a participating supplier may offer.

(2) *Submission of offers:* The procedure for submitting an offer shall be as follows: (i) a participating supplier may submit an offer for each lot; (ii) unless the instructions provide otherwise, participating supplier may include in his offer the overall rebate he would grant in the event of amalgamation of some or all of the lots for which he has submitted individual offers; (iii) unless the solicitation documents state that lots apportioned to the same participating supplier shall form a single contract, each lot shall form a separate contract; (iv) where lots are to be apportioned to different suppliers, the solicitation documents may provide that the supplier for a particular lot shall ensure the coordination of the execution of all lots.

(3) *Simultaneous offers:* All offers and combinations of offers shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination offering the lowest calculated price to the public entity.

Article 22

Cooperation or coordination

Any public entity shall determine ways to cooperate or coordinate with (a) the civil society of the Republic of Montenegro, (b) any association of professionals, local or international, (c) non government organizations (d) any other group or associations of Montenegrins, with the view (i) to improve the implementation of this Act, (ii) to ensure that the public procurement system is a self enforceable system (iii) to promote harmonization with the best international recognized practices (iv) to ensure transparency and integrity for any procurement activities undertaken under this Act, and (v) to improve the general awareness thereon, to promote the importance thereof, to consider the consequences thereafter and to inventory the savings and benefits obtainable therefrom. The article 22 shall apply to any procurement activities undertaken under this Act.

Article 23

Independence of suppliers

For any solicitation exercises, suppliers shall prepare their offers independently and shall declare to the public entity any potential or inimical conflict of interest that may be detrimental to the Republic of Montenegro. All suppliers shall declare their independence at time of preparing an offer by using the standard form laid down by the public procurement rules. This article shall apply to any procurement activities undertaken under this Act.

(1) *Interests:* Consultants shall be expected to provide professional, objective and impartial advice and at all times hold the public entity's interests, without any

consideration for future work, and strictly avoid conflict with other assignments or their own corporate or personal interest.

(2) *Consultants:* Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations of other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the contracting authority. Consultants or any of their affiliates shall not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants.

(3) *Disqualification:* Subject to the generality of this Act and except for suppliers who are together performing the contractor's obligations under a turnkey, consultant or consulting firm shall not be hired where he has been engaged by the contracting authority to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment.

Article 24 Bid prices

The participating suppliers shall provide the information required by the solicitation documents for the determination of the lowest calculated price, make the necessary arithmetical calculations and the offer.

(1) *Prevailing price:* The total amount of the bid shall be written in figures and in words. In all cases where there is a discrepancy between a price stated in figures and also in words, the price stated in words shall prevail. Where the solicitation documents so require, the following shall also be written in figures and in words: (i) the breakdown of the overall price in the case of lump sum contracts; (ii) the unit prices for each item in the bill of quantities and/or the unit price schedule in the case of unit price contracts; (iii) in the case of a composite contract, the breakdown of the overall price part as well as the bill of quantities and/or the price schedule for the unit price part.

(2) *No disproportion:* Prices must correspond to the relative value of each item in relation to the total amount of the offer. Prices should not be of such a nature as to distort the comparison of tenders or to result in interim payments, which are disproportionate to the value of the work done.

(3) *Local currency:* Offers shall be expressed in the local currency of the Republic. The participating suppliers may in addition express the equivalent value of his offer in any convertible currency or in the currency of the country in which he has his registered place of business. The conversion rate shall be that in force 30 days prior to the latest date fixed for the submission of bids.

(4) Foreign currency: A participating supplier may request in his offer that a justified part, expressed as a percentage of the price offered, be paid directly to him in foreign currency. The justification required shall be assessed in the light of the verifiable facts as regards the real origin of the works, supplies or services to be performed and the expenditure to which they give rise.

(5) For unit price contract: the contract price shall be the price for the whole Works and, where applicable, for unit price contract based on the priced Bill of Quantities submitted by the Bidder. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Bidder will not be paid by the Contracting Authority when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.

(6) For lump-sum contract: the contract price shall be the price for the whole Works as described in the drawings and specifications listed in the Activity Schedule or scope of works

(7) Duties and taxes for works: All duties, taxes and other levies payable by the contractor under the Contract, or for any other cause, as of the date 20 days prior to the deadline for submission of bids, shall be included in the rates, prices and total Bid price submitted by the Bidder. For lump sum contract arrangements, all duties, taxes or other levies payable by the Contractor under the contract shall be included in the bid price.

(8) For Goods: The Bidder shall indicate on the appropriate Price Schedule the unit prices, where so required by the solicitation documents, and the total bid price of the goods it proposes to supply under the contract.

(9) For Goods from the Republic of Montenegro: Prices indicated on the Price Schedule shall be entered separately in the following manner: (1) for goods offered from within the Republic of Montenegro: (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable: a) on the components and raw material used in the manufacture or assembly of goods quoted ex works or ex factory; or b) on the previously imported goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf; (ii) any Public entity country sales and other taxes which will be payable on the goods if the contract is awarded. (iii) the price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, (iv) the price of other incidental or ancillary services, if any, listed in the solicitation documents.

(10) For goods from abroad: (i) the price of the goods shall be priced CIF named port of destination, or CIP border point, or CIP named place of destination, in the

Republic of Montenegro; in offering the price, the Bidder shall be free to use transportation through carriers registered in any eligible countries; (iii) the price of the goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the solicitation documents; (iv) the price of goods quoted CFR port of destination, or CPT as the case may be, if specified in the solicitation documents; (v) the price for inland transportation, insurance, and other local costs incidental to delivery of the goods from the port of entry to their final destination, if specified in the solicitation documents; (vi) the price of (incidental) ancillary services, if any, listed in the solicitation documents.

(11) Incoterms: The terms EXW, CIF, CIP, etc., shall be governed by the rules prescribed in the current edition of Incoterms published by the International Chamber of Commerce.

(12) Price adjustment for goods: Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and shall not be subject to variation on any account, unless otherwise specified in the solicitation documents. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected. If, however, in accordance with the solicitation documents, prices quoted by the Bidder shall be subject to adjustment during the performance of the contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

Article 25 Period of validity

Participating suppliers shall be required to submit offers valid for a period specified in the solicitation documents. Extension of the validity shall be exceptional and under such circumstances, rights of the participating suppliers shall be determined. The article 25 (1) and 25 (2) shall apply to any procurement activities undertaken under this Act. The article 25 (3) and 25 (4) shall apply only to bids for goods or works.

(1) Period: A public entity shall ensure that the validity period of an offer is sufficient to enable the suppliers to respond to the solicitation, to allow time for examination, evaluation and comparison of offers and, where applicable, for any relevant authority to review the recommendation of award and give the necessary approval so that the contract can be awarded within that period.

(2) Extension of the validity period: All reasonable steps shall be taken to avoid any situation where an extension of the initial period of validity becomes necessary. A public entity may extend the validity period, if justified by exceptional circumstances, by requesting in writing such extension from all suppliers before the expiry date. Where given, the extension shall be for a minimum period required to complete the evaluation, obtain the necessary approvals and award the contract. Whenever an extension of validity

period is requested, the participating suppliers shall not be allowed to change the quoted price or conditions of the offer.

(3) Price adjustment: In the case of contract under which unit prices or total prices are fixed prices, requests for a second and subsequent extensions may provide for an appropriate price adjustment mechanism to take into account upward or downward changes in the market.

(4) Rights of the participating suppliers: Participating suppliers shall have the right to refuse to grant such an extension without forfeiting their bid security. Those bidders who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Article 26 Guarantees

A public entity shall ensure that a contract or legal act will be duly carried out. Therefore, where appropriate, a public entity may require a bid security to protect against irresponsible offers, a performance or other type of security to protect against breach of contract and, any other form of security to secure advance payment. The article 26 (1) and 26 (2) shall apply for procurement of goods and works, the article 26 (3) and 26 (4) shall apply to any procurement activities undertaken under this Act.

(1) Security against irresponsible offers: To afford the public entity reasonable protection against irresponsible offers, bid security may be required, but it shall not be set too high as to discourage suppliers.

(2) Security against breach of contract, including performance: The solicitation documents may require security in an amount sufficient to protect the public entity in case of breach of contract by a supplier, including lack of performance; this security shall be provided by a performance bond or a bank guarantee in an appropriate standard form and in an amount specified in the solicitation documents; a portion of the security may extend sufficiently beyond the date of delivery to cover defects liability, maintenance and / or warranty; alternatively, contracts may provide for a percentage to be held from payments as retention money until final acceptance; suppliers may be allowed to replace retention money with an equivalent security after provisional acceptance.

(3) Advance payment: The total payment to be made in advance for mobilization and similar expenses shall be reasonable and specified in the solicitation documents. Any other advances, such as for materials delivered to the site for use in works shall also be clearly defined in the solicitation documents. As a condition for advance payment, the supplier shall provide a guarantee for the same amount and be valid and renewable until the advance payment is fully recovered by the public entity.

(4) Form: Any security shall in the form of a bank or insurance guarantee, letter of credit or retention money. For security, cash money, assets or shares shall not be permitted. Any security, other than retention money shall be provided by a reputable institution under a form acceptable to the public entity.

Article 27 Alternative offer

Bidders shall submit offers that comply with the requirements of the solicitation documents, including the basic technical design as indicated in the drawings and the specifications. Alternatives shall not be considered, unless specifically authorized in the solicitation documents. The article 27 shall apply to procurement activities for goods or works undertaken under this Act.

(1) Requirements: If so authorized in the solicitation documents, bidders wishing to offer technical alternatives to the requirements shall also submit a bid that complies with the requirements of the solicitation documents, including the basic technical design as indicated in the drawings and specifications.

(2) Information: In addition to submitting the basic bid, the bidder shall provide all information necessary for a complete evaluation of the alternative by the public entity, including design calculations, technical specifications, breakdown of prices, proposed construction methods and any other relevant details.

(3) Consideration: Only the technical alternatives, if any, of the lowest calculated price conforming to the basic technical requirements shall be considered by the public entity.

Article 28 Pre-bid conference

For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby participating suppliers may meet with the procuring entity representatives to seek clarification. The article 28 shall apply to any procurement activities undertaken under this Act.

(1) Amendment: minutes of any pre-bid conference shall be made available to all suppliers provided with solicitation documents; therefore, an amendment thereof shall be issued and binding all participating suppliers in compliance with article 18.

(2) Permission: Where a participating supplier is advised to visit and inspect the place where the contract is to be executed and its surroundings and obtain for himself, on

his own responsibility, all information that may be necessary for preparing the offer and entering into a contract, the participating supplier and any of his personnel or agents shall, so far as practicable, be granted permission by the contracting authority to enter the place where the contract is to be executed for the purpose of such inspection, provided that the participating supplier, his personnel or agents will release and indemnify the contracting authority and its personnel and agents from and against all liability in respect thereof.

(3) Responsibility: Accordingly, the participating supplier shall be responsible for any personal injury, whether fatal or otherwise, loss or damage which, but for acting on such permission, would not have arisen.

(4) Assistance: Without prejudice to the laws on immigration or any other laws in force *infra civitatem*, the procuring entity shall assist, an instance of aiding, helping or making it easier, the suppliers to be granted any permit required to any person who substantiates his eligibility in terms of Article 4 as a participant in an invitation to offer, or any agent of such person, for the purpose of carrying out visits enabling him to prepare his offer. Any permit or authorization thereof shall expire on the day following the end of the validity period of the offers.

(5) Costs: Responsibility for participation in pre-bid conferences, visits, examination of either the work site or the environment where the subject-matter of the contract could be utilized and for obtaining any relevant information likely to impact on either the offer or the contract performance shall rest primarily on participating suppliers themselves. Therefore, the participating suppliers shall bear all costs associated with such preparatory exercises and the public entity shall in no case be responsible or liable for those costs, regardless of the outcome of the bidding process.

Article 29 **Signing of offers**

The procuring authority shall ensure that offers are signed in a manner to bind the participating supplier in a formal and a legal manner. Therefore, to avoid fraudulent offer *ex malitia*, the procuring entity shall make any control as it may be judged necessary in the circumstances. The article 29 shall apply to any procurement activities undertaken under this Act.

(1) Original and copies: The offer shall be signed by the supplier or by his duly authorized agent as required by the instructions. It shall be drawn up in a single original bearing the word 'original'. The number of copies to be supplied by the supplier shall be stated in the instructions. Copies shall be signed in the same way as the original and shall bear the word 'copy'.

(2) **Agent:** An offer submitted by an agent must state the name of the principal on whose behalf he is acting. Agents shall attach to the offer the simple contract or notarial act or deed, which empowers them to act on behalf of suppliers. A signature to a deed must be certified in accordance with the national law of the State of the principal.

(3) **Joint venture:** If a participating supplier is a joint venture or consortium of two or more persons, the offer must be single with the object of securing a single contract, each person must sign the offer, and all such persons shall be jointly and severally bound by the offer and any resulting contract, and shall designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the contracting authority.

(4) **Deed:** The offer may be signed by the representative of the joint venture or consortium only if he has been expressly so authorized in writing by the members of the joint venture or consortium, and the authorizing contract, notarial act or deed is attached to the offer. All signatures to the authorizing instrument must be certified in accordance with the national laws and regulations of each of the parties comprising the joint venture or the consortium together with the powers of attorney establishing, in writing, that the signatories to the offer are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 4 as if he, himself, were the participating supplier.

(5) **Initials:** The complete offer shall be without alterations, interlineation or erasures, except those to accord with instructions issued by the contracting authority, or necessary to correct errors made by the participating supplier. The person or persons signing the offer shall initial alterations and corrections.

(6) **One offer:** Except (i) in the case of lots pursuant to Article 21, (ii) variant solutions pursuant to Article 27, (iii) where a subcontractor is participating in more than one joint ventures or associations, only one offer may be submitted by each participating supplier.

CHAPTER 6: SUBMISSION OF OFFERS

Article 30 Time limit

The time allowed for the preparation and submission of offers by participating suppliers shall be determined with due consideration of the particular circumstances of the project and the magnitude and the complexity of the contract. To ensure effective procurement, time limits shall also be imposed on public servants for the undertaking of procurement activities.

(1) For international competitive bidding: Generally, not less than the prescribed minimum number of days from the date of invitation to bid or the date of availability of the bidding documents, whichever is later, shall be allowed to participating suppliers to prepare their offers for international competitive bidding.

(2) For large works: For large works or complex items of equipment, the period for the preparation of offers shall be generally not less than the prescribed minimum number of days to enable suppliers to prepare their offers.

(3) Extension for submission: Exceptionally, the contracting authority may, at its discretion, extend the deadline for submission of offers by amending the solicitation documents.

(4) Contracting authority: Decision shall be made within the maximum time allocated as set out in the Public Procurement Rules. Any person who, by willful negligence, causes a delay shall commit an offence under this Act.

Article 31 **Sealing and marking of envelopes**

Any offers under competitive bidding for goods or works, and any proposals under request for proposals for consulting services and the annexes thereto shall be placed in sealed envelopes and be marked as stipulated.

(1) Identification: Envelopes shall bear only: (i) the address designated for submission of offers, (ii) the reference to the notice of invitation to offer in reply to which the offer is being submitted; (iii) where applicable, the numbers of the lots for which offers are included; and (iv) the words "do not open before the opening session". The identification shall be in the language stipulated in the solicitation documents.

(2) Technical / Financial offers: Where so stipulated in a request for proposals or in the solicitation documents, documents relating to the financial proposal shall be placed together with the technical proposal in one envelope or in separate envelopes. In the latter case, the price proposal shall be placed in a separate identifiable envelope, bearing the words "Financial Offer", which shall be sealed and placed together with the technical proposal in the envelope referred to in Article 31 (1).

Article 32 **Withdrawals and amendments**

Where a participating supplier wishes to withdraw or amend his offer, he shall not be allowed to retrieve his original offer, but shall only be allowed to send another offer

equally sealed, properly identified and linked to his original offer and marked as "modification" or "withdrawal" as the case may be.

CHAPTER 7: EXAMINATION, EVALUATION AND COMPARISON

Article 33 Opening

Subject to other provisions under this Act, offers can only be received after proper solicitation; due care shall be taken to ensure confidentiality of the content of the offers and of the process.

(1) *Opening Committee*: Pursuant to article 49, the receiving of envelopes and the opening of envelopes containing offers shall be the responsibility of an "Opening Committee" wherein determined duties are imposed upon the members under this Act.

(2) *Procedures for receiving offers*: In addition to the location, deadline for submission, including date and time, the solicitation documents shall stipulate how a participating supplier may deliver his offer and where applicable by whom the offer shall be received; such instructions shall be in compliance with the public procurement rules for opening.

(3) *Procedures for opening*: The opening of offers shall be in full compliance with the procedures laid down under the public procurement rules.

Article 34 Evaluation and comparison

All receivable and eligible bids shall be examined and, where substantially responsive, shall be evaluated and compared. The article 34 shall apply to any procurement activities for goods and works undertaken under this Act.

(1) *Opening Committee*: Pursuant to article 50, the examination, evaluation and comparison of bids shall be the responsibility of an "Evaluation Committee" wherein determined duties are imposed upon the members under this Act.

(2) *Determination of responsive bids*: All bids shall be first examined to determine if they (i) meet the minimum eligibility requirements stipulated in the bidding documents; (ii) have been duly signed; (iii) are accompanied by a valid security, where stipulated in the bidding documents; (iv) are substantially responsive to the bidding documents; and (v) are generally, otherwise, in order; the following shall not be sought, offered or permitted: (a) changes in prices, subject to this Act; (b) changes of substance in a bid; and (c) changes to make an unresponsive bid responsive.

(3) *Minor and major deviations:* A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification from the participating supplier; the following shall be considered as major deviations: (a) with respect to clauses in an offer (i) improper arbitration; (ii) unacceptable sub-contracting; (iii) unacceptable time schedule if time is of essence; (iv) unacceptable alternative design; and (v) unacceptable price adjustment; (b) with respect to the status of the bidder (i) the fact that he is ineligible or not prequalified; and (ii) the fact that he is uninvited; (c) with respect to bid documents (i) an unacceptable or missing bid security, or (ii) an unsigned bid; (d) with respect to time, date and location for submission (i) any bid received after the date and time for submission stipulated in the solicitation documents; and (ii) any bid submitted at the wrong location; in cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder; in all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant; the following shall be considered as minor deviations: (i) the use of codes; (ii) the difference in standards; (iii) the difference in materials; (iv) alternative design; (v) alternative workmanship; (vi) modified liquidated damages; (vii) limited liability and insurance; (viii) omission in minor items; (ix) discovery of arithmetical errors; (x) sub-contracting that is unclear and questionable; (xi) different methods of construction; (xii) difference in final delivery date; (xiii) difference in delivery schedule; (xiv) completion period where these are not of essence; (xv) non-compliance with some technical local regulation; payment terms; and (xvi) any other condition that has little impact on the bid; in cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply: where the impact on the costs is major, it shall be regarded as a major deviation; and where the impact on the costs is minor, it shall be regarded as a minor deviation; in cases of minor deviations, written clarification may be obtained from the supplier and, where applicable, an offer made for the correction of the minor deviation; where a supplier does not accept the correction of a minor deviation, his bid shall be rejected; at the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms; for the rejection of a bid, a written notice shall be given promptly to the supplier.

(4) *Purpose of bid evaluation and comparison:* The purpose of bid evaluation shall be to determine the cost of each bid in a manner that permits comparison on the basis of their calculated costs; subject to any verification of the capabilities of the supplier, the bid with the lowest calculated cost, but not necessarily the lowest submitted price, shall be selected for award.

(5) *Methods and criteria for evaluation and comparison:* For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation and comparison, no other methods or criteria shall be used except those stipulated in the solicitation documents; all relevant factors, in addition to price, that will be considered for

the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents; such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages; (b) for works, if time is a critical factor, the value of early completion as per a pre-set criteria in the bidding documents including the conditions of contract providing for penalties in case of late delivery; provisions for price adjustment included in a bid shall not be taken into consideration; the evaluation and comparison of bids shall be on CIF or CIP prices for the supply of imported goods and EXW prices for goods offered from the Republic of Montenegro, together with prices for any required installation, training, commissioning, and any related ancillary services; under works and turnkey contract, contractors shall be responsible for all duties, taxes and other levies and bidders shall take these factors into account in preparing their bids; therefore, the evaluation and comparison shall be strictly in monetary terms; any procedure under which bids above or below a predetermined bid value assessment are disqualified shall not be permitted.

(6) *Currency of bids:* When bid prices are expressed in two or more currencies, the prices of all bids shall be converted in one currency, according to the rate and date of rate and source specified in the solicitation documents.

(7) *When suppliers were prequalified:* If suppliers of complex works were prequalified pursuant to article 14, verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

(8) *Confidentiality:* After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning the award shall not be disclosed to the bidders or to persons not officially concerned with the process until the successful bidder is notified of the award.

(9) *Evaluation report:* Any bid evaluation and comparison shall be reported in the manner and in the format laid down in the public procurement rules provided that the report shall always be signed by all evaluators and the supervisor confirming the correctness of the report and the compliance with this Act.

(10) *Transportation and insurance:* A public entity may reserve transportation and insurance for the importation of goods to national companies or other designated sources; suppliers shall be asked to quote FOB (Port of shipment) or CFR (Port of destination), prices in addition to the CIF (Port of Destination) or CIP (Place of destination). Selection of the bid with the lowest calculated price shall be on the basis of the CIF or CIP price,

but the public entity may sign the contract on FOB or CFR terms and make its own arrangement for transportation and / or insurance; the solicitation documents shall state the types and terms of insurance to be provided by the supplier. The indemnity payable under transportation insurance shall be in an amount sufficient to cover replacement of actual loss or damage of the contract amount in the currency of the contract or in the freely convertible currency to enable prompt replacement of actual loss or damages, and shall not result in any case in gain or profit made on such loss; for works, a Contractor's all risk form of policy shall be specified; for large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement shall be obtained by the public entity, in which case the public entity may seek competition for insurance under shopping for such ancillary services.

Article 35 **Rejection of all offers**

Rejection of all offers shall be allowed only when there is lack of effective competition or when all offers are not substantially responsive. The article 35 shall apply to any procurement activities undertaken under this Act.

(1) Determination: Lack of competition shall not be determined solely on the basis of the number of suppliers; when all offers are rejected, the public entity shall review the cause justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination thereof, before inviting new offers; when the rejection of all offers is due to lack of competition, wider advertising shall be considered; when the rejection is due to most or all of the offers being substantially not responsive, new offers may be invited from the same suppliers who were originally invited; offers shall not be rejected for the purpose of obtaining lower prices.

(2) Notice of overall rejection: In case of rejection of all offers, the notice of the overall rejection shall be given promptly to all suppliers who submitted offers and in all cases, before the end of the validity period; a public entity shall not thereby incur any liability nor assume any obligation to inform any supplier of the grounds for the rejection or the cancellation of the process.

(3) Alternative to overall rejection of offers: When the responsive offer at the lowest calculated price exceeds the estimate by a substantial margin, the public entity shall investigate causes for the excessive costs and shall consider requesting new offers; alternatively and after the approval, the public entity may, instead of calling for new offers and without changing the substance of the solicitation, offer to the supplier offering the lowest calculated price a reduction on the scope and / or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price.

CHAPTER 8: AWARD OF CONTRACT FOR GOODS OR WORKS

Article 36 Selection and postqualification

The selection of the successful supplier shall be made in compliance with the requirements of this Act. Where undertaking an open competitive bidding exercise, and where the bidders were not prequalified, locally or internationally, a postqualification shall be undertaken to determine if the bidder whose bid has been determined the lowest calculated price has the capability and the resources to carry out the contract effectively; the criteria to be met, on a pass or fail basis, shall be set out in the solicitation documents and the bidder who fails shall be rejected; where the first bidder fails the post-qualification test, similar examinations shall be carried out in descending order of rank for the determination of the next successful bidder. The article 36 shall apply to any procurement activities undertaken for procurement of goods or works.

Article 37 Notification of award

The contract shall enter into force with the issuance of a letter of acceptance, or notification of award, issued to the supplier; for works contract, the notification of award may be conditional to the securities, performance security or security for advance payment, to be obtained from the successful supplier; the supplier shall not be required, as a condition of award, to undertake responsibilities not stipulated in the solicitation documents or otherwise to modify substantially the bid as originally submitted. The article 37 shall apply for any procurement activities undertaken under this Act for procurement of goods or works.

Article 38 Contract documents

Any documents to form part of any contract shall be included in the solicitation documents in the manner and in the format laid down by the public procurement rules and by using only the standard forms approved by the Public Procurement Commission. For any solicitation, or any type of contracting, no standard contract documents of any kind shall be modified, amended or altered by a public entity except (i) where authorized by the Public Procurement Commission and (ii) where permitted as an alternative, depending on the type of contract. The article 38 shall apply to any procurement activity undertaken under this Act.

Article 39
Signing of the contract

Within the number of days stipulated in the solicitation documents, the successful supplier shall sign the contract. After signature by the successful supplier, the contract document shall be returned to the contracting authority; where applicable, the contracting authority shall not sign the contract until the performance guarantee or security has been established in accordance with the solicitation documents. By the signature of the contracting parties, the contract becomes binding upon contracting parties. Alternatively, the contracting authority may, depending on the nature of the contract and the requirements of the solicitation documents, decide to conclude the contract on the basis of the letter of acceptance whereby the notification of award of contract shall constitute the conclusion of the contract. In the event of withdrawal by the successful supplier, the contracting authority may call up his bid security. In addition, it may approach the other participating suppliers according to the order in which their bids are classified, or may initiate a fresh procedure. The article 39 shall apply for any procurement activities undertaken under this Act for procurement of goods or works.

Article 40
Performance guarantees

Where a performance guarantee is stipulated as being required in the solicitation documents, failure to timely provide the performance security shall be sufficient ground for rejection of the bid of the successful bidder; where such circumstances result in the failure of the participating supplier, the procedures under article 39 shall apply.

CHAPTER 9: PROCUREMENT OF CONSULTING SERVICES

This Chapter of the law shall apply to consulting services delivered by consultants or by consulting firms, or by artists.

Article 41
Terms of reference

All procurement of consulting services and artistic items shall be determined in accordance with the Terms of Reference as per the prescribed format laid down in the public procurement rules; suppliers of services shall be encouraged to comment on the Terms of Reference.

Article 42
Short list

The responsibility of drawing up a short list shall be on the public entity subject to its making proper enquiry from any appropriate body or, after advertising if the value of

the services exceed the prescribed amount; the short list shall comprise from three (3) to seven (7) candidates and the rational selection of candidates shall be made in terms of competence and experience in the area in which the services are to be delivered; where a short list is intended to be drawn up following an advertisement, at least the minimum prescribed number of days shall be allowed for consultants to present an expression of interest.

(1) *Criteria for listing*: No consultant shall be listed unless he is expected to meet the relevant qualifications, competence and experience necessary for the type of services required.

(2) *Cost estimate*: Before issuing a letter of invitation to the short listed suppliers of services, a cost estimate shall be prepared to better compare and determine the expected total cost of services such as salaries, travel costs, daily allocation when travelling, consumable and all other expenses.

Article 43 **Selection methods**

Any procurement activities for consulting services or artistic items shall be undertaken as per the procedures laid down hereunder:

(1) *Quality and Cost Based Selection*: For contracts under this Chapter, the procurement method shall be the quality and cost based selection, unless circumstances warrant differently.

(2) *Other methods*: Other procurement methods such as quality-based selection, selection under a fixed budget, single source selection, selection of United Nations Agencies or reputed procurement Agents or accredited inspection Agents shall be resorted to as per the public procurement rules.

(3) *Artistic item*: Any artistic item shall be procured in compliance with the public procurement rules for such item as laid down for the procurement of services; goods or works under the responsibility of an artist shall be, by essence, part of the services.

Article 44 **Contract agreements**

Unless the circumstances warrant otherwise, all contracts under this Chapter shall be on a lump-sum basis.

(1) Time-based contract: Where circumstances warrant, contracts under this Chapter may be made as a time-based contract, a retainer or contingency fee contract, a percentage contract or an indefinite delivery contract.

(2) Other contracting arrangements: A time-based contract is a contract which, owing to the difficulty in defining its duration, payment is determined in terms of agreed unit prices as per units of time and actual expenses for reimbursable, with a ceiling amount; retainer or contingency fee contract may be utilized for privatization operations, sales of companies, merger of firms or sales of assets; percentage contract may be utilized for inspection agent or procurement agent; indefinite delivery contract may be utilized for professionals involved in an activity where the duration of the exercise cannot be reasonably determined in advance and payment may be made on the basis of the time actually dedicated for the final determination such as in the case of (i) adjudicators for works contract; (ii) advisers on institutional reforms; (iii) specialists on procurement matters; (iv) technicians in troubleshooting; (v) monitoring of works contract.

Article 45 **Request for proposals**

The request for proposals shall include the Terms of Reference, the letter of invitation, the instructions to suppliers of services and, the proposed contract; the letter of invitation shall state the intention of the public entity to enter into a contract for services, the date and venue for submission of proposals; the request for proposals shall include all information required by suppliers of services to prepare their proposals, the evaluation criteria and the points to be allocated to each criterion and the manner in which they will be applied at the time of evaluation.

Article 46 **Evaluation and comparison of technical proposals**

All evaluations of technical proposals shall take into account the following technical criteria: (i) the relevant experience for the assignment; (ii) the quality of the methodology proposed (iii) the qualification of the key staff proposed; (iv) the transfer of knowledge; and (v) the extent of participation by locals; these criteria may be divided in sub-criteria; criteria shall be marked on a scale of a total of one hundred (100) points and each criterion shall be marked not less than ten (10) points and not more than thirty (30) points; when price is a consideration, each criterion shall be marked on a scale of one hundred (100) points less the points given to price that shall not exceed thirty (30) points; the criteria and points allocated per criterion shall be stipulated in the request for proposals; an evaluation report on technical proposals shall be mandatory and shall be signed by all evaluators.

Article 47
Evaluation and comparison of financial proposals

For appraisal, no financial proposal shall be opened unless the technical proposal has been evaluated; the financial proposal shall be opened in public. Before determining the ranking of the financial proposals, the following adjustments shall be made (i) arithmetical errors, if any, shall be corrected; and (ii) all prices shall be converted into a single currency at the exchange rate prevailing on the date stipulated in the Request for Proposals and, as published by an international newspaper.

Article 48
Negotiation

Negotiations shall include discussions of the Terms of Reference, the methodology, staffing, public entity's inputs, and special conditions of the contract; these discussions shall not substantially alter the original Terms of Reference or the terms of the contract, the quality of the final services delivered, its cost and the relevance of the initial evaluation shall not be affected; major reductions in services input should not be made solely to meet the budget; the final terms of reference and the agreed methodology shall be incorporated in the description of services which shall form part of the contract.

(1) *Personnel proposed:* The selected supplier of services shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the supplier of services may be disqualified and the process shall continue with the next ranked firm. The key staff proposed for substitution shall have the qualification equal to or better than the key staff initially proposed.

(2) *Financial matters:* Financial negotiation with suppliers of services shall include determination of the tax liabilities of the supplier in the Republic of Montenegro, and how this tax liability has been or would be reflected in the contract. Proposed unit rates for staff-months and reimbursable shall not be negotiated, since these have already been a factor of selection in the cost of the proposal unless there are exceptional reasons.

(3) *Failure of negotiation:* If the negotiations fail to result in an acceptable contract, the public entity shall terminate the negotiations and invite the next ranked suppliers of services for negotiations. The supplier of services shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked supplier of services, the public entity shall not reopen the earlier negotiations. After negotiations are successfully completed, the public entity shall promptly notify in writing other suppliers of services on the short list that they were unsuccessful.

CHAPTER 10: PUBLIC PROCUREMENT OFFICERS

Article 49 Opening of envelopes

Except for shopping and direct agreement, all procurement officers undertaking a procurement exercise shall set up an ad-hoc opening committee; where appropriate, a public entity may alternatively have a committee established for a set period of time. The article 49 shall apply to any procurement activities undertaken under this Act.

(1) Responsibility: The opening committee shall be responsible for the opening of offers following a solicitation for bids or proposals that are initiated under this Act.

(2) Membership: The opening committee shall comprise three members: one coordinator and two assistants, designated by the Public Procurement Officer who is responsible for the procurement. A public procurement Officer shall not be a member.

(3) Effectiveness: The members shall continue in their functions until the final opening report is submitted.

(4) Report: The opening report shall be signed and prepared as per the approved format set out in the public procurement rules.

(5) Public opening: Where the evaluated value of the contract exceeds the prescribed amount for public opening as set out under this Act, opening shall be public.

(6) Deadline: The deadline date, time and the location, for any opening, public or not, shall be the same as for the receipts of bids or proposals, or promptly thereafter, and shall be announced, together with the place for bid opening in the solicitation documents; promptly thereafter shall mean the time to take the offers to the place announced for public opening.

(7) Participation: At public opening, the participating suppliers or their representatives shall be allowed to be present and shall be governed by the procedures laid down by the public procurement rules. Non participation by a supplier shall not be a sufficient ground for rejection of an offer. All participants shall sign the registry of attendance.

(8) Verbal statement: The names of the suppliers offering, the total amount of each offer, and any alternative offer, if they have been requested or permitted, shall be read aloud and recorded when opened.

(9) Rejection: Any offer received after the date and time stipulated or received at a place other than the place stipulated, as well as those not opened and read out at opening, shall not be, for any reason and under any circumstances, considered.

(10) Acknowledgement: Where a supplier is requesting a confirmation of the receipt of his envelope containing his offer, the Co-ordinator of an opening committee shall provide such acknowledgement without divulging any other information which shall be treated with maximum confidentiality.

Article 50

Evaluation committees

Except for shopping and for direct agreement, under which the evaluation of offers shall be the sole responsibility of the public procurement Officers, any other evaluation exercise undertaken under this Act shall be made by an Evaluation Committee. Appointment shall be the responsibility of the Head of the public entity responsible for the procurement. An evaluation committee shall be comprised of a Supervisor and three or five evaluators, who shall not have been involved in the opening of offers to be evaluated. The Supervisor or any member shall be public servants selected on the basis of the combination and complimentary of their expertise. The Supervisor and the members shall not be elected persons. The article 50 shall apply to any procurement activities undertaken under this Act.

(1) Assessment and examination: When deemed necessary by the Supervisor, the supervisor may seek to obtain the following preliminary information (i) a preliminary assessment report on the offers received from any expert in the area; and (ii) a preliminary examination of the offers from his staff.

(2) Expertise: Where the necessary expertise is not available in the public entity responsible for the evaluation, such expertise may be sought from any other public entity or from any other sources.

(3) Continuation: The members of an evaluation committee shall continue in their functions until the evaluation report is submitted.

(4) Supervision: The supervisor shall be solely responsible for the supervision and co-ordination of the evaluation process but, in any case, shall not be involved directly in the evaluation process or in rejection of offers. The supervisor shall be responsible to take any action necessary to ensure the confidentiality of the offers, their evaluation and of the overall process until completion. He shall safeguard all offers and any documents related thereto which shall be transferred together with the evaluation report to the public procurement Officer responsible of the procurement.

(5) Undertaking: Each evaluator shall make his own individual evaluation without undue influence; thereafter, the supervisor shall determine the average, in the presence of the evaluators from individual results obtained. The evaluation shall be completed within the validity period so as to leave enough time for contract award. On completion, the evaluation report with firm recommendations shall be submitted to the public procurement Officer. The undertaking shall be in compliance with the procedures laid down under the public procurement rules.

(6) Final: Any recommendation for award made thereof, under any evaluation undertaken, shall be final. Therefore, an evaluation exercise cannot be re-conducted, except where there is an evident situation of non compliance with this Act; after evidence is made on non compliance, another similar evaluation shall be conducted by another evaluation committee; the second committee shall not be provided with the first evaluation report which shall remain secret until the second evaluation report is completed. Contrary to the evaluation resulting in a final recommendation for award, for procurement of consulting services and artistic items under Chapter 9 of this Act, the recommendation shall result in the determination of the ranks for negotiation.

(7) Report: Any evaluation report thereof shall be in the format laid down by the public procurement rules.

Article 51 Determination of needs and standardization

With a view to minimizing maintenance and inventory costs and to securing procurement from suppliers capable of offering best value for money by offering goods that meet the identified needs, a public entity may, by advertising, invite suppliers to qualify their goods to be standardized for a determined period not exceeding two years. The article 51 shall only apply to the procurement of goods.

(1) Standardization committee: Public procurement Officers shall, as and when necessary, establish a standardization committee.

(2) Duties: A standardization committee shall, under the supervision of the public procurement Officer, be responsible for (i) determining the needs and, (ii) standardizing goods as per this Act. A standardization committee may be ad-hoc and shall comprise a Head and such number of staff as may be necessary. To ensure transparency and integrity, any activities undertaken shall be in compliance with the procedures laid down by the public procurement rules. In the discharge of his functions under this Act, the Head of a standardization Committee shall supervise the procedures and shall propose standardization of goods to be approved by the public procurement Officer responsible of the procurement of these goods.

(3) Eligibility to quote: Only suppliers offering goods being standardized shall be eligible to offer during the applicable period. The list of standardized goods and the applicable periods shall be published in the Official Gazette and in the public procurement electronic communication media.

(4) Prohibition of single source: Except for the circumstances authorized under this Act for direct agreement, public entities shall avoid such type, nature and period of standardization, which may eventually result in a situation of single source or monopoly. When a standardization exercise results in a situation of single source of supply or monopoly, for any item, any exercise for that particular item shall be aborted.

Article 52

Functions and powers

Each public entity shall appoint a public procurement Officer who shall not be an elected person. The Head of the public entity shall appoint the public procurement Officer in consultation with the Public Procurement Commission and for government owned companies or firms with the Head of the parent Ministry. The article 52 shall apply to any procurement activities undertaken under this Act.

(1) Powers: In the discharge of his functions under this Act, a public procurement Officer may (i) issue solicitation documents, (ii) prequalify suppliers; (iii) supervise standardization of goods; (iv) after obtaining the necessary approval, delegate powers of negotiation with consultants and powers to enter into contract; (v) issue letter of acceptance for goods and works, after having obtained the approval of the Head of the public entity who shall not be an elected person; (vi) sign purchase orders, and (vii) appoint Co-ordinators and staff of Opening Committees.

(2) Functions: The public procurement Officers shall be responsible for all contracts of a value under the prescribed amounts; for any procurement of a value exceeding the prescribed amounts, the endorsement of an award committee, established under this Act, shall be obtained.

(3) Expertise: Where a Head of a public entity considers that his public entity does not have the necessary expertise or experience for the undertaking of any procurement exercise, the public entity, on good cause shown, shall seek the assistance from the Department responsible for Procurement or from the Department responsible for Public Works.

CHAPTER 11: DEPARTMENT FOR PROCUREMENT SERVICES

Article 53 Common-use items

There is established for the purpose of this Act a Department responsible for Procurement of the Republic of Montenegro, previously know as the Department for common business for State administration, responsible for the procurement of common use items and to provide advisory services to any public entity, where so required. Common use items shall be defined for the purpose of this Act as a good or any ancillary services needed by more than one Ministry or Department and for which advantages and savings may be obtainable by way of standardization and by way of grouping needs under one solicitation exercise. For avoidance of doubt, the Department shall not undertake any procurement activities for government owned companies or firms and for the self-local governments, but on good cause shown, may provide to them, advisory services in public procurement.

(1) Servicing: In addition, on good cause shown, any public entity other than self government or government owned companies or firms, may request the Department responsible for procurement to undertake any such procurement activity on its behalf.

(2) Sub-divisions: The Department responsible for procurement shall comprise (i) a sub-division responsible for goods and common-use items, (ii) a sub-division responsible for ancillary services and, (iii) any other subdivision, as the Director may decide.

(3) Autonomy: The Department shall report to the Government of the Republic of Montenegro and shall be autonomous in the conduct of its business and shall be under the supervision of a Director.

(4) List of items: The list of common use items for which the procurement is handled by the Department responsible for Procurement shall be advertised in the Official Gazette once a year, along with the types of services that may be offered to Self-Local Governments.

(5) Software and hardware: For procurement of, and / or standardization exercise for, software and hardware for computers, the Secretariat responsible for Development shall take part of any procurement activity or standardization exercise undertaken by any public entity.

Article 54

Functions and powers

The functions and the powers of the Department for Procurement shall be to undertake procurement activities in compliance with this Act -

(1) Functions: The functions of the Department responsible for procurement shall be to (i) handle procurement activities of its own or, as and when required, on behalf of public entities as listed under article 53; (ii) where required, provide advisory services to public entities on procurement matters; (iii) handle procurement of common use items on behalf of public entities as required under this Act, (iv) improve supply management of common-use items; (v) take all necessary action to streamline procurement of common-use items.

(2) Powers: In the discharge of its functions under this Act, the Department responsible for Procurement shall, for the conduct of its business, (i) appoint Coordinators and staff of Opening Committees; (ii) issue solicitation documents; (iii) sign purchase orders; (iv) issue letters of acceptance, for common use items; and (v) after obtaining the necessary approval, delegate powers of negotiation with consultants and powers to enter into contract (vi) supervise standardization of common-use items. For the discharge of its powers, the Department responsible for procurement may co-opt such other persons capable of assisting it with expert advice.

(3) Fees and charges: The Department responsible for procurement may levy such fees and charges as may be authorized by the Cabinet. Any revenue in excess or deficit of the Department shall be on the budget of the Government of the Republic of Montenegro, reported to and transferred on the Ministry of Finance.

Article 55

Director

There shall be appointed a Director and one Head for each subdivision who shall be public officers.

(1) Director: The Director shall be appointed by the Cabinet in consultation with the President of the Republic and with the leaders of the opposition parties. The Director shall hold office for a period not exceeding 3 years and shall be eligible for re-appointment. Termination of appointment by the Cabinet, shall be possible at any time, in the same manner as for appointment, where credible and admissible evidence is made of (i) any misconduct, default or breach of trust in the discharge of his duties; and (ii) an offence of such nature as renders it desirable that his appointment should be terminated.

(2) Staff: The Director shall be responsible for the management and the day-to-day activities of the Department responsible for procurement and shall perform such duties as are imposed upon him under this Act. Such public officers and public procurement officers as may be required shall staff the Department.

CHAPTER 12: AD-HOC PROJECT MANAGEMENT UNIT

ARTICLE 56

Project management

A public entity may, in respect of any pre-investment or any investment project, establish an ad-hoc Project Management Unit that shall have the authority and the responsibility (i) for obtaining the necessary clearance, license, permit, approval or any kind of authorization for the project; (ii) for the co-ordination and management thereof; (iii) for the handling of all procurement activities related thereto; and (iv) the overall execution, monitoring and proper discharge of all contractual obligations flowing therefrom.

(1) Members: The designation of the members of a Project Management Unit shall be subject to the approval, in the case of ministries, of the Director of the Department responsible for Public Works, and in the case of other public entities, of the Head of the parent ministry. A Project Management Unit may request the assistance of any public entity to provide the necessary expertise on assignment of duties. On receipt of such a request, a public entity may release a public servant having the required expertise for a determined period either on full or part time basis to enable the timely completion of the project.

(2) Records: A Project Management Unit shall, on termination of its assignment (i) transfer all project and procurement records to the public entity responsible for the project and, (ii) make available copies of "as built drawings" and any document for the maintenance to the public entity responsible of the project and, the same, to the Department responsible for public works.

(3) Project preparation: For project identification, pre-feasibility study, environmental impact assessment, feasibility study or any preparatory tasks, the Project Management Unit shall be the counterpart of the Pre-investment Committee so as to obtain approval thereon as required under this Act. Any activities thereof for public infrastructure projects shall meet the requirements under Chapter 17 of this Act.

CHAPTER 13: Award Committees

Article 57 For works

For any contract of a value exceeding the prescribed amount, the award shall be authorized by an award committee.

(1) Members: The award committee for works shall comprise three members: a Chairperson, a Vice Chairperson and an ad-hoc member from the public entity on whose behalf the award is being handled, having wide experience in legal, administrative, financial or related procurement matters for public infrastructure projects. The Head of the public entity shall designate the ad-hoc member.

(2) Appointment: The Cabinet, in consultation with the President of the Republic and with the leaders of the opposition parties, shall appoint the Chairperson and the Vice-Chairperson, and, on such terms and conditions as may be determined by the Prime Minister. The Chairperson and Vice-Chairperson shall hold office for a period not exceeding 3 years and shall be eligible for one re-appointment.

(3) Termination: The Cabinet may, in consultation with the President of the Republic and with the leaders of the opposition parties, at any time, terminate the appointment of the Chairperson and the Vice-Chairperson who has been guilty of (i) any misconduct, default or breach of trust in the discharge of his duties, and (ii) an offence of such nature as renders it desirable that his appointment should be terminated.

(4) Assistance: The award committee may co-opt such number of persons as may be necessary, capable of assisting the committee with expert advice; any person co-opted shall have no right to vote.

(5) Meeting: An award committee shall at the request of the Chairperson or at the request of a public entity, meet at such time and place as the Chairperson deems fit. At any meeting of the award committee, (i) a Chairperson, a Vice Chairperson and any ad-hoc member of the committee shall constitute a quorum, and decisions shall be made at majority, with each member having at any one time one vote on any matter.

(6) Presence: To ensure no delay in awards, in case of temporary absence or inability to perform his function, the Chairperson or the Vice-Chairperson of an award committee, may temporarily delegate his function and powers to another person by issuing therefor a non verbal statement to the Prime Minister.

(7) Approval: Approval by the Award Committee shall be made within the validity period. For avoidance of doubt, the award committee shall not be competent in procurement of services. The decision to reject a recommendation for award shall be made on the evidence of non compliance with this Act; therefore, the committee shall refer thereof to the specific article or Chapter of the Act on which they found a major non compliance, and shall advertise promptly the decision of non approval to the general public by divulging the non compliance thereof.

(8) Powers: In the discharge of its functions, the Award Committee shall have the power to endorse recommendations of award in respect of any contract of a value exceeding the prescribed amount that are handled by any public entity. Subject to article 50 (6), where a recommendation is not endorsed, the procurement exercise shall be aborted.

(9) Records: Any minutes by the award committee or any copy received from any award committees shall be, immediately upon decision, be safeguarded, protected and recorded by the State Archives, and any record thereof shall be available to the general public.

Article 58 **For common use items**

For common use items procured by the Department responsible for Procurement, the Director shall appoint an award committee of three members who shall have the power to endorse recommendations for award for any contract exceeding the prescribed amount. For information only, any minutes of award meetings shall be made available to the Chairperson of the award committee for works. Decision shall be made at majority and be final.

Article 59 **For public entities**

For self-local governments, government owned companies or firms, the Head the public entity shall appoint an award committee of three members who shall have the power to endorse recommendations for award for any contract exceeding the prescribed amount. For information only, any minutes of award meeting shall be made available to the Chairperson of the award committee for works. Decision shall be made at majority and be final.

CHAPTER 14: INTEGRITY

Article 60 Prohibition

For procurement other than for consulting services and artistic items and for others under direct agreement, no negotiation of any type including *negotiorum gestio*, verbal or not, shall take place between parties or a third party with respect to a prequalification or standardization exercise, a solicitation for bids or a request for quotations. For procurement of consulting services and artistic items, negotiation shall be handled as per this Act. No negotiation shall be undertaken after contract issuance except such as is consistent with the terms and conditions implied in the contractual documents.

Article 61 Extension and variation

No variation shall be authorized by a contracting authority unless the terms and the conditions of the contract offered in the solicitation documents include provisions for such variations and the mechanisms for consequential price adjustments thereof. Subject to the limitation under the article 7 (6), a contracting authority may decide by direct agreement on any extension of a contract.

CHAPTER 15: RULES AND FORMS

Article 62 Up-dating and issuance

There is established for the purposes of this Act a Public Procurement Commission. The public procurement commission shall be responsible of ensuring that the public procurement system will permit the conduct of procurement activities with the up-most transparency and integrity in full compliance with this Act.

(1) Members: The Public Procurement Commission shall comprise three members: (i) a Chairperson who shall represent the Ministry of Justice (ii) two other members who shall represent the Ministry of Finance and the Self-Local Governments.

(2) Appointment: The members of the Public Procurement Commission, who shall not be elected persons, shall be appointed by the Cabinet, in consultation with the President of the Republic and with the leader of the opposition parties, and on such terms and conditions as may be determined by the Prime Minister. Every member shall hold office for a period not exceeding 3 years and shall be eligible for one re-appointment.

(3) Termination: The Cabinet may, in consultation with the President of the Republic and with the leader of the opposition parties, at any time terminate the

appointment of a member who has been guilty of (i) any misconduct, default or breach of trust in the discharge of his duties and, (ii) an offence of such nature as renders it desirable that his appointment should be terminated.

(4) Assistance: The Public Procurement Commission may co-opt such number of persons as may be necessary, capable of assisting it with expert advice. Such expert shall not have, in any matter, right to vote.

(5) Meetings: The Public Procurement Commission shall meet at such time and place, as the Chairperson deems fit. The Public Procurement Commission shall regulate its proceedings in such manner, as it deems fit.

(6) Remuneration: the Government of the Republic of Montenegro shall determine the remuneration of the members of the Public Procurement Commission, for carrying out their duties under this Act.

Article 63 Coordination

The co-ordination of the public procurement system of the Republic of Montenegro shall be on the public procurement commission.

(1) Duties: The public procurement commission shall on assumption of duties: (i) safeguard national interest, in public procurement matters, having due regard to the regional and international obligations of the Republic of Montenegro, (ii) provide the Parliament with a periodic procurement assessment report as required under this Act, (iii) give due consideration to complaints of suppliers and of public entities on procurement matters, (iv) give due consideration to perceived and detected irregularities and mismanagement, (v) make decision on the application of this Act in cases of disputes between public entities, (vi) approve and disseminate public procurement rules and standard forms and, (vii) recommend to the Government any change to this Act.

(2) Powers: In the discharge of its functions, the Public Procurement Commission shall have the power to: (i) oversee the operation of the procurement activities undertaken by any public entity, project management units and of the Department responsible for Procurement and the Department responsible for public works; (ii) investigate into complaints from suppliers as well as from public entities and propose remedial action; (iii) investigate into reported cases of irregularity and mismanagement, and propose remedial action; (iv) make decision in case of disputes between public entities on the interpretation of this Act; (v) decide on procurement procedures in compliance with this Act.

CHAPTER 16 TRANSPARENCY

Article 64 Disposal of surplus

When disposing any surplus, a public entity shall follow the procedures as laid down in the public procurement rules.

Article 65 Undue influence

Any person who directly or indirectly, in any manner influences, or attempts to influence any officer or member taking part on any public procurement process, whether or not his role is critical to the decision-making, with the object of obtaining an unfair advantage under this Act, shall commit an offence. Any evaluator or supervisor of an evaluation committee who directly or indirectly, in any manner influences, or attempts to influence another evaluator shall commit an offence.

Article 66 Solemn statement and code of ethics

The Chairperson and the members of the public procurement commission, public procurement officers, the members of the award committees, the Director and Heads of the subdivisions of the Department responsible for Procurement, the Director of the Department responsible for works, the Heads of the Project Management Units, on assumption of duty, shall take a solemn statement specified in the form set out in the public procurement rules. The solemn statement taken under this article shall include an undertaking to be bound by the content of this article, which is a code of ethic. At the occasion of the solemn statement, in the presence of (i) the President of the Republic of Montenegro, (ii) the President of the Supreme Court of the Republic of Montenegro, and (iii) the President of the Constitutional Court of the Republic of Montenegro, this article shall be read aloud. To promote transparency and integrity, all elected persons of the Republic, not later than five days after they have been elected under the law, shall take a solemn statement in the same manner.

(1) *Free from interests:* All persons involved directly or indirectly in matters of public procurement and disposal of surplus (i) are expected to be free from interests or relationships which are actually or potentially inimical or detrimental to the best interests of the Republic of Montenegro; and, (ii) shall not engage or participate in any commercial transaction involving the Government, its affiliates, divisions or subsidies in which they have a financial interest.

(2) *Outside business:* Any person engaged in the public procurement and disposal of surplus who has assumed, or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest. Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.

(3) *Conflict of interest:* A conflict of interest exists where a person (i) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of Government; (ii) possesses a direct or indirect interest in or relationship with an outsider that is inherently unethical or that may be implied or construed to be, or make possible personal gain due to the person's ability to influence dealings; (iii) entertains relations which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgements; (iv) places by acts and omissions the public entity he represents or the Government in an equivocal, embarrassing or ethically questionable position; (v) entertains relations compromising the reputation on the integrity of the public entity he represents or the Government; (vi) receives benefits by taking personal advantage of an opportunity that properly belongs to the public entity he represents or the Government; (vii) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and, (viii) discloses confidential information being either the property of his public entity, the Government or to a supplier to unauthorized persons.

(4) *Prescribed period for surplus:* A person involved in the disposal of surplus, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these surplus and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

Article 67 Declaration of assets

The Chairperson and the members of the public procurement Commission, public procurement Officers, the members of the award committees, the Director and Heads of the subdivisions of the Department for Procurement and Services, Heads of the Project Management Units, shall file with the State Prosecutor a General declaration of assets and liabilities in the form specified in the public procurement rules (i) not later than 30 days after appointment or election and, (ii) on the termination of services. In the same manner, all elected persons shall declare their assets.

(1) *Fresh declaration:* Where, subsequent to a declaration made under the article 67, the state of assets and liabilities is so altered as to be reduced or increased in value by a prescribed amount, a fresh declaration shall be made.

(2) *Disclosure:* No declaration of assets and liabilities filed with the State Prosecutor shall be disclosed to any person except with the express consent of the person concerned or by order of a Judge on credible evidence shown of misconduct or offences.

Article 68
Declaration by suppliers

Where so stipulated in a solicitation document and where standard form are included therein, the suppliers shall, in addition to his offer, make such declaration in the format prescribed under this Act and under the public procurement rules made under. Failure to provide such mandatory declaration or any false declaration thereunder shall be sufficient grounds for rejection of any offer whereas such offer, after evidence is made at examination of offers, shall be judged as being not substantially responsive.

Article 69
Access to legal texts

Subject to reasonable administrative charges and the procedures laid down by the public procurement rules, the general public shall be given prompt access to the public procurement rules and the standard procurement forms made under this Act.

Article 70
Public notice of contracts

All public entities shall furnish the Public Procurement Commission monthly returns containing relevant information regarding all contracts exceeding the prescribed amounts for public notice of contracts; public notice of contracts may be made by electronic modes of communication or by any other mode of advertising. For any contract of a value exceeding the prescribed amount, the Public Procurement Commission shall publish at least once a year the names of the contract, the contract number, the amount and the name of the suppliers who entered into contractual obligations under this Act. The information advertised shall be the information as received from the public entities.

Article 71
Procurement records

Any public entity involved in public procurement shall record and safeguard all relevant documents issued and received where they directly or indirectly relate to a public procurement activity; any person who, willfully or negligently, by any action or omission resulting in the non availability of any document or evidence, shall commit an offense;

(1) Prescription: All procurement records shall be kept in safe condition for a minimum period of ten (10) years, and in the case of national security, a minimum period of thirty (30) years, after completion and payment of contracts and, be available instantaneously for procurement assessment or debriefing for audit.

(2) General public: Except for procurement records directly or indirectly related to the national security for which a prescribed period of 25 years shall apply, contractual documents for which the obligations are fully fulfilled, shall be made accessible to any person interested within two weeks from receipt of a written request; where the request concerns viewing only the documents, it shall be in the presence of an officer; where the request is to obtain copies thereof, it shall be subject to payment of reasonable fee; where there is a dispute, the documents shall remain not accessible to general public until full settlement.

Article 72

Assessment report

A public procurement assessment shall be undertaken on a yearly basis aiming at enhancing the public procurement system along principles of transparency, integrity and good governance; the assessment shall take into account other reviews and assessments, if any, by other agencies and bilateral or multilateral organizations; the assessment report, prepared by such experts as may be appointed by the Chairperson of the public procurement commission, shall be considered an official publication of the Government; the report shall include the assessment at random of at least fifty per cent (50 %) of the total value of delivered contracts for works, forty per cent (40 %) of the total value of delivered contracts for consulting services, thirty per cent (30 %) of the total value of the delivered contracts for goods. The report shall include the sections as prescribed under the public procurement rules; this report shall be published as written by the assessors and be accompanied by the comments of the Chairperson and the members of the public procurement commission, and submitted to the Parliament not later than three (3) months after the end of the budget year.

CHAPTER 17: PRE-INVESTMENT COMMITTEE

Article 73

Infrastructure committee

This Chapter shall apply to all activities related to investment by any public entity, including the pre-investment stage, in connection with a project the reasonable value of which exceeds the prescribed amounts as determined under this Act.

(1) Establishment: There shall be a Pre-investment Committee set up under the Department responsible for public works approving (i) project preliminary design; (ii) project design; and (iii) final project preparation and final design.

(2) **Composition:** The Pre-Investment Committee shall be chaired by the Director of the Department responsible for public works, and shall include a representative of the Ministry responsible for (i) finance (ii) environment, (iii) health (iv) the public entity responsible for the project and, (v) any other public entity, as the Director may decide.

Article 74

Feasibility study

Pre-investment activities shall include all services required at the preparatory stage which enables a public entity to obtain the services necessary for the preparation of documents needed for an investment project, including, where necessary, procurement documents.

(1) **Expertise:** The public entity shall determine at the earliest possible stage of project identification the expertise required for project preparation, detailing types of expertise, duration and period that these services are to be available to deliver an investment project on time; request for such services shall, in the first instance, be addressed in writing to the public entity having the necessary expertise; the public entity concerned shall within fifteen (15) days confirm to the requesting public entity the availability or otherwise of the required expertise; where such expertise is not available, the public entity responsible for the project shall proceed with the hiring of the required services from the private sector; due diligence shall be made to secure the necessary expertise; no pre-investment activity shall be delayed on the ground that the necessary services are not readily available.

(2) **Approval:** Where a public entity has wholly delivered a project design, it shall be construed as having been approved by that public entity according to its own standards; when a project design in whole or in part is serviced by a supplier of services, such design before the delivery to the public entity shall be approved by the Pre-investment Committee; where a project preparation or part thereof is being handled by a supplier of services, the latter shall (i) be responsible to obtain any clearance, license, permit or authorization necessary for the project; (ii) obtain clearance from the Pre-investment Committee, and (iii) be properly covered by a professional liability insurance in an amount sufficient to cover liabilities; terms of reference for such services may include the preparation of estimates and appropriate bidding documents in compliance with this Act; the final report of the supplier of services submitted to a public entity shall include the necessary revision, adaptation on deliverables that were found necessary to obtain clearance; the Request for Proposals for such consulting services shall include provisions for payment to be effected at appropriate stages after due approval by the Pre-investment Committee.

(3) Conflict of interest: Consultants shall not be hired for any assignment that would be in conflict with their previous and current assignment, and prior obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the public entity; consultants shall not be hired where a firm and any of its affiliates has been engaged by the public entity (i) to provide goods or works for the same project (ii) to prepare the same project.

Article 75

Soliciting and contracting

No procurement activities shall be initiated until the public entity has ensured that all necessary approvals and documents are available for bidders to prepare bids with all necessary information.

(1) Early warning: The duration of the period for the preparation of bids and bid validity shall take into account the time reasonably needed for the preparation of bids depending on the nature and complexity of the project and the fact that every unwarranted delay caused in procurement proceedings including bid evaluation and award may represent a fair percentage of final investment costs to the public entity; any person causing a delay hereunder in bad faith shall commit an offense; therefore, under a limited solicitation, an early warning notice may be given to contractors with a view to reducing the time taken for the preparation of bids; without compromising transparency and integrity, contracts shall be awarded in the shortest possible time, taken into account that time is of essence at investment stage.

(2) Reputed agent: Should a public entity decide to delegate the procurement proceedings for a works contract of high complexity to the Department responsible for public works, only the latter may in turn delegate the procurement proceedings to a procurement agent; a reputed procurement agent engaged by the Department responsible for public works shall be bound by the provisions of this Act; the selection of Procurement Agents shall be approved by the Public Procurement Commission.

Article 76

Works surveillance

Where the expertise exists, the works surveillance shall generally be the responsibility of the public entity responsible for the project; when the public entity responsible for such works considers, at its own discretion, that it does not have the available resource or the expertise for the supervision of a particular work, it shall seek assistance from the Department responsible for public works or engage a Project Manager, as appropriate under the circumstances, at the earliest stage of project preparation, from a list of candidates proposed by the department responsible for public works under which not less than three candidates shall be proposed.

(1) Conflict of interest: Any supplier of services or affiliates that (i) may have any interest with participating bidders for the works to be delivered, (ii) were engaged to provide goods or works for the project; (iii) have been involved in the preparation or implementation of the project, or (iv) are involved in another assignment under the same project, shall be disqualified and prohibited for works surveillance on the grounds of conflict of interest.

(2) Stipulation: The solicitation documents for works shall indicate the name of the person who shall be responsible for works surveillance on behalf of the public entity.

Article 77 **Contract supervision**

Contract supervision for any procurement of works shall rest on the public entity responsible for the project.

(1) Appointment: Therefore, the public entity shall appoint an officer responsible for contract supervision during the whole duration of a contract; in exceptional cases, such authority and responsibility may be delegated, at the sound discretion of the public entity, to another public entity; for large and highly complex project in which no related technical expertise is available, an engineering firm may be hired for contract monitoring; such hiring shall be governed by this Act. A corporate body or a firm shall deliver such services under an indefinite delivery contract agreement that shall include full professional responsibility and corresponding liabilities.

(2) Declaration: The solicitation documents for works shall include a provision giving the name of the person or the selected firm responsible to supervise the contract on behalf of the public entity.

CHAPTER 18 **DISPUTES**

Article 78 **Adjudicators for works contracts**

For works contract execution, the dispute settlement provision shall include a clause allowing for an adjudicator or three adjudicators to facilitate dispute settlement; the adjudication shall be final and shall bind the parties; the names of the adjudicator or adjudicators shall be stipulated in the solicitation documents; where adjudicators are not public servants, consultants shall be covered by an indefinite delivery contract.

Article 79 Prevention

To prevent disputes, suppliers shall be invited to address their complaints in writing to the public entity concerned.

(1) *Where aggrieved:* Where a supplier who, after having complained on procurement proceedings and obtained information from a public entity still considers that he is aggrieved, he shall address his complaint in writing to the Public Procurement Commission.

(2) *Prescription of time:* On receipt of a complaint, a reply in all cases shall be given in writing within 8 days.

(3) *Forum:* Conditions of all contracts shall include provisions concerning the applicable law and the forum for the settlement of disputes.

Article 80 Disputes

For settlement of disputes arising with suppliers established in the Republic of Montenegro, the forum for settlement of disputes shall be law *infra civitatem*.

(1) *Amicable settlement:* Provision for settlement of disputes shall include as a first step that parties shall make all effort for "an amicable settlement" within 30 days after receipt of a written notice of dispute.

(2) *International arbitration:* Alternatively, foreign suppliers may opt to make use of international arbitration in the Republic of Montenegro, so long as they accept to be governed by UNCITRAL rules of arbitration.

CHAPTER 19 PUNISHMENTS

Article 81 Anti-corruption

Under this Act, collusion to control a market, restriction of competition, bid rigging and kickbacks / bribery shall be criminal offences.

(1) *Collusion:* A collusion can be presumed from a set of acts from which it can be inferred that there was a kind of understanding, explicit or implicit, formal or informal,

overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the honest forces of free open market; for purposes of the presumption, consideration shall be given to a suspect's ability to control the market or to control a solicitation or the conditions of the contract in question, whether total or partial.

(2) *Restriction of competition:* Any conspiracy, agreement or arrangement that would, if put into effect, unduly restrict competition by fixing prices or preventing new competitors from entering the market, or by influencing the competitiveness of a solicitation exercise, shall be a criminal offense; such offense can be inferred from surrounding circumstances and the absence of direct evidence of communication between the parties, need not be a bar to the initiation of a prosecution; it shall be necessary to prove that a reasonable business person should have or ought to have known that the agreement would unduly restrict competition; it shall not be necessary to show that the conspiracy, if carried into effect, would have completely eliminated competition in the market as regards the procurement exercise in question and, in that regard, partial elimination would suffice.

(3) *Bid rigging:* bid rigging shall be an agreement between persons whereby (i) one or more bidders refrain from submitting an offer in response to a solicitation; (ii) offers submitted have been pre-arranged between them; or (iii) their conduct had the effect of directly or indirectly restricting free and open competition, distorting the competitive process and leading to an escalation or increase in costs; it shall be sufficient to prove that a reasonable business person should have known or ought to have known that his action or omission would result in restricted competition or increases in costs, and the actual effect on competition or on costs need not be proved.

(4) *Kickbacks:* kickbacks shall be an agreement between persons whereby (i) a bribery is paid by a person to another person with the aim to obtain an unfair advantage (ii) there is a situation of secret agreement or a result of coercion resulting in public funds, in cash or otherwise by any kind of advantages, that are shared unjustly by one or more persons without any judicial or legal grounds from any honest and normal conduct of procurement activities under this Act, (iii) the corrupt payment, receipt or solicitation of private favor for official action (iv) the obtaining of any advantages, material or not, derivative or not, that are defined as conflict of interest under article 66 (3) of this Act.

(5) *Declaration:* A person, who has reasonable grounds to believe that any of the criminal offences under this article or, any other offences under this Act as a whole, has taken place, may inform the State Prosecutor or any institution for anti-corruption in the Republic of Montenegro, without any need of disclosing his name and address, in any manner or by using a hot-line for anti-corruption; the hot-line number shall be advertised regularly in newspapers of general circulation or in any form of mass media.

(6) Prosecution: The State Prosecutor shall inquire into the matter and shall take forthwith remedial action as may be appropriate, including the recovery of funds or property in whose hands they can be traced losses, any compensation or indemnity that may be appropriate against the person who has been unjustly enriched, in the Republic of Montenegro and, where applicable, from abroad. Where a person from abroad is involved for payment or receipt or is presumably guilty under circumstantial evidence, the State Prosecutor shall collaborate forthwith with any Public Prosecutors or anti-corruption units of the country of residence of the said person; in such cases, to recover the funds and for prosecution abroad in parallel, the State Prosecutor shall share any evidence found in the Republic of Montenegro, so as to comply as far as practicable, with the international treaties on anti-bribery and to collaborate, as far as practicable, with the law of the country of residence.

Article 82 Offences

Any person who contravenes this Act or any regulations made thereunder, shall commit an offense. Such person shall be liable civilly and if a public officer, administratively liable in accordance with the laws *infra civitatem* provided that any fine to be imposed shall be in the minimum amount of 200 DM, equivalent, and shall not exceed the total amount gained by the person for his unlawful acts. Further, said person shall also be criminally liable as provided under this Act and, on conviction, be liable to a fine not exceeding the total amount gained as a consequence of unlawful or prohibited acts and to imprisonment for a maximum term not exceeding 15 years.

CHAPTER 20 FINAL PROVISIONS

Article 83 Separability

If any of the provisions of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in full force and effect.

Article 84 Repeal

All laws, decrees, orders, regulations, and other issuance which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

Article 85
Transitional provisions

Any right or obligation subsisting at the commencement of this Act in favor of, or against any of the public entities shall, on commencement of this Act, be a right or obligation in favor of the same public entities. Notwithstanding any other enactment to the contrary, any rights, obligations, authorities, responsibilities, powers and duties of the Department for common businesses of state administration shall be in on the Department for Procurement established under this Act, and shall be added to the powers and the functions determined under this Act.

(1) *Applicability*: For the purposes of this Act, any situation which came into being but were not exercised before the entry into effect of this Act, shall remain in full effect in conformity with the previous legislation; but their exercise, duration and procedure to enforce them shall be regulated by this Act; if the exercise of the right or of the action was commenced under the old laws, but is pending on the date this Act takes effect, and the rules or regulations were different from that established in this Act, the rules made under this Act shall apply; for the Government to fulfil its obligation without re-soliciting, solicitations and contracts that were approved before this Act shall be deemed to have been approved under this Act.

(2) *No retroactive effect*: Changes made and new provisions or rules laid down or made under this Act which may prejudice or impair vested or acquired rights in accordance with the repealed legislation shall have no retroactive effect.

(3) *Procurement records*: For the purpose of this Act, all procurement procedures and all related documents shall be kept by each public entity.

(4) *Rules and forms*: As soon as this Act is enacted, it shall be incumbent upon the public procurement commission to approve the public procurement rules and the standard procurement forms.

(5) *Delays*: Due care shall be given by public entities to eliminate delays in procurement proceedings during the transition period.

Article 86
Commencement

This Act shall take effect on the eight day after being published in the Official Gazette of the Republic of Montenegro.