

LAW ON PUBLIC PROCUREMENT
(cleared version)

I. GENERAL PROVISIONS

Article 1

This Law shall regulate the manner and the procedure of performing public procurement for the budget users and the spending units within the Budget of the Republic of Macedonia, the budgets of the local government units, the state and municipal off-budget funds, as well as the within the agencies and the public institutions and other state founded bodies and organizations (hereinafter referred to as: Purchasers).

This Law shall also regulate the manner and the procedure of performing public procurement at the state owned public enterprises and associations.

Article 2

The provisions of this Law shall not refer to public procurement of items concerning state defense and security, and are regarded as a secret of the state.

The provisions of this Law shall also not refer to public procurement the source of funds of which are international organizations, should special conditions for procurement be proscribed for them.

Article 3

Publicity and equal position of the bidders shall be ensured for the public procurement procedure.

Article 3-a

Public procurement for same type of need shall not be divided into portions.

Article 4

Public procurement shall be performed only if the Purchaser has previously planned and provided funds, with a budget, financial plan or investment program.

Purchasers - spending units within the Budget of the Republic of Macedonia shall perform the public procurement upon prior written consent by the competent body of the state administration, of which they are integral part.

Article 5

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

1. "Public procurement" shall mean purchase, leasing and renting goods, works and services (hereinafter referred to as: procurement).
2. "Group procurement" shall mean procurement in favor of more than one Purchaser.
3. "Bidder" shall mean any domestic and foreign physical and legal entity that participates in the procurement procedure by submitting a bid.

4. "Goods" shall mean items of all kinds, including raw materials, intermediate goods, products, solid, liquid or gas materials, as well as the services related to the supply of the goods.
5. "Services" shall mean activities that provide conditions for executing the function or the production (production and non-production services).
6. "Equipment" shall mean devices for provision of conditions for executing the function and the production process.
7. "Works" shall mean all activities related to the construction pursuant to the Construction Law.
8. "Pre-qualification" shall mean procedure for selecting bidders according to their capability to deliver the goods, i.e. perform the works or render the services.
9. "Tender documentation" shall mean specification of the item of procurement and each page has to be verified with purchaser's signature and seal.

II. PUBLIC PROCUREMENT

1. Planning and Defining the Need for Procurement

Article 6

On the basis of the determined sources of funds, the Purchaser may plan his/her needs for procurement and determine the dynamics for procurement realization.

The plan referred to in paragraph 1 of this Article shall be developed by the authorized person, i.e. the body in charge of making decisions about the allocation and the usage of Purchaser's funds, in accordance with the law.

Article 7

For the purpose of public procurement, the authorized person i.e. the body in charge of making decisions about the allocation and the usage of Purchaser's funds, shall reach a decision.

The decision for the need for particular procurement shall determine the type and the quantity of the procurement, the amount and the source of funds necessary for performing the procurement, including the expenses pertaining to taxes, customs, and other public fees, the manner and the procedures for performing the public procurement, the criteria for selection of the most favorable bidder and the body, i.e. the authorized person for implementation of the procedure.

Article 8

Group procurement shall be performed in coordination, through one Purchaser acting on behalf of all Purchasers, upon prior concluded agreement for execution of group procurement.

Article 9

The purchaser is obliged to keep registry for the performed public procurement.

The registry referred to in paragraph 1 of this Article should particularly comprise: the item of procurement, the type of procurement procedure, total procurement value, number of Bidders,

decision for selection of the most favorable Bidder, appeals by the Bidders, performer of the procurement, procurement date, number, date and value of the concluded Contract and data about the concluded Annexes to the main concluded contract.

The Purchaser - the budget user and the spending user within the Budget of the Republic of Macedonia shall submit data from the registry for the performed procurement for each quarter in the calendar year to the Ministry of Finance.

Minister of Finance shall prescribe the form and manner of keeping the registry for the performed procurement.

2. Bodies to Perform the Procurement Procedure

Article 10

Procurement procedure shall be performed by a Public Procurement Committee (hereinafter referred to as: Committee), founded by the Purchaser.

The Committee referred to in paragraph 1 of this Article shall comprise President and two members and their deputies at least from among the employees at the Purchaser.

In case the Purchaser is budget user and spending unit within the Budget of the Republic of Macedonia, and when the purchase is carried out through an open or restricted invitation, representative authorized by the Minister of Finance, not entitled to vote, shall also participate in the operation of the Committee referred to in paragraph 2 of this Article.

The authorized representative referred to in paragraph 3 of this Article is obliged to follow the procurement procedure and regularly inform the Ministry of Finance thereof.

In addition to its existing composition of the Committee, depending on procurement nature and specificity, other experts can also be included in the operations of the Committee.

Depending on the scope, nature and specificity of the procurement, the Purchasers can establish more Committees.

The President of the Committee shall be the responsible person at the Purchaser (the official i.e. the employer) or a person duly authorized by the former.

The President and the members of the Committee and their deputies shall be designated for a period of two years, but no longer than two mandates.

The President and the members of the Committees and their deputies shall be responsible should they fail to adhere to the prescribed procedures and time stipulated with this Law.

"Article 10-a

Ministry of Finance shall organize education training pertaining to carrying out public procurement procedure.

The training shall be conducted by persons assigned by the Minister of Finance.

The program and the manner of conducting the training referred to in paragraph 1 of this Article shall be proscribed by the Minister of Finance."

Article 11

Members of the Public Procurement Committee and the responsible and the managing persons at the Purchaser, as well as members of their closer family in terms of the Family Law cannot apply as bidders.

Article 12

The Purchaser shall revoke the decision for procurement, should the Bidder give, directly or indirectly, a gift of any form or render any kind of service to the Committee, which influenced or could have influenced the adoption of the decision on procurement.

3. Manner of Performing the Public Procurement Procedure

Article 13

Procurement can be performed by:

- Open Invitation for Bids;
- Restricted Invitation for Bids;
- Collecting Bids; and
- Direct Settlement.

Article 14

Procurement through Open and Restricted Invitation for Bids shall be mandatorily and simultaneously published in the "Official Gazette of the Republic of Macedonia" and other public media. Should the invitation be not published at the same time, valid time limits shall be the ones from the Invitation for Bids last published.

When the procurement is performed with a decision for International Competitive Bidding, the Purchaser shall also publish the Invitation for Bids in the foreign public media.

A. OPEN INVITATION FOR BIDS

Article 15

Procurement through Open Invitation for Bids shall mean procurement in which each interested bidder can submit a bid.

Bid pertaining to Open Invitation can be also submitted by a group of bidders.

Article 16

Procurement shall be mandatorily performed through Open Invitation for Bids when the Denar equivalent of the procurement exceeds EUR 52,000, except for the cases referred to in Article 45 of this Law.

Open Invitation for Bids may also be practiced for procurement of less value than stipulated in the paragraph 1 of this Article, at the Purchaser's discretion.

Article 17

The announcement for the Open Invitation for Bids shall comprise the following data: name, residence and address of the Purchaser; number of the Invitation for Bids; subject of procurement; quantity; option of arranging the procurement in portions depending on the type of goods, equipment and service; time limits and place of execution of the subject of procurement; deadline for bids submission; technical features (technical specifications) of goods and services; quality and standards; evaluation criteria for selection, listing and rating of the most favorable Bidder and; time limit and manner of payment; place, date and time of Public Opening of Bids.

Should, according to the type of procurement, a tender documentation be needed, the place and time where the documentation can be provided, as well as the amount to be possibly paid for it and the manner of payment shall be determined in the announcement for Open Invitation for Bids referred to in paragraph 1 of this Article.

The tender documentation referred to in paragraph 2 of this Article shall be prepared in accordance with the needs of the Purchasers, harmonized with the prescribed standards and rules for the suitable types of procurements.

The Purchaser must not specify the given technical features of the subject of the procurement in precisely determined brand, model or type in the announcement for the Open Invitation for Bids and in the tender documentation.

Article 18

The Open Invitation for Bids shall have a deadline for bids submission set by the Purchaser of no less than 36 days from the date of publishing of the announcement for Open Invitation for Bids. In case of shortened procedure, the deadline shall not be set prior to 15 days from the date of publishing of the announcement for Open Invitation for Bids.

The Purchaser may extend this deadline for submission of bids at least 5 days prior to the expiration of the initial deadline, in case one or more Bidders inform the Purchaser that they are unable to submit the bids by the deadline due to objective reasons. If the Purchaser accepts the objective reasons, he announces the extension of the deadline in the media in accordance to Article 14 paragraph 1 of this Law.

In case a particular procurement requires reviewing of extensive technical specification, site visits and inspections, these circumstances shall be taken into account for setting the deadlines referred to in paragraphs 1 and 2 of this Article.

Any bid received by the Purchaser after the deadline of submission of bids, pursuant to Article 52 of this Law, shall be considered as late bid and returned unopened to the Bidder.

Article 19

Characteristics of the technical specifications included in the bid should be in accordance with the standards of the Republic of Macedonia and the international standards accepted in the Republic of Macedonia.

Article 20

Prior to the Public Bids Opening shall determine the maximum price for the total procurement, above which any bid shall be rejected. The maximum price shall include the costs for taxes, customs and other public fees.

The maximum price referred to in paragraph 1 of this Article shall be kept in highest confidentiality, in a sealed envelope till the moment of its announcement, pursuant to Article 31 paragraph 9 of this Law.

Article 21

The Committee shall begin the Public Bids Opening, i.e. the envelope with technical documentation, provided at least three bids are submitted to the open invitation.

The Committee shall check and state the economic and financial status, as well as the technical capability of the Bidder, for realization of the subject of procurement.

The Committee shall begin the Public Bids Opening, i.e. the envelope with the financial documentation provided at least two bids have complete technical documentation.

Article 22

As evidence to its financial and economic capability, the Bidder, parallel to the bid submission, shall provide and submit an appropriate document of solvency, issued by the Central Registry, in original or copy, verified by notary public, as well as certificate from the Public Revenue Office for paid taxes, contributions and other public fees.

The Minister of Finance shall prescribe the contents of the document of solvency for domestic Bidders.

Foreign legal entities and physical persons that appear as Bidders shall submit an audit report by foreign eminent audit institution registered for performing audit. The audit report shall contain data for the total business activity of the foreign bidder during the last three years.

Article 23

Following items may serve as evidence for technical capability of the Bidder:

- List of main deliveries of goods or services provided in the last three years, together with the prices, dates and purchasers;
- Technical description of the Bidder's plants, the measures undertaken for provision of quality and the research departments;

- Technical experts included in the process, especially the ones responsible for quality supervision;
- Samples, description or photographs of the items that are to be purchased, the authenticity of which should be verified, if requested by the Purchaser;
- A certificate, issued by an authorized institution for product quality supervision, that confirms the harmonization with given procurement specifications and standards;
- Catalogues of the basic technical features and operation manuals for the technical devices and equipment.

The Purchaser shall specify which certifications of the technical capability shall be submitted.

Article 24

Open Invitation for Bids shall exclude a bidder which:

- is bankrupt or in a process of liquidation, or is subject to bankruptcy proceedings or having its business activities suspended in accordance with the law, and
- an effective court decision exists for interdiction of its business activities as a preventive measure.

The Purchaser is obliged to request from the Bidder to enclose documentary evidence to the Bid, such as certificate for the court registry, not older than six months in original or copy verified by notary public that none of the aforementioned in the paragraph 1 of this Article applies to the Bidder.

Article 25

Depending on the type of the procurement, the evaluation criteria for selection of the most favorable Bidder may be:

- the lowest offered price only, or
- the most favourable bid in terms of price, delivery schedule, manner of payment, operating costs, efficiency, quality, esthetic and functional characteristics, technical qualities, provision of post-sale services and provision of technical assistance.

If the Purchaser decides to apply the criteria referred to in paragraph 1, line 2 of this Article, it shall list and rate all criteria in the Open Invitation for Bids that will be applied for the selection of the most favorable Bidder.

Article 26

If a particular bid price is unusually low and in significant discrepancy to the prices of other bidders, the Committee may request from the Bidder written information with explanation of the reasons for such bid price.

If the Bidder fails to explain the reason for offering bid price referred to in the paragraph 1 of this Article in a period of 7 days from the date of the request, or the Committee does not approve its reasons, the Bidder will be excluded from the selection procedure for a most favorable Bidder.

The Committee will inform the Bidder in writing of its exclusion from the selection procedure, supported by clarification of all the reasons for such decision and this information will be included in the documentation of the Open Invitation for Bids.

Article 27

Purchaser and Bidder are not allowed to do any negotiations whatsoever, nor reveal any technical specifications, prices related information or other market information to third parties.

Article 28

The Purchaser shall submit data about the third party (subcontractor) in the Open Invitation for Bids for the part of the bid entrusted for execution to that party by subcontract.

Article 29

The Public Bids Opening shall be done in the presence of all members of the Purchaser's Committee and representatives of Bidders.

The representatives of Bidders shall submit to the Committee a written authorization for attending the Public Bids Opening, issued by the Bidder.

Article 30

The Public Bids Opening shall commence at the time and place specified in the Open Invitation for Bids.

Article 31

The Committee shall take minutes of the Public Bids Opening.

Firstly, the Committee shall state the number of timely submitted bids and present representatives of the Bidders.

The Committee shall examine whether the submitted envelopes containing the bids are not damaged or opened.

The Committee shall publicly open the envelopes.

The Committee shall open the envelopes containing technical documentation first, then the envelopes containing the financial documentation (Bid) of the Bidders that were previously stated to have complete technical documentation.

The Committee shall examine whether all the necessary documents stipulated by this Law and other documents requested with the Open Invitation for Bids are submitted in the Bid.

All the documents of a bid shall be marked with the registry number of the bid and their serial number.

The Committee, as the Public Bids Opening, will announce the Bidders' business names and their addresses of residence, as well as whether the bids are formally complete and shall read out bid prices and other substantial elements from the Open Invitation for Bids.

After all data referred to in the paragraph 7 of this Article had been read, the Committee shall announce the previously determined maximum price of the procurement.

At the Public Bids Opening, the Committee will reject bids: that have been found incomplete; as well as in cases as stipulated in the Article 12 of this Law and that shall be recorded in the Minutes, together with the reasons for their rejection, while the authorized representatives of the rejected Bidders shall immediately be informed. Apart from this information, the Committee shall include in the Minutes all opinions and notes of the present representatives of Bidders provided they are relevant to the Public Bids Opening procedure.

In case any of the Committee members or authorized representatives of the Bidders does not approve course of the procedure, he/she shall state the reason that shall also be registered in the Minutes.

Article 32

During evaluation of the bids, the Committee shall act independently and in accordance with the conditions of the Open Invitation for Bids and the criteria stipulated by this Law.

The Committee evaluates only the bids that entirely fulfil the conditions of the Open Invitation for Bids and shall rate the bids.

In case the conditions envisaged in Article 21 paragraph 1 of this Law are not fulfilled, the Open Invitation for Bids shall be repeated two more times, and provided the envisaged conditions in the aforementioned Article are not fulfilled for the third time, the procurement may be executed with direct settlement, after previously gathered at least three bids.

The report with the rated bids shall be signed by all Committee members and it shall be submitted to the management with all the data about the bids, in a period not longer than 30 days from the day of Public Bids Opening.

The report shall comprise: Purchaser's name and address, subject and price of the procurement, names of the Bidders that have entered the competition and the reasons for their selection, names of the rejected Bidders and the reasons for the rejection, as well as the name of the most favourable Bidder and the reasons for its selection, inclusive of, if available, the names of the subcontractors.

This report, together with the bids or the documents comprising the bids, are considered business secret till the moment of selection of the most favorable bid.

The management shall decide about the selection of the most favourable Bidder in a period not longer than 15 days from the day of submission of the report.

In case management fails to make selection of the most favourable Bidder within the period referred to in paragraph 7 of this Article, the Purchaser shall inform the bidders within eight days that the selection of the most favourable Bidder will not be performed without having the obligation to explain the reasons.

B. RESTRICTED INVITATION FOR BIDS

Article 33

Procurement by the means of Restricted Invitation for Bids shall be done in cases when:

- the procurement value exceeds EUR 260,000 in Macedonian Denar equivalent;
- the nature of the procurement is complex or special (due to economic or security reasons);
- this type of procurement will achieve higher efficiency;
- examination and assessment period for a considerable number of bids would be disproportional with the procurement value;

Article 33-a

The procurement by the means of Restricted Invitation for Bids shall be carried out in two phases as follows:

1. Pre-qualification phase by gathering technical documentation from Bidders through Open Invitation for Bids, and
2. Phase of gathering bids from certain number of Bidders qualified in the pre-qualification phase.

Article 34

The Purchaser shall announce a Restricted Invitation for Bids for gathering technical documentation pursuant to Article 14 of this Law.

The deadline for the submission of documentation for participation of the Bidders in the Restricted Invitation for Bids shall be no sooner than 21 days from the date of announcement of the Invitation. In case of a shortened procedure, the deadline shall not be set sooner than 10 days from the date of the announcement of the Restricted Invitation for Bids.

Article 35

The Purchaser shall perform a pre-qualification of potential Bidders for the purpose of their participation in the Restricted Invitation for Bids, without the presence of their representatives.

Pre-qualification of potential Bidders, as stipulated in paragraph 1 of this Article shall be done on the basis of the assessment, whether they have:

- needed technical and technological solvency;
- economic and financial solvency;
- confirmation for paid taxes, contributions and other public fees, issued by the Public Revenue Office;
- appropriate equipment and other physical capacities necessary for realization of the procurement;
- managerial capabilities;
- experienced and expert personnel to perform the procurement;
- confirmation issued by a competent court that bankruptcy or liquidation procedure has not been initiated;

- no effective court decision for interdiction of its business activities as a preventive measure;
- possession of document of legal registration of their activity.

The fulfillment of conditions referred to in paragraph 2 of this Article shall be proved by documents and data, enclosed in the Bid application.

The Purchaser shall exclude the Bidder considered to have submitted forged, falsified or incomplete pre-qualification documents.

Article 36

The documentation for the Restricted Invitation for Bids shall be submitted in a sealed envelope.

Article 37

The Purchaser is obliged to determine the manner, place and deadline for submitting the technical documentation for pre-qualification in the announced Restricted Invitation for Bids and is obliged to respond upon Bidder's request to give clarification of the elements of the announced Restricted Invitation for Bids.

Article 38

The Purchaser shall decide about the qualification of the Bidder.

When making the decision referred to in the paragraph 1 of this Article, the Purchaser shall evaluate the conditions referred to in Article 35 paragraph 2 of this Law.

The Committee of the Purchaser shall notify all the Bidders that have submitted technical documentation for pre-qualification about the qualified Bidders and shall create a list of Bidders within a period of 8 days from the day of the expiration of the deadline for the submission of documents for pre-qualification.

The right to further participation in the phase of gathering Bids shall be given solely to those Bidders the qualification of which meet the requirements of the Purchaser.

Article 39

The Purchaser shall submit written request to the qualified Bidders from the created list for submission of Bid that shall contain:

- address of the Purchaser
- reference to the announced Invitation
- subject of the procurement
- contents of the procurement
- criteria for selection of the most favourable Bidder and their rating
- deadline for the bid submission
- time and place of provision of tender documentation and the price and conditions of payment, and
- the place, date and time of the Public Bids Opening

Article 40

The deadline for submission of bids shall be no sooner than 21 days from the mailing date of the written Invitation for Bids. In case of an emergency, the deadline for reception of the Bid shall not be set prior to 10 days from the mailing date of the written Invitation.

Article 41

The provisions referred to in Article 17 paragraphs 3 and 4, and Articles 22, 23, 30, 31 and 32 of this Law shall suitably be applied to the manner of the Committee operations during Restricted Invitation for Bids.

C. PROCUREMENT BY COLLECTING BIDS

Article 42

Procurement by Collecting Bids shall be performed when the value of the procurement is between EUR 2,600 and EUR 52,000 in Macedonian Denar equivalent and when the Purchaser without the presence of the representatives of Bidders, selects the bearer of the procurement on the basis of Request for Collecting Bids submitted by at least three bidders.

The Request for Collecting Bids referred to in paragraph 1 of this Article shall be published by the Purchaser in the public media, trade publications, magazines and papers.

The deadline for submitting the Bids determined by the Purchaser may not be sooner than 10 days from the day of publishing the Request for Collecting Bids.

The Request for Collecting Bids comprises the data referred to in Article 17 of this Law, except for data about the place, date and time of the Public Bids Opening.

Article 43

As supporting documentation to the bid referred to in Article 42 paragraph 4 of this Law, the Bidder shall mandatorily submit:

- certificate for registered activity;
- document of solvency, issued by the Central Registry;
- evidence that bankruptcy or liquidation proceedings have not been initiated;
- evidence from a competent body that there is no effective decision for interdiction of its business activities as a preventive measure;
- confirmation for paid taxes, contributions and other public fees, issued by the Public Revenue Office.

The documents referred to in paragraph 1 lines 3, 4 and 5 of this Article must not be older than 6 months.

Article 44

On the basis of the Decision referred to in Article 7 of this Law that determines the procurement procedure, the Committee may distribute Requests for Collecting Bids from certain number of Bidders, determined by the Committee itself, within the period determined in the published Request referred to in Article 42 of this Law.

The Bidders are obliged to submit their bids to the Committee within the period set in the Request.

The Committee is obliged to review the bids and prepare a report with a suggestion for selection of the most favourable Bidder, within 30 days after the arrival of bids.

The provisions set in Article 17 paragraphs 2, 3 and 4, and Articles 22, 23, 24, 31 and 32 of this Law shall be suitably applied to the manner of operation of the Committee in case of Procurement by Collecting Bids.

D. PROCUREMENT BY DIRECT SETTLEMENT

Article 45

Procurement by Direct Settlement shall be performed when the value of the procurement is up to EUR 2,600 in Macedonian Denar equivalent, whereby the Purchaser is obliged to provide bids by at least three bidders and to directly negotiate the conditions of the bid.

The Purchaser may do procurement through direct settlement also in the following cases:

- provided the subject of the procurement is only available from a sole source-direct producer from the country or abroad or the Bidder has the authorship, patent, license or other kind of industrial ownership rights, or the Bidder has the exclusive rights in relation to the goods, equipment and services, and there is no other suitable alternative;
- provided the purchaser implemented three proceedings for public procurement in which the necessary minimum number of registered bidders has not been fulfilled.
- In case of procurement of additional deliveries due to standardization and need for compatibility with the current goods, equipment and services from the first bearer of the procurement, intended either as partial replacement or as an extension to existing procurements and the change of Bidder, would oblige the Purchaser to take goods, equipment or services having different technical features that would result in incompatibility or larger technical changes in the operation i.e. the maintenance.
- when additional investments and construction work is needed, as well as equipment, for the already agreed procurement, the value of which is not higher than 20% of the agreed procurement and where its necessity emerges prior to completion of the execution of the initial agreement;
- when the procurement of material goods, equipment and services are of extreme urgency created by some unpredictable circumstances;

Article 46

In the procedure by direct settlement, it is not allowed to realize the purchase for the same need at the same Bidder in the same calendar year.

III. PROCUREMENT AT PUBLIC ENTERPRISES AND STATE OWNED COMPANIES

Article 47

During the realization of procurement at public enterprises and state owned companies, the provisions of this Law shall suitably be applied, unless otherwise stipulated with this part of the Law.

Article 48

Notwithstanding Article 47 of this Law, the Purchasers shall perform procurement via Open and Restricted Invitation for Bids, the estimated value of which is not less than:

a) EUR 210,000 in Macedonian Denar equivalent for procurement from Bidders performing activities regarding:

- production and transport of: electricity, gas or heating energy and drinking water;
- supply of water, electricity, gas or heating energy to the appropriate networks;
- waste water removal;
- irrigation and drainage;
- examination and exploitation of oil, gas, coal and other solid fuels;
- construction of air terminals, (river or lake) docks or other transport terminals;
- utilization of networks providing services for: railroad transport, automatic systems, street cars, trolley buses, busses and cable cars.

b) EUR 310,000 in Macedonian Denar equivalent - for procurement from Bidders performing an activity regarding the provision of telecommunication services;

c) EUR 2,600,000 in Macedonian Denar equivalent - for procurement from Bidders that provide public works (construction of roads, railroads, hydro and thermal power stations etc.).

Article 49

In cases the procurement referred to in Article 48 of this Law is performed through a Restricted Invitation for Bids, the following rules shall be applied:

- the deadline for submission of application for participation in the bidding shall be no sooner than 36 days from the date of publishing the announcement of the Invitation;
- the deadline for submission of applications shall be settled by a mutual consent between the Purchaser and the potential Bidders, provided all Bidders are given equal time for preparation of their bids;
- when the mutual consent can not be reached, the Purchaser will set up the deadline no sooner than 21 days from the day of the written request for submission of the Bid.

Article 50

The system of qualification of the Bidders in the Restricted Invitation for Bids shall be based on the conditions stipulated in Article 33 of this Law, with exception to the condition for the procurement value.

These conditions shall be based on an objective need of the Purchaser for reducing the number of the registered Bidders to a justified level in order to achieve balance between the particular characteristics of the procedure for awarding the procurement contract and the funds. The number of selected candidates must be taken into account, in order to provide appropriate competition.

The Purchaser shall notify the registered Bidders of its decision regarding the qualifications in a reasonable period of time. If the qualification decision cannot be reached before six months from the presentation of the documentation, within two months after submission of the documentation, the Purchaser shall notify the registered Bidders about the reasons justifying the longer period and the date to which his/her bid shall be accepted or rejected.

While deciding on the qualification, the Purchaser is not allowed to:

- impose conditions of administrative - technical or financial nature on some Bidders, that does not impose on other;
- request evidence that doubles the objective evidence material already at their disposal;

The rejected candidates shall be notified about the reasons for the rejection. The reasons must be based on the qualification conditions referred to in paragraph 1 of this Article.

Article 51

The Purchaser is entitled to use the Direct Settlement procedure in the following cases:

- a) when no application has been submitted pursuant to the procedures regulated by this Law;
- b) when the procurement is specifically aimed for research, studying and development purposes and not for acquiring any profit, i.e. surplus funds from the activity;
- c) when due to technical and performance reasons, or reasons with regard to the protection of exclusive rights for representation in the Republic of Macedonia, the procurement may be done solely by a determined bearer of procurement;
- d) when due to highest emergency situation caused by events unpredicted by the Purchasers for the deadlines of Open and Restricted Invitation for Bids that could not be followed;
- e) in case of procurement for additional deliveries from the first bearer of the procurement intended either as a partial replacement or as an extension to existing procurements, when the change of the Bidder would oblige the Purchaser to take material having different technical features that would result in incompatibility or disproportionate technical changes in the operation and maintenance;
- f) in case of additional activities and services not previously included in the initially awarded project or initially agreed contract, but that have appeared to be

necessary for executing the procurement out of unpredictable reasons, on the condition that:

- such additional activities or services cannot be separated from the main procurement without creating considerable inconvenience for both the Purchaser and the Bidder;
 - such additional activities or services are absolutely essential for the basic phases of the initial procurement, although they can be separated from the main procurement;
- g) when purchasing new activities comprising repetition of similar activities entrusted to the Bidder to which the procurement has been previously awarded by the Purchaser, provided such activities are in accordance with the basic project for which the awarded procurement was determined at an Open Invitation;
- h) in case of procurement to be awarded on the basis of framework contracts;
- i) in case of favourable procurement when there is a possibility to provide procurements with the usage of some particularly favourable opportunity available for a short time at much lower prices than the usual market price;

IV. MANNER OF SUBMISSION OF BIDS FOR PROCUREMENT

Article 52

Bids for procurement shall be submitted to the Purchaser by mail, in the archives, or directly handed to the Committee, but at the time and date set for the Public Bids Opening at the latest.

Article 53

The bid and all other documentation shall be submitted in a sealed envelope with a notice “do not open” in the upper left corner.

The correct address of the Purchaser should be stated in the middle of the envelope.

The envelope must not be marked with any kind of sign, which may identify the sender - the Bidder.

The sealed envelope should contain two more closed and sealed envelopes.

One of the inner envelopes shall contain the bid, together with its financial documentation and shall be marked with the word "bid", while the other inner envelope shall contain the technical documentation and shall be marked as "documentation" and shall also indicate the correct address of the sender - the Bidder.

Article 54

The Bid is submitted in a form of an original document that shall be verified and signed by the responsible person of the Bidder.

The Bid shall contain all the data as specified by the Invitation.

The price for offered goods and services of foreign origin shall compulsory include custom duties and other similar taxes.

V. GUARANTEE FOR PARTICIPATION IN PROCUREMENT

Article 55

For value of procurement that exceeds EUR 260,000 in Macedonian Denar equivalent, executed through Open and Restricted Invitation for Bids, it is compulsory that the Purchaser requests from the Bidders to secure their bid either by depositing funds or by obtaining a bank guarantee.

The Purchaser shall the amount of the grantee that should not be less than 5% of the total value of the procurement, including the customs, value added tax and other public fees.

The document that is evidence for the guarantee shall be a part of the bid documentation.

Article 56

The bid guarantee referred to in Article 55 of this Law shall be collected for the benefit of the Purchaser if the Bidder has been called to sign a contract after the selection of the most favorable Bidder and the Bidder refuses to do so.

Article 57

After completion of the procurement procedure, the Purchaser is obliged to return the deposited amount of the guarantee to the Bidders participating in the selection of the most favourable Bidder in a period of 7 days and to the selected Bidder the signing of the contract.

VI. SIGNING CONTRACTS

Article 58

After making the decision for the choice of the most favourable Bidder, the Purchaser is obliged to notify the Bidder in writing that he/she has been selected as the most favourable Bidder, in a period of 7 days at the latest.

The notification referred to in paragraph 1 of this Article is a valid confirmation that the particular Bidder is definitely determined to be the bearer of contract.

All the Bidders shall be notified about the selection of the most favorable Bidder within the deadline as set in the paragraph 1 of this Article.

The contract shall be signed in a period of 7 days beyond the expiration of the deadline set for lodging complaints, i.e. after the final decision is made with regard to the lodged complaint.

The contract shall be signed by the responsible official of the Purchaser (official or managing authority) or person authorized by him/her and on behalf of the bearer of the procurement-authorized signatory. An authorized person by the Minister of Finance shall sign the contract on

behalf of the Purchaser - funds user of the state budget of the Republic of Macedonia and an authorized administration body shall sign on behalf of the spending units. The contract that is not signed by all of the above mentioned persons shall not generate legal action.

The provisions referred to in paragraph 5 of this Article shall be applied also when signing annexes to the primary contract.

For the purpose of keeping the unique records of the public procurements in the Ministry of Finance, the users and spending units of the funds of the Budget of the Republic of Macedonia are obliged to submit a copy of the signed public procurement contract in a period of 15 days from the day of the signing of the contract.

The provisions referred to in paragraph 7 of this Article shall also be applied when signing annexes to the primary contract and to the contracts signed when the procurement was performed via direct settlement.

Article 58a

The Purchaser must not change the price, quality and technical features of the subject of the procurement by signing the Annex to the primary contract.

Article 58b

The procurements where the subject of procurement is successively delivered, and the selected most favourable Bidder fails to deliver the subject of procurement pursuant to the contract, the Purchaser shall cancel the contract and may sign a contract with the second rated Bidder or may carry out new procurement procedure.

Article 59

The contract envisages depositing caution money, guarantees or advance payments as warrants to secure payments, as well as the conditions and the manner for cancellation of the contract.

Advance payment shall be done in conditions when goods and services cannot be provided on the market and when that results into a lower sale price.

In the case of budget agencies and spending units, the advance payment may not be greater than 30% of the value of the contract.

VII. LODGING A COMPLAINT

Article 60

Any unsatisfied participant from the selection of the most favourable Bidder may lodge a complaint to the Public Procurement Complaint Committee in a period of 8 days from the day of the submission of the notification for the most favourable Bidder.

The complaint referred to in paragraph 1 of this Article shall be lodged through the Committee that has executed the first instance procedure.

The Committee that performed the first instance procedure shall submit the complaint together with an explanation upon complaint allegations and copies of total documentation for the performed public procurement procedure to the Public Procurement Complaint Committee.

In case of lodging the complaint, the execution of the decision for the selection of the most favourable Bidder shall be retained until decision upon the complaint becomes legally effective.

Article 60a

The Public Procurement Complaint Committee is obliged to give statement upon the complaint allegations in a period of 15 days from the day of reception of the complaint.

The Committee referred to in paragraph 1 of this Article will reject the complaint provided the complaint is non-timely and unless rejected, it shall take the subject for resolving.

Article 60b

The Public Procurement Complaint Committee will reject the complaint as groundless in cases when:

- it determines that the procedure prior to the selection of the most favourable Bidder was performed pursuant to this Law, or
- it finds that in the first instance procedure there were shortages that could not significantly impact the decision for selection of the most favourable Bidder.

Article 60c

The Public Procurement Complaint Committee will cancel the decision for selection of the most favourable Bidder if it determines that:

- the first instance body misjudged the bids and the enclosed documentation, or
- the first instance body made a selection for the most favourable bidder by incorrect application of the criteria for selection of the most favourable Bidder.

In case of cancellation of the decision for selection of the most favourable Bidder, the Public Procurement Complaint Committee is obliged to refer to the first instance body about the circumstances that should be taken into account in the further proceedings. The first instance body is obliged to act according to the references and to make a selection of the most favourable Bidder in a period of 15 days at the latest, thereby immediately informing the Public Procurement Complaint Committee.

Article 60d

The Public Procurement Complaint Committee will cancel the performed procedure if it determines that the first instance Committee incorrectly applied the provisions of this Law when implementing the procedure.

In case of cancellation of the performed procedure, the Public Procurement Complaint Committee is obliged to inform the first instance body and to refer what circumstances should be taken into account in the further proceedings.

Article 60e

The Public Procurement Complaint Committee shall inform the complainant and the Committee that performed the first instance procedure about its decision.

The decision of the Public Procurement Complaint Committee shall be final.

Article 61

The Public Procurement Complaint Committee shall be composed of a Chairman and 4 members and their deputies representing distinguished experts (attorneys, notaries public, commercial supervisors, engineers etc.), designated and revoked by the Government of the Republic of Macedonia for a period of 2 years, with a right to be reelected for a period of 2 years.

Member of the Committee referred to in paragraph 1 of this Article cannot be a person designated by the Parliament of the Republic of Macedonia and the Government of the Republic of Macedonia.

Member of the Committee referred to in paragraph 1 of this Article may be revoked prior to the expiration of his/her mandate in case of his/her criminal conviction regarding property in the same manner as he/she has been designated.

The Chairman and the members of the Public Procurement Complaint Committee, as well as their deputies for their activities in the Committee shall be entitled to allowances determined by the Government of the Republic of Macedonia.

Article 62

The Public Procurement Complaint Committee created a Rules of Procedure, which has to be accepted by the Government of the Republic of Macedonia.

Article 63

The Public Procurement Complaint Committee works independently and informs the Government of the Republic of Macedonia of its activities at least twice a year.

VIII. SUPERVISION AND CONTROL

Article 64

The Ministry of Finance provides supervision of the implementation of the provisions of this Law.

The inspection of the finances is done by the budget and public procurement funds auditors at the Ministry of Finance.

The auditors referred to in paragraph 2 of this Article shall supervise:

- the provision of funds for the public procurement;
- the implementation of the public procurement procedures;
- the organization of the bodies that perform the procurement proceedings;
- the records of the procurement;
- completion of the documentation for the procurement;
- the realization of the contracts.

Article 65

The auditor referred to in paragraph 2 of Article 64 of this Law poses business identification, the form and contents of which, as well as the manner of its issuance, shall be determined by the Minister of Finance.

Article 66

Should the auditor state any irregularities and faults in the performance of the current public procurement procedure, a decision shall be brought regarding the measures to be undertaken and the deadline shall be set for removal of the stated irregularities.

In case the stated irregularities are not removed within the set time limits, the auditor shall order interruption of the commenced procurement procedure.

A complaint may be lodged against the decision referred to in paragraph 1 of this Article to the Public Procurement Complaint Committee.

Article 67

If the auditor states that the breach of the procurement procedures have resulted in a violation of law or in a criminal act, he/she is obliged to request, i.e. submit a request for initiating a legal criminal procedure without any delay.

Article 68

A control over the utilization of the procurement funds by the purchasers' referred to in Article 1 of this Law is performed according to the State Audit Law.

V. PENALTY PROVISIONS

Article 69

The legal entity - Purchaser, except for the state bodies and local government units bodies, shall be fined with an amount of 200,000 - 300,000 Macedonian Denars for:

- not establishing a body to execute the public procurement procedure (Article 10 paragraph 1);
- not announcing the Invitation for Bids (Article 14);

- not determining the maximum price and not treating it as confidential (Article 20).
- Division of the public procurement (Article 3a) and
- Not submitting a copy of the contract and the Annex to the main contract to the Ministry of Finance within the main deadline (Article 58, paragraphs 7 and 8)

Article 70

The responsible person of the legal entity shall be fined with an amount of 40,000 - 50,000 Macedonian Denars for:

- making a the decision for procurement without having provided funds for the procurement process (Article 4);
- not keeping records for already done procurement and not submitting data from the records to the Ministry of Finance (Article 9);
- not applying the procedures and deadlines determined with this Law (Article 10).
- not canceling the decision for procurement if Bidder presents, directly or indirectly, a gift of any form or any kind of service to the members of the Committee (Article 12);
- failing to comply with the amount of the procurement for the appropriate type of procurement procedure (Article 16, Article 33 paragraph 1 line 1, Article 42 paragraph 1, Article 45 paragraph 1 and Article 48);
- selecting the most favorable Bidder without checking the economic and financial condition as well as the technical ability of the Bidder for executing the proposal of the Bid (Article 21 paragraph 2, articles 22 and 23);
- if he/she does not exclude the Bidder from the procedure (Article 24 paragraph 1, Article 35 paragraph 4);
- not complying with the conditions announced in the Open Invitation for Bids, and the evaluation criteria for selection of the most favorable Bidder (Article 25 and Article 32 paragraph 1);
- failing to inform the Bidder in writing of its exclusion from the procurement procedure (Article 26 paragraph 3);
- negotiating with the Bidder, revealing to third parties technical specifications, information connected to price and other market related information (Article 27);
- executing a procurement through a Restricted Invitation for Bids without pre-qualification stage (Article 33a);
- failing to determine the manner, place and deadline for submitting technical documentation for pre-qualification and does not clarify the elements of the published Restricted Invitation for Bids (Article 37);
- bringing a decision without assessing the conditions stipulated in of Article 35 paragraph 2 of this Law (Article 38 paragraph 2).
- failing to notify all the Bidders that have submitted technical documentation for pre-qualification of the qualified Bidders (Article 38 paragraph 3).
- constantly purchasing same kind of items from same Bidder in a procedure by direct settlement (Article 46).
- not making a decision for the need of public procurement (Article 7);
- permitting participation of members of the Public Procurement Committee and the responsible and the managing persons at the Purchaser, as well as

- members of their closer family in the public procurement procedure (Article 11).
- specifying technical features of the subject of procurement of precisely determined brand, model or type in the announcement for Public Invitation and tender documentation (Article 17 paragraph 4) and
 - by concluding Annex to the main contract, changing the basic conditions of the Bid with respect to the price, quality and technical features of the subject of procurement (Article 58a).

Article 71

The official shall also be fined with an amount of 40,000 - 50,000 Macedonian Denars for the violations referred to in Article 70 of this Law.

VII. TRANSITIONAL AND FINAL PROVISIONS

Article 72

The procedures of public procurement which have commenced before the date of coming into force of this Law shall be completed in accordance with the regulations which have been effective prior this Law has entered into force.

Article 73

The by-laws stipulated with this Law shall be adopted within 30 days from the date of effectiveness of this Law.

The Public Procurement Complaint Committee shall be established within 60 days from the date this Law comes into force.

Article 74

The Government may adopt by-laws for implementation of this Law.

Article 75

The day this Law comes into force, the Articles 8, 9, 10, 11, 51, 52, 53, 56, 57 and 58 of the Law on Rights, Duties and Responsibilities of the Republic Bodies Concerning the Socially-owned Assets They Utilize (“Official Gazette of the Socialist Republic of Macedonia” no. 41/85 and 51/88) shall cease to be valid.

Article 76

This law shall enter into force on the eight day from the date of its publication in the “Official Gazette of the Republic of Macedonia”.