Law on Amendments to the Public Procurement Law

Article 1

In the Public Procurement Law ("Official Gazette of Montenegro" 42/11) Article 2(1), item 4 shall be replaced by the following:

"4) business organizations, legal entities and entrepreneurs performing business activities in the fields of water management, energy, transport and postal traffic pursuant to the provisions in Articles 108 to 113 of this Law.

In paragraph 3 after the word “article” comes the full stop, and the words “(hereinafter: a contracting authority)” shall be deleted.

After paragraph 3 a new paragraph shall be added, worded as follows:
“A contracting authority is a covered party referred to in paragraph 1 of this Article“.

The present paragraphs 4, 5, 6 and 7 shall become respectively paragraphs 5, 6, 7 and 8.

Article 2

In Article 3 paragraph 1, item 3 shall be deleted.
Item 6 shall be deleted.
Item 12 replaced by the following:
12) notification of the advertisement services on the public procurement procedures in the media’.

After item 12 new item shall be inserted worded as follows:
„13) particular public procurement prescribed by this Law”.

In paragraph (2) after the word ”concession” a comma shall be added, and the words: ”and privatisation” shall be replaced by the words: ”and providing services or engaging experts (with financial, law and/or technical qualification) in the process of privatisation”.

The present items 4, 5, 7, 8, 9, 10, 11 and 12 shall become respectively items 3, 4, 5, 6, 7, 8, 9 and 10.

Article 3

In Article 4 paragraph 1 item 3, the words: “public enterprises” shall be replaced by the following: “economic operators”.

Item 5 shall be replaced by the following:
5) bidder shall mean a business organization, a legal entity or an entrepreneur submitting the bid in a public procurement procedure individually or as a group of bidders in a joint bid.

After item 12, ten new items shall be added, worded as follows:
13) public funds are funds in the Budget of Montenegro, that is, the Budget of local government units, and other funds generated by the parties covered by this Law;

14) authorised person is a legal representative, that is, a head of the contracting authority, or of the bidder, or a person authorized by them to undertake on their behalf certain actions within the public procurement procedure;

15) decision is an act by means of which contracting authority in the form of a decision establishes the most favourable bid, suspension of public procurement procedure or the annulment of public procurement procedure, as well as an act by means of which, in the form of a conclusion
or decision, contracting authority shall make decision upon appeal lodged against actions and activities in the procedure;

16) **equivalence** means that an offered product or service has identical or better technical characteristics than those of the product of a specific manufacturer stated in the technical specification of the subject of procurement;

17) **interested person requested the clarification of tender documents** is a person who has proved or made probable by means of an appeal that because of the contested act or action of the contracting authority they have suffered or might have suffered damage in the capacity of a bidder in the public procurement procedure or as a contracting authority within legal protection procedures initiated by appeal and complaint;

18) **military equipment** is equipment specially designed and adjusted to military purposes and intended to be used as weapons, ammunition, or war material;

19) **sensitive equipment, sensitive works and sensitive services** are the goods, works and services procured for security purposes, which include, require and/or contain confidential data;

20) **life cycle** means all possible successive phases of a product, i.e. research and development, industrial development, production, repair, modernisation, modification, maintenance, logistics, training, testing, withdrawal and disposal;

21) **classified information** means any information or material, regardless of their form, nature or mode of transmission thereof, to which a certain level of security classification has been attributed in accordance with regulations governing data confidentiality, where the disclosure of such information to a third party results or might result in damaging consequences for the security and defence, foreign, monetary and economic policy of Montenegro;

22) **candidate** is a person having filed an application for qualification in the first phase of a restricted or negotiated procedure with prior publication of contract notice“.

**Article 4**

In Article 7(1), the words: “notices for public competition” shall be replaced by the words: “tender documents”, and the word “notice” shall be replaced by the words: ”tender documents”.

**Article 5**

In Article 9 paragraph 1, item 3 shall be deleted.

**Article 6**

In Article 11(1), “contract notice, an invitation to tender and” shall be deleted.

In paragraph 2, the words ”a contract notice, an invitation to tender and tender” shall be replaced by the word “tender”.

Paragraph 3 shall be replaced by the following:

“A bidder shall prepare its bid in the language specified in tender documents”.

2
Article 7

In Article 14 paragraph 2 after the words “contracting authorities“ a comma shall be added followed by: “interested persons“.

In paragraph 5, after the words “contract notice“, the word “that is“ shall be inserted, and the words: “and by the tender documentation“ shall be deleted.

The paragraph 6 shall be amended to read:
„The manner of submission of bids (in written or electronic form) shall be determined in the contract notice, that is in the invitation to tender“.

Article 8

In Article 15(1) and (2), the following words: ‘or reasonably suspect’ and the words “contract notice, invitation to tender and” shall be deleted.

In paragraph 4, after `of this Article` the following shall be added: `and lay down the risk analysis methodology in exercising control with the aim of proactive action in prevention and early detection of corruption practices and other acts with elements of corruption.`

After the paragraph 4, two new paragraphs shall be added worded as follows:

`Public procurement contract awarded by violating of the anti-corruption rule shall be declared null and void.

Public procurement contract shall contain the provision on nullity of the contract in terms of the paragraph 5 hereof (anticorruption clause).`

Article 9

Article 16 shall be replaced by the following:

„Contracting authority shall take any necessary actions in order to prevent the conflict of interest within the persons participating in a public procurement procedure.

An authorised person, public procurement officer, members of the Commission for the opening and evaluation of bids, persons participating in the preparation of the contract notice, invitation to tender and tender documents, persons participating in public procurement planning, and other persons participating, directly or indirectly, in the public procurement procedure shall notify with no delay the contracting authority on existence of the conflict of interest, as well the economic or other personal interest which may compromise their impartiality and independence in the public procurement procedure.

Person referred to in paragraph 2 hereof may not enter into employment or be engaged on any other ground by the bidder awarded a public procurement contract in the procedure participated by the said person, bidder’s legal successor, or a party related to them, for at least two years after the public procurement contract has been awarded.

Conflict of interest of a contracting authority shall exist if the person referred to in paragraph 2 hereof:

1) is a bidder, submitter of the joint bid, subcontractor, subprovider, legal representative, or attorney of the bidder, one of joint bidders, subcontractor or subprovider;

2) is a blood relative of the legal representative or attorney of the bidder or submitter of the joint bid, subcontractors or subproviders in the straight line of kinship, or in the lateral line of kinship up to the fourth degree;"
3) is a spouse or unmarried partner of the legal representative or attorney of the bidder, submitter of the joint bid, subcontractor or subprovider;

4) is an in-law up to the second degree along with the legal representative or attorney of the bidder, submitter of the joint bid, subcontractor or subprovider;

5) is an adopter or adoptee of the bidder, submitter of the joint bid, subcontractor, subprovider, legal representative or attorney of the bidder, submitter of the joint bid, subcontractor or subprovider;

6) is a shareholder or member of management bodies of the bidder, submitter of the joint bid, subcontractor or subprovider.

The person referred to in paragraph 2 hereof shall submit a written statement on the non-existence of conflict of interest before taking the first action within a public procurement procedure, and if such conflict of interest emerges in the course of a public procurement procedure it shall submit with no delay the request for its exclusion.

In case the request for exclusion is submitted by the authorised person, decision of such request shall be made by the body that appointed or elected the authorized person or the body authorized to supervise the operation of the contracting authority.

In the case of the paragraph 5 hereof the contracting authority shall decide with no delay on exclusion of the person referred to in paragraph 2 hereof, not later than 8 days from the day of submitting the request for the exclusion.

Statement referred to in paragraph 5 hereof, request for exclusion and decision of the contracting authority pertaining to such request, shall form an integral part of the public procurement documentation.”

**Article 10**

Article 17 shall be replaced by the following:

Conflict of interest of bidders, submitter of the joint bid, subcontractors or subproviders shall exist where their legal representative or attorney:

1) is a legal representative or an attorney of the contracting authority;

2) is a blood relative of the person referred to in Article 16 paragraph 2 hereof in the straight line of kinship or in the lateral line of kinship up to the fourth degree or their spouse or unmarried partner or in-law up to the second degree, irrespective of whether such marriage has been terminated;

3) is an adopter or adoptee of the person referred to in Article 16 paragraph 2 hereof;

4) is a shareholder or a member of management bodies of the contracting authority.

5) a person who has direct or indirect interest in the public procurement procedure, which enables personal acquisition of property or some other kind of benefit, by exerting influence on the decision-making process; and

6) is directly or indirectly involved in other circumstances causing a doubt about such person’s impartiality.

Person having prepared or participated in the preparation of technical documentation or having conducted expert control of the technical documentation and person whose authorised person or technical staff has participated in the preparation or expert control of the technical documentation used for the development of technical specification or the bill of quantities for the tender documents or the documentation according to which public procurement contract is performed, may not participate in the public procurement procedure in the capacity of a bidder, submitter of the joint bid, subcontractor or subprovider, and may not cooperate with the bidder, submitter of the joint bid, subcontractor or subprovider in preparing the bid, unless where the subject of such public procurement is the development of technical documentation and execution of works according to the technical documentation.
Depending on the manner of submission of bids, a bidder shall submit within their bid a statement of their responsible person, responsible persons of the joint bidders, responsible person of the subcontractor and responsible person of the subprovider certifying existence or non-existence of the conflict of interests referred to in paragraphs 1 and 2 hereof.

Where a bidder fails to submit within their bid the statements on non-existence of the conflict of interest referred to in paragraphs 1 and 2 hereof, or where it is established that any of the conflicts of interest referred to in paragraphs 1 and 2 hereof exists on their side, their bid shall be rejected, pursuant to this Law.

Person interested in participating in a public procurement procedure in the capacity of a bidder might make request from the contracting authority, within the time limit laid down for the submission of appeal against tender documentation, to exclude the person referred to in Article 16 paragraph 2 hereof, because of whom their interests conflict, save for the responsible person of the contracting authority.

Contracting authority shall decide the request referred to in paragraph 5 hereof within three days from the day of the submission of the request, and publish such decision in the manner identical to that of publishing of the tender documents.

Participation in technical consultations with the contracting authority and provision of technical advice to the contracting authority by candidates, bidders, submitter of the joint bid, subcontractors or subproviders before the commencement of the public procurement procedure shall not be deemed a conflict of interest on the side of the bidder, where such action does not violate the competition among other candidates or bidders and where such technical consultations and provided technical advice fully form an integral part of the tender documentation or request for the submission of bids by shopping method.

In the case referred to in paragraph 7 hereof, the contracting authority and the person having participated in technical consultations or having provided technical advice to the contracting authority pertaining to the subject of the public procurement, shall sign separate statements to certify that the content of such technical consultations and provided technical advice is fully presented in the tender documents or in the request for the submission of bids by shopping method.

Article 11

The title of, and the Article 18 shall be replaced by the following:
“Consequence of and recording the conflict of interest”

Article 18

A public procurement contract which is awarded in the existence of conflict of interest on the side of the contracting authority or of the bidder shall be null and void.

Persons whose interests created conflict and persons who have failed to submit a statement on the non-existence of conflict of interest shall be excluded from the public procurement procedure.

Where a contracting authority in the course of the public procurement procedure receives a bid which involves or may cause a conflict of interest, they shall reject such bid, pursuant to this Law.

Contracting authority shall keep records of cases involving conflict of interest referred to in paragraphs 16 and 17 hereof and inform the competent body of such cases with no delay.
Article 12

In Article 19 paragraph 1 item 8 the words: “contract notices” shall be replaced by the following: “tender documents for the implementation of the procedure following a contract notice”.

After paragraph 1 the following two paragraphs shall be added:

“When a public procurement plan, contract notice, decision on qualification of candidates, decision on selection of the most favourable bid, decision on suspension of the public procurement procedure, decision on annulment of the public procurement procedure, public procurement contract or amendments thereof, submitted to the competent authority for the purpose of their publishing, fail to comply with the law, the competent authority shall notify contracting authority accordingly so as to eliminate the noticed irregularity within three days.

Where a contracting authority fails to eliminate the irregularity within the time limit referred to in paragraph 2 hereof, the competent authority shall publish the contracting authority’s act in the submitted text and inform a public procurement inspector thereof.”

Article 13

In Article 20, item 5 and 6 shall be deleted.

Items 7, 8 and 9 shall become 5, 6 and 7.

Article 14

In Article 21(1), indent 3, “items 1 to 7” shall be replaced by the words: “items 1 to 5.”

Article 15

Article 26 shall be replaced by the following:

Contracting authority may conclude framework agreements and public procurement contracts on basis of the framework agreement.

Contracting authority may conclude framework agreement after completing open, restricted or negotiated procedure in accordance with provisions of this Law.

Where a contracting authority intends to award a framework agreement, it shall specify within the contract notice the following issues:

1) conclusion of the framework agreement and its duration;
2) the number of bidders to be parties to such framework agreement;
3) the elements of the framework agreement that cannot be altered;
4) changeable elements of the framework agreement;
5) manner of concluding public procurement contract on basis of the concluded framework agreement.

Contracting authority may award framework agreement to one or more bidders.

Framework agreement with several bidders may be awarded to at least three bidders.

Where in the public procurement procedure referred to in paragraph 2 of this Article, a supposed number of bidders by which the framework agreement to be awarded fails to submit the acceptable bid, the contracting authority shall award the framework agreement to the bidder or the bidders that submitted the acceptable bid or to suspend the procedure.
Framework agreement with several bidders may be concluded for a period of up to four years, and framework agreement with one bidder may be concluded for a period of up to two years.

In case of the paragraph 6 of this Article, framework agreement with one bidder may be awarded by the contracting authority to the period supposed to be awarded with several of them.

The contracting authority may conclude the framework agreement for a longer time period than it is referred to in paragraph 7 of this Article if there is a reasonable justification for such action pertaining to the subject of procurement in the framework agreement, which the contracting authority shall explain in the contract notice.

Changeable elements of the framework agreement may be as follows:

1) quantity of goods, services or scope of works that are subject of the procurement in the course of framework agreement on annual basis;
2) dynamics in the delivery of goods, provision of services or performance of works that are subject of the procurement;
3) place of delivery of goods, provision of services or performance of works that are subject of the procurement;
4) price of the goods, services or the works that are subject of the public procurement.

Framework agreement for the entire subject of procurement or one part thereof shall be awarded in accordance with the specific lot and the elements referred to in paragraph 10 of this Article offered by the most favourable bid.

Contracting authority shall not conduct framework agreement in a way that hinders, limits or distorts competition.

Public procurement contracts shall be awarded on the basis of the framework agreement concluded for the entire subject of procurement or one part thereof in one of the ways referred to in Article 26a of this Law.

Where the contracting authority in public procurement procedure upon conclusion of the framework agreement with several bidders receives only one acceptable bid, the framework agreement may be concluded with one bidder provided that one of the ways of contract conclusion is laid down within tender documents on basis of the framework agreement referred to in Article 26a, paragraph (1) or (2) of this Law.

**Article 16**

After the Article 26, the new Article shall be added worded as follows:

*Procedure for the award of public procurement contracts under framework agreements*

**Article 26a**

If the framework agreement is awarded to only one bidder and if all requirements for the public procurement contract award are laid down therein, the contract shall be awarded directly under such requirements and the bid submitted before awarding of the framework agreement.

If the framework agreement is awarded to only one bidder and if all requirements for the public procurement contract award are not laid down therein, the contract may be awarded on basis of the written request from the contracting authority to the bidder to submit the addendum of the bid or a new bid.

Apart from already determined requirements, the contracting authority may indicate and other requirements in written request referred to in paragraph 2 of this Article, as well as the amendments to the requirements of the framework agreement specified by tender documents.
If the framework agreement is awarded to several bidders and if all requirements for the public procurement contract award are determined within, the contract may be directly awarded on basis of such requirements and bids which are submitted before awarding of the framework agreement without reiterated contract notice for submission of bids.

In case that the most favourable bidder is not in position to perform the subject, group or part of the subject of a public procurement, the public procurement contract for the subject, group or part of the subject thereof may be awarded to the second most favourable bidder by which the framework agreement is concluded.

If the framework agreement is awarded to several bidders and if all requirements for the public procurement contract award are not determined within, the contract may be awarded after reiterated contract notice for submission of bids to the bidders of the framework agreement.

Reiterated contract notice for submission of bids referred to in paragraph 6 of this Article may include:

1) basic elements and more precise requirements for public procurement contract award, and
2) other requirements, if necessary within the framework agreement which the contracting authority indicated to be used in tender documents.

Pursuant to the paragraphs 6 and 7 of this Article, the contracting authorities shall conduct the following procedure in which:

1) invite bidders in written form to submit new bids in writing for each individual contract,
2) fix a time limit long enough for making new bids for each individual contract taking into account factors such as the complexity of the subject-matter of the public procurement and the time needed to send in the bids,
3) keep secret the content of the bids until the expiry of time limit determined for its submission,
4) conclude individual contracts on public procurement with the most favourable bidder upon review and assessment of submitted bids on basis of the determined criteria for selection of the bid in tender documents.

Pursuant to the paragraphs 4, 5, 6 and 7 of this Article, the contracting authority shall submit the decision on selection of the most favourable bid for the award of public procurement contracts under framework agreements to all bidders which submitted the bid according to the contract notice and publish it on the public procurement portal.

Public procurement contract on the basis of concluded framework agreement shall be awarded to the period laid down by tender documents.

According to the contract notice referred to in paragraphs 2, 3, 6 and 7 of this Article the bidder may submit in its bid of the second year of the duration of framework agreement the individual price as the subject of the public procurement in the amount higher than the price laid down by the framework agreement, with the maximum of 10% higher price than the one laid down by the framework agreement; For the following years of the duration of framework agreement the maximum amount shall be in 10% higher than the procurement subject price laid down by the public procurement contract in the previous year.

By way of exception to paragraph 11 of this Article, the bidder may offer separately stated price for the subject matter of the public procurement which is subject to the regulatory price setting mechanism up to the amount in percentage increase of the public procurement subject price for the previous year in relation to the price laid down by the framework agreement or by the public procurement contract in the previous year.”

Article 17

Article 27 shall be deleted.

8
Article 18

Article 29 shall be replaced by the following:

“The public procurement procedure by shopping method may be conducted not more than one
time in a year for the same subject of public procurement.

Selection of the most favourable bid in the public procurement procedure by shopping method
shall be conducted applying the lowest offered price criterion.

Bidders meeting the criteria referred to in Articles 65 and 67 hereof may participate in the
public procurement procedure by shopping method, in accordance with the contract notice.

Time limit for submission of the bids in the public procurement procedure by shopping
method may not be shorter than 12 days from the date of publication of the tender documents.”

Article 19

In Article 30, paragraph 3 shall be replaced by the following:

“By way of exception to paragraph 2 of this Article, the total annual value of public
procurement conducted by direct agreement may amount up to 20% of its executed public
procurement budget of a contracting authority for previous year, provided that the budget of that
contracting authority does not exceed EUR 25,000”.

After the paragraph (3), new paragraph shall be added, worded as follows: “Direct agreement
as the type of public procurement procedure shall be governed by the contracting authority with
the special act”.

Article 20

In Article 31, paragraph 1, words ‘the procedures referred to in Articles 24 to 27 of this Law
shall be replaced by the words ‘the procedures referred to in Articles 24 and 25 of this Law.’

Article 21

Article 35 shall be replaced by the following:

“The subject of a public procurement of works shall be execution of works on the construction,
adaptation, reconstruction and maintenance of facilities.

The subject of a public procurement of works may also involve the procurement of goods and
services needed for the execution of works, provided that the estimated value of works exceeds the
total estimated value of goods and services”.

Article 22

In Article 38 paragraph 3, the words ”15 days” shall be replaced by the words ”five days”.
Paragraph 5 shall be replaced by the following:
"The public procurement plan shall be adopted by the authorised person or the management body of the contracting authority”.

**Article 23**

In Article 40, paragraph 2, the words: ”head or the responsible person“ shall be replaced by: “ the authorised person“.

**Article 24**

In Article 42, paragraph 2 shall be replaced by the following: ”Where the subject of a public procurement is determined by lots, all such lots must be stated in the contract notice or invitation to tender”.

**Article 25**

In Article 44 paragraph 1, after the words: “invitation to public tender”, comma and the words ”tender documents” shall be deleted.

**Article 26**

Article 49 shall be replaced by the following:

"Tender documents, depending on the type of procedure and the subject of public procurement shall contain:

1) contract notice, or invitation to tender;
2) technical characteristics or specifications of the subject of public procurement, or the bill of quantities, which include: quantity and description of goods, works and services and other important characteristics of the subject of public procurement, time limits and place of execution of the contracts, quality assurance, manner of execution of quality control, data pertaining to the technical documentation according to which the public procurement contract will be executed and data on the availability of such documentation;

3) contracting authority’s statement certifying that it will timely settle obligations in respect of the selected bidder;
4) statements of persons referred to in Article 16 paragraph 2 hereof on the non-existence of conflict of interest;
5) methodology of evaluation of bids by criteria and subcriteria;
6) form for the financial part of the bid;
7) forms for proofs prepared by bidders (statement on the non-existence of conflict of interest referred to in Article 17 hereof; lists, statements and certifications on the fulfilment of conditions pertaining to professional, technical and staffing capability, etc.);
8) draft framework agreement and draft public procurement contract, except in the case of procurement of loans where tender documents include contracting authority’s loan application based on which the bidders submit draft contracts;
9) instruction for bidders on the preparation and submission of bids.
10) content of a bid;
11) instruction on legal remedy."
Tender documents for the first phase of the public procurement restricted procedure shall contain:

1) invitation for pre qualification;
2) instruction on how to prepare and submit applications;
3) methodology for determining the qualifications.

Invitation for pre qualification shall give the details of: contracting authority, subject of public procurement, estimated value of the public procurement, awarding of framework agreement, language used in bids, Internet page on which the tender documents will be published; conditions for the participation in public procurement procedure; evidence to prove the fulfilment of required conditions and statements on the non-existence of conflict of interest given by persons referred to in Article 16 paragraph 2 hereof.

Apart from the elements referred to in paragraph 1, points 2 to 11 of this Article, tender documents for the second phase of the public procurement restricted procedure shall contain the invitation for submission of bids.

Invitation referred to in paragraph 4 of this Article shall contain data on the following: optional submission of bids by lots, optional submission of alternative bids, criterion and subcriteria for the evaluation of bids, obligatory submission of contract performance guarantee and other guarantees, time limit for the submission of bids, time limit for the public opening of bids, time period of the validity of bid;

Contracting authority shall mark by ordinal numbers all first pages of the sheets and the total number of sheets of the tender documents.

The form of tender documents shall be prescribed by the Ministry”.

**Article 27**

Article 54 and its heading shall be replaced by the following:

“Publishing and submission of tender documents

**Article 54**

Contracting authority shall publish on the Public Procurement Portal tender documents for the implementation of open procedures, restricted procedures I phase, negotiated procedure with prior publication of contract notice I phase, contest and shopping.

In the case that one part of tender documents includes classified information, contracting authority shall specify in the published part of the documents the manner in which interested persons may obtain such classified part of the tender documents containing confidential data in accordance with regulations governing the confidentiality of data.

Tender documents for the implementation of restricted procedure II phase, negotiated procedure with prior publication of contract notice II phase, negotiated procedure without prior publication of contract notice, and consulting services shall be delivered directly to those persons that the contracting authority deems interested in the submission of bids.”

**Article 28**

Article 55 shall be replaced by the following:

”Contracting authority may change and/or amend tender documents not later than eight days before the time limit for the submission of bids has expired.
Where contracting authority makes changes and/or amendments of tender documents within the time limit shorter than the one referred to in paragraph 1 hereof, they shall extend the time limit for the submission of bids so that the time period from the day of publication of changes and/or amendments of tender documents to the expiry of the time limit for the submission of bids is not shorter than eight days. Changes and amendments of tender documents shall be published in the manner prescribed in Article 54 paragraph 1 hereof”.

**Article 29**

Article 56 shall be replaced by the following:

“Interested person shall have the right to request from the contracting authority to clarify tender documents.

Clarification referred to in paragraph 1 hereof, depending on the type of public procurement procedure, may be requested:

1) within 22 days from the day of publishing or delivery of tender documents, where the time limit for submission of bids is at least 37 days from the day of publishing or submission of tender documents;

2) within eight days from the day of publishing or submission of tender documents, where the time limit for submission of bids is at least 22 days from the day of publishing or submission of tender documents;

3) within six days from the day of publishing or submission of tender documents, where the time limit for submission of bids is at least 12 days from the day of publishing or submission of tender documents;

4) within three days from the day of publishing or submission of tender documents, where the time limit for submission of bids is less than 12 days from the day of publishing or submission of tender documents.

Contracting authority shall supply bidders with the clarification of tender documents and publish such clarification on the Public Procurement Portal, depending on the type of public procurement procedure, within three days from the day of receipt of the request.

Clarification of tender documents may not serve as changes and/or amendments of the tender documents.

Clarification of tender documents shall represent an integral part of the tender documents”.

**Article 30**

Article 57 shall be replaced by the following:

“Contracting authority may establish in a contract notice, or invitation to tender the obligation to submit the bid guarantee for the purpose of protection from trivial tenders, contract performance guarantee, advance payment guarantee and other guarantees, for the purpose of protection from the breach of a public procurement contract.

For public procurements of estimated value over EUR 30 000, contracting authority shall establish in the contract notice or invitation to tender the obligation to submit the bid guarantee for the purpose of protection from trivial tenders, contract performance guarantee, advance payment guarantee or other guarantees, for the purpose of protection from the breach of a public procurement contract before such contract is concluded.
The bid guarantee shall not be for more than 2% of estimated public contract value, and contract performance guarantee may not exceed 5% of the value of contract, and advance payment guarantee may not be lower than the defined advance payment.

Contracting authority shall activate guarantees referred to in paragraph 1 hereof in the event of breach of a contract by the selected bidder."

**Article 31**

In Article 58, paragraph 2 shall be replaced by the following:

“A public procurement officer shall have the following duties: to prepare public procurement plans, to prepare texts of decisions on the launch of public procurement procedures, to prepare tender documents for the implementation of public procurement procedures by shopping method and provide clarification of such procedures, to provide interested persons with parts of tender documents involving classified information which are subject to regulations governing data confidentiality, to conduct public procurement procedures by shopping method and direct agreement, to keep documents pertaining to public procurements, to keep records of public procurements, to prepare and submit reports on the conducted public procurement procedures to the authorised person of the contracting authority, to perform technical and administrative tasks in the implementation of public procurement procedures and other tasks prescribed by this law.”

**Article 32**

Article 59 shall be replaced by the following:

“Commission for the opening and evaluation of bids shall conduct public procurement procedures, except for the procedures conducted by shopping method and direct agreement.

The Commission referred to in paragraph 1 hereof shall be established by the authorised person of a contracting authority parallel to the adoption of a decision to launch a public procurement procedure.

The Commission referred to in paragraph 1 hereof shall have odd number of members, where minimum one third of them shall have passed professional exam for the work in public procurement, one member shall be an expert in the public procurement field and one member shall hold a university degree in law.

The contracting authority’s public procurement officer may be a member of the Commission referred to in paragraph 1 hereof.

The Commission referred to in paragraph 1 hereof shall prepare tender documents, provide clarification of tender documents, conduct public opening of bids, and/or requests for qualification, draw up record on public opening of bids, review, assess, compare and evaluate bids, prepare record on the review, assessment and evaluation of bids, prepare proposals for decisions on the selection of the most favourable bid or decisions on the suspension or annulment of public procurement procedures, prepare responses to appeals, perform other tasks in accordance with this Law.”

More detailed criteria for establishing the Commission for opening and evaluation of bids are prescribed by the Ministry depending on the type of the subject of public procurement.

**Article 33**

Article 62 and its heading shall be replaced by the following:
“Advertisement notice on public procurement

Contracting authority shall publish the notification on public procurement procedure referred to in Article 54 paragraph 1 of this law in one daily print media which is issued and distributed in the entire territory of Montenegro and available on the Internet, no later than 3 days from the date of publishing the tender documents on the public procurement web portal.

Notification referred to in paragraph 1 of this Article shall contain in particular the following data on: a contracting authority (name, registered office and address); subject and the estimated value of the public procurement; the address and publishing date of the tender documents and the person in charge of providing the information (name, surname; contact phone number and e-mail address). A public procurement procedure initiated or conducted without advertising of notices referred to in paragraph 1 hereof shall be null and void”.

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

Article 34

Article 63 shall be replaced by the following:

“According to the type of public procurement procedure, contract notice or invitation to tender shall include data pertaining the following: contracting authority, type of procedure and subject of public procurement, estimated value of public procurement, optional submission of bids by lots, awarding of framework agreement, optional submission of alternative bids, language of bids, mandatory submission of contract performance and other guarantees; mandatory and facultative conditions for participation in the public procurement procedure; evidence necessary to prove the fulfillment of determined conditions in accordance with law; time limits and place of execution of the contract; time-limit of the validity of bid; criteria and subcriteria for evaluation of bids; time and place of the submission and public opening of bids, time limits for adoption of decision on the selection of the most favourable bid, names of persons in charge of providing information and their contact details, and other data important for the implementation of public procurement procedure “.

Article 35

Article 64 shall be deleted.

Article 36

Article 65 shall be replaced by the following:

“In a public procurement procedure shall participate only the bidder who::

1) is registered with the body tasked with registration of business organisations;
2) have permit, licence, approval or other document necessary for the performance of the activity being subject of the public procurement, where such document is prescribed by a separate law;
3) timely settle all obligations in respect of taxes and contributions in accordance with law and/or regulations of the country of their registered office;
4) proofs on which himself and his legal representative are not convicted by a final court decision for any of the criminal acts of organized crime with elements of corruption, money laundry and fraud“.

Conditions referred to in paragraph 1 hereof shall not apply to natural persons: artists, scientists and cultural workers.
“Contracting authority shall specify in contract notice and invitation to tender the permits and/or licences, approvals and other documents which are required to prove the fulfilment of conditions for participation in the public procurement procedure.

Contracting authority may request opinion from state administration bodies tasked with specific administrative areas on the proofs referred to in paragraph 1 item 2 hereof which are required for the performance of activity which is the subject of a public procurement.

The state administration body referred to in paragraph 4 hereof shall supply the contracting authority with requested opinion within five days from the day of receipt of such request."

Article 37

Article 66 shall be replaced by the following:

“The fulfilment of conditions referred to in Article 65 paragraph 1 hereof shall be established on the basis of the following:

1) proof of registration with the body tasked with registration of business organizations, along with data on the authorized persons of the bidders;
2) proof of possession of a valid permit, licence, approval or the other act issued by the competent body;
3) proof issued by the body tasked with taxation affairs of timely submission, calculation and execution of all obligations in respect of taxes and contributions dated up to 90 days before the day of the public opening of bids, in accordance with regulations of Montenegro, and/or regulations of the bidder’s country of registered office;
4) proof of competent body issued on the basis of criminal records which shall not be older than six months on the day of opening of bids."

Article 38

Article 67 shall be replaced by the following:

“Apart from mandatory conditions for the participation in a public procurement procedure, contracting authority may also specify in contract notices or invitations to tender the obligation of bidders to prove they fulfil optional conditions relating to:

1) their economic and financial capacity, and/or
2) their professional, technical and staffing capabilities.

Contracting authority shall specify in contract notices or invitations to tender, depending on the type of subject of public procurement, the proofs referred to in Articles 68, 69, 70 and 71 hereof that the bidders are obliged to submit in order to prove their fulfilment of conditions referred to in paragraph 1 hereof."

Article 39

In Article 73, paragraph 3 shall be deleted.

Article 40

Article 74 shall be replaced by the following:
“Proofs of fulfilment of conditions for the participation in a public procurement procedure and other required proofs may be submitted in their original form, in the form of certified or non-certified copies, or in electronic form.

Bidder whose bid is selected as the most favourable shall submit, prior to the conclusion of their public procurement contract, originals or certified copies of proofs of fulfilment of conditions for the participation in public procurement procedure.

In the case of initiated appeal procedure, bidder whose proofs are contested on account of their authenticity shall provide originals or certified copies of such proofs.

In the course of the procedure of review and assessment of bids, contracting authority may verify the accuracy and legal validity of the proofs referred to in paragraph 1 hereof with the competent body or using services of such body, as well as by inspecting public registers and records.”

In case that the bidder referred to in paragraphs (2) and (3) of this Article fails to submit originals or certified copies of the proofs, its bid shall be deemed invalid.”

Article 41

In Article 75 paragraph 1, the words “contract notice, invitation to tender, and” shall be deleted.

Article 42

Article 76 shall be replaced by the following:

“A bidder shall prepare the bid as a whole, where each first page of every sheet and total number of sheets are marked by the ordinal number and the seal, stamp or by the similar logo of the bidder.

Documents made by the bidder, as the integral part of the bid shall be personally signed by the authorised person of the bidder.

Bids shall be bound with a red tape into one whole and sealed by sealing wax printing out the impression of stamp or the similar logo of the bidder in such manner that prevents subsequent insertion, elimination or replacement of sheets without damaging any of the sheets, the red tape or the sealing wax.

Bids shall be submitted in an appropriate closed wrapping (envelope, package, etc).

Title and seat of the contracting authority shall be indicated on one part of the wrapping, along with the number of contract notice or of invitation to tender and the following text: “Do not open before public opening of bids”, while the title, seat, name and address of the bidder shall be indicated on the other part of the wrapping.

Provisions of paragraphs 2, 3, 4 and 5 hereof shall not apply to bids submitted in electronic form”.

Article 43

In Article 77, paragraph 3 shall be replaced by the following:

“What a bidder submits one bid for several or all of the lots, the bid shall be prepared in a manner such that it may be evaluated for each lot separately, which means that those proofs that relate to all the lots are submitted jointly in one copy within the bid for the first lot applied for, while the proofs that relate only to specific lot/s are submitted separately for each of the lots”. 
Article 44

In Article 80 after paragraph 4, two new paragraphs shall be added:
“Bidders may prove the fulfilment of conditions for the participation in public procurement procedure referred to in Article 65 paragraph 1 item 2 and Article 67 paragraph 1 item 2 hereof through subcontractors or subproviders. Bidders may prove their technical, professional and staff capability by using capacities of other legal or natural person where such capacities have been made available to them, in accordance with specific law“.

Article 45

In Article 83 paragraph 4, the words: “or does not extend the validity of the means of financial securing“ shall be deleted.

In paragraph 5 after the words “the bid“ a full stop shall be added and the rest of the wording shall be deleted.

Article 46

In Article 88 paragraph 1 shall be replaced by the following:
“Time limit for the submission of bids shall start running on the day following to that of the publication of tender documents, that is, the day of delivery of tender documents”.

Article 47

Article 90 shall be replaced by the following:
“Time limit for the submission of bids in an open public procurement procedure shall not be shorter than 37 days from the day of publishing of tender documents on the Public Procurement Portal.
The time limit for the submission of bids referred to in paragraph 1 herein may be reduced by the contracting authority when so required by urgent nature of public procurement, where such reduction is not provoked by fault on the part of the contracting authority, but, it may not be less than 22 days from the day of publishing of tender documents on the Public Procurement Portal.
The contracting authority shall provide in the contract notice or invitation to tender an explanation of the reasons of urgency because of which they have reduced the time limit for the submission of bids referred to in paragraph 1 hereof“.

Article 48

Article 91 shall be replaced by the following:
“Time limit for the submission of applications for prequalification in a restricted public procurement procedure shall not be shorter than 37 days from the day of publication of tender documents for the first phase of restricted procedure on the Public Procurement Portal.
Time limit for the submission of bids in a restricted public procurement procedure shall not be shorter than 22 days from the day of delivery of tender documents for the second phase of restricted procedure to the qualified applicants. 
Time limit for the submission of bids in a negotiated procedure with or without prior publication of contract notice, except in cases referred to in Article 25 item 1 indents 2 and 3 hereof, shall not be shorter than 22 days from the day of publication of tender documents for invitation to tender by negotiations on the Public Procurement Portal, or the day of delivery of tender documents for invitation to tender by negotiations to the interested parties”.

**Article 49**

In Article 92, paragraph 1 shall be replaced by the following:

“A contracting authority shall establish criteria and sub criteria for the selection of the most favourable bid in the contract notice or the invitation to tender”.

“In paragraph 5, after the words: “of this Article” full stop is added, and the rest of the text shall be deleted.

**Article 50**

Introductory sentence referred to in Article 98, paragraph 5 shall be replaced by the following:

“The Commission for opening and evaluation of the bids, that is, the public procurement officer shall keep the record on opening and evaluation of the bids which shall contain in particular:

Item 1 shall be replaced by the following:

“1) type and number of the public procurement procedure, place, day and hour of the beginning of opening of bids”;

Item 6 shall be replaced by the following:

“6) data pertaining to the time of submission of bids and untimely bids”.

In paragraph 6 after the word “bids” a comma shall be added followed by the words: “or the public procurement officer”.

**Article 51**

Article 100 shall be replaced by the following:

“Invalid bid shall be a bid:

1) which is not prepared in compliance with the conditions specified in tender documents;
2) which is not supported by the documents specified in tender documents;
3) which does not include the proofs specified in tender documents;
4) submitted by bidders who have failed to submit evidence of their joint participation or appoint the joint bid bearer;
5) which is not expressed the price, but the bidder offers a price which is lower by certain percentage than the lowest offered price;
6) which includes total price which is not expressed in accordance with this Law;
7) which includes price with calculation error in the amount higher than 3% of the value of bid;
8) for which the bidder has failed or refused to provide the requested explanation;
9) which includes offered price which is higher than the estimated value of the public procurement.
Methodology for the establishing of calculation error referred to in paragraph 1 item 7 hereof shall be prescribed by the Ministry.

**Article 52**

Article 101 shall be replaced by the following:

“Review, assessment and evaluation of bids, depending on the type of public procurement procedure, shall be conducted by the Commission for the opening and evaluation of bids, or the public procurement officer, with no participation of the bidders.

Bids shall be assessed by checking whether their content complies with the conditions specified in the tender documents.

In the course of assessment of validity of bids, the Commission for the opening and evaluation of bids, or the public procurement officer may request from bidders to provide explanation of their bids in order to eliminate any doubts as regards the validity of their bids.

Explanations of bids may not serve for the purpose of changes or amendments to the bids.

Where a bidder fails to provide the explanation referred to in paragraph 3 herein within eight days from the day of delivery of request for such explanation, their bid shall be rejected as invalid.

In the course of review and assessment of bids and subject to request of the Commission referred to in paragraph 1 herein or the public procurement officer, the contracting authority may engage experts to provide their professional assistance in the assessment and evaluation of bids.

Any bid assessed as invalid shall be rejected.

**Article 53**

Article 102 shall be replaced by the following:

Commission for the opening and evaluation of bids, or the public procurement officer, shall commence the procedure of evaluation of bids once the assessment of validity of bids has been completed.

Each member of the Commission for the opening and evaluation of bids shall separately (individually) evaluate valid bids on basis of the criteria or subcriteria specified in tender documents.

The public procurement officer shall evaluate bids on basis of the lowered offered price criterion.

Based on the results of assessment referred to in paragraphs 2 and 3 hereof, each bid shall receive an average number of points according to which a ranking list in descending order shall be established”.

**Article 54**

Article 103 shall be replaced by the following:

”In regards to the review, assessment, comparison and evaluation of bids, the Commission for the opening and evaluation of bids, or the public procurement officer, shall take and prepare record of the review, assessment and evaluation of bids including the following information:

1) data on the type and number of the public procurement procedures;
2) data on the subject and the manner of conducting the public procurement;
3) data on time of commencement of review, assessment and evaluation of bids;
4) required conditions and evidence for participation in the public procurement procedure and the conditions for preparation and submission of bids;
5) data on submitted bids, listed in the order indicated in the record of public opening of bids title and seat, or name and address of bidders having submitted the bid;
6) assessment of timeliness and untimeliness of bids, supported by reasons and evidence based on which such timeliness or untimeliness of bids has been established;
7) assessment of validity or invalidity of bids, supported by assessment of facts, evidence and reasons based on which validity or invalidity of bids has been established;
8) observation on the manner of evaluation of bids;
9) opinion of experts engaged to provide assistance in the assessment and evaluation of bids;
10) comparative overview, analysis and descending order of bids according to the number of points given to them;
11) proposal for the adoption of decision on the selection of the most favourable bid, or on the suspension of public procurement procedure, along with a rationale for such proposal.
12) date on which such record have been prepared and signatures of all members of the Commission for the opening and evaluation of bids, or the public procurement officer.

Where a member of the Commission disagrees with the conducted procedure of review, assessment, comparison and evaluation of bids or with the proposal for adoption of decision on the selection of the most favourable bid or on the suspension of the public procurement procedure, they shall have the right to include such opinion in the record.

In the case referred to in paragraph 2 hereof, opinion of the member of the Commission shall be included in the record after the proposal for decision on the selection of the most favourable bid, or on the suspension of the public procurement procedure.

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

**Article 55**

“In the Article 104(2), the full stop shall be deleted and the words “or the public procurement officer” shall be added at the end of the paragraph.

**Article 56**

In Article 105 paragraph 1, item 4 shall be deleted.
In paragraph 2, the words: “head, or responsible” shall be replaced by “the authorised”.
Paragraph 3 shall be replaced by the following:
“In the case referred to in paragraph 1 item 1 hereof, untimeliness and invalidity of bids shall be decided by means of a decision on suspending the public procurement procedure “.

**Article 57**

In Article 106 paragraph 1 shall be replaced by the following:
“Contracting authority shall adopt a decision on the selection of the most favourable bid within the time limit specified in the contract notice or invitation to tender”.
After paragraph 2, a new paragraph shall be added:
“Decision on the selection of the most favourable bid shall serve to establish the most favourable bid, valid bids, invalid and untimely bids”.
Paragraphs 3, 4, 5 and 6 shall become paragraphs 4, 5, 6 and 7.
Article 58

In Article 107 paragraph 2 shall be replaced by the following:
“Public procurement contract shall comply with the conditions specified in tender documents and the decision on the selection of the most favourable bid”.

After the paragraph 4, the new paragraph shall be added, worded as follows:
The contract concluded contrary to paragraph 4 hereof shall be null and void “.

Paragraph 6 shall be replaced by the following:
“Contracting authority shall request from the bidder whose bid has been selected as the most favourable and who has refused to enter into the public procurement contract a compensation of damage amounting to 10% of the offered amount of their bid; and the bidder shall compensate the contracting authority for the damage”.

Paragraphs 5, 6 and 7 shall become paragraphs 6, 7 and 8.

Article 59

Chapter III and Articles 108 - 113 shall be replaced by the following:

„III. PUBLIC PROCUREMENT IN THE WATER MANAGEMENT, ENERGY, TRANSPORT AND POSTAL TRAFFIC SECTORS

Covered parties

Article 108

For the purpose of carrying out activities referred to in Article 109 of this Law, contracting authorities in the sectors of water management, energy, transport and postal traffic shall apply the provisions referred to Article 108 to 113 of this Law as follows:

1) contracting authorities referred to in Article 2 paragraph 1 items 1, 2 and 3 hereof performing one or more relevant activities referred to in Article 109 of this Law;

2) economic operators performing one or more activities referred to in Article 109 of this Law over which one or more contracting authorities may directly or indirectly exercise dominant influence;

3) economic operators which under special or exclusive rights granted to them by a competent body perform one or more activities referred to in Article 109 of this Law which are not contracting authorities or economic operators as specified in items 1 and 2 of this paragraph.

Dominant influence on the part of contracting authorities within the meaning of paragraph 1 item 2 hereof shall exist in case when such contracting authorities, directly or indirectly, in relation to an economic operator:
– hold the majority of the subscribed capital of the business organization,
– control voting power attached to the shares issued by the business organization, or
– may appoint more than half of supervisory or managing body of that business organization.

Special or exclusive right within the meaning of paragraph 1 item 3 hereof shall be any right granted by the competent body in accordance with the law, the effect of which is to restrict
performance of activities referred to in Article 109 of this Law to one or more economic operators, which significantly reduces the capability of other economic operators to perform such activities.

If the procedure is not regulated by the Articles 108 to 113 of this Law, the contracting authorities referred to in paragraph 1 hereof shall apply the provisions contained in Chapter II of this Law."

**Relevant activities**

**Article 109**

Relevant activities for the purpose of Article 108 paragraph 1 of this Law shall be:

1) Activities in the field of water management, being the following:
   - provision or putting in operation of fixed networks intended to provide a public service in connection with the production, transportation or distribution of drinking water and supply of drinking water to such networks;
   - hydraulic engineering projects, irrigation or land drainage, on condition that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation of drainage installations, or
   - the disposal or treatment of sewage;

2) Activities in the field of energy, being the following:
   - provision or putting in operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of electricity and supply of electricity to such networks;

3) Activities in the field of gas and heat, being the following:
   - provision or putting in operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of gas and heat and supply of gas and heat to such networks;

4) Activities in the field of exploring for or production of oil, gas (hydrocarbon), coal and other solid fuels in connection with exploitation of a geographic area for the purposes of:
   - exploring for or production of oil, gas (hydrocarbon);
   - exploring for or extracting of coal and other solid fuels.

5) Activities in the field of transport, being the following:
   - provision or putting in operation of networks intended to provide public service in connection with transport by railway, urban rail, automated systems, tramways, buses, trolley buses or cable.
   - Exploitation of a geographic area for the purpose of provision of services of airport or maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways.

6) Activities in the field of postal traffic, being the following:
   - provision of postal services;
provision of services other than postal, on condition that such services are provided by an entity which provides postal services and such services are not directly exposed to competition.

It shall be deemed that network in the field of transport within the meaning of paragraph 1 item 5 hereof shall be taken to exist where transport services are provided under operating conditions prescribed by a competent body (such as the conditions in the view of providing the service of transport, capacities to be made available or the frequency of the service).

Postal services within the meaning of paragraph 1 item 6 hereof shall be taken to include the services of receiving, sorting, transport and distribution of postal items being the following:
1) reserved postal services,
2) unreserved postal services.

Postal services within the meaning of paragraph 3 hereof shall be the following services:
1) mail service management services (services both preceding and subsequent to despatch of the mail);
2) added-value services linked to and provided entirely by electronic means, including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;
3) services not included in paragraph 5 hereof, such as direct mail bearing no address;
4) financial services, as defined in the Common Procurement Vocabulary by reference to numbers 66100000-1 to 66720000-3 of nomenclature and in Article 3, paragraph 1, item 7 of this Law, including in particular postal money orders and postal gyro transfers;
5) philatelic service and
6) logistics services (combining physical delivery and/or warehousing with other non-postal functions).

Postal item within the meaning of paragraphs 3 and 4 hereof shall be an item addressed in the form in which it is to be delivered, such as letters and other postal items, including books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of their weight.

Activities other than relevant

Article 110

Within the meaning of Article 109 of this Law, the following shall not be taken as relevant activities:
1) The supply of drinking water to the networks providing a public service by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:
   - such entity produces drinking water for carrying out an activity which is not a relevant activity, and
   - supply of drinking water to the network depends exclusively on such entity's own consumption and does not exceed 30% of entity's total average production of drinking water over the previous three years, including the current year;

2) The supply of gas or energy to the networks providing a public service by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:
- the production of gas or heat by such entity is the inevitable consequence of carrying out an activity other than relevant activity, and
- supply to the network is aimed exclusively at economic exploitation of such production, and it does not exceed 20% of the entity's average turnover for the previous three years, including the current year;

3) The supply of electricity to the networks providing a public service by a contracting entity other than the contracting authority referred to in Article 108 paragraph 1 item 1 of this Law, provided that:
- such entity produces electricity for carrying out an activity other than relevant activity, and
- supply to the network depends exclusively on such entity's own consumption and does not exceed 30% the entity's average energy production for the previous three years, including the current year;

4) The provision of public bus transport services, where other entities may provide such services in general or within the specific geographic area under the same conditions as the contracting entity.

Exemptions

Article 111

Provisions of this Law shall not apply to the following:

1) Contracts awarded by contracting authorities for:
- the services of research and development other than those where the benefits accrue exclusively to the contracting authority for its own use in the conduct of its own affairs on condition that the provided service is fully paid by such contracting authority;
- the sale or lease to third parties provided that the contracting authority enjoys no special or exclusive rights to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting authority.
- the purposes other than the pursuit of relevant activities of the contracting authority referred to in Article 109 of this Law or for the pursuit of such activities in a third country, in conditions not involving the physical use of system or geographic zones within Montenegro;
- the purchase of water procured by a contracting authority performing the activities referred to in Article 109 paragraph 1 item 1 of this Law;
- the purchase of electric energy or of fuels for the production of energy procured by a contracting authority performing the activities referred to in Article 109(1), item 2 of this Law;

2) Contracts awarded by contracting authorities to an affiliated undertaking;

3) Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law to a business organisation related to one of such contracting authorities;

4) Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law, to one of these contracting authorities;

5) contracts awarded by contracting authorities to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out a relevant activity over a period of at least three years and that the instrument (the contract) setting up the joint venture stipulates
that the contracting authorities, which form such joint venture, will be part thereof for at least three years.

By way of exception to the paragraph 1 items 2 and 3 hereof this Law shall apply as follows:

1) to service contracts provided that at least 80% of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to business organizations with which it is affiliated;

2) to supplies contracts provided that at least 80% of the average turnover of the affiliated undertaking with respect to supplies delivered for the preceding three years derives from the provision of such supplies to business organizations with which it is affiliated;

3) to works contracts provided that at least 80% of the average turnover of the affiliate undertaking with respect to works for the preceding three years derives from the provision of such works to business organizations with which it is affiliated.

Where the turnover data of the affiliated undertaking for the preceding three years are not available due to creating or commencing of its activities, it will be sufficient for that undertaking to make that turnover probable particularly through the business projections.

Where two or more business organizations affiliated with the contracting authority provide the same or similar services, supplies or works, the percentages referred to in paragraph 2 hereof shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

Within the meaning of the paragraphs 1 to 3 of this Article, affiliated undertaking shall be any business organization the annual accounts of which are consolidated with those of the contracting authority in accordance with regulations governing accountancy and auditing, or, any business organization over which the contracting authority may exercise, directly or indirectly, a dominant influence within the meaning of Article 108 paragraph 2 of this Law, or which, in common with the contracting authority, is subject to the dominant influence of another business organization by virtue of ownership, financial participation or the rules.

Selection of public procurement procedures

**Article 112**

When awarding public procurement contracts in the field of water management, energy, transport and postal traffic, contracting authorities may use public procurement procedures referred to in Article 20 of this Law following the conditions, rules and value scales specified in Chapter II of this Law, while in the case of negotiated procedure with prior publication of contract notice may be used without adhering to the conditions referred to in Article 24 paragraph 1 and Article 31 of this Law.

When awarding public procurement contracts referred to in paragraph 1 of this Article, contracting authorities may set up and operate a system of qualification of the bidders (hereinafter: qualification system), subject to provisions of Article 113 of this Law.

Qualification system

**Article 113**

Contracting authority in the field of water management, energy, transport or postal traffic intending to establish and operate a qualification system of public procurement shall publish a notification thereof on the Public Procurement Portal.

Where a qualification system is of duration greater than three years, contracting authority shall publish the notification of establishment of such qualification system once a year; where a
qualification system is of a duration lesser than three years, contracting authority shall only publish initial notification.

The notification referred to in paragraph 1 hereof shall indicate the purpose of the qualification system and the manner in which interested persons may request rules and criteria for the qualification.

Qualification system shall be operated in accordance with objective criteria and rules determined by the contracting authority for the qualification of candidates who request the operation of a qualification system.

The criteria and rules for qualification may be updated if so needed.

The criteria and rules for qualification shall involve conditions for the participation in public procurement procedure, in accordance with Articles 65 to 74 of this Law.

Where criteria and rules for qualification involve technical characteristics or specifications, provisions of Articles 50 to 52 of this Law shall also apply.

Contracting authority shall ensure that the bidders are able to request qualification in every moment.

Qualification system may involve different qualification stages.

Candidate for qualification may submit a request for qualification in every moment, and the contracting authority shall evaluate their request for qualification within the shortest possible time period, and not later than six months after the day of submission of such request, and notify the candidates of its decision.

Where the decision takes longer than four months from the submission of request for qualification, the contracting authority shall notify the candidate of the reasons for which such decision has not been made and of the date by which their request will be decided.

Contracting authority shall notify candidates whose request for qualification has been refused immediately, and not later than 15 days from the day of such decision.

Reasons for refusal of a request for qualification shall be based on the criteria for qualification referred to in paragraph 4 hereof.

Contracting authority shall keep record of qualified business organizations included in the qualification system, which may be divided into categories according to the type of public procurement contracts for which the qualification is valid.

Contracting authority shall publish the list of qualified bidders on its Internet page.

Contracting authority shall conduct public procurements based on established qualification systems in accordance with rules determined for the second phase of restricted public procurement procedure or the second phase of negotiated public procurement procedure with prior publication of invitation to tender, and supply all bidders included in the qualification system for the concerned subject of procurement with invitation for the submission of bids.

Contracting authority may bring the qualification of a previously qualified bidder to an end for reasons which are based on the criteria and rules for qualification, and it shall notify in writing the bidder thereof at least 15 days before the date on which the qualification is due to end, together with the reasons justifying such ending of qualification.

Contracting authority may use qualification systems established by other contracting entities. Ministry shall prescribe the form of notification referred to in paragraph 1 hereof.

Article 60

In Article 116 paragraph 1 shall be replaced by the following:

“Bidder may submit a bid in electronic form only if the possibility of submission of bids in electronic form is indicated in the contract notice or invitation to tender”.

26
Article 61
After Article 116, a new Chapter and 9 new Articles shall be inserted:

„IVa PROCUREMENTS IN THE FIELD OF DEFENCE AND SECURITY

Covered parties

Article 116 a

Provisions of Articles 116a to 116i of this Law shall be applied by contracting authorities for the procurement of:
1) military equipment, including all its parts, components and/or subassemblies thereof;
2) security sensitive equipment, including all parts, components and/or subassemblies thereof;
3) supplies, services and works directly connected to the equipment referred to in items 1 and 2 hereof, for any and all elements of its lifecycle;
4) services and works exclusively for military purposes;
5) security sensitive services and security sensitive works.

Exemptions

Article 116 b

This Law shall not apply to the following:
1) procurements governed by special procurement regulations in accordance with an international agreement or arrangement concluded between Montenegro and one or more countries;
2) procurements governed by special procurement regulations in accordance with an international agreement or arrangement relating to the stationing of troops and applying to business organizations in Montenegro, EU Member State or other country;
3) procurements which must be awarded by Montenegro under specific regulations of an international organisation;
4) procurements where the application of provisions of this Law would impose an obligation on Montenegro to provide information the disclosure of which is contrary to the vital interests of its security;
5) procurements for the purpose of intelligence activities;
6) procurements within cooperation programmes between Montenegro and at least one EU Member State which are based on research and development, for the purpose of development of a new product and, where applicable, for later stages of all or part of the lifecycle of such product;
7) procurements awarded in a third country, including those for civil purposes, carried out when forces are deployed outside the territory of the European Union where operational needs require such contracts to be concluded with the bidders located in the area of operations;

By way of derogation from paragraph 1 hereof, this Law shall apply to the research and development services where the benefits accrue exclusively to the contracting authority in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.
Unless otherwise provided for by this Law, the provisions of Chapter II of this Law shall apply to the procurements referred to in paragraph 2 of this Article, and in the Articles: 116a and 116c to 116i of this Law respectively.

Selection of public procurement procedure

Article 116 c

For procurements in the fields of defence and security, contracting authority may use the restricted public procurement procedure and negotiated procedure with prior publication of contract notice, as well as negotiated procedure without prior publication of contract notice.

Within the meaning of the first paragraph of this Article, the provisions referred to in Article 24 paragraph 1 and Article 31 of this Law shall not apply for the restricted public procurement procedure as well the negotiated public procurement procedure with the prior publication of the contract notice.

The contracting authority may continue with the procedure within the restricted procurement procedure in case the number of the bidders qualified for the I phase therein are less than three.

Contracting authority may enter into framework agreements or award contracts based on a framework agreement concluded in accordance with Article 26 and 26a of this Law.

The term of a framework agreement referred to in paragraph 4 of this Article may not exceed seven years, except in exceptional circumstances determined in accordance with the expected life cycle of any delivered items of public procurement, installations or systems and the technical difficulties which may be caused by a change of business organization.

Contracting authority shall in the contract notice or in the invitation to tender state the valid reasons regarding the circumstances of the paragraph 5 of this Article.

Protection of classified information in the procedures of public procurement and conclusion and execution of contracts

Article 116 d

Where a contracting authority communicates classified information to the bidders, within the procedure of a public procurement or in the course of conclusion and execution of a contract, these bidders shall comply with regulations governing the confidentiality of information.

Where a public procurement procedure or execution of a public procurement contract is participated by a subcontractor who is familiar with classified information, such subcontractor, as well as bidder and contractor, shall comply with the requirements in accordance with regulations governing confidentiality of information.
Special conditions for performance of contract

Article 116 e

Contracting authority may provide within tender documents the special conditions relating to the performance of a public procurement contract, provided that such conditions connected with the subject of the said contract are non-discriminatory.

The conditions referred to in paragraph 1 hereof may in particular refer to:
1) protection of the security of classified information, in accordance with Article 116d of this Law;
2) protection of the security of goods, in accordance with Article 116g of this Law,
3) subcontracting, in accordance with Article 116h of this Law,
4) social and environmental requirements.

Protection of classified information during execution of contract

Article 116 f

Where a public procurement contract involves, requires and/or contains classified information, contracting authority should determine the measures and conditions necessary to ensure the security of such classified information at the requisite level.

For the purpose of protection of security of information referred to in paragraph 1 hereof, contracting authority may require that the bids contain, in particular, the following:
1) a commitment from the bidders and subcontractors already identified to appropriately safeguard the confidentiality of classified information in their possession or coming to their notice throughout the conclusion and duration of the public procurement contract and after termination of the public procurement contract, in accordance with regulations governing the security of information;
2) a commitment from the bidders to safeguard the confidentiality of classified information referred to in item 1 hereof as from other subcontractors to which they will subcontract during the execution of the public procurement contract;
3) necessary information on the subcontractors already identified to enable the contracting authority to determine that each of them possesses the capabilities required to appropriately safeguard the confidentiality of the classified information to which they have access or which they are required to produce when carrying out their subcontracting activities;
4) a commitment from bidders to provide information referred to in item 3 hereof for any new subcontractor before awarding a subcontract.

Measures and requirements referred to in paragraph 2 hereof shall comply with the provisions of regulations governing the area of security clearance.

If the contracting authority assesses that the bidder does not meet the requirements and demands regarding the protection of confidentiality of data referred to in paragraphs 1 and 2 of this Article, he is obliged to explain it in the decision on selection of the most favourable bid.
Security of supply

Article 116 g

For the purpose of ensuring the security of supply requirements, a contracting authority may request that submitted bids contain in particular the following:

1) certification or documentation demonstrating to the satisfaction of the contracting authority that the bidder will be able to honour its obligations regarding the export, transfer or transit of goods of the contract, including the other supporting documentation received from certain country or countries;

2) the indication of any restriction on the contracting authority regarding disclosure, transfer or use of supplies or any result of export control or security arrangements;

3) certification or documentation demonstrating that the organisation and location of the bidder's chain of supply will allow to comply with the requirements of the contracting authority concerning security of supply set out in the tender documents, and a commitment to ensure that possible changes in the supply chain during the execution of the contract may not affect adversely compliance with these requirements;

4) a commitment from the bidder to establish and/or maintain the capacity required to meet additional needs required by the contracting authority or contracting entity in case of a crisis, according to already agreed terms and conditions;

5) any other documentation received from the bidder's national authorities regarding the fulfilment of additional needs required by the contracting authority in case of a crisis;

6) a commitment from the bidder to carry out the maintenance, modernisation or adaptation of the supplies covered by the contract;

7) a commitment from the bidder to inform the contracting authority in due time of any change in its organisation, supply chain or industrial strategy which may affect its fulfillment of the obligations to that contracting authority;

8) a commitment from the bidder to provide the contracting authority, according to terms and conditions already agreed, with all the means necessary for the production of spare parts, components, assemblies and special testing equipment, including technical drawings, licenses and instructions for use, in the event that it is no longer able to provide these supplies.

Where according to the assessment of a contracting authority a bidder fails to comply with the measures and requirements referred to in paragraph 1 of this Article, the contracting authority should specify the reasons in their decision for the selection of the most favourable bid.

Subcontracting

Article 116 h

The most favourable bidder may select its subcontractors for all subcontracts it intends to award, except in case referred to in paragraph 3 hereof.

Contracting authority shall not require from the most favourable bidder to discriminate against potential subcontractors on grounds of nationality.
Contracting authority may require that bidders specify in their bids the following:

1) any part of the contract it may intend to subcontract to third parties, information pertaining to any proposed subcontractors, as well as any part or parts of the public procurement contract that will be subject of the subcontract, and/or

2) information on any change occurring at subcontractors during the execution of the public procurement contract.

Contracting authority may require from the most favourable bidder to subcontract to third parties a certain share (percentage) of the contract.

In the case referred to in paragraph 4 hereof, the contracting authority shall specify the minimum of the subcontract in the form of a range of values, comprising a minimum and maximum percentage.

The maximum percentage of a subcontract shall not exceed 30% of the contract value.

The range of value of a subcontract should be proportionate to the subject of the contract, the estimated value of the contract and the nature of the industry sector involved, including the level of competition in the market and relevant technical capabilities of the industrial base.

Any percentage of subcontracting falling within the range of values indicated by the contracting authority shall fulfil the subcontracting requirements provided for in paragraph 4 hereof.

Contracting authority shall require from bidders to specify in their bid which part or parts of their bid they intend to subcontract to fulfil the requirements referred to in paragraph 4 hereof.

The most favourable bidder shall award subcontracts corresponding to the percentage which the contracting authority requires it to subcontract in accordance with paragraph 4 hereof by way of carrying out the subcontracting procedure referred to in Article 116i of this Law.

Bidders may propose to subcontract a share of the total value which is above the range required by the contracting authority in accordance with paragraph 4 hereof.

The participation of subcontractors shall be without prejudice to the liability of bidders for the execution of a public procurement contract.

**Subcontracting procedure**

**Article 116 i**

Within the meaning of 116h, paragraph 4 of this law, members of the groups of candidates or bidders which have been formed in order to obtain the contract, or the business organizations related to them, shall not be considered third parties.

Bidders shall include in their bids the exhaustive list of the business organizations related to them.

The list referred to in paragraph 2 hereof shall be updated by the bidder following any change in the relationship between these affiliated undertakings.

For the purpose of paragraph 1 hereof, a affiliated undertaking shall be any business organization over which the most favourable bidder exercises or may exercise a dominant influence, whether directly or indirectly, or any business organization which exercises or may exercise a dominant influence over the most favourable bidder or which, as the most favourable bidder, is subject to a dominant influence of another business organization by virtue of ownership, financial participation or special regulations.
A dominant influence referred to in paragraph 4 of this Article shall exist where the business organization, directly or indirectly, in relation to another business organization:

– holds the majority of the business organization’s subscribed capital;
– controls a majority of the votes attached to the shares issued by the business organization, or
– is entitled to appoint more than half of the business organization's administrative and supervisory structures.

The most favourable bidder shall act transparently and treat all potential subcontractors in an equal and non-discriminatory way.

When awarding subcontracts to third parties, the most favourable bidder shall publish subcontract notices on the Public Procurement Portal, if the estimated value of the contract including VAT is above the value scale III defined in Article 21 of this Law.

When awarding subcontracts to third parties the value of which, excluding VAT, is estimated as equal or below the value scale III defined in Article 21 of this Law, the most favourable bidder shall act according to the principles of transparency and competitiveness.

The bidder may, if necessary, to state other information deemed significant in the subcontract notice with the prior consent of the contracting authority.“

**Article 62**

Article 121 shall be replaced by the following:

“Upon the public procurement procedure of submission of the record, decisions, forms and component parts of the decision, calculation of time limits and protection of rights in appeal proceedings, the provisions of the law governing the general administrative procedure shall apply accordingly, unless otherwise prescribed by this Law”.

**Article 63**

Article 122 shall be replaced by the following:

“A procedure for the protection of rights shall be initiated by lodging an appeal before the State Commission for the control of public procurement procedures (hereinafter referred to as: State Commission).

The appeal shall be lodged directly through the contracting authority, or by means of registered mail or by electronic mail containing the advanced electronic signature.

An appeal may be lodged against the following:

1) tender documents
2) decision on the selection of the most favourable bid;
3) decision on the suspension of the public procurement procedure;
4) decision on the annulment of the public procurement procedure.

In the case referred to in paragraph 3 item 1 hereof, appeals shall be lodged with regard to the following:

1) content of the tender documents;
2) manner of publication or delivery of tender documents;
3) amendments and clarification of tender documents;
4) failure in providing clarification of tender documents;

In the case referred to in paragraph 3 items 2 and 3 hereof, appeal shall be lodged against the following:
1) procedure of receipt of bids;
2) procedure of public opening of bids and the content and manner of despatch of the record of public opening of bids;
3) procedure of review, assessment, comparison and evaluation of bids;
4) lawfulness of the decision on the selection of the most favourable bid
5) lawfulness of the decision on the suspension of the public procurement procedure;

In the case referred to in paragraph 3 item 4 hereof, appeals shall be lodged against the lawfulness of the decision on the annulment of the public procurement procedure;

In the case referred to in paragraph 4 hereof, appeals shall be lodged by the interested person from the date of publication or submission of tender documents until the date required for opening the bids, whereas the appeal have to be lodged to the contracting authority no later than the expiry of the time-limit prescribed for submission of bids.

In the case referred to in paragraph 5 hereof, appeals shall be lodged by the bidder within ten days from the day of delivery of the decision on the selection of the most favourable bid, decision on the suspension of the public procurement procedure“.

In the case referred to in paragraph 6 hereof, appeals shall be lodged by the bidder within ten days from the day of delivery of the decision on the annulment of the public procurement procedure“.

Where an interested party has failed to lodge the appeal within the time-limit referred to in paragraph 7 out of the reasons set forth in paragraph 3, item 1 hereof, they shall have no right as a bidder to contest such acts and actions of the contracting authority in the appeal against the decisions of the contracting authority referred to in paragraph 3 items 2, 3, and 4 hereof“.

**Article 64**

Article 123 shall be replaced by the following:
“Appeals may be lodged by both bidders and interested parties“.

**Article 65**

In Article 125, paragraph 5 shall be replaced by the following:

“Where in an appeal procedure decision is made in favour of the appellant, the contracting authority shall reimburse such appellant for its costs referred to in paragraph 3 of this Article, within 15 days from the day on which the decision concerning the appeal becomes final“.

**Article 66**

Article 127 shall be deleted.
Article 67

In Article 128 paragraph 1, item 1 shall be replaced by the following:

“1) appeal and response to appeal;”

Article 68

Article 134 shall be replaced by the following:

“Substantial violations of the law in a public procurement procedure shall be the following:
1) carrying out a public procurement procedure without publishing or delivery of tender documents;
2) carrying out the public procurement procedure referred to in Articles 24 and 25 of this Law, without prior approval of the competent body referred to in Article 31 of this Law;
3) non-compliance of tender documents with the law, which might have led to the discrimination of the interested parties or the restriction of market competition or has led to the discrimination of bidders or to the restriction of tender documents;

In the case of substantial violation of the law referred to in paragraph 1 hereof, the decision and/or part of the procedure or the entire public procurement procedure shall be annulled“.

“Contracting authority shall publish the decision on annulment of the public procurement procedure within three days of the day of its adoption on the public procurement portal and submit it to all bidders.

Article 69

In Article 139 paragraph 1, item 6 shall be deleted.
Present items 7, 8 and 9 shall become items 6, 7 and 8.

Article 70

In Article 141, paragraphs 4 and 5 shall be replaced by the following:

“The Secretary of the State Commission shall be appointed on basis of the public contest by the State Commission, at proposal of the President of the State Commission in accordance with the Law on the civil servants and state employees relating the appointment of the senior management staff. The Secretary of the State Commission may only be a law school graduate who passed civil service exam and the professional exam for performing the public procurement tasks with no less than three years of work experience”.

After paragraph 5, a new paragraph shall be added reading as follows:

"The Secretary of the State Commission is set for a period of five years, and follow to the expiration of that period he may be re-appointed."

Paragraphs 6 and 7 become the paragraphs 7 and 8.
Article 71

After the Article 143, the subchapter:
“3. Control of Public Procurement Procedures” and the Articles: 144, 145 and 146 shall be deleted.

Article 72

Article 148 shall be replaced by the following:

“A public procurement inspector shall perform inspection control in particular over the following:
1) adoption, changes, amendments and publishing of public procurement plans;
2) fulfilment of conditions for the performance of tasks of public procurement officers; and of the Commission for the opening and evaluation of bids;
3) fulfilment of conditions for initiating public procurement procedures;
4) content, publishing, advertising, changes and amendments and the submission of tender documents;
5) content, manner and timeliness of publishing and delivery of clarifications of tender documents;
6) establishment and extension of time limits for the submission and opening of bids;
7) implementation of anticorruption measures and measures for the prevention of conflict of interest in public procurement procedures;
8) keeping and storing records and documents on public procurements;
9) application of rules of reception of bids, and of issuance and provision of related proofs;
10) application of rules for the opening of bids, preparation, content and handing over or delivery of records of public opening of bids;
11) application of rules for the procedure of review, assessment and evaluation of bids;
12) adherence on the part of contracting authorities to the time limits laid down for the adoption of decisions on the completion of public procurement procedure;
13) content of decisions of contracting authorities
14) conclusion and implementation of the public procurement contracts”.

Public procurement inspector referred to in paragraph 1 items 3 to 12 hereof may perform the inspection control over actions and decisions until the expiry of the time limit laid down for the lodging of appeals.

The inspector referred to in paragraph 1 hereof shall not perform control over actions and decisions of the contracting authority against which an appeal has been lodged to the State Commission”.

Article 73

Article 149 shall be replaced by the following:

“A pecuniary fine ranging from EUR 2 000 to EUR 20 000 shall be imposed on a legal person for an infringement:
1) if it fails to keep specific records regarding violation of anti-corruption rules, to make an official note thereof or to submit a report to the competent state authorities for the purpose of
undertaking measures in accordance with the Law and if it fails to notify the competent authority (Article 15 paragraph 3);

2) if it fails to take any necessary actions in order to prevent the conflict of interest within the persons participating in a public procurement procedure (Article 16 paragraph 1);

3) if it fails to record the cases of existence of conflict of interest referred to in Articles 16 and 17 of this Law and if it fails to notify the competent authority without any delay (Article 18 paragraph 4);

4) if it fails to adopt, to publish on the Public procurement Portal and to submit to the applicants the decision on selection of the qualified candidates with a rationale within five days as of the day of its adoption (Article 23 paragraphs 5 and 6);

5) if it fails to submit the decision on the selection of the most favourable bid for the award of public procurement contracts under framework agreements to all bidders which submitted the bid according to the contract notice referred to in Article 26a, paragraph 4, 5, 6 and 7 of this law or if it fails to publish it on the public procurement portal (Article 26a paragraph 9);

6) if it fails to adopt and submit to the competent state authority a public procurement plan, so that it could be published on the Public Procurement Portal, by not later than 31 January of the current budget or financial year (Article 38 paragraph 1);

7) if it fails to observe the conditions and manner of conducting a public procurement procedure laid down by this Law and, during a budget or financial year, split the subject of procurement that is a whole, with an intention of avoiding the application of this Law and the prescribed public procurement procedure (Article 44 paragraph 4);

8) if it fails to publish on the Public Procurement Portal tender documents for the implementation of open procedures, restricted procedures I phase, negotiated procedure with prior publication of contract notice I phase, contest and shopping (Article 54 paragraph 1);

9) if it fails to supply bidders with the clarification of tender documents and fails to publish such clarification on the Public Procurement Portal, depending on the type of public procurement procedure, within three days from the day of receipt of the request (Article 56 paragraph 3);

10) if it fails to establish for public procurements of estimated value over EUR 30 000, in the contract notice or invitation to tender the obligation to submit contract performance guarantee, advance payment guarantee or other guarantees, for the purpose of protection from the breach of a public procurement contract before such contract is concluded (Article 57 paragraph 2);

11) if it fails to activate guarantees referred to in paragraph 1 hereof in the event of breach of a contract by the selected bidder (Article 57 paragraph 4);

12) if it fails to submit to the competent state authority the decision on appointment of the person for the performance of tasks referred to in Article 58 paragraph 2 of this Law (Article 58 paragraph 3);

13) if it fails to publish the notification on public procurement procedure referred to in Article 54 paragraph 1 of this law in one daily printed media which is issued and distributed in the entire territory of Montenegro and available on the Internet, no later than 3 days from the date of publishing the tender documents on the public procurement web portal (Artical 62 paragraph 1);

14) if it fails to accept the proof on fulfilment of quality standards in other form, in case that the bidder provides a proof that it has no possibility or right to request the proofs referred to in paragraph 1 of this Article (Article 73 paragraph 2);

15) if it fails to deliver the decision on cancellation of public procurement procedure, with a rationale, to the bidders no later than three days from the day of making that decision, and fails to publish it on the Public ProcurementPortal (Article 105 paragraph 4);

16) if it fails to publish on the Public procurement Portal or fails to submit the decision to the bidders referred to in Article 106 paragraph 1 of the Law (Article 106 paragraph 5);

17) if the decision on selection of the most favourable bid is made without previously conducted public procurement procedure, since the contracting authority had the obligation to conduct the procedure (Article 106 paragraph 6);
18) if it fails to request from the bidder whose bid has been selected as the most favourable and who has refused to enter into the public procurement contract a compensation of damage amounting to 10% of the offered amount of their bid; and the bidder shall compensate the contracting authority for the damage (Article 107 paragraph 7);

19) if it fails to submit the concluded public procurement contract to the competent state authority, within three days from the date of conclusion, for the purpose of its publication on the Public Procurement Portal (Article 107 paragraph 8);

20) if it fails to notify candidates whose request for qualification has been refused immediately, and not later than 15 days from the day of such decision (Article 113 paragraph 12);

21) if it fails to keep record of qualified business organizations included in the qualification system in accordance with the type of public procurement contracts for which the qualification is valid (Article 113 paragraph 14);

22) if it fails to publish the list of qualified economic operators on its Internet page (Article 113 paragraph 15);

23) if it fails to keep records on conducted public procurement procedures (Article 117 paragraph 1 item 1);

24) if it fails to keep records on concluded public procurement contracts (Article 117 paragraph 1 item 2);

25) if it fails to submit to the competent state authority the report on conducted public procurement procedures and on public contracts by 28 February of the current year at the latest, concluded in the previous year (Article 118 paragraph 1);

26) if it fails to preserve the documents regarding a public procurement procedure for at least five years (Article 119 paragraph 1);

27) if it fails to preserve the documents regarding a public procurement procedure for contracts of contracted value not exceeding EUR 15 000 for three years (Article 119 paragraph 2);

28) if it fails to terminate all further activities in the procedure of public procurement, until the decision is made in respect of submitted appeal (Article 124 paragraph 1);

29) if it fails within eight days from the day of receipt of the appeal to submit to the State Commission the following: appeal and response to the appeal, acts and documents related to the public procurement with a list of appendixes and the original bids (Article 128);

30) if it fails to act in accordance with the State Commission’s decision, and fails to notify the State Commission thereof within the time limits determined by the State Commission (Article 132 paragraph 5);

For an infringement referred to in paragraph 1 of this Article an economic operator shall be fined by pecuniary fine ranging from EUR 500 to EUR 6 000.

**Article 74**

After the Article 149, new Article shall be added reading as follows:

,,Misdemeanours of the natural persons

**Article 149a**

A pecuniary fine ranging from EUR 2 000 to EUR 20 000 shall be imposed on a person for an infringement:

1) Person referred to in Article 16, paragraph 2 may not enter into employment or be engaged on any other ground by the bidder awarded a public procurement contract in the procedure participated by the said person, bidder’s legal successor, or a party related to them, for at
least two years after the public procurement contract has been awarded (Article16, paragraph 2)."

**Article 75**

After the Article 151, new Article shall be added reading as follows:

'Appointment of the Secretary of the State Commission

**Article 151a**

The appointment of the Secretary of the State Commission shall be conducted in accordance with this Law within six months as of the day of entering into force of this Law."

**Article 76**

After the Article 153, two new Articles shall be added, worded as follows:

'Time-limit for Secondary legislation

**Article 153a**

Secondary legislation deriving from this Law shall be adopted within 120 days from the day of entering into force of this Law.

**Commenced Procedures**

**Article 153b**

A public procurement procedures commenced before entering into force of this Law shall be completed by the regulations under which they had been initiated’.

**Article 77**

After the Article 154, new Article shall be added worded as follows:

' Termination of Effect

**Article 154a**

The Decree on Foreign Trade funds for special purposes (‘Official Gazette’ of the Republic of Montenegro 66/10) shall be repealed on the day of commencing of the application of this Law’. 
Entering into force

Article 78

This Law shall enter into force on the eighth day following that of its publication in the 'Official Gazette of Montenegro', and it shall apply after expiry of 120 days from the day of its entering into force.