

Act CXLIII of 2015
on public procurement

The National Assembly of Hungary, in order to ensure the transparency and public controllability of the use of public funds and establish the conditions for fair competition in public procurement procedures, with the objective to facilitate the participation of local small and medium sized enterprises in public procurement procedures and the achievement of environmental and social objectives of the state, in line with provisions laid down in international conventions signed by Hungary and in directives of the European Union concerning public procurement, adopts the following Act:

PART ONE

GENERAL PROVISIONS

CHAPTER I

SCOPE AND PRINCIPLES

Section 1 (1) This Act shall lay down the rules on public procurement procedures, concession procedures, and legal reviews related thereto.

(2) For the purposes of Part One and Parts Five to Eight, public procurement procedures shall also mean concession procedures, unless explicitly provided otherwise in this Act.

Section 2 (1) In public procurement procedures, contracting authorities shall be obliged to ensure and economic operators shall be obliged to respect the fairness, transparency and publicity of competition.

(2) Contracting authorities shall guarantee equal opportunities and equal treatment for economic operators.

(3) Contracting authorities and economic operators shall be obliged to proceed in public procurement procedures in line with the requirements of good faith and fair dealing. The abuse of rights shall be prohibited.

(4) When using public funds, contracting authorities shall follow the principles of efficient and responsible management.

(5) In public procurement procedures, national treatment shall be afforded to economic operators established in the European Union and goods originating in the Community. National treatment shall be afforded in public procurement procedures to economic operators established outside the European Union and products of non-Community origin in line with the international obligations of Hungary and the European Union in the field of public procurement.

(6) Public procurement procedures shall be conducted in the Hungarian language, however, contracting authorities may also permit, but shall not be allowed to require the use of a language other than the Hungarian language.

(7) Derogations from the provisions of this Act shall only be permitted if explicitly allowed by this Act. When applying the provisions of this Act and to any matter not regulated by laws, the principles of public procurement shall be observed in line with the objective of the regulations pertaining to public procurement in the course of preparing and conducting public procurement procedures, concluding and performing contracts, and in review procedures pertaining to public procurement procedures.

(8) The provisions laid down in Act V of 2013 on the Civil Code (hereinafter “the Ptk.”) shall apply to contracts concluded as a result of public procurement procedures subject to the derogations specified in this Act.

CHAPTER II

INTERPRETATIVE PROVISIONS

Section 3 For the purposes of this Act:

1. *tenderer* means an economic operator that submits a tender in a public procurement procedure;
2. *subcontractor* means an economic operator that is directly involved by a tenderer in the performance of a contract concluded as a result of a public procurement procedure, with the exception of
 - a) economic operators pursuing their activities on the basis of exclusive rights,
 - b) manufacturers, distributors and sellers of parts or materials sought to be employed for the purpose of performing the contract,
 - c) sellers of building materials for works;
3. *label* means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;
4. *label requirement(s)* means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.
5. *European Single Procurement Document* means, for the purposes of Part Two, a document consisting of a declaration made by the economic operator concerned in the standard form specified by the European Commission to serve as preliminary evidence of the non-existence of grounds for exclusion and the fulfilment of suitability criteria and of the objective criteria specified in section 82 (5);
6. *electronic communications networks and services* have the meaning defined in the Act on electronic communications;
7. *life cycle* means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the use of the product, existence of the works, or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and/or end of service or utilisation;
8. *work* has the meaning defined in the Act on the development and protection of the built environment;
9. *European Union* and *Member State of the European Union* also means the European Economic Area and signatory states to the agreements on the European Economic Area, except for section 9 (1) c);
10. *economic operator* means a natural person, legal person, individual firm, an organisation having legal capacity under its personal law, or a group of such persons or organisations, who or which offers on the market the execution of works, supply of products or provision of services;
11. *disadvantaged worker* has the meaning defined in the Act on the promotion of employment and the benefits of the unemployed;
12. *innovation* means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes; a new marketing method or a new organisational method in business practices, workplace organisation or external relations, aiming at, in particular, improving the efficiency of an activity or having advantageous social and environmental impacts;
13. *written* or *in writing* means, in the context of statements made and procedural acts carried out in the course of a public procurement procedure, any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;

14. *ancillary procurement service* means a support activity for conducting a public procurement procedure, in particular

- a) provision of a technical infrastructure enabling contracting authorities to conduct public procurement procedures or to conclude framework agreements;
- b) advice on the conduct or design of public procurement procedures;
- c) preparation and management of public procurement procedures on behalf and for the account of the contracting authority concerned;

15. *affiliated undertaking* means an undertaking that is required under the Act on accounting to prepare a consolidated annual report with the contracting entity, or an undertaking that

- a) is, directly or indirectly, subject to a dominant influence by the contracting entity;
- b) exercises a dominant influence over the contracting entity; or
- c) together with the contracting entity, is subject to the dominant influence of another undertaking;

16. *appealed item* means a separable part of a review application filed with the Public Procurement Arbitration Board describing the challenged procedural act, behaviour, decision or omission, with reference to the infringed legal provision(s), and containing a request and reasons for a decision to be adopted by the Public Procurement Arbitration Board, with the proviso that challenging a decision taken by a contracting authority that establishes the inadmissibility of the tender or of the application shall be deemed a single appealed item, unless other legal consequences are also attached to the ground for inadmissibility;

17. *demand risk* means the risk on actual demand for the works or services which are the subject-matter of the contract;

18. *framework agreement* means an agreement between one or more contracting authorities and one or more tenderers, the purpose of which is to establish the terms governing contracts to be concluded by and between them in a certain manner during a given period, in particular with regard to price and, where appropriate, the quantities envisaged;

19. *supply risk* means the risk on the provision of the works or services which are the subject-matter of the contract;

20. *concessionaire* means an economic operator that was awarded a contract for a works or service concession by a contracting authority;

21. *procurement document* means any document produced or referred to by the contracting authority to describe or determine the subject-matter of the procurement or the concession, or the procurement or concession procedure, in particular the contract notice, the prior information notice used as a contract notice, the technical specifications, the descriptive document, the additional information, the proposed conditions of contract, the template documents to be submitted by economic operators, the detailed price table and the budget without prices;

22. *preparation of a public procurement* means the performance of acts required for the commencement of the given public procurement or concession procedure, in particular the situation and market study and preliminary market consultation relating to the given public procurement, the assessment of the estimated value of the procurement, and the preparation of procurement documents;

23. *commencement of a public procurement* means the date of dispatching the contract notice pertaining to the given public procurement or concession procedure; for a procedure that is launched without a contract notice, the date of sending the call for competition or invitation to negotiate or, in the absence thereof, the date of commencing the negotiation;

24. *public contract* means a supply contract, service contract or works contract for pecuniary interest concluded in writing by a contracting authority as defined in this Act;

24a. *procurement service provider* means an organisation or person offering ancillary procurement services on the market, in particular an accredited public procurement consultant;

25. *central purchasing body* means an organisation authorised to request tenders in centralised purchasing;

26. *centralised purchasing* means an activity pursued by a central purchasing body permanently for the purpose of

a) placing orders for products and services for resale to contracting authorities as defined in this Act, or

b) entering into supply contracts, service contracts, and works contracts or framework agreement for contracting authorities as defined in this Act;

27. *public service contract* means a public contract the purpose of which is to ensure the preparation, commencement, or pursuit of the public service activity of a contracting authority as defined in this Act;

28. an organisation has a *dominant influence* if it meets at least one of the following conditions regarding another organisation:

a) its financial contribution or, for a company limited by shares, the nominal value of the shares held by it exceeds half of the registered capital,

b) it holds over half of the members' votes on its own, or other members vote with the influencing member under an agreement entered into with the influencing member, or other members exercise their voting rights through the influencing member, provided that they hold over half of the members' votes together,

c) it is entitled to elect (appoint) or recall over half of the executive officers (decision makers, managing directors) or members of the supervisory board (supervisory or controlling organ or body);

29. *media service provider* means the natural or legal person who has editorial responsibility for the choice of the content of the media service and determines such content;

30. *technical equivalence* means a defining technical parameter of a facility, product or service that can be measured and the required index can be met by more than one facility, product or service;

31. *sub-central contracting authority* means a contracting authority specified in section 5 (1) c) to e) and in section 5 (2) to (3);

32. *financial institution* has the meaning defined in the Act on credit institutions and financial undertakings;

33. *postal item* means an addressed item in its final form in which it is to be carried, irrespective of its weight; in addition to items of correspondence, books, catalogues, newspapers, periodicals and postal packages containing goods with or without commercial value, irrespective of their weight;

34. *postal service* means a service consisting of the clearance, sorting, routing and delivery of postal items, including universal services, postal services substituting universal services and postal services not substituting universal services as defined in the Act on postal services;

35. *other service than postal service* means services provided in the following areas:

a) mail service management services (services both preceding and subsequent to despatch, in particular mailroom management services),

b) services concerning postal items not included in point a), in particular services concerning direct mails bearing no address;

36. *candidate* means an economic operator who (which), in the course of a public procurement procedure consisting of more than one stage, submits a request to participate in

the first, participation-related stage of the public procurement procedure or in the concession procedure;

37. *professional tender* means a tender for the subject-matter of the procurement, as well as for the requirements specified by the contracting authority in the technical specifications and conditions of contract;

38. *developmental employer* means an organisation specified in section 99/D (1) of the Act on social administration and social benefits;

39. *subsidies* means the provision of funds or other pecuniary benefits to a contracting authority for the purpose of performing a public procurement contract, excluding any tax reduction, suretyship, any subsidy provided to the taxpayer for a purpose specified in the Act on corporate tax and dividend tax, or any offering made by a taxpayer for a beneficiary goal specified in the Act on corporate tax and dividend tax;

40. *design contest* means a procedure, regulated in detail by law, which enables the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

41. *sheltered place of employment* means employment by an accredited employer if the employer provides transit or permanent employment, and at least 30% of its employees qualifies as a person with reduced capacity to work under section 22 of Act CXCI of 2011 on the benefits for persons with reduced capacity to work and amending certain Acts, or an employer the main purpose of whom is to employ disadvantaged workers.

CHAPTER III

PERSONAL AND MATERIAL SCOPE OF THE ACT

Section 4 (1) Organisations qualifying as contracting authorities under sections 5 to 7 shall conduct a public procurement or concession procedure as defined in this Act when entering into a public contract, or works or service concession the value of which reaches the thresholds specified in section 15 (1).

(2) A public procurement procedure shall be conducted when concluding a public contract, and a concession procedure shall be conducted when concluding a works or service concession.

(3) In compliance with the implementing decree of this Act and with the exceptions specified therein, contracting authorities specified in section 195 (1) shall be obliged to request at least three tenders prior to concluding a contract specified in section 8 (2) to (6) if the value of the contract does not reach the national thresholds specified in section 15 (1) *b*) but reaches one million forints. The provisions of this Act shall apply to such purchases only to the extent required under the implementing decree of this Act.

Contracting authorities

Section 5 (1) Under this Act, the followings are obliged to conduct public procurement procedures:

- a) ministries,
- b) central purchasing bodies appointed by the Government,
- c) the state, all budgetary organs, public foundations, local governments, local and national self-governments of national minorities, associations of local governments and national minority self-governments, associations of local governments for regional development, regional development councils,
- d) legal persons specified in section 9 (1) *h*) to *i*),

e) organisations with legal capacity that were established for reasons other than a specifically public interest activity of an industrial or commercial nature, or that carry out such activities to any extent, provided that one or more organisations mentioned in points a) to e), the National Assembly or the Government is capable, directly or indirectly, of exercising dominant influence over the organisation concerned, or the majority of its operations is financed by one or more such organisation (body).

(2) With regard to procurements to be realized using subsidies, an organisation or person not falling within the scope of paragraph (1) shall be obliged to conduct a public procurement procedure if for the most part the procurement the estimated value of which reaches or exceeds the EU public procurement thresholds, or at least 75% of a procurement the estimated value of which does not reach the EU public procurement thresholds but reaches or exceeds the national public procurement thresholds, is subsidised directly by one or more organisations or persons specified in paragraph (1), provided that the subject-matter of the procurement is

a) works that involve civil engineering activities within the meaning of Annex 1,
b) works that involve works for hospitals, facilities intended for sports, recreation and leisure, school and higher education buildings and buildings used for administrative purposes, or

c) service related to works mentioned in point a) or b).

(3) In addition to those mentioned in paragraph (2), an organisation or person not falling within the scope of paragraph (1) shall be obliged to conduct a public procurement procedure with regard to procurements financed with a non-refundable subsidies, not including any non-refundable subsidies combined with a financial instrument if the service, supply or works contract is subsidised directly by one or more organisations or persons specified in paragraph (1) with at least forty million forints, unless the procurement is financed from an

a) investment subsidy determined in an individual decision of the Government,
b) single subsidy for creating jobs,
c) subsidy for education and for establishing and developing vocational training centres,
d) subsidy for research, development and innovation purposes,
e) subsidy for re-industrialization investments by undertakings, or
f) subsidy requested prior to 1 November 2015 and provided from an EU or national budgetary source.

(4) An organisation not falling within the scope of paragraphs (1) to (2) shall be obliged to comply with the provisions of this Act if it undertakes to conduct a public procurement procedure under this Act voluntarily or in a contract, or if it is required to conduct a public procurement procedure by law.

(5) Paragraph (3) shall not apply if the Government, on the proposal from the minister responsible for public procurements, adopts an individual decision on granting an exemption. An application for an exemption may be submitted if, considering the particularities of a procurement financed with a subsidy, conducting a public procurement procedure would not serve the efficient use of public funds, and the economically most advantageous use of the subsidy amount would be ensured by the proceedings of the organisation under paragraph (3). The text of individual exemption decisions adopted during the previous year shall also be published by the Government in the official gazette *Magyar Közlöny* in the form of notice by 31 March of each year.

Section 6 (1) For the purposes of this Act and with regard to purchases made with a view to ensuring its public service activities, a contracting entity means an organisation specified in section 5 (1), which pursues or was established for the pursuit of any of the following public service activities:

a) the provision or operation of fixed networks in connection with the production, transport or distribution of drinking water for the purpose of fulfilling a public service or the provision of drinking water for such networks;

b) the provision or operation of fixed networks in connection with the production, transport or distribution of gas, heat or electricity for the purpose of fulfilling a public service, or the provision of gas, heat or electricity for such networks;

c) activities relating to the provision or operation of networks providing a public service in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable;

d) exploitation of a defined geographical area for the purpose of

da) making that available to airports and maritime or inland ports or other terminal facilities to carriers of goods or persons by air, sea or inland waterway,

db) extracting oil or gas, or

dc) exploring and extracting coal or other fuels;

e) providing postal services,

f) providing services other than postal services, provided that the contracting authority also provides postal services within the meaning of point *e)* that do not fall within the scope of section 13.

(2) Public service activity shall include cases where the public procurement procedure of a contracting entity pursuing a drinking water related activity as per paragraph (1) *a)* is connected with

a) a hydraulic engineering project, irrigation or land drainage, provided 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 a project or irrigation or drainage installation, or

b) the disposal or treatment of sewage.

(3) For the purposes of transport services specified in paragraph (1) *c)*, a network shall be considered to exist if the service is provided under operating conditions laid down by the competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

(4) For the purposes of paragraph (1) *a)* and *b)*, supply shall also mean wholesale and retail sale.

Section 7 (1) For the purposes of this Act and with regard to purchases made with a view to ensuring its public service activities, a contracting entity means an economic organisation which does not fall within the scope of organisations specified in section 5 (1), and which pursues or was established for the pursuit of any of the public service activities specified in section 6 (1) to (2), provided that one or more organisations specified in section 5 (1) is capable of exercising, directly or indirectly, dominant influence over the given organisation.

(2) For the purposes of this Act and with regard to procurement made with a view to ensuring its public service activities, a contracting entity means an economic organisation which does not fall within the scope of organisations specified in section 5 (1) and in paragraph (1), and which pursues one or more public service activities specified in section 6 (1) to (2) under a special or exclusive right.

(3) For the purposes of paragraphs (1) to (2), it shall not be considered a public service activity if:

a) with regard to gas and heat, the production of gas or heat by the organisation concerned is the unavoidable consequence of carrying out an activity other than its public service activity, and the supply to the network is aimed only at the economic exploitation of such production and amounts to not more than 20% of the respective organisation's turnover on the basis of the average for the preceding three years, including the current year;

b) with regard to electricity and drinking water, the organisation concerned products electricity and drinking water for an activity other than its public service activity, and the supply to the network solely depends on its use of it, and amounts to not more than 30% of the total amount of electricity or water produced by it, considering the average of the preceding three years, including the current year.

(4) For the purposes of paragraph (2), a special or exclusive right means a right that is based on law or authority decision (license) allowing only one or a limited number of undertakings to pursue a public service activity specified in section 6 (1) to (2), thereby having a considerable impact on the opportunities of other organisations to pursue such activities.

(5) For the purposes of paragraph (2), an economic operator shall not be deemed the holder of a special or exclusive right if it was awarded the right to pursue a public service activity on the basis of objective criteria in the course of a public procedure. In particular, the following shall be considered such procedure:

a) licensing procedures concerning activities in the natural gas industry as defined in the Act on the supply of natural gas;

b) licensing procedures and tenders for the establishment of new electricity production capacities (power plants) as defined in the Act on electricity;

c) licensing of the provision of postal services requiring a license as defined in the Act on postal services;

d) licensing of the prospection, exploration and production of hydrocarbons as defined in the Act on mining;

e) public procurement procedures for the provision of public passenger transport services by bus, tramway, rail or metro within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, provided that they are in compliance with the provisions laid down in Articles 4 (3) to (4) and 5 (3) of that Regulation.

Subject-matters of public procurement

Section 8 (1) Public procurement means the conclusion of a public contract or a works or service concession under this Act. The subject-matter of the contract may be public supplies, public works, or public services.

(2) Under a supply contract, the contracting authority acquires the ownership of or a right to use or exploit, with or without call option, a marketable movable thing that can be taken into possession. A supply contract shall include siting and installation operations.

(3) Under a works contract, the contracting authority orders (and receives) any of the following works:

a) the realisation, or realisation and design as defined in a separate law, of a work relating to an activity mentioned in Annex 1;

b) the realisation, or realisation and design as defined in a separate law, of a building;

c) the realisation, by whatever means, of a work complying with the requirements specified by the contracting authority.

(4) Ordering a service means a procurement other than public supply or public works, the subject-matter of which is an activity ordered by the contracting authority.

(5) A works concession shall be an onerous contract concluded in writing by a contracting authority as defined in this Act, under which the contracting authority orders a public work defined in paragraph (3), and as consideration, assigns the right to utilize the work for a fixed period, or assigns such right and provides financial consideration, which entails that the operating risk pertaining to the utilization of the work is borne by the concessionaire.

(6) A service concession shall be an onerous contract concluded in writing by a contracting authority as defined in this Act, under which the contracting authority orders a public service defined in paragraph (4), and, as consideration, assigns the right to utilize the service for a fixed period, or assigns that right and provides financial consideration, which entails that the operating risk pertaining to the utilization of the service is borne by the concessionaire.

(7) For the purposes of paragraphs (5) to (6), the concessionaire shall be deemed to assume operating risk if it is not guaranteed whether the investments made or the costs incurred upon creating and operating the works or the services subject of the concession will recoup. Any potential loss incurred by the concessionaire may not be merely nominal or negligible. The operating risk may arise from demand risk, supply risk or the combination of these two risk factors; only risks arising from factors beyond the control of the concessionaire shall be taken into account to consider the existence of such risks.

(8) The subject-matter of a public procurement shall also be specified by referring to the Common Procurement Vocabulary (hereinafter “CPV”).

Exceptions

Section 9 This Act shall not apply to the following:

a) procurements in the field of defence and security as defined in a separate Act, with the proviso that such procurements shall be conducted according to the rules stipulated in that separate Act; if the procurement is also an exception under the separate Act and the exception specified in point *b) ba)* applies whereby the competent committee of the National Assembly granted an exemption from the application of the separate Act in a preliminary decision adopted on the basis of a proposal made in line with conditions specified in a separate law,

b) procurements not falling within the scope of point *a)*, for which

ba) the application of the public procurement rules would oblige Hungary to transfer information the disclosure of which is contrary to the essential interests related to State security,

bb) the fundamental security and national security interests of Hungary, the protection of classified data, or the necessary special security measures cannot be guaranteed by security measures that are available in public procurement procedures,

and for which the competent committee of the National Assembly granted an exemption from the application of this Act in a preliminary decision adopted on the basis of a proposal made in line with conditions specified in a separate law;

c) procurements conducted under special procedural rules laid down in an international agreement or international convention, if the international agreement or international convention concluded with a country outside the European Union in line with the Treaty on the Functioning of the European Union (hereinafter “TFEU”) is related to the joint realisation or utilisation of a project, with the proviso that the European Commission shall be notified of the conclusion of the international agreement or international convention;

d) procurements conducted under special procedural rules defined in an international agreement or international convention on the stationing, movement, or use of troops (military forces), including procurements relating to the realization of deployment (transfer) and repositioning of units to be deployed (transferred to) or repositioned at an operational area,

e) procurements which, due to obligations by international law, shall be conducted by the contracting authority according to special procedural rules set out by an international organisation;

f) procurements conducted according special procedural rules specified by an international organisation or international financing institution, if the procurement is financed by the respective organisation or institution in full, or the majority of the procurement is financed by

the respective organisation or institution, and the parties agreed to the application of public procurement rules that are different from those laid down in this Act;

g) procurements conducted for the sole purpose of facilitating the contracting authorities to provide or exploit public electronic communications networks or to provide to the public one or more electronic communications services;

h) contracts concluded by a contracting authority as per section 5 (1) with a legal person over which the contracting authority exercises control similar to that exercised over its own organisational units, where the contracting authority exercises a decisive influence over determining its strategic objectives and making its significant decisions regarding its operations, and in which the contracting authority has no direct private capital participation, and over 80% of the annual net turnover of which originates from the performance of contracts concluded or to be concluded with the controlling contracting authority or with another legal person controlled by the contracting authority according to this point;

i) contracts concluded by a contracting authority as per section 5 (1) with a legal person over which the contracting authority, together with other contracting authorities, exercises control similar to that exercised over its own organisational units, where the contracting authorities together exercise a decisive influence over determining its strategic objectives and making its significant decisions regarding its operations, and in which the contracting authority has no direct private capital participation, and over 80% of the annual net turnover of which originates from the performance of contracts concluded or to be concluded with the controlling contracting authority (contracting authorities) or with another legal persons controlled by the contracting authority according to this point;

j) contracts concluded by a contracting authority as per section 5 (1) with another contracting authority or other contracting authorities for the purpose of establishing a cooperation among the contracting authorities on the field of performing public tasks, providing public services, or achieving common public objectives, where no more than 20% of the contracting authorities' annual net turnover related to their cooperation activity concerned originates from the open market;

k) contracts for supplies, services or works purchased by a central purchasing body under a public procurement procedure concluded by organisations for and on behalf of which the central purchasing body entered into a public contract, as well as contracts for ancillary procurement services provided by central purchasing bodies.

(2) Paragraph (1) *h)* shall also apply if a public contract is concluded by a controlled legal person as a contracting authority with its controlling contracting authority or with another legal person controlled by the contracting authority as per paragraph (1) *h)*.

(3) The provisions laid down in paragraph (1) *h)* shall also apply if the state is a member in the controlled legal person. In such case, the conditions laid down in paragraph (1) *h)* shall be met by the legal entity exercising the ownership rights (minister or, concerning a person managing another central state administration organ, the organ managed by him) as a contracting authority.

(4) In a case described in paragraph (1) *i)*, all contracting authorities shall be represented in the decision-making organs of the controlled legal person. The persons performing representation may represent one or more controlling contracting authorities or all of them. The interests of the controlled legal person shall not be contrary to those of the controlling contracting authorities.

(5) The conditions set out in paragraph (1) *h)* to *i)* shall be met during the entire term of the contract. If the above-mentioned conditions are not met any longer, the contracting authority shall be entitled and obliged to terminate the contract.

(6) For the purposes of paragraph (1) *h)* to *i)*, the consideration for a public service performed to a third party under a contract shall be deemed as originating from the

performance of such contract, regardless of whether the consideration is paid by the contracting authority or the party making use of the public service.

(7) For the purposes of paragraph (1) *h*) to *j*), where the concept of annual net turnover is not applicable to a contracting authority, the ratio of activities performed for a contracting authority or another legal person controlled by a contracting authority shall be determined on the basis of costs incurred in relation to the activity performed during the last three years prior to the conclusion of the contract. If no data is available concerning the last three years prior to the conclusion of the contract, the contracting authority shall presume the figures primarily by presenting its authentic business plan.

(8) If the subject-matter of a contract is the procurement of a service, this Act shall not apply to

a) the purchase of an existing building or other immovable property, and the acquisition of other rights pertaining thereto;

b) the acquisition, development, production or co-production by audio-visual or radio media service providers of programme material intended for audio-visual media services or radio media services that are awarded by audio-visual or radio media service providers; contracts for programme provision or broadcasting time that are awarded to audio-visual or radio media service providers by any contracting authority, and contracts for the acquisition, development, production, or co-production of programme material intended for audio-visual or radio media services, or for the purchase of transmission time;

c) arbitration, mediation and conciliation activities;

d) legal services, if their subjects are

da) legal representation by an attorney-at-law in court, arbitration, authority conciliation or mediation procedures and legal consultation activities provided by an attorney-at-law in relation to such procedures,

db) authentication services provided by a notary,

dc) legal services provided by a trustee, guardian, or custodian appointed by virtue of the law or by the court, and other legal services the provision of which is supervised by the appointing court,

dd) services constituting the exercise of Member State public authority;

e) financial services, which are covered by CPV code 66100000-1 (CPV codes 66110000-4 to 66190000-8), in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the Act on investment companies, stock exchange service providers and the rules pertaining to their activities; central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

f) credit and loan contracts within the meaning of the Act on credit institutions and financial undertakings;

g) employment relationship, public service relationship, government service relationship, state service relationship, public employment relationship, employment relationship with a scholarship within the meaning of the Act on public service officials, state project evaluator relationship, service relationship in a public prosecutor's office, service relationship as a judge, judicial employees' service relationship, service relationship of professional staff of law enforcement bodies, service relationship of professional, contracted or voluntary reserve staff of the Hungarian Defence Forces;

h) civil defence and danger prevention services provided by non-profit organisations or associations to protect citizens, covered by CPV codes 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9, 85143000-3 and 85143000-3 except for patient transport ambulance services;

- i)* public passenger transport services by rail or metro;
- j)* political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, ordered by a political party in the context of an election campaign;
- k)* services provided by a contracting authority within the meaning of section 5 (1) or the association of such contracting authorities, on the basis of an exclusive right granted by law or an authority decision in accordance with TFEU;
- l)* research and development services covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2, and 73430000-5, unless the result of such a service is utilised only by the contracting authority in the course of its activities, and the consideration is paid by the contracting authority in full.

(9) This Act shall not apply to purchases made by organisations providing a service mentioned in section 6 (1) *e)* for the purpose of the following activities:

- a)* 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);
- b)* financial services covered by CPV codes 66100000-1 to 66720000-3 in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, and operations conducted with the European Financial Stability Facility and the European Stability Mechanism, including postal money orders and postal giro transfers,
- c)* philatelic services; or
- d)* logistics services (services combining physical delivery and/or warehousing with other non-postal functions).

(10) In the course of procurements mentioned in paragraph (1) *b)*, contracting authorities shall be entitled to process criminal personal data.

(11) Access to public interest data and data accessible on grounds of public interest processed with regard to a procurement specified in paragraph (1) *b)* may be restricted by a contracting authority mentioned in section 5 (1) *a)* to *c)* on the ground of national security interests for a maximum period of ten years from the generation of such data, considering the significance of public interests in accessing the data and in restricting such access.

(12) Access to

- a)* a decision adopted by an organ acting within its functions and powers concerning a procurement,
 - b)* the identity of the successful tenderer in a procurement procedure, and
 - c)* the title, subject-matter, value, and term, as well as the name of the contracting parties of a procurement contract
- specified in paragraph (1) *b)* shall not be restricted under paragraph (11).

Additional exceptions concerning contracting entities

Section 10 (1) In addition to the cases specified in section 9, contracting entities shall not apply this Act in cases specified in sections 10 to 13.

(2) Contracting entities shall not apply this Act to public service contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject-matter of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

(3) Contracting entities within the meaning of section 7 shall not apply this Act to contracts awarded for purposes other than the pursuit of their public service activities as described in this Act or for the pursuit of such activities in a country outside the European Union if it does not involve the physical use of a network or geographical area within the European Union.

(4) Upon request by the European Commission, contracting authorities, acting through the Public Procurement Authority, shall provide information on the activities and/or groups of goods or activities falling within the scope of exceptions under paragraphs (2) to (3).

Section 11 This Act shall not apply to the following:

a) purchase of water by a contracting authority pursuing a public service activity mentioned in section 6 (1) *a)* regarding drinking water;

b) purchase of energy or fuel required for energy production by a contracting authority pursuing a public service activity mentioned in section 6 (1) *b)* regarding gas, heat, or electricity;

c) purchase of energy or fuel required for energy production by a contracting authority pursuing a public service activity mentioned in section 6 (1) *d) db)* regarding the extraction of oil or gas;

d) purchase of energy or fuel required for energy production by a contracting authority pursuing a public service activity mentioned in section 6 (1) *d) dc)* regarding the exploration and extraction of coal or other fuels.

Section 12 (1) This Act shall not apply to the following:

a) public service contracts concluded with affiliated undertakings,

b) public service contracts concluded by and between a joint venture established only by contracting entities for the purpose of pursuing a public service activity within the meaning of this Act and an affiliated undertaking of such a contracting entity, provided that, on the field of purchase of supplies, services or works within the European Union, at least 80% of the average total turnover of the last three years of the organisation mentioned in point *a)* or *b)* was realised from economic activities conducted with another organisation or contracting entity under a relationship mentioned in point *a)*.

(2) If due to the establishment date or the commencement date of activities concerning the organisation contracting with a contracting entity mentioned in paragraph (1), the turnover is not available for the preceding three years, it shall be sufficient for that organisation to presume that the turnover referred to in paragraph (1) is credible, in particular by presenting its authentic business plans.

(3) If identical or similar services, goods or works are provided to a contracting entity by more than one organisation having a relationship with the contracting entity mentioned in paragraph (1) *a)* the total turnover realised from the services, goods or works provided by those organisations shall be taken into account.

(4) If an organisation having a relationship with a contracting entity as described in paragraph (1) does not qualify as a contracting authority under this Act and that organisation intends to employ a third organisation falling outside the personal scope defined in this section to perform a contract to be concluded with a contracting entity in more than 25%, the exception specified in paragraph (1) may only be applied if the organisation having a relationship with a contracting entity as described in paragraph (1) conducts a public procurement procedure for the selection of the third organisation under section 5 (4). The application of the exception specified in paragraph (1) shall be subject to the above condition only if a public procurement procedure would be required for the procurement by the contracting entity in the absence of that exception.

(5) This Act shall not apply to

a) public service contracts concluded by and between a joint venture established only by contracting entities for the purpose of pursuing a public service activity within the meaning of this Act and such a contracting entity,

b) public service contracts concluded by and between a contracting entity and a joint venture of which it is a member of,

provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

(6) Regarding the application of paragraphs (1) to (5), upon request by the European Commission, contracting authorities, acting through the Public Procurement Authority, shall provide information on the name of organisations contracted, the type and value of contracts awarded, as well as all circumstances and evidence the European Commission finds necessary to determine whether the relationship between the contracting parties meets the requirements specified in this section.

Section 13 (1) This Act shall not apply to public service contracts if pursuant to the procedure described in Articles 34 to 35 of Directive 2014/25/EU, the European Commission established that the public service activity concerned is pursued in conditions of effective competition on a market to which access is not restricted, or if the European Commission did not adopt a decision thereon by the applicable time limit.

(2) The procedure of the European Commission shall be subject to Article 35 of and Annex 4 to Directive 2014/25/EU, and Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors. Provisions on initiating the procedure of the European Commission and submitting requests shall be laid down in a separate law. All tasks pertaining to the provision of information on all substantive facts concerning the pursuit of activities, specified in the law, in conditions of effective competition shall be carried out by the Hungarian Competition Authority.

Additional exceptions concerning concessions

Section 14 (1) In addition to the cases specified in section 9, this Act shall not apply to the conclusion of works or service concessions in cases specified in this section. The exceptions specified in sections 10 to 13 shall apply to the purchase of works or service concessions by contracting entities as well.

(2) This Act shall not apply to works or service concessions

a) if the contract concluded by the contracting entity is aimed at activities in a country outside the European Union, not involving the physical use of a network or geographical area within the European Union;

b) for concluding contracts aiming at activities specified in section 6 (1) *a)* and section 6 (2).

(3) With regard to service concessions, this Act shall not apply to the followings:

a) services mentioned in section 6 (1) *b)* to *e)* and provided by an economic operator under an exclusive right granted by law or authority decision in accordance with TFEU, with the proviso that a notice specified in a separate law shall be published concerning the conclusion of the contract, unless a relevant sectoral law requires other form of publication concerning the conclusion of the contract;

b) concluding contracts for public passenger transport services by rail and by road within the meaning of the Act on passenger transport services;

c) contracts for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No 1008/2008;

d) concluding contracts for organising lottery services (lotteries) covered by CPV code 92351100-7 concluded on the basis of an exclusive right granted by law or an authority decision in accordance with TFEU.

(4) The European Commission shall be informed through the Public Procurement Authority of the granting of any special or exclusive right under paragraph (3) *a)* within thirty days.

(5) The grant of a special or exclusive right under paragraph (3) *d)* shall be subject to publication in the Official Journal of the European Union.

Public procurement thresholds

Section 15 (1) The thresholds for public procurement and concession procedures shall be:

a) the thresholds specified in a legal act of the European Union regarding public procurement and concession procedures (hereinafter “EU thresholds”);

b) the thresholds specified in the Act on the central budget regarding public procurement and concession procedures (hereinafter “national thresholds”).

(2) The EU thresholds are established and published by the European Commission in the Official Journal of the European Union periodically.

(3) The national thresholds applicable to individual subject-matters of procurement shall be specified in the Act on the central budget annually. The EU thresholds applicable to individual subject-matters of procurement, as specified in the legal acts of the European Union mentioned in paragraph (2), shall be stated in the current Act on the central budget annually.

(4) With regard to social and other services specified in Annex 3, no national threshold shall be set for service concessions, and contracting authorities shall proceed in line with this Act where the value of a service concession reaches or exceeds the EU threshold.

(5) The EU thresholds and national thresholds applicable to individual subject-matters of procurement, as well as the thresholds specified in section 19 (4) *a)* shall be published by the Public Procurement Authority on its website at the beginning of each year. At the time of such publication, the HUF equivalent of EU thresholds and the thresholds specified in section 19 (4) *a)* shall be indicated in line with the European Commission communication concerning equivalents of EU thresholds in national currencies as published in the Official Journal of the European Union.

The estimated value of public procurement

Section 16 (1) (1) The estimated value of public procurement shall be construed to mean the total consideration, calculated without value added tax and determined considering the provisions of sections 17 to 20, generally asked or offered for the subject of procurement on the given market at the time of commencement of the public procurement procedure. If the request for tenders includes any optional part, the value of such optional parts shall be calculated into the total consideration.

(2) Any fee or other payment (commission) to be paid or made by a contracting authority to the candidates or tenderers shall be calculated into the estimated value of procurement, if any such payment is made by a contracting authority.

(3) If tendering for lots is permitted by a contracting authority, the value of all lots shall be calculated into the estimated value of procurement.

(4) If a contracting authority is composed of more than one separate operational or organisational unit (hereinafter “operational unit”), the procurement needs of all operational units shall be taken into account together for calculating the estimated value of procurement, determined considering section 19 (3), unless a separate operational unit has its own economic organisation and is entitled to dispose of its operational budget independently. In the latter case, the estimated value of procurement may also be determined at the level of the given separate operational unit.

(5) The Public Procurement Authority shall issue guidelines concerning the individual methods of calculating the estimated value and the selection of such a method.

Section 17 (1) In the case of supply contracts for the acquisition of a right to use or exploit a product, the estimated value shall be as follows:

a) in the case of fixed-term contracts, for one year or a longer term, the consideration to be paid during the term of the contract or, if the term of the contract is longer than one year, the consideration to be paid during the term of the contract including the estimated residual value;

b) in the case of contracts for an indefinite term or the term of which cannot be determined at the time of commencing the procedure, the monthly consideration multiplied by forty-eight.

(2) For contracts concluded on a regular basis or for recurring contracts, the estimated value of services and supplies shall be as follows:

a) the actual consideration provided under the contract or contracts concluded on the same subject-matter during the previous calendar year, adjusted with any change in volume or value expected for the subsequent calendar year, or

b) the estimated consideration to be paid during a period of twelve months after the first performance or during the period of a contract or contracts concluded for a period over twelve months.

(3) With regard to service contracts not indicating the total price, the estimated value shall be as follows:

a) in the case of fixed-term contracts, if that term is less than or equal to four years, the consideration to be paid during the contract term;

b) in the case of contracts for an indefinite term or for a term longer than four years, the monthly consideration multiplied by forty-eight.

(4) Upon calculating the estimated value of the services, the following shall be considered for the following services:

a) for insurance services, the premium payable and other forms of consideration;

b) for banking and other financial services, the fees, commissions, interest and other forms of consideration;

c) for services including designing, fees and commissions payable, and other forms of consideration.

(5) Upon calculating the estimated value of works, the consideration payable for the total works taken as a functional unit for technical and economic purposes shall be considered. The estimated value of works shall include the estimated value of goods and services needed for the realisation of the works and provided by the contracting authority.

Section 18 (1) The estimated value of a framework agreement shall be the highest estimated total value of the contracts to be concluded during the period of the framework agreement.

(2) When using dynamic purchasing system, the estimated value of procurement shall be the highest estimated total value of the contracts to be concluded during the period of the dynamic purchasing system.

(3) The estimated value of innovation partnerships shall be the highest estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the planned partnership.

(4) The estimated value of a design contest shall include the followings:

- a) prizes or payments (commissions) to candidates and other forms of consideration, and
- b) the estimated value of the service to be awarded to one of the winners (prize holders), upon recommendation by the jury, in the course of a negotiated procedure without prior publication to be conducted under section 98 (5) after the design contest, unless the contracting authority (inviter) excluded the conclusion of such contract in the call for competition.

Section 19 (1) The method of calculating the estimated value may not be chosen with the aim of circumventing this Act.

(2) A public procurement shall not be divided into lots in a manner that results in the circumvention of this Act or the rules laid down in this Act concerning purchases the estimated value of which reaches or exceeds an EU threshold within the meaning of this Act.

(3) If works or services aiming to achieve the same direct goal, or supply intended for the same or similar use are awarded in separate lots by more than one contract, the value of all such lots shall be taken into account for the purpose of calculating the estimated value of procurement. In the context of contracts for services, the assessment whether they are aiming at the same direct goal shall be based on the technical and economic functional unity of the individual services.

(4) If the estimated value of the public procurement, calculated in line with paragraph (3), reaches or exceeds EU thresholds under this Act, notwithstanding paragraph (3), the procedure laid down in Part Three may be applied to contracts

- a) where the estimated value of the contract itself is less than EUR 80 000 for services or supplies, or EUR 1 000 000 for works, and
- b) the total value of the separated lots does not exceed 20% of the total estimated value determined in line with paragraph (3).

(5) In cases under paragraph (4), the exceptions specified in section 111 shall not be applied.

(6) Paragraph (2) shall apply separately regarding each foreign mission when purchasing for foreign missions, each member institute when purchasing for vocational training centres maintained by the minister responsible for vocational training and adult education, each parliamentary group and budget when making purchases paid from the operational and supply budget granted to parliamentary groups by an Act, and, for organs mentioned in section 8 (1) a) to c) and section 10 (1) of Act CLXIII of 2011 on the prosecution service, each procurement paid from the respective approved appropriation.

The estimated value of concessions

Section 20 (1) The estimated value of the works or service concession shall be the total turnover, calculated without value added tax, expected upon the commencement of a public procurement to be realised by the concessionaire during the contract term from the works or services subject to the concession and the related supplies.

(2) In addition to the factors under paragraph (1), in particular the following shall be considered for the purpose of calculating the estimated value of a works or service concession:

- a) if the request for tenders includes any optional part, the value of such optional parts;

b) revenue from the payment of fees and fines by the users of the works or services subject to the concession other than those collected on behalf of the contracting authority;

c) financial consideration, or any financial advantage in any form whatsoever made by the contracting authority to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;

d) the value of grants from third parties to the concessionaire for the performance of the concession or any other financial advantages in any form;

e) revenue from sales of any assets that are part of the concession;

f) the value of goods and services required for the performance of the concession and provided by the contracting authority;

g) any commission paid or other payment made to candidates or tenderers.

(3) Section 19 (1) to (3) shall apply accordingly in the course of calculating the estimated value of a works or service concession.

(4) The objective method of calculating the estimated value of a works or service concession shall be described in the procurement documents.

The applicable rules of procedure

Section 21 (1) Unless otherwise provided in this Act, a public procurement procedure shall be conducted according to Part Two, if its value reaches or exceeds the EU thresholds, or to Part Three, if its value remains below those thresholds but reaches the national threshold. The contracting authority shall be considered as acting lawfully, if it conducts a public procurement procedure according to the rules laid down in Part Two, even though Part Three should be applied to that public procurement procedure under this Act.

(2) Public procurement procedures relating to the use of social and other services according to Annex 3, with the exception of concession procedures, shall be conducted according to Part Three.

(3) Concession procedures shall be conducted according to Part Four.

(4) The special rules on public procurement procedures aiming at the conclusion of public service contracts, derogating from the provisions of this Act, shall be laid down in a separate law. This Act shall apply in the course of public procurement procedures aiming at the conclusion of public service contracts subject to the derogations laid down in that separate law. In the course of procurements for a purpose other than ensuring their public service activities, contracting authorities within the meaning of section 6 shall apply the general rules of this Act.

(5) The detailed procedural rules on design contests, which may be applied mainly in the fields of town and country planning, architecture and engineering or data processing, shall be laid down in a separate law.

(6) Contracting authorities within the meaning of section 5 (3) shall apply the provisions laid down in Part Three, unless they also qualify as contracting authorities under section 5 (2). In the latter case, the applicable rules of procedure shall be determined according to paragraph (1).

Mixed procurements

Section 22 (1) If a public procurement procedure covers more than one subject-matter within the meaning of section 8 (2) to (4), the public procurement procedure shall be conducted according to the rules pertaining to the main subject-matter of the procurement.

(2) For the purposes of paragraph (1), the main subject-matter of procurement shall be highest value subject-matter, if the subject-matter of the procurement is a complex service,

which also includes social and other services according the Annex 3, and another different service, or the subject-matter of procurement includes both services and supplies.

(3) If a public procurement procedure covers both works and service concessions or concessions for more than one service, the concession procedure shall be conducted according to the rules pertaining to the main subject-matter.

(4) For the purposes of paragraph (3), the main subject-matter of the procurement shall be the service of higher value if the service concession includes both social and other service according the Annex 3, and another different service.

(5) If a contract concluded by a contracting entity is necessary for the pursuit of both its public service activity under this Act and another activity pursued by the contracting entity, the contracting entity may decide

a) to enter into separate contracts for each component of the procurement; in such cases, the rules applicable to that particular contract shall apply to the conclusion of each contract, or

b) to enter into a single contract; in such cases, the rules applicable to the activity constituting the main goal of the contract shall apply to the conclusion of the contract.

The choice made under this paragraph shall not be aimed at avoiding the application of this Act.

(6) If in a case under paragraph (5) *b)*, it cannot be established as to for which activity the public procurement is necessary in the first place,

a) the general procedural rules on public procurement laid down in this Act (Part Two or Three) shall apply, if any part of the public procurement contract falls within the scope of Part Two or Three, while another part would be subject to the separate law mentioned in section 21 (4);

b) contracting entities shall be obliged to follow the provisions laid down in the separate law mentioned in section 21 (4), if the separate law mentioned in section 21 (4) were to be applied to any part of the procurement, while Part Four would be applicable to any part of the contract that is aimed at a goal other than the pursuit of the public service activity;

c) contracting entities shall follow the provisions laid down in the separate law mentioned in section 21 (4), if the separate law mentioned in section 21 (4) were to be applied to any part of the contract, while any part of the contract that is aimed at a goal other than the pursuit of the public service activity would not fall within the scope of this Act;

d) Part Four shall apply to works or service concessions according to the rules pertaining to contracting authorities, proceeding not as contracting entities, within the meaning of section 5 (1), if a part of the concession would be subject to the rules pertaining to contracting entities, while another part would be subject to rules pertaining to contracting authorities, proceeding not as contracting entities, within the meaning of section 5 (1);

e) the general procedural rules on public procurement laid down in this Act (Part Two or Three) shall apply, if Part Four would be applicable to the part of the contract that serves the pursuit of the public service activity of the contracting authority, while Part Two or Three would be applicable to the part that is aimed at a goal other than the pursuit of the public service activity;

f) the provisions laid down in Part Four shall apply, if Part Four would be applicable to the part of the contract that serves the pursuit of the public service activity of the contracting entity, while the part that is aimed at a goal other than the pursuit of the public service activity of the contracting entity does not fall within the scope of this Act.

(7) For the purposes of sections 22 to 24, a concession procedure shall not be considered a public procurement procedure.

Section 23 (1) The provisions of this section shall apply if, apart from the cases described in section 22, different elements of the procurement are subject to different legal regulations,

either because the application of different rules is required by this Act, or a part of the procurement does not fall within the scope of this Act. With regard to contracting entities, the provisions of this section shall apply if all elements of the procurement subject to different legal regulations serve the pursuit of the public service activity of the contracting entity.

(2) If the different elements of a procurement are objectively not separable and are necessarily subject to the same contract, the rules pertaining to the conclusion of the contract shall be determined according to the main subject-matter of the procurement.

(3) For the purposes of paragraph (2), in the case of contracts involving service concession and supply elements as well, the main subject-matter of the contract shall be determined upon the service or supply element of higher estimated value.

(4) If the different elements of a procurement are objectively separable and the contracting authority enters into separate contracts for each component of the procurement, the conclusion of each contract shall be subject to the rules applicable to the subject-matter of the contract.

(5) If a contracting authority awards a single contract for objectively separable procurements, the applicable rules shall be determined according to paragraphs (6) to (8).

(6) If a contract includes elements of a public contract and another contract exempted from the application of this Act, the rules applicable to a public procurement procedure shall apply to the conclusion of the contract, regardless to the ratio of the value of the contract elements exempted from this Act to the value of the entire contract.

(7) If a contract includes elements of a public contract and a works or service concession, a public procurement procedure shall be conducted for the conclusion of the contract, provided that the value of the public contract part in itself reaches the relevant public procurement threshold.

(8) If a contract includes elements of a works or service concession and another contract exempted from the application of this Act, the rules applicable to a concession procedure shall apply to the conclusion of the contract, regardless to the ratio of the value of the contract elements exempted from this Act to the value of the entire contract.

Section 24 (1) Notwithstanding the provisions laid down in sections 22 (5) and 23, the provisions of this section shall apply if the procurement includes elements falling within the scope of this Act and elements exempted from this Act under section 9 (1) *a*) or *b) ba*).

(2) If the different elements of the procurement are objectively not separable and are necessarily subject to the same contract, the conclusion of the contract

a) shall not be subject to this Act, provided that the contract includes an element falling within the scope of section 9 (1) *b) ba*) and that the exemption specified in section 9 (1) *b*) applies;

b) shall be subject to the Act on defence and security procurement, provided that the contract includes an element falling within the scope of section 9 (1) *a*), and that the case specified in point *a*) does not apply.

(3) If the different elements of the procurement are objectively separable and the contracting authority enters into separate contracts for each component of the procurement, the conclusion of each contract shall be subject to the rules applicable to the subject-matter of the contract.

(4) If a contracting authority awards a single contract for objectively separable purchases, the conclusion of the contract

a) shall not be subject to this Act if the contract includes an element falling within the scope of section 9 (1) *b) ba*), the exemption specified in section 9 (1) *b*) applies, and provided that the realisation of the procurement by a single contract is objectively justified;

b) shall be subject to the Act on procurement for defence and security purposes if the contract includes an element falling within the scope of section 9 (1) *a*), the case specified in

point *a*) does not exist, and provided that the realisation of the procurement by a single contract is objectively justified.

(5) Contract award decisions of the contracting authority shall not be aimed at avoiding the application of this Act or the Act on procurement for defence and security purposes.

CHAPTER IV

PROVISIONS ON ACTORS OF PUBLIC PROCUREMENT PROCEDURES

Conflict of interests

Section 25 (1) Contracting authorities shall take all necessary measures to avoid any conflict of interests or situations resulting in the violation of the fairness of competition.

(2) A person or organisation, including any procurement service provider and its employees, shall be deemed conflicted and may not be involved in the preparation and conduct of a procedure for and on behalf of the contracting authority if he is unable to carry out his functions in an impartial and objective manner for any reason, in particular due to any economic or other interest, or any other common interest shared with an economic operator participating in the procedure.

(3) The followings shall be deemed conflicted and shall not participate in the procedure as a tenderer, candidate, subcontractor or an organisation certifying suitability:

a) a person or organisation involved by the contracting authority in any activity relating to the procedure or its preparation,

b) an organisation if

ba) its executive officer or supervisory board member or

bb) its owner, or

bc) a relative living in the same household with a person mentioned in points *ba*) to *bb*) was involved by the contracting authority in any activity relating to the procedure or its preparation,

provided that the participation of such a person may result in the violation of the fairness of competition.

(4) In addition to those mentioned in paragraph (3) and with the exception of public companies limited by share, an organisation owned by any of the following shall be deemed conflicted and shall not participate in a procedure as a tenderer, candidate, subcontractor or an organisation certifying suitability:

a) the President of the Republic,

b) the Speaker and Deputy Speaker of the National Assembly,

c) a member of the Government,

d) the President of the Curia, and the President of the National Office for the Judiciary,

e) the Prosecutor General,

f) the President of the Constitutional Court,

g) the President of the State Audit Office,

h) the head of the Public Procurement Authority, the Equal Treatment Authority, the Hungarian Competition Authority, the National Authority for Data Protection and Freedom of Information, the National Election Office, the Hungarian Central Statistical Office, the Hungarian Atomic Energy Authority, the Hungarian Intellectual Property Office, the National Tax and Customs Administration, the National Research, Development and Innovation Office, the National Media and Infocommunications Authority and the Hungarian Energy and Public Utility Regulatory Authority,

i) the Governor of the Hungarian National Bank,

j) to m)

as well as organisations owned by a relative living in the same household with a person mentioned in points *a) to i)*.

(5) Contracting authorities shall warn all persons and organisations involved in the preparation of the procedure if, according to paragraphs (3) to (4) and in particular with regard to the extra information obtained by such a person or organisation, their participation in the public procurement procedure would result in a conflict of interests.

(6) A person or organisation acting for and on behalf of and involved by the contracting authority in an activity relating to the procedure or its preparation shall make a statement in writing as to whether or not he or it is subject to any conflict of interests within the meaning of this section.

(7) For the purposes of paragraph (3), the participation of a person (organisation) in the procedure shall not be considered a violation of the fairness of competition or a conflict of interests if

a) he was requested, upon being informed of data required exclusively to the assessment, by a contracting authority to provide information for situation and market assessment purposes and for assessing the estimated value of procurement concerning a given public procurement, without indicating the starting date of the public procurement,

b) he participated in a preliminary market consultation [section 28 (4)] conducted by a contracting authority,

c) he submitted a quote to a contracting authority, which was necessary for submitting a subsidy application,

provided that, upon applying point *a)*, *b)*, or *c)*, the contracting authority did not disclose to him any information beyond those provided to all tenderers or candidates during the public procurement procedure.

(8) A tenderer or candidate may only be excluded from a procedure under this section if the equal opportunities of economic operators participating in the public procurement procedure cannot be ensured by any other means. Prior to exclusion, the contracting authority shall grant the economic operator concerned the possibility, by way of remedy of deficiencies or request for further information, to show that his involvement in the preparation of the public procurement procedure does not violate the equality of opportunities or the fairness of competition, or the possibility to avert the conflict of interests by other means. The contracting authority shall describe the measures taken by the economic operator concerned to avert the conflict of interests in the summary on the evaluation of the tenders (requests to participate).

Common rules concerning contracting authorities

Section 26 (1) With the exception of contracting authorities within the meaning of section 5 (2) to (3), contracting authorities shall notify the Public Procurement Authority of the fact that they fall within the scope of this Act and of any change of data within thirty days of becoming subject to this Act or of the change.

(1a) For data recorded in a public register with certified authenticity, a change notice under paragraph (1) may also be performed by a notification sent to the Public Procurement Authority by the organ keeping the public register, if requested so by the contracting authority, within the time limit specified in paragraph (1).

(2) The Public Procurement Authority shall keep and publish on its website an up-to-date register of contracting authorities, and shall provide the European Commission with information on the registered contracting authorities as necessary. If an organisation concerned fails to perform its notification obligation specified in paragraph (1), or if there is

doubt whether or not the organisation concerned falls within the scope of this Act, the president of the Public Procurement Authority shall initiate a procedure before the Public Procurement Arbitration Board.

Section 27 (1) Contracting authorities shall establish the order of responsibilities pertaining to the preparation, conduct and internal control of public procurement procedures, the responsibilities of persons and organisations involved in the procedure and acting on behalf of the contracting authority, and the rules on documenting public procurement procedures in line with applicable laws. In this respect, contracting authorities shall specify, in particular, the person, persons or bodies responsible for the decisions adopted during the procedure.

(2) If a contracting authority does not have a general public procurement policy meeting the requirements of paragraph (1), or if the conditions, laid down in the policy, of derogating from that policy are met, the details required under paragraph (1) shall be specified prior to the preparation of the given public procurement procedure at the latest.

(3) The persons and organisations involved in the procedure and/or acting on behalf of a contracting authority during the preparation of a public procurement procedure, drafting the call for competition and the procurement documents, evaluating the tenders and in other stages of the procedure shall jointly possess the professional, public procurement related, legal and financial expertise according to the subject-matter of the public procurement. Contracting authorities shall involve accredited public procurement consultants in public procurement procedures which are financed, in whole or in part, from EU sources, or reaching EU thresholds applicable to supply and services contracts, or reaching five hundred million forints for public works.

(4) Contracting authorities shall set up an evaluation committee of at least three members and jointly possessing all the expertise required under paragraph (3), to assess and evaluate the tenders in line with this Act and after the remedy of deficiencies or provision of further information or justification [sections 71 to 72], if any. The evaluation committee shall draft a written expert opinion and a proposal for a decision for the person or body adopting the decision closing the procedure. Minutes shall be taken of the work of the evaluation committee, which may include the reasoned evaluation sheets of its members, if such sheets are used by the contracting authority.

(5) The person adopting a decision on behalf of a contracting authority on closing a procedure shall not be member of the evaluation committee. If the decision is adopted by a body, the decision-maker may delegate a person to the evaluation committee with consultative powers only. If the decision is adopted by a body, each vote shall be cast by name.

The preparation of the procedure

Section 28 (1) Contracting authorities shall prepare their public procurement procedures with due care, having regard to the subject-matter and estimated value of the public procurement procedure. The procurement documents provided by a contracting authority shall ensure that economic operators can submit tenders in the procedure that are technically suitable, physically feasible and economically reasonable. Contracting authorities shall, as early as the preparation of public procurement procedures, seek to ensure the conditions required for performing at high quality, protecting the environment as possible considering the subject-matter of the procurement, taking into account sustainability considerations, and eliminating any contract amendment concerning the subject-matter of the procurement. The contracting authority may also apply the method of value analysis.

(2) Within the scope of their responsibilities specified in paragraph (1), contracting authorities shall carry out special examinations to calculate the estimated value, and shall document the results of such examinations. In the course of such examinations, contracting

authorities shall be allowed to apply methods based on objective factors. In particular, the following shall be considered such methods:

- a) requests for indicative quotes for the subject-matter of the procurement,
- b) market research carried out by specialised organisations concerning the subject-matter of the procurement,
- c) involvement of a judicial expert,
- d) tariffs recommended by professional chambers,
- e) detailed construction databases based on realisation value drafted and maintained by professional chambers,
- f) price statistics published by the Public Procurement Authority,
- g) analysis of previous contracts on similar subject-matters awarded by the contracting authority.

(3) In the case of public works, public procurement procedures shall only be launched upon the availability of plans meeting the relevant requirements laid down in a separate law. In cases specified in a separate law, contracting authorities shall arrange for the control of plans and the participation of a site architect.

(4) Prior to launching a public procurement procedure, the contracting authority may engage in preliminary market consultation with independent experts, authorities and market participants to prepare the public procurement procedure and provide information to economic operators regarding the planned procurement and the relevant requirements. Contracting authorities shall take all measures necessary to ensure the enforcement of principles related to the fairness of competition, equal opportunities and equal treatment of economic operators, in particular by publishing all relevant information in the procurement documents and setting an appropriate time limit for submitting tenders.

Joint public procurement procedures

Section 29 (1) The contracting authority may authorise another contracting authority to conduct public procurement procedures on its behalf. However, such authorisation shall not result in the avoidance of the rules applicable to the authorising contracting authority under this Act.

(2) The public procurement may also be realised by more contracting authorities jointly by authorising one of them to conduct the public procurement procedure.

(3) In the cases pursuant to paragraph (1) or (2), the call for competition shall indicate the fact that the contracting authority conducts the public procurement procedure for (an)other contracting authority/authorities (as well).

(4) For the purposes of paragraph (1) or (2), if the entire public procurement procedure is conducted jointly on behalf of all the contracting authorities concerned, the contracting authorities shall be jointly responsible for fulfilling their obligations pursuant to this Act. If a public procurement procedure is not conducted in its entirety in the name and on behalf of the contracting authorities concerned, the contracting authorities shall be jointly responsible only for the parts conducted jointly. Each contracting authority shall have sole responsibility for fulfilling its obligations under this Act in respect of the parts of the public procurement procedure conducted by it in its own name and on its own behalf.

Section 30 (1) Contracting authorities may jointly award public contracts, enter into a framework agreements or operate dynamic purchasing systems with contracting authorities established in another Member State of the European Union. However, doing so shall not result in avoiding the application of this Act or other laws applicable to the contracting authority.

(2) For the purposes of paragraph (1) and if the conditions specified in this section are not provided for under an international agreement, the contracting authority shall enter into an agreement with the other contracting authority established in another Member State of the European Union, specifying the following:

- a)* the scope of responsibilities of each contracting authority, and the Member State the laws of which are applied by the contracting authorities for conducting the public procurement, and
- b)* the internal organisation of the public procurement procedure, including the conduct of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(3) The information specified in paragraph (2) *a)* shall also be indicated in the procurement documents of the joint public procurement procedure.

(4) If the contribution of a specific central purchasing organ is not required under this Act or a separate law, contracting authorities may use the services of a central purchasing body operating in another Member State of the European Union to realise their public procurements. The public procurement shall be realised and the contract under a dynamic purchasing system or framework agreement shall be awarded pursuant to the national laws of the Member State where the seat of the central purchasing body is located.

(5) The contracting authority may set up a joint entity with another contracting authority established in another Member State of the European Union to carry out certain public procurement(s). In such a case, the contracting authorities shall agree, based on a decision adopted by the supreme body of the joint entity, that the public procurement procedures shall be subject to the public procurement rules of the Member State where

- a)* the seat of the joint entity is located, or
- b)* the joint entity is carrying out its activities.

(6) A joint entity within the meaning of paragraph (5) may be established for a definite or indefinite term, for certain types of procurements, and for conducting one or more individual public procurements, provided that it is indicated in the constitutive act of the joint entity.

Centralised purchasing

Section 31 (1) The Government may order public procurement procedures to be conducted in a centralised manner regarding budgetary organs controlled or supervised and public foundations established by it, and state-owned economic organisations over which, directly or indirectly, it is capable of having dominant influence, specifying the personal and material scope of the centralised procedure, the organisation authorised to request tenders (central purchasing body), and the possibility of joining the procedure.

(2) With regard to organisations financed from the Health Insurance Fund, centralised procedures shall be conducted concerning health care services in cases specified by a separate law. The Government may lay down detailed rules for such procedures, including their personal and material scope, and the organisation authorised to request tenders (central purchasing body).

(3) For public procurements relating to the performance of government communications tasks, centralised procedures shall be conducted in cases specified by a separate law. The Government may lay down detailed rules for such centralised procedures, including their personal and material scope, and the organisation authorised to request tenders (central purchasing body).

(4) The detailed rules on centralised public procurement procedures under this section, derogating from this Act due to the specificities of such procedures, shall be laid down in a separate law.

(5) In centralised public procurement procedures, all written communication between the central purchasing body and the economic operators, including the submission of tenders and requests to participate, shall be made by electronic means, subject to the exceptions specified in the law adopted to implement this Act.

Section 32 (1) More than one contracting authority may set up a joint central purchasing body or appoint one of them as a central purchasing body and conduct their purchases jointly and in a centralised manner, provided that the participation of a specific central purchasing body is not mandatory under section 31. The rules on cooperation among the contracting authorities setting up a centralised purchasing system shall be laid down in a cooperation agreement.

(2) Central purchasing bodies shall be responsible for the operation of their centralised purchasing systems. The contracting authority using the system shall be responsible for realising the parts conducted by it, in particular for placing orders using the dynamic purchasing system operated by the central purchasing body, or for procurements under the framework agreement concluded by the central purchasing body with or without reopening competition.

(3) In centralised public procurement procedures, all written communication between the central purchasing body and the economic operators, including the submission of tenders and requests to participate, shall be made by electronic means, subject to the exceptions specified in the law adopted to implement this Act.

Reserved contracts

Section 33 (1) The contracting authority may or, if required by the Government, shall be obliged to reserve the right to participate in a public procurement procedure for organisations qualifying as sheltered place of employment, where over 30% of the workers are persons with reduced capacity to work or disadvantaged workers, and for developmental employers, over 30% of the workers are involved in developmental employment. Furthermore, contracting authorities may or, if required by the Government, shall be obliged to require that a public contract be fulfilled under the framework of a job creation programme, in the framework of which at least 30% of the workers involved in the fulfilment of the contract are persons with reduced capacity to work, persons with disabilities or disadvantaged workers (sheltered employment programmes).

A reference to this fact shall be made by the contracting authority in the call for competition.

(2) If a contract is reserved under paragraph (1), the contracting authority shall ensure equal opportunities for economic operators established in the European Union, where over 30% of the workers are persons with reduced capacity to work, persons with disabilities or disadvantaged workers.

Section 34 (1) With regard to health, social and cultural services referred to in Annex 3, covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, contracting authorities may reserve the right to participate in the public procurement procedures for economic operators

a) the activities of which are aimed at the performance of public tasks relating to the provision of health, social and cultural services specified in this paragraph,

b) which operate in a non-profit manner and reinvest profits to perform the public tasks of the organisation, or, if profits are divided, the division of profits serves the involvement of workers in the management of the organisation

c) the structures of management or ownership of which ensure the active involvement of workers in the management of the organisation, or require the active participation of employees or those being interested in the performance of the public task, and

d) which have not entered into a contract falling within the scope of this paragraph with the contracting authority under this paragraph during the preceding three years.

(2) The contract under paragraph (1) may be concluded for a definite term, up to three years at most.

(3) If the right to participate in a public procurement procedure is reserved under this section, a reference to this fact shall be made by the contracting authority in the call for competition.

Common rules concerning economic operators

Section 35 (1) More than one economic operator may submit a tender or request to participate jointly.

(2) For the purposes of paragraph (1), joint tenderers or candidates shall appoint a representative from themselves authorised to act on behalf of the joint tenderers or candidates during the public procurement procedure.

(3) All statements made on behalf of the group of joint tenderers or candidates shall clearly identify the joint tenderers or candidates.

(4) Where contracting authorities are required under this Act to notify tenderers or candidates, as well as in the case of providing additional information [section 56] or requesting the remedy of deficiencies [section 71], further information [section 71], or justification [section 72], contracting authorities shall send to the representative under paragraph (2) all notifications, information and requests that are addressed to the joint tenderers or joint candidates.

(5) If the contracting authority requires the provision of a tender guarantee [section 54], the joint tenderers shall provide such guarantee only once. If any joint tenderer fails to comply with the time during which it shall maintain its tender, [section 54 (4)], the guarantee shall be kept by the contracting authority.

(6) Joint tenderers shall bear joint and several liability toward contracting authorities for the fulfilment of a contract.

(7) There shall be no change in the person of economic operators submitting a joint tender or request to participate in a tender procedure or in a multi-stage procedure after the expiry of the time limit open for requests to participate.

(8) Contracting authorities shall not require the establishment of an economic organisation as a condition of participation in a public procurement procedure; however, successful tenderer(s) may be required to do so if justified for the purpose of performing the contract to be concluded in the public procurement procedure. The requirement of the contracting authority regarding the establishment of an economic organisation shall be clearly indicated in the call for competition.

(9) If the establishment of an economic organisation for the purpose of performing a contract (project company) is permitted or required by the contracting authority, the requirements relating to the economic organisation to be established shall be specified in the procurement documents; such requirements may relate only to the legal form, minimum amount of the registered capital (in proportion to the contract value), scope of activities, and the control of the activities of the economic organisation.

Section 36 (1) During the same public procurement procedure and if tenders may be submitted for lots, for the same lot, tenderers or candidates

- a)* shall not submit a tender jointly with another tenderer, and shall not submit another request to participate jointly with another candidate,
- b)* shall not participate as a subcontractor of another tenderer or candidate,
- c)* shall not certify the suitability of another tenderer or candidate for the performance of the contract [section 65 (7)].

(2) If the contracting authority detects or has reason to suspect that the provisions of section 11 of Act LVII of 1996 on the prohibition of unfair and restrictive market practices (hereinafter “the Tpv.”) or the provisions of Article 11 TFEU have clearly been violated during the public procurement procedure, it shall notify the Hungarian Competition Authority in line with the provisions laid down in the Tpv. concerning notifications and complaints.

(3) If, during the public procurement control of public procurement procedures, public contracts, works or service concessions and their amendments, the minister responsible for public procurements or for the use of EU funds detects or has reason to suspect that the provisions of section 11 of the Tpv. or the provisions of Article 11 TFEU have clearly been violated, he may disclose all data, except for classified data, obtained during the control of the public procurement procedure, contract, works or service concession concerned and their amendments, to the Hungarian Competition Authority when notifying the Hungarian Competition Authority in line with the provisions laid down in the Tpv. concerning notifications and complaints.

CHAPTER V

PUBLICATION, COMMUNICATION, PUBLICITY

Publication

Section 37 (1) Contracting authorities shall publish by way of a notice the following:

- a)* prior information notice;
- b)* contract notice launching an open procedure;
- c)* invitation to participate launching a restricted procedure, negotiated procedure, competitive dialogue or innovation partnership, with the exception of restricted and negotiated procedures launched with a notice containing a prior information notice and with a notice containing a periodic prior information notice under a separate law, furthermore, direct invitation to participate sent during a restricted procedure and negotiated procedure, competitive dialogue or innovation partnership launched with a pre-qualification notice under a separate law;
- d)* call for competition launching a procedure conducted according to independent procedural rules under section 117;
- e)* periodic prior information notice and pre-qualification notice under a separate law;
- f)* design contest notice;
- g)* concession notice, with the exception of procedures mentioned in sections 128 and 129 (2);
- h)* contract award notice;
- i)* results of the design contests;
- j)* modification notice.

(2) The contract award notice under paragraph (1) *h)* to *i)* shall be sent for publication by the contracting authority within ten working days after the contract is concluded or a decision is made by the contracting authority on declaring the procedure ineffective or refusing to conclude a contract [section 131 (9)]. The public procurement procedure shall be closed upon the publication of such a notice.

(3) Contracting authorities shall indicate in the contract award notice if they do not intend to conclude any further contracts during the period specified in a prior information notice.

(4) By way of derogation from paragraph (2), the contracting authority may dispatch a joint contract award notice regarding contracts concluded on the basis of a framework agreement or a dynamic purchasing system, if a framework agreement or dynamic purchasing system is used. In this case, a notice regarding all contracts concluded during the previous quarter shall be sent for publication within ten working days following the last day of the quarter.

(5) The contracting authority shall send a notice containing the modification notice mentioned in paragraph (1) *j*) for publication within fifteen days of the contract amendment at the latest.

(6) Contracting authorities shall send their notices for publication to the Public Procurement Authority by electronic means and in the manner specified in a separate law. Contracting authorities shall publish their notices under this Act according to the standard forms specified in a separate law. The detailed rules on the applicable standard forms, their mandatory contents, the sending, control, control fees, and dispatch of notices, and the rules on publication shall be laid down in a separate law. The notice control fee shall be deemed an administrative service fee. Such fees shall be used by the Public Procurement Authority for its own operations in the context of its core activities.

Section 38 (1) After the commencement of a financial year, the contracting authority may prepare a prior information notice, while a contracting entity may prepare a periodic prior information notice under a separate law, of all supply, works and service contracts planned for the given year or the subsequent period of up to twelve months.

(2) With regard to social or other services according the Annex 3, the prior information notice shall specify the services constituting the subject-matter of the contracts, shall include information that no further notice containing invitation will be published during the procedure, and shall invite economic operators to give notice of their intent to participate in writing. In such case, the prior information notice may cover a period exceeding the period of the subsequent twelve months.

(3) The contracting authority may publish the prior information notice or the periodic prior information notice by way of a notice according to the standard forms specified in a separate law.

(4) If the prior information notice or the periodic prior information notice is published on the website of the contracting authority, it shall be obliged to send a notice titled notice on a buyer profile to the Publications Office of the European Union through the Public Procurement Authority. The prior information notice or periodic prior information notice may be published on a website after such notice is sent to the Publications Office of the European Union by electronic means.

(5) The publication of a notice containing prior information notice or periodic prior information notice shall not imply any obligation to conduct any public procurement procedure mentioned in such notice.

Section 39 (1) Apart from requesting registration data, contracting authorities shall make all procurement documents available to economic operators electronically, directly, without limitation and in full, and free of charge.

(2) If certain procurement documents may not be made available electronically, without limitation, in full, and free of charge because

a) the nature of the public procurement would require the use of a specific form of electronic communication not generally available to economic operators,

b) the content of such procurement documents cannot be displayed using open-source applications or other applications generally available to economic operators, or permission is

required for such use, and the contracting authority cannot provide the economic operators with the necessary applications or permission,

c) making the procurement documents available would require special office equipment not generally available to contracting authorities, or

d) the procurement documents contain business secrets or classified data, or they are confidential due to security or national security considerations, and adequate protection cannot be ensured when using means of electronic communication generally available to economic operators,

the contracting authority shall indicate in the call for competition by what means other than electronic means the procurement documents are to be made available to economic operators, or what measures are to be taken to preserve the confidentiality of the procurement documents and how the relevant documents can be accessed.

Communication in public procurement procedures

Section 40 (1) The public procurement procedure and the concession procedure shall be conducted by using the central electronic public procurement system operated by the Prime Minister's Office.

(2) The development, the operation and the conditions for use of the electronic public procurement application under paragraph (1) shall be laid down in a separate law.

Section 41 (1) All statements made by and between the contracting authority and the economic operator shall be made in writing, unless otherwise provided in this Act.

(2) If using a certain means of communication is not specifically required under this Act, the written statement may be sent:

- a)* by postal or direct delivery, having regard to paragraph (5);
- b)* via fax;
- c)* by electronic means.

(3) Contracting authorities may require the use of a certain means of communication, however, it shall not violate the equal opportunities of economic operators. With the exception of procedures conducted by the central purchasing body, public procurement procedures conducted through the electronic procurement system operated by the Prime Minister's Office, and of using a dynamic purchasing system, an electronic catalogue, or an electronic auction, tenderers shall not be required to use electronic communication means only.

(4) Unless otherwise provided in this Act or a law issued based on the authorisation of this Act, the statement under paragraph (2) *c)* may be submitted in an electronic document supplied at least with an advanced electronic signature or meets the requirements laid down in law adopted on the basis of the authorisation by an Act.

(5) With regard to provision or requests for information required under this Act, postal delivery may only be used exceptionally and in justified cases.

(6) In public procurement procedures, procedural acts may also be carried out by electronic means. A separate government decree shall provide for the method of carrying out procedural acts by electronic means, and it may derogate from the provisions of this Act to the extent required to carry out such procedural acts by electronic means.

Publicity in public procurement procedures

Section 42 (1) With the exception of central purchasing bodies, contracting authorities specified in section 5 (1) shall prepare a summary public procurement plan (hereinafter "public procurement plan") of their public procurements planned for the given year at the beginning of the financial year, but no later than 31 March. Contracting authorities shall

preserve their public procurement plans for a period of five years at least. Public procurement plans shall be publicly available.

(2) Contracting authorities may launch public procurement procedures even before preparing the public procurement plan, but it shall be indicated in the plan.

(3) The public procurement plan shall not imply any obligation to conduct any public procurement procedure mentioned in the plan. The contracting authority may conduct public procurement procedures regarding public procurements that are not indicated, or differing from the public procurements indicated in its public procurement plan. In such case, the public procurement plan shall be modified when such need or other change arises, indicating the reason for the modification.

(4) The contracting authority shall make available its public procurement plan upon request by the Public Procurement Authority or another organ authorised to control the operations of the contracting authority.

Section 43 (1) Contracting authorities shall publish the followings in the Public Procurement Database operated by the Public Procurement Authority or, if publication in the Public Procurement Database is not possible, on their own website or on the website of their maintaining entity:

- a)* public procurement plan and any amendment thereto, immediately after their adoption;
- b)* data mentioned in section 80 (2) concerning preliminary dispute resolution, immediately after receipt of the application for preliminary dispute resolution;
- c)* contracts awarded under sections 9 (1) *h)* to *i)* and 12 (1) to (5), immediately after contracting;
- d)* contracts awarded in a public procurement procedure, immediately after contracting;
- e)* summary evaluating requests to participate and tenders, simultaneously with sending it to candidates or tenderers;
- f)* the following data pertaining to the fulfilment of the contract: reference to the notice launching the procedure (or invitation concerning procedures launched without notice), name of the contracting parties, whether the performance was in conformity with the contract, the date of performing the contract recognised by the contracting authority, the date of paying the consideration and the amount of consideration paid, within thirty days after each party (or the organisation obliged to pay regarding supplier payments, if the procurement is subsidised) performed the contract;
- g)* annual statistical summary under a separate law, by the time limit specified therein.

(2) All data mentioned in paragraph (1) shall be considered data public on grounds of public interest, and their publication shall not be denied upon relying to business secret. Notwithstanding the above provision, section 44 shall apply to the publicity of the tender, if the tender is annexed to the contract by the parties.

(3) When the public procurement plan mentioned in paragraph (1) *a)* is published on a website, it shall remain available until the public procurement plan for the year following the relevant year is published on the website.

(4) If the data, information and documents mentioned in paragraph (1) *b)* and *f)* to *g)* are published on the website of the contracting authority shall provide for their availability at least for the period specified in section 46 (2).

(5) If the contracts mentioned in paragraph (1) *c)* to *d)* are published on the website of the contracting authority shall provide for their availability at least for a period of five years after performance.

(6) With regard to contracts concluded for a period over one year or for an indefinite period, the information mentioned in paragraph (1) *f)* shall be updated annually after the conclusion of each contract.

Section 44 (1) The economic operator may prohibit the publication of documents containing business secrets (including protected know-how) [section 1 of Act LIV of 2018 on the protection of trade secret] included separately into a tender, request to participate, remedy of deficiencies, information or justification under section 72. The document containing business secrets shall contain only information the publication of which would cause disproportionate harm to the economic operator regarding its business activities. The economic operator shall attach to the separate document containing business secrets a justification explaining in detail why and how the publication of the given information or data would cause disproportionate harm. Any justification given by an economic operator shall be deemed insufficient, if it is formulated in general terms.

(2) For the purposes of paragraph (1), the economic operator shall not declare the following to be business secrets in particular:

- a) information and data publicly available in electronic, public or other registers,
- b) data public on grounds of public interest under section 27 (3) of Act CXII of 2011 on the right to informational self-determination and on the freedom of information,
- c) the following if presented by the tenderer or candidate in the context of certifying its suitability:
 - ca) public contracts performed previously, and information and data pertaining to the conclusion, content or performance of works or service concession within the meaning of this Act,
 - cb) information and data pertaining to machines, devices, equipment, technicians, certificates or labels,
 - d) the description of supplies, works or services mentioned in the tender, excluding any clearly defined part of such a description for which the tenderer can demonstrate that the conditions specified in paragraph (1) are met,
 - e) the professional tender submitted by the tenderer, if it is requested by the contracting authority, excluding any clearly defined part of such professional tender concerning which the tenderer can demonstrate that the conditions specified in paragraph (1) are met and the classification as business secret is not prohibited under paragraph (3).

(3) The economic operator shall not prohibit the publication of its name, address (seat, residence), or any fact, information, solution, or data (hereinafter jointly “data”) that is evaluated on the basis of an evaluation criteria under section 76, however, it shall be entitled to prohibit the publication of any partial information and underlying data not falling within the scope of paragraph (2), in particular a budget with prices, serving as basis for the above-mentioned data.

(4) If the economic operator fails to comply with paragraphs (1) to (3) during classifying any piece of information or data as business secret, the contracting authority shall invite in the context of remedy of deficiencies the economic operator concerned to submit a document with appropriate contents.

Section 45 (1) After the summary of the evaluation of tenders or requests to participate is sent, the tenderer or candidate participating in the given procedure may request access to the tender or request to participate of other economic operators, except for parts containing business secrets, submitted by another economic operator, including any remedy of deficiencies, further information or justification under section 72. In the application for access, the economic operator shall specify the part of the tender or request to participate it wishes to access, as well as the suspected violation serving as ground for its application. Access to documents shall be granted during working hours within two working days after receipt of the application. The contracting authority shall grant access to documents to the extent necessary for the economic operator to exercise its rights related to the alleged

violation. The tender or request to participate submitted by another economic operator may not be reviewed in full by means of such access.

(2) Upon request by the tenderer submitting a valid tender, the contracting authority, after giving notice of the result of the procedure, shall provide specific information on the characteristics of the successful tender and its advantages compared to the other tender, as well as the on the progress of any negotiation or dialogue with the tenderers, if a negotiated procedure, competitive dialogue, or innovation partnership was conducted, within five working days after receipt of the corresponding application, with due regard to the business secret related interests of the successful tenderer.

The documentation of procedures and the calculation of time limits

Section 46 (1) Contracting authorities shall document each and every public procurement procedure, from the preparation of the procedure until the fulfilment of the contract awarded, in writing or, if the public procurement procedure is conducted electronically, by electronic means according to the law adopted based on the authorisation by this Act.

(2) All documents related to preparing and conducting the public procurement procedure, as well as all documents related to the fulfilment of the contract shall be kept for a period of at least five years calculated from the closure of the public procurement procedure [section 37 (2)] and from the fulfilment of the contract, respectively. If review procedure is launched concerning a public procurement procedure, the documents shall be kept until the review procedure or, if an administrative court action is launched, the administrative court action is completed with final and binding effect, but for a period of at least five years.

(3) Upon the request by the Public Procurement Authority or another organ authorised by law, the contracting authority shall forward or make available by electronic means its documents pertaining to the public procurement procedure concerned.

Section 47 (1) If this Act requires the taking of minutes during the public procurement procedure, this requirement may also be satisfied by recording acts taken in the presence of a notary in a public deed.

(2) If under this Act or a separate law adopted based on the authorisation of this Act the contracting authority requires the submission of a document in a public procurement procedure, a simple copy of the document concerned may also be submitted, unless otherwise provided by law. The contracting authority may require that a statement be submitted in its original copy or, if permitted by the contracting authority, in a certified copy, if such statement serves as a direct basis for enforcing a claim (in particular, a statement assuming guarantee or suretyship). If tenders are not submitted by electronic means, an original copy of the tender submitted under section 68 (2) shall include the original and signed copy of the statement mentioned in section 66 (2). A responsible translation made by a tenderer of a document written in a language other than the Hungarian language shall also be accepted by contracting authorities.

(3) If a certificate required under this Act does not exist in the country of establishment of a tenderer established outside the European Union, contracting authorities may also accept a certificate or document that is equivalent to the certificate concerned.

Section 48 (1) With regard to time limits specified in this Act, the time limit or period determined in days, months or years (hereinafter jointly “time limit”) shall not include the starting day. The starting day shall be the day during which the act or other circumstance serving as reason for commencing the time limit is performed or occurs.

(2) The time limit set in months or years shall expire on the day that corresponds to the day following the starting day according to its numbering; if there is no corresponding day in the month of expiry, the time limit shall expire on the last day of that month.

(3) If the last day of the time limit falls on a public holiday, the time limit shall expire on the next working day.

(4) The time limit specified in the notice (invitation) shall be calculated from the day following the day when the notice (invitation) is published or the invitation directly sent.

(5) Paragraphs (1) to (3) shall also apply for calculating the period during which the tenderer must maintain its tender and the period mentioned in section 131 (6).

PART TWO

RULES ON PUBLIC PROCUREMENTS REACHING AN EU THRESHOLD

CHAPTER VI

LAUNCHING OF PUBLIC PROCUREMENT PROCEDURES

The types of public procurement procedures

Section 49 (1) The public procurement procedure may be

- a) an open procedure,
- b) a restricted procedure,
- c) an innovation partnership,
- d) a negotiated procedure,
- e) a competitive dialogue,
- f) a negotiated procedure without prior publication.

(2) Negotiated procedure, competitive dialogue, or negotiated procedure without prior publication may only be conducted if the conditions laid down in this Act are met. The innovation partnership may be used for purposes specified in this Act.

(3) In the course of a public procurement procedure, the type of the given procedure shall not be changed.

(4) Contracting authorities shall be allowed to apply specific procurement methods regulated under Chapter XVI.

Call for competition

Section 50 (1) According to the rules applicable to the different types of public procurement procedures, a call for competition may be a contract notice, an invitation to participate, an invitation to tender or a direct invitation to participate.

(2) The call for competition shall include in particular:

- a) the name, address, phone and fax number, e-mail address and web address (if any) of the contracting authority;
- b) the type of the public procurement procedure, in the case of negotiated and accelerated procedure, a competitive dialogue, or a negotiated procedure without prior publication, the justification of their application;
- c) contact information at which the procurement documents are or will be available electronically for unrestricted and full direct access, free of charge. If certain procurement documents are not available directly by electronic means for the reasons specified in section 39, an indication of the means to be used by the contracting authority for making such documents available;
- d) the subject-matter and quantity of the public procurement;
- e) description of the contract to be concluded as a result of the procurement procedure;
- f) indication of the conclusion of framework agreement, the use of a dynamic purchasing system or electronic auction, where appropriate;

- g)* term of the contract or time limit for performance;
- h)* the place of performance;
- i)* conditions of paying the consideration, or reference to the applicable laws;
- j)* indication of whether or not a tenderer may submit variants;
- k)* acceptance or exclusion of tendering for lots. If tendering for lots is permitted, indication of whether it is possible to submit a tender for one, for several or for all of the lots; indication of whether the number of lots that may be awarded to the same tenderer is limited. If the possibility of tendering for lots is excluded, the reasons for the exclusion;
- l)* award criteria of the tenders. If the most economically advantageous tender is not exclusively based on the price or cost determined according to section 78, the weighting (exceptionally the order) of the award criteria pertaining to the most economically advantageous tender shall also be indicated;
- m)* the grounds for exclusion and reference to the required methods of certification;
- n)* the selection criteria and reference to the required methods of certification;
- o)* the time limit for submission of tenders or the time limit for submission of requests to participate, in the case of invitation to participate;
- p)* the address to which tenders or requests to participate shall be submitted, and the way of submission;
- q)* the language (languages) of tenders or requests to participate, and an indication as to whether or not a tender or request to participate may be submitted in a language other than Hungarian;
- r)* the time and - if not done by electronic means -, place of opening of tender(s), and the persons authorised to be present at the opening of tenders, in the case of invitation to participate, the time and - if not done by electronic means -, place of opening of requests to participate;
- s)* minimum period during which the tenderer must maintain its tender, except for an invitation to participate;
- t)* in the case of invitations to participate, the planned date of sending the invitation to tender;
- u)* information on any required tender guarantee, which shall also be indicated in the invitation to participate concerning the subsequent stage of the procedure;
- v)* special conditions applicable to the performance of the contract, if any;
- w)* if the public procurement is subsidized from European Union, information on the relevant project (programme) concerned.

(3) In addition to the information specified in paragraph (2), a direct invitation to participate shall also include a reference to the published prior information notice and the date of its publication. An invitation to tender and a direct invitation to participate shall specify the date on which it is sent to economic operators.

(4) Call for competition and all other procurement documents shall ensure in all cases equal opportunities to economic operators to submit appropriate tenders or requests to participate.

Section 51 (1) In the case of sub-central contracting authorities, if restricted or negotiated procedures are launched by the use of prior information notice pursuant to section 82 (3) or section 86 (2), the prior information notice shall be published with a content specified in a separate law. The prior information notice launching the procedure shall specify the subject-matter of the contract and the fact that the contracting authority is conducting a restricted procedure or negotiated procedure launched by a direct invitation to participate, and it shall include an invitation to economic operators to express their interest to participate by the time limit specified in the prior information notice.

(2) Data on the subject-matter of the public procurement shall be provided in the prior information notice announcing the procedure so that economic operators can decide whether or not they intend to participate in the procedure.

Setting a time limit for submission of tenders and requests to participate

Section 52 (1) The time limit for submission of tenders and requests to participate shall be set by contracting authorities, - taking into account the complexity of the contract and the minimum time limits set by this Act, - so as to ensure enough time to draw up tenders or requests to participate.

(2) If tenders can be made only after a visit to the site or after on-the-spot inspection of certain documents, the time limit for the submission of tenders shall be longer than the minimum time limits set out in this Act and shall ensure that all economic operators concerned may be aware of all the information needed to draw up tenders.

(3) A time limit for receipt may only be extended, and it shall be made in line with the rules on the amendment of contract notice, invitations to tender, and invitations to participate [section 55].

(4) Contracting authority shall extend the time limit for the submission of tenders or requests to participate:

a) if it cannot provide additional information by the applicable time limit [section 56 (2)], although it was requested by the economic operator in due time according to section 56, or
b) if changes are made to the procurement documents.

(5) The length of the extension shall be proportionate to the importance of the additional information provided or the change. Notwithstanding paragraph (4) *b)*, a contracting authority shall not be obliged to extend a time limit, if the changes made to the procurement documents are insignificant and the amendment is sent not later than ten days before the expiry of the time limit for the submission of tenders or requests to participate or, if a notice shall be published concerning the amendment, such the notice is dispatched not later than eleven days before the expiry of the time limit for the submission of tenders or requests to participate. The changes made to procurement documents shall be considered insignificant, if it does not have any impact on the proper preparation of requests to participate or tenders in due time.

CHAPTER VII
THE BINDING NATURE OF STATEMENTS MADE IN A PUBLIC PROCUREMENT
PROCEDURE

Withdrawal from a public procurement procedure

Section 53 (1) Contracting authorities may withdraw the call for competition until the expiry of the time limit for the submission of tenders in the case of an open procedure or, until the expiry of the time limit for requests to participate in the case of procedures consisting of more than one stage.

(2) If a call for competition was published in a notice, a notice shall be published concerning the withdrawal before expiry of the time limit mentioned in paragraph (1), and at the same time all economic operators who expressed their interest in the procedure shall be notified. In the case of procedures without prior publication of a notice, all economic operators invited to submit a tender or participate shall be informed directly and simultaneously before the expiry of the original time limit.

(3) The publication of a prior information notice shall not imply any obligation to conduct a public procurement procedure, even if the notice was aimed to publish a public procurement procedure. In the latter case, the contracting authority shall publish stating that the procedure

will not be launched and shall notify all economic operators who submitted their declaration of interest to the contracting authority.

(4) After the expiry of the time limit under paragraph (1), the contracting authority is not obliged to assess the tenders or requests to participate, to finish the negotiation or dialogue; and, in the case of procedures consisting of more than one stage, it may withdraw the invitation to tender by the expiry of the time limit for the submission of tenders, if the contracting authority can prove that he would not be able to fulfil the contract due to an unforeseeable event that occurred after the expiry of the time limit under paragraph (1) and fell beyond the control of the contracting authority, or due to such circumstances the contracting authority would be entitled to cancel the contract or unilaterally terminate it. In such a case, the contracting authority shall declare the procedure ineffective.

(5) Notwithstanding paragraph (4), the contracting authority may also declare the procedure ineffective, if economic operators were informed in the call for competition that the procedure may be declared ineffective in case of a specific future and uncertain event which is beyond the control of the contracting authority and occurs after the expiry of the time limit under paragraph (1) (conditional public procurement).

(6) A conditional public procurement may also be launched, if the contracting authority has submitted or will submit an application for subsidy (application, project proposal, amendment of a funding contract or notification of change), regardless of whether or not the call for proposal of the subsidy has already been published, and the contracting authority considers that the rejection of its application or the granting of an lower amount than the requested amount as an event why the contracting authority may declare the procedure ineffective.

(7) Section 75 shall apply in case of declaring the procedure ineffective on any other ground and section 131 (9) shall apply to the obligation to contract that applies after the contract award notice is sent.

(8) A candidate may withdraw its request to participate before the expiry of the time limit for requests to participate. A tenderer may withdraw its tender before the beginning of the period during which the tenderer must maintain its tender.

(9) The period during which the tenderer must maintain its tender shall be subject to the relevant rules laid down for each type of public procurement procedure.

Tender guarantee

Section 54 (1) Contracting authorities may make participation in the procedure conditional on the provision of a tender guarantee which shall be provided by tenderers to contracting authority in the amount specified in the invitation before the beginning of the period during which the tenderer must maintain its tender. Tenderers shall certify that their tender guarantee was provided to the contracting authority. Tender guarantee shall serve as security for the observance of the tender for the period during which the tenderer must maintain its tender; participation in the participation stage of a procedure may not be made conditional on the provision of any guarantee.

(2) A tender guarantee may be provided, at the choice of the tenderer, by paying the required amount to the payment account of the contracting authority, by providing a guarantee or directly enforceable suretyship by a financing institution or insurance company, or by way of a promissory note issued pursuant to an insurance contract stipulating the assumption of a or directly enforceable suretyship. The place of payment, the payment account number of the contracting authority, and the method of evidencing the payment shall be specified in the contract notice or the invitation to tender.

(3) The amount of the tender guarantee shall be determined in a way that ensures opportunities to all tenderers and with regard to the amount of the foreseeable costs that would arise on the side of the contracting authority, in case of violation of the period during

which the tenderer must maintain its tender according to paragraph (4). If tendering for lots is permitted by the contracting authority, the tender guarantee and its amount shall be determined for each lot.

(4) If a tenderer withdraws a tender under the period during which the tenderer must maintain its tender, or if contracting fails for a reason arising within the tenderer's sphere of interest, the contracting authority shall be entitled to keep the tender guarantee, with the exception specified in section 131 (9). The contracting authority shall be entitled to keep the tender guarantee also if the tender of a tenderer is considered invalid because upon the request of the contracting authority, the tenderer fail to submit or submits inadequately, to its binding tender the certificates confirming its statement made in the European single procurement document.

(5) A tender guarantee shall be repaid

a) to tenderers within ten days after the withdrawal of the contract notice or the invitation to tender, the declaration of the invalidity of the tender, or after sending of the contract award notice to tenderers;

b) to the successful tenderer and the tenderer with the second most advantageous tender, if indicated in the summary, within ten days after concluding the contract, unless the guarantee is to be converted into a contract guarantee according to the contract notice.

(6) If the provision of a guarantee was required by a contracting authority as a condition to participation in a procedure, twice the amount of the tender guarantee provided in money or in other cases the amount corresponding to the value of a tender collateral shall be paid within ten days

a) to each tenderer, if the tenderers were not informed on the result of the procedure during the period during which the tenderer must maintain its tender as specified in the invitation, including any extension;

b) to the successful tenderer and the tenderer with the second most advantageous tender, if indicated in the summary, if the contract is not concluded except for cases specified in section 131 (9).

(7) If, in a case specified in this Act, a contracting authority invites tenderers to maintain their tenders before the expiry of the period during which the tenderer must maintain its tender and a tenderer refuses or all tenderers refuse to maintain its or their tender, the guarantees shall be repaid, without applying paragraph (6), within ten days after receiving the statement of a tenderer or sending the contract award notice to the tenderers. Tenderers maintaining their tender shall be invited by the contracting authority, in the invitation to maintain their tender, to maintain a guarantee equal to the originally valid collateral, during the extended binding period.

Modifying invitations, other procurement documents, tender and request to participate

Section 55 (1) If a contracting authority intends to modify the content (including the extension of a time limit) of an invitation that was published in a notice, it shall modify the conditions specified in the invitation by publishing a notice. If other procurement documents are also modified, the notice shall include a reference to this fact.

(2) The notice modifying an invitation shall be published before the expiry of time limit for the submission of tenders or, in the participation stage of a public procurement procedure consisting of more than one stage, before the time limit for the submission of requests to participate; all economic operators who have expressed their interest in the procedure to the contracting authority, in particular those who accessed the procurement documents electronically or requested additional information, shall be informed simultaneously about the

intent of modification and the dispatch of the modification notice before expiry of the original time limit for the submission of tenders or requests to participate. No measure and decision shall be taken and no documents shall be submitted in the public procurement procedure before the publication of the modification notice.

(3) If the contracting authority intends to modify the content of an invitation that has not been published or any other procurement document that has not been published in a notice, economic operators that were invited to submit a tender or, in case of direct invitation to participate, invited to participate, as well as economic operators who expressed their interest in the procedure shall be informed directly and simultaneously until the expiry of the time limit for the submission of tenders, in the case of invitation to tender and procurement documents concerning tendering; and until the time limit for the submission of requests to participate in the case of invitation to participation and procurement documents that relate only to the participation stage of the procedure.

(4) Contracting authorities shall make the modification to procurement documents available directly by electronic means, at the same place as the original documents are available.

(5) An element of the invitation to tender or the public procurement document that was included in the invitation to participate may not be modified in the tendering stage of a restricted procedure.

(6) The modification of an invitation or other procurement document may not result in any significant change in the conditions pertaining to the subject-matter of procurement or the contract terms so that knowledge of the new conditions could have had a substantial impact on the decision of interested economic operators whether or not to submit a request to participate or a tender in the public procurement procedure, or that the contracting authority, taking into account the change, should have had defined suitability criteria that would have allowed more economic operators to participate in the procedure.

(7) A tenderer or candidate may modify its tender or request to participate by submitting a new tender or request to participate until the expiry of the time limit for the submission of tenders or requests to participate. In such cases, the first tender or request to participate submitted shall be considered withdrawn.

CHAPTER VIII

ADDITIONAL INFORMATION AND SITE INSPECTIONS

Section 56 (1) In order to submit appropriate tenders or request to participate, economic operators eligible to be candidates or tenderers in a given public procurement procedure may request contracting authorities or the organisations designated by them, in writing to provide additional information regarding the contents of procurement documents.

(2) The additional information shall be provided within reasonable period after receipt of the request, but no later than six days, in the case of accelerated procedure not later than four days and in negotiated procedures without prior publication not later than three days before the expiry of the time limit for the submission of tenders, or, in the participation stage of a public procurement procedure, not later than four days before the expiry of the time limit for the submission of requests to participate.

(3) If the request for additional information is submitted later than the fourth day or, in accelerated procedures or negotiated procedures without prior publication, the third day before the time limit for sending of the answer as specified in paragraph (2), the contracting authority is not obliged to provide additional information.

(4) If a contracting authority cannot provide the information by the time limit specified in paragraph (2), or if the procurement documents are modified simultaneously with the provision of the additional information, section 52 (4) and (5) shall apply.

(5) The additional information shall be provided in a manner that ensures the equal opportunities of economic operators. All the additional information provided shall be made available or sent to all economic operators that expressed their interest in the procedure to the contracting authority or, in the tendering stage of a procedure consisting of more than one stage and in public procurement procedures without prior publication, to all economic operators that were invited to submit tender or participate directly. When providing additional information, the contracting authority shall not specify the economic operator that asked a certain question or the economic operators the answer of the contracting authority was sent to.

(6) Additional information may also be provided by way of consultation. In that case, the time and place of the consultation shall be indicated in the call for competition. Minutes shall be taken on the consultation and shall be sent or made available to the economic operators mentioned in paragraph (5) by electronic means within five days after the consultation.

(7) The provisions laid down in paragraph (6) shall also be applied to any additional information provided in the course of a site inspection or site visit.

CHAPTER IX

THE PROCUREMENT DOCUMENTS

Section 57 (1) With the exception of additional information provided during a procurement procedure and other exceptions specified for each type of procedure, the procurement documents shall be made available by contracting authorities at the time of the publication or dispatch of the call for competition. In order to facilitate the submission of appropriate tenders and requests to participate, and with the exception of negotiated procedures without prior publication, in addition to the documents specified in this Act, the following procurement documents supplementing the invitation shall be made available by contracting authorities:

a) the draft contract, with the exception of negotiated procedures and competitive dialogues, where a contracting authority, instead of providing a draft contract, may specify only the contract terms and conditions known by him (draft contract and contract terms and conditions hereinafter jointly “draft contract”),

b) information necessary for tenderers and candidates regarding the preparation of the tender or the request to participate, the list of certificates and declarations to be submitted as part of the tender or the request to participate, and a standard form of the European Single Procurement Document. Contracting authorities may provide further recommended samples for certificates and declarations.

(2) The procurement documents shall be accessed for each tender or request to participate electronically by at least one tenderer, candidate or a subcontractor mentioned in the tender or request to participate before the expiry of the time limit for the submission of tenders or, in a procedure consisting of more than one stage, the time limit for requests to participate.

CHAPTER X

REQUIREMENTS REGARDING THE SUBJECT-MATTER OF THE PUBLIC PROCUREMENT

Technical specifications

Section 58 (1) The contracting authority shall specify the subject-matter and quantity of a public procurement, as well as the optional lots (if any), in the call for competition and, if the procedure was launched with a prior information notice, in the prior information notice.

(2) The contracting authority shall lay down the technical specifications of the subject-matter of the public procurement in the call for competition or in the other procurement documents. The technical specifications mean a set of provisions defining characteristics

required concerning the subject-matter of the public procurement, on the basis of which the subject -matter of the public procurement can be described in such a manner that it meets its designation required by the contracting authority. Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even if such factors do not have an impact on the features of the works, supplies or services concerned, provided that they are linked to the subject-matter of the contract [section 76 (7)] and are proportionate to its value and its objectives.

(3) Technical specifications shall ensure that economic operators have equal access and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(4) The detailed rules pertaining to the determination and contents of technical specifications shall be laid down in a separate law.

Requirements concerning labels and certification

Section 59 (1) If contracting authorities intend to procure works, supplies or services with specific environmental, social or other characteristics, or intend to take such characteristics into account during evaluation, the contracting authorities may require in the technical specifications or as part of the contract performance conditions or the award criteria the use of a specific label, provided that all of the following conditions are fulfilled:

- a)* the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the subject-matter of the contract;
- b)* the label requirements are based on objectively verifiable and non-discriminatory criteria;
- c)* the labels are accepted in an open and transparent procedure in which all relevant stakeholders, including government organs, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- d)* the labels are accessible to all interested party;
- e)* the label requirements are set by a third party over which the economic operator applying for the label cannot exercise any influence.

(2) If the contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are to be met or taken into account in the evaluation.

(3) Contracting authorities requiring a specific label as proof of compliance shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements. If an economic operator demonstrates that he had no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the time limit for the submission of tenders, for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, including in particular a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or, in a case described in paragraph (2), the specific requirements indicated by the contracting authority.

(4) If a label fulfils the conditions provided in paragraph (1) *b)*, *c)*, *d)* and *e)* but also sets out requirements unrelated to the subject-matter of the contract, contracting authorities shall not be entitled to require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Section 60 (1) Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions. If the contracting authority require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authority.

(2) For the purposes of paragraph (1), a conformity assessment body means an accredited body performing conformity assessment activities (calibration, testing, certification, and inspection) within the meaning of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

(3) If an economic operator demonstrates that he had no possibility of obtaining the certificate or test report issued by the specific body indicated by the contracting authority or an equivalent certificate or test report within the time limit for the submission of tenders, for reasons that are not attributable to that economic operator, the contracting authority shall, in addition to those mentioned in paragraph (1), also accept other means of proof, in particular a technical dossier from the manufacturer. In that case, the economic operator concerned shall prove that the works, supplies or services to be provided by him fulfil the requirements or criteria indicated by the contracting authority.

Submitting variants and tendering for lots

Section 61 (1) A contracting authority shall indicate in the call for competition if submitting variants is permitted or required. If submitting variants is required or permitted, it shall be indicated whether or not a variant may be submitted only if a tender, which is not regarded as variant, is submitted.

(2) Minimum requirements to be met by the variants and other requirements applicable to the variants shall be indicated in the procurement documents. Only requirements that are related to the subject-matter of the contract may be applied to variants [section 76 (7)]. Contracting authorities shall define award criteria so that they can be applied to variants and tenders that are not regarded as variants.

(3) It shall not affect the suitability of a variant that, if the variant was accepted, the subject-matter of the public procurement would be services instead of supplies, or supplies instead of services.

(4) The contracting authority shall examine if tendering for lots is allowed by the nature of the subject-matter of the procurement, and other circumstances relating to the contract. If tendering for lots is not permitted by the contracting authority, the reasons for it shall be specified in the call for competition.

(5) If tendering for lots is permitted, the call for competition shall specify the lots of the subject-matter of the contract for which a separate tender or request to participate may be submitted. If tendering for lots is permitted by the contracting authority, the estimated value, subject-matter, and quantity of public procurement shall also be specified for each lot.

(6) Contracting authorities shall indicate in the call for competition, whether tenders (requests to participate) may be submitted for one, for several or for all of the lots. Contracting authorities may, even if tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the call for competition. In such a case, the procurement documents shall specify objective and non-discriminatory criteria to be taken into account by the contracting authority when deciding which lots will be awarded to a tenderer, if the tenderer concerned submitted the most advantageous tender to the contracting authority

according to the award criteria for more lots than the maximum number of lots per tenderer. If a lot may not be awarded to a given tenderer, the tenderer that submitted the second-best tender according to the award criteria shall be declared the successful tenderer.

CHAPTER XI

REQUIREMENTS CONCERNING TENDERERS AND CANDIDATES

Grounds for exclusion

Section 62 (1) An economic operator may not participate in a procedure as a tenderer, candidate or subcontractor, and may not participate in the certification of suitability, if

a) it committed any of the following criminal offences and the commission of the criminal offence was established in a final and binding court judgment during the last five years, until it is absolved from the adverse legal consequences of having a criminal record:

aa) participation in a criminal organisation, including the commission of a criminal offence in a criminal organisation within the meaning of Act IV of 1978 on the Criminal Code (hereinafter “Act IV of 1978”) or Act C of 2012 on the Criminal Code (hereinafter “the Btk.”);

ab) offering a bribe, trading in influence, buying influence, offering a bribe in international relations, buying influence in international relations, misappropriation, mismanagement within the meaning of Act IV of 1978, the corruption criminal offences specified in Chapter XXVII of the Btk., or misappropriation or mismanagement within the meaning of the Btk.;

ac) budget fraud or violation of the financial interests of the European Communities within the meaning of Act IV of 1978, or budget fraud within the meaning of the Btk.;

ad) terrorist act, or instigation, abetment or attempt related to a terrorist act, within the meaning of Act IV of 1978 or the Btk.;

ae) money laundering within the meaning of Act IV of 1978 or the Btk., or terrorism financing within the meaning of the Btk.;

af) trafficking in human beings within the meaning of Act IV of 1978 or the Btk., or forced labour within the meaning of the Btk.;

ag) concluding an agreement restricting competition in a public procurement or concession procedure within the meaning of Act IV of 1978 or the Btk.;

ah) any criminal offence similar to those mentioned in points *a)* to *g)* under the personal law of the economic operator;

b) it has not performed a tax, customs, or social security payment obligation that has been overdue for over one year, unless it pays or received a moratorium regarding its debt and any interest and fine attached to it by the time of submitting its tender or request to participate;

c) it is subject to winding-up, a court order launching a bankruptcy procedure against it was published, the liquidation against it has been ordered with final and binding effect, or the economic operator is in or subject to a similar situation or procedure under its personal law;

d) it suspended its business activities or its business activities have been suspended;

e) the commission of a criminal offence concerning its economic or professional activities was established in a final and binding court judgment in the last three years;

f) its activities were restricted by a final and binding court judgment under section 5 (2) *b)* or, in a manner relevant to the given public procurement procedure under section 5 (2) *c)* or *d)* of Act CIV of 2001 on measures applicable to legal persons under criminal law, during the period of prohibition, or if the activities of the tenderer were restricted by another court with final and binding effect for or in another similar reason or manner;

g) it was prohibited from participating in public procurement procedures under section 165 (2) *f)* permanently or with final and binding effect, during the period specified in the decision

of the Public Procurement Arbitration Board having reached administrative finality or, if an administrative court action challenging the decision of the Public Procurement Arbitration Board was brought, in the final and binding judgment

h) it supplied false data or made false declaration in a previous public procurement or concession procedure and, was therefore excluded from that procedure, for a period of three years after the closing of the public procurement procedure concerned, provided that no legal remedy was sought regarding the exclusion or, if legal remedy was sought regarding the exclusion, the decision adopted by the contracting authority concerning the exclusion was declared lawful and the provision of false data was established by a final decision of the Public Procurement Arbitration Board or, if an administrative court action challenging the decision of the Public Procurement Arbitration Board was brought, a final and binding court judgment delivered within the last three years;

i) in the course of the fulfilment of the obligation concerning data provision obligations stipulated in the given procedure, it provides incorrect data (hereinafter “false data”) or makes any declarations containing false data, or, despite its declaration submitted as preliminary certification during the procedure, it is unable to supply the information required for the fulfilment of the selection criteria, the verification of the absence of grounds for exclusion or the mentioned in section 82 (5) (hereinafter jointly “false declaration”), provided that

ia) the false data or statement influences the decision of the contracting authority concerning exclusion, suitability, compliance of the tender with technical specifications, or the evaluation of tenders, and

ib) the economic operator provided false data or made a false declaration intentionally, or, if acting with the care that can be generally expected under the given circumstances, it should have been aware of that the data provided is incorrect or the declaration made does not comply with the contents of available certifications;

j) the contracting authority can prove that the economic operator attempted to unduly influence the decision-making process of the contracting authority in the procedure concerned in an unlawful manner, or attempted to obtain confidential information that would have provided it with an unlawful advantage in the public procurement procedure, or the economic operator was excluded from a previous public procurement or concession procedure for such a reason and no legal remedy was sought regarding the exclusion within three years after the closure of the public procurement procedure concerned;

k) any of the following conditions is met concerning the economic operator:

ka) it has tax residence in a country that is not a member of the European Union, the European Economic Area, or the Organisation for Economic Cooperation and Development, is not a signatory to the Agreement on Government Procurement of the World Trade Organization, is not an overseas country or territory within the meaning of Article 198 TFEU, or does not have an agreement with Hungary on avoiding double taxation or a bilateral agreement with the European Union in the field of public procurement;

kb) it is a company that is unable to identify its beneficial owner within the meaning of section 38 (3) *a)* to *b)* or *d)* of Act LIII of 2017 on the prevention and combating of money laundering and terrorist financing, or

kc) the condition specified in sub-point *kb)* is met by any legal person or organisation having legal capacity under its personal law that owns or holds, directly or indirectly, over 25% of the shares or votes in the economic operator;

l) in case of employing any third-country national subject to licensing in Hungary, it committed an infringement that was established under section 7/A of Act LXXV of 1996 on labour inspection by the labour authority in an administrative decision having reached administrative finality or court judgment, if the decision was challenged in an administrative court action, becoming final and binding in the last two years, and for which a payment

obligation to the central budget or a public order fine within the meaning of the Act on the entry and residence of third-country nationals was imposed by the immigration authority;

m) if a distortion of competition resulting from conflict of interest as per section 25 or from the prior involvement of the economic operator in the preparation of the procurement procedure cannot be remedied by a measure other than the exclusion of the economic operator;

n) it committed an infringement mentioned in section 11 of the Tpv. or Article 101 TFEU that was established and punished by a fine in an enforceable competition decision having reached administrative finality, adopted within three years, or a final and enforceable court decision, if the competition decision was challenged in an administrative court action; or if such a violation by the tenderer was established, and a fine was imposed, by another competition authority in a decision having reached administrative finality or by a court with final and binding effect within the last three years;

o) the contracting authority can prove that the tenderer committed an infringement mentioned in section 11 of the Tpv. or Article 101 TFEU in the course of the public procurement procedure concerned, unless the economic operator reveals its acts violating section 11 of the Tpv. or Article 101 TFEU to the Hungarian Competition Authority before submitting its tender or, in a negotiated procedure or a competitive dialogue, final tender, and the conditions of refraining from applying a fine under section 78/A (2) of the Tpv. are established by the Hungarian Competition Authority in an order within the meaning of section 78/C (2) of the Tpv.;

p) it did not use the amount advanced to it under a contract awarded in the public procurement or concession procedure in line with the contract, and it was established in a final and binding court judgment, administrative decision having reached administrative finality, or a final and binding court judgment delivered in an administrative court action brought to challenge the administrative decision, adopted in the last three years;

q) it committed a serious infringement of the provisions laid down in this Act regarding the performance of contracts awarded in a public procurement or concession procedure, and such infringement was established in decision of the Public Procurement Arbitration Board having reached administrative finality or a final and binding court judgment, if the decision of the Public Procurement Arbitration Board was challenged in an administrative court action, adopted in the last 90 days.

(2) Furthermore, an economic operator may not participate in a procedure as a tenderer, candidate or subcontractor, and may not participate in the certification of suitability, if:

a) a final and binding sentence court judgment was passed against an executive officer, supervisory board member, manager, or, regarding companies, the sole member of the economic operator, a member of its similar management or supervisory body under its personal law, or a person with similar decision-making powers under its personal law within the last five years for committing a criminal offence mentioned in paragraph (1) *a)*, and he has not been exempted from the adverse legal consequences of having a criminal record, or

b) the final and binding court judgment for committing a criminal offence specified in paragraph (1) *a)* was passed in the last five years, or any shorter period required for being exempted from the adverse legal consequences of having a criminal record regarding the given criminal offence, against a person who, at the time of committing the criminal offence, served as or was an executive officer, supervisory board member, manager, or, regarding companies, the sole member of the economic operator, a member of its similar management or supervisory body under its personal law, or a person with similar decision-making powers.

(3) With regard to economic operators established in Hungary, a tax payment obligation mentioned in paragraph (1) *b)* shall be construed to mean a tax payment obligation recorded by the national tax and customs authority.

(4) Paragraph (1) *c*) shall not be applied, if a contracting authority conducts a negotiated procedure without prior publication under section 98 (4) *d*).

(5) With regard to a tenderer established in another Member State of the European Union or a foreign national person who is subject to the criminal jurisdiction of another country, the expression similar criminal offences mentioned in paragraph (1) *a) ah*) shall be construed to mean the following:

a) offences relating to participation in a criminal organisation within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, with regard to the criminal offence of participation in a criminal organisation,

b) corruption within the meaning of Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (*c*) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, with regard to the criminal offences of offering a bribe, acceptance of a bribe, offering a bribe to a public officer, acceptance of a bribe by a public officer, offering a bribe in the proceedings of a court or authority, and acceptance of a bribe in the proceedings of a court or authority,

c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities, with regard to the criminal offence of budget fraud,

d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision, with regard to terrorist acts,

e) money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, with regard to the criminal offences of money laundering and terrorism financing,

f) child labour and other forms of trafficking in human beings within the meaning of Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, with regard to trafficking in human beings and forced labour.

(5a) Paragraph (1) *n*) shall not apply to a public procurement procedure if the Government, with a view to ensuring competition and acting on the motion of the minister responsible for public procurement, issues an individual decision on granting an exemption upon request by a tenderer. An exemption may be requested by a tenderer prior to the launch of a public procurement procedure, if a considerable number of economic operators on the market affected by the public procurement procedure is subject to the ground for exclusion specified in paragraph (1) *n*), excluding economic operators that may not be excluded from the public procurement procedure due to self-cleaning within the meaning of section 64. Contracting authorities shall indicate in the call for competition that they do not apply the ground for exclusion specified in paragraph (1) *n*) in a public procurement procedure with regard to the decision of the Government.

(6) Contracting authorities shall refer to the grounds for exclusion specified in paragraphs (1) and (2) in the call for competition.

(7) Contracting authorities shall notify the Public Procurement Authority of any exclusion under paragraph (1) *i*) and *j*) and the date of exclusion, indicating the name and address (seat, residence) of the tenderer, candidate, subcontractor or organisation participating in the certification of suitability, the subject-matter and reference number of the procedure, the date

of the exclusion, and the date when the excluded economic operator became aware of the exclusion.

Section 63 (1) A contracting authority may stipulate in a call for competition that an economic operator may not participate in a procedure as a tenderer, candidate or subcontractor, and may not participate in the certification of suitability, if:

a) it committed a serious violation of the environmental, social, and labour requirements mentioned in section 73 (4), and such violation was established in a final and binding court judgment, administrative decision having reached administrative finality, or a final and binding court judgment delivered in an administrative court action brought to challenge the administrative decision, adopted in the last three years;

b) it committed a serious violation of an obligation of its profession laid in the laws, with the exception of cases specified in point *c)*, or the ethical proceedings conducted by of a professional organisation specified in separate law established that it committed a serious violation of professional and ethical rules, and such violation was established in a final and binding court judgment, administrative decision having reached administrative finality, or a final and binding court judgment delivered in an administrative court action brought to challenge the administrative decision, adopted in the last three years;

c) it committed a serious breach of a contractual obligation undertaken in a previous public procurement or concession procedure in the last three years, and the breach of the contract resulted in the unilateral termination or cancellation of that previous contract or the enforcement of a claim for damages or other sanctions available under the contract, or if an act the successful tenderer is accountable for resulted, in whole or in part, in the frustration of the contract;

d) it committed a breach of contract against a subcontractor with regard to a contract awarded in a public procurement or concession procedure, as established in a final and binding court judgment within three years, involving a failure to pay over 10% of a final or interim invoice of the subcontractor, even though the contracting authority, as a party to the contract, performed its payment obligations in due time.

(2) Contracting authorities shall specify any ground for exclusion applied under paragraph (1) in the call for competition.

(3) The periods mentioned in paragraph (1) and in section 62 (1) *a), b), e), h), j), l), n)* and *p)* shall be calculated from the date of verifying the non-existence of the ground for exclusion. If an economic operator is subject to any ground for exclusion to be applied in a procedure, it shall be excluded from the procedure by the contracting authority. Contracting authorities shall verify pursuant to this Act and to the separate law whether or not an economic operator is subject to any ground for exclusion.

Self-cleaning

Section 64 (1) Despite the existence of any ground for exclusion with the exception of grounds for exclusion specified in section 62 (1) *b)* and *f)*, a tenderer, candidate, subcontractor or organisation participating in the certification of suitability may not be excluded from a public procurement procedure, if the economic operator concerned implemented measures prior to the submission of its tender or request to participate that are sufficient to demonstrate its reliability despite the existence of a ground for exclusion, as established in decision having reached administrative finality of the Public Procurement Authority pursuant to section 188 (4) or, if such a decision is challenged in an administrative court action, a final and binding court judgment pursuant to section 188 (5).

(2) If the reliability of an economic operator subject to the respective ground for exclusion is established in a decision having reached administrative finality of the Public Procurement Authority pursuant to section 188 (4) or, if such a decision is challenged in an administrative

court action, a final and binding court judgment pursuant to section 188 (5), the contracting authority shall accept it as such without further consideration. The final and binding decision shall be submitted by the economic operator together with the European Single Procurement Document.

Selection criteria

Section 65 (1) Contracting authorities may specify selection criteria for tendering by specifying conditions concerning the following:

- a) economic and financial standing;
- b) technical and professional ability;
- c) enrolment in a register of the country in which the economic operator is established, or possession of a permit, license, or membership in an organisation or chamber required in the country of establishment, if it is necessary for the fulfilment of the contract.

(2) The contracting authority is entitled to decide not to specify any selection criteria regarding technical and professional suitability only in exceptional cases justified in the procurement documents, provided that, according to the individual characteristics of the procurement, the application of any such selection criteria is unnecessary for adequate performance. No justification is necessary, if due to the legal basis for conducting a negotiated procedure without prior publication, only one economic operator is invited to submit tender. All selection criteria shall be specified in the call for competition accurately. In this respect and with regard to paragraph (1), the contracting authority shall specify the circumstances the existence or absence of which, or the degree of deficiencies of such circumstances which prevent the contracting authority from qualifying a tenderer or candidate suitable for the performance of the contract. The documents to be submitted as evidence of compliance with any selection criteria shall be clearly specified in the call for competition or, in addition to a short description of the types of document to be submitted in the call for competition, in the other procurement documents.

(3) Contracting authorities shall limit the determination of selection criteria to the subject-matter of the procurement, while taking principles pertaining to equal opportunities, equal treatment, and the fair competition into account; selection criteria shall be limited to conditions that are objectively necessary for the fulfilment of the contract, also taking the estimated value of procurement into account.

(4) The possible methods of certification of suitability and the detailed requirements for establishment of selection criteria shall be laid down in a separate law.

(5) In line with paragraph (3), a requirement shall be considered objectively necessary concerning references, if the contracting authority requires certification regarding the fulfilment of a previous supplies, works or services contract if the subject-matter of the previous contract is technically equivalent to the public procurement concerned and the value of the previous contract reaches up to 75% of the value of public procurement concerned, calculated without applying section 19 (3), or, if defined by quantity, the quantity or volume of the previous contract reaches up to 75% of the public procurement concerned. Minimum requirements against tenderers concerning turnover shall be defined by contracting authorities so that an economic operator may not be considered unsuitable, if either its total turnover for the business year or years considered by the contracting authority reaches the value of the contract concerned, calculated without applying section 19 (3), if the total annual turnover is examined, or its revenue pertaining to the subject of the procurement reaches 75% of the value of the contract concerned, calculated without applying section 19 (3), if the turnover pertaining to the subject-matter of the contract is examined.

(6) A defined selection criteria may also be met jointly by joint tenderers or joint candidates. As a consequence of the possibility to meet such requirements jointly, it shall be sufficient if a

requirement that may be reasonably applied to economic operators only individually is met by one of them only.

(7) A defined selection criteria may also be met by a tenderer or candidate by relying on the capacities of another organisation or person, regardless to the legal nature of their legal relationship. In such cases, that organisation and the selection criterion or criteria, identified by referring to the relevant section of the call for competition, for the certification of which the tenderer or candidate relies on the capacities of that organisation shall be specified in the tender or, in a procedure consisting of more than one stage, in the request to participate. With the exception of cases described in paragraph (8), a document containing such an obligation undertaken by the organisation providing resources in a contract or pre-contract shall be attached to the tender or request to participate, which confirms that the resources that are necessary for the fulfilment of the contract will be available during the period of fulfilling the contract.

(8) The organisation, whose data are used by a tenderer or candidate to certify its economic and financial standing shall be liable as a surety, within the meaning of section 6:419 of the Ptk., for any and all damage that may arise on the side of the contracting authority from any non-performance or defective performance by the tenderer.

(9) Pursuant to the implementing decree of this Act, an economic operator may not rely on the capacities of an organisation to meet a requirement pertaining to the availability of professionals, including their educational and professional qualifications, or references on relevant professional experience, unless the degree of involvement of the other organisation in the fulfilment of the contract or the contract part for which those capacities guarantee the presence of the expertise and professional experiences expressed by the selection criteria in the course of fulfilment. The capacities of another organisation may not be used to certify compliance with a criterion mentioned in paragraph (1) *c*), unless the task, for which enrolment in a register, membership in an organisation, or holding of a licence is required, is performed by the organisation concerned. This shall be confirmed by the undertaking to be submitted under paragraph (7). With regard to the other organisation certifying compliance with a reference-related requirement, the undertaking mentioned in paragraph (7) shall confirm that that organisation is actually involved in the fulfilment of the contract; in the course of fulfilling a contract, a contracting authority shall monitor that the degree of involvement in the fulfilment of the contract is in line with the provisions laid down in this paragraph.

(10) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, if the tender is submitted by joint tenderers, by one of the joint tenderers. In such a case and notwithstanding paragraph (7), a tenderer or candidate may not rely on the capacities of another organisation to certify compliance with a selection criterion mentioned in paragraph (9), and such tasks may not be carried out by a subcontractor in the course of performance.

(11) In order to certify its suitability, the economic operator may not use data it would be entitled to use directly in case of legal succession, without involving the legal predecessor according to paragraph (7), if the legal predecessor economic operator is or, if the legal predecessor existed despite having been terminated, would be subject to any ground for exclusion from the procedure. In such a case, the economic operator may take the opportunity provided under section 64 and may use the data of its legal predecessor to certify its suitability, if it proves its reliability concerning the ground for exclusion that arose earlier.

CHAPTER XII

TENDERS AND REQUESTS TO PARTICIPATE

Drawing up of a tender or request to participate

Section 66 (1) Economic operators draw up and submit their tender or request to participate in line with the content and form-related requirements specified in the procurement documents.

(2) A tender shall contain, among others, an explicit statement by the tenderer regarding the conditions of the contract notice or the invitation to tender, the conclusion and fulfilment of the contract, and the consideration sought.

(3) The candidate may not submit a tender as part of its request to participate.

(4) In addition to submitting the other required documents, a tenderer shall make a statement in its tender or, in a procedure consisting of more than one stage, its request to participate as to whether or not it qualifies as a micro, small, or medium-sized enterprise under the Act on small and medium-sized undertakings and the support of their development.

(5) A tender or request to participate shall include a summary sheet indicating the information specified in section 68 (4) or section 68 (5) concerning the tender or request to participate, respectively.

(6) A contracting authority may require in the call for competition that the following shall be specified in a tender or, in a procedure consisting of more than one stage, in a request to participate:

a) any part (parts) of the public procurement for the fulfilment of which a tenderer (candidate) intends to use a subcontractor,

b) the subcontractors to be employed for such parts, if already known at the time of the submission of the tender or request to participate.

Section 67 (1) The economic operator shall submit its statement included in a European Single Procurement Document, concerning the non-existence of the grounds for exclusion, compliance with the selection criteria, and with the objective criteria specified in section 82 (5), if any, in its tender or, in a procedure consisting of more than one stage, its request to participate.

(2) In a document under paragraph (1), economic operators shall state that no ground for exclusion exists and selection criteria are met, and they shall provide all information required in the procedure, including data concerning their compliance with the selection criteria. Contracting authorities shall provide guidance in the procurement documents as to the level of details economic operators are required to provide in the European Single Procurement Document regarding their compliance with the selection criteria. If not specified in the implementing decree of this Act, the statement shall specify the organ authorised to issue a certificate to be submitted under section 69 (4), and it shall include the data necessary and a statement of consent, if necessary, to the use a database within the meaning of section 69 (11).

(3) If the selection criteria are met by a tenderer or candidate by relying on the capacities of another organisation, the tender or, in a procedure consisting of more than one stage, the request to participate shall include a statement made by the organisation providing resources according to paragraph (1), and, if the submission of certificates is required, that organisation shall certify its compliance with the given selection criterion, and only with the given selection criterion, in line with the required certification methods.

(4) A tender or, in a procedure consisting of more than one stage, a request to participate shall include a statement by the tenderer or candidate that it will not use any subcontractor subject to a ground for exclusion specified in section 62 or, if required for the given public procurement procedure, in section 63 for the purpose of performing the contract. The

statement shall also be submitted, even if the contracting authority did not require the subcontractors already known to be identified in the procedure.

The submission and opening of tenders and requests to participate

Section 68 (1) The documents containing tenders or requests to participate shall be opened upon the expiry of the time limit for the submission of tenders or requests to participate.

(2) If a request to participate or tender is submitted by non-electronic means, the tender or request to participate shall be submitted in one single closed written copy directly at, or via post addressed to the address specified in the contract notice, request for tenders, invitation to tender or invitation to participate by the expiry of the time limit for the submission of tenders or requests to participate. Contracting authorities may also require the submission of electronic copies.

(3) When requests to participate and tenders submitted by non-electronic means are opened only by the contracting authority, the tenderers (candidates), other persons invited by them, and, if the contracting authority received a subsidy for the procurement, other persons and the representatives of organs specified in the separate law. These persons shall be entitled to inspect the summary sheet during the opening of tenders.

(4) When the tenders are being opened, the name and address (seat, residence) of tenderers, and the main quantifiable data that are to be evaluated according to the award criteria shall be presented. The amount of coverage available may also be presented before the opening of tenders.

(5) The name and address (seat, residence) of candidates shall be presented during the opening of requests to participate.

(6) The opening of tenders and requests to participate, as well as the presentation of data mentioned in paragraphs (4) to (5) shall be recorded in minutes by the contracting authority, and the minutes shall be sent to all tenderer or candidates within five days after the opening of tenders. The submission of a tender or request to participate after the expiry of the time limit shall also be recorded in minutes, and the minutes shall be sent to all tenderer or candidates, including the belated ones.

CHAPTER XIII

THE EVALUATION OF TENDERS AND REQUESTS TO PARTICIPATE

The process of evaluation

Section 69 (1) In the course of the evaluation of tenders and requests to participate, contracting authorities shall verify that the tenders and requests to participate meet the conditions specified in the procurement documents and other conditions specified in the laws.

(2) Contracting authorities shall determine if a tender or request to participate is inadmissible, and if an economic operator is to be excluded from the procedure. During evaluation, contracting authorities shall accept the self-declaration made in the European Single Procurement Document as preliminary evidence concerning the verification of selection criteria, grounds for exclusion and other criteria mentioned in section 82 (5), and shall verify the suitability of requests to participate and tenders from all other respects, and shall carry out the measures specified in sections 71 to 72, if necessary. In addition to the verification of self-declarations made in a European Single Procurement Document (in a procedure consisting of more than one stage, during the participation stage), contracting authorities shall also verify the contents of databases mentioned in the declaration and available according to paragraph (11).

(3) If a tender is considered suitable according to paragraph (2), it shall be assessed by the contracting authority on the basis of the award criteria.

(4) Before deciding on the result of a procedure, contracting authorities shall invite the tenderer who, having regard to the award criteria, submitted the most advantageous tender, to submit the certificates required by the procurement documents concerning the grounds for exclusion, selection criteria and the objective criteria according to section 82 (5), if any, within an appropriate time limit. The organisation providing its resources shall submit certificates concerning the selection criteria only. Certificates submitted by an economic operator in its tender or request to participate without being invited by the contracting authority under this section to do so may be ignored by the contracting authority; it shall suffice to include them in the evaluation only before making a decision on closing the procedure and with regard to tenderers the contracting authority intended to invite to submit certificates. If a tenderer has already submitted its certificates, the contracting authority shall not invite the tenderer to submit its certificates again but shall consider the previously submitted certificates as if they were submitted upon invitation by the contracting authority, and shall request the remedy of deficiencies or further information, if necessary.

(5) If a tenderer mentioned in paragraph (4) fails to submit or fails to submit its certificates adequately even after the remedy of deficiencies or further information was requested (including cases where a certificate does not support or is inconsistent with a self-declaration made in the European Single Procurement Document), it shall be ignored by the contracting authority, and the contracting authority shall invite the tenderer who, having regard to the award criteria, submitted the most advantageous tender, to submit the certificates according to paragraph (4). The contracting authority may only declare a tenderer to be the successful tenderer in the decision closing the procedure, if that tenderer performed its obligation to submit certificates regarding the selection criteria, grounds for exclusion and other criteria mentioned in section 82 (5) pursuant to the provisions of this Act and separate laws.

(6) Before making a decision closing the procedure, the contracting authority may decide to invite, in addition to the tenderer with the most advantageous tender, according to paragraph (4), a certain number of tenderers as well who submitted the most advantages tenders ranked after that tender to submit their certificates. A contracting authority may not identify the tenderer with the second most advantageous tender in the summary, unless that tenderer was also invited to submit its certificate before the decision closing the procedure was made. The option mentioned in this section may also be taken by a contracting authority, if, having regard to the evaluation method, the relative ranking of tenderers would remain unchanged in case a tender was ignored.

(7) If any reasonable doubt arises on the side of a contracting authority regarding the truthfulness of the self-declaration made by an economic operator in the course of the evaluation of the requests to participate and tenders, the contracting authority may invite the tenderer or candidate concerned at any time to submit the certificates mentioned in paragraph (4) within five working days.

(8) If a contracting authority opted to determine the range of economic operators to be invited to tender at the participation stage of a procedure consisting of more than one stage, and the number of requests to participate submitted in the given public procurement procedure exceeds that range, the contracting authority shall require the submission of the certificates mentioned in paragraph (4) during the evaluation of the requests to participate, and the result of the participation stage shall be established in light of such certificates.

(9) The ex-post certification obligation of a tenderer or candidate shall serve to ensure that the values taken into account by a contracting authority on the basis of a European Single Procurement Document regarding the selection criteria, the non-existence of any ground for exclusion, and the criteria mentioned in section 82 (5) are met. If the values taken into

account regarding the selection criteria, the non-existence of any ground for exclusion, and the criteria mentioned in section 82 (5) are met, the tender or request to participate shall be considered acceptable, even if the submitted certificates differ from the data indicated in the previous self-declaration. However, the ranking of candidates to be invited to tender shall not be changed, even if the values confirmed by the certificates submitted ex-post exceed the figures specified in the previous self-declaration.

(10) The certification methods that the contracting authorities must accept and the documents that the contracting authorities may require to submit with regard to suitability and grounds for exclusion shall be determined by the Government in a decree.

(11) The submission of a certificate may not be required, if the contracting authority can have direct access to the certificate or any other relevant information through a free electronic database operated in a Member State of the European Union and designated in the e-Certis system by the relevant Member State as a database suitable for certification. If the register is not available in Hungarian language, the contracting authority may request the submission of the Hungarian translation of the relevant certificate or information. With regard to Hungarian registers, official registers and other registers designated in separate laws shall be considered suitable for replacing the submission of a certificate. The Public Procurement Authority shall arrange for the publication of the list of Hungarian registers in the e-Certis system.

(12) With regard to selection criteria, economic and professional chambers may establish a list of approved tenderers concerning the activities of their members, as regulated in detail by separate laws. A list of approved tenderers shall be registered by the Public Procurement Authority, and the Public Procurement Authority shall verify that the conditions for inclusion in the list meets the requirements laid down in this Act and in separate laws.

(13) Contracting authorities may request information from other public and local bodies, public authorities, and economic operators in order to verify the contents of certificates and self-declarations submitted in a tender or request to participate. The organisation requested shall provide the information within three working days.

(14) In order to assess suitability and non-existence of the grounds for exclusion, contracting authorities may manage the natural identification data of persons named in a tender or request to participate, as well as data pertaining to their educational and professional qualifications, professional experience, membership in an organisation or statutory professional body, and membership in a company. In the course of verifying that no ground for exclusion exists, an official certificate showing data pertaining to a clean criminal record may also be requested in line with the rules on certification laid down in a separate law. The declaration specified in a separate law and required to show that no ground for exclusion exists may also be a declaration made by its member in front of an economic or professional chamber.

Section 70 (1) Contracting authorities shall evaluate the tenders within the shortest possible period. Notwithstanding the provisions laid down in section 69, a contracting authority may decide to declare the procedure ineffective without evaluating the tenders, if all final tenders submitted in the given procedure exceed the amount of available coverage as certified pursuant to section 75 (4). If a contracting authority does not carry out the evaluation of tenders, it may not launch a negotiated procedure without prior publication under section 98 (2) *a*) due to the ineffective procedure. Notwithstanding the provisions laid down in section 69, a contracting authority may also decide to declare the procedure ineffective without evaluating the tenders, if the failure of the procedure is based on section 75 (2) *e*).

(2) If a contracting authority is unable to carry out the evaluation within a time-frame that would allow the tenderers to be notified about the decision closing the procedure during the period during which the tenderer must maintain its tender, it may invite the tenderers to maintain their tenders until a specified date, but that an extension of the binding period of

tenders may not exceed sixty days calculated from the original date of expiry of the period during which the tenderer must maintain its tender. If a tenderer fails to make a statement by the time limit set by a contracting authority, it shall be deemed to maintain its tender until the date specified by the contracting authority. If a tenderer does not maintain its tender, the tender shall be ignored in the subsequent stage of the procedure following the original date of expiry of the period during which the tenderer must maintain its tender.

(3) Contracting authorities shall carry out the evaluation of requests to participate within the shortest possible period. If the evaluation is not completed by the date indicated in the invitation to participate as the date of sending out the invitations to tender, each candidate shall be notified simultaneously about the new date set for sending out the invitations to tender, which shall not be later than sixty days calculated from the original date, and the candidate shall be notified about the result of the participation stage by this date.

Remedy of deficiencies, request for further information, and correction of calculation errors

Section 71 (1) Contracting authorities shall allow all tenderers and candidates to remedy deficiencies under identical terms and conditions, and shall request further information from any tenderer with a view to clarifying the meaning of any ambiguous declaration, statement, or certificate that may have been submitted as part of a tender or request to participate.

(2) Contracting authorities shall send out invitations to remedy deficiencies or provide further information to the tenderers or candidates concerned directly and simultaneously with notifying the other tenderers or candidates, and also setting a time limit and, in an invitation to remedy deficiencies, identifying the deficiencies to be remedied.

(3) The remedy of deficiencies shall aim at bringing a tender or request to participate in line with provisions laid down in the procurement documents or the laws. In the course of remedying deficiencies, documents forming part of a tender or request to participate, including documents required under section 69 (4) to (5), may also be modified or supplemented.

(4) If a contracting authority establishes that a tenderer or candidate, in order to certify its suitability, relies on the capacities of an economic operator or names a subcontractor with regard to whom a ground for exclusion exists under section 62 (1) *a) to h), k) to n), or p) to q)* or, due to its behaviour in a previous procedure, under section 62 (1) *j)*, or, if applied by the contracting authority, under section 63, the economic operator subject to the ground for exclusion shall be excluded from the procedure, and the tenderer or candidate shall be invited, if necessary, to name another economic operator instead of the excluded economic operator by way of remedy of deficiencies.

(5) If there is a pending time limit, specified in an invitation or notice mentioned in paragraph (2), for remedying deficiencies or providing further information with regard to a tenderer or candidate, the tenderer or candidate concerned may also remedy deficiencies concerning which it was originally not requested by the contracting authority.

(6) A contracting authority shall request another round of remedy of deficiencies, if it identifies a deficiency that was not covered in a previous notification to remedy deficiencies. A contracting authority shall not be obliged to request another round of remedy of deficiencies, if, by way of remedying its deficiencies, a tenderer or candidate involves in the procedure an economic operator that was not included in the tenderer or request to participate earlier, and the new round of remedy of deficiencies would be necessary concerning that economic operator, provided that it was indicated in the call for competition that further remedy of deficiencies would not be requested, or would be requested only with a limited scope, in such a case. A deficiency identified earlier may not be remedied in a subsequent round of remedy of deficiencies.

(7) A contracting authority may request further information only in line with paragraphs (1) to (2), and subject to the limitation that the requested information shall be necessary for the evaluation of tenders or requests to participate.

(8) Any remedy of deficiencies or provision of further information:

a) may not violate the principles laid down in section 2 (1) to (3) and (5), and

b) with regard to a tender document pertaining to the characteristics of the subject-matter of procurement, the method of performing the contractual obligations of a tenderer, or other term or condition of the contract, it shall be limited to correction or remedy of such insignificant errors and deficiencies relating to a peculiar detail, or, concerning flat-rate contracts, to the remedy, modification, supplementation, or erasure of such an item or unit price of a budget with prices (tender with detailed pricing), the change of which leaves the total tender price or an assessed sub-total, as well as the ranking of tenderers unchanged.

(9) By way of remedying deficiencies, the identity of experts to be presented upon request by a contracting authority for evaluation purposes under section 76 (3) *b)* may be changed only in the cases described in paragraph (4) or if necessary to meet a selection criterion, with the proviso that the new expert presented during the remedy of deficiencies shall be at least equivalent to the previous expert from all relevant aspects taken into account during evaluation. If a person with more experience or higher qualifications is presented in the course of remedying deficiencies, the contracting authority shall still take into account the data pertaining to the expert replaced; even in such a case, the remedy of deficiencies shall aim at achieving validity and may not result in any change to the factors taken into account for evaluation purposes. If there is any inconsistency between the data indicated on the summary sheet pertaining to experts presented for evaluation purposes according to section 76 (3) *b)* and the contents of a document submitted as part of a tender concerning an expert, and the data indicated on the summary sheet is not supported by way of providing further information or remedying deficiencies pertaining to the document concerning the expert already presented, the contracting authority shall take into account for evaluation purposes the data supported by the documents submitted concerning the expert, provided that that data is less advantageous during evaluation than the data indicated on the summary sheet. The contracting authority shall notify all tenderers participating in the procedure about the established value of such data evaluated simultaneously and without delay after establishing that value. If there is any inconsistency between the data indicated on the summary sheet and the contents of a document submitted concerning an expert, and the data indicated on the summary sheet is less advantageous during evaluation, the data indicated on the summary sheet shall be taken into account for evaluation purposes.

(10) Contracting authorities shall verify that the remedy of any deficiencies and the provision of further information is performed in line with the provisions of this section. If the provisions laid down in paragraphs (3) or (8) to (9) are violated, or if the remedy of deficiencies or the provision of further information is not performed at all or by the time limit set, only the original copy of the tender or request to participate may be taken into account for evaluation purposes.

(11) If a contracting authority detects a calculation error in a tender with an impact on evaluation, the error shall be corrected by the contracting authority by calculating the total consideration, or other data based on a calculation made in the tender, on the basis of the values (underlying data) specified for each item of the subject-matter of the public procurement procedure. Each tenderer shall be notified in writing about the correction of a calculation error simultaneously, directly, and without delay.

Abnormally low price and other disproportionate commitments

Section 72 (1) If an amount, which is specified in a tender as price or cost, or an individually evaluated price of cost element, and is taken into account as an award criterion, is abnormally low in light of the subject-matter of the contract to be awarded, the contracting authority shall request written data and justification serving as ground for the tender elements that are relevant for evaluation purposes, and shall notify the other tenderers of its request.

(2) Contracting authorities may take into consideration justifications which are based on objective factors and relate, in particular, to:

- a) cost-efficiency of the manufacturing process, the public works or the services provided,
- b) the technical solutions chosen,
- c) any exceptionally favourable conditions available to the tenderer for performance;
- d) originality of the supplies, services or work proposed by the tenderer,
- e) compliance with an environmental, social, or labour requirement mentioned in section 73 (4), or
- f) the possibility of the tenderer obtaining subsidy.

(3) With a view to deciding on the acceptability of a justification (if there is any doubt in that respect), contracting authorities may request further supplementary justifications from a tenderer, simultaneously with notifying other tenderers. The tenderer shall provide the contracting authority with all facts, data, and calculations regarding the veracity of its tender price, in order to enable the contracting authority to make a decision, after adequate consideration, regarding the veracity of the tender price. Contracting authorities shall declare a tender inadmissible, if the information provided are insufficient to show that the contract can be performed for the price or at the cost specified.

(4) A justification shall be considered inadequate in particular, if it can be established that the price or cost quoted in the tender is abnormally low, because the tender fails to comply with an environmental, social or labour requirement mentioned in section 73 (4). In the course of examining the veracity of a tender, contracting authorities may also request information from the tenderer regarding mandatory wages applicable in the given sector.

(5) If it is needed to decide on the veracity of a tender price, a contracting authority may also request other tenderers to provide data concerning certain tender elements for comparison purposes.

(6) A contracting authority may not declare a tender, which includes an abnormally low consideration due to subsidy, to be inadmissible, unless it requested information in that respect from the tenderer concerned in writing, and the tenderer failed to verify that it received the subsidy concerned in a lawful manner. If a tender is declared inadmissible on this ground, the contracting authority shall notify the European Commission accordingly through the Public Procurement Authority.

(7) The rules laid down in paragraphs (1) to (6) shall also be applied, if another tender element includes an undertaking that is deemed impossible. In such a case, the contracting authority shall declare the tender inadmissible; if the provided information is insufficient to show that the given commitment can be performed.

Inadmissible tenders and requests to participate

Section 73 (1) A tender or request to participate shall be deemed inadmissible, if

- a) it was submitted after the expiry of the time limit for the submission of tenders or requests to participate;
- b) the tenderer or candidate was excluded from the procedure;
- c) a subcontractor or an organisation certifying the suitability of a tenderer or candidate was excluded on a ground for exclusion specified in section 62 (1) *i*) or, due to its behaviour in the given procedure, in section 62 (1) *j*);

d) the tenderer or candidate fails to meet the selection criteria required for the performance of the contract, or failed to certify its compliance with such criteria appropriately;

e) it fails to meet the conditions laid down in the contract notice, invitation to tender, invitation to participate, procurement documents, or laws in any other way, except for requirements specified by the contracting authority regarding the form of tenders and requests to participate;

f) the tenderer or candidate

fa) classifies any data as business secret in violation of section 44 (2) to (3), and does not remedy this deficiency even after being called upon to do so by the contracting authority; or

fb) the justification within the meaning of section 44 (1) remains inadequate even after the remedy of deficiencies.

(2) In addition to the provisions laid down in paragraph (1), a tender shall also be deemed invalid, if it includes any abnormally low consideration or other impossible condition [section 72].

(3) In addition to the provisions laid down in paragraph (1), a request to participate shall be deemed inadmissible, if the candidate submits a tender.

(4) A tender shall be deemed inadmissible under paragraph (1) *e)*, in particular, if it fails to meet an environmental, social or labour requirement specified by law, a mandatory collective agreement, or the environmental, social and labour law provisions listed in Annex 4. The Public Procurement Authority, on the basis of data provided annually by the minister responsible for employment policy, shall publish information on its website regarding the mandatory minimum wages in individual sectors in Hungary.

(5) For information purposes, contracting authorities shall indicate in the procurement documents the name of organisations tenderers may request information from regarding the requirements to be met under paragraph (4) during performance. With regard to the provisions laid down in paragraph (4), contracting authorities shall not be obliged to require that specific information be provided in tenders submitted during the public procurement procedure, they shall verify only that the information provided in such tenders are not inconsistent with the requirements mentioned in paragraph (4).

(6) A tender shall be deemed inadmissible under paragraph (1) *e)*, in particular, if

a) it is withdrawn by the tenderer during the period during which the tenderer must maintain its tender;

b) the tenderer failed to provide the tender guarantee by the time limit set, or provided only an amount less than required;

c) the contracting authority specified an amount in the call for competition, providing that tenders the price or cost of which exceeds the set amount would be declared inadmissible during evaluation, and the tender exceeds that amount.

Section 74 (1) Contracting authorities shall exclude a tenderer, candidate, subcontractor, or organisation certifying suitability from the procedure, if

a) it is subject to a ground for exclusion [section 62 and, if applied by the contracting authority, section 63];

b) a ground for exclusion arises during the procedure.

(2) Contracting authorities may exclude from a procedure

a) a tenderer or candidate who is not eligible for national treatment [section 2 (5)],

b) a tender offering supplies that, considering their origin, are not eligible for national treatment [section 2 (5)].

(3) The origin of supplies shall be established according to the origin-related provisions laid down in a law and in Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

CHAPTER XIV

THE RESULT OF A PUBLIC PROCUREMENT PROCEDURE

Ineffective procedures

Section 75 (1) A procedure shall be ineffective, if

a) no tender or, in the participation stage of a procedure consisting of more than one stage, request to participate was submitted;

b) only inadmissible tenders or requests to participate were submitted;

c) the original period during which the tenderer must maintain its tender expires with regard to each tender submitted in the procedure without any tenderer maintaining its tender.

(2) A contracting authority may declare a procedure to be ineffective, if

a) becoming incapable of concluding or performing the contract, or it becomes possible to cancel the contract or unilaterally terminate it [section 53 (4) to (6)];

b) the amount of available coverage, as verifiable according to paragraph (4), is insufficient for the conclusion of the contract with the tenderer who, according to the evaluation, submitted the most advantageous tender;

c) a tenderer or candidate commits an act that violates the fairness of the procedure or harms the interests of the other tenderers or candidate in a seriously;

d) a decision of the contracting authority is set aside by the Public Procurement Arbitration Board, and the contracting authority decides to conduct a new public procurement procedure or withdraws from its intent to conduct the procedure; however, a contracting authority may not declare a procedure ineffective if, after the unlawful decision closing the procedure is set aside, the lawfulness of the procedure may be restored by adopting a lawful decision;

e) at least two tenders (proposals for a solution) were not submitted by the time limit for the submission of tenders in a procedure consisting of a one stage, with the exception of negotiated procedures without prior publication, or in the tendering (dialogue) stage of a procedure consisting of more than one stage, or at least two requests to participate were not submitted by the time limit for the submission of requests to participate in the participation stage of a procedure consisting of more than one stage;

f) it is established by an organ granting subsidy for the public procurement or performing the process-integrated control of public procurement procedures that a serious violation was committed, and the contracting authority does not have any means to restore the lawfulness of the procedure according to the rules on the public procurement procedure.

(3) If a procedure is ineffective on the ground of paragraph (2) *a)* because the coverage, originally available, for performance was withdrawn in whole or in part, the contracting authority shall provide information on the amount of the coverage that was available, as well as the organisation that made the decision to withdraw or transfer the coverage, as well as the date of and reason for doing so.

(4) In a case described in paragraph (2) *b)*, a contracting authority may certify the amount of available coverage by recording the relevant data in the electronic notice management system (application), by data recorded in the course of the public procurement procedure and communicated to tenderers or candidates before the submission of their final tender, or, when an electronic auction is used, by recording that data in the electronic system before the commencement of the auction.

(5) If a contracting authority permitted tendering for lots in a public procurement procedure, ineffectiveness may be established only with regard to the lot that is affected by the ground for ineffectiveness. If a contracting authority provided and explained in a call for competition that it would not be interested in awarding the contract if any lot were ineffective, the procedure may be declared ineffective regarding all lots.

(6) Contracting authorities shall indicate in a call for competition whether they apply section 75 (2) *e*) in the given procedure. Before the expiry of a time limit for the submission of tenders or requests to participate, the minister responsible for public procurement may require contracting authorities within the meaning of section 195 (1), as well as any contracting authority having received an subsidy for a procedure under the review of the minister responsible for public procurement by law, to apply section 75 (2) *e*), so that an adequate period is allowed for contracting authorities to take the necessary measures. In such a case, the contracting authority shall modify the call for competition by indicating the application of the ground for ineffectiveness mentioned in section 75 (2) *e*).

Selection of a successful tenderer

Section 76 (1) Contracting authorities shall specify a criterion or criteria (hereinafter “award criteria”) in the call for competition to serve as basis for selecting the most economically advantageous tender, including applicable social, societal, and environmental considerations, if any.

(2) The following may be used as award criteria:

- a*) lowest price,
- b*) lowest cost, calculated with a cost-effectiveness approach specified by the contracting authority, or
- c*) criteria, in particular qualitative, environmental, and social criteria, representing the best price-quality ratio, also taking into account the price or cost.

(3) Award criteria representing the best price-quality ratio may be related, in particular, to the following:

- a*) quality, including technical merit, aesthetic and functional characteristics, accessibility to all users, employment of disadvantaged workers and other social, environmental, and innovative characteristics, trading and its conditions, customer service and technical support, provision of spare parts, stock security, date or period of performance;
- b*) the organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract.

(4) A set of criteria representing the best price-quality ratio may also be applied so that the value of the price or cost element is set by the contracting authority, and tenderers compete with each other regarding the other evaluation criteria.

(5) Contracting authorities shall apply the lowest cost criterion or other award criteria representing the best price-quality ratio. A contracting authority may not use lowest price as the only award criterion, unless the needs of the contracting authority are met by supplies or services meeting a specific qualitative or quantitative requirement, and the selection of the most economically advantageous tender is not influenced by any qualitative characteristic in addition to the evaluation of the lowest price. A contracting authority may not use lowest price as the only award criterion concerning design, architectural and engineering services, or works. Detailed rules concerning the award criteria and method to be applied regarding certain procurement subject-matters may be set forth in a law adopted on the basis of authorisation of this Act or, for procurements subsidised, in the subsidy conditions.

(6) Award criteria shall meet the following requirements:

- a*) they shall be related to the subject-matter of the contract;
- b*) they may not allow a contracting authority to make decisions arbitrarily, but the decision shall be based on factors that can be evaluated on the basis of quantitative or professional criteria;
- c*) they shall ensure compliance with the principles mentioned in section 2 (1) to (5);

d) the suitability of a tenderer for performing a contract may not be evaluated among the award criteria. Where factors mentioned in paragraph (3) *b)* are evaluated and such factors are also taken into account among the selection criteria of the given procedure, the minimum requirements concerning performance (selection criterion) shall be clearly separated from the additional factors that are taken into account for evaluation purposes;

e) they may not result in a given tender element being evaluated more than once.

(7) According to paragraph (6) *a)* award criteria shall be considered to be linked to the subject-matter of the contract if they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

a) the specific process of production, provision or trading of those works, supplies or services; or

b) a specific process for another stage of the life cycle of those works, supplies or services; even if they do not have a material impact on the characteristics of the product of those works, supplies or services.

(8) In particular, the proposed extent of employing unemployed or permanently unemployed persons (including the employment of natural persons under a public employment relationship, as defined in the Act on community employment and amending Acts concerning community employment and other Acts, or under a similar legal relationship in another Member State of the European Union, other than as public employees) and the implementation of measures aimed at training unemployed persons in the course of performing the given contract may be taken into account in the context of the process of producing or providing the given works, supplies or services.

(9) If the lowest price or lowest cost, calculated using a method described in section 78, is not used as the only award criterion by a contracting authority, the contracting authority shall specify the following:

a) the lowest cost or the award criteria representing the best price-quality ratio, as well as the multipliers defining the weight of each criterion (hereinafter “weight multiplier”), in proportion to the actual significance of the given criterion,

b) the weight multiplier of each sub-criterion in proportion to its actual significance, if any sub-criterion is specified among the award criteria;

c) the floor and cap of points given in the course of evaluating the tender elements against award criteria, which shall be the same for all award criteria,

d) the method (methods) used to determine the actual points given between the floor and cap [point *c)*].

(10) The information mentioned in paragraph (9) shall also be indicated in the call for competition, however, the detailed description of the method (methods) mentioned in paragraph (9) *d)* may also be provided in the other procurement documents. In exceptional cases, if a weight multiplier under paragraph (9) *a)* or *b)* cannot be determined for objective reasons, and as explained by the contracting authority in the call for competition clearly, the contracting authority shall present the criteria in an order decreasing in terms of importance. In such a case, section 77 (2) may not be applied, and the contracting authority shall present the method of evaluation in the procurement documents.

(11) Notwithstanding paragraphs (9) to (10), only the information mentioned in section 78 shall be provided in the procurement documents, if a contracting authority applies the lowest cost criterion only and, in that context, uses life-cycle costing to determine the cost of supplies, services, or works.

(12) The Public Procurement Authority shall prepare guidelines regarding the methods mentioned in paragraph (9) *d)* and the evaluation of tenders.

(13) In the procurement documents, a contracting authority shall lay down provision ensuring that the contracting authority would be able to verify the information provided by tenderers in order to determine to what extent a tender is consistent with the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information provided by the tenderers.

Section 77 (1) With regard to tender elements pertaining to award criteria (sub-criteria) other than the award criterion or sub-criterion containing the consideration or cost, contracting authorities may determine in the call for competition the most advantageous level of a given tender element, for which, and for even more advantageous commitments, the maximum number of points would be given during evaluation. A contracting authority may define an expected level for any criterion of which a given tender element may not fall short.

(2) If the lowest price is not applied by a contracting authority as the only award criterion, tender element pertaining to each award criterion shall be evaluated within the point ranges specified in the call for competition using the method specified by the contracting authority, and then the score of each tender element shall be multiplied by the weight multiplier, and then the products shall be added for each tender. The tender with the highest total score shall be deemed the most advantageous. The most advantageous tender shall be determined using the method described in section 78, if a contracting authority applies the lowest cost criterion only and, in that context, uses life-cycle costing to determine the cost of supplies, services, or works.

(3) After the evaluation of tenders, a contracting authority may initiate an electronic auction, provided that the possibility of doing so was indicated in advance in the call for competition.

(4) A tenderer shall be the successful tenderer, if it submitted the most advantageous tender according to the award criteria, and its tender is acceptable.

(5) In the call for competition, contracting authorities may specify an objective method or additional criterion, in line with section 76 (6) *a*) to *d*) as the basis for selecting the most advantageous tender, should more than one tender have the same total score calculated according to paragraph (1), or should more than one tender specify the same amount as the lowest price or cost, where it is used as the only award criterion. If a contracting authority did not specify such a method or criterion, a tender shall be deemed the most advantageous, if it received the highest score for the award criterion with the highest weight from among the criteria scored differently; with regard to the lowest price criterion, the contracting authority shall select one of the tenders offering the lowest price randomly in the presence of a notary public. A contracting authority may also select randomly in the presence of a notary, if the most advantageous tender cannot be determined using the method described in this paragraph.

Section 78 (1) If contracting authorities evaluate the costs of supplies, services or works taken into account for evaluation purposes using a life-cycle costing method, they shall indicate this fact in the call for competition, and shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.

(2) Life-cycle costing shall, to the extent specified by the contracting authority according to their significance, cover parts or all of the following costs over the life cycle of a product, service or works:

- a*) costs, borne by the contracting authority or other users, such as:
 - aa*) costs relating to acquisition,
 - ab*) costs of use, such as consumption of energy and other resources,
 - ac*) maintenance costs,
 - ad*) end of life costs (especially collection and recycling costs),

b) costs imputed to environmental externalities linked to the supply, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(3) The method used for the evaluation of costs imputed to environmental externalities shall fulfil all of the following conditions:

a) it is based on objectively verifiable criteria that ensure the effects of principles laid down in section 2 (1) to (3) and (5) and do not unduly favour or disadvantage certain economic operators;

b) it is determined in advance, is accessible to all interested parties, and is not only usable specifically in a particular public procurement procedure;

c) the data required can be provided with reasonable effort by economic operators pursuing their activity with the expected care.

(4) The Public Procurement Authority shall publish guidelines on life-cycle costing methods, also indicating if a common methodology is available the application of which is mandatory under a legal act of the European Union. A law adopted on the basis of authorisation of this Act may establish life-cycle costing methods the application of which is mandatory regarding certain subject-matters of procurement.

Notification of the decision of a contracting authority

Section 79 (1) Contracting authorities shall inform tenderers and candidates in writing of the result of a procedure or participation stage of a procedure, the ineffectiveness of a procedure, the declaration of a tender or request to participate submitted by a tenderer or candidate to be inadmissible, and the exclusion of an economic operator, including a detailed justification for given event, without delay, but no later than three working days, after making the decision concerned.

(2) When the evaluation of tenders and requests to participate is completed, contracting authorities shall prepare a written summary of the tenders or requests to participate using a standard form specified in a separate law. When the evaluation of tenders and requests to participate is completed, contracting authorities shall provide the information mentioned in paragraph (1) by sending the written summary to all tenderers or, in case of closing the participation stage, candidates simultaneously via fax or electronic means.

(3) Upon request, summaries shall also be sent to the European Commission, the Public Procurement Authority, another organisation authorised to control the public procurement procedure, or the Hungarian Competition Authority. The summary shall be sent to the European Commission through the minister responsible for public procurement.

(4) The contracting authority, if detecting after sending out the result that the result (ineffectiveness) is unlawful and the unlawfulness can be remedied by modifying the summary, may modify the written summary once, withdraw the notice of inadmissibility, if necessary, cancel contract concluded, or, if restoring the original situation is not possible, terminate the contract unilaterally with immediate effect within twenty days after the written summary is sent to tenderers or, if the summary is the summary of a participation stage, before the time limit for the submission of tenders. If the modification includes the withdrawal by the contracting authority of a notice of inadmissibility regarding a request to participate, the contracting authority may send an invitation to tender to the candidate while setting a new time limit for the submission of tenders. The contracting authority shall send the modified written summary to all tenderers via fax or by electronic means.

(5) A contracting authority may correct any typographical error (change of names, misspelled names, numeric errors, calculation errors, or similar typographical errors) in a

written summary of tenders or requests to participate upon or without any request to do so. The corrected written summary shall be sent by the contracting authority to all tenderers or candidates simultaneously within ten days after sending out the result of the procedure or participation stage.

Preliminary dispute settlement

Section 80 (1) Preliminary dispute settlement may be initiated

a) by a tenderer or candidate within three days after it becomes aware of an unlawful event, if it considers that a written summary, a procedural act taken by a contracting authority, or a document produced in the course of a public procurement procedure, with the exception of those mentioned in *b)*, is in whole or in part unlawful;

b) by an interested economic operator or a chamber or other organisation of interest representation the activities of which are related to the subject-matter of the public procurement (for the purposes of this section, hereinafter jointly “applicant”)

ba) until the tenth day before the expiry of time limit for the submission of tenders or requests to participate or, in an accelerated procedure or a negotiated procedure without prior publication, before these time limits,

bb) before the expiry of the time limit for indicating the interest to participate, as specified in the prior information notice announcing a restricted or negotiated procedure,

if it considers that the call for competition, a procurement document made available together with that invitation, or any amendment thereto is in whole or in part unlawful.

(2) In an application submitted to the contracting authority (hereinafter “application for preliminary dispute settlement”), the applicant shall specify the allegedly unlawful element of the written summary, other document, or procedural act, and any proposal or observation by and the data and facts supporting the position of the applicant, and reference shall be made to any and all supporting documents, if any.

(3) An application for preliminary dispute settlement shall be submitted to the contracting authority via fax or by electronic means; the contracting authority shall notify the applicant of its position regarding the application within three working days after receiving the application using the same means used to submit the application, and the contracting authority shall also notify all tenderers and candidates who participated in the procedure, if known, about the submission of an application for preliminary dispute settlement and its response to the application.

(4) Within three working days after the submission of an application for preliminary dispute settlement, the contracting authority may invite tenderers or candidates once to remedy deficiencies [section 71] or provide further information [section 71] or justification [section 72], even if doing so would not be possible according to the rules of the procedure, provided that the violation committed during the procedure can be remedied through such procedural acts. In that case, the applicant and the tenderers or candidates shall be notified by the contracting authority of the submission of an application for preliminary dispute settlement at the same time as sending out the invitation to remedy deficiencies or provide further information or justification, and of the response of the contracting authority to the application via fax or by electronic means within seven working days after receiving the application.

(5) If an application for preliminary dispute settlement is submitted by a tenderer by the time limit mentioned in paragraph (1) and pursuant to paragraph (2) regarding a procedural act taken or document produced after the opening of the tenders, the contracting authority may not conclude the contract (if tendering for lots was permitted, the contract regarding the affected lot of the procurement) after the submission of the application for a period of ten days after sending out its response, even if the standstill period would expire by that time.

CHAPTER XV

SPECIFIC RULES OF CERTAIN TYPES OF PROCEDURES

Open procedures

Section 81 (1) An open procedure means a public procurement procedure consisting of a single stage where any interested economic operator may submit a tender.

(2) An open procedure shall be launched with the publication of a contract notice.

(3) Tenderers shall submit, in addition to their tender, a European Single Procurement Document as certificate regarding the grounds for exclusion and their suitability.

(4) In an open procedure, a contracting authority may stipulate in the call for competition that the examination of any abnormally low price or cost is to be carried out only after the evaluation of tenders. In that case, the issue of whether or not the price or cost is abnormally low shall be examined only with regard to the tenderer who submitted the most advantageous tender, and also with regard to the tenderer who submitted the second most advantageous tender if that tenderer is to be named in the summary, and the procedure laid down in section 72 shall be applied, if necessary. If the tender of that tenderer is inadmissible due to its price or cost being abnormally low, the tenderer ranked as next shall take its place and the necessary measures of evaluation shall be carried out with regard to that tenderer.

(5) In an open procedure, a contracting authority may stipulate in the call for competition that the evaluation of tenders should be carried out on the basis of declarations made in the European single procurement document only after the evaluation of tenders. In that case, evaluation shall be carried out only with regard to the tenderer who submitted the most advantageous tender, or with regard to that tenderer and one or more other tenderers ranked after that tenderer, in the order of their ranking. The provisions laid down in section 69 shall apply accordingly, with the proviso that, even in such a case, it shall be ensured during the evaluation that the inadmissibility of the tender submitted by the successful tenderer (as well as of the second most advantageous tender if that tenderer is named in the summary) is subject to comprehensive evaluation by the contracting authority, including any certificate submitted by the tenderer regarding its declarations, before the decision closing the procedure is adopted.

(6)

(7) The time limit for the submission of tenders, as specified by a contracting authority in a contract notice, may not be shorter than thirty-five days after the notice containing the request for tenders is published. If tenders may be submitted by electronic means during a public procurement procedure, the time limit for the submission of tenders may not be shorter than thirty days after the dispatch of contract notice.

(8) If a contracting authority dispatched a prior information notice less than thirty-five days before the dispatch contract notice, but within the last twelve months, and it contained the data of the prior information notice in line with a separate law, the time limit may be shorter than the time limit specified in paragraph (7), but the time limit for the submission of tenders may not be shorter than fifteen days after the day of the dispatch of the contract notice.

(9) If a contracting authority does not provide comprehensive and direct access via electronic means to certain procurement documents according to section 39 (2), the time limit for the submission of tenders shall be five days longer than required under paragraphs (7) and (8).

(10) Under exceptional and urgent circumstances where the time limits required under paragraph (7) may not be applied, a contracting authority may set a time limit for the submission of tenders that is shorter than the time limit under paragraph (7), but it may not be

shorter than fifteen days after the dispatch of the contract notice (accelerated open procedure). The reasons for applying an accelerated procedure shall be stated in the contract notice.

(11) Negotiations shall not be permitted in an open procedure. In an open procedure, contracting authorities shall be bound by the terms and conditions specified in the request and the procurement documents, and tenderers shall be bound by their tender after the time limit for the submission of tenders. Contracting authorities may not stipulate in a contract notice that tenders are to be binding for a time frame exceeding thirty or, with regard to works contracts or in case the public procurement procedure is conducted under process-integrated control as required under a separate law, sixty days calculated from the commencement of the binding period during which the tenderer must maintain its tender.

Restricted procedures

Section 82 (1) A restricted procedure means a public procurement procedure consisting of two stages, where, in the first stage (participation stage), a contracting authority shall decide on the suitability or unsuitability of candidates for the fulfilment of the contract pursuant to section 69. Candidates may not submit a tender during the participation stage. In the second stage (tendering stage) of the procedure, candidates who were qualified as suitable and were invited to tender by the contracting authority may submit their tender.

(2) Restricted procedures shall be launched with an invitation to participate, and, with the exception specified in paragraph (3), any interested economic operator may submit a request to participate.

(3) A sub-central contracting authority may also launch a restricted procedure by means of a prior information notice. In that case, the invitation to participate shall not be published by the contracting authority in a notice, but it shall be sent directly and simultaneously to economic operators who submitted an expression of interest to the contracting authority by the time limit specified in the prior information notice, and such economic operators shall be invited to confirm their intent to participate by submitting a request to participate (hereinafter “direct invitation to participate”). A direct invitation to participate shall be sent out within twelve months after the publication of the prior information notice at the latest.

(4) In an invitation to participate or, in a case specified in paragraph (3), in a prior information notice or direct invitation to participate, contracting authorities may specify a range up to the cap of which candidates, who are considered suitable and submitted a admissible request to participate, would be invited for tendering in the second stage of the procedure. Such a range shall include at least five tenderers and shall guarantee effective competition.

(5) Where a range is specified by a contracting authority, the invitation to participate or, in a case specified in paragraph (3), the prior information notice or direct invitation to participate shall describe a method of ranking suitable candidates, to be applied in case the number of suitable candidates exceeds the cap of the range. The contracting authority shall specify objective criteria, which are consistent with the principles of this Act, to be applied for the purpose of ranking. The contracting authority may specify the kinds of certificates to be submitted by economic operators according to section 69 in order to show their compliance with such objective criteria and to support their declaration made in the European Single Procurement Document.

Section 83 (1) In a restricted procedure, the time limit for the submission of requests to participate as specified by the contracting authority may not be shorter than thirty days after the dispatch of the notice containing the invitation to participate or sending out the direct invitation to participate.

(2) Under exceptional and urgent circumstances where the time limits required under paragraph (1) may not be applied, a contracting authority may set a time limit for the

submission of requests to participate that is shorter than the time limit under paragraph (1), but it may not be shorter than fifteen days after the dispatch of a notice containing the invitation to participate or sending the direct invitation to participate (accelerated restricted procedure). The reasons for applying an accelerated procedure shall be stated in the contract notice.

(3) If the participation stage is effective, the contracting authority shall send an invitation to tender to all qualified candidates or, if a range was set by the contracting authority for candidates, to selected candidates simultaneously within five working days after communicating the result to the candidates.

(4) If the number of qualified candidates does not reach the floor of the range, the contracting authority shall continue the procedure by inviting the qualified candidates to tender. Candidates invited to tender may not submit a joint tender.

Section 84 (1) An invitation to tender shall include at least the following information:

- a)* name, address, phone and fax number, and e-mail address of the contracting authority;
- b)* a reference to the published invitation to participate or prior information notice, the date of publication, and the date of sending out direct invitations to participate;
- c)* the address where the procurement documents may be accessed via electronic means; in a case specified in section 39 (2), the documents concerned shall be attached to the invitation, provided that they have not been made available by other means yet;
- d)* the specification of certificates to be submitted under section 69 in the tendering stage as support for the declaration made in the European Single Procurement Document pursuant to the invitation to participate or direct invitation to participate, and, if necessary, the specification of declarations and documents to be attached to a tender to show that no ground for exclusion exists at the tendering stage with regard to a tenderer, its subcontractor, or an organisation contributing to the certification of suitability;
- e)* the time limit for the submission of tenders;
- f)* the address of submitting tenders and the method of submission;
- g)* an indication as to whether or not a tender may be submitted in a language other than Hungarian language;
- h)* the date and, if not done via electronic means, place of opening the tenders, and the persons who may attend the opening of tenders;
- i)* period during which the tenderer must maintain its tender;
- j)* the date of sending the invitation to tender.

(2) Negotiations shall not be permitted in a restricted procedure.

In a restricted procedure, contracting authorities shall be bound by the terms and conditions specified in invitation to participate after the time limit for the submission of requests to participate, as well as the terms and conditions specified in the invitation to tender and the procurement documents, and tenderers shall be bound by their tender after the time limit for the submission of tenders. Contracting authorities may not stipulate in an invitation to tender that tenders should be maintained for a period exceeding thirty or, with regard to works contracts or in case the public procurement procedure is conducted under procedure-integrated control as required under a separate law, sixty days calculated from the commencement of the period during which the tenderer must maintain its tender.

(3) A tenderer shall not attach to its tender a certificate or declaration already submitted in its request to participate, unless the certificate or declaration submitted earlier is not suitable any longer to show compliance with applicable provisions.

(4) In the tendering stage of a restricted procedure, the time limit for the submission of tenders as specified by the contracting authority may not be shorter than thirty days after sending out the invitation to tender. If tenders may be submitted by electronic means during a

public procurement procedure, the time limit for the submission of tenders may not be shorter than twenty-five days after the invitation to tender is sent.

(5) With regard to a procedure launched with an invitation to participate, if a contracting authority published a notice containing a prior information notice less than thirty-five days before publishing the notice containing the invitation to participate, but within the last twelve months, and it contained the data of the prior information notice in line with a separate law, a time limit may be shorter than the time limit specified in paragraph (4). In that case, the time limit for the submission of tenders may not be shorter than ten days calculated from the date of sending out the invitation to tender.

(6) In a procedure launched by a sub-central contracting authority, the contracting authority and the candidates to be invited to tender may specify the time limit for the submission of tenders in an agreement, provided that all candidates have an equal amount of time to prepare and submit their tender. If the contracting authority and the qualified candidates fail to reach an agreement on the time limit for the submission of tenders, the time limit for the submission of tenders shall be specified by the contracting authority, with the proviso that the time limit set by the contracting authority may not be shorter than ten days calculated from the date of sending out the invitation to tender.

(7) If a contracting authority does not provide comprehensive and direct access via electronic means to certain procurement documents according to section 39 (2), the time limit for the submission of tenders shall be at least five days longer than required under paragraphs (4) to (6).

(8) In an accelerated procedure and in the event the time limits specified in paragraph (4) cannot be met, the time limit for the submission of tenders as specified by the contracting authority may not be shorter than ten days after sending out the invitation to tender.

Negotiated procedures

Section 85 (1) A negotiated procedure means a public procurement procedure consisting of two stages, where, in the first stage (participation stage), the contracting authority decides on the suitability or unsuitability of candidates for the performance of the contract pursuant to section 69. Candidates shall not submit a tender during the participation stage. In the second stage (tendering stage) of the procedure, the contracting authority shall negotiate the terms and conditions of the contract with candidates who were qualified as suitable and were invited to tender.

(2) Contracting authorities may conduct a negotiated procedure if:

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

b) the subject-matter of the public procurement includes design or innovative solutions;

c) the most advantageous tender cannot be selected without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up of the contract or because of the risks attaching to them;

d) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of separate laws; or

e) a previous open or restricted procedure was ineffective because only unacceptable tenders were submitted, or the procedure was ineffective under section 75 (2) *b)* because all tenders submitted in the procedure exceeded the amount of coverage available to the contracting authority.

Section 86 (1) A negotiated procedure shall be launched with an invitation to participate, and the title of conducting a negotiated procedure shall be stated in the invitation to

participate. With the exception specified in paragraph (2), any interested economic operator may submit a request to participate in the participation stage of the procedure.

(2) A sub-central contracting authority may also launch a negotiated procedure by means of a prior information notice pursuant to section 82 (3).

(3) In a negotiated procedure, the contracting authority may set the range of the number of tenderers pursuant to section 82 (4) to (5), with the derogation that the upper limit of the range shall be at least three.

(4) Section 83 shall also apply to negotiated procedures.

Section 87 (1) The contracting authority may specify in the procurement documents which elements of the technical specifications and contract terms are non-negotiable minimum requirements. The specifications of the subject-matter of the public procurement and the contract terms shall be presented with a degree of accuracy that is needed to enable economic operators to recognize the subject and nature of the procurement, to decide whether they intend to submit a request to participate, and to have equal opportunities to submit a proper first tender in the tendering stage of the procedure.

(2) The provisions laid down in section 84 (1) shall apply to the contents of the invitation to tender, with the proviso that the time limit for the submission of tenders shall be construed to mean the time limit for the submission of the first tender. The invitation to tender shall also describe the negotiation process and the rules on negotiation established by the contracting authority, and it shall specify the date of the first round of negotiations.

(3) The time limit for the submission of the first tender shall be determined pursuant to section 84 (4) to (8).

(4) In a negotiated procedure, contracting authorities shall be bound by the terms and conditions specified in procurement documents, and tenderers shall be bound by their tender after the date of closing the negotiations. Contracting authorities shall not stipulate in an invitation to tender the period during which tenderers must maintain their tenders exceeding thirty or, in the case of public works or when, according to a separate law, the public procurement procedure is conducted under process integrated control, sixty days calculated from the commencement of such period (closing of negotiations).

(5) Tenders shall also be subject to the provisions laid down in section 84 (3).

(6) The contracting authority, if it indicated in the call for competition that it reserved the option to do so, may decide after receipt of the first tenders not to enter into any negotiation but to finish the procedure by assessing and evaluating the tenders submitted. In such case, the contracting authority shall notify the tenderers without delay, and the respective submitted tenders shall become binding when the notification is sent out by the contracting authority for a period determined by the contracting authority subject to the maximum periods specified in paragraph (4).

Section 88 (1) In a negotiated procedure, the negotiations between the contracting authority and one or more tenderer shall be aimed at enabling the contracting authority to award a contract with the most advantageous terms and conditions.

(2) The equal treatment of tenderers shall be ensured by the contracting authority during the negotiations as well, including, in particular, that any information provided by the contracting authority must be provided to all tenderers.

(3) If the contracting authority negotiates with each tenderer separately, no information disclosed by a tenderer regarding its tender during the negotiations shall be disclosed to other tenderers without the consent of the tenderer concerned.

(4) Contracting authorities shall record the minutes of each round of negotiation, and, before the commencement of the next round or, if it was the only or last round, within two working

days after the given round, each tenderer who attended the given meeting shall sign and be provided with a copy of the minutes, or a copy shall be sent to them within two working days.

(5) Contracting authorities may provide that negotiations are to be held in rounds during the tendering stage of a procedure, and, after each round, negotiations are to be resumed only with those tenderers who submitted the most advantageous tender according to the award criteria. In such case, the contracting authority shall indicate in the call for competition that it intends to reduce the number of tenderers in the course of the negotiations. Contracting authorities shall ensure in such cases as well that there is effective competition during the submission of the final tenders, and the number of tenderers who are invited to submit the final tender may not be reduced to one during the rounds of negotiation.

(6) In the course of negotiations, the subject-matter and conditions of a public procurement shall not change so that

a) the conditions indicated in the call for competition, the invitation to tender, or the other procurement documents are changed or supplemented to such considerable extent, which distorts competition or violates the equal opportunities of economic operators, in particular where familiarity with the new conditions could have had a fundamental impact on the decision of interested economic operators whether to submit a request to participate, or due to such change, any tenderer would become unable to submit a final tender during the procedure after the negotiations,

b) the award criteria or method is changed,

c) the minimum requirements specified by the contracting authority under section 87 (1) are changed.

(7) In the case described in paragraph (5), the contracting authority shall stipulate in advance in the invitation to tender the course of such negotiations of more than one round, including the maximum number of tenderers to be invited to the first and a specific subsequent round of negotiations. In the course of subsequent rounds of negotiation with the invited tenderers, a tenderer may not submit a tender unless the tender is more advantageous for the contracting authority than the one submitted in a previous round.

(8) Prior to the submission of final tenders or any revised tender requested from tenderers, contracting authorities shall notify all participating tenderers of any change of the technical specifications or other procurement documents so that the tenderers are given an adequate period for modifying their tender.

(9) Contracting authorities shall inform the tenderers clearly and in advance of the expected date of closing the negotiations, if such date is not specified in the invitation to tender. At the time of closing the negotiations, the contracting authority shall invite the tenderers to submit a final tender in writing. The contracting authority shall specify the time limit for submission of final tenders.

Section 89 With the exception of the case specified in section 87 (6), the evaluation of tenders shall be carried out by contracting authorities in multiple stages in the course of a negotiated procedure:

a) With regard to non-binding first tenders submitted within the time limit for submission of tenders as specified in the invitation to tender, the contracting authority shall examine if the tender meets the requirements specified in the procurement documents. Prior to the commencement of negotiations, a tender shall be declared inadmissible, if the tender is admissible due to a reason concerning which the tender cannot be made compliant during the negotiations or by way of remedy of deficiencies. The tender shall not be declared inadmissible prior to the commencement of negotiations due to the non-compliance of the professional tender, unless the professional tender fails to meet the minimum requirements specified by the contracting authority. Deficiencies pertaining to other statements and documents forming part of a tender shall be remedied until the closure of the negotiations.

b) After the negotiations are closed, the contracting authority shall examine whether the final tenders comply with the contents of procurement documents as of the time of closing the negotiations and with other statutory requirements, and section 72 shall apply as necessary. Any deficiency pertaining to statements and documents that should have been remedied until the closure of the negotiations in relation with the first tender may not be remedied subsequently.

c) Final tenders that are considered compliant under point *b)* shall be evaluated by the contracting authority according to the award criteria specified in the call for competition, and, if the submission of certificates was not requested at an earlier stage of the procedure, the provisions laid down in section 69 (4) to (6) shall apply.

Competitive dialogues

Section 90 (1) A competitive dialogue means a public procurement procedure where the contracting authority engages in a dialogue with candidates, selected according to section 69, with a view to defining accurately the subject-matter of the procurement and the type and terms of the contract, and then requests for tenders.

(2) The competitive dialogue shall consist of three stages:

- a)* a participation stage,
- b)* a dialogue stage,
- c)* a tendering stage.

(3) Contracting authorities may conduct a competitive dialogue in cases described in section 85 (2).

(4) The competitive dialogue shall be launched with an invitation to participate. The legal ground of conducting a competitive dialogue shall be stated in the invitation to participate. Any interested economic operator may submit a request to participate in the participation stage of the procedure. The provisions laid down in section 86 (3) shall apply to a competitive dialogue.

(5) In a competitive dialogue, the time limit for submitting requests to participate as specified by the contracting authority shall not be shorter than thirty days after dispatching the notice containing the invitation to participate.

(6) In a competitive dialogue, the evaluation of tenders shall be based on a set of criteria representing the best price-quality ratio.

(7) Contracting authorities shall describe their need and requirements concerning the subject-matter of the contract in the invitation to participate, and the description shall be formulated more precisely in the descriptive document. A descriptive document shall present in particular the subject-matter of the public procurement, the corresponding technical specifications, and the contract terms and conditions with the degree of details the contracting authority is able to provide, and it shall include guidance concerning which circumstances the contracting authority seeks proposals from tenderers, and to the limits or expectations of the contracting authority concerning such circumstances. An indicative time limit for the conclusion and performance of the contract shall also be specified in the procurement documents.

Section 91 (1) If the participation stage is effective, the contracting authority shall send an invitation to tender to all qualified candidates or, if a range was set by the contracting authority for dialogue partners, to selected candidates simultaneously within five working days after communicating the result to the candidates.

(2) If the number of qualified candidates does not reach the floor of the range, the contracting authority shall continue the procedure by inviting the qualified candidates to the

dialogue. Tenderers invited to the dialogue individually shall not submit a proposal for a solution or tender jointly.

(3) In the dialogue stage of the procedure, the tenderers shall submit proposals for a solution to serve as basis for the dialogue with the contracting authority.

Section 92 (1) The invitation to tender shall include at least the following information:

- a)* name, address, phone and fax number, and e-mail address of the contracting authority;
- b)* a reference to the published invitation to participate and the date of publication;
- c)* the address where the procurement documents may be accessed via electronic means; in the case described in section 39 (2), the documents concerned shall be attached to the invitation, provided that they have not been made available by other means yet;
- d)* the time limit for the submission of proposals for a solution;
- e)* the address and method of submitting the proposals for a solution;
- f)* an indication whether the proposal for a solution may be submitted and the dialogue may be conducted in a language other than Hungarian;
- g)* the date and, if not done via electronic means, the place of opening the proposals for a solution;
- h)* the persons allowed to attend the opening of proposals for a solution submitted via other than electronic means;
- i)* the date of sending out invitations to the dialogue;
- j)* the course, fundamental rules established by the contracting authority, and date of commencement of the dialogue;
- k)* the course of dialogue rounds and the maximum number of tenderers selected for further dialogue after the given round, where the contracting authority intends to reduce the number of tenderers during the dialogue;
- l)* relevant rules established by the contracting authority, where the contracting authority intends to award a prize to one or more tenderers;
- m)* according to the invitation to participate, if necessary, the specification of certificates, statements, and documents to be submitted with the proposal for a solution verifying that no ground for exclusion exists at the dialogue stage with regard to a tenderer, its subcontractor, or other entity taking part of the certification of suitability.

(2) The provisions laid down in section 88 (5) shall apply to a competitive dialogue as well, with the proviso that negotiation shall be construed to mean dialogue, and contracting authorities shall reduce the number of proposals for a solution to be discussed.

(3) The proposal for a solution shall include the following:

- a)* a proposal of the tenderer for a single or a multi-variant solution regarding the circumstances mentioned in section 90 (7),
- b)* a corresponding preliminary offer by the tenderer, if the contract were to be performed according to technical, legal, or financial terms and conditions proposed by the tenderer, and
- c)* the designation of those parts of the proposal for a solution that are to be considered business secrets.

(4) The rules pertaining to the opening of tenders shall apply to the submission and opening of proposals for a solution, and the provisions laid down in sections 73 (1) *a)* and 75 (1) *a)* shall also be applied to proposals submitted by the tenderers.

Section 93 (1) In a competitive dialogue, the dialogue between the contracting authority and one or more tenderers shall be aimed at identifying solutions that are most capable of satisfying the purchasing need of the contracting authority.

(2) The equal treatment of tenderers shall be ensured by the contracting authority during the dialogue as well, including, in particular, that any information provided by the contracting authority shall be provided to all tenderers.

(3) In the course of a dialogue, tenderers shall not be bound by the proposal for a solution, and the contracting authority shall not be bound by the conditions it laid down earlier, with the proviso that the subject-matter of the procurement and the conditions laid down in the procurement documents may not be changed during the procedure to such a considerable extent that would distort competition or otherwise infringe the equal opportunities of economic operators. The evaluation criteria and method shall not be changed during the procedure.

(4) In a case described in section 92 (2), the tenderer shall not submit a proposal for a solution in the course of further dialogue conducted with tenderers still being in competition, unless it is more advantageous for the contracting authority than the one submitted in a previous round. If the tenderer submitted a multi-variant proposal for a solution, each variant shall be considered an independent proposal, and the contracting authority shall be entitled not to invite one or more proposals of a tenderer to the subsequent round or rounds of the dialogue.

(5) If the contracting authority continues the dialogue with each tenderer separately, no information disclosed by a tenderer shall be disclosed to other tenderers without the consent of the tenderer concerned. The consent of the tenderer shall be requested for the intended communication of a specific piece of information.

(6) If a dialogue is conducted, exclusively or among others, by means of negotiations orally, the contracting authority shall record the minutes of each round of the dialogue, and, before the commencement of the next round or, if it was the only or last round, within two working days after the given round, each tenderer who attended the given dialogue shall sign and be provided with a copy of the minutes, or a copy shall be sent to them within two working days.

Section 94 (1) After closing a dialogue, contracting authorities shall invite tenderers, who participated in the dialogue or, as the case may be, in the last round of the dialogue, simultaneously and in writing to submit their tender.

(2) If the participants concerned agreed to the use of their proposal for a solution, in whole or in part, to the development of requirements pertaining to the subject-matter of the procurement, and if the contracting authority finds it necessary, the contracting authority is entitled to establish the technical specifications and contract terms of the procurement, to be used for the preparation of final tenders, by using one or more proposals for a solution or any parts thereof. In that case, new procurement documents shall be provided for the purpose of submitting a final tender.

(3) If the conditions laid down in paragraph (2) are not met, tenderers shall submit their final tender by finalising the proposal for a solution they submitted earlier.

(4) The following shall be specified in the invitation to tender:

- a) time limit for the submission of tenders, and the place of submission,
- b) place and date of opening the tenders,
- c) in a case described in paragraph (2), information on the availability of the procurement documents,
- d) the period during which tenderers must maintain their tenders,
- e) the specification of certificates to be submitted under section 69 in the tendering stage to support the declaration included in the European Single Procurement Document pursuant to the invitation to participate, and, if necessary, the specification of statements and documents to be attached to a tender to prove that no ground for exclusion exists at the tendering stage with regard to a tenderer, its subcontractor, or an entity contributing to the certification of suitability.

(5) The period during which tenderers must maintain their tenders shall commence upon the expiry of the time limit for the submission of tenders. The period during which tenderers must

maintain their tenders shall not be stipulated by contracting authorities in the invitation to tender as exceeding thirty or, in the case of public works or where according to a separate law, the public procurement procedure is conducted under process integrated control, sixty days calculated from the commencement of such time period.

(6) In a competitive dialogue, the period during which tenderers must maintain their tenders shall apply to tenderers with the derogation that, if necessary, contracting authorities may adjust certain non-substantial contract terms during negotiations with the tenderer to be announced as the successful tenderer. Such adjustments shall not distort competition and shall not harm the equal opportunities of economic operators.

Innovation partnership

Section 95 (1) Innovation partnership means a specific public procurement procedure aimed at the development of an innovative supply, service or works and the subsequent purchase of the resulting supplies, services or works.

(2) The innovation partnership shall consist of two stages:

a) an innovation partnership contract or contracts shall be concluded in a procedure regulated under this Act (procedural stage), and then

b) the development process and the procurement shall be carried out and implemented pursuant to the terms and conditions of the innovation partnership contract (contractual stage).

Section 96 (1) The provisions applicable to the negotiated procedure shall apply to the conclusion of an innovation partnership contract or, if a contracting authority intends to set up a partnership with more than one tenderer, contracts with the derogations specified in this section.

(2) In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works, pursuant to section 95 (1), that cannot be met by purchasing products, services or works already available on the market. The procedure shall not be announced in a prior information notice, and the decision to conduct such a procedure shall be justified by the contracting authority with the novelty (innovative nature) of the subject-matter of the contract. The contract terms specified in the procurement documents shall include detailed terms and conditions regarding intellectual property rights. In the case of public works contracts, it shall not be necessary to provide economic operators with a budget without prices or to submit a budget with prices as part of a tender.

(3) The time limit for the submission of requests to participate as specified by the contracting authority shall not be shorter than thirty days after dispatching the notice containing the invitation to participate, and the options available in a negotiated procedure of shortening the time limit shall not be applied.

(4) The evaluation of tenders shall be based exclusively on a set of criteria representing the best price-quality ratio.

(5) The provisions laid down in section 87 (3) shall not be applied in the tendering stage of the procedure. Contracting authorities shall not exercise the option specified in section 87 (6).

(6) If the contracting authority opted to limit the number of candidates to be invited to submit a tender, the contracting authority, in the course of selecting candidates, shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(7) The tender of a tenderer shall describe the research and development project aimed at meeting the needs identified by the contracting authority that cannot be met by using the existing solutions. The contracting authority shall specify for which price components are payable to tenderers and in what breakdown the consideration is to be indicated in a tender,

and the pre-determined maximum price of the supplies, services, or works resulting from the development are to be included among the evaluation criteria.

(8) When the procedural stage is concluded, the contracting authority may conclude a partnership contract with more than one tenderer. The notice mentioned in section 37 (1) *h*) shall be published concerning the conclusion of a partnership contract as well.

Section 97 (1) The partnership contract shall describe the research and innovation process, structured in successive stages and it shall include the production of supplies, the provision of services and the completion of works. The partnership contract shall set intermediate targets to be attained by the partners and provide for payment of the remuneration accordingly.

(2) The contracting authority may decide, after each stage, to terminate the innovation partnership or reduce the number of partners by terminating individual partnership contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions thereof. The partnership contract shall specify clearly the objective criteria for reducing the number of partners, and the number of economic operators from which the contracting authority would purchase supplies, services, or works at the end of the process, and, if the number of partners was not reduced during the development process accordingly, the applicable objective criteria to decide from which partner he intends to purchase such products, services, or works.

(3) If the innovation partnership is set up with more than one partner, no information disclosed by a partner shall be disclosed to other partners without the consent of the partner concerned. The consent of the partner shall be requested for the intended communication of a specific piece of information.

(4) The contracting authority shall ensure that the structure of the partnership and the duration and value of the different stages reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of the solution. The value of supplies, services or works realised by the development shall not be disproportionate in relation to the costs required for their development.

Negotiated procedures without prior publication

Section 98 (1) Negotiated procedure without prior publication means a public procurement procedure consisting of a single stage where the contracting authority negotiates the contract terms with the tenderers invited to submit a tender.

(2) Contracting authorities may conduct a negotiated procedure without prior publication under exceptional circumstances, if:

a) the conditions specified in section 85 (2) *e*) are met, no material change occurred regarding the conditions of the public procurement, and all, and only those tenderers are invited by the contracting authority to the negotiation who participated in the open or restricted procedure and submitted a tender that was not inadmissible under section 73 (1) *b*) or *d*) and complied, possibly after the remedy of deficiencies, with all formal requirements;

b) the open or restricted procedure was ineffective because no tender or request to participate was submitted during the procedure, or all tenders or requests to participate submitted were fundamentally non-compliant, provided that no material change occurred regarding the conditions of the public procurement; the contracting authority, through the minister responsible for public procurement, shall provide information about all these elements upon request by the European Commission. The tender shall be deemed fundamentally non-compliant, if it is inadmissible for a reason due to which the professional tender is clearly unable to meet the needs and requirements specified by the contracting authority without considerable changes; a request to participate shall be deemed fundamentally non-compliant, if it is inadmissible under section 73 (1) *b*) or *d*);

c) the contract may be awarded only to a specific economic operator due to its technical characteristics or the protection of exclusive rights, provided that the contracting authority does not have a reasonable alternative to satisfy its procurement need, and the absence of competition is not the result of the subject-matter of the contract being defined in a manner that restricts competition to an unjustified extent;

d) the contract may be awarded only to a specific economic operator, as its aim is the creation of a unique work of art or artistic performance or the acquisition of these by the contracting authority;

e) it is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits laid down for open procedures, restricted procedures and negotiated procedures cannot be complied with; the circumstances invoked to justify extreme urgency shall not in any event be due to an omission of or another reason caused by the contracting authority.

(2a) Paragraph (2) *a)* and *b)* shall not apply if a tender (or, with respect to a participation stage, a request to participate) was submitted in the procedure, and the ineffectiveness of the procedure could have been established on the basis of, in the case it was applied in the given procedure, section 75 (2) *e)* as well.

(3) Contracting authorities may also use the negotiated procedure without prior publication to purchase works or services, if new works or services are purchased by the contracting authority from a previous successful tenderer for the purpose of realising identical or similar works or services. It shall be conditional on the new works or services being in conformity with the underlying project for which the previous contract was concluded in an open or restricted procedure, and the contracting authority indicated in the earlier call for competition the possibility of using a negotiated procedure, the subject and conditions of the possible further contracts for works or services, and that the estimated value of the additional works or services was taken into account when calculating the estimated value of the works or services subject to the previous procedure (for the purpose of determining if an EU threshold is reached). Such negotiated procedure may be launched only within three years after the conclusion of the previous first contract.

(4) Contracting authorities may conduct negotiated procedures without prior publication also for supplies, if:

a) the item concerned is produced only for research, experimental, study or development purposes; this provision shall not apply with regard to a quantity that could serve as basis for marketability or cover the costs of research and development;

b) with regard to the partial replacement or extension of an item procured earlier, the replacement of an earlier successful tenderer would imply that the items to be procured would be different and incompatible from a technical perspective, or such procurement would cause disproportionate technical difficulties in operations and maintenance; however, the period of such contract or contracts concluded with a previous successful tenderer may not exceed three years in total;

c) the goods are quoted and purchased on a commodity exchange;

d) the goods are procured under exceptionally advantageous terms and conditions in the course of sale in liquidation proceedings, winding-up proceedings, judicial enforcement proceedings, or similar proceedings under the personal law of the organisation concerned.

(5) The contracting authority may also conduct a negotiated procedure without prior publication to procure services, if it does so after a design contest and the contract is concluded with the winner or, upon the recommendation of the jury, one of the winners or awarded participants; in the latter case, all participants or tenderers recommended by the jury of the design contest shall be invited to the negotiation.

Section 99 (1) The negotiated procedure without prior publication shall be launched, with the exception of the procedure specified in section 98 (4) *c*) to *d*), by sending out an invitation to tender or, in a case specified in section 102 (2), by sending out an invitation to negotiate. If more than one tenderer may submit a tender, the invitations to tender or negotiate shall be sent to all tenderers simultaneously.

(2) In a negotiated procedure without prior publication, only economic operators invited to tender may submit a tender. Economic operators invited to tender shall not submit a tender jointly, but an economic operator invited to tender may submit a joint tender with an economic operator the contracting authority did not send an invitation to tender to.

(3), If the negotiated procedure is conducted under sections 98 (2) *b*) and 98 (4) *a*) or if it is reasonably possible under the circumstances causing extreme urgency, in the cases specified in section 98 (2) *e*) contracting authorities shall invite at least three tenderers to tender as possible.

Section 100 (1) In addition to the information specified in section 50, an invitation to tender shall include the following information:

a) the legal title of the negotiated procedure;

b) the course and fundamental rules on the negotiation established by the contracting authority;

c) the date of the first round of negotiation.

(2) If the contracting authority does not provide any separate procurement document in addition to the invitation; the contract terms, the technical specifications, the budget without prices concerning works, and any applicable requirement pertaining to an economic organisation to be established by the successful tenderers shall be specified in the invitation to tender.

(3) If the negotiated procedure without prior publication is conducted under section 98 (5), the evaluation of tenders shall be based solely on a set of criteria representing the best price-quality ratio.

(4) Tenderers shall maintain their tender after the date of closing the negotiations. Contracting authorities shall not stipulate in an invitation to tender a period during which tenderers must maintain their tender exceeding thirty or, in the case of public works or when according to a separate law, the public procurement procedure is conducted under process integrated control, sixty days calculated from the commencement of such period (closing of negotiations).

(5) If the contracting authority invites only a single tenderer to tender during the procedure, the contracting authority may require, in derogation from section 69 instead of using the European Single Procurement Document, that the certificates concerning the absence of any ground for exclusion and, if the contracting authority stipulated so, the compliance with all suitability criteria shall be submitted already upon the submission of the tender. The provisions laid down in section 76 (5) shall not apply if only a single tenderer is invited to tender.

Section 101 (1) The provisions laid down in section 88 (2) to (4) shall apply to negotiations accordingly.

The provisions laid down in section 88 (9) shall apply with the proviso that the submission of a written final tender should not be required, unless more than one tenderer participates in the procedure.

(2) In the course of negotiations, the subject-matter and conditions of a public procurement shall not change so that

a) the characteristics or circumstances of the subject-matter or terms of the contract concluded during the procedure differ from the subject-matter or terms specified in the

invitation to tender in a way that would have not allowed the application of a negotiated procedure without prior publication,

b) the terms communicated in the invitation to tender and the procurement documents are amended or supplemented to such an extent that they make a tenderer unable to submit a final tender upon the conclusion of the negotiations, or

c) the evaluation criteria or method would be changed.

Section 102 (1) If a negotiated procedure without prior publication is conducted under section 98 (2) *e)*, negotiations shall be conducted with and, upon the conclusion of the negotiations, a written contract shall be awarded to the tenderer or tenderers who are able to fulfil the contract within the time-frame necessitated by the situation of extreme urgency; if an invitation was sent to more than one economic operator, the contract shall be awarded to the tenderer who submitted the most advantageous tender.

(2) In that case, the contracting authority shall send an invitation to tender or, if the extreme urgency of the situation does not allow for the preparation of an invitation to tender, an invitation to negotiate to suitable economic operators. An invitation to negotiate shall specify the name and seat of the contracting authority, the place and date of the negotiation, and at least the subject and quantity of the procurement.

(3) In the procedure conducted with extreme urgency:

a) the contracting authority shall not be required to justify a decision not to apply any suitability criteria,

b) the contracting authority may accept a statement made by a tenderer (possibly enclosed in a European Single Procurement Document) as the final certificate confirming the absence of any ground for exclusion, in addition to the verification of available electronic registers by the contracting authority.

Section 103 (1) On the day of the commencement of the negotiated procedure without prior publication, the contracting authority shall submit to the Public Procurement Authority the invitation to tender and information on the name and address (seat, residence) of economic operators to be invited to tender, the estimated value of the procurement, and the circumstances justifying the use of the negotiated procedure.

(2) In a case described in section 98 (2) *e)*, the contracting authority shall notify the Public Procurement Authority of the information specified in paragraph (1) at the same time when the invitations to tender or, as the case may be, to negotiate are sent out to economic operators. An invitation to negotiate shall be sent instead of an invitation to tender, where appropriate.

(3) On the day of the commencement of the negotiated procedure under section 98 (4) *c)* and *d)*, the contracting authority shall submit an information note to the Public Procurement Authority on the circumstances justifying the use of a negotiated procedure and, in a case described in point *d)*, the name and address of the organisation concerned.

(4) The Public Procurement Authority shall adopt a decision with detailed reasoning, based on which the establishment of the legal basis of the negotiated procedure can be clearly identified. The Public Procurement Authority shall publish the decision on its website.

(5) If the negotiated procedure without prior publication is conducted under section 98 (2) *c)*, the contracting authority shall dispatch a notice specified in section 137 (2) at least ten days prior to the conclusion of the contract.

(6) On the day of commencement of the negotiated procedure without prior publication, the contracting authority shall publish in the Public Procurement Database and on its own website as well, all documents sent to the Public Procurement Authority under paragraph (1), the procurement documents, and the minutes of the opening of tenders after the opening of tenders.

CHAPTER XVI

SPECIFIC PURCHASING METHODS

Framework agreements

Section 104 (1) Contracting authorities may undertake their procurements by framework agreement as well.

(2) In the course of it, the framework agreement shall be concluded in a public procurement procedure conducted pursuant to this Act, and the procurement shall be undertaken under that framework agreement pursuant to the provisions laid down in this subtitle.

(3) In the call for competition, the contracting authority shall specify whether the procedure is aimed at concluding a framework agreement with one or more tenderers, and in what manner or manners the procurement may be undertaken under the given framework agreement pursuant to section 105. In this matter, tenderers who are parties to a framework agreement shall be obliged to make and conclude offers and contracts. The contracting authority may also stipulate that, with regard to various parts of the framework agreement and regardless whether tendering for lots was permitted in the procedure, contracts shall be concluded in the various manners permitted under section 105 (1) or, if more than one tenderer participates, under section 105 (2).

(4) Under circumstances specified in sections 29 to 30 and 31 to 32, only contracting authorities that are identified in the call for competition may conclude a contract under a framework agreement with a tenderer who is a party to the framework agreement.

(5) If the framework agreement is to be concluded with more than one tenderer, the contracting authority shall specify in the call for competition the range of tenderers who submitted the most advantageous tender according to the evaluation criteria, the cap of which is to represent the maximum number of tenderers who may be a party to the framework agreement. The range shall be consistent with the subject-matter and other specificities of the procurement, and it shall ensure effective competition under all circumstances. The range shall include at least three tenderers, but the framework agreement shall be concluded with at least three tenderers only if at least three tenderers submit an admissible tender during the procedure. If multiple tenders ranked at the cap of the range of tenderers who submitted the most advantageous tender are identical, the contracting authority may decide, instead of applying section 77 (5), to conclude a framework agreement with all tenderers who submitted such tenders. If the contracting authority indicated in the call for competition that the procedure is aimed at concluding a framework agreement under section 105 (2), the procedure may also be declared ineffective if only a single valid tender is submitted. If a framework agreement is concluded with more than one tenderer, the second sentence in section 69 (5) shall apply to all tenderers who are party to the framework agreement.

(6) The period of the framework agreement shall not exceed four years, unless it is justified appropriately by exceptional circumstances, in particular regarding the subject-matter of the framework agreement. In this respect, it shall be considered whether the application of an extended fix period would be justified by the specificities of the given framework agreement, and whether it would restrict competition in a disproportionate manner. If the public procurement procedure is aimed at concluding a framework agreement for a period over four years, the reasons for defining such period shall be stated in the call for competition.

(7) The contracting authority shall not be obliged to make any purchase under a framework agreement, in particular if the framework agreement was concluded for several years or if the number of tenderers who are party to the framework agreement do not allow for effective competition. In that case, the contracting authority shall refer to this fact in the new call for competition, and, if the procedure is launched with a contract notice, the tenderers who are

parties to the framework agreement shall be notified without delay of the publication of the new contract notice.

(8) Contract under the framework agreement shall be concluded during the period of the framework agreement only, and the quantity purchased under a framework agreement shall not exceed the total quantity planned in the framework agreement.

(9) If written consultation or the reopening of competition takes place under a framework agreement, the conditions stipulated in the framework agreement shall not be modified significantly during the written consultation or the reopening of competition.

Section 105 Under a framework agreement concluded with a single tenderer, including cases where the procedure was aimed at concluding a framework agreement with more than one tenderer, but the framework agreement was concluded with the only tenderer who submitted an admissible tender, the given public procurement may be realised:

a) by means of a direct order placed by the contracting authority under the terms and conditions stipulated in the framework agreement, if the framework agreement contains all terms and conditions of the contract(s) aimed at realising the given public procurement,

b) by means of a direct order placed by the contracting authority under point *a)* or by concluding a contract after a written consultation conducted under point *c)*, if the framework agreement contains all terms and conditions of the contract(s) aimed at realising the given public procurement, and provided that the latter option was stipulated by the contracting authority in the framework agreement and in the call for competition used to launch the underlying public procurement procedure. The decision whether specific public procurements should be realised following a written consultation or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria set out in the framework agreement. The framework agreement shall also specify which terms may be subject to written consultation. The written consultation shall be aimed at having the tenderer make an offer to the contracting authority under terms that are identical to or more advantageous for the contracting authority than those set out in the framework agreement.

c) by means of concluding a contract after written consultation, if the framework agreement does not contain all terms and conditions of the contract(s) aimed at realising the given public procurement. In an invitation to consultation, the contracting authority shall invite the tenderer to supplement its tender submitted during the public procurement procedure aimed at concluding the framework agreement; the supplements with regard to which the tenderer is to supplement its tender shall be specified in the invitation to consultation. The invitation to consultation shall specify the data pertaining to the subject-matter and contract terms of the given public procurement. During the written consultation, the tenderer shall make an offer under terms that are identical to or more advantageous for the contracting authority than those set out in the framework agreement, and the tenderer shall be bound by its offer made during the written consultation for a period specified in the invitation to consultation. The contracting authority shall notify the tenderer of the acceptance or rejection of the offer made during the written consultation.

(2) Under the framework agreement concluded with more than one tenderer, the given public procurement may be realised:

a) by means of a direct order placed by the contracting authority with the tenderer(s) selected according to objective criteria specified in the framework agreement under the terms and conditions stipulated in the framework agreement, if the framework agreement contains all terms and conditions of the contract(s) aimed at realising the given public procurement. The framework agreement shall specify the objective criteria (in particular the ranking established on the basis of evaluation criteria applied in the first part, or another objective criterion related to the subject-matter of the public procurement to be realised under the framework agreement) on the basis of which the contracting authority concludes the contract

for the realisation of the given public procurement with a tenderer who is a party to the framework agreement.

b) by means of a direct order placed by the contracting authority under point *a)* or by reopening competition under point *c)*, if the framework agreement contains all terms and conditions of the contract(s) aimed at realising the given public procurement, and provided that the latter option was stipulated by the contracting authority in the framework agreement and in the call for competition used to launch the underlying public procurement procedure. The decision whether specific public procurements should be realised following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria set out in the framework agreement. The framework agreement shall also specify which terms may be subject to reopening of competition.

c) by means of reopening competition pursuant to paragraphs (3) to (5), if the framework agreement does not contain all terms and conditions of the contract(s) aimed at realising the given public procurement.

(3) For the purposes of paragraph (2) *b)* and *c)*, the contracting authority shall send an invitation to tender in writing and simultaneously to all tenderers who are parties to the framework agreement. No other tenderer shall be involved in the procedure. The invitation to tender shall include the following:

- a)* name, address, phone and fax number, and e-mail address of the contracting authority;
- b)* reference to the call for competition that launched the procedure aimed at the conclusion of a framework agreement, and the date of publication;
- c)* reference to the framework agreement concluded;
- d)* subject-matter and quantity of the given public procurement;
- e)* designation of the contract;
- f)* contract term or time limit for performance;
- g)* place of performance;
- h)* conditions of paying the consideration, or reference to applicable laws;
- i)* time limit for the submission of tenders and the address of submitting tenders, and an indication whether the contracting authority permits the submission of tenders in a language other than Hungarian;
- j)* place and, if not done by electronic means, time of opening the tenders, and the persons authorised to be present;
- k)* notice to tenderers that they are to make a statement on the absence of any ground for exclusion;
- l)* other information required for tendering, including, if applicable, information on making available further procurement documents;
- m)* the period during which the tenderer must maintain its tender;
- n)* evaluation criteria and method according to section 76.

(4) The contracting authority may apply evaluation criteria that are different from the evaluation criteria applied in the public procurement procedure aimed at concluding the framework agreement, if they were already provided for in the procurement documents relating to the public procurement procedure aimed at concluding the framework agreement, and if they were also included in the framework agreement. The evaluation criteria and method shall be specified according to section 76. The tenderer may make an offer only under terms that are identical to or more advantageous for the contracting authority than those set out in the framework agreement.

(5) The opening of tenders shall be subject to section 68 (4), the evaluation of tenders shall be subject to sections 69 (1) and 73 to 75, the communication of the decisions of the contracting authority shall be subject to section 79, and the conclusion of the contract shall be

subject to section 131. The amount determined in section 73 (6) *c*) may also be specified in the invitation to consultation or invitation to tender sent to tenderers who are party to the framework agreement.

Dynamic purchasing systems

Section 106 (1) The contracting authority may establish a dynamic purchasing system to realise public procurements that reoccur frequently.

(2) The dynamic purchasing system shall be operated as an electronic process, if all communications between the contracting authority and the tenderers are conducted via electronic means.

(3) Any economic operator who meets the selection criteria defined by the contracting authority may join a dynamic purchasing system during the entire period of its existence.

(4) The contracting authority may divide a dynamic purchasing system into categories according to the objective characteristics (in particular, the highest value or place of performance of contracts to be concluded under a given lot) of the procurement to be undertaken in a given category. In that case, each category and its characteristics shall be indicated in the call for competition, including contract notices if the procedure is announced in a prior information notice. The contracting authority shall define the selection criteria for each category separately. The provisions laid down in section 61 (4) to (6) shall not be applied.

Section 107 (1) Admittance to the dynamic purchasing system is subject to the rules on the participation stage of the restricted procedure, while the implementation of the procurement in the dynamic procurement system is subject to the rules on the tendering stage of the restricted procedure, with the differences specified in this subtitle. The provisions laid down in section 83 (3) shall not be applied.

(2) The fact that the contracting authority is using a dynamic purchasing system shall be indicated in the call for competition, including contract notices if the procedure is launched with a prior information notice. When launching the procedure, the subject-matter of the procurement shall be specified in the procurement documents so that the nature of the procurements planned can be determined clearly; the estimated quantity of the procurements planned, any categorisation of the supplies, works, or services to be procured, the characteristics of individual categories, and the most important contract terms shall also be specified, so that economic operators can decide whether to join to the dynamic purchasing system. The necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used, and the technical connection arrangements and specifications shall also be provided. Accurate technical specifications and contract terms pertaining to the specific purchases to be made through the system shall be made available at the time of the sending out of the invitations to tender.

(3) The procurement documents shall be made available for free, directly, and via electronic means during the entire period of existence of the system.

(4) All candidates meeting the selection criteria shall be admitted into the dynamic purchasing system, and the number of candidates to be invited to tender shall not be restricted.

(5) When establishing a dynamic purchasing system, the time limit for the receipt of requests to participate as specified by the contracting authority shall not be shorter than thirty days after publishing the notice containing the invitation to participate or sending out the direct invitation to participate, and the rules on accelerated procedures shall not be applied. This time limit for the receipt of requests to participate shall be applicable to the establishment of the system and to sending out the invitations to tender regarding the first public procurement conducted through the system. New time limit for the receipt of requests to participate may not be set regarding subsequent purchases to be made through the system,

and requests to participate may be submitted during the entire period of existence of the system.

(6) The contracting authority shall decide on each request to participate and notify the candidates of their admission to the dynamic purchasing system or of the rejection of their request within ten days after receipt. The time limit may be extended to fifteen days in justified cases, in particular if the remedy of deficiencies or further information is requested. When establishing a dynamic purchasing system, the period of assessment may be extended; in that case, the invitations to tender regarding the first public procurement may not be sent out until the assessment of the requests to participate is completed. A summary of the assessment of requests to participate shall be prepared only at the time of establishing the dynamic purchasing system. The contracting authority shall notify all candidates of the extended assessment period.

(7) In order to realize individual public procurements, contracting authorities shall invite all economic operators admitted to the system to submit a tender. If the dynamic purchasing system is divided into categories, the contracting authority shall invite all economic operators admitted to the given category to submit a tender. The time limit for the submission of tenders as specified by the contracting authority may not be shorter than ten days after sending out the invitation to tender. A sub-central contracting authority shall apply section 84 (6) to set the time limit for the submission of tenders.

(8) With regard to a given purchase, the contract shall be awarded to the tenderer who submitted the most advantageous tender according to the evaluation criteria published in the notice on the dynamic purchasing system, the call for competition, or notice if the procedure was announced in a prior information notice. The assessment of tenders and requests to participate shall be subject to the provisions laid down in section 69, with the derogation that, during the entire period of existence of the system, the contracting authority may invite economic operators admitted to the system at any time to submit the updated version of their statement embodied in the European Single Procurement Document within five working days.

(9) The period of existence of the dynamic purchasing system shall be indicated by the contracting authority in the call for competition, including contract notices if a procedure is announced in a prior information notice. Any change to that period of existence shall be published in a notice specified in a separate law.

(10) Economic operators may not be charged any fee with regard to their participation in a dynamic purchasing system.

Electronic auctions

Section 108 (1) In the course of electronic auctions, tenderers shall offer new prices, revised downwards, and/or new values concerning certain quantifiable elements of tenders. For this purpose, contracting authorities shall structure the electronic auction as a repetitive electronic process, which occurs after the evaluation of the tenders according to section 76, enabling them to be ranked using automatic evaluation methods.

(2) In order to select the successful tenderer, the contracting authority may initiate an electronic auction in the following cases, provided that the possibility of doing so was indicated in advance in the call for competition:

a) in an open, restricted, or negotiated procedure, if the content of the procurement documents, in particular the technical specifications, can be established with precision,

b) in the case of reopening competition among parties to a framework agreement under section 105 (2) *b)* or *c)*,

c) when the contract is awarded under the framework of a dynamic purchasing system within the meaning of section 106.

(3) An electronic auction may not be applied concerning public contracts for works or services, if the subject-matter of the latter is creative intellectual work, in particular the design of works.

(4) An electronic auction may take place in a number of successive stages.

(5) An electronic auction shall be based on one of the following elements of the tenders:

a) solely on prices if the tenders are evaluated on the basis of price only;

b) prices and/or other evaluation criteria applied in the procedure if the tenders are evaluated on the basis of criteria representing the best price-quality ratio or the lowest cost.

(6) In a case described in paragraph (5) *b)*, an electronic auction may be initiated with regard to criteria that can be defined with an adequate degree of accuracy. An evaluation criterion shall be deemed capable of being defined with an adequate degree of accuracy, if it can be quantified or expressed with numbers or percentages that make it possible to rank each tender by automatic means using a pre-determined formula.

(7) Before proceeding with an electronic auction, contracting authorities shall evaluate the tenders in line with section 76 in accordance with the evaluation criterion or criteria and with the weighting fixed for them.

(8) After tenders are evaluated pursuant to paragraph (7), the contracting authority shall notify and invite all tenders simultaneously via electronic means to participate in the electronic auction at the specified date and time, by using the connections in accordance with the instructions set out in the invitation.

(9) Electronic auctions shall not be used by contracting authorities for any purpose other than the intended purposes of electronic auctions, including in particular the prevention, restriction, or distortion of competition, and the use of an electronic auction shall not result in the subject-matter of the contract awarded in the procedure being different from the subject of procurement specified in the call for competition and the procurement documents.

(10) After closing an electronic auction, contracting authorities shall award the contract in accordance with section 76 and, if the certificates were not submitted earlier, with section 69 (4) to (6) on the basis of the results of the electronic auction.

(11) The detailed rules on conducting an electronic auction shall be laid down in a separate law.

Electronic catalogues

Section 109 (1) If the use of electronic means of communication in a public procurement procedure is required by the contracting authority under section 41 (3), the contracting authority may require tenderers in the call for competition to submit tenders in the format of an electronic catalogue or to attach an electronic catalogue to their tender.

(2) Tenderers shall be allowed to attach other documents, completing the tender, to tenders submitted in the form of an electronic catalogue.

(3) If the submission of tenders in the form of electronic catalogues is required, contracting authorities shall:

a) state so in the call for competition or in the direct invitation to participate if a prior information notice is used as a means of calling for competition;

b) indicate in the procurement documents all the necessary information concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

(4) Electronic catalogues shall be established by the tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority pursuant to paragraph (3) *b)* and other requirements set forth with regard to electronic communications under a separate government decree.

(5) If the framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues.

(6) In a case described in paragraph (5), contracting authorities shall use one of the following methods:

a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or

b) notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question.

(7) The application of the method described in paragraph (6) *b)* shall be indicated by the contracting authority in the procurement documents pertaining to the framework agreement.

(8) Where contracting authorities reopen competition for specific contracts in accordance with paragraph (6) *b)*, they shall notify tenderers, at least five working days prior to the commencement of the information collection, of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question. Contracting authorities shall give tenderers the possibility to refuse such collection of information.

(9) Before the evaluation of tenders, contracting authorities shall inform the tenderer concerned about the collected information, so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

(10) Contracting authorities may require the submission of tenders in the format of an electronic catalogue even when using a dynamic purchasing system within the meaning of section 107.

(11) Contracting authorities may also apply the methods described in paragraph (6) *b)* and paragraph (8) when using a dynamic purchasing system, provided that the request to participate in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. Such catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in paragraph (6) *b)*.

PART THREE

PROCEDURES BELOW EU THRESHOLDS

CHAPTER XVII

RULES ON PROCEDURES BELOW EU THRESHOLDS

Section 110 The provisions laid down in this Part shall be applied by contracting authorities when realising public procurements not reaching an EU threshold but reaching national thresholds, except for works and service concessions. The procedure shall also be conducted pursuant to this Part, if it is permitted or required under Chapter III of this Act [section 19 (4); section 21 (2)].

Exceptions

Section 111 This Act shall not apply to the following procurements, if they do not reach an EU threshold:

- a)* procurement of schoolbooks, if the procurement is undertaken under the framework of providing schoolbooks to schools pursuant to the Act on textbook provision in national public education, provided that the given schoolbooks are on the list of schoolbooks;
- b)* procurement of supplies and services used for the all-inclusive maintenance of children staying in care homes and living homes under the Act on the protection of children and guardianship administration, or for the all-inclusive maintenance of persons receiving after-care or supplied through social services specified in sections 59 to 85/A of Act III of 1993 on social administration and social benefits;
- c)* hotel and restaurant services according to Annex 3, library management services covered by CPV codes 79995000-5 to 79995200-7, recreational, cultural and sporting services covered by CPV codes 92000000-1 to 92700000-8, and legal services;
- d)* any service according to Annex 3, provided that its estimated value does not reach eighteen million forints;
- e)* procurements undertaken in the course of international development cooperation and international humanitarian assistance;
- f)* procurement of cold foodstuff and cooking materials, fresh and processed vegetables and fruits, milk and dairy products, cereals, bread and bakery products, honey, eggs, horticultural plants;
- g)* procurement of services aimed at the production of literary works (technical, scientific literature) or the provision of consultancy or personal interpretation services that are necessary for the pursuit of the core activities of the contracting authority;
- h)* use of service provided by an accredited public procurement consultant;
- i)* procurement for the purpose of points 5, 7 and 9 of section 3 of Act CXXVIII of 2011 on disaster management and amending certain related Acts, and, in a state of necessity or emergency, to directly prevent, avert, be ready to protect against, or for restoration immediately after a pandemic illness of animals, damages caused by serious industrial or traffic accidents, water damages, or water quality damages;
- j)* procurement of supplies, services or works produced or provided by prisoners during mandatory work;
- k)* procurement of supplies, services or works produced or provided by a public employer by way of public employment;
- l)* use of payment services within the meaning of the Act on credit institutions and financial undertakings;
- m)* procurements undertaken by an organisation providing postal services or other services than postal services provided by a postal service provider;
- n)* procurements of and acquiring other rights pertaining to things that are cultural goods, and the purchase of musical instruments, and accessories to and parts of such instruments;
- o)* procurements undertaken against the budget specified in sections 113 and 114 (3) of Act XXXVI of 2012 on the National Assembly;
- p)* procurement of services aimed at the pursuit of scientific, awareness-raising, research, or educational activities specified in the deed of foundation of a foundation established under section 1 of Act XLVII of 2003 on foundations pursuing scientific, awareness-raising, research, or educational activities to support the operation of political parties;
- q)* procurements for the benefit of delegations;
- r)* procurement of architectural-technical design services, interior design services, community planning and land planning services; including the related specialized design services, only if those are ordered together with the architectural, interior design, community planning, or land planning services under the framework of the same works envisaged;

s) services covered by CPV codes 71241000-9, 71242000-6, 71244000-0, 71246000-4, and 71247000-1, provided that the service is procured together with a design service mentioned in point r) under the framework of the same works;

t) procurement of supplies or services produced or provided by persons with reduced capacity to work at a sheltered place of employment;

u) procurement of produce stimulating and plant protection materials covered by CPV codes 24400000-8 to 24457000-2 to be used in agricultural production and research activities;

v) procurement of supplies covered by CPV codes 24000000-4 to 24327500-7 and 24500000-9 to 24965000-6 by application of subsidies granted for research, development, and innovation purposes;

x) procurements where the contracted task is performed by a contracting authority within the meaning of sections 5 (1) or 7 (2), or an association of such contracting authorities, on the basis of an exclusive right granted by a legislative act or official decision in accordance with TFEU.

Procedural rules to be applied

Section 112 (1) When realising the public procurement falling within the scope of this Part, contracting authorities shall, at their own discretion,

a) conduct a procedure regulated by themselves pursuant to section 117, or

b) apply the provisions laid down in Part Two of this Act with the derogations specified in sections 113 to 116.

(2) In the case described in paragraph (1) b) and by applying accordingly the criteria specified in sections 22 to 24, Part Two of this Act shall also apply pursuant to the separate law referred to in section 21 (4).

Section 113 (1) The contracting authority shall not publish the call for competition launching an open, restricted, or negotiated procedure as a contract notice. The contracting authority shall send a summary notice of the procedure to be launched to the Public Procurement Authority via the electronic means made available by the Public Procurement Authority at least five working days, but not more than twelve months, prior to launching the procedure, and the Public Procurement Authority shall publish the summary notice on its website within one working day after receipt. At the time of sending the summary notice, the contracting authority shall also send to the Public Procurement Authority the name and address of at least three economic operators to whom the call for competition would be sent at the own initiative of the contracting authority. The summary notice shall specify the name and address of the contracting authority, the contact information to be used to give notice of interest, the subject of the contract, the quantity of the procurement or other data determining the volume of performance, the contract period or time limit for performance, the place of performance, any reservation under section 114 (11), and an invitation to economic operators to give notice of their interest in the procedure to the contracting authority by the time limit specified in the summary notice, with the proviso that the time limit may not be shorter than five working days after sending out the summary notice. Section 75 (6) shall apply so that the information pertaining to the application of section 75 (2) e) shall be provided in the summary notice instead of the call for competition. The provisions concerning the other data contained in and detailed content of a summary notice shall be laid down in a separate law.

Data on the subject-matter of the public procurement shall be provided in the summary notice so that economic operators can decide whether or not they intend to give notice of their interest in the procedure to the contracting authority. The provisions laid down in section 41 shall apply to the notice of interest, with the derogation that economic operators shall not need to sign a statement made via electronic means with electronic signature. The content of a

notice shall not be modified after publication. If the contracting authority does not wish to launch the procedure, or wishes to launch it with elements other than those stated in the notice, it shall notify the Public Procurement Authority via the electronic means made available by the Public Procurement Authority about the withdrawal of the notice within twelve months of sending out the notice at the latest, and it shall notify the economic operators who, until that point, gave notice of their interest in the procedure to the contracting authority. The fact of withdrawal shall be published on the website of the Public Procurement Authority within one working day after receipt of the notification.

(2) Contracting authorities shall send a call for competition to at least three economic operators, who were notified to the Public Procurement Authority in advance, as well as to all economic operators who gave notice of their interest in the procedure to the contracting authority. The call for competition shall be sent to economic operators in writing, directly, and simultaneously within twelve months after sending out the summary notice. The contracting authority shall make the procurement documents available pursuant to section 57 on the day of sending out the call for competition at the latest. The economic operator may submit a tender or request to participate in the procedure, if it received a call for competition from the contracting authority. The economic operator, who has received a call for competition from the contracting authority, may submit a tender or request to participate jointly with another economic operator, even if the latter has not received a call for competition from the contracting authority. At the time of opening the tenders or requests to participate, the contracting authority shall present the economic operators to whom it has sent a call for competition at its own initiative.

(3) In the course of applying paragraph (2), the principle of equal treatment shall apply and the participation of micro, small, and medium-sized companies shall be ensured, as possible, in the course of selecting the economic operators. In the course of deciding on this matter, the restriction set forth in section 3 (4) of Act XXXIV of 2004 on small and medium-sized undertakings and supporting their development shall not apply.

(4) When applying paragraphs (1) to (2), the modification of the time limit for the submission of tenders or requests to participate, the call for competition, or the procurement documents, and the withdrawal of the call for competition shall not be published in a notice, but the economic operators to whom the contracting authority has sent a call for competition shall be notified directly, simultaneously, and in writing before the original time limit for the submission of tenders or requests to participate. Any modification to a procurement document shall be made directly available by contracting authorities at the same place as the original documents by electronic means. An element of a call for competition or procurement document may not be modified, if it was also included in the summary notice mentioned in paragraph (1).

(5) Paragraphs (1) to (4) shall not apply, if:

- a)* the estimated value of the works reaches or exceeds seven hundred million forints;
- b)* the estimated value of services mentioned in Annex 3 reaches or exceeds an EU threshold;
- c)* the contracting authority uses a prior information notice, periodic prior information notice, or prequalification contract notice as call for competition.

(6) If paragraphs (1) to (2) are not applied, a notice modifying a time limit for the submission of tenders or requests to participate, a call for competition, or a procurement document shall be dispatched, but is not required to be published before the original time limit for the submission of tenders or requests to participate; however, all economic operators who gave notice to the contracting authority of their interest in the procedure, in particular those who accessed the procurement documents electronically or requested additional information, shall be notified directly, simultaneously, and in writing about the modification intent and the

publication of the notice of modification before the original time limit for the submission of tenders or requests to participate. No measure, decision, or document may be taken, adopted, or submitted in the public procurement procedure before the publication of the notice of modification.

Section 114 (1) In a call for competition, contracting authorities may require the application of one or more grounds for exclusion specified in sections 62 to 63 in the course of the public procurement procedure, and shall apply the grounds for exclusion specified in section 62 (1) *g*) to *k*), *m*), and *q*).

(2) With regard to the statement mentioned in section 67 (1), the standard form specified by the European Commission shall not be applied, and the “European Single Procurement Document” mentioned in Part Two of this Act shall mean the statement within the meaning of section 67 (1). In the statement within the meaning of section 67 (1), the tenderer or candidate shall provide detailed information regarding section 62 (1) *k*) *kb*) pursuant to a separate law. The contracting authority shall verify, as provided for under the Government decree in detail, that no ground for exclusion exists on the basis of available electronic registers. In a statement within the meaning of section 67 (1), an economic operator shall merely state that the suitability criteria it seeks to certify are met, and it shall not be required to provide detailed data regarding its compliance with the suitability criteria. The economic operator shall submit its statements, as required by the call for competition, containing detailed data on its compliance with the suitability criteria and the objective criteria mentioned in section 82 (5), if applicable, upon request by the contracting authority under section 69 and pursuant to the rules pertaining to the submission of certificates required by the call for competition. If the contracting authority does not specify any suitability criteria to be applied in the procedure, it shall not be required to apply a notice mentioned in section 69 (4).

(3) For works contracts, contracting authorities shall, with the exception of negotiated procedures without prior publication launched under a title specified in section 98 (2) to (3), make available procurement documents that meet section 57 (1); in other cases contracting authorities are entitled to do so with the proviso that, with regard to supplies or services contracts, the material contract terms, instead of a draft contract, shall be disclosed in addition to the information mentioned in section 57 (1) *a*) to *b*) (hereinafter “draft contract”).

(4) In an open procedure, restricted procedure, or negotiated procedure, the contracting authority may not set a time limit for the submission of tenders that is shorter than

- a*) ten days for regarding supplies or services contracts,
- b*) fifteen days regarding works contracts

calculated from dispatching the notice containing the call for competition or sending out the call for competition or the invitation to tender. In the participation stage of a procedure consisting of more than one stage, the time limit for the receipt of requests to participate shall be sufficient to submit a compliant request to participate.

(5) Negotiated procedure or competitive dialogue may be applied in all cases. If the prior information notice prepared with regard to services mentioned in Annex 3 applies to a period over twelve months, the direct invitation to participate may be sent out even over twelve months after the publication of the notice containing the prior information notice, but it shall be sent out within the period covered by the prior information notice at the latest.

(6) Any additional information shall be provided by the contracting authority at a reasonable date prior to the expiry of the time limit for the submission of tenders or requests to participate. If the contracting authority considers a response to a question necessary for the proper submission of tenders or requests to participate, but the time available is insufficient for giving a response in a reasonable time and taking the response into account, the time limit for the submission of tenders or requests to participate may be extended pursuant to section 52 (3).

(7) Where framework agreement is applied, competition may be reopened by conducting an electronic auction instead of applying section 105 (2), provided that the latter option was stipulated by the contracting authority in the framework agreement and in the call for competition used to launch the underlying public procurement procedure.

(8) If the contract were awarded to the tenderer who submitted the most advantageous tender on the basis of the evaluation, the value of the contract would exceed the estimated value, and the procedure was launched by the contracting authority using rules that could not have been applied in a lawful manner, had the estimated value of the procedure been determined at such contract value, the contracting authority shall declare the procedure to be ineffective.

(9) The contracting authority may launch a negotiated procedure without prior publication, if the published and publicly accessible purchase terms are exceptionally advantageous, but are open only for a short period, the consideration is significantly below market prices, and such terms would not be available if a procedure under this Part were conducted.

(10) Even in a case described in paragraph (9), the contracting authority shall ensure competition and shall invite at least three economic operators to tender, whom the contracting authority considers capable of meeting the suitability criteria relating to the fulfilment of the contract.

(11) The contracting authority may reserve the right to participate in a public procurement procedure to tenderers who realised a turnover, net of value added tax, of one hundred million forints regarding supplies and services or one billion forints regarding works during the previous year, provided that such tenderers use subcontractors for the fulfilment of the contract who also comply with the requirements specified in this paragraph, and they meet the applicable suitability criteria by relying on the capacities of other organisations who also comply with the requirements specified in this paragraph.

(12) The provisions laid down in paragraph (11) shall not apply to works contracts, unless the value of the procurement does not reach five hundred million forints.

(13) In a case described in section 80 (1) *b*), preliminary dispute resolution may be initiated before the time limit for the submission of tenders or requests to participate, or, with regard to a summary notice mentioned in section 113 (1), before the time limit for the receipt of notices of interest.

(14) With regard to services mentioned in Annex 3, the data specified in section 76 (9) may also be provided in the procurement documents in lieu of the call for competition.

Section 115 (1) If the estimated value of a works contract does not reach three hundred million forints, the contracting authority may, at its own discretion, conduct the public procurement procedure by applying the rules applicable to open or negotiated procedures without prior publication below EU thresholds with the derogations specified in this section, unless the procurement is subsidised by a fund of the European Union and is related to a project that extends beyond the borders of Hungary. The contracting authority may conduct a procedure under this section, if it is familiar with an appropriate number of economic operators to ensure the fairness of competition as required under this Act. If a procurement does not reach the threshold specified in this section, it may be realised by the contracting authority by way of a public procurement procedure announced either with a notice mentioned in section 112 (1) *a*) or with a summary notice and a notice according to the rules laid down in section 112 (1) *b*). If the rules on open procedures are applied, the provisions laid down in paragraphs (2) to (4) and (6) to (7) shall apply; if the rules on negotiated procedures without prior publication are applied, the provisions laid down in paragraphs (5) to (7) shall apply.

(2) The contracting authority shall ensure competition and shall send an invitation to tender in writing to at least five economic operators simultaneously in lieu of publishing a call for

competition. The contracting authority shall not be obliged to apply any suitability criteria in the procedure. The contracting authority may send an invitation to tender only to professionally reliable economic operators who are capable of performing the contract. The principle of equal treatment shall be applied and the participation of micro, small, and medium-sized companies shall be ensured, as possible, in the course of selecting the economic operators to be invited to tender without any discrimination. The contracting authority shall keep changing the economic operators to be invited to tender in various procedures as much as possible. A period of five days may be applied instead of a period of ten days set out in section 80 (5). Section 113 shall not apply.

(3) The provision pertaining to the minimum period of the time limit for the submission of tenders in an open procedure shall not be applied. The modification of the time limit for the submission of tenders, the invitation to tender, or the procurement documents, and the withdrawal of the invitation to tender shall not be published in a notice, but the economic operators to whom the contracting authority has sent an invitation to tender shall be notified directly, simultaneously, and in writing before the original time limit for the submission of tenders.

(4) During the procedure, only economic operators invited to tender may submit a tender. Economic operators invited to tender shall not submit a tender jointly. Any economic operator invited to tender may submit a tender jointly with an economic operator the contracting authority did not send an invitation to tender to.

(5) The provisions laid down in paragraph (2) shall apply accordingly if the rules on negotiated procedures without prior publication are applied. Section 103 (1) to (2), (4), and (6) shall not apply.

(6) Section 71 shall apply with the derogation that the contracting authority, even without indicating it specifically in the procurement documents, shall not be obliged to request another round of remedy of deficiencies, if the new round of remedy of deficiencies would be necessary concerning a document submitted or economic operator named during a round of remedy of deficiencies.

(7) Simultaneously with launching the procedure, the contracting authority shall publish the call for competition and the procurement documents on its website and in the Public Procurement Database and, immediately after opening the tenders, the name and address of economic operators invited to tender and the minutes of opening the tenders.

Electronic bidding

Section 116 (1) With regard to supply contracts, the contracting authority may, at its own discretion, conduct the public procurement procedure as electronic bidding by applying the rules applicable to open procedures below EU thresholds, with the derogations specified in this section, as well as the provisions pertaining to electronic bidding as laid down in a government decree derogating from this Act. Electronic bidding means a public procurement procedure where the contracting authority conducts an electronic auction, without tenders being submitted prior to the auction, according to the detailed rules laid down in section 108 and a government decree.

(2) Section 50 (2) *n*) to *p*) and *r*) shall not apply to the call for competition, the contracting authority shall not apply any suitability criteria during the procedure, and the possibility of submitting variants shall be excluded. The call for competition shall specify the time limit for the submission of the requests for registration into the procedure. For the purpose of applying the rules on open procedures accordingly, the time limit for the submission of the tenders shall be construed to mean the time limit for the submission of the requests for registration into the procedure.

(3) The economic operator may submit a request for registration into the procedure before the relevant time limit, if it were eligible for tendering in an open procedure. The request for registration shall specify the name and address (seat, residence) of the economic operator. The contracting authority shall send a confirmation to the requesting economic operator using the contact point specified by the economic operator about the registration or rejection of the request, including the reasons for rejection, within two working days after receipt of the request for registration. Deficiencies may not be remedied and further information may not be requested with regard to a request for registration; the economic operator the request for registration of whom was rejected by the contracting authority may submit a new request for registration. Requests for registration may be rejected only on an objective ground that ensures the effects of non-discrimination and the principle of equal treatment, including situations in particular where a request for registration is submitted after the time limit for the receipt of such requests. Registration may not be subject to the condition of providing a tender collateral.

(4) The tenderer may modify or withdraw its tender until the electronic auction is closed. The contracting authority shall be bound by the provisions laid down in the call for competition and the procurement documents after the expiry of the time limit for the submission of requests for registration, tenderers shall maintain their tenders made in the course of an electronic auction after the closure of the electronic auction. If the contracting authority indicated in the call for competition that tenderers would be invited to submit a professional tender after the closure of an electronic auction, tenderers shall maintain their professional tender as of the time limit for the submission thereof; for the purpose of determining the period during which tenderers must maintain their tenders, the date of closing the electronic auction shall be deemed as the date of the commencement of such period.

(5) The contracting authority shall invite the tenderer or tenderers to submit the statements mentioned in section 66 (4) and (6) and section 67 (1), as well as other documents, in particular the professional tender, required under other laws or, as the case may be, the call for competition by applying section 69 accordingly. Tenderers shall not be required to submit a summary sheet.

(6) The provisions laid down in sections 68 and 73 (1) *a*) and *b*) shall not apply in the procedure. The procedure shall be declared to be ineffective by the contracting authority, if no request for registration is submitted.

The application of own purchasing rules

Section 117 (1) Contracting authorities may establish independent procedural rules that are not subject to the rules laid down in Part Two.

(2) In the course of a public procurement procedure, the contracting authority shall not switch from the selected type of procedure to another. If the procedural rules to be applied in a public procurement procedure are established by the contracting authority independently, such rules shall be indicated in the call for competition. Calls for competition shall ensure that economic operators have equal opportunities to submit responsive tenders or requests to participate.

(3) The call for competition shall contain all information economic operators need for submitting a compliant tender (request to participate), including, in particular, main details of the contract to be awarded (subject-matter, quantity, and contract terms of the public procurement), a short description of the method of awarding (evaluation criteria and method), the time limit for the submission of tenders (requests to participate), and information on contacting the contracting authority. The contracting authority shall provide for the opening of tenders at the time and place specified in the call for competition. The call for competition

shall be published by the contracting authority by way of a notice using the standard form specified in a separate law.

(4) In the call for competition, contracting authorities may require the application of one or more grounds for exclusion specified in sections 62 to 63 in the course of the public procurement procedure, but a ground for exclusion not specified in this Act may not be applied. The contracting authority shall require the application of the grounds for exclusion specified in section 62 (1) *g*) to *k*), *m*), and *q*). With regard to suitability, the contracting authority may apply objective suitability criteria and certification methods, in addition to those specified in a separate law, but it shall apply section 65 (3) in the course of doing so.

(5) When establishing the procedural rules pursuant to paragraph (1), the contracting authority shall ensure adequate publicity of its procedures pursuant to this Act.

(6) The contracting authority shall provide the right to participate to all economic operators established in the European Union, ensure the mutual recognition of diplomas, certificates and other qualification documents, set appropriate time limits for submitting tenders (requests to participate), establish regulations that allow access to the applicable procedural rules in advance, and ensure the effect of non-discrimination and the principle of equal treatment in the course of adopting a decision closing the procedure.

(7) The contracting authority shall provide a non-discriminatory description of the subject-matter of the contract. The contracting authority may not specify the technical specifications of the procurement in a manner excluding certain economic operators or goods from the procedure or otherwise resulting in an unjustified and disadvantageous or advantageous discrimination in their regard. If reference to a thing of a specific make, origin, or type, or a procedure, activity, person, patent, or trade mark is required to provide a clear and generally understandable description of the subject-matter of the procurement, the description shall include the information that such reference is made only for the purpose of providing a clear description of the nature of the subject-matter, and the phrase “or an equivalent” shall be used next to such reference.

(8) The contracting authority shall notify in writing all tenderers, candidates, and (prior to tender opening) economic operators who gave notice of their interest in the procedure about all decisions and information having an impact on the result of the procedure, including a detailed justification thereof, without delay, but no later than three working days, after making the decision concerned. After finishing the evaluation of tenders, the contracting authority shall prepare, and send to all tenderers simultaneously, a written summary providing information of the evaluation of tenders and the reasons for selecting the successful tender.

(9) In the course of establishing its own procedural rules mentioned in paragraph (2), the contracting authority shall apply the grounds for inadmissibility mentioned in section 73 (1) and may apply the grounds for inadmissibility mentioned in section 73 (2) and (3), with the proviso that the ground for inadmissibility mentioned in section 73 (1) *c*) shall apply only if the ground for exclusion mentioned therein is applied, and the ground for inadmissibility mentioned in section 73 (1) *d*) shall be applied only if a suitability criteria is applied. The provisions laid down in section 73 (4) and (6) shall apply accordingly. The provisions laid down in section 75 (6) shall apply.

(10) The provisions laid down in sections 44 to 45 shall apply in the procedure accordingly.

PART FOUR
CONCESSION PROCEDURES
CHAPTER XVIII
RULES ON CONCESSION PROCEDURES

Commencement of the procedure

Section 118 (1) Contracting authorities shall apply the provisions of this Part when awarding a works or service concession reaching or exceeding the national threshold or, with regard to social or other service according the Annex 3, the EU threshold.

(2) According to separate law, different obligations exist regarding the publication of notices for concessions not reaching EU thresholds, respectively.

(3) Contracting authorities may conduct a concession procedure freely, provided that they comply with the principles and fundamental procedural rules laid down in Part One and this Part.

(4) The concession procedure may consist of one or more stages; the call for competition shall provide information on the course of the procedure, the goal of individual stages where a procedure consists of more than one stage, and on the expected indicative date of completion. More detailed information on the course of the procedure may also be provided in the other procurement documents; in this respect, clear information shall be provided on the stage of the procedure after which tenderers must maintain their tender. If the contracting authority adjusts any information pertaining to the course of the procedure during the procedure, it shall notify all economic operators participating in the procedure accordingly; if any fundamental information communicated in the call for competition or the content of the procurement documents is changed, the provisions laid down in section 119 (3) shall apply.

Section 119 (1) With the exception of cases described in sections 128 and 129, the call for competition shall be published with a notice specified in a separate law.

(2) The following shall be specified in particular in the call for competition:

a) name, address, phone and fax number, e-mail address and web address (if any) of the contracting authority;

b) availabilities where the procurement documents are or, with regard to tendering, will be available electronically without limitation and in full, directly, and free of charge. If certain procurement documents are not available directly by electronic means for a reason specified in section 39, the method of making the documents concerned available by the contracting authority;

c) the subject-matter and quantity of the works or service concession pursuant to section 121 (1), also specifying the optional part, if any;

d) contract term or maximum possible term;

e) place of performance;

f) possibility or exclusion of tendering for lots; where tendering for lots is permitted, indication of whether it is possible to submit a tender for one, for several or for all of the lots; indication of any limitation of the number of lots that may be awarded to any one tenderer;

g) the evaluation criteria according to section 125 (2);

h) the grounds for exclusion applied and methods of certification required in the procedure;

i) suitability criteria, data required for the assessment of suitability, and the method of certification required;

j) time limit for submitting tenders or requests to participate;

k) address of submitting tenders or requests to participate, and the method of submission;

- l)* language (languages) of tenders or requests to participate, and an indication whether a tender or request to participate may be submitted in a language other than Hungarian;
- m)* time and, if not done by electronic means, place of opening the tenders, and the persons authorised to attend the opening of the tenders; with regard to requests to participate, the time and, if not done by electronic means, place of opening the requests to participate;
- n)* special conditions applicable to the fulfilment of the contract, if any;
- o)* if the public procurement is subsidised from a source of the European Union, information on the project or programme concerned.

(3) The contracting authority may modify the call for competition before the date until any interested economic operator can join the procedure. Until that date, any modification to the call for competition shall be published in a notice, and all economic operators who expressed their interest in the procedure to the contracting authority shall be notified simultaneously. All economic operators participating in the procedure shall be notified simultaneously about the modification of any other procurement document. If the call for competition or another procurement document is modified, economic operators shall be afforded appropriate time to prepare, and, with the exception of insignificant changes, the time limit for the submission of tenders or requests to participate shall be extended. Section 55 (6) shall also apply to modifications.

(4) Requests for additional information and site inspections shall be subject to section 56, with the proviso that the additional information shall be provided within a reasonable period after receipt of a request, but no later than six days before the time limit for the receipt of requests to participate.

Procurement documents

Section 120 (1) Where economic operators are to submit a tender in response to the call for competition, the contracting authority shall make the procurement documents (except for adjustments made subsequently during the procedure, and answers to questions raised by economic operators, if any) available at the time of publishing or sending out the call for competition. If the call for competition does not include an invitation to submit tenders, the procurement documents shall be made available together with the invitation to tender. Any procurement document prepared specifically for the submission of requests to participate shall be made available at the time of publishing or sending out the call for competition.

(2) In addition to those required under this Act, the contracting authority shall also provide procurement documents that determine the following:

- a)* contract terms known to the contracting authority;
- b)* technical specifications of the subject-matter of the concession;
- c)* notice regarding the information economic operators need for preparing a tender or request to participate, and a list of certificates and statements to be submitted as part of a tender or request to participate. The contracting authority may also require the use of the template of European Single Procurement Documents in a concession procedure, and the use of additional templates for certificates and statements provided by the contracting authority may also be recommended.

(3) Procurement documents shall be electronically accessible to at least one tenderer, candidate, or a subcontractor mentioned in the tender or the request to participate per tender or request to participate.

Requirements concerning the subject-matter of the concession

Section 121 (1) A description of the works or service concession shall be provided in the call for competition, by specifying its nature, scope, volume, or indicative value, so that it enables economic operators to decide whether they intend to participate in the procedure.

(2) The contracting authority shall provide economic operators with the technical specifications in the procurement documents. The provisions laid down in section 58 (2) to (3) and, unless provided for otherwise by a law, in separate laws concerning the definition and contents of the technical specifications shall apply to the technical specifications.

(3) If the contracting authority enters into negotiations regarding the technical specifications or the contract terms during the procedure, if the submission of variants is permitted, or if proposals for a solution are requested from economic operators regarding specific characteristics, conditions, or purposes, the contracting authority shall determine the minimum requirements each tender must meet, including in particular technical, functional, and legal conditions.

(4) The provisions laid down in sections 59 to 60 shall apply, if labels are used or certification is required.

Negotiation

Section 122 (1) If the contracting authority enters into negotiations with economic operators participating in the procedure, the provisions laid down in section 88 (1) to (4) and (8) shall apply accordingly, with the proviso that minimum requirements shall be construed to mean the conditions mentioned in section 121 (3).

(2) The provisions laid down in section 88 (6) shall apply, with the derogation mentioned in section 125 (4), accordingly during the entire procedure as long as the contracting authority is not bound by the conditions it specified.

(3) The contracting authority may initiate or reopen negotiations with economic operators, if it establishes after the evaluation of tenders that, taking into account the terms of the most advantageous tender, the conditions laid down in sections 8 (7) and 133 (2) would not be met.

The submission of tenders and requests to participate

Section 123 (1) Depending on the course of the procedure, a tender or a request to participate, which shall not contain a tender but shall contain the information required by the contracting authority, shall be submitted as specified by the contracting authority in response to the call for competition.

(2) Economic operators shall always be afforded sufficient time for submitting a tender or request to participate. The time limit for the submission of tenders or requests to participate according to the call for competition may not be shorter than thirty days calculated from the date of dispatching the contract notice. If the procedure consists of more than one stage and requests to participate were to be submitted in response to the contract notice, the time limit set for the submission of first tenders in a subsequent stage of the procedure may not be shorter than twenty-two days calculated from the date of dispatching the invitation to tender. The time limit for the submission of tenders may be shortened by five days, if tenders may also be submitted via electronic means during the concession procedure.

(3) The provisions laid down in section 68 shall apply concerning requests to participate submitted during the concession procedure, first tenders requested from tenderers, and the final tenders assessed prior to the decision closing the procedure, and the contracting authority shall require the submission of a summary sheet with corresponding content as part of the tender or request to participate.

(4) The contracting authority may require in the procurement documents that the following shall be specified in a tender or request to participate:

- a) any part (parts) of the concession for the fulfilment of which a tenderer (candidate) intends to use a subcontractor,
- b) the subcontractors to be used for such parts, where already known at the time of submitting the tender or request to participate.

(5) In the course of the procedure, the contracting authority shall indicate the permitted scope of remedying deficiencies in the invitation to submit tenders or requests to participate.

Suitability criteria and grounds for exclusion

Section 124 (1) In a call for competition, contracting authorities shall specify suitability criteria pertaining to the technical and professional ability and economic and financial standing of candidates and tenderers. All suitability criteria and the documents to be submitted to certify compliance with such criteria shall be specified in the call for competition accurately. In this respect, the contracting authority shall specify the circumstances the existence or absence of which, or the degree of deficiencies of such circumstances which prevent the contracting authority from qualifying a tenderer or candidate as suitable.

(2) Section 65 (3), (6) to (8), (11), and (9) shall apply with regard to suitability criteria in a concession procedure, taking into account that the contracting authority may apply other objective requirements in addition to suitability criteria that are regulated under a separate law and may be applied in a public procurement procedure.

(3) If a suitability criterion is met by a tenderer or candidate by relying on the capacities of another organisation, that organisation shall certify its compliance with the given suitability criteria in line with the required certification methods. It may not be required in a concession procedure that a certain part of the contract must be fulfilled by the tenderer personally.

(4) The provisions laid down in sections 62 to 64 shall apply in a concession procedure as well. The ground for exclusion specified in section 62 (1) *i*) with regard to failure to submit certificates to support a statement made in a European Single Procurement Document may be applied, if the contracting authority requires the use of that document in the concession procedure to serve as preliminary evidence regarding the grounds for exclusion.

(5) The provisions laid down in section 71 (4) shall apply, if a subcontractor or an organisation certifying suitability is subject to any ground for exclusion.

Evaluation criteria

Section 125 (1) The successful tenderer shall be selected on the basis of objective evaluation criteria. The provisions laid down in section 76 (1) to (8), (11), and (13) shall apply to the definition of evaluation criteria, with the derogation that, instead of specifying their weight multiplier, it shall be sufficient to list the sub-criteria taken into account for each evaluation criterion in a decreasing order of importance.

(2) It shall be sufficient to list the evaluation criteria in the call for competition in a decreasing order of importance, while their weight multiplier, other information mentioned in section 76 (9), and the description of the evaluation method shall be provided in the procurement documents.

(3) If life cycle costing is used, the provisions laid down in section 78 shall also apply.

(4) If a tender is received during the procedure which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by a diligent contracting authority, the contracting authority may, exceptionally, modify the weight multiplier of the evaluation criteria or the order of importance of sub-criteria specified for each evaluation criterion, with the proviso that the order of importance specified in the call for

competition shall remain unchanged. In that event, the contracting authority shall notify all tenderers about the modification and send a new invitation to tender, taking into account the minimum time limit of twenty-two days for the submission of tenders as specified in section 123 (2). The contracting authority may not exercise the option specified in this paragraph, unless the procedure consists of more than one stage and no tender was to be submitted in response to the call for competition, but the contracting authority sent invitations to tender to qualified candidates in a subsequent stage of the procedure, and, at the time of publishing the call for competition, only the evaluation criteria and their order of importance was accessible to economic operators.

Evaluation of tenders and requests to participate

Section 126 (1) In the course of evaluating tenders and requests to participate, contracting authorities shall verify that they meet the conditions specified in the procurement documents and other conditions specified in laws.

(2) Contracting authorities shall determine if a tender or request to participate is inadmissible, and if an economic operator is to be excluded from the procedure. If an economic operator was not requested by the contracting authority to remedy its deficiencies, its tender or request to participate may not be declared inadmissible for a reason that could have been remedied by way of remedy of deficiencies.

(3) The contract may be awarded to a tenderer

a) the tender of whom meets the conditions specified in the procurement documents and other conditions specified in laws,

b) who meets the suitability criteria applied in the procedure, and

c) who is not subject to any ground for exclusion.

(4) The provisions laid down in section 73 (1) and (4) to (6) and in section 74 shall apply to the inadmissibility of tenders and requests to participate, and the contracting authority may also apply the grounds for inadmissibility specified in section 73 (2) and (3).

(5) A procedure may be declared ineffective in a case described in section 75 (1) or in any situation specified by the contracting authority in the call for competition. If the contracting authority stipulates that it may declare the procedure ineffective if certain conditions are met, it shall also specify the objective criteria used as basis for deciding on the ineffectiveness of the procedure.

(6) In addition to paragraph (5), a procedure shall also be ineffective if it can be established after the evaluation that, having regard to the most advantageous tender according to the evaluation criteria, the value of the concession exceeds the estimated value and, if the former were considered the estimated value at the time of launching the procedure, a notice should have been published at European Union level under a separate law instead of applying publication at national level in the procedure.

(7) In addition to paragraph (5), the procedure shall also be ineffective if it can be established that, having regard to the conditions of the most advantageous tender according to the evaluation criteria, the conditions laid down in sections 8 (7) and 133 (2) would not be met.

Section 127 (1) Contracting authorities shall inform in writing (via fax or electronic means) all tenderers and candidates or, prior to the opening of tenders, all economic operators who gave notice of their interest in the procedure about the result of a procedure, the ineffectiveness of a procedure, the declaration of a tender or request to participate submitted by a tenderer or candidate to be inadmissible, and the exclusion of an economic operator, including a detailed justification for the given event, without delay, but no later than three working days, after making the decision concerned. After finishing the evaluation of tenders,

the contracting authority shall produce, and send to all tenderers via fax or electronic means simultaneously, a written summary providing information of the evaluation of tenders, the reasons for selecting the successful tender, the availability of legal review, and the exact length of the standstill period.

(2) The contracting authority shall notify all tenderers or candidates without delay about any modification of a decision mentioned in paragraph (1), possibly made upon request by an economic operator, if the decision was unlawful and its unlawfulness is remedied by the modification. The contracting authority may also take measures as necessary to restore the lawfulness of a procedure, with due regard to the principles laid down in section 2 (1) to (3). If necessary, a contracting authority may also cancel or, where the original situation may not be restored because performance has already commenced, terminate a contract unilaterally with immediate effect.

(3) The contracting authority shall also notify all tenderers or candidates under paragraph (2) about any correction of a typographical error that does not have an impact on the lawfulness of a procedure.

(4) Upon request by a tenderer who submitted an admissible tender, the contracting authority, after giving notice of the result of the procedure, shall provide specific information on the characteristics of the successful tender and its advantages compared to the other tender within five working days after receipt of a corresponding request, with due regard to the business secret related interests of the successful tenderer.

Concession procurement procedures without prior publication

Section 128 (1) By way of derogation from section 119 (1), the call for competition shall not be published in a notice but shall be sent by the contracting authority to economic operators directly and simultaneously

a) in a case described in section 98 (2) *c)* or *d)*,

b) if a previous concession procedure launched with the publication of a notice was ineffective because no tender or request to participate was submitted during the procedure, or all tenders or requests to participate submitted were fundamentally non-compliant, provided that no material change occurred regarding the conditions of the concession; the contracting authority, acting through the minister responsible for public procurement, shall provide information about all these factors upon request by the European Commission. A tender shall be deemed fundamentally non-compliant, if it is inadmissible because the professional tender is clearly unable to meet the needs and requirements specified by the contracting authority without considerable changes; a request to participate shall be deemed fundamentally non-compliant, if it is inadmissible under section 73 (1) *b)* or *d)*.

(2) In a concession procedure without prior publication, only invited economic operators may submit a tender or request to participate. Invited economic operators may not submit a tender or request to participate jointly, but an invited economic operator may submit a joint tender or request to participate with an economic operator the contracting authority did not send an invitation to.

(3) Even in a case described in paragraph (1) *b)*, the contracting authority shall send the call for competition to at least three economic operators whom the contracting authority considers capable of meeting the suitability criteria relating to the fulfilment of the contract.

(4) Economic operators participating in the procedure shall be notified directly about any change pertaining to the procurement documents. The subject-matter or the terms of the contract may not change during the procedure to such an extent that would not allow the application of a procedure without prior publication.

(5) The time limit for submission shall not be subject to the minimum time limits specified in section 123 (2), but it shall be determined so that economic operators have sufficient time to submit a tender or request to participate.

(6) In a case described in paragraph (1) *a*), a final tender may also be presented orally during negotiation, in which case it shall be documented by the contracting authority adequately.

CHAPTER XIX

SPECIAL RULES CONCERNING CONCESSIONS OF A PARTICULAR SUBJECT

Rules concerning social and other services

Section 129 (1) With regard to social and other services specified in Annex 3, the provisions of this Part shall apply with the derogations specified in this section.

(2) The concession procedure may also be published in a prior information notice. The prior information notice shall be published with a content corresponding to requirements laid down in a separate law. The prior information notice announcing the procedure shall include an invitation to economic operators to give notice of their intent to participate by the time limit specified in the prior information notice. Data on the subject of the concession shall be provided in the prior information notice announcing the procedure so that economic operators can decide whether they intend to participate in the procedure. In that case, the contracting authority shall send the call for competition launching the concession procedure to economic operators who gave notice of their intent to participate directly. Changes to data included in the prior information notice shall be published in a notice setting an appropriate time limit, and changes to a call for competition sent out directly shall be notified to the economic operators directly.

(3) The contracting authority may declare more than one tenderer as successful tenderers with whom the service concession contract or contracts are to be concluded. The contracting authority may derogate from section 125 in line with the characteristics and the organization of the given service, with the proviso that the contracting authority shall always ensure that evaluation is based on objective criteria which, as well as the relative importance of which, are made available to economic operators in advance.

(4) The contracting authority may stipulate that, with regard to the nature of the service, tenderers are to perform the contract personally, and it may exclude the use of other economic operators for the certification of suitability.

PART FIVE

PROVISIONS ON CONTRACTS

CHAPTER XX

PROVISIONS ON CONTRACTS

Section 130 (1) The provisions laid down in this Part shall apply to public contracts, framework agreements, and works and services concessions (hereinafter jointly “contract”) falling within the scope of this Act.

(2) Innovation partnership contract shall be subject to provisions laid down in sections 131, 136 to 137, 139, 141, and 143 only.

Conclusion of the contract

Section 131 (1) The contract shall be concluded in writing on the basis of an effective procurement procedure with the successful tenderer or successful tenderers, if the tender was

submitted jointly, according to the final terms, draft contract, and tender communicated during the public procurement procedure.

(2) The contract shall include the evaluated elements of the successful tender, with due regard to the award criteria taken into account during the procedure.

(3) Where lot tendering was permitted by the contracting authority, a contract for each lot shall be concluded with the successful tenderer the given lot.

(4) The contracting authority shall conclude the contract only with the successful tenderer or, if the successful tenderer withdraws from contracting, the tenderer who submitted the next most favourable tender during evaluating the tenders, provided that that tenderer was named in the written summary of the evaluation of tenders.

(5) The period during which the tenderer must maintain its tender concerning the successful tenderer and, in a case described in paragraph (4), the tenderer with the second most favourable tender shall be extended by thirty or, with regard to public works contracts, sixty days calculated from the day of sending out the written summary of the evaluation of tenders to tenderers.

(6) The contract shall be concluded by the contracting authority in the period during which the tenderer must maintain its tender pursuant to paragraph (5). Unless provided for otherwise in this Act, the contract shall not be concluded for a period of ten or, where a procedure under section 115 is applied, five days after sending out the written summary or a modified summary in case the summary is corrected and the data pertaining to the effectiveness of the procedure, the validity of the tender, or the result of evaluation is modified.

(7) If an application for review procedure [section 148 (2)] or initiative [section 152] is filed, the contract or, in a case described in paragraph (3), the contract on the part affected by the review procedure shall not be concluded until the decision on the merit of the case or the decision resulting in the closure of the public procurement case is adopted, unless the conclusion of the contract is permitted by the Public Procurement Arbitration Board [section 156 (4)]. If the period during which the successful tenderer must maintain its tender expires in the meantime, the contracting authority may conclude the contract with that tenderer, if it makes a statement on maintaining its tender.

(8) Notwithstanding paragraph (6), the contract may be concluded before the period of ten or five days specified therein expires, if:

a) only one tender was submitted in the course of an open procedure, a concession award procedure consisting of one stage and launched with a notice, or a procedure consisting of one stage and conducted under section 117;

b) only one tender was submitted in the course of a restricted procedure, negotiated procedure, competitive dialogue, a procedure for an innovation partnership, contract procedure in a dynamic purchasing system, a concession award procedure consisting of more than one stage and launched with a notice, or a procedure consisting of more than one stage and conducted under section 117, and, if any request to participate submitted in the procedure was declared invalid or a participant was excluded, the time limit for legal review against the corresponding decision expired with regard to the stakeholders, or the decision was declared lawful by the Public Procurement Arbitration Board;

c) the negotiated procedure without prior publication was launched under section 98 (2) *e*);

d) the public procurement is made under a framework agreement, unless the public procurement is realised by the reopening of competition and several tenders are submitted during the procedure;

e) the negotiated procedure without prior publication was launched under section 98 (2) *c*) to *d*), paragraph (3), or paragraph (4) *b*) to *d*) or, with an invitation to only one tenderer under section 98 (5), or the concession award procedure without prior publication was launched

under section 128 (1) *a*), and the president of the Public Procurement Authority did not launch a review procedure within the time limit specified in section 152 (3);

f) only one tender was submitted in the procedure conducted under section 115.

(9) The contracting authority shall only be relieved from its obligation to conclude the contract with the successful tenderer, and the successful tenderer shall only be relieved from its obligation to conclude the contract during the period specified in paragraph (5) (release from the period during which the tenderer must maintain its tender), if it had not been able to conclude or fulfil the contract due to an unforeseeable event arising beyond the control of it after sending the written summary of the evaluation of tenders or the contract should be rescinded or terminated due to such an event.

Special conditions of contract performance

Section 132 (1) The contracting authority may establish special conditions concerning the performance of the contract, in particular with regard to social or environmental considerations and/or the incentives for innovation. Such contract terms and conditions shall be indicated in the notice launching the procedure, and the detailed conditions may also be specified in other procurement documents.

(2) The special conditions shall be related to the subject-matter of the contract [section 76 (7)] and shall not result in the violation of any fundamental principle specified in section 2 (2) to (3) and (5).

(3) For the purposes of paragraph (1), social conditions may include the following in particular:

a) the involvement of an organisation mentioned in section 33 or an organisation meeting Article 20 of Directive 2014/24/EU under the law of another Member State of the European Union in the performance of the contract;

b) the employment of job seekers, disadvantaged workers, unemployed persons or prisoners;

c) the part-time employment of persons receiving any kind of child care allowance during or after the period of disbursement, or a person receiving an infant care fee or child care fee after the period of disbursement, within the meaning of the Act on the support of families;

d) the application of measures enforcing compliance with the requirement of equal treatment;

e) the provision of training, under the framework of performing the given contract, to unemployed or young persons participating in the fulfilment of the given contract regarding the skills required for performance.

Duration of contracts

Section 133 (1) Contracting authorities shall specify the duration of contracts in the notice launching the procedure so that the contract is not concluded for an indefinite period or for a disproportionately long period that is inconsistent with the goals of maintaining competition and spending public funds efficiently, unless justified by the subject-matter of the contract, the selected contract structure, the related financial conditions, or an investment made by the successful tenderer.

(2) Works or service concessions shall only be concluded for a definite period. For works or service concessions lasting more than five years, the contracting authority shall prove by calculations that the duration of the concession does not exceed the time during which the concessionaire could reasonably be expected to take to recoup the investments made in operating the works or services and during the contract duration for the purpose of performing the contract, together with a return on invested capital.

Securities of contracts

Section 134 (1) If the contracting authority requires a security in a contract, the terms and conditions pertaining to the security shall be specified in the procurement documents. The provisions laid down in paragraphs (2) to (8) shall not apply to the means of securing a contract within the meaning of Chapter XXVI of Book Six of the Ptk.

(2) A security aiming to secure claims arising from the non-performance of the contract may not exceed 5% contractual consideration calculated without any reserve or value added tax.

(3) A security aiming to secure claims arising from the defective performance of the contract may not exceed 5% contractual consideration calculated without any reserve or value added tax.

(4) The available amount of a collateral required under paragraphs (2) to (3) shall be reduced by the amount of any satisfied claim of the contracting authority; a tenderer, as a contracting party, may not be required to keep up the security at a specified level continuously once a claim is satisfied. A security shall be made available pursuant to the terms and conditions stipulated in the contract; a security aiming to secure claims arising from the non-performance of the contract may not be required to be made available before the effective date of the contract, and a security aiming to secure claims arising from the defective performance of the contract may not be required to be made available before the performance of the contract. With regard to securities required for any other purpose, the security may not be required to be made available before the date of concluding the contract or a date before which the secured event could not occur, whichever date is later.

(5) With regard to securities specified in paragraph (4), tenderers shall make only a statement in their tender regarding the provision of the collateral in due time, but they may not be required to provide any other certificate or statement pertaining to collaterals during the public procurement procedure.

(6) If the provision of a security is required, the contracting authority, in the procurement documents shall,

a) stipulate that the security may be provided, at the choice of the tenderer as a contracting party, by paying the required amount as collateral security to the payment account of the contracting authority as a contracting party, by money transfer, by providing a guaranty or directly enforceable suretyship by a financing institution or insurer, or by way of a promissory note issued under an insurance contract stipulating the assumption of a directly enforceable suretyship, or

b) indicate one or more forms or means of providing securities, other than those mentioned in point *a)*, and stipulate that the security may be provided, at the choice of the tenderer as a contracting party, in or by any of the forms or means specified or by any of the means mentioned in point *a)*.

(7) With regard to securities aiming to secure claims arising from defective performance, the contracting authority may agree in the contract to the security to be made available, in whole or in part, by way of retention from any remuneration payable to the tenderer for its performance or partial performance, so that the retained amount shall be subject to the rules pertaining to collateral securities.

(8) A tenderer, as a contracting party, may switch from one type of securities to another type mentioned in paragraphs (6) to (7), with the proviso that the security shall remain available at the amount and during the period specified in the contract.

Special provisions on the performance of contracts

Section 135 (1) The party entering into contract as contracting authority shall issue a statement on the acknowledgement of the performance of the contract (receipt of

performance) or its refusal in writing within fifteen days calculated from the date of the performance by the party entering into contract as a tenderer, or the receipt of the written notification thereof.

(2) With regard to construction contracts concluded for carrying out public works, if the handover-acceptance procedure is not started by the contracting authority upon the written notice (completion notice) of the party entering into contract as tenderer within fifteen days following the contractual time limit for starting the handover-acceptance procedure, or if it is started but not completed by the time limit defined in the contract with due regard to section 6:247 (2) of the Ptk., the party entering into contract as contracting authority shall issue a receipt of performance upon the request of the party entering into contract as tenderer.

(3) With regard to public works, special rules derogating from section 6:130 (1) to (3) of the Ptk. may be established by a government decree with regard to the payment of the contractual consideration.

(4) Where a public contract is carried out using subsidies, in the case of payment for suppliers, the organisation obliged for payment shall pay the consideration in full compliance with the rules applicable to the party entering into contract as contracting authority under the provisions laid down in section 6:130 (1) to (3) of the Ptk., paragraph (3), or the government decree passed on the basis of authorisation by this Act.

(5) The parties may also agree to the payment of the consideration in instalments, provided that the chosen type of the contract actually justifies it. In that event, the provisions laid down in an Act or government decree with regard to payments shall apply to the payment of all instalments.

(6) Homogeneous and expired claims may be set off against a debt of the contracting authority arising from a contractual consideration, provided that they are acknowledged by the obligee.

(7) If the subject-matter of the public contracts consist of public works and the period of performing the contract exceeds two months, the contracting authority shall grant the possibility of requesting the advance payment of an amount corresponding to 5% of the total contractual consideration calculated without any reserve or value added tax, but not exceeding seventy-five million forints. The contracting authority shall not require the other contracting party to provide a security as a pre-requisite for the payment of the advance up to this mandatory amount.

(8) The parties may agree in the contract to the payment of an advance, even in excess of the mandatory amount and in any case other than that specified in paragraph (7). A separate law may also require the payment of an advance in excess of the amount specified in paragraph (7) or in any other situation, and it may also make it mandatory to pay an advance exceeding the amount specified in paragraph (7) without any collateral.

(9) Notwithstanding paragraph (7), in case of public contract carried out using subsidises, in the case of the payment for suppliers, the contracting authority shall grant the possibility of requesting the advance payment of an amount corresponding to 30% of the eligible contract amount, calculated without any reserve or value added tax, provided that a separate law does not require the payment of a higher supplier advance. In such case, the amount of security the contracting authority might require may not exceed the difference between 10% of the eligible contract amount, calculated without any reserve or value added tax, and the supplier advance requested.

(10) The conditions specified in paragraphs (1) to (3), (6) to (7), and (9) shall form integral parts of the contract, even if the parties did not agree on any or, with the exception of paragraph (8), agreed to other provisions regarding such matters.

(11) Any provision of the contract concluded on the basis of a public procurement procedure shall be null and void, if, apart from the cases permitted under section 6:155 (4) of

the Ptk. regarding the payment of default interest, it excludes or limits the possibility of applying the legal consequences of any breach of contract by the contracting authority.

(12) With regard to conditional public procurements, a condition specified by the contracting authority in the notice launching the procedure regarding the effectiveness of the public procurement may also be used as a suspensory condition regarding the entry into force of the contract to be awarded in the procurement procedure.

Section 136 (1) The contracting authority shall stipulate in the contract that the successful tenderer

a) in relation to the performance of the contract, shall not pay or charge for any cost incurred by a company failing to meet the requirements specified in section 62 (1) *k) ka)* to *kb)* and which costs are suitable for reducing the taxable turnover of the successful tenderer;

b) shall provide the contracting authority with access to its ownership structure during the entire period of performing the contract and shall notify the contracting authority about any transaction within the meaning of section 143 (3) without delay.

(2) If the successful tenderer has tax residency in a foreign country, a statement by the successful tenderer shall be attached to the contract authorizing the Hungarian National Tax Authority to obtain data pertaining to the successful tenderer from the tax authority of the country of its tax residency directly and without using cross-border legal assistance.

The invalidity of contracts

Section 137 (1) A contract shall be null and void if

a) it was concluded unlawfully without the conduct of a public procurement procedure;

b) it was concluded in a negotiated procedure without prior publication, so that the conditions of conducting such procedure were not met;

c) the contract was concluded by the parties in violation of the rules on a standstill period [sections 80 (5), 115 (2), 131 (6) to (8)], thereby making it impossible for tenderers to seek legal review before contracting, and, at the same time, the violation of public procurement rules affected the chances of the tenderer to be the successful tenderer.

(2) Notwithstanding paragraph (1), the contract shall not be null and void, if the contracting authority did not conduct a public procurement procedure launched with the publication of a notice or entered into an agreement without conducting a public procurement procedure [sections 9 to 14, and 111], because it believed that it was permitted by this Act to conclude a contract by applying a public procurement procedure without publication of notice or without conducting a public procurement procedure, provided that its intent to contract was published in a notice using the standard form in a separate law and the contract was not concluded within ten days after publishing the notice.

(3) Notwithstanding paragraph (1), the contract shall not be null and void, if the performance of the contract is justified by exceptionally important public interest. Economic interests directly related to the contract (in particular costs related to any obligation arising from late performance, conducting a new public procurement procedure, any change in the contracting parties, or invalidity) shall not be regarded as exceptionally important public interest, and other economic interests in the validity of the contract shall only be considered exceptionally important public interest, if the invalidity of the contract would result in disproportionate consequences.

(4) The provisions of this Act shall not exclude the application of section 6:95 of the Ptk. with regard to establishing the invalidity of a contract concluded in violation of any law on public procurement and public procurement procedures. In addition to the rules laid down in paragraph (1), the violation of the rules on public procurement procedures (other than provisions regulating the contents of contracts) shall also render the contract invalid, if the

validity of the contract would be inconsistent with the goals and principles of this Act in light of the weight and nature of the given violation.

Parties involved in contract performance

Section 138 (1) A contract shall be performed, as a contracting party, by the successful tenderer or joint tenderers, or, if the contracting authority required or permitted the establishment of an economic organisation [section 35 (8) to (9)], an economic organisation (hereinafter “project company”) established with the exclusive participation of the successful tenderer(s) or the contracting authority and the successful tenderer(s). With regard to public works, the maximum total percentage performed by subcontractors shall not exceed 65% of the value of the contract. The percentage of subcontractors’ involvement in the performance of the contract shall be determined by the percentage they receive from the value of the contract, calculated without value added tax.

(2) The party entering into contract as tenderer shall use any organisation certifying its suitability in line with the commitment presented in the procedure under section 65 (7), as well as in the cases and manners specified in section 65 (9), and it shall involve the professionals presented to certify its suitability in the involvement of the contract. It may be possible not to involve such organisations or professionals or to involve another organisation or professional instead (including cases of legal succession through transformation, merger, or division), if the suitability criteria the contracting tenderer met in the public procurement procedure together with the given organisation or professional are also met (where the contracting authority reduced the number of economic operators participating in the procedure on the basis of data presented with regard to a given suitability criterion during the public procurement procedure, that suitability criterion shall be met equivalently as with the original organisations or professionals) by the party entering into contract as tenderer even without the organisation or professional concerned or with the new organisation or professional to be involved instead.

(3) The contracting authority shall not limit the right of the tenderer to involve a subcontractor, unless the option specified in section 65 (10) was exercised during the procedure. At the time of contracting and, with regard to subcontractors involved subsequently, during the period of performing the contract, the successful tenderer shall notify the contracting authority in advance about any and all subcontractors involved in the performance of the contract; where a certain subcontractor was not nominated in the relevant public procurement procedure, the successful tenderer, at the time of giving notice, shall also submit a statement made by the successful tenderer or the subcontractor concerned that the subcontractor to be involved in the performance of the contract is not subject to any ground for exclusion applied in the previous public procurement procedure.

(4) Involving an organisation or professional presented by the tenderer during the procedure shall not be omitted, if, in light of the characteristics of the contract concerned, the involvement of the given person (organisation) constituted a determinant factor during the evaluation of tenders during the procurement procedure. In such case, the involved organisation may be changed only in certain cases of legal succession, where the new organisation can be considered the legal successor of the organisation originally presented in the procedure in terms of all relevant circumstances taken into account during evaluation, in particular with regard to the staff evaluated in the case described in section 76 (3) *b*). The professional, who was considered a decisive factor during evaluation, shall not be changed without the consent of the contracting authority and if the new professional presented is equivalent to the professional evaluated with regard to all relevant factors considered during evaluation.

(5) With regard to public works, the subcontractor involved in the performance of the contract shall not involve any another agent to an extent exceeding 65% of its subcontract.

Section 139 (1) The identity of the successful tenderer or tenderers as contracting party may be replaced only if:

a) legal succession takes place with regard to a project company under a clear contractual provision meeting the requirements laid down in section 141 (4) *a)*, or with regard to a legal entity providing financing for performance or a legal entity designated by such a legal entity under such a contractual provision with a view to securing the performance of the contract; or

b) the legal succession taking place with regard to the contracting party is a result of the transformation, merger, division or other form of termination of the legal person with a legal successor, or it is the result of partial legal succession during which an entire business branch (including relevant contracts, assets, and employees) operating as an economic unit, if the legal person concerned is not a business company, an entire organisational unit pursuing the given activity is transferred to the legal successor, or if the contract is transferred during an insolvency procedure conducted with regard to the original contracting party;

provided that the legal successor entering the contract is not subject to any ground for exclusion applied in the public procurement procedure and meets the suitability criteria applied in the public procurement procedure according to the rules pertaining to tenderers and by applying the provisions laid down in section 138 (2) to (4), and that the legal succession is not aimed at circumventing the application of this Act.

(2) Apart from the cases described in paragraph (1), the identity of the party entering into contract as tenderer may be replaced only as a result of a new public procurement procedure. The provision laid down in section 141 shall apply to the change of any other element of the legal relationship.

(3) Any legal succession involving a change of identity concerning party entering into contract as contracting authority, shall not be aimed at circumventing the application of this Act.

Section 140 (1) If the successful tenderer or tenderers set up a project company for the purpose of performing the contract, the contract shall stipulate that the rights and obligations stipulated therein shall belong to the project company once it is established, and that the contracting parties shall enter into all transactions as necessary to this end. In that event, the subcontractors named in the tender shall enter into a contract with the project company as necessary for the performance of the contract.

(2) In other respects, the provisions pertaining to contracts shall also be applied to the contract concluded by and between the party entering into contract as contracting authority and the project company, including in particular the provisions laid down in this Act or other laws pertaining to the publicity, mandatory elements, and amendment of contracts, as well as the control of contract performance.

(3) The project company and the successful tenderer or tenderers are jointly and severally liable for the performance of the contract.

(4) The project company shall not pursue any activity or enter into any contract other than those required for the performance of the contract, it shall not acquire ownership in another economic organisation, and it shall not transform into, merge with, or be divided into any other legal person.

(5) No person other than the successful tenderer or tenderers may acquire any ownership in the project company, apart from cases where the contracting authority indicated in the notice launching the procedure that the project company was to be established by the successful tenderer or tenderers and the contracting authority. The founders shall not take away the

subscribed capital and the assets exceeding the registered capital of the project company, not including dividends.

(6) The project company may be terminated by the successful tenderer or tenderers, if:

a) the project company performed the contract, and both the project company and the contracting authority performed its accounting obligations toward the other party, or

b) all rights and obligations arising from the contract and other contracts concluded for the purpose of performing the contract are assumed from the project company by the successful tenderer or tenderers in full.

(7) The party entering into contract as contracting authority may terminate the contract unilaterally, if the successful tenderer was required to set up a company, and the tenderer fails to notify the company registry court about the conclusion of the memorandum of association or the adoption of the articles of association within twenty days after signing the contract.

(8) If the contract also falls within the scope of the Act on concessions, the provisions laid down in this section shall apply with the derogations specified in that Act concerning concession contracts and concession companies.

(9) The performance of the project company may be used as reference or turnover certifying suitability by any owner of the project company who was actually involved in such performance, up to the volume of their involvement, even if the project company was terminated in the meantime.

Contract amendment

Section 141 (1) The provisions laid down in this subtitle shall apply to amendments of the contract effected by the contracting parties, or a contracting party entitled to do so, and to changes to the legal relationship between the contracting parties pursuant to the provisions of the contract (hereinafter jointly “contract amendment”).

(2) The contract may be amended without examining the conditions provided for under paragraph (4) or (6) and conducting a new public procurement procedure, if the increase in consideration resulting from the amendment or, if more than one amendment is made, the net total of such increases does not reach either

a) the EU threshold, where the initial contract reached the EU threshold; or

b) 10% of the initial contract value regarding public service, public supply, or works or service concession contract, or 15% of the initial contract value regarding public works contract;

and the amendment may not alter the overall nature of the contract and is compatible with the nature of the initial contract.

(3) Paragraph (2) can be applied to a contract amendment that results in any change in the contract value or, where an amendment affects more than one element of the contractual relationship, to elements of an amendment related to the change in contract value. Paragraph (2) shall not be applied to a contract amendment, if the public procurement procedure preceding the conclusion of the contract was launched by the contracting authority using rules that could not have been applied in a lawful manner, had the contracting authority determined the estimated value of the procedure by considering the contract value after the contract amendment.

(4) In addition to the cases regulated under paragraph (2), a contract may be amended without examining the conditions provided for under paragraph (6) or conducting a new procurement procedure in any of the following cases:

a) where the exact conditions and content of amending certain elements of the contract subsequently (including the right of option) are clearly specified in the contract, ensuring

access to all tenderers in advance. However, such contractual conditions shall not provide for amendments that would alter the overall nature of the contract;

b) it becomes necessary to purchase additional works, services, or supplies not mentioned in the initial contract from the original contracting party, where a change of the contracting party

ba) cannot be made for economic or technical reasons, in particular due to interchangeability or interoperability with existing equipment, services, or installations procured under the initial contract; and

bb) would cause significant inconvenience or substantial duplication of costs for the contracting authority. However, the increase in the price or, where more than one amendment is effected, the total net value of such increases shall not exceed 50% of the original contract value;

c) where all of the following conditions are fulfilled:

ca) the need for amendment has been brought about by circumstances which a diligent contracting authority could not foresee;

cb) the amendment does not alter the overall nature of the contract;

cc) any increase in price is not higher than 50% of the value of the original contract. Where several successive amendments are made due to multiple unrelated circumstances mentioned in subpoint *aa)*, such limitation shall apply to the net value of each amendment. Such consecutive amendments shall not be aimed at circumventing this provision.

(5) For the purposes of paragraph (2) and (4) *b)* and *c)*, the updated contract value shall be the reference value for the calculation of the original contract value, where the contract includes an indexation clause pursuant to paragraph (4) *a)*. With regard to works and service concessions and in the absence of an indexation clause, the updated value shall be calculated using the annual average inflation index published by the Hungarian Central Statistical Office.

(6) For cases other than those regulated under paragraphs (2) and (4), the contract may be amended without conducting a new public procurement procedure, if the amendment is not substantial. The contract amendment shall be deemed substantial, if it stipulates conditions that are substantially different from those of the original contract. An amendment shall always be considered substantial, if:

a) it stipulates conditions which, had they been included in the procurement procedure prior to the conclusion of the contract, would have allowed the participation of tenderers (candidates) other than the originally participating tenderers (candidates) or would have allowed for the success of a tender other than the successful tender;

b) the amendment changes the economic balance of the contract to the advantage of the successful tenderer; or

c) the amendment extends the subject-matter of the contract to a new, significant element that is material in comparison to the tenderer obligations set forth in the original contract.

(7) With the exception of cases described in paragraph (4) *a)*, the contracting authority shall dispatch a notice on the contract amendment in line with the contents of the standard form specified in a separate law.

(8) Apart from the cases described in this section, a contract may not be amended without conducting a new public procurement procedure. Any amendment made without conducting a public procurement procedure in an unlawful manner shall be null and void under section 137 (1) *a)*.

Compliance with the principle of responsible management of public funds in the course of contract performance

Section 142 (1) Contracting authorities shall keep records of data concerning the performance of the contract; in that regard, a contracting authority shall review and record the

performance of all contractual obligations that were taken into account during the evaluation stage of the public procurement procedure, as well as any and all performance that derogates from the contract, including the reason for such derogations and the enforcement of claims arising from the breach of contract, if any.

(2) Any failure by the party entering into a contract as contracting authority to enforce a claim arising from a breach of contract (apart from the right to unilaterally terminate or cancel the contract) shall be considered a violation of the fundamental principles laid down in section 2 (1) to (4), if:

a) the breach of contract is committed by failing to perform an obligation in a contractual manner, which was taken into account by the contracting authority during the evaluation of tenders in the public procurement procedure; or

b) due to the breach, the performance derogates from the contract to such an extent that, had the parties amended the contract accordingly, it would constitute a substantial amendment within the meaning of section 141 (6).

(3) A contract amendment shall be null and void, if it is aimed at relieving the contracting tenderer from a breach of contract (committed by it) and its legal consequences, apart from the right to unilaterally terminate or cancel the contract, for which it is (or would be) liable, or at having the contracting authority assume extra labour costs or other risks that should be borne by the successful tenderer under the contract without due reason.

(4) The Public Procurement Authority shall be entitled to control compliance with requirements set forth in this Act concerning the amendment and performance of the contract pursuant to section 187 (2) *j)*, and to initiate a procedure at the Public Procurement Arbitration Board or a court if any violation is established [sections 153 (1) *c)* and 175].

(5) The contracting authority shall notify the Public Procurement Authority if the successful tenderer, as a contracting party, committed a serious violation of its contractual obligations, and the violation resulted in the unilateral termination or cancellation of the contract or the enforcement of a claim for damages or other sanctions available under the contract, or if an act the successful tenderer is accountable for resulted, in whole or in part, in the frustration of the contract. The notification shall provide a description of the breach of contract, the corresponding legal consequence applied, an indication as to whether or not the contracting party admitted to the breach of contract, and if a court action was filed regarding the matter.

(6) If the violation of a contractual obligation by the successful tenderer, as a contracting party, is established in a final and binding court decision, the contracting authority shall notify the Public Procurement Authority about the breach of contract, describing the breach and its substantial characteristics, including an indication as to whether the breach of contract resulted in the unilateral termination or cancellation of the contract or the enforcement of a claim for damages or other sanctions available under the contract, or if an act the successful tenderer is accountable for resulted (in whole or in part) in the frustration of the contract.

Special provisions on termination of the contract

Section 143 (1) The contracting authority may unilaterally terminate or, pursuant to the provisions of the Ptk., cancel the contract, if:

a) a substantial amendment of the contract is indispensable, and for this reason a new public procurement procedure must be conducted under section 141;

b) the tenderer does not ensure compliance with section 138, or valid legal succession takes place regarding the party contracting as tenderer without meeting the requirements of section 139; or

c) an infringement procedure is launched on the ground of violating the rules on public procurement under Article 258 TFEU, or a serious infringement of the obligations under the

law of the European Union has been declared by the Court of Justice of the European Union in a procedure under Article 258 TFEU, and the contract is null and void due to the violation established by the Court.

(2) The contracting authority shall unilaterally terminate or, pursuant to the provisions of the Ptk., cancel the contract, if it learns after the conclusion of the contract that a ground for exclusion existed concerning the contracting party during the public procurement procedure and, for this reason, it should have been excluded from the procurement procedure.

(3) The party entering into a contract as tenderer, shall be entitled to and at the same time shall be bound to unilaterally terminate the contract within a notice period allowing for arrangements to be made to ensure the performance of the contracted task, where such a period is necessary if:

a) the condition specified in section 62 (1) *k kb)* is met by any legal person or organisation with legal capacity under its personal law acquiring, directly or indirectly, over 25% of the shares in the successful tenderer;

b) the condition specified in section 62 (1) *k kb)* is met by any legal person or organisation with legal capacity under its personal law in which the successful tenderer acquires, directly or indirectly, over 25% of shares.

PART SIX

LEGAL REVIEW IN PUBLIC PROCUREMENT

CHAPTER XXI

RULES ON REVIEW PROCEDURES

Section 144 (1) Legal review shall be available according to the provisions laid down in this Part concerning any unlawful act or omission under laws pertaining to public procurement, procurement procedures, works or service concessions, and concession award procedures.

(2) The adjudication of civil claims concerning procurement procedures, concession award procedures, contracts concluded in a public procurement procedure, concluded works or services concession contracts, and the amendment thereto or performance thereof, with the exception specified in section 145 (3a) shall be reserved to the court.

(3) For the purposes of this Part, public procurement and public procurement procedure shall also include concession award procedure and design contest.

General provisions on the procedure of the Public Procurement Arbitration Board

Section 145 (1) The provisions laid down in Act CL of 2016 on the Code of General Administrative Procedure (hereinafter “the Ákr.”) shall apply to the proceedings of the Public Procurement Arbitration Board, with due regard to the supplementary or derogating provisions laid down in this Act and the implementing decree passed on the basis of authorisation by this Act.

(1a) In a review procedure conducted by the Public Procurement Arbitration Board,

a) unless provided for otherwise under this Act, communication by electronic means within the meaning of the Act on the general rules on electronic administration and trust services (hereinafter “the Eüsztv.”) shall be used mandatorily;

b) a summary procedure may not be conducted;

c) the Public Procurement Arbitration Board may invite the applicant or the organisation initiating an *ex officio* procedure to remedy deficiencies on more than one occasion;

d) a party may not make up for a missing procurement document by providing a statement.

(2) Proceedings concerning an infringement of the laws applicable to public procurements, procurement procedures, works and service concessions, and concession award procedures, including the proceedings concerning the rejection of the request for prequalification and the deletion from the prequalification list specified in the separate law referred to in section 21 (4) (hereinafter “review procedures initiated in prequalification cases”), shall fall within the material competence of the Public Procurement Arbitration Board.

(3) With the exception of proceedings launched on the ground of civil claims arising from the modification or performance of a contract, the Public Procurement Arbitration Board shall have material competence over the modification or performance of a contract, concluded in a public procurement procedure or concession award procedure, in violation of this Act or a decree adopted on the basis of authorisation by this Act, as well as proceedings launched due to an act or omission of a contracting authority in violation of its own procedural rules within the meaning of section 117.

(3a) The Public Procurement Arbitration Board shall have material competence over establishing the nullity of a contract due to a violation mentioned in section 137 (1), as well as establishing the fact that, on the ground of circumstances specified in section 137 (3), a contract affected by a violation mentioned in section 137 (1) is not null and void. Where a contract is null and void due to a violation mentioned in section 137 (1), the Public Procurement Arbitration Board shall have material competence over establishing whether or not the original situation can be restored for the purposes of applying the legal consequences of the contract being invalid.

(4) The Public Procurement Arbitration Board shall have material competence over legal disputes pertaining to the violations mentioned in paragraphs (1) to (2), committed by any organisation or natural person applying this Act on a voluntarily basis.

(5) The Public Procurement Arbitration Board shall have territorial competence over the entire territory of Hungary.

(6) In the course of review procedures pertaining to exclusions of this Act, the Public Procurement Arbitration Board shall not review the decision made by a competent committee of the National Assembly to grant an exemption from the application of this Act. Where such a provision is laid down in an act, the Public Procurement Arbitration Board may have material competence over proceedings launched on the ground of violation of a law pertaining to purchases and procurement procedures that are conducted on the field of defence and security, involve classified data, affect fundamental security or national security interests, or require special security measures.

(7) In a review procedure conducted before the Public Procurement Arbitration Board, representation by an accredited public procurement consultant, counsel of a chamber, or attorney-at-law is mandatory.

Acting public procurement commissioners

Section 146 (1) In cases mentioned in section 145 (2) to (4) (hereinafter “public procurement cases”), the Public Procurement Arbitration Board shall act in a panel consisting of three public procurement commissioners, with the exception mentioned in paragraph (4), passing its decision by majority voting.

(2) The chairperson of the Public Procurement Arbitration Board shall appoint the members and president of the proceeding panel. Members of the proceeding panel shall be appointed so that at least two members shall hold a professional exam in law, at least one member shall have experience in EU subsidised procurement (if the procurement case concerned involves such subsidy), and at least one member shall hold a university or college degree on a field that is closely related to the subject-matter of the case. The president of the proceeding panel shall be a public procurement commissioner having Bar hold a professional exam in law.

(3) The president of the proceeding panel shall be responsible for preparing and presiding the procedure. The president of the proceeding panel may take any measures and make any decisions falling within the material competence of the Public Procurement Arbitration Board under an Act, with the exception of provisional measures, procedural decisions resulting in the conclusion of a public procurement case, decision on extending the scope of the procedure [section 158 (1)], and decisions on the merit of the public procurement case (hereinafter “decision on the merits”) [section 165].

(4) A single public procurement commissioner of the Public Procurement Arbitration Board shall proceed in cases mentioned in section 153 (1) *a*) to *b*). The chairperson of the Public Procurement Arbitration Board shall appoint only public procurement commissioners a professional exam in law to act as single acting commissioners. References in this Act to a proceeding panel or president shall include hereafter single acting commissioners as well.

Section 147 (1) In addition to the provisions laid down in sections 22 and 23 (1) of the Ákr., a public procurement commissioner shall be prohibited from acting in the public procurement case, if:

a) he holds any ownership of or indirectly owns a share exceeding 50% in the contracting authority, or in an entity which has unlawfully failed to adopt the procurement procedure in its procurement, or in any another interested organisation that initiated the procedure (hereinafter jointly “client organisation”);

b) he holds any ownership of or indirectly owns a share exceeding 50% in an organisation that has regular business relations with the client organisation;

c) he had an employment relationship, other work relationship, or membership relationship with, or was an executive officer or supervisory board member of, or held any ownership thereof or indirectly owns a share exceeding 50% in the client organisation within the last two years preceding the commencement of the review procedure.

(2) A public procurement commissioner shall be prohibited from acting in a public procurement case, if any of their relatives living in the same household

a) has an employment relationship, other work relationship, or membership relationship with, or is an executive officer or supervisory board member of the client organisation;

b) holds any ownership of or indirectly owns a share exceeding 50% in the client organisation;

c) has an employment relationship, other work relationship, or membership relationship with, is an executive officer or supervisory board member of, or holds any ownership thereof or indirectly owns a share exceeding 50% in an organisation that has regular business relations with the client organisation;

d) has a public service, government service, or state service relationship with an organisation, which is the supervisory organisation of or an organisation supervised by the client organisation, or which grants any support or exclusive right to the client organisation.

(3) A public procurement commissioner shall notify the chairperson of the Public Procurement Arbitration Board if he is subject to any ground for disqualification under this section, or sections 22 and 23 (1) of the Ákr. without delay, and not later than within three days after the occurrence of the given ground for disqualification. A public procurement commissioner shall bear disciplinary and financial liability regarding any failure of, or delay in filing such notification.

(4) The matter of disqualification shall be decided upon by the chairperson of the Public Procurement Arbitration Board. If the chairperson of the Public Procurement Arbitration Board participates in the proceedings as a member of the proceeding panel, the matter of disqualification shall be decided upon by president of the Public Procurement Authority.

(5) For the purposes of this section, indirect ownership share means any ownership share held in the client organisation through holding an ownership share in another organisation (hereinafter “intermediate organisation”). The ratio of indirect ownership shall be calculated by multiplying the ownership share in the intermediate organisation held by the person holding indirect ownership with the ownership share held by the intermediate organisation in the client organisation. If the ownership share held in the intermediate organisation exceeds 50%, it shall be taken into account as complete ownership.

Review procedures

Section 148 (1) A procedure of the Public Procurement Arbitration Board shall be launched upon application or *ex officio*. An application for launching a procedure, as well as a document initiating an *ex officio* procedure shall be submitted in writing to the Public Procurement Arbitration Board pursuant to section 145 (1a) a).

(2) An application may be filed by the contracting authority, the tenderer, any of the tenderers where a tender was submitted jointly, a candidate, any of the candidates where a request to participate was submitted jointly, or any other stakeholder whose right or legitimate interest is infringed or jeopardised by an act or omission violating this Act. An application may also be filed by a chamber or other representative organisation the activities of which are related to the subject-matter of procurement, on the ground of the unlawful nature of the contract notice, the invitation for submission of tenders, the invitation to participate, the procurement documents, the modification of any such document, or any information provided under section 113 (1). (For the purposes of this paragraph, hereinafter jointly “applicant”.)

(3) Subject to the derogation described in paragraphs (4) to (5), an application may be filed by the applicant within fifteen days or, with regard to unlawful decisions closing a public procurement procedure, ten days from the date when the applicant learned of the violation. Applications shall not be filed over ninety days from the occurrence of the violation.

(4) In derogation from paragraph (3), an application concerning a procedure mentioned in section 115 may be filed by the applicant within fifteen days or, with regard to an unlawful decision closing the public procurement procedure, five days from the date when the applicant learned of the infringement. Applications shall not be filed over ninety days from the occurrence of the violation.

(5) With regard to the contract notice, the invitation to tender or the invitation to participate, procurement documents, the modification of any such document, an application may be filed not later than five days before the, possibly modified, time limit to submit tenders or time limit to participate, with the proviso that in case the time limit under paragraph (3) or (4) is longer than this time limit, the applicant may submit its application until the time limit specified in paragraph (3) or (4). With regard to the contract notice, the invitation to tender or the invitation to participate, procurement documents, the modification of any such document, the contracting authority may file an application due to its own violation by the date of sending of the written summary concerning the tenders.

(6) No separate review application shall not be filed due to an unlawful procedural act taken by the contracting authority pursuant to section 69 (4) to (7); an application against such a violation may be filed as part of a review application filed against an unlawful decision closing the public procurement procedure. An application pertaining to a procedural act mentioned in section 69 (4) to (7) shall not be considered an independent appealed item in comparison to another appealed item filed against an unlawful decision closing the public procurement procedure; for the purpose of calculating the time limit specified in paragraphs (3) to (4), the date when the applicant learned of the violation and the date when the violation occurred, respectively, shall be the same dates as in the case of the application to review applications filed against the unlawful decision closing the public procurement procedure.

(7) For the purpose of calculating the time limit specified in paragraphs (3) to (4), the date of becoming aware of the violation

a) shall be the date when a contract notice launching the public procurement procedure or the information within the meaning of section 113 (1) is published, a direct invitation is received, or a procurement document is made available with unlawful contents;

b) shall be the fifteenth day from the publication of a notice that was dispatched after the expiry of the applicable time limit, or, with regard to a notice on the withdrawal of the information under section 113 (1) that was sent to the Public Procurement Authority after the expiry of the applicable time limit, the fifteenth day after the notice was published on the website of the Public Procurement Authority;

c) shall be the day when the access to files is closed, with regard to violations involving accessed documents mentioned in the decision closing the public procurement procedure, provided that the applicant accessed the tender(s) at the premises of the contracting authority or the Public Procurement Arbitration Board within ten days after receipt of the written summary;

d) where preliminary dispute settlement was requested with regard to the violation the application is related to, and

da) the contracting authority sent out its position regarding the violation but did not take any other measure, shall be the date when the position of the contracting authority regarding the given violation was sent out;

db) the contracting authority failed to send out its position in time regarding the violation, shall be the date when the time limit for the contracting authority to send out its position regarding the given violation expired;

e) shall be the thirtieth day, where a contract concluded in a public procurement procedure is modified or performed against the provisions of this Act, calculated from the date of the publication of the notice concerning the contract modification or from the date when the data on the performance of the contract [section 43 (1) *f*)] are published in the database operated by the Public Procurement Authority or, if publication in the Public Procurement Database is not possible for any reason, on the website of the contracting authority or of the maintaining entity of the contracting authority.

(7a) If a preliminary dispute settlement also is initiated under paragraph (7) *d)* after accessing files under paragraph (7) *c)* regarding a given violation, the date of becoming aware of the violation shall be determined pursuant to paragraph (7) *d)*.

(8) For the purpose of calculating the time limit specified in paragraphs (3) to (4), the date when the violation occurred shall be

a) the date of publication of the notice or the information when the contract notice launching the public procurement procedure and the information within the meaning of section 113 (1) with unlawful contents is published, in case of a direct invitation the date when the invitation is sent out with unlawful contents;

b) the date of the publication of the notice or the information when a notice dispatched, or the information within the meaning of section 113 (1) sent out after the expiry of the applicable time limit;

c) the date of the conclusion of the contract, where a procurement was made without conducting a public procurement procedure, or, where that date cannot be determined, the date when the performance of the contract is commenced by any party.

(9) If the applicant learned that a procurement without conducting a public procurement procedure only after the time limit specified in paragraphs (3) to (4), the application may be filed within one year after the date of the conclusion of the contract or, where that date cannot be determined, the date when the performance of the contract is commenced by any party.

(10) Failure to meet the time limits specified in paragraphs (3) to (9) shall lead to forfeiture of rights.

(11) After the submission of an application, the Public Procurement Arbitration Board shall arrange for the publication of the title and subject-matter of the procedure affected by the application, the name of the parties, and the date of receipt of the application on the website of the Public Procurement Authority without delay.

(12) Before filing an application, the applicant within the meaning of paragraph (1) shall notify the contracting authority or the procurer of this fact, providing a description of the alleged violation by him, via the same way as those used to file the application.

Section 149 (1) The following shall be specified in an application:

a) the name and seat (residence) of the applicant and its representative, and facts showing its eligibility for an applicant status;

b) the name and seat of the contracting authority in the public procurement procedure affected by the application, the subject-matter of the public procurement, the lot affected by the review (in case of tendering for lots), or, where a purchase was made without conducting a public procurement procedure, the name and seat of the purchaser, and the subject-matter of the purchase;

c) the date when the violation occurred and when the applicant learnt thereof, in such a way that allows clear identification regarding each appealed items;

d) the violated statutory provision concerning all appealed items, as well as the violation and corresponding proof;

e) a request for a decision of the Public Procurement Arbitration Board, as well as reasons with regard to each appealed item in an unambiguously identifiable manner;

f) requests for provisional measures [section 156] and the reasons for such measures;

g) name and seat (residence) of possible stakeholders in the procurement case, if known to the applicant;

h) conduct of the preliminary dispute settlement, if any, including the result of the procedure, with the response of the contracting authority, which shall be attached to the application.

(2) The application shall be submitted in a number of copies corresponding to the number of potential parties participating in the procedure, to the knowledge of the applicant, plus one.

(3) An electronic, editable version of the application, edited with IT tool, shall be provided to the Public Procurement Arbitration Board, and receipt of that document shall be confirmed by the Public Procurement Arbitration Board within one business day, provided that it was filed via electronic mail.

Section 150 (1) An administrative service fee shall be paid for a procedure launched by the Public Procurement Arbitration Board upon receipt of an application; the amount of the administrative service fee shall be specified by the minister responsible for public procurement in a decree in proportion to the estimated value of the public contract. The receipt showing the payment of the fee shall be attached to the application.

(2) Chambers having activities related to the subject-matter of the public procurement shall be exempted from paying the fee mentioned in paragraph (1) in a review procedure for the unlawful nature of the contract notice, invitation for submission of tenders, invitation to participate, procurement documents, the modification of any such document, or any information provided under section 113 (1). A contracting authority shall be exempted from paying the fee mentioned in paragraph (1) regarding an application filed by the contracting authority in a review procedure concerning its own unlawful act or omission.

(3) If an applicant supplements its review application with an appealed item during the proceedings, it shall also pay the administrative service fee for the new appealed item upon

request by the Public Procurement Arbitration Board. If the applicant fails to supplement the administrative service fee, the Public Procurement Arbitration Board shall not be obliged to proceed with regard to the new appealed item.

Section 151 (1) The Public Procurement Arbitration Board shall launch the review procedure on the next working day after receipt of an application meeting the requirements laid down in section 148 (1) to (9), section 149 (1) to (2), and section 150 (1) to (2).

(2) The Public Procurement Arbitration Board shall issue an invitation to remedy deficiencies, if:

- a) the application does not contain the data required under section 149 (1),
- b) the certificate confirming the payment of the fee specified in section 150 (1) is not attached,
- c) the authorisation granted to the authorised representative is not attached, or
- d) the application or its mandatory attachments are not submitted via electronic means according to the Eüsztv.

If the applicant fails to comply with the invitation to remedy deficiencies, the application shall be dismissed, unless the provisions laid down in paragraph (3) can be applied.

(3) If the estimated value of the public contract cannot be determined by the applicant from the documents of the public procurement procedure concerned by the review procedure, this fact shall be referred to the Public Procurement Arbitration Board in the review application. In that event, the Public Procurement Arbitration Board shall send an invitation to the applicant to remedy its deficiencies, informing the applicant about the estimated value, determined on the basis of available data, which serves as basis for calculating the administrative service fee.

(4) When establishing the estimated value, in the case of tendering for lots, the value of the lot affected by the review procedure, the Public Procurement Arbitration Board may request the contracting authority to provide data; the contracting authority shall comply with such request within two working days.

(5) The Public Procurement Arbitration Board shall terminate the proceedings, if it establishes that the contract notice launching the procurement procedure, the invitation, or the invitation mentioned in section 113 (1) was withdrawn by the contracting authority in a lawful manner.

(6)

(7) The applicant may withdraw its application aimed at launching the procedure, or any appealed item in the application, before the decision on the merits is adopted [section 165].

(8) If the application for legal review is rejected or the review is terminated by the Public Procurement Arbitration Board, the administrative service fee shall be repaid to the applicant. If the application or an appealed item is withdrawn, the applicant may request the reimbursement of the administrative service fee having regard to the appealed items maintained and the provisions laid down in separate laws.

(9) If in its decision on the merits and closing the review, the Public Procurement Arbitration Board decides in accordance with section 165 (2) c) to f) of the Kbt., the part of the administrative service fee in excess of three hundred thousand forints shall be repaid to the applicant within eight days after the decision on the merits is sent by the Public Procurement Arbitration Board. From the amount of the administrative service fee, three hundred thousand forints shall be considered the own revenue of the Public Procurement Authority, which shall be borne pursuant to the decision adopted by the Public Procurement Arbitration Board on the matter in line with the provisions laid down in the Ákr. on procedural costs. If the application is unfounded, the fee shall not be paid back, and the entire amount of the administrative service fee shall be borne by the applicant.

(10) If the applicant sought the establishment of more than one violation in the review application, but the application is granted only in part in the decision on the merits adopted by the Public Procurement Arbitration Board, the amount of the administrative service fee, reduced by the own revenue of the Public Procurement Authority pursuant to paragraph (2), shall be repaid to the applicant taking into account the ratio of the founded and unfounded applications.

Section 152 (1) The following organisations and persons may initiate an *ex officio* procedure by the Public Procurement Arbitration Board, on the grounds they learned any act or omission violating this Act during the of performance of their tasks:

- a) the president of the Public Procurement Authority;
- b) the State Audit Office;
- c) a government audit body;
- d) a body responsible for supervising the legality of the operations of local governments;
- e) the Hungarian State Treasury;
- f) the Commissioner for Fundamental Rights;
- g) an organisation providing subsidy for the public procurement, and/or participating in the use of a subsidy under the law;
- h) a central purchasing body appointed by the Government;
- i) the Hungarian Competition Authority;
- j) a body auditing European Union subsidies;
- k) the minister responsible for the supervision of state assets;
- l) a prosecutor;
- m) the minister responsible for public procurement.

(2) An *ex officio* procedure of the Public Procurement Arbitration Board may be initiated by a person or organisation mentioned in paragraph (1) within sixty days from the learning of the violation, but

- a) no later than within three years after the violation occurred,
- b) within five years from the date of concluding the contract or, if such date cannot be determined, from the start of the performance of the contract by any party where, in derogation from point a), in the case of procurements without the conduct of public procurement procedure, or
- c) with regard to public procurements to be realised using subsidies, in derogation from points a) and b), during the mandatory period of retaining documents pertaining to the relevant separate act of legislation on granting and use of the given subsidy, but at least within five years after the date of the violation or the date of concluding the contract or, if such date cannot be determined, from the start of the performance of the contract by any party in the case of procurements without the conduct of public procurement procedure.

(3) Unless it follows otherwise from paragraph (2), the provisions laid down in section 148 (8) shall apply with regard to the date of committing the violation. In the event described in section 153 (1) d), the president of the Public Procurement Authority may, in derogation from paragraph (2), initiate an *ex officio* procedure of the Public Procurement Arbitration Board within the time limit specified in section 189 (1).

(4) The data mentioned in section 149 (1) a) to d) and g) shall be specified, and proposals regarding the provisions laid down in points e) and f) may be made, in a document initiating an *ex officio* procedure of the Public Procurement Arbitration Board. Copies of available documents pertaining to the purchase or public procurement affected by the violation shall be attached to the initiating document. An electronic, editable version of the submitted initiating document, edited with IT tool, shall be provided to the Public Procurement Arbitration Board,

and receipt of that document shall be confirmed by the Public Procurement Arbitration Board within one working day, provided that it was filed via electronic mail.

(5) The initiation of an *ex officio* procedure shall be rejected by the Public Procurement Arbitration Board, if it was not filed by an eligible person specified in paragraph (1).

(6) If the initiative does not contain the data mentioned in paragraph (4), the Public Procurement Arbitration Board shall invite the initiating organisation or person to remedy deficiencies. The provisions laid down in section 151 (2) shall apply to the remedy of deficiencies accordingly.

(7) After receipt of an initiative, the Public Procurement Arbitration Board shall arrange for the publication of the title and subject-matter of the procedure concerned by the initiative, the name of the parties, and the date of receipt of the initiative on the website of the Public Procurement Authority without delay.

(8) The provisions laid down in section 151 (5) to (8) shall apply accordingly to the rejection of the initiative and the termination of the procedure accordingly.

Section 153 (1) The president of the Public Procurement Authority shall initiate an *ex officio* procedure of the Public Procurement Arbitration Board, if:

a) the contracting authority fails to publish its annual statistical summary in the Public Procurement Database before the time limit specified in a separate law, calculated from the invitation from the president of the Authority,

b) the organisation concerned fails to perform its obligations of registration and declaration to the list of contracting authorities falling within the scope of the Act even after a request to do so from the Public Procurement Authority,

c) it seems likely on the basis of the findings of an administrative audit carried out by the Public Procurement Authority under section 187 (2) *j)*, or even without commencing an administrative audit, that the contract was modified or performed in a manner violating this Act, in particular where a violation mentioned in section 142 (c) occurred, or

d) upon inspection of the documents sent to the Public Procurement Authority about the launching of a negotiated procedure without prior publication, it can be reasonably assumed that the rules on public procurement or the provisions or fundamental principles laid down in a law on public procurement and procurement procedures were violated.

(2) In addition to the provisions laid down in paragraph (1), the president of the Public Procurement Authority may also initiate an *ex officio* procedure of the Public Procurement Arbitration Board, in particular, if the contracting authority fails to publish the data, information, and documents specified in section 43 (1) *a)* to *f)* in the Public Procurement Database by the prescribed time limit, even after a request from the Public Procurement Authority to do so.

(3) The provisions laid down in section 152 (2) to (8) shall apply to the initiative mentioned in paragraphs (1) to (2).

Section 154 (1) The Public Procurement Arbitration Board shall notify the applicant or initiator, the contracting authority of the public procurement case, and any parties interested in the public procurement case of the launch of the procedure. The Public Procurement Arbitration Board shall invite the contracting authority in the public procurement case and any parties interested in the public procurement case who gave notice of their intent to participate under paragraph (1a) to file their observations within five days. The Public Procurement Arbitration Board shall attach the application or, if the procedure was launched *ex officio*, the document initiating this procedure. If electronic communication with the contracting authority as provided for under the Eüsztv. is not possible, the Arbitration Board shall send a notice to the contracting authority about launching the procedure via electronic mail or fax. A notice sent via fax shall be deemed received on the day when successful delivery is confirmed. If

electronic mail was the only available means of sending the notice, and the contracting authority failed to confirm receipt of the electronic mail to the Arbitration Board within one working day, the notice of launching the procedure shall be served onto the contracting authority via post.

(1a) The Arbitration Board shall notify parties interested in the public procurement case, in addition to the contracting authority and the applicant or person initiating the *ex officio* procedure, about launching the procedure via post, with the proviso that they may give notice of their intent to participate in the review procedure via electronic means pursuant to the Eüsztv. within three working days after receipt of the procedural decision on launching the procedure, also filing an authorisation granted to a representative mentioned in section 145 (7) of the Kbt. If any notice of intent to participate is given pursuant to this paragraph, the Arbitration Board shall send, via electronic means, the application or initiating document to the parties who gave notice of their intent to participate, and other documents prepared during the review procedure subsequently shall be forwarded only to parties who gave notice of their intent to participate. Failure to meet this time limit shall result in the forfeiture of rights.

(1b) After taking the measures specified in paragraphs (1) and (1a), the contracting authority, the applicant, the person who initiated the *ex officio* procedure, and, from among persons interested in the public procurement case, persons who gave notice of their interest to participate under paragraph (1a) and were included in the proceedings, including interested persons included in the proceedings under paragraph (1c), shall be deemed parties in the proceedings of the Arbitration Board.

(1c) If a person interested in the public procurement case fails to give notice of its intent to participate in the review procedure pursuant to paragraph (1a), this failure shall not prevent that person from being included in the review procedure as a party by the Arbitration Board subsequently, or from being invited by the Arbitration Board to provide documents or make a statement, if necessary for clarifying the facts of the case.

(2) At the time of notification, the Public Procurement Arbitration Board shall also call upon the contracting authority in the relevant public procurement procedure, or the purchaser who carried out the purchase without conducting a public procurement procedure, to submit all documents pertaining to the public procurement or purchase, or only certain related documents if those suffice, within five days, or make such data accessible where they are stored in a system within the meaning of section 40 (1). If the application was filed by the contracting authority, it shall submit or make accessible all available documents together with the application. In addition to documents available in a paper-based format, an editable version of those documents, edited with IT tool, shall also be provided, which are available in such a format. Where such editable documents are submitted via electronic mail, receipt of the documents shall be confirmed by the Public Procurement Arbitration Board within one working day.

(3) If a procedure of the Public Procurement Arbitration Board is launched, the contracting authority may suspend the ongoing public procurement procedure, and it shall notify the Public Procurement Arbitration Board thereof. In the case of suspension, the procedural time limits in the ongoing procedure shall be extended by the period of suspension.

Section 155 (1) In order to adjudicate on certain matters jointly, the Public Procurement Arbitration Board may join cases pending before it, if the subject are interrelated or settling cases collectively is justified by practical, economic, or other procedural considerations.

(2) The Public Procurement Arbitration Board may order that certain parts or elements of the application of an ongoing case being dealt by it be separated, if settling such cases separately is justified by practical, economic or other procedural considerations.

(3) In case the applicant has more issues (elements) in the application concerning the same public procurement procedure, the Public Procurement Arbitration Board may make its

decision at the same time. The Public Procurement Arbitration Board may make a single compound decision.

Provisional measures

Section 156 (1) If it seems likely that the statutory provisions and fundamental principles of public procurement and public procurement procedures are violated, or there is a risk of such violation, the Public Procurement Arbitration Board may impose provisional measures upon request or *ex officio* in an ongoing review procedure until a contract is concluded on the basis of the public procurement procedure (or purchase) under review, taking into account all circumstances of the case.

(2) As a provisional measure, the Public Procurement Arbitration Board may

a) order the suspension of public procurement procedure;
b) call upon the contracting authority involved in the public procurement procedure to include the applicant in the procedure.

(3) In case of suspension of a public procurement procedure, the time limits in the pending review procedure, as specified in the invitation, shall be extended by the period of suspension.

(4) If justified by the protection of a pressing highly important or public interest (including reasons of national economy), the Public Procurement Arbitration Board may, upon request by the contracting authority, adopt a procedural decision on permitting the conclusion of the contract, provided that the benefits exceed the drawbacks of the conclusion of the contract. The pressing highly important or public interest (reason of national security) shall be stated in the request, and, at the time of submitting the request, the Public Procurement Arbitration Board shall also be provided with documents confirming the reason for submitting the request. For the purposes of this paragraph, public interests shall include, in particular, the maintenance of the uninterrupted security of conduct of the public utilities activity. The Public Procurement Arbitration Board shall decide on the request within five days after receipt, and no legal remedy may be sought against its procedural decision.

(5) The Public Procurement Arbitration Board shall arrange for the publication of its procedural decision permitting the conclusion of the contract on the website of the Public Procurement Authority without delay.

Initiating a preliminary ruling procedure of the Court of Justice of the European Union

Section 157 If the Public Procurement Arbitration Board initiates a preliminary ruling procedure before the Court of Justice of the European Union under TFEU, it shall adopt a corresponding procedural decision and suspend the procedure at the same time. In its procedural decision, the Public Procurement Arbitration Board shall determine the question in need of a preliminary ruling by the Court of Justice of the European Union and, to the extent necessary to answer the question, it shall present the facts of the case and the relevant provisions of Hungarian legislation. The procedural decision of the Public Procurement Arbitration Board shall be sent to the Court of Justice of the European Union and, at the same time, to the ministers responsible for justice and public procurement for information purposes.

The scope of review by the Public Procurement Arbitration Board

Section 158 (1) The Public Procurement Arbitration Board may also proceed *ex officio* regarding any violation, other than those reviewed on the ground of the application or initiative, it might become aware of in the course of the proceedings before the decision on the merits is adopted [section 165]. The scope of the procedure may be extended, if the violation revealed violates the fairness or publicity of competition or the equal opportunities

of tenderers, or it has a material impact on the decision of the contracting authority. The proceeding panel shall decide on extending the scope of the procedure.

(2) If the application is withdrawn, the Public Procurement Arbitration Board shall continue the procedure where available data suggest the likelihood of a serious violation.

(3) If the Public Procurement Arbitration Board finds any indication of the violation of another law during its proceedings, it shall report to the competent authority, in particular to the one responsible for prosecution, the State Audit Office, a government audit body, or the Hungarian Competition Authority.

(4) The Public Procurement Arbitration Board may suspend its procedure, if deciding on a preliminary question falls within the material competence of another body.

Section 159 (1) If a decision on the merits of the public procurement case regarding a violation mentioned in section 142 (2) depends on the preliminary question of whether or not a breach of contract was committed, the Public Procurement Arbitration Board shall bring an action for establishing the breach of contract and shall suspend its procedure simultaneously. The Public Procurement Arbitration Board shall be granted full cost exemption in the action.

(2) The Public Procurement Arbitration Board shall publish a notice of bringing an action under paragraph (1) on the website of the Public Procurement Authority. The notice shall provide a description of the case (also specifying the public procurement procedure concerned, as the case may be) and specify the date of filing the statement of claim and the name of the parties to the action.

Section 160 (1) The Public Procurement Arbitration Board shall make arrangements to ensure that the applicant, the party initiating the procedure and the opposing party can have access to and present his position regarding all new facts, applications, and statements that arose or were presented in the course of the proceedings.

(2) Any observation made by a party under section 154 shall be sent by the Public Procurement Arbitration Board to the parties with opposing interests, indicating that they shall make any related statement within three days. The Public Procurement Arbitration Board may also invite the parties and other persons interested in the public procurement case at any time to submit a statement or their observations within an appropriate time limit set. Upon request by the Public Procurement Arbitration Board, an editable version of such statements, observations, and other documents, edited with IT tool, shall also be provided to the Public Procurement Arbitration Board, if they are available in such a format. Where such editable documents are provided via electronic mail, receipt of the editable version of the documents shall be confirmed by the Public Procurement Arbitration Board within one working day.

(3) If the Public Procurement Arbitration Board does not hold a hearing concerning the case, it may set a time limit, communicated to the parties in a notice, for the parties to submit any and all statements and observations regarding the merits of the case. If the Public Procurement Arbitration Board holds a hearing concerning the case, the parties shall submit any and all statements and observations regarding the merits of the case before the hearing.

(4) After the date set under paragraph (3) or the hearing, the parties may not submit any further observation or statement without being invited to do so by the Public Procurement Arbitration Board specifically. The Public Procurement Arbitration Board shall also notify the party with opposing interest about such an invitation by sending out a copy of the invitation simultaneously. Any and all observation or statement submitted without a specific invitation from the Public Procurement Arbitration Board after the date set under paragraph (3) or the hearing held in the case shall be ignored by the Public Procurement Arbitration Board in the course of adopting its decision.

(5) The Public Procurement Arbitration Board may hold a new hearing after the hearing without sending out an invitation after the post-hearing invitation under paragraph (4), if doing so is necessary to clarify the facts of the case. The date of the new hearing shall be

communicated by the Public Procurement Arbitration Board to the parties on the day following the first hearing at the latest. The hearing shall be set so that it can be held within eight days after the first hearing.

Section 161 (1) The Public Procurement Arbitration Board shall decide on the public procurement case without holding a hearing, unless holding a hearing is indispensable for, in particular, a party to exercise its rights, clarifying the facts of the case, and adopting a professional decision taking into account all material facts pertaining to the case. A hearing may not be held, if the subject-matter of the review procedure is limited to establishing the technical equivalence of the references presented by the economic operator during the public procurement procedure with the requirements specified in the notice launching the procedure.

(2) The Public Procurement Arbitration Board shall hold the hearing within fifteen days after launching the procedure.

(3)

(4) The hearing shall be public. The Public Procurement Arbitration Board, acting *ex officio* or upon a reasoned request by a party, shall exclude the public from the entire hearing or a part thereof, if it is justified by the protection of classified data, business secrets, other secrets specified in an Act. In exceptionally justified cases, the Arbitration Board may also exclude the public from the audition of a witness during a hearing, if the data of the witness were ordered to be kept separately and confidentially, and holding the audition of the witness in a closed hearing is necessary to protect the life or physical integrity of the witness or his relative. Unless a closed hearing is held pursuant to a mandatory statutory provision, the Arbitration Board shall adopt a reasoned procedural decision on the exclusion of the public.

(5) The minutes of the hearing shall be sent by the Public Procurement Arbitration Board to the parties within five days after the hearing.

Section 162 (1) The documents prepared during the public procurement procedure or the review procedure may be accessed, copied, or annotated by a party until the tenth date calculated from the initiation of the procedure, or until the thirtieth day calculated from the initiation of the procedure in a review procedure pertaining to the modification or performance of a contract concluded under a public procurement procedure in violation of this Act, or by a person acting for and on behalf of the Public Procurement Authority at any time during the proceedings.

(2) The contracting authority, the tenderer and the candidate may submit a reasoned request, with reference to the protection of business secrets, for the exclusion or limitation of the access rights of persons mentioned in paragraph (1) with regard to documents or data that are not public interest data or data accessible on public interest grounds.

(3) If a tenderer or candidate included certain specific documents in its tender or request to participate in a separated manner as business secrets, or if it requested that another document submitted during the public procurement procedure should be handled as business secret, it shall be deemed as a request for the prohibition of access to such documents for any person mentioned in paragraph (1).

(4) The Public Procurement Arbitration Board shall examine whether the conditions of excluding or limiting the right of access to documents are met, and, at the time of deciding on the request, it may instruct the person concerned to prepare a version of the document not containing any business secret, if doing so is possible having regard to the given document.

(5)

(6) A document containing classified data shall not be accessed without the permission for use. Neither shall a document containing other data protected under an Act be accessed if access is prohibited by the Act protecting the data concerned, or if unfamiliarity with the

protected data does not prevent the person requesting access under paragraph (1) from exercising his rights for judicial remedy.

(7) No copy or note shall be made of or from the minutes of a hearing from which the public was excluded with a view to protecting any classified data. In such a case, access to documents shall be subject to conditions set by the chairperson of the Public Procurement Arbitration Board pursuant to the Act on the protection of the classified data.

(8) Access to documents shall be subject to the permission of the Public Procurement Arbitration Board, having regard to the provisions laid down in paragraphs (1) to (7).

Section 163 (1) The Public Procurement Arbitration Board shall impose an administrative fine of ten thousand to five hundred thousand forints on the applicant or another participant in the review procedure, if it

- a) provides false data or fails to disclose any data that is relevant to deciding on the case;
- b) does not provide further information at all or within the applicable time limit;
- c) does not submit a document at all or within the applicable time limit, or, if required under this Act, in the editable format edited with IT tool;
- d) prevents access to documents pertaining to its economic, professional, or public procurement activities;
- e) gives a clearly unsubstantiated statement regarding expulsion, or makes a repeated unsubstantiated statement in the same procedure for the expulsion of the same public procurement commissioner.

(2) A claim filed against a procedural decision imposing an administrative fine shall have a suspensory effect on the enforcement of the procedural decision.

Section 164 (1) With the exception of cases mentioned in paragraph (2), the Public Procurement Arbitration Board shall conclude the proceedings within fifteen days after launching the procedure, provided that no hearing is held regarding the case.

(2) With the exception of the case mentioned in paragraph (3), the Public Procurement Arbitration Board shall conclude the proceedings within twenty-five days after launching the procedure, if a hearing was held regarding the case.

(3) The Public Procurement Arbitration Board shall conclude the proceedings launched with regard to the modification or performance of a contract concluded in a public procurement procedure in violation of this Act, or concerning procurements without conducting a public procurement procedure, within sixty days after launching the procedure.

(4) In case of a joinder under section 155 (1), the administrative time limit shall be calculated with regard to the latest procedure launched.

(5) In justified cases, the time limit mentioned in paragraphs (1) to (3) may be extended once by ten days. Notice of such an extension shall be sent to all persons who were notified about the launching of the procedure on the day of expiry of the time limit mentioned in paragraphs (1) to (3) at the latest.

(6) A party may not request a stay during a procedure.

The Public Procurement Arbitration Board's decision on the merits of the case

Section 165 (1) The Public Procurement Arbitration Board shall adopt its decision in the name of the Public Procurement Authority.

(2) In its decision, the Public Procurement Arbitration Board shall

- a) dismiss the application if it is unfounded;
- b) establish the lack of any violation in a procedure launched or conducted *ex officio*;
- c) establish that a violation occurred;
- d) establish that a violation occurred, and shall apply the legal consequences specified in paragraph (3);

e) impose a fine in addition to establishing that a violation occurred in the cases specified in paragraph (6);

f) establish that a violation occurred and shall prohibit the tenderer, subcontractor, or another organisation or person who participated in the procurement procedure from participating in the public procurement procedure;

g) establish the nullity of the contract *ex officio*, if a violation specified in section 137 (1) is established, or establish that the contract concerned is not null and void, if the conditions specified in section 137 (3) are met;

h) where a contract is null and void due to a violation mentioned in section 137 (1), establish whether the original situation can be restored for the purposes of applying the legal consequences of the contract being invalid.

(3) If a violation is established by the Public Procurement Arbitration Board in a decision, it may

a) call upon the person who committed the violation before the conclusion of the public procurement procedure to proceed in compliance with this Act, or may set conditions regarding the decision of the contracting authority;

b) annul the decision adopted by the contracting authority in the course of or closing the public procurement procedure, if the contract has not been concluded yet on the basis of that decision;

c) order the removal of the tenderer from the official list of approved tenderers;

d) impose a fine on the infringing organisation or person, as well as on the person or organisation responsible for the violation and engaged by the person or organisation that is liable for the violation.

(4) The amount of the fine mentioned in paragraph (3) *d)* shall not exceed 10% of the estimated value of the public procurement procedure or, in the case of lot tendering, of the lot affected by the review, having regard to the provisions laid down in paragraph (11).

(5) If preliminary dispute settlement was requested regarding the violation specified in the application and the contracting authority presented its position on the violation without taking any other measure, the amount of the fine mentioned in paragraph (3) *d)* pertaining to such violation shall not exceed 15% of the estimated value of the public procurement procedure or, in the case of lot tendering, of the lot affected by the review, having regard to the provisions laid down in paragraph (11).

(6) In addition to establishing that a violation occurred, the Public Procurement Arbitration Board shall impose a fine, if:

a) the violation was committed by the unlawful bypass of the procurement procedure;

b) the parties concluded a contract in violation of the rules pertaining to the standstill period;

c) the contract was concluded in a negotiated procedure without prior publication without meeting the conditions of conducting such procedure;

d) the contracting authority failed to notify the Public Procurement Authority in advance about conducting a negotiated procedure without prior publication;

e) the president of the Public Procurement Authority initiated an *ex officio* procedure at the Public Procurement Arbitration Board [section 153], and the Arbitration Board established that a violation occurred.

(7) The amount of the fine mentioned in paragraph (6) shall not exceed 15% of the estimated value of the public procurement procedure or, in the case of lot tendering, the lot affected by the review, or, in the case of the unlawful bypass of the public procurement procedure, of the contract value, having regard to the provisions laid down in paragraph (11).

(7a) If a violation is established under section 137 (1) and the Public Procurement Arbitration Board establishes that the contract is not null and void as the conditions set forth in section 137 (3) are met, a fine not exceeding 15% of the contract value, having regard to all circumstances of the case, shall be imposed in addition to the fine imposed under paragraphs (6) to (7).

(7b) If a violation is established under section 137 (1) and the Public Procurement Arbitration Board establishes that the original situation cannot be restored for the purposes of applying the legal consequences of the contract being invalid, a fine not exceeding 15% of the contract value, having regard to all circumstances of the case, shall be imposed in addition to the fine imposed under paragraphs (6) to (7).

(8) In addition to establishing that a violation occurred under paragraph (2) *f*), the Public Procurement Arbitration Board shall also prohibit the tenderer, subcontractor, or another organisation or person which or who participated in the public procurement procedure from participating in a public procurement procedure for a period between six months and three years, having regard to the provisions laid down in paragraph (11), if

a) it provided false data or made a false declaration in the course of or with regard to the public procurement procedure, and the conditions of exclusion specified in section 62 (1) *i*) are met;

b) it attempted to wrongly influence the decision-making process of the contracting authority in the given public procurement procedure, or attempted to obtain any confidential information that would have provided it with an undue advantage in the public procurement procedure.

(9) In addition to establishing that a violation occurred under paragraph (2) *f*), the Public Procurement Arbitration Board shall also prohibit the tenderer, subcontractor, or another organisation or person which or who participated in the public procurement procedure from participating in the public procurement procedure, having regard to the provisions laid down in paragraph (11), where a distortion of competition arising from any conflict of interests under section 25 or its prior involvement in the preparation of the public procurement procedure cannot be remedied effectively by other, less intrusive measures.

(10) For the purposes of paragraph (8), the tenderer, subcontractor, or other organisation or person which or who participated in the public procurement procedure shall be prohibited by the Public Procurement Arbitration Board from participating in any public procurement procedure in the future, in the public procurement procedure reviewed, or from any other public procurement procedure in progress, and/or from concluding a contract, provided that the result of the procedure have not been sent out yet in the procedures concerned. In the case described in paragraph (9), the tenderer, subcontractor, or other organisation or person which or who participated in the public procurement procedure may be prohibited by the Public Procurement Arbitration Board from participating in a public procurement procedure or from concluding a contract only with regard to the procurement procedure reviewed.

(11) In determining whether a fine is to be imposed, in fixing the amount of the fine, and setting the period of prohibition, the Public Procurement Arbitration Board shall take into account all circumstances relevant of the case, including, in particular, the importance of the violation, the subject-matter and value of the public procurement, the impact the violation had on the decision closing the procedure, if the act violating this Act is recurring, the possible cooperation of the liable person during the proceedings, the duration of the period between the occurrence of the violation and the launch of the review procedure, and, in the case of subsidised public procurements, the fact, if a sanction relating to the repayment of the subsidy may be applied by another body with regard to the violation. If the violation was committed in a manifestly intentional manner, this fact shall also be taken into account when determining the amount of the fine and the duration of the prohibition.

(12) If the Public Procurement Arbitration Board shall annul the decision adopted by the contracting authority on closing the procedure, the contracting authority shall adopt a new decision closing the procedure within thirty days from the date when the decision becomes enforceable. If it is foreseeable that the procedure is not ineffective, a statement from each tenderer with a valid tender shall be obtained before adopting a decision and within a set time limit whether they maintain their tender. If a tenderer fails to make a statement by the time limit set, it shall be deemed not maintaining its tender. If a tender guarantee was required by the contracting authority as a prerequisite for participation in the proceedings, the tenderer maintaining its tender shall certify that the tender guarantee is also kept available or is provided again for the extended validity period of the tender as determined by the contracting authority.

(13) If the violation of a statutory provision pertaining to public procurement or public procurement procedures is established by the Public Procurement Arbitration Board pursuant to this section, the party concluding the contract as a contracting authority or tenderer may cancel the contract concluded in the public procurement procedure within thirty days from the service of the Public Procurement Arbitration Board's decision, provided that the violation had an impact on the decision closing the procedure.

Announcement and publication of the Public Procurement Arbitration Board's decision

Section 166 (1) A procedural decision suspending the procedure or resulting in the conclusion of the public procurement case, and a decision shall be served to the parties. If the procedural decision suspending the procedure or resulting in the conclusion of the public procurement case, or the decision is related to a public procurement realised with a subsidy, the decision shall also be served to the organisation subsidising the public procurement.

(2) A procedural decision resulting in the conclusion of the public procurement case, a decision, and a procedural decision on permitting the conclusion of the contract [section 156 (4)] shall be published on the website of the Public Procurement Authority on the day when it is adopted. A decision on the merits of the case shall also be published, even if the public was excluded from the hearing by the Public Procurement Arbitration Board under section 161 (4).

(3) Even if an administrative court action was brought against it, the decision of the Public Procurement Arbitration Board shall be published on the website, but with reference to the fact of the action.

(4) A procedural decision rejecting the application or terminating the proceedings, and the judgment of the court where an administrative court action was brought against the decision on the merits (in addition to the particulars of the application for launching the procedure of the Public Procurement Arbitration Board as specified in section 148 (11) and/or section 156 (5), as well as the decision on the merits of the case) shall also be published on the website of the Public Procurement Authority.

(5) If an administrative court action is brought against the decision of the Public Procurement Arbitration Board, the contracting authority may suspend the procurement procedure or post pone the conclusion of the contract until a final and binding judgment of the court is delivered.

Review procedures for prequalification cases

Section 167 (1) The provisions pertaining to procedures conducted by the Public Procurement Arbitration Board shall apply to review procedures for prequalification cases with the derogations specified in paragraphs (2) to (4).

(2) The applicant may file an appeal against the rejection of its prequalification request or its deletion from the prequalification list. The appeal may be filed within fifteen days after receipt of a corresponding written notice from the contracting authority.

(3) The followings shall be specified in an appeal:

- a) the name and seat (residence) of the applicant and its representative;
- b) the name and seat of the contracting authority operating the prequalification system mentioned in the appeal;
- c) the date when the written notice from the contracting authority was received;
- d) the statutory provision violated;
- e) a reasoned request for a decision of the Public Procurement Arbitration Board.

(4) In addition to establishing that a violation occurred, the Public Procurement Arbitration Board shall annul or amend the decision of the contracting authority in its decision.

Ensuring the consistency of the decisions taken by the Public Procurement Arbitration Board

Section 168 (1) With a view to ensuring the consistency of the review procedures, a general council including the public procurement commissioners shall be operated at the Public Procurement Arbitration Board. The sessions of the general council may be attended by representatives of the organisational unit responsible for public procurement within the ministry headed by the minister responsible for public procurement, as well as representatives of the body auditing EU subsidies, in a consultative capacity.

(2) The Public Procurement Arbitration Board may operate councils regarding specific cases and groups of cases specified in its organisational and operational regulations. With a view to ensuring the consistency of review practice, a specialised council shall examine the practise of the Public Procurement Arbitration Board, monitor the development of court case-law, and express its opinion regarding disputed matters concerning the application of the law.

(3) Where a proceeding panel of the Public Procurement Arbitration Board decided on a theoretical matter, it shall present its decision to the chairperson of the Public Procurement Arbitration Board. The chairperson of the Public Procurement Arbitration Board shall present the decision on the theoretical matter to the general council.

(4) The chairperson of the Public Procurement Arbitration Board shall continuously monitor the decisions-making process of the Public Procurement Arbitration Board. If the chairperson becomes aware of decisions adopted by proceeding panels on the basis of inconsistent theoretical considerations, he shall inform the general council accordingly. With a view to ensuring the consistency of decisions, the general council shall express an opinion regarding the legal matter concerned. Before expressing its opinion, the general council shall allow the bodies mentioned in paragraph (1) to present their opinions on the legal matter concerned within a reasonable time limit; such opinions shall not be binding for the general council. Any derogation from the opinion of the general council shall be subject to the conditions laid down in paragraph (5). Subject to the agreement of the general council, the Public Procurement Arbitration Board shall provide information regarding the new opinion of the general council on the website of the Public Procurement Authority.

(5) Where a proceeding panel of the Public Procurement Arbitration Board intends to derogate from the contents of the opinion of the general council, it shall notify the chairperson of the Public Procurement Arbitration Board accordingly. The chairperson of the Public Procurement Arbitration Board shall present the envisaged decision to the council competent to deal with the given case group, or to the general council, and seek an opinion from the council or general council. The proceeding panel shall wait for, however, shall not be bound by the opinion of the council or general council, and the proceeding panel may adopt a

decision derogating from the opinion of the general council. Subject to the mutual agreement of the proceeding panel and the council or general council, the Public Procurement Arbitration Board shall provide information regarding the new or amended opinion of the general council on the website of the Public Procurement Authority.

(6) In the course of applying the law, the public procurement commissioners shall take into account the published opinions of the general council.

(7) The rules pertaining to the operation of the councils and the general council shall be laid down in the organisational and operational regulations of the Public Procurement Arbitration Board.

Judicial review of decisions taken by the Public Procurement Arbitration Board

Section 169 (1) If individual review is available against a procedural decision under the Ákr., applications for a review shall be filed with the Public Procurement Arbitration Board within eight days after receipt of the procedural decision. The Public Procurement Arbitration Board shall forward the application for a review and all documents of the case to the court after receipt without delay.

(2) No further judicial review shall be available against a court judgment delivered in an administrative court action brought against a procedural decision of the Public Procurement Arbitration Board against which individual review is available.

Section 170 (1) The organisation or person specified in section 152 may also bring an administrative court action against the decision adopted by the Public Procurement Arbitration Board on the merits of a case. An administrative court action may be brought either on the ground of a violation committed by the Public Procurement Arbitration Board or because, in the opinion of the plaintiff, the Public Procurement Arbitration Board inadequately evaluated and qualified the previous procedure or decision of the respondent with regard to the provisions of this Act.

(2) The statement of claim shall be filed only with the Public Procurement Arbitration Board within fifteen days after receipt of the decision.

(3) The Public Procurement Arbitration Board shall forward the statement of claim to the court within ten days after receipt. The Public Procurement Arbitration Board may also forward the documents of the case to the court in an electronic copy format extracted from the system mentioned in section 40 (1).

(4)

Section 171 (1) The court shall send the statement of defence to the plaintiff within eight days after receipt. The court may request the contracting authority in the public procurement case to make accessible data stored in a system mentioned in section 40 (1), and the contracting authority shall comply with such a request without delay.

(2) If a statement of claim includes a claim for granting a suspensive effect to the act of filing the statement of claim, the court shall decide on that claim within five days after the statement of claim is received by the court.

(3) A time limit for remedying deficiencies may not exceed eight days during the action, and may be extended once in justified cases by up to eight days.

Section 172 (1) If the court amends the decision of the Public Procurement Arbitration Board, including any amendment of the amount of a fine, it may also apply the legal consequences specified in section 165 (3), (6), and (8) to (10).

(2) If the court establishes the violation mentioned in section 137 (1) in the context of amending the decision of the Public Procurement Arbitration Board, it shall examine the applicability of section 137 (3) *ex officio*, and, with regard to the violation, it shall establish in

its judgment either the nullity of the contract or the fact that contract is not null and void as the conditions specified in section 137 (3) are met.

(3) If the court establishes pursuant to paragraph (2) that the contract is not null and void as the conditions set forth in section 137 (3) are met, it shall impose a fine not exceeding 15% of the contract value, having regard to all circumstances of the case.

(4) If a violation mentioned in section 137 (1) is established by the court, the court shall establish the nullity of the contract and examine whether the pre-contracting situation can be restored in kind, taking into account the nature of the services provided. If it is established that the original situation cannot be restored for the purposes of applying the legal consequences of the contract being invalid, it shall impose a fine not exceeding 15% of the contract value, having regard to all circumstances of the case.

(5) The court shall decide within sixty days, where no procedure for taking of evidence is needed or no hearing is held.

(6) No appeal may be filed against the decision of the court, unless the decision of the Public Procurement Arbitration Board is amended by the court.

(7) The decision of the court shall be put in writing and served onto the parties within fifteen days after adopting the decision.

Sections 173 to 174

Civil law action for establishing the invalidity of a contract modification

Section 175 (1) If the Public Procurement Authority establishes in the course of an administrative audit conducted under section 187 (2) *j*) that the content of a contract is likely to be in violation of section 142 (3), it shall bring an action for establishing the invalidity of the contract modification and applying the legal consequences of invalidity. The Public Procurement Authority shall be granted full cost exemption in the action.

(2) The Public Procurement Authority shall bring the action mentioned in paragraph (1) within thirty days after finishing the audit. In the case of failing to meet the time limit, an application for excuse may be filed pursuant to the provisions laid down in the Act on the Code of Civil Procedure.

(3) The Public Procurement Authority shall publish a notice of bringing an action under paragraph (1) on its website. The notice shall provide a description of the case (also specifying the public procurement procedure concerned, as the case may be) and specify the date of filing the statement of claim and the name of the parties to the action.

(4) If the court establishes in an action mentioned in paragraph (1) that the contract modification is invalid for a reason mentioned in section 142 (3), it shall apply the legal consequences of invalidity as specified in the Ptk., and it shall impose a fine not exceeding 15% of the contract value, having regard to all circumstances of the case.

Section 176

Other civil law actions concerning public procurements

Section 177 (1) With the exception of cases mentioned in section 175 (1) or (3), the enforcement of a civil claim pertaining to the legal consequences of nullity due to a violation specified in section 137 (1) and of any other civil claim based on a violation of a law concerning public procurements and public procurement procedures shall be subject to the condition that the nullity of the contract or, with regard to any other civil claim, the violation is established by the Public Procurement Arbitration Board with administrative finality or, if an administrative court action was brought against the decision of the Public Procurement

Arbitration Board, by the court with final and binding effect; otherwise, the statement of claim shall be dismissed by the court in its judgment.

(2) If the tenderer claims, as damages, only the reimbursement of the costs incurred with regard to the preparation of its tender and its participation in the public procurement procedure, it shall be sufficient for its claim for damages to prove that

- a) the contracting authority violated a provision laid down in a law pertaining to public procurement and public procurement procedures,
- b) it had a real chance of winning the contract, and
- c) the violation had a detrimental impact on its chances of winning the contract.

(3) The provisions laid down in paragraph (1) shall not be applied, if the enforcement of the civil claim, or the reference to the invalidity of the contract, is based on the violation of sections 133 to 135, 138 to 140, 142 (3), or another provision laid down in this Act or its implementing decrees pertaining to the contents of contracts. In case of subsidies granted by the European Union, the enforcement of a material claim concerning public procurement infringement, on the basis of the funding relationship shall not be subject to the condition that the public procurement violation is established by the Public Procurement Arbitration Board or, if the decision of the Public Procurement Arbitration Board is subject to review, a court with final and binding effect, unless the body granting subsidy for the public procurement or conducting the statutory audit of public procurements reviewed and established the lawfulness of the given public procurement procedure.

(4) The tenderer who participated in a public procurement procedure, but was not awarded a contract may bring an action for establishing the invalidity of the contract due to a public procurement violation and for applying the legal consequences of invalidity, if it demonstrates its direct legal interest in contract being invalid. For the purpose of demonstrating such a direct legal interest, submission of a valid tender in the public procurement procedure shall not suffice. The court shall not oblige the contracting authority to conclude a contract, unless the contracting authority is obliged by the Kbt. to enter into a contract on the basis of its decision closing the procedure.

(5) If a violation specified in section 137 (1) is committed, any civil claim pertaining to the legal consequences of the invalidity of the contract, other than those aimed at establishing the facts specified in section 165 (2) g) and section 165 (7a) to (7b), shall be enforced in a civil law action only. The decision adopted with regard to the nullity of the contract by the Public Procurement Arbitration Board, or by the court proceeding in an administrative court action brought against the decision of the Public Procurement Arbitration Board, shall be binding for the court proceeding in the civil law action.

(6) If the court proceeding in a civil law action finds, notwithstanding the decision of the Public Procurement Arbitration Board or the judgment delivered in an administrative court action brought against the decision of the Public Procurement Arbitration Board, with regard to a contract that is null and void due to a violation specified in section 137 (1) that, for the purposes of applying the legal consequences of the contract being invalid, the original situation cannot be restored, it shall impose a fine not exceeding 15% of the contract value, having regard to all circumstances of the case.

(7) If the court proceeding in a civil law action finds, notwithstanding the decision of the Public Procurement Arbitration Board or the judgment delivered in an administrative court action brought against the decision of the Public Procurement Arbitration Board, with regard to a contract that is null and void due to a violation specified in section 137 (1) that, for the purposes of applying the legal consequences of contract invalidity, the original situation can be restored, the fined person or organisation may, on the basis of the decision of the Public Procurement Arbitration Board or the judgment delivered in an administrative court action brought against the decision of the Public Procurement Arbitration Board and pursuant to

paragraphs (8) to (9), file an action or retrial, within eight days after the court judgment becomes final and binding, with the court that proceeded in the administrative court action to recover any fine imposed under section 165 (7b) or 172 (4). No application for an excuse may be submitted if this time limit is missed.

(8) An action to recover a fine imposed under section 165 (7b) shall be brought against the Public Procurement Arbitration Board. The procedure shall be subject to the rules on first instance procedures. The decision adopted by the court of the civil law action on the matter of whether or not the original situation can be restored shall be binding for the court of the administrative court action.

(9) A retrial may be sought against the judgment of the court of the administrative court action brought against a decision of the Public Procurement Arbitration Board regarding the recovery of a fine imposed pursuant to section 172 (4) and the restorability of the original situation. A decision adopted by the court in the civil law action on the matter of whether or not the original situation can be restored shall be binding for the court of the administrative court action.

(10) The provisions laid down in paragraphs (7) to (9) shall not be applied, if the fine imposed in a decision of the Public Procurement Arbitration Board or in an administrative court action brought against the decision of the Public Procurement Arbitration Board is not paid by the time limit specified in paragraph (7) with regard to bringing an action.

CHAPTER XXII

PROCEDURE BY THE EUROPEAN COMMISSION

Section 178 (1) If the European Commission notices a violation of EU legislation on contract award procedures in a public procurement procedure conducted under Part Two, it may initiate a procedure within the meaning of paragraph (2).

(2) The European Commission shall also notify the contracting authority of the violation noticed, and shall invite the contracting authority to remedy the violation before concluding the contract.

(3) The contracting authority shall be required to report to the Public Procurement Authority with information regarding the violation noticed, so that the Public Procurement Authority may forward the information to the European Commission within twenty-one or, with regard to public procurement procedures relating to a public utility contract, thirty days after receipt of the notice.

(4) The contracting authority shall give notification, in particular, on whether

- a) the violation was remedied,
- b) the violation was not remedied, or
- c) the public procurement procedure concerned was suspended, and/or if the suspension of the public procurement procedure was ordered by the Public Procurement Arbitration Board as a provisional measure in a review procedure.

(5) The information specified in paragraph (4) b) shall be justified. If an alleged violation was not remedied because it is already the subject to a review procedure, the Public Procurement Authority shall notify the European Commission about the decision adopted in the course of the review without delay.

(6) In the case of described in paragraph (4) c), the Public Procurement Authority shall also inform the European Commission without delay about the result of the public procurement procedure or the review procedure, as well as the issue of legal remedy to the violation reported.

PART SEVEN

THE PUBLIC PROCUREMENT AUTHORITY AND THE PUBLIC PROCUREMENT ARBITRATION BOARD

CHAPTER XXIII

THE PUBLIC PROCUREMENT AUTHORITY

Section 179 (1) With a view to ensuring the achievement of the goals specified in this Act, a Public Procurement Authority (hereinafter “Authority”) shall be operated, and it shall be subject to the National Assembly only.

(2) The Authority shall be a central budgetary body operating as an autonomous administrative organ under the supervision of the National Assembly, with general material competence regarding its tasks specified in this Act, and territorial competence in the entire territory of Hungary. It shall be seated in Budapest.

(3) The budget of the Authority shall be planned as an independent title under the chapter on the National Assembly budget of the Act on the central budget. The funds appropriated for the Authority shall not be reallocated during the year without the approval of the National Assembly.

(4) The Council (hereinafter “Council”) and the Public Procurement Arbitration Board (hereinafter “Arbitration Board”) shall operate within the framework of the Authority.

The president of the Authority

Section 180 (1) The president of the Authority shall

- a)* act as representative of the Authority and the Council;
- b)* attend sessions of the National Assembly and its committees and present the annual report of the Authority, if invited;
- c)* issue president’s briefings providing practical information on public procurements;
- d)* initiate urgent voting on pressing matters falling within the material competence of the Council during periods between Council sessions pursuant to the organisational and operational regulations of the Authority;
- e)* exercise the employer’s rights over the secretary-general (hereinafter “secretary-general”) of the Authority, employees of the Secretariat of the Authority, the chairperson and vice-chairperson of the Arbitration Board, and the procurement commissioners;
- f)* carry out other tasks specified in an act.

(2) In his absence, the president of the Authority shall be substituted by the vice-president with unlimited powers.

Section 181 (1) The president of the Authority shall be appointed by the Council with two-thirds majority of the votes present for a period of five years. The appointment may be renewed once.

(2) The president of the Authority shall be subject to the Act on public service officials (hereinafter “the Kttv.”) with the derogation specified in this Act.

(3) The monthly salary of the president of the Authority for the period between 1 March of the base year and the end of February of the next year shall be eight times the monthly national average gross salary published by the Hungarian Central Statistical Office for the year preceding the base year. In other respects, the president of the Public Procurement Authority shall be entitled to the benefits provided to a minister.

(4) The employer’s rights over the president of the Authority shall be exercised by the Council, and conflicts of interests, if any, shall be notified by the president to the Council.

(5) The vice-president of the Authority shall be elected by the Council from among its members for a period of five years with two-thirds majority of the votes present.

(6) The mandate of the president and vice-president of the Authority and members of the Council shall be terminated

- a) upon expiry of the mandate;
- b) upon dismissal;
- c) upon resignation;
- d) upon the occurrence of a case specified in section 182 (8);
- e) if he becomes unworthy of or permanently unfit for the position;
- f) upon his death;
- g) if a conflict of interests is established.

(7) In a case described in paragraph (6) e) or g), the termination of the mandate shall be established by the Council with two-thirds majority of the votes present, taking into account the opinion of the organisations or persons which of who appointed the person concerned.

(8) If the Council does not decide on the appointment of a new president by the expiry of the mandate of the president of the Authority, the mandate of the president shall be extended until the end of the given calendar year.

The Council operating within the Authority

Section 182 (1) The Council shall have thirteen members. The members of the Council shall represent individual public interest goals, the contracting authorities, and tenderers.

(2) The enforcement and representation of fundamental principles of this Act, individual public interest goals, and the interests of contracting authorities and tenderers in the Council shall be the responsibility of the following persons:

- a) the person designated by the minister responsible for economic policy;
- b) the person designated by the minister responsible for public procurement;
- c) the person designated jointly by the minister responsible for construction regulation and construction authority matters and the minister responsible for the construction sector;
- d) the person designated by the minister responsible for the supervision of state assets;
- e) the President of the Hungarian Competition Authority or the person designated by him;
- f) the president of the Government Control Office or the person designated by him;
- g) the person designated jointly by the national associations of local governments;
- h) three persons designated by the national representative organisation of employers and national economic chambers, including the Hungarian Chamber of Agriculture, Food Industry, and Rural Development;
- i) the person designated jointly by the president of the Chamber of Hungarian Engineers and the president of the Chamber of Hungarian Architects;
- j) the person designated by the professional body of responsible accredited procurement consultants.

(3) The president of the Council shall be the president of the Authority. The vice-president of the Council shall be the vice-president of the Authority.

(4) The president of the Council shall become a member of the Council even if he is not elected from among the members. If the president of the Council is elected from among the members of the Council, the president shall not represent the general goals or interests of his designating entity any longer, and the designating entity may designate a new member to the Council. The designating entity may not make use of its right granted under section 181 (6) b) and section 181 (7) *vis-à-vis* the president of the Council.

(5) Each member of the Council shall report to his designating entity annually on his activities pursued in the Council for the purpose of achieving the goals and general interests to be enforced by him, as well as the objectives of this Act, including the realization thereof on the field of public procurement.

(6) The president, vice-president, and members of the Council shall make an asset declaration pursuant to the rules applicable to Members of the National Assembly; the first asset declaration shall be made within thirty days after the designation of the person concerned. The rules pertaining to the registration, control, and management of asset declarations made by Members of the National Assembly shall apply to the registration, control, and management of asset declarations.

(7) The mandate of the president, vice-president, and a member of the Council shall be terminated on the ground of conflict of interests, if he refuses or omits to perform his duty to make an asset declaration, or if he misrepresents a material data or fact in his asset declaration.

(8) A person shall not be a member of the Council, if

- a)* he is a Member of the National Assembly or a national minority; advocate
- b)* he has a criminal record.

(9) The mandate of a member shall be granted for at least two years.

(10) In addition to the rules laid down in paragraphs (7) to (9), the rules pertaining to the designation and dismissal of members shall be established by the designating entities, so that the functioning of the Council is ensured at all times.

(11) Members shall carry out their mandate in person. Members shall be entitled to an honorarium the monthly amount of which shall be specified in the organisational and operational regulations of the Authority.

Section 183 The Council shall

- a)* determine the number of members of the Public Procurement Arbitration Board;
- b)* appoint and/or discharge the chairperson and vice-chairperson of the Public Procurement Arbitration Board and the procurement commissioners; decide on conflict of interests matters pertaining to procurement commissioners;
- c)* with a view to facilitating the application of public procurement related legislation, prepare guidelines, in agreement with the minister responsible for public procurement and, as the case may be, in cooperation with national economic chambers and other professional organisations, concerning legal review decisions, experiences gained during the control public procurements, and practical information on public procurements (in particular on subjects specified in this Act);
- d)* carry out other tasks specified in an act.

Section 184 (1) The Council shall hold a collegiate session as necessary, but at least ten times per annum.

(2) The Council shall have a quorum if two-thirds of its members are present.

(3) The Council shall adopt its decisions with a simple majority of votes, subject to the exceptions specified in this Act.

(4) Members of the Council shall not be involved in the preparation and adoption of a Council decision regarding a matter specified in section 183 *b)*, if the person involved in the case is one of his relatives living in the same household.

(5) Members of the Council shall notify to the president any conflict of interests that may exist or emerge regarding him under paragraph (4), and he shall cease his participation in the pending procedure immediately.

The Secretariat of the Authority

Section 185 (1) The Secretariat of the Authority shall coordinate the activities and prepare and implement the decisions of the Authority and the Council, and carry out the related data collection, registration, and administrative activities as necessary. The Secretariat shall be headed by the secretary-general.

(2) The secretary-general and employees of the Secretariat shall have a public service relationship with the Authority, and the provisions laid down in the Kttv. shall be applicable to that relationship. The secretary-general shall be entitled to the salary and other benefits provided to a deputy secretary of state.

Section 186 The president and vice-president of the Authority, members of the Council, the secretary-general, employees of the Secretariat, procurement commissioners, and other persons who work in such positions and carry out such activities shall keep any and all classified data and business secrets disclosed to them during the fulfilment of their tasks.

The tasks and competence of the Authority

Section 187 (1) The Authority shall be responsible for efficiently contributing to the development of public procurement policy and for forming and spreading lawful behaviours in public procurement, taking into account the interests of the public, contracting authorities, and tenderers, thereby fostering the public and transparent spending of public funds.

(2) The Authority shall

a) keep up to date and publish on its website

aa) the list of contracting authorities falling within the scope of this Act,

ab) the official list of approved tenderers prepared by the Authority,

ac) the number and date of decisions of the Arbitration Board and court decisions justifying the exclusion within the meaning of section 62 (1) *h*), as well as, without considering the seriousness of the violation, the number and date of all decisions of the Arbitration Board with administrative finality or by a court with final and binding effect, where the decision of the Arbitration Board was challenged in an administrative court action, that can serve as ground for exclusion within the meaning of section 62 (1) *q*), regardless to the seriousness of the violation,

ad) the list of tenderers prohibited from participating in a public procurement procedure, including the period of the prohibition,

ae) where the violation of a contractual obligation by an economic operator is acknowledged by the economic operator or established in a final and binding court decision, the description of the breach and its material characteristics, including an indication whether the breach of contract resulted in the cancellation of or unilateral termination of the contract or the enforcement of a claim for damages or other sanctions available under the contract, or if an act the successful tenderer is accountable for resulted, in whole or in part, in the frustration of the contract, with the proviso that such data shall remain available on the website for a period of three years calculated from the breach of contract,

af) decisions establishing the reliability of economic operators subject to a ground for exclusion [section 188 (4)],

ag) the list of sheltered places of employment, including the products manufactured or distributed and the services provided by them;

b) keep a register of public procurements;

c) verify compliance with the conditions of admission to the list of approved tenderers set up by economic and professional chambers, and keep a register of such lists;

d) send missing statistical data to the European Commission as requested by the Commission, and send notices required under this Act to the European Commission;

e) for the first time by 1 March 2017 and every three years thereafter, prepare a statistical report on public procurements below EU thresholds, including in particular the total estimated value of such procurements during the relevant period, and provide such report to the minister responsible for public procurement in due time;

f) arrange for the editing of the “Közbeszerzési Értesítő – a Közbeszerzési Hatóság Hivatalos Lapja” (Public Procurement Bulletin – the Official Journal of the Public Procurement Authority, hereinafter “Public Procurement Bulletin”), and the publication and examination of notices pertaining to public procurement procedures and design contests. In the context of examining such notices, it shall ensure the completeness of data and, for that purpose, may invite contracting authorities to provide data. It shall also arrange for the publication of notices mentioned in section 113 (1) on its website, as well as of other data and information required under this Act on its website and the Public Procurement Bulletin;

g) publish on its website upon receipt the particulars of applications for, and *ex officio* initiatives initiating, a procedure of the Public Procurement Arbitration Board, the decisions adopted by the Arbitration Board on the merits of a case or closing a public procurement case, as well as the decision of the court, if the decision of the Arbitration Board was challenged in an administrative court action;

h) set up, operate, and make available on its website a public database of review decisions, ensuring that the Arbitration Board and court decisions are publicly available via electronic means, free of charge, in a comprehensive manner, and including keyword-based search options;

i) publish the guidelines and communication mentioned in paragraph (10) or sections 183 c) or 194 (3) on its website;

j) monitor the modification of contracts concluded in the course of a public procurement procedure, control their performance by conducting administrative audits pursuant to the Ákr. and other detailed rules laid down in a separate law, and, in particular, take the measures specified in sections 153 (1) c) and 175;

k) operate the Public Procurement Database serving the central register of public procurement procedures, facilitates the publicity of information on public procurements, the widespread use of electronic procurement databases, and supports the use of electronic procedural and communication options; in this context, it shall provide means of electronic publication, so that contracting authorities may make their procurement documents available to tenderers by electronic means in a centralized manner, free of charge, and in full, and that tenderers may access such procurement documents free of charge;

l) organise conferences for the purposes of presenting public procurement regulations to a wide audience;

m) express opinions, after consulting the minister responsible for public procurement as necessary, concerning matters of theoretical significance on the field of legal interpretation, for the purpose of providing assistance to contracting authorities regarding the preparation and realization of public procurement procedures;

n) provide information under the framework of keeping contact with public procurement organisations in other Member States of the European Union, in particular with regard to certificates used in public procurement procedures and public databases and registers operated in Hungary, arrange for the publication of such relevant registers in the e-Certis system, and perform in particular the obligations laid down in Articles 44(3), 59(6), 60(5), 61(1), 62(3), 64(1) and (8), and 69(5) of Directive 2014/24/EU, and in Articles 62(3), 81(3), 84(5), and 86(1) and (4) of Directive 2014/25/EU;

o) monitor the application and enforcement of the rules laid down in this Act, and initiate the adoption or amendment of public procurement related laws at the authorised bodies;

p) opine about legislative drafts and concepts concerning public procurements and the operation of the Council;

q) continuously update, maintain, and publish on its website the wages and related public dues that are common in or set for various sectors, on the basis of data provided annually by the minister responsible for employment policy;

r) define the qualification criteria and certification methods pertaining to the list of approved tenderers established by the Authority;

s) collect statistical data concerning public procurement procedures, and produce and publish on its website regularly statistics on prices on the basis of such statistical data;

t) produce the organisational and operational regulations of the Authority, other internal regulations pertaining to the operation of the Authority, and the budget proposal and the annual budget report of the Authority, and approve of the organisational and operational regulation of the Public Procurement Arbitration Board;

u) publish on its website the particulars of accredited public procurement consultants, registered by the minister responsible for public procurement, as specified in the ministerial decree on the activities of accredited public procurement consultants;

v) carry out other tasks specified in an act.

(3) Upon request by the president of the Authority or a procurement commissioner, any organisation (including professional chambers and representative organisations) shall provide information on cases pertaining to public procurement within ten days.

(4) The Authority shall report to the National Assembly every year on its activities, experiences regarding the lawfulness and transparency of public procurements, and experiences gained in review cases. The report shall contain findings pertaining to the number of and value trends in public procurement procedures, as well as the standing of domestic tenderers, in particular micro, small, and medium-sized enterprises. The Authority shall also forward its report to the State Audit Office for information purposes.

(5) With a view to keeping the official list of approved tenderers, the Authority and an economic or professional chamber shall be entitled to process natural identification data and data on educational and professional qualifications and professional experiences regarding persons named by applicants.

(6) to (9)

(10) The Authority shall issue a guideline, after consulting the minister responsible for foreign policy, regarding international conventions in effect on the field of public procurement and countries Hungary signed a convention with on the elimination of double taxation.

(11) A person shall not be involved in the preparation or conduct of a procedure conducted by the Authority under paragraph (2) *a) ab)* if he has a personal or material interest in a person or entity subject to the proceedings. If such conflict of interests exists, the person concerned shall notify the president of the Authority accordingly without delay, and shall cease his involvement in the pending proceedings or the preparation. The decision of the Authority may be challenged by the applicant or the approved tenderer concerned in an administrative court action within fifteen days after receipt of the decision. No appeal may be filed against the judgment of the court.

Section 188 (1) The economic operator subject to any ground for exclusion other than those specified in section 62 (1) *b)* and *f)* may submit an application to the Authority for the purpose of establishing that the measures implemented by the economic operator concerned serve as adequate evidence of its reliability despite the existence of a ground for exclusion. An editable

version of the submitted application, edited with a computer tool, shall be provided to the Public Procurement Authority, and receipt of that document shall be confirmed by the Public Procurement Authority within one working day, provided that it was filed via electronic mail. Evidence for the measures taken shall also be submitted to the Public Procurement Authority together with the application.

(2) For the purpose of demonstrating its reliability, the economic operator subject to a ground for exclusion shall certify that

a) it provided compensation, or agreed to do so within a specific time limit, for the damages caused by its criminal offence, infringement, or other violation, which was accepted by the injured party;

b) it clarified the facts and circumstances of the case in a comprehensive manner and in active cooperation with the competent authorities; and

c) it introduced technical, organisational, and personal measures that are suitable for preventing further criminal offences, infringements, and other violations.

(3) In the course of evaluating the measures mentioned in paragraph (2), the Authority shall take into account the weight and peculiar circumstances of the criminal offence, infringement, or other violation.

(4) The Authority shall adopt a decision on the suitability of the measures taken by the economic operator within fifteen working days after receipt of the application. The rules on summary procedures shall not apply. In the course of the proceedings, the rules on remedying deficiencies as laid down in the Ákr. shall apply with the derogation that the Authority may invite the applicant to remedy deficiencies on more than one occasion.

(4a) In justified cases, the time limit may be extended once by up to fifteen working days, so that the applicant economic operator shall be notified about the extension simultaneously. The Authority shall send its decision to the economic operator in writing and without delay. A decision establishing the reliability of an economic operator subject to a ground for exclusion may not set forth any condition or provisions on further measures to be taken by the economic operator.

(4b) If the application is dismissed by the Authority in a decision, the economic operator subject to the given ground for exclusion may submit a new application under paragraph (1) regarding the same ground for exclusion, provided that it seeks to demonstrate its reliability through a measure taken after the dismissal of its previous application.

(5) The applicant may challenge a decision dismissing its application by bringing an administrative court action within fifteen days after receipt of the decision. No appeal may be filed against the judgment of the court.

(6) A person shall not participate in deciding on an application mentioned in paragraph (1), if his rights or legitimate interests are affected by the case directly, or he cannot be expected to decide on the matter in an unbiased way. The provisions laid down in section 147 (1) to (2) shall apply accordingly to conflicts of interests that may exist regarding persons participating in deciding on an application mentioned in paragraph (1), with the proviso that, for this purpose, client organisation shall be construed to mean the applicant, public procurement case shall be construed to mean deciding on the application, and the date of launching the review procedure shall be construed to mean the date of filing the application. If a conflict of interests described in detail in this paragraph exists with regard to a person, he shall notify the president of the Authority accordingly without delay, and shall cease his involvement in the pending proceedings or the preparation.

Section 189 (1) If the president of the Authority establishes upon inspection of the documents sent to the Authority about the commencement of a negotiated procedure without prior publication that it can be reasonably assumed that the rules on public procurement or the

provisions or fundamental principles laid down in a law on public procurement procedures were violated, he shall initiate an *ex officio* procedure of the Public Procurement Arbitration Board within ten working days after receipt of the documents. At the time of filing the initiative, the president of the Authority shall also notify the contracting authority accordingly, specifying the alleged violation.

(2) If the documents submitted by the contracting authority do not show clearly that the conditions of conducting a negotiated procedure without prior publication were met or that the invitation to tender was lawful, the president of the Authority shall invite the contracting authority via fax or electronic means to provide the necessary data within three days.

(3) If the contracting authority fails to remedy deficiencies, the president of the Authority shall decide on initiating a procedure on the basis of available data.

Section 190 The provisions laid down in Chapter XII of Act CLXI of 2011 on the organisation and administration of the courts (hereinafter “the Bszi.”) shall apply to the publication of decisions adopted by the Arbitration Board or in the course of administrative court actions relating to a public procurement procedure, with the following derogations:

a) by derogating from section 163 (1) of the Bszi., the collection of court decisions adopted with regard to public procurement procedures and of decisions adopted by the Arbitration Board shall be published by the Public Procurement Authority,

b) anonymised digital copies, within the meaning of section 163 (3) of the Bszi., of decisions of the Public Procurement Arbitration Board shall be prepared by the Public Procurement Arbitration Board,

c) an application within the meaning of section 166 (4) of the Bszi. shall be submitted to the president of the Public Procurement Authority,

d) section 163 (2) and (5) of the Bszi. shall not apply,

e) sections 163 (3) and 164 (1) of the Bszi. shall apply with the proviso that the president of the court adopting the decision shall send the decision to the President of the National Office for the Judiciary for publication in the collection, and he shall make the decision, as well as other decisions mentioned in section 163 (3) of the Bszi., available to the president of the Public Procurement Authority.

The operation of the Authority

Section 191 (1) The Authority shall not pursue economic activities on a commercial basis, and shall not accept or provide financial contribution from or to any person or organisation.

(2) Any administrative service fee collected shall constitute the own revenue of the Authority. The revenue from the control of notices shall be used by the Authority, in part, to maintain the computer facilities required for the performance of its tasks under this Act.

(3) The administrative service fees mentioned in paragraph (2) shall be used by the Authority to cover its expenditures incurred in the course of performing its statutory tasks.

(4) For the purpose of verifying the payment of required fees, the Authority shall keep separate records of the administrative service fees, administrative fines, and fines paid. Having regard to sections 89 (1) b) and 90 (1) and (2) of Act I of 2017 on the Code of Administrative Court Procedure, as well as the relevant provisions laid down in this Act, the Authority shall account for its revenues from fines, reduced by the amount of repayment obligations that arose during the relevant year, as of 31 December of the given year. In other respects, the law on public accounting shall apply to the registration and management of and accounting for fees, administrative fines, and fines.

(5) With regard to administrative service fees mentioned in paragraph (2), the provisions laid down in

- a) sections 3 (4) and 28 (2) to (3) of Act XCIII of 1990 on duties (hereinafter “the Itv.”) shall apply to fee payment obligations,
- b) the first sentence of section 31 (1) and in section 31 (2) and (5) of the Itv. shall apply to the determination of the group of persons and entities obliged to pay a fee,
- c) in section 86 of the Itv. shall apply to limitation
accordingly with the derogation that references in the Itv. to duty shall be construed to mean fee.

CHAPTER XXIV

THE PUBLIC PROCUREMENT ARBITRATION BOARD

Section 192 (1) The Public Procurement Arbitration Board shall be responsible for administering review procedures launched on the ground of unlawful or disputed matters pertaining to public procurement or design contests.

(2) The operations of the Arbitration Board shall be covered from the budget of the Authority.

(3) The Arbitration Board shall include procurement commissioners, in a number determined by the Council and working under a public service relationship with the Authority, and a chairperson, all of whom shall be appointed and discharged by the Council.

(4) The chairperson and vice-chairperson of the Arbitration Board shall be elected by the Council with two-thirds majority of the votes present for a period of five years. The vice-chairperson of the Arbitration Board shall be elected by the Council from among the procurement commissioners, and the chairperson of the Arbitration Board shall recommend a candidate. The chairperson and vice-chairperson of the Arbitration Board may be re-elected.

(5) A person may become the chairperson of the Arbitration Board, if

- a) he holds a professional exam in law, and
 - aa) has at least five years of experience on the field of public procurement, or
 - ab) has at least three years of experience as a state executive official, or
 - b) has at least three years of experience as a judge or prosecutor.

(6) The provisions laid down in the Kttv. shall apply to the public service relationship of the chairperson of the Arbitration Board with the derogations laid down in this Act with regard to the public service relationship of procurement commissioners.

(7) The chairperson of the Arbitration Board shall be entitled to a salary and other benefits provided to a secretary of state. The vice-chairperson shall be entitled to a salary provided to a head of department.

Section 193 (1) The chairperson of the Arbitration Board shall

- a) head the work of the Arbitration Board;
- b) act as representative of the Arbitration Board;
- c) prepare the organisational and operational regulation of the Arbitration Board and present it to the president of the Authority for approval;
- d) verify compliance with procedural time limits;
- e) arrange for the publication of the title and subject of the procedure affected by the application, the name of the parties, the date of receipt of the application, the decision adopted by the Arbitration Board on the merits of or closing the public procurement case, the decision permitting the conclusion of the contract, and, if the decision is challenged in an administrative court action, the decision of the court without delay after receipt of an application for launching the procedure of the Arbitration Board;
- f) arrange for the opinions of specialised councils within the meaning of section 168 (2) to be presented to procurement commissioners.

(2) In his absence, the chairperson of the Arbitration Board shall be substituted by the vice-chairperson with unlimited powers.

(3) The provisions laid down in the Kttv. shall apply to the public service relationship of procurement commissioners with the derogations laid down in this Act.

(4) A person may be a procurement commissioner, if he has a qualification obtained in higher education, at least three years of professional experience, and a professional exam in law or public administration, or specialised qualification in public administration studies, or specialised qualification in government studies.

(5) The time limits specified in the Kttv. shall apply accordingly concerning the professional exam required under paragraph (4).

(6) Apart from scientific, teaching, artistic, proofreading, editorial activities, other intellectual activities protected by law, and employment as a foster parent, a procurement commissioner shall not accept any other mandate, pursue any other paid profession, be a member in a company who is required to contribute in person, or serve as an executive officer or supervisory board member of a company.

(7) A person shall not be a procurement commissioner if

a) he is a Member of the National Assembly, a local government representative, a national minority advocate, a mayor, or a chamber officer;

b) holds an ownership share in a company over 25% or exceeding twenty-five million forints.

(8) Procurement commissioners shall be graded according to the rules on promotion laid down in the Kttv., with the derogation that they shall be entitled to a salary associated with a grade that is two levels above their grade.

(9) A procurement commissioner graded as a principal adviser shall be entitled to the salary of a head of section, and a procurement commissioner graded as a senior principal adviser shall be entitled to the salary of a head of department.

(10) In addition to the cases specified in the Kttv., the public service relationship of a procurement commissioner may also be terminated by discharge if the Council reduced the headcount of the Arbitration Board.

(11) If the mandate of a procurement commissioner is terminated, he shall be re-graded pursuant to the rules laid down in the Kttv.

(12) Procurement commissioners shall be independent in their decision-making, shall decide according to their convictions on the basis of applicable law, and shall not be influenced or instructed regarding their decisions.

PART EIGHT

FINAL PROVISIONS

Obligations under European Union law

Section 194 (1) The minister responsible for public procurement shall ensure that the application of public procurement rules is monitored in a coordinated manner. To this end, the minister responsible for public procurement, the Public Procurement Authority, the State Audit Office, the government audit body, the Hungarian Competition Authority, and the body auditing European subsidies shall cooperate with each other; where, in the course of such cooperation, the above bodies identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall notify each other accordingly, including any other measure they have taken in the given situation (such as initiating a review procedure or legislative amendment).

(2) For the first time by 18 April 2017 and every three years thereafter the minister responsible for public procurement shall submit to the European Commission a monitoring report covering, where applicable, information on the most frequent sources of unlawful public procurement application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of micro, small, and medium-sized enterprise participation in public procurement and about prevention, detection and adequate reporting of cases of criminal offences pertaining to public procurement [in particular the criminal offences mentioned in section 62 (1) *a) ab) and ac)*], conflict of interests and other serious irregularities. Upon request by the European Commission, the minister responsible for public procurement shall also provide information on the implementation of domestic strategic public procurement policies. The minister responsible for public procurement shall be provided with the data required for the monitoring report and providing the above-mentioned information by the organisations mentioned in paragraph (1) in due time, and, for this purpose, the minister responsible for public procurement may set up a committee with the organisations mentioned in paragraph (1).

(3) The minister responsible for public procurement shall arrange for the publication of the monitoring results. The publication may be made on an ad hoc basis or by publishing the monitoring report mentioned in paragraph (2). If the monitoring results are included in the report of the Public Procurement Authority mentioned in section 187 (4), it shall not be required to publish the monitoring results any further. With a view to facilitating the application of public procurement related legislation, the minister responsible for public procurement may produce guidelines and notices concerning legal review decisions, experiences gained during the control public procurements, and practical information on public procurements.

(4) The minister responsible for public procurement shall arrange for the designation of a point of reference for cooperation with the European Commission as regards the application of public procurement legislation.

(5) For the first time by 18 April 2017 and every three years thereafter the minister responsible for public procurement shall submit to the European Commission a statistical report, provided by the Public Procurement Authority, on public procurements below EU thresholds. The minister responsible for public procurement shall, as necessary, make available to the Commission information on the domestic institutional organisation related to the implementation, monitoring and enforcement of Directive 2014/24/EU of the European Parliament and of the Council, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules. The statistical report and the information mentioned in this paragraph may be incorporated in the monitoring report mentioned in paragraph (2).

(6) The minister responsible for public procurement shall be tasked with monitoring public procurement procedures conducted with regard to supplies and services contracts, and service concessions reaching or exceeding EU thresholds and financed, in whole or in part, from a non-domestic budgetary source, and to works contracts and works concessions the value of which reaches or exceeds three hundred million forints, and with approving of modifications of contracts concluded as a result of such public procurement procedures. The detailed rules pertaining to audits and approvals mentioned in this paragraph shall be laid down in a separate law.

Other tasks of the minister responsible for public procurement

Section 195 (1) The minister responsible for public procurement shall be tasked with authorising the launch and conducting the central monitoring of public procurements

undertaken by budgetary bodies and their institutions, controlled or supervised by the Cabinet, the public foundations of the Cabinet, and economic organisations the majority of which is owned by the state where the ownership rights (shareholder's rights, membership rights etc.) are exercised by a central budgetary body or its institution under a ministerial decree or an agency contract concluded with the Hungarian National Asset Management Inc., and permitting the modification of public contracts and works or service concessions concluded by such organisations, as well as authorising the conclusion and modification of purchase contracts concluded by such organisations or foundations managed or established by them outside the scope of public procurement.

(2) The minister responsible for public procurement shall approve the framework for establishing the training of persons involved in public procurement procedures, and shall direct, supervise, and control trainings in public procurement.

(3) The detailed rules pertaining to the tasks specified in paragraphs (1) to (2) shall be laid down in a separate law.

(4) With regard to the central control mentioned in paragraph (1), the minister responsible for public procurement may impose an administrative fine on a controlled organisation, if it fails to perform or meet an obligation or time limit laid down in a separate law.

(5) Upon request by the minister responsible for public procurement, the contracting authority mentioned in paragraph (1) shall submit to the minister any data pertaining to its public procurements within five working days. The contracting authorities specified in paragraph (1) shall submit to the minister responsible for public procurement data pertaining to procurements below the public procurement threshold pursuant to the rules laid down in a government decree. The minister responsible for public procurement may control procurements undertaken by contracting authorities mentioned in paragraph (1) below the public procurement threshold pursuant to the rules laid down in a government decree.

(6) The minister responsible for public procurement shall keep an up-to-date list of accredited public procurement consultants.

(7) With a view to keeping a list of accredited public procurement consultants, the minister responsible for public procurement shall be entitled to process, with regard to accredited public procurement consultants, natural identification data, contact address, qualifications, and data pertaining to the legal capacity, criminal history, employer, and the public procurement practice of an accredited public procurement consultant, as well as information whether the accredited public procurement consultant is authorised to pursue activities specified in section 2 (1) of Act LXXVIII of 2017 on the professional activities of attorneys-at-law.

(8) The minister responsible for public procurement may keep processing the data mentioned in paragraph (7) for a period of one year after the removal of an accredited public procurement consultant from the list of accredited public procurement consultants. The accredited public procurement consultant shall be removed from the list, if he does not meet the admission requirements specified in a separate law, a ground for exclusion specified in paragraph (9) arises, it is established in a final and binding decision that the accredited public procurement consultant, acting in such capacity, committed an intentional violation, the registration period expires and a request for renewal is not filed or it is dismissed, at the request of the accredited public procurement consultant concerned, or upon the death of a person included in the list.

(9) A person shall not be an accredited public procurement consultant, if

- a)* he has no or partially limited capacity to act;
- b)* has not been absolved from the adverse legal consequences of having a criminal record;
- c)* he is a procurement commissioner;

d) he is the president or vice-president of the Public Procurement Authority.

(10) An application for registration shall be accompanied by original documents, or authentic copies of such documents, confirming that no ground for exclusion mentioned in paragraph (9) exists. An administrative service fee, the amount of which shall be specified in a separate law, shall be paid for admission to the list, renewing the registration, or modifying any data recorded on the list. In case of failure to pay the administrative service fee, the application shall be rejected by the authority. No exemption may be granted from paying the administrative service fee.

(10a) After examining the documents attached to an application for admission to the list, the minister responsible for public procurement shall decide on the suitability of the documents pursuant to the Ákr. within twenty days after receipt of the application, with the proviso that this decision may not be made in a summary procedure. If the documents submitted are incomplete, the minister responsible for public procurement may grant a time limit of eight days to the applicant once. If the time limit set for the remedy of deficiencies passes without result, the application for admission to the list shall be dismissed by the minister responsible for public procurement.

(10b) Applications for admission to the list shall be submitted in writing. Communication by electronic means shall be mandatory in the authority proceedings. The application may not be submitted at a government window. A party may not make up for the absence of a document required to show that the conditions of admission to the list are met by providing a statement.

(11) A person shall not be involved in the preparation or conduct of a procedure by the minister responsible for public procurement under paragraph (7) if he has a personal or material interest in a person or entity subject to the proceedings. If such a conflict of interests exists with regard to a person, he shall notify the minister responsible for public procurement accordingly without delay, and shall cease his involvement in the pending proceedings or the preparation. Unless provided for otherwise under this Act, no appeal may be filed against a decision or procedural decision adopted by the minister responsible for public procurement within the scope of his tasks. The applicant or the accredited public procurement consultant concerned may challenge a decision by bringing an administrative court action within fifteen days after receipt of the decision. No appeal may be filed against the judgment of the court.

(12) The minister responsible for public procurement shall carry out tasks pertaining to the maintenance and operation of the unified electronic procurement system that is to be used for the purpose of conducting public procurement and concession procedures.

Entry into force

Section 196 This Act shall enter into force on 1 November 2015, with the exception specified in paragraphs (2) and (3).

(2)

(3) Section 40 shall enter into force on 15 April 2018.

Transitional provisions

Section 197 (1) The provisions of this Act shall apply to procurements started, contracts awarded in public procurement procedures commenced, and design contests launched after the entry into force of this Act, as well as review procedures and preliminary dispute resolutions applied for, initiated, or launched *ex officio* in relation thereto. The provisions laid down in sections 139, 141, 142, section 153 (1) *c*), and section 175 shall apply to the option of modifying a contract awarded in a procurement or public procurement procedure launched prior to the entry into force of this Act without conducting a new public procurement

procedure, and to the control of any modification and performance; furthermore, the provisions laid down in Chapter XXI shall also apply to related review procedures.

(2) The provisions of Act CVIII of 2011 on public procurements shall apply to procurements undertaken, contracts awarded in public procurement procedures [with the exception specified in the second sentence of paragraph (1)], and design contests launched before 1 November 2015, as well as review procedures and preliminary dispute resolutions applied for, initiated, or launched *ex officio* in relation thereto.

(3) Until the separate Act mentioned in section 9 (1) *a*) enters into force, the Public Procurement Arbitration Board shall have material competence over review procedures conducted in procurement procedures regulated by the government decrees mentioned in section 198 (1) 20 to 21. The provisions laid down in Part Six of this Act shall apply to review proceedings, with the proviso that the review application and the decision shall not be published on the website of the Public Procurement Authority and the Public Procurement Arbitration Board shall hold closed hearings only.

(4) Section 5 (3) and section 62 (5a) of this Act, as introduced by Act LXIII of 2016 amending Act CXLIII of 2015 on public procurements (hereinafter "the Amending Act"), shall apply to procurements and public procurement procedures launched and contracts awarded in a public procurement procedure launched after the entry into force of the Amending Act, as well as to review procedures launched in relation thereto.

(5) Section 31 (5) and section 32 (3) of this Act, repealed by Act CLX of 2016 amending Act CXLIII of 2015 on public procurements and certain related Acts (hereinafter "the Amending Act 1"), shall not apply to pending public procurement procedures.

(6) Points 21 and 24a of section 3, section 4 (1) and (3), section 5 (2), (3), and (5), section 6 (1) *e*) to *f*) and (4), section 9 (1) *g*) and (8) *e*) and *g*), section 15 (5), section 19 (4) *a*), section 20, section 21 (1), section 25 (2), section 27 (3), section 29 (4), section 30 (1) and (4), section 31 (5), section 32 (3), section 37 (3), section 39 (1), section 40 (1), section 44 (1), section 50 (2) *m*) and *n*), section 55 (1) and (2), section 61 (5), section 62 (1) *h*) and *p*), section 63 (1) *a*), section 65 (2), (5), and (9), section 69 (4), section 70 (1), section 71 (8) *b*), section 71 (9), section 75 (2) *e*) and *f*) and (6), section 76 (8), section 81 (6), section 98 (2a), section 100 (5), section 102 (3) *b*), section 103 (4) to (6), section 107 (2), section 111 *n*), section 113 (1) and (2) and (5) *a*) and *c*), section 114 (1), (2), (4), and (14), section 115 (1), (2), and (5) to (7), section 117 (9), section 119 (4), section 123 (2), section 135 (8) and (9), section 138 (1) to (2), (3), and (5), section 141 (2) *b*) and (3), section 146 (4), section 177 (3) and (4), section 181 (3), section 182 (1), (2), and (11), section 184 (1), section 187 (2) *a*) *ac*), *n*), and *u*), and (6) to (9) and (11), section 189 (1), section 192 (7), section 195 (5) to (12), section 196 (2) to (3), section 197 (5) to (6), section 198 (1) 8 and 20 and (2) *a*) and *c*) of this Act, as introduced by the Amending Act 1, shall apply to purchases and public procurement procedures launched and contracts awarded in a public procurement procedure launched after the entry into force of the Amending Act 1, as well as to review procedures launched in relation thereto. The contracting parties may agree to apply section 138 (1) and (5) of this Act, as amended by the Amending Act 1, to their contract, and to apply the restriction on subcontractor participation in a services contract. The modification of a contract to this effect shall not be considered a material modification and shall not give rise to an obligation to conduct a new public procurement procedure.

(7) Section 62 (1) *q*) of this Act, as introduced by the Amending Act 1, shall apply to public procurement procedures that are pending upon the entry into force of the Amending Act 1, provided that the time limit for the receipt of requests to participate or, in procedures consisting of a single stage, tenders has not expired upon the entry into force of the Amending Act 1 yet. In the course of applying section 62 (1) *q*) of this Act, as introduced by the Amending Act 1, decisions that become final and binding after the entry into force of this Act

shall be taken into account, even if the decision establishes the violation of a provision laid down in Act CVIII of 2011 on public procurements regarding the performance of contracts awarded in a public procurement procedure. If the violation of a provision laid down in this Act pertaining to the performance of a contract awarded in a public procurement procedure or concession procedure by an economic operator is established in a final and binding decision of the Public Procurement Arbitration Board or, if the decision of the Arbitration Board is challenged in an administrative court action, a court after the entry into force of this Act but before the entry into force of the Amending Act 1, the ground for exclusion specified in section 62 (1) *q*) shall be applied so that the economic operator who committed the violation established in the final and binding decision shall not become a tenderer, applicant, or subcontractor and shall not be involved in the certification of suitability for a period of 90 days after the entry into force of Amending Act 1.

(8) The provisions of this Act as introduced by Act CLXXXVI of 2017 amending Acts relating to the reduction of bureaucracy in public administration and the simplification of certain authority proceedings (hereinafter “the Amending Act 2”) shall apply to procurements and public procurement procedures launched and contracts awarded in a public procurement procedure launched on or after 1 January 2018.

(9) With the exception of the provisions laid down in paragraph (8), the provisions of this Act in force prior to 1 January 2018 shall apply to public procurement procedures announced by way of a prior information notice under section 51 or a summary notice under section 113 published prior to 1 January 2018.

Section 197/A The provisions laid down in

a) section 25 (3) and (4) concerning relatives living in the same household, as introduced by Act CXCI of 2015 amending certain Acts with respect to the reorganisation of the National Tax and Customs Administration and budget planning and management shall apply to procedures launched after 1 November 2015,

b) section 25 (4), as introduced by Act CXCI of 2015 amending certain Acts with respect to the reorganisation of the National Tax and Customs Administration and budget planning and management shall, with the exception referred to in point *a*), apply to procedures launched after the entry into force of that Act.

Authorisation

Section 198 (1) The Government shall be authorised to determine in a decree

1. the provisions on the method of certifying suitability and the absence of any ground for exclusion in a public procurement procedure, the documents that may be requested in that regard, and the detailed rules on the application suitability criteria, the verification of suitability criteria and grounds for exclusion by contracting authorities, and the determination and contents of technical specifications in public procurement procedures;

2. the provisions on approved tenderers, the conditions of and method of certification regarding admission to the list of approved tenderers, the rules on keeping the list of approved tenderers, the requirements pertaining to grounds for exclusion and suitability as confirmed by the certificate according to the list, and the requirements confirmed by such certificates issued by an organisation of another Member State of the European Union;

3. the rules on governing design contests;

4. the special rules on procedures aimed at the conclusion of public service contracts, and the rules pertaining to procedures mentioned in section 13;

5. the detailed rules pertaining to centralised public procurement procedures concerning budgetary bodies, public foundations, and state-owned economic organisations controlled, supervised, or established by it, as well as the amount of the fee payable to organisations

authorised to request tenders in centralised public procurement procedures and covering solely the costs arising in relation to implementation;

6. the detailed rules pertaining to centralised public procurement procedures concerning healthcare services of organisations financed from the Health Insurance Fund, as well as the amount of the fee payable to organisations authorised to request tenders in centralised public procurement procedures and covering solely the costs arising in relation to implementation;

7. the detailed rules pertaining to centralised public procurement procedures concerning the performance of government communications tasks, the amount of the fee payable to organisations authorised to request tenders in centralised public procurement procedures and covering solely the costs arising in relation to implementation, and the rules on purchasing services required for the performance of government communications tasks and related goods, which are different from those laid down in this Act due to the characteristics of such procedures;

8. the detailed rules pertaining to procedural acts carried out via electronic means, electronic auctions, electronic catalogues, and procurement via electronic means, which are different from the rules laid down in this Act to the extent necessitated by the use of electronic means, as well as the exceptions from the mandatory use of electronic means of communication;

9. the detailed rules applicable to the public procurement of works and related design and engineering services, which may be different from the rules laid down in this Act due to the specificities of such public procurements, as well as the detailed rules on performing contracts relating to such subject-matters, and, with regard to public contracts aimed at the realization of works, the rules paying the contractual consideration, which may be different from the rules laid down in this Act or the Ptk.;

10. the detailed rules pertaining to the framework of evaluation criteria and evaluation methods applicable to certain subjects of public procurement, the mandatory cases and methods of enforcing social, in particular employment, environmental, sustainability, and energy efficiency related criteria in public procurement, including requirements pertaining to the mandatory application of reserved public procurements;

11. the special rules on public procurement of medicinal products or medical devices, which may be different from the rules laid down in this Act due to the specificities of such procedures;

12. the conditions and process of initiating the granting of exemptions for procurements specified in section 9 (1) *b*) by the competent committee of the National Assembly, as well as the requirements to be applied by a contracting authority in the course of realizing such procurements;

13. the special public procurement rules on determining and taking into account the energy and environmental impacts associated with the operation of road vehicles, calculated for the entire life of such vehicles, as well as the detailed rules on related reporting obligations;

14. the detailed rules pertaining to the authorisation of the launch and conducting the central control of public procurements undertaken by budgetary bodies and their institutions, controlled or supervised by it, the public foundations of it, and economic organisations the majority of which is owned by the state where the ownership rights (shareholder's rights, membership rights etc.) are exercised by a central budgetary body or its institution under a ministerial decree or an agency contract concluded with the Hungarian National Asset Management Inc., and to the authorisation of the modification of public contracts and works or service concessions concluded by such organisations, as well as to the authorization of the conclusion and modification of procurement contracts concluded by such organisations or foundations managed or established by them outside the scope of public procurement, to the range of data to be provided for the purpose of the central control and authorisation of public procurements, as well as to the fine, and the amount thereof, the minister responsible for

public procurement may impose, in agreement with the minister responsible for taxation policy, in relation to such central control. As part of the authorisation and control activities, content-related requirements may also be specified regarding public procurements and the conditions thereof for the purpose of enforcing the legal policy objectives of the Government.

15. the detailed rules pertaining to the control of public procurement procedures conducted with regard to supplies and services contracts, and service concessions reaching or exceeding EU thresholds and financed, in whole or in part, from a non-domestic budgetary source, and to works contracts and works concessions the value of which reaches or exceeds three hundred million forints, and to the approval of modifications of contracts concluded as a result of such public procurement procedures.

16. the detailed rules on administrative controls the Public Procurement Authority may conduct to control the performance and modification of contracts, and the control-related obligations of contracting authorities and economic operators, as part of which the Public Procurement Authority shall be entitled to learn, without any limitation, about data pertaining to the performance and modification of the procedure and the contract, and it may request the disclosure of such data;

17. the mandatory cases of public procurements reserved for sheltered places of employment positions, developmental employers, and organisations employing disadvantaged workers;

18. the detailed rules on procurements undertaken under the NATO Security Investment Programme or other co-financed programmes supported by the NATO;

19. the detailed rules pertaining to the establishment of a framework for the training of persons involved in public procurement procedures, the direction, supervision, and control of trainings in public procurement;

20. the requirements pertaining to procurements undertaken below the public procurement thresholds under section 4 (3) by contracting authorities specified in section 195 (1), the exceptions from the requirement of obtaining at least three tenders regarding such procurements, and the rules pertaining to the transmission of data on procurements and public procurements below the public procurement threshold undertaken by such contracting authorities to the minister responsible for public procurement, and the control of such procurements by the minister responsible for public procurement;

21. the special rules on procurements concerning measures relating to the crisis caused by mass immigration;

22.

(2) The minister responsible for public procurement shall be authorised to determine in a decree

a) the rules on sending, dispatching, and publishing notices and public procurement plans, the rules on, and, in agreement with the minister responsible for taxation policy, the fee of reviewing notices, the detailed rules on collecting, managing, recording, and reimbursing fees, the provisions pertaining to the additional data and detailed content of summary notices mentioned in section 113 (1), and, in agreement with the minister responsible for taxation policy, the amount of the administrative service fee payable for the publication of summary notices and the detailed rules on collecting, managing, recording, and reimbursing such fees, the rules pertaining to the annual statistical summary of public procurements, and the rules on publishing them in the Public Procurement Bulletin and/or the website of the Public Procurement Authority;

b) the standard forms of notices, evaluation summaries, and annual statistical summaries, as well as the content elements of notices;

c) the rules pertaining to the activities of accredited public procurement consultants, the public procurement practice and the certification thereof which are required for the pursuit of accredited public procurement consultant activities, the registration of accredited public procurement consultants, the registration process, and, in agreement with the minister responsible for taxation policy, the amount, collection, management, recording, and reimbursement of such fees, the list of accredited public procurement consultants, the keeping of and admission to the list, the professional body of accredited public procurement consultants, and, in agreement with the minister responsible for taxation policy, the amount, management, recording, and reimbursement of the administrative service fee payable for admission to the list, registration renewal, and the modification of registered data, as well as rules pertaining to the liability insurance required for the pursuit of accredited public procurement consultant activities;

d) the special rules for maintaining and operating an electronic procurement system;

e) the amount and method of payment of the administrative service fee payable for the proceedings of the Public Procurement Arbitration Board, in agreement with the minister responsible for taxation policy, as well as the rules pertaining to the payment and bearing of such fees;

f) the detailed rules pertaining to the preparation of price statistics published by the Public Procurement Authority, as well as the conditions and method of providing statistical data to the Public Procurement Authority.

Amended provisions

Section 199

Repealed provisions

Section 200

Compliance with the law of the European Union

Section 201 This Act serves the purpose of compliance with the following legal acts of the European Union:

a) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts,

b) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,

c) Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV,

d) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts,

e) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles, together with the government decree adopted on the basis of the authorisation of section 189 (1) 13 for the

implementation of this Act and with Act XXXIII of 2004 on regular passenger transport services by bus,

f) Article 7 (1) (b) of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals,

g)

h) Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions,

i) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts,

j) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC,

k) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

Annex 1 to Act CXLIII of 2015

List of work activities referred to in section 8 (3) a)

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply

NACE Rev. 1 ¹					CPV Code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: — construction of new buildings and works, restoring and common repairs.	4500000
	45,1		Site preparation		4510000
		45,11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral	4511000

				<p>properties and sites.</p> <p>This class also includes:</p> <ul style="list-style-type: none"> — building site drainage. — drainage of agricultural or forestry land. 	
		45,12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. <p>This class excludes:</p> <ul style="list-style-type: none"> — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20. 	45120000
	45,2		Building of complete constructions or parts thereof; civil engineering		45200000
		45,21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of all types of buildings construction of civil engineering constructions, — bridges, including those for elevated highways, viaducts, tunnels and subways, — long-distance pipelines, communication and power lines, — urban pipelines, urban communication and power lines, — ancillary urban works, — assembly and erection of prefabricated constructions on the site 	<p>45210000</p> <p>except:</p> <p>45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>

				<p>This class excludes:</p> <ul style="list-style-type: none"> — service activities incidental to oil and gas extraction, see 11.20, — erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, — building installation, see 45.3, — building completion, see 45.4, — architectural and engineering activities, see 74.20, — project management for construction, see 74.20 	
		45, 22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> — erection of roofs, — roof covering, — waterproofing. 	4526100 0
		45, 23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> — construction of highways, streets, roads, other vehicular and pedestrian ways, — construction of railways, — construction of airfield runways, — construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, 	4521221 2 and DA03 4523000 0 except: 4523100 0 4523200 0 4523411 5

				<p>— painting of markings on road surfaces and car parks.</p> <p>This class excludes:</p> <p>— preliminary earth moving, see 45.11.</p>	
		45, 24	Construction of water projects	<p>This class includes</p> <p>— construction of:</p> <p>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</p> <p>— dams and dykes,</p> <p>— dredging,</p> <p>— subsurface work.</p>	4524000 0
		45, 25	Other construction work involving special trade	<p>This class includes:</p> <p>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</p> <p>— construction of foundations, including pile driving,</p> <p>— water well drilling and construction, shaft sinking,</p> <p>— erection of non-self-manufactured steel elements,</p> <p>— steel bending,</p> <p>— bricklaying and stone setting,</p> <p>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</p> <p>— erection of chimneys and industrial ovens.</p> <p>This class excludes:</p>	4525000 0 4526200 0

				— renting of scaffolds without erection and dismantling, see 71.32	
	45,3		Building installation		4530000 0
		45,31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> — electrical wiring and fittings, — telecommunications systems, — electrical heating systems, — residential antennas and aerials, — fire alarms, — burglar alarm systems, — lifts and escalators, — lightning conductors, etc. 	4521331 6 4531000 0 except: 4531600 0
		45,32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or other construction projects of thermal, sound or vibration insulation. <p>This class excludes:</p> <ul style="list-style-type: none"> — waterproofing, see 45.22 	4532000 0
		45,33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> — installation in buildings or other construction projects of: — plumbing and sanitary equipment, — gas fittings, — heating, ventilation, refrigeration or air-conditioning equipment and ducts, — sprinkler systems. 	4533000 0

				<p>This class excludes:</p> <ul style="list-style-type: none"> — installation of electrical heating systems, see 45.31 	
		45,34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> — installation of illumination and signalling systems for roads, railways, airports and harbours, — installation in buildings or other construction projects of fittings and fixtures n.e.c. 	<p>4523411 5 4531600 0 4534000 0</p>
	45,4		Building completion		<p>4540000 0</p>
		45,41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> — application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials. 	<p>4541000 0</p>
		45,42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> — installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, — interior completion such as ceilings, wooden wall coverings, movable partitions, etc. <p>This class excludes:</p> <ul style="list-style-type: none"> — laying of parquet and other wood floor coverings, see 45.43. 	<p>4542000 0</p>
		45,43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> — laying, tiling, hanging or fitting in buildings or other construction projects of: — ceramic, concrete or cut stone wall or floor tiles, — parquet and other wood floor coverings carpets and linoleum floor coverings, 	<p>4543000 0</p>

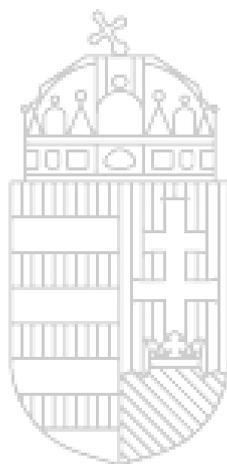
				<p>— including of rubber or plastic,</p> <p>— terrazzo, marble, granite or slate floor or wall coverings,</p> <p>— wallpaper.</p>	
		45,44	Painting and glazing	<p>This class includes:</p> <p>— interior and exterior painting of buildings,</p> <p>— painting of civil engineering structures,</p> <p>— installation of glass, mirrors, etc.</p> <p>This class excludes:</p> <p>— installation of windows, see 45.42.</p>	45440000
		45,45	Other building completion	<p>This class includes:</p> <p>— installation of private swimming pools,</p> <p>— steam cleaning, sand blasting and similar activities for building exteriors,</p> <p>— other building completion and finishing work n.e.c.</p> <p>This class excludes:</p> <p>— interior cleaning of buildings and other structures, see 74.70.</p>	45212212 and DA0445450000
	45,5		Renting of construction or demolition equipment with operator		45500000
		45,50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>— renting of construction or demolition machinery and equipment without operators, see 71.32.</p>	45500000

¹ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

Annex 2 to Act CXLIII of 2015

List of products in the field of defence

Chapter 25:	Salt, sulphur, earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes except: ex 27.10: special engine fuels
Chapter 28:	<p>Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except:</p> <p>ex 28.09: explosives</p> <p>ex 28.13: explosives</p> <p>ex 28.14: tear gas</p> <p>ex 28.28: explosives</p> <p>ex 28.32: explosives</p> <p>ex 28.39: explosives</p> <p>ex 28.50: toxic products</p> <p>ex 28.51: toxic products</p> <p>ex 28.54: explosives</p>
Chapter 29	<p>Organic chemicals except:</p> <p>ex 29.03: explosives</p> <p>ex 29.04: explosives</p> <p>ex 29.07: explosives</p> <p>ex 29.08: explosives</p> <p>ex 29.11: explosives</p> <p>ex 29.12: explosives</p> <p>ex 29.13: toxic products</p> <p>ex 29.14: toxic products</p>



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	<p>ex 29.15: toxic products</p> <p>ex 29.21: toxic products</p> <p>ex 29.22: toxic products</p> <p>ex 29.23: toxic products</p> <p>ex 29.26: explosives</p> <p>ex 29.27: toxic products</p> <p>ex 29.29: explosives</p>
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	<p>Miscellaneous chemical products,</p> <p>except: ex 38.19:</p> <p>toxic products</p>
Chapter 39:	<p>Artificial resins and plastic materials, celluloses esters and ethers, articles thereof,</p> <p>except:</p> <p>ex 39.03: explosives</p>
Chapter 40:	<p>Rubber, synthetic rubber, factice, and articles thereof,</p> <p>except:</p> <p>ex 40.11: bullet-proof tyres</p>
Chapter 41:	Raw hides and skins (other than fur skins) and leather

Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut)
Chapter 43:	Fur skins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper-making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard
Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans
Chapter 65:	Headgear and parts thereof
Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof
Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter	Tin and articles thereof

80:	
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: ex 82.05: tools ex 82.07: tools, parts
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: ex 84.06: engines ex 84.08: other engines ex 84.45: machinery ex 84.53: automatic data-processing machines ex 84.55: parts of machines under heading No 84.53 ex 84.59: nuclear reactors
Chapter 85:	Electrical machinery and equipment, parts thereof, except: ex 85.13: telecommunication equipment ex 85.15: transmission apparatus
Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: ex 86.02: armoured locomotives, electric ex 86.03: other armoured locomotives ex 86.05: armoured wagons ex 86.06: repair wagons

	ex 86.07: wagons
Chapter 87:	Vehicles, other than railway or tramway rolling-stock, and parts thereof, except: ex 87.08: tanks and other armoured vehicles ex 87.01: tractors ex 87.02: military vehicles ex 87.03: breakdown lorries ex 87.09: motorcycles ex 87.14: trailers
Chapter 89:	Ships, boats and floating structures, except: ex 89.01A: warships
Chapter 90:	Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except: ex 90.05: binoculars ex 90.13: miscellaneous instruments, lasers ex 90.14: telemeters ex 90.28: electrical and electronic measuring instruments ex 90.11: microscopes ex 90.17: medical instruments ex 90.18: mechano-therapy appliances ex 90.19: orthopaedic appliances ex 90.20: X-ray apparatus
Chapter 91:	Manufacture of watches and clocks

Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: ex 94.01A: aircraft seats
Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, powder-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles

Annex 3 of Act CXLIII of 2015

Social services and other services

CPV code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 ² 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services ³
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation service
98131000-0	Religious services

55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;4	Legal services, to the extent not excluded pursuant to point (d) of Article 10
75100000-7 to 75120000-3; 75123000-4;5 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded pursuant to point (h) of Article 10
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

² In the case of concessions the CPV codes 92350000-9 to 92352200-5 shall not apply.

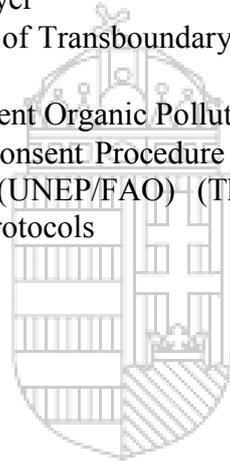
³ These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of

compulsory social services or of other services as services of general interest or as non-economic services of general interest.

Annex 4 to Act CXLIII of 2015

List of environmental, social and labour conventions referred to in section 73 (4)

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise
- ILO Convention 98 on the Right to Organise and Collective Bargaining
- ILO Convention 29 on Forced Labour
- ILO Convention 105 on the Abolition of Forced Labour
- ILO Convention 138 on Minimum Age
- ILO Convention 111 on Discrimination (Employment and Occupation)
- ILO Convention 100 on Equal Remuneration
- ILO Convention 182 on Worst Forms of Child Labour
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols



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