

# **Ordinance on the Award of Special Public Procurements**

## **ORDINANCE**

on the award of special-purpose public procurements  
(Title amended, SG № 7/2007)

Adopted by Council of Ministers Decree № 233/3.09.2004.

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## **Chapter One GENERAL PROVISIONS**

### **Article 1**

(1) This Ordinance regulates the terms and procedure for:

1. The award of public procurements under Article 13 (1), items 1 and 2, of the Public Procurement Law (PPL), hereinafter called "special-purpose public procurements", including:

- (a) procurements related to national defense and security, which are subject of classified information constituting state secret;
- (b) procurements, performance whereof must be accompanied by special security measures in accordance with the existing national legislation;
- (c) procurement of supplies and services associated with the manufacture of and trade in weapons, ammunition and military equipment.

2. The award of special-purpose public procurements under compensatory (offset) arrangements, as well as the cases in which such arrangements shall be permissible.

(2) Any procurement which comes simultaneously under Article 1 (1) (c) and Article 1 (1) (a) or (b) herein shall be awarded according to the procedure provided for in (a) or (b).

(3) The provisions of PPL, Article 15, shall apply accordingly in determining the value of special-purpose public procurements.

### **Article 2**

(1) Contracting authorities for the special public procurements shall be the persons referred to in PPL, Article 7 (1).

(2) The contracting authorities shall organize and conduct the public procurement award procedures under this Ordinance and shall conclude the contracts and/or

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the framework agreements in respect of such contracts through their managers or other officials they have authorized to that effect.

### Article 3

The candidates for contractors of special-purpose public procurements shall be the persons referred to in PPL, Article 9 (1), who satisfy the requirements for access to classified information or the requirements for application of special security measures, or for manufacture of, or trade in, of weapons, ammunition and military equipment, as the case may be.

### Article 4

(1) Annually, on or before the 31<sup>st</sup> day of January, and upon request, the contracting authorities shall submit to the Public Procurement Agency summary information regarding the special-purpose public procurements for the preceding year, which shall state:

1. number and aggregate value of procurements that have ended in conclusion of a contract, grouped by object of procurement (works, supplies and services) and by type of procedure;
2. number of compensatory (offset) arrangements concluded;
3. number of terminated procedures, specifying object of procurement and the type of procedure.

(2) The information under Paragraph (1) shall be submitted in a standard form as approved by the Executive Director of the Public Procurement Agency and shall not be subject to entry in the Public Procurement Register.

## Chapter Two

### AWARD OF SPECIAL-PURPOSE PUBLIC PROCUREMENTS

### Article 5

(1) Special-purpose public procurements shall be awarded after conduct of a negotiation procedure or a competition on the basis of documents.

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(2) The contracting authority shall take at its own discretion a decision on the conduct of a special-purpose public procurement award procedure by means of a negotiated procedure or by means of a competition on the basis of documents.

(3) Where a special-purpose public procurement falls solely under Article 1 (1), item 1 (c) herein, and its value does not exceed BGN 30 000 thousand exclusive of value added tax (VAT), the contracting authority may, without conducting a procedure, authorize its representative to collect price quotations from potential contractors and the documents referred to in Article 9 (1) herein from the candidate who has tendered the lowest price, as well as to conclude a public procurement award contract with such candidate. The authorized person shall satisfy the eligibility requirements established by PPL, Article 35.

### Article 6

(1) The decision to open a procedure shall contain:

1. a description of the object of the special-purpose public procurement;
2. grounds of law and of fact for award of the procurement;
3. type of procedure;
4. classification level of the information or special security measures provided for in the cases under Article 1 (1), item 1, (a) and (b) herein;
5. a scheme for classification of the contract performance stages pursuant to Article 4 of the Ordinance establishing General Industrial Security Requirements (prom., SG, No. 65/1993, as am. and suppl., No. 86/1994, as suppl., No. 41/1997, No. 32/2003/, in the cases under Article 1 (1), item 1, (a) herein;
6. technical specifications and basic economic requirements for performance of the procurement;
7. time limit and place for performance of the procurement;
8. conditions and amount of the contract performance guarantee;
9. persons who are to conduct a survey for the purposes of identifying possible contractors, and time limit for the conduct of such survey;
10. other requirements, at the discretion of the contracting authority, considering the object of the procurement;
11. criteria for conduct of negotiations and/or to be applied in the evaluation of proposals and a method for according the relative weight of each such criterion in arriving at the integral evaluation of the proposal.

(2) In the cases under Article 1 (1), item 1, (a) and (b) herein, the decision to open a special-purpose public procurement award procedure shall be taken on basis of a reasoned opinion in writing given by the information security officer as to whether the object of the procurement includes any information that is subject to classification as a state secret according to the requirements established by the Law on the Protection of Classified Information (LPCI), or by another competent authority as to the need to apply special security measures.

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(3) The persons referred to in Paragraph (2), item 9, shall conduct the survey in conformity with the requirements for protection of classified information from unauthorized access, using information sources, including the relevant statistical organizations which issue market information bulletins and from sector trade organizations, about potential contractors on basis of the subject of the special-purpose public procurement contract. The persons shall draw up a report on the results of the survey to the contracting authority, which shall also include a list of identified potential contractors.

### **Article 7**

(1) The contracting authority shall solicit expression of interest in participation in the procedure from the potential contractors identified in the report pursuant to Article 6 (3) herein.

(2) Within a time limit specified by the contracting authority, the persons referred to in Paragraph (1) shall express in writing their interest in participation, enclosing with the reply a declaration of consent to the conduct of a background investigation under LPCI, a list of potential subcontractors, as well as declarations by the potential subcontractors of consent to participate in the procedure and to the conduct of a background investigation under LPCI.

(3) Upon expiry of the time limit specified and upon receipt of the representations under Paragraph (2), in the cases under Article 1 (1), item 1, (a) and (b) herein the contracting authority shall submit a request to the competent security service for a background investigation within the meaning of LPCI and/or to the competent authority for an opinion as to reliability.

(4) The written reply of the competent service under Paragraph (3) containing the results of the background investigation or the relevant opinion shall be sent to the contracting authority which shall notify the persons who have expressed interest in participation.

### **Article 8**

(1) Upon receipt of the information under Article 7 (4) herein, the contracting authority shall notify in writing the potential contractors, in respect of whom clearance for access to the relevant classified information level has been issued and/or a favorable opinion as to their reliability has been given, as to the terms whereunder the decision on opening of the procedure and/or the contract documents (if any) can be requested and as to the place and deadline for submission of proposals.

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(2) The deadline for submission of proposals shall be fixed in accordance with the complexity of the procurement but in any event it may not be earlier than seven working days after receipt of the notice under Paragraph (1).

(3) The contracting authority shall prepare contract documents where the complexity and the specifics of the procurement contract require a detailed description and instructions to the candidates that could not be included in the decision under Article 6 (1) herein. Such documents shall be provided at no charge or against payment and the price thereof may not exceed the actual costs of the elaboration thereof.

### Article 9

(1) Proposals shall be drawn up according to contracting authority's requirements as specified in the decision on opening of the procedure and in the contract documents, if any, and shall contain:

1. a document certifying the current legal status of the candidate;
2. administrative information about the candidate: address, telephone and facsimile number, contact person, etc;
3. evidence of the technical capacity to perform the procurement;
4. a declaration to the effect that the candidate envisages or does not envisage participation of subcontractors;
5. technical proposal and price quotation, as well as conditions for performance of the procurement;
6. a document certifying that the candidates have a right of access to classified information under LPCI;
7. other documents pursuant to the decision referred to in Article 6 (1) herein.

(2) Subcontractors must satisfy all requirements satisfied by the main candidate, which shall be evidenced by presentation of the same documents.

(3) Proposals shall be submitted in writing in the Bulgarian language; documents drawn up in a language other than Bulgarian shall be accompanied by a translation into Bulgarian and the document under Paragraph (1), item 1, shall be accompanied by a legalized translation.

(4) For the submission of proposals, the provisions of PPL, Article 57, shall apply.

(5) Candidates whose proposals do not satisfy contracting authority's requirements, shall be excluded from participation.

### Article 10

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(1) Upon expiry of the time limit for submission of proposals the contracting authority shall appoint a commission to examine such proposals and shall set a timeframe for its work. The members of the commission shall be announced on the day fixed for the opening of the proposals.

(2) The members of the commission shall be persons having the necessary professional expertise and practical experience required in accordance with the subject and complexity of the special-purpose public procurement contract and a competent lawyer shall without fail be nominated as a member of the commission.

(3) Eligibility for appointment to the commission shall be limited to persons who satisfy the requirements of PPL, Article 35, who have not taken part in the survey pursuant to Article 6 (3) herein, and who have right of access to the relevant classification level where such level is specified in the decision under Article 6 (1) herein.

(4) The remunerations of the commission members and all expenses arising in connection with the work of such commission shall be for the account of the contracting authority.

### Article 11

(1) Where the procurement is awarded through negotiations, the commission shall examine any submitted proposals, shall draw up a memorandum listing the candidates admitted to participation, and shall notify such candidates in writing of the place, date and hour for the conduct of negotiations.

(2) In the course of negotiations, any proposals made and any arrangements reached with each candidate shall be recorded in a separate memorandum which shall be signed by the commission members and by the candidate.

### Article 12

(1) Upon completion of its work, the commission shall draw up a final memorandum on its activity which shall be signed by all commission members and shall include:

1. the names of the commission members;
2. a list of submitted proposals;
3. a list of the candidates who have been excluded and the reasons for the exclusion thereof;
4. quoted prices;
5. evaluation of the proposals;
6. ranking of the candidates;

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7. a proposal to conclude a contract with the candidate ranked first.

(2) The memorandum of the commission shall be approved by the contracting authority which shall notify the candidates in writing about the results of the procedure and shall set a time limit for the signing of a public procurement award contract.

### Article 13

(1) The contracting authority shall sign a contract with the candidate ranked first within the time-limit specified in the notice pursuant to Article 12 (2) herein, or, should such candidate decline, with the candidate ranked second.

(2) Candidate's failure to provide the contract performance guarantee or to appear within the time limit specified for the signing of the contract shall be considered a decline to sign a contract.

(3) Revocation of the relevant document under LPCI shall be grounds for non-conclusion of the contract.

(4) In the cases referred to in Article 1 (1), item 1 (a) herein, the special-purpose public procurement award contract must also specify without fail:

1. any specific requirements for the protection of classified information, relating to the volume and level of classification;
2. the persons having access to classified information;
3. the person who shall exercise control according to the procedure established in LPCI, Article 105.

(5) The contracting authority shall have the right to terminate unilaterally a special-purpose public procurement award contract under Article 1 (1), item 1, (a) and (b) herein should any circumstances occur or become known after the conclusion of any such contract as a result of which the contractor no longer satisfy the requirements for the protection of classified information or for implementation of the special-purpose security measures specified.

### Article 14

(1) The contracting authority shall terminate a special-purpose public procurement award procedure in the cases referred to in PPL, Article 39, and shall notify the candidates thereof.

(2) A special-purposes public procurement award procedure shall be conducted even where a single proposal for participation has been submitted.

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### Article 15

(1) All notices under the procedure shall be made by the contracting authority in writing and shall be delivered to the addressee in person upon signed acknowledgement of service, by registered mail with an advice of delivery, by facsimile transmission or electronically. Receipt by facsimile transmission shall be certified by the signature of the official who has dispatched the letter.

(2) Any candidate who has changed the indicated administrative data under Article 9 (1), item 2 herein, failing to notify the contracting authority thereof in writing, shall be presumed to have been notified.

### Chapter Three AWARD OF SPECIAL-PURPOSE PUBLIC PROCUREMENTS UNDER A COMPENSATORY (OFFSET) ARRANGEMENT

#### Article 16 (amended and supplemented)

(1) Special-purpose public procurements under a compensatory (offset) arrangement as provided for in this Chapter shall be awarded without fail where the following conditions are simultaneously fulfilled:

1. a non-resident person is a potential contractor and/or a principal subcontractor of the procurement.
2. the value of the procurement exceeds BGN 10 million exclusive of value added tax (VAT).

(2) The award of special-purpose public procurements under a compensatory (offset) arrangement as provided for in this Chapter may be applied at the discretion of the minister of economy and energy where the following conditions are simultaneously fulfilled:

1. a non-resident person is a potential contractor and/or a principal subcontractor of the procurement.
2. the value of the procurement exceeds BGN 5 million exclusive of value added tax (VAT).

#### Article 17 (amended and supplemented)

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(1) Save as otherwise provided for in this Chapter, the negotiation procedure under Chapter Two herein shall be applied upon award of special-purpose public procurements under a compensatory (offset) arrangement.

(2) The negotiations on the award of special-purpose public procurements shall be conducted by the contracting authority and the contract for award of any such procurements shall be signed by the contracting authority and by the selected contractor of the special-purpose public procurement.

(3) The offset arrangement shall be signed by the minister of economy and energy and by the selected contractor of the special-purpose public procurement.

### Article 17a (new)

(1) An Interagency Council on Special-purpose Public Procurements under a Compensatory Arrangement (ICSPPCA), hereinafter called "the Interagency Council", shall be established as a standing advisory body at the Council of Ministers. The Interagency Council shall be chaired by the minister of economy and energy. Members of the Council shall be a deputy-minister of the economy and energy, a deputy-minister of finance, a deputy-minister of defense, a deputy-minister of interior, a deputy chairperson of the State Agency for Information Technology and Communications, and the executive director of the InvestBulgaria Agency.

(2) The activity of the Interagency Council shall be administered by the minister of economy and energy.

(3) The Interagency Council shall assist the Council of Ministers in:

1. the development of the offset policy of the Republic of Bulgaria;
2. the analysis of legislation pertaining to special-purpose public procurements under a compensatory arrangement;
3. the analysis of particular special-purpose public procurements under a compensatory arrangement (SPPCA).

(4) The Interagency Council shall prepare opinions under Paragraph (3), item 3 herein to the Council of Ministers regarding:

1. the special-purpose public procurements under a compensatory arrangement which have been proposed by the contracting authorities under PPL, Article 7 (1) and have been planned for award for the next fiscal year.
2. the parameters of each particular special-purpose public procurement under a compensatory arrangement, award whereof is due in the current fiscal year.

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(5) The Interagency Council shall meet to discuss the proposals of the minister of economy and energy under Article 19 (2) herein regarding:

1. the priority projects for the undertaking of indirect compensatory obligations;
2. the specific values of the offset multipliers for the indirect compensatory obligations;
3. the ratio of the value of indirect compensatory obligations to the value of direct compensatory obligations;
4. the method for evaluation of proposals in the special-purpose public procurement award procedure in respect of indirect offset;
5. the value of the compensatory arrangement for the particular special-purpose public procurement;
6. the time limits for performance of the compensatory obligation;
7. the amount of the compensatory arrangement guarantee;
8. the draft compensatory arrangement for the indirect offset and a reporting form;
9. a possibility to admit third-party contractors to the performance of compensatory obligations.

(6) In the cases under Paragraph (5), as well as where any substantial differences arise in the discussions, the matter shall be referred to the Council of Ministers for settlement.

### Article 17b (new)

(1) The Interagency Council shall meet every quarter on a regular basis and, where necessary, shall be called to an extraordinary meeting by its chairperson.

(2) The Interagency Council shall meet in the presence of a quorum of more than two-thirds of its members.

(3) At its first meeting, the Interagency Council shall adopt its Rules of Procedure.

(4) The opinions of the Interagency Council under Article 17a (4) herein and the proposals under Paragraph 5 shall be signed without fail by every Council member. Where any Council member disagrees with the common opinion or proposal expressed, such member shall sign with a reasoned note of dissent.

### Article 18 (amended and supplemented)

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(1) The organization and award of a special-purpose public procurement under a compensatory arrangement shall include without fail the following stages:

1. The contracting authority shall send to the Interagency Council information on the special-purpose public procurements planned for the next fiscal year.
2. The contracting authority shall specify the basic parameters of the particular special-purpose public procurement for the current fiscal year and shall notify the Interagency Council thereof.
3. Where the circumstances under Article 16 herein exist, the contracting authority shall notify the minister of economy and energy and the Interagency Council thereof in writing.
4. Within thirty days after receipt of the information under item 3 above, the minister of economy and energy shall send to the contracting authority a reasoned proposal under Article 19 (2) herein and shall notify the Interagency Council thereof.
5. The Interagency Council shall verify the fulfillment of the conditions under Article 16 herein, shall discuss the proposal of the contracting authority and the minister of economy and energy and shall, within 30 days, submit its opinion thereon to the Council of Ministers, notifying thereof the contracting authority and the minister of economy and energy.
6. In the event of a dispute between the contracting authority and the minister of economy and energy, the Interagency Council shall, within thirty days, submit a draft proposal for a decision to the Council of Ministers. The Council of Ministers shall pronounce on the matter in dispute by a reasoned decision.
7. The contracting authority shall open the SPPCA award procedure upon receipt of the opinion of the Interagency Council under item 5 above, and in the event of a dispute with the minister of economy and energy - upon receipt of the decision of the Council of Ministers under item 6 above.
8. The contracting authority shall appoint the commission under Article 26 herein, which shall comprise two sub-commissions: on the special-purpose public procurement and on the compensatory (offset) arrangement.
9. The commission shall examine and evaluate the proposals and the offset proposal.
10. The memorandum on the proceedings of the commission under item 9 herein shall be approved by the contracting authority.
11. Upon approval of the memorandum by the contracting authority, the commission shall conduct negotiations on finalization of the clauses of the public procurement contract and of the compensatory arrangement with the candidate ranked first.
12. The special-purpose public procurement award contract and the compensatory arrangement shall be concluded in accordance with Article 17 herein.

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13. The contracting authority shall provide control on the performance of the special-purpose public procurement contract and the direct offset obligations, and the minister of economy and energy shall provide control on the performance of the compensatory arrangement in respect of the indirect offset obligations.

### **Article 19 (amended)**

(1) Where the conditions under Article 16 herein are fulfilled, the contracting authority shall send to the minister of economy and energy information about: the object of the special-purpose public procurement planned, the basic procurement performance requirements, the share of the preferred direct offset, specific programs and projects required by the contracting authority as a direct offset.

(2) Based on the information under Paragraph (1) above, the minister of economy and energy shall draw up a reasoned proposal as to the basic parameters of the compensatory arrangement, which shall include:

1. priority sectors for performance of the indirect compensatory obligations;
2. particular priority projects for performance of the indirect offset;
3. value of the compensatory arrangement;
4. specific values of the compensatory coefficients for the offset;
5. time limits for performance of the indirect compensatory obligations;
6. amount of the compensatory arrangement performance guarantee;
7. method for evaluation of the proposals in the special-purpose public procurement procedure for the offset;
8. draft of a compensatory arrangement and reporting forms;
9. potential offset beneficiaries upon performance of direct compensatory obligations, other than the beneficiaries proposed by the contracting authority;
10. a possibility to admit third-party contractors to the performance of compensatory obligations;

### **Article 20 (supplemented)**

(1) The following can be subject of compensatory arrangements:

1. investments in priority sectors and projects approved by the minister of economy and energy;
2. supplies, services or works provided by resident persons;
3. provision of technical equipment and/or technologies to resident persons;
4. grant to resident persons of licenses for the use of industrial property rights or transfer of intellectual property rights.

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(2) Compensatory arrangements shall not be concluded in respect of investments which are subject to promotion and protection by the state under other statutory instruments.

(3) Arrangements within the meaning of item 1 above, which have been concluded or performed, or performance whereof is in progress, prior to the conclusion of the offset arrangement, shall not be recognized as offset arrangements.

### Article 21

The value of the compensatory arrangement shall not be less than 110% per cent of the public procurement value as fixed in the special-purpose public procurement award contract.

### Article 21a (new)

The ratio of direct to indirect offset obligations shall be 30 per cent to 70 per cent.

### Article 22 (amended and supplemented)

(1) The admissible range of the compensatory coefficients for the direct and indirect offset shall be from 1 to 3.

(2) The specific coefficients for each compensatory (offset) arrangement to a special-purpose public procurement shall be proposed by the minister of economy and energy upon consultation with the contracting authority in respect of the direct offset.

(3) In cases of exceptional importance for the national economy, the Council of Ministers may, acting on a proposal by the Interagency Council, determine higher coefficients in a reasoned decision.

### Article 23 (amended)

The term of validity of a compensatory arrangement may not exceed 10 years from its entry into effect.

### Article 24 (amended and supplemented)

(1) Save as otherwise provided for in this Chapter, the contracting authority shall take a decision to open a special-purpose public procurement award procedure

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under a compensatory arrangement, applying the provisions of Chapter Two herein.

(2) In addition to the essential elements under Article 6 (1) herein, the decision to open the procedure shall contain without fail the proposal of the minister of economy and energy under Article 19 (2) herein and the decision of the Council of Ministers under Article 18, item 6 herein.

(3) The decision to open the procedure shall approve the contract documents for SPPCA and shall specify the deadlines, price, place and mode of payment in respect of such documents.

(4) The contract documents under Paragraph (3) shall contain:

1. the decision to open the procedure;
2. comprehensive description of the object of the special-purpose public procurement;
3. requirements for the economic and financial standing of candidates;
4. technical and technological requirements to candidates;
5. the offset requirements:
  - a) priority sectors and projects (if any) for performance of the compensatory obligations;
  - b) the specific values of the compensatory coefficients;
  - c) the value of the compensatory arrangement;
  - d) the time limits for performance of the compensatory obligations;
  - e) the relative weight of the evaluation of the offset proposal accorded in arriving at the integral evaluation of candidate's proposal;
  - f) the ratio of the value of indirect compensatory obligations to the value of direct compensatory obligations;
  - g) other offset beneficiaries upon performance of direct compensatory obligations;
  - h) a possibility to admit third-party contractors to the performance of compensatory obligations.
6. the criteria and the method to be applied in the evaluation of proposals, which includes a mechanism to evaluate the technical and financial proposal and the direct and indirect offset proposal.
7. terms and amount of the performance guarantee for the special-purpose public procurement contract and of the performance guarantee for the compensatory arrangement;
8. draft of a special-purpose public procurement award contract;
9. draft of a compensatory arrangement;
10. such other documents as may be required for the performance of the SPPCA award contract.

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- (1) The proposal must satisfy the requirements under Article 9 herein.
- (2) The proposals shall contain without fail an offset proposal satisfying the requirements specified in the decision of the contracting authority.
- (3) The following shall be attached to the offset proposal:
  1. a declaration as to any compensatory arrangements previously concluded and performed by the candidate;
  2. value of the compensatory arrangement with breakdown by values of the direct and indirect offset;
  3. subject of the compensatory arrangement and method of performance of such arrangement;
  4. performance time limits;
  5. third-party subcontractors to perform compensatory obligations where such option has been provided for.

### **Article 26 (amended and supplemented)**

- (1) Upon expiry of the time limit for submission of proposals the contracting authority shall appoint a commission according to the procedure provided for in Article 10 herein to examine the proposals and shall determine the members, the timeframe and the rules of operation of such commission.
- (2) Within seven days following a request by the contracting authority the minister of economy and energy and the minister of finance shall issue orders designating their representatives in the commission and shall notify the contracting authority thereof.
- (3) The members of the commission shall be announced on the day fixed for the opening of proposals.
- (4) The commission shall comprise two sub-commissions:
  1. a sub-commission to examine the technical and financial parameters of the proposals for performance of special-purpose public procurements, which shall include without fail representatives of the minister of finance and the minister of economy and energy;
  2. a sub-commission to examine the offset proposals, which shall comprise two working groups: one to examine the direct offset proposals and one to examine the indirect offset proposals;
    - (a) the working group on the indirect offset shall include representatives of the contracting authority and of the minister of economy and energy who shall have majority of two-thirds of the members of such working group;

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(b) the working group on the direct offset shall include representatives of the minister of economy and energy and representatives of the contracting authority who shall have a majority of two-thirds of the members of such working group.

(5) The members of each sub-commission shall include persons having the necessary professional expertise and practical experience relevant to the object and complexity of the special-purpose public procurement under compensatory arrangement, and a competent lawyer shall without fail be nominated as a member of the commission.

(6) Eligibility for appointment to the commission shall be limited to persons who satisfy the requirements of PPL, Article 35, who have not taken part in the survey pursuant to Article 6 (3) herein, and who have right of access to the relevant classification level where such level is specified in the decision under Article 24 (1) herein.

(7) The remunerations of the commission members and all expenses arising in connection with the work of such commission shall be for the account of the contracting authority.

### *Article 27*

The commission shall:

1. examine and arrive at an integral evaluation of the proposals in accordance with the criteria and the method specified in the contract documents, proceeding from the memoranda of each of the sub-commissions.
2. conduct the negotiations on conclusion of a special-purpose public procurement award contract and of the compensatory arrangements.

### *Article 28*

(1) Following completion of proceedings, the commission shall draw up a memorandum on its activity, summarizing therein the results of the proceedings of the two sub-commissions.

(2) In addition to the information under Article 12 (1) herein, the memorandum shall include findings as to the conformity of submitted offset proposals to the parameters specified in the decision on opening of the procedure.

(3) The memorandum shall be signed by all commission members and shall be submitted to the contracting authority for approval.

### *Article 29*

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(amended and supplemented)

(1) Upon approval of the memorandum by the contracting authority the commission shall invite the candidate ranked first to negotiations on the finalized clauses of the special-purpose public procurement award contract and the offset arrangement.

**(2) Should the candidate ranked first decline to participate in the negotiations under Paragraph (1) above or to sign the special-purpose public procurement contract and/or the compensatory arrangement, the commission under Article 26 herein shall start negotiations with the candidate ranked second.**

### Article 30

(amended and supplemented)

The compensatory arrangements shall specify:

1. the parties to the arrangement and the date and place of signing;
2. the subject of the compensatory arrangement;
3. the value of the compensatory arrangement;
4. the schedule, time limit and performance scheme for the compensatory obligations;
5. the compensatory coefficients;
6. any third-party subcontractors to perform compensatory obligations, where provided for by the contracting authority in the decision on opening of the procedure;
7. the liability for non-performance of the compensatory obligation, which may not be less than 50% of the value of non-performance;
8. the type and amount of the performance guarantee for the compensatory obligations;
9. the method of reporting the performance of the compensatory obligation.

### Article 31 (amended)

The compensatory arrangements shall take effect at entry into force of the special-purpose public procurement award contract.

### Article 32

(1) The contracting authority shall provide control on the performance of the compensatory arrangement in respect of the direct offset and the minister of economy and energy - in respect of the indirect offset obligations.

(2) The contractor shall be obligated to submit to the control authority regular reports (six-month and annual) on the performance of the compensatory obligations.

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(3) The control authority under Paragraph (1) may at any time require the contractor and the offset beneficiary to submit information on the performance of the compensatory obligations and may at any time inspect the financial and business documents supporting the performance of such obligations.

(4) Performance of the compensatory obligations shall be certified in a form as approved by the control authority.

(5) Where the control authority has established non-performance or inaccurate performance of the compensatory obligations, it shall take steps to enforce in respect of the contractor the relevant non-performance liability as provided for in the arrangement.

(6) The contracting authority and the minister of economy and energy shall inform the Interagency Council on the progress of performance of the special-purpose public procurement award contract and the compensatory (offset) arrangement.

### **Chapter Four FRAMEWORK AGREEMENTS**

#### **Article 33**

Where because of the nature of the special-purpose public procurement the parameters of a specific contract cannot be determined, the contracting authority may conclude a framework agreement following a procedure as provided for in Chapter Two herein, which option shall be expressly stated in the decision on opening of the procedure.

#### **Article 34**

(1) The parties shall sign a framework agreement for the purpose of outlining the terms and conditions at which they intend to sign the special-purpose public procurement contracts over a specified period, including in respect of prices and the pricing mechanism.

(2) The framework agreement shall provide the basis for signing of contracts which shall stipulate the specific financing parameters, technical characteristics, quantities, performance stages, acceptance and complete service of the respective activity.

(3) The signing of a framework agreement on the award of SPPCA shall be grounds for conclusion of an offset arrangement and for provisional performance of the offset obligations under such arrangement.

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## Chapter Five ADMINISTRATIVE PENALTY PROVISIONS

### Article 35

Any contracting authority that fails to conduct a special-purpose public procurement award procedure when there are grounds for such a procedure shall be liable to the penalty referred to in PPL, Article 129.

### Article 36

For other violations of this Ordinance the defaulting persons shall be penalized as provided for in the Law on Administrative Violations and Sanctions, Article 32.

### Article 37

(1) Statements of violation shall be drawn up by officials of the State Financial Inspection Agency within 6 months from the day on which the violation becomes known, but in any event not later than three years after the violation is committed.

(2) Penalty decrees shall be issued by the minister of finance or by officials authorized by the minister.

(3) Violations shall be established and penalty decrees shall be issued, appealed and enforced as provided for in the Law on Administrative Violations and Sanctions.

## SUPPLEMENTARY PROVISION

§ 1. Within the meaning of this Ordinance:

1. "Information security officers" shall mean the persons referred to in § 1, item 4 of the Supplementary Provisions of the Law on the Protection of Classified Information.

2. "Security services" shall mean the services within the meaning of § 1, item 1 of the Supplementary Provisions of the Law on the Protection of Classified Information.

3. "Non-resident person" shall mean a non-resident person within the meaning of § 1, item 1 of the Supplementary Provisions of the Investment Promotion Law.

4. "Compensatory (offset) obligations" shall mean any activities which a non-

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resident contractor of a special-purpose public procurement undertakes to perform on the strength of a concluded compensatory (offset) arrangement having a subject under Article 20 herein.

5 „Direct compensatory (offset) obligations" shall mean any compensatory (offset) obligations relating to the subject of the special-purpose public procurement award contract.

6. (amended) "Indirect compensatory (offset) obligations" shall mean any activity, service, acquisition of tangible and intangible assets, technologies, know-how, industrial property rights, etc., that creates new products or recreates existing products, generates new jobs, creates value added, enhances the competitiveness of Bulgarian goods and services and increases the export potential of such goods and services.

7. "Compensatory (offset) coefficient" shall mean a coefficient expressed as a number and indicating the increase in the nominal value of the compensatory (offset) obligation accounted for by the economic benefits from the performance of such obligation.

8.(amended) „Value of a compensatory (offset) arrangement" shall mean the nominal value of the offset arrangement under Article 21 herein, expressed as a number."

9.(new) „Offset benefit" shall mean the value of the compensatory arrangement under item 8 above, multiplied by the compensatory coefficient under item 7 above.

10. "Offset beneficiary" shall mean any person benefiting from the performance of compensatory (offset) obligations, who may be:

- a) a Bulgarian trader;
- b) a Bulgarian science and education institution;
- c) a Bulgarian public-financed institution and organization.

11.(amended) "Third-party contractors to perform compensatory (offset) obligations" shall mean any persons other than the special-purpose public procurement contractors, who are in contractual relationships with such contractors and who are responsible for the performance of the special-purpose public procurement under a compensatory arrangement.

### **TRANSIENT AND FINAL PROVISIONS**

§ 2. This Ordinance is adopted pursuant to the Public Procurement Law, Article 13 (2).

§ 3. The Ordinance establishing the terms and procedure for the award of public procurements related to national defense and security, adopted by Council of Ministers Decree No. 303 of 19.12.2002, promulgated, State Gazette, No. 119 / 27.12.2002, is hereby repealed.

§ 4. The procedures for the award of special-purpose public procurements, on which a decision to open has been taken as provided for in the Ordinance establishing the terms and procedure for the award of public procurements

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related to national defense and security, shall be completed in accordance with the hitherto effective procedure.

§ 5. This Ordinance shall furthermore apply to the conclusion of compensatory (offset) arrangements with a selected contractor as provided for in the Ordinance establishing the terms and procedure for the award of public procurements related to national defense and security.

§ 6. This Ordinance shall take effect from 1 October 2004.

According to § 26 of CoM Decree No. 1 / 05.01.07, amendments shall take effect from the date on which the Decree is promulgated in the State Gazette.

CoM Decree No. 1 was promulgated in State Gazette No. 7 / 23.01.2007.