

**Government Decree 289/2011 (22 December)**  
**on the specific rules pertaining to the public procurement in the utilities sector**

The Government, on the basis of the empowerment of Article 182(1) point 5 of the Act CVIII of 2011 on Public Procurement and acting within its competence according to Article 15(3) of the Fundamental Law of Hungary, lays down the following:

**CHAPTER I**

**1. The scope of the Decree**

**Article 1**

1. This Decree shall apply to contract award procedures conducted for the conclusion of public utilities contracts pursuant to Chapter XIV of the Act CVIII of 2011 on Public Procurement (hereinafter referred to as: the 'PPA').
2. In compliance with paragraph 114(1) of the PPA, for the purposes of contract award procedures for the conclusion of public utilities contracts, the provisions laid down in Chapters VI-XII of the PPA shall be applied with the differences set out by Chapter XIV of the PPA and by this Decree.
3. The provisions set out by this Decree shall also apply where the public utilities contract is concluded according to the national procedure under Part Three of the PPA and, according to Article 121(2) of the PPA, the provisions set out in Part Two of the PPA are applied by the contracting entity in compliance with the specific rules laid down in Chapter XIV. In such cases the provisions to the contrary set out in Article 122 of the PPA shall also apply.

**2. Specific procedural rules**

**Article 2**

1. The contract award procedure may be open, restricted or negotiated procedure; no competitive dialogue may be applied; procedures for the conclusion of framework agreements may be conducted under Articles 14 - 18 of this Decree. The contracting entity may apply, by his choice, negotiated procedure with prior publication of a contract notice.
2. At request, the contracting entity shall make available to the tenderers (candidates) the technical specifications regularly referred to, including the technical specifications referred to in the periodic indicative notice.
3. If the technical specifications referred to have been defined in documents accessible to the tenderers (candidates), it is sufficient if the contracting entity makes reference to such documents.
4. In the context of defining the public procurement technical specifications, the assessment of suitability, the evaluation of the tenders (requests to participate) and the conclusion of contracts, contracting entities may set requirements to ensure that the information supplied will be kept confidential by the concerned parties. The above shall not affect the provisions set out in Article 80 of the PPA.
5. In addition to the suitability criteria laid down by the separate act of legislation on the way of certification of suitability and verification of the non-existence of the grounds for exclusion in contract award procedures, the contracting entity may prescribe other objective suitability criteria and methods of certification thereof, nevertheless, the provisions of Article 55(3) shall be applied as appropriate.

**Article 3**

1. The contracting entity may also exclude from the procedure tenderers submitting an offer for public supply where the proportion of the products in the tender not eligible for national treatment due to its place of origin exceeds fifty percent of the total value of the products constituting the tender.
2. In case of public supply contracts, where two or more tenders are identical in the course of the evaluation on the basis of the evaluation criteria, the contracting entity shall give preference to the tenders in

case of which the proportion of the goods originating from a country eligible for national treatment exceeds fifty percent of the total value of the products constituting the tender.

3. For the purposes of paragraph 2

(a) preferential tenders shall be deemed identical, if the price difference, as compared to the price of the non-preferential tender pursuant to paragraph 1, does not exceed three percent,

(b) software used for electronic telecommunications network equipment shall be considered as goods.

4. In the case pursuant to paragraph 2, the contract shall be awarded to the tenderer submitting the preferential tender, and if there are several tenders subject to preferential treatment, the contract shall be awarded to the tenderer quoting lower price. In the event of identical prices, the contract shall be awarded to the tenderer submitting the tender which received higher score for the constituent factor (among the constituent factors for which it was given a different score) with the largest weight, pursuant to Article 72(2) of the PPA.

5. Paragraph 2 shall not be applied by contracting entities, where the preference of a tender would oblige the contracting entity to purchase equipment having technical characteristics different from those of existing equipment, or such a purchase would result in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

### ***3. Open procedures***

#### **Article 4**

If the contracting entity had dispatched a periodic indicative information notice at least fifty-two days but no more than twelve months prior to the dispatch of the contract notice, which also contained the data available at the dispatch of the periodic indicative notice according to the standard form of the periodic indicative notice, the time limit for submission of tenders may be shorter than forty-five days, in open procedures. In such case, the time limit for submission of tenders shall not be shorter than twenty-nine days as of the day of the dispatch of the notice containing the contract notice, except in the case of urgency, where the time limit may be shortened to twenty-two days. The time limit for submission of tenders, which shall be at least forty-five, twenty-nine or twenty-two days, may be shortened under Article 83(6).

### ***4. Restricted and negotiated procedures***

#### **Article 5**

1. In restricted and negotiated procedures with prior publication of a contract notice, the time limit for request to participate may not be shorter than a period of thirty days as of the date of dispatch of the notice for invitation to participate, and it shall not be shorter than fifteen days in cases of urgency either. Article 85(2) of the PPA (the accelerated procedure) may not be applied.

2. The time limit for submission of tenders may be set by mutual agreement between the contracting entity and the candidates qualified suitable, provided that all the candidates have equal amount of time to prepare and submit their tenders.

3. Where in accordance with paragraph 2 the contracting entity and the candidates qualified suitable, may not reach agreement on the time limit for submission of tenders, the contracting entity shall fix the time limit, which shall, as a general rule, not be less than twenty-four days as of the date of dispatch of the invitation to tender. In cases of urgency, the time limit for submission of tenders may be reduced to ten days, provided that the invitation to tender is communicated by fax or by electronic means.

4. The period of twenty-four days for the time limit for submission of tenders, as prescribed in paragraph 3, may be shortened by not more than five days by the contracting entity, provided that the contracting entity has offered free and full direct access to the documentation by electronic means for the tenderers as of the date of publication of the notice concerning the invitation to participate, and disclosed the accessibility data in that notice.

5. However, in the mutual agreement according to paragraph 2, the contracting entity and the candidates qualified suitable may set a time limit shorter than ten days.

## **Article 6**

1. A periodic indicative notice may be applied to announce both a restricted and a negotiated procedure, excluding the negotiated procedure without prior publication of a contract notice (restricted or negotiated procedure with the publication of a periodic indicative notice). In such case the periodic indicative notice shall be drawn up and published with the contents according to the standard form specified in the separate act of legislation on the standard form of notices and certain content elements thereof, and it shall include the time limit for the submission of the written statement expressing interest (hereinafter referred to as: 'declaration of intention') and the planned starting date of the procedure (procedures).

2. In the case specified in paragraph 1, instead of publishing the notice concerning the invitation to participate launching the restricted procedure and the negotiated procedure with prior publication of a contract notice, the contracting entity shall send the invitation to participate directly, simultaneously (hereinafter referred to as: 'direct invitation to participate') to the economic operators which have submitted their declaration of intention within the set time limit and shall invite them to confirm their declaration of intention.

3. The direct invitations to participate shall be sent within twelve months after the publication of the periodic indicative notice at the latest. Restricted and negotiated procedures shall be launched by sending out the direct invitations to participate.

4. The contracting entity shall not be bound to start the procedure if, after the publication of the periodic indicative notice, due to unforeseeable and unavoidable reasons beyond its control, such material circumstances arise, which make the contracting entity incapable of concluding or performing the contract. In such cases the contracting entity shall immediately inform in writing the entities submitting declarations of intention and the Public Procurement Authority.

5. The provisions set out in Article 38(3)-(4) of the PPA concerning the invitation to participate (notice launching the procedure) shall be applied accordingly to the contents of the direct invitation to participate, noting that it shall also contain a reference to the published periodic indicative notice and the date of publication thereof, as well as the date of dispatching the direct invitations to participate. The reference to the published periodic indicative notice and the date of publication thereof shall also be included in the invitation to tender.

6. The minimum time limit for participation, specified in Article 5(1), shall be counted from the date of dispatching the direct invitation to participate.

7. The time limit for submission of tenders may only be shortened by the contracting entity according to Article 5(4), if the contracting entity has offered free and full direct access to the tender documentation by electronic means for the tenderers as of the date of publication of the periodic indicative notice, and has defined the internet address at which this documentation is accessible in the text of the notice.

## **Article 7**

1. Restricted and negotiated procedures – excluding negotiated procedures without prior publication of a contract notice - may also be published by means of pre-qualification notices (restricted or negotiated procedure advertised by means of a pre-qualification notice).

2. If the contracting entity announced the procedure by means of a pre-qualification notice, instead of publication of the invitation to participate launching the restricted procedure or negotiated procedure with prior publication of a contract notice, the contracting entity shall send a direct invitation to participate to economic operators included in the prequalification list (hereinafter referred to as: the 'list') (Article 8). The restricted or negotiated procedure announced by means of a pre-qualification notice shall be launched by sending the direct invitations to participate.

3. In such procedures the contracting entity may only invite the candidates included in the pre-qualification list to submit their request to participate. The contracting entity shall send the direct invitation to participate to all pre-qualified candidates, except where the list has been made broken down by the subject-

matter of the public procurement or its subgroup. In such cases only those pre-qualified candidates shall be invited to participate, which are in the appropriate category.

4. The contracting entity shall not be required to launch the procedure according to the announced pre-qualification notice if, after the publication of the notice – due to unforeseeable and unavoidable reasons beyond its control – such material circumstances arise, which make the contracting entity incapable of concluding or performing the contract. In such cases the contracting entity shall immediately notify in writing the pre-qualified candidates and the Public Procurement Authority.

5. The contracting entity may apply another type of procedure to be launched with the prior publication of a contract notice to the public procurement specified in the pre-qualification procedure in particular where the number of pre-qualified candidates does not ensure genuine competition. In such cases the contracting entity shall refer to this fact in the new notice and shall inform the pre-qualified candidates simultaneously and in writing of the publication of the new notice immediately after the publication.

6. The provisions set out in Article 38(3)-(4) of the PPA concerning the invitation to participate (the notice launching the procedure) shall be applied accordingly to the contents of the direct invitation to participate, noting that it shall also contain a reference to the published pre-qualification notice and the date of publication thereof, as well as the date of dispatching the direct invitations to participate. The reference to the pre-qualification notice and the date of publication thereof shall also be included in the invitation to tender.

7. Contrary to the provisions set out in Article 38(3)(k) and (l), the direct invitations to participate shall include the following:

(a) if needed, the list of certificates, statements and documents to be enclosed with the application which certify that the pre-qualified candidate is not subject to the grounds for exclusion – pursuant to the pre-qualification criteria - in the participation phase either;

(b) if necessary, suitability criteria concerning the fulfilment of the contract in question, more stringent than the pre-qualification criteria;

8. Contrary to the provision set out in Article 5, the time limit to submit requests to participate shall not be shorter than thirty-seven days as of the sending of the direct invitation to participate as a general rule. The time limit to participate may exceptionally be shortened to twenty-two days in case of extraordinary urgency, or to fifteen days in case the invitations were sent via fax or electronically.

9. The time limit for submission of tenders may only be shortened by the contracting entity according to Article 5(4), if the contracting entity has offered free and full direct access to the tender documentation by electronic means for the tenderers as of the date of publication of the pre-qualification notice, and has specified in the text of the notice the internet address at which this documentation is accessible.

10. Pre-qualified candidates may submit a joint request to participate and may also submit a joint tender.

11. Article 87(1)(d) and Article 91(1)(d) of the PPA shall not apply.

#### ***5. The pre-qualification system which may be established by the contracting entities***

### **Article 8**

1. The contracting entity may set up and operate a system for the candidates' pre-qualification, aiming a preliminary selection of those entitled to participate in restricted and negotiated procedures for certain specified procurements.

2. The pre-qualification notice shall be drawn up and published according to a standard form specified in a separate act of legislation and shall contain in particular the purpose of the pre-qualification system, the duration thereof, the description of the subject-matter of the public procurements planned for the relevant period of time, the criteria of pre-qualification and the means of certification or a summing description thereof.

3. If the duration of the pre-qualification system exceeds three years, the pre-qualification notice shall be published annually. If the duration is shorter, the first notice is sufficient.

4. The contracting entity shall ensure for the concerned parties, that it is possible to apply for pre-qualification at any time after the publication of the pre-qualification notice and during the entire time of operation of the system.

5. The contracting entity – in accordance with the legislative measures pertaining to the public procurement technical specifications – shall specify the details of the pre-qualification system's operation, the criteria of pre-qualification and the means of certification thereof. The pre-qualification system may comprise different degrees of qualification.

6. If needed, the contracting entity may review and modify the rules on the operation of the pre-qualification system, the qualification criteria and the means of certification thereof.

7. The contracting entity shall keep a list of the pre-qualified candidates. The list may be prepared in a breakdown of the subject-matter of public procurement or its subgroup. The list shall include at least the name and address (contact details) of the pre-qualified candidate and the date of its inclusion in the list. The data of the list shall be made public, except in case of personal data. Public data of the list shall be published by the contracting entity on its homepage.

### **Article 9**

1. In compliance with the provisions set out in Chapter IX of the PPA, pursuant to the separate act of legislation on the way of certification of suitability and verification of the non-existence of the grounds for exclusion in contract award procedures, the contracting entity shall specify the conditions of inclusion in the candidates' list (hereinafter referred to as: the 'pre-qualification criteria') and the means of certification thereof, noting that a simple statement may be accepted where the way of certification is the submission of a statement and in the case specified in Article 57(1)(e) of the PPA; in addition, other objective pre-qualification criteria and means of certification thereof may also be required, but the provisions of Article 55(3) shall be complied with. The contracting entity shall have the right to choose from the criteria and the ways of certification pursuant to Chapter IX of the PPA and the separate act of legislation on the way of certification of suitability and verification of the non-existence of the grounds for exclusion in contract award procedures.

2. In the course of setting of the pre-qualification criteria, candidates shall not be discriminated on the basis of their seat or place of establishment, nor by setting any administrative, financial or technical requirements which are only valid in the case of certain candidates. Contracting entities shall not require such certificates from the candidates which are already available. .

3. The contracting entity shall prepare pre-qualification documentation in which it shall in particular specify the details defined in Article 8(5), and the time limit for the assessment of pre-qualification applications. The time limit for the assessment shall not be longer than six months. If the assessment is expected to last longer than four months, the contracting entity shall inform the candidates on the grounds of the longer assessment period and the expected date of the assessment of their application, within two months following the submission of the pre-qualification application.

4. Where a contracting entity accepts – considering the pre-qualification criteria – the pre-qualification system of another contracting entity as equivalent to its own, it shall indicate this fact, give the name and address and state the acceptance of the pre-qualification of the other contracting entity in the pre-qualification documentation.

5. The contracting entity shall provide for the availability of the pre-qualification documentation as of the publication of the pre-qualification notice. If a candidate asks for the pre-qualification documentation to be sent to it, the contracting entity or the organisation designated by it shall grant such a request within two business days as of receipt of such request. The pre-qualification documentation shall also be sent, if requested, to the Public Procurement Authority.

6. If the contracting entity modifies the rules of the pre-qualification system or the pre-qualification criteria and the means of certification thereof, it shall publish a new pre-qualification notice and inform simultaneously and directly in writing those candidates that have already been included in the pre-qualification list and those, who have submitted a pre-qualification application.

## **Article 10**

1. Candidates may ask for their pre-qualification and registration on the pre-qualification list at any time, presenting the data and facts specified in the pre-qualification documentation and the attachment of the necessary certificates, statements and other documents.
2. The pre-qualification applications and the candidates' pre-qualification shall be assessed solely on the basis of the defined pre-qualification criteria.
3. If a pre-qualification application is incomplete, the candidate shall be informed of the deficiencies and invited to supply missing information.
4. The contracting entity shall inform the candidate of its decision after the assessment of the application as soon as possible, but not later than 15 days after the decision and, if the application is rejected, on the grounds of the refusal as well.
5. If the contracting entity modifies the pre-qualification criteria, those candidates already registered on the pre-qualification list shall also duly certify their compliance with the new or modified pre-qualification criterion. The pre-qualified candidates shall be invited to do so in the course of the provision of information according to Article 9(6). As for submitted applications under assessment, the contracting entity shall ask the candidates to provide further information needed for the modification of the application.
6. In case any change occur in the pre-qualification data or circumstances of a pre-qualified candidate, he shall notify the contracting entity thereof immediately, but not later than within five business days following the occurrence of such changes. If the modification results in some pre-qualified candidates' failure to comply with the new criteria, the contracting entity shall remove them from the list.
7. The contracting entity may initiate removal of the candidates from the pre-qualification list at its own discretion, if according to available data such candidates do not comply with the pre-qualification criteria.
8. At least 15 days before the removal from the pre-qualification list, the contracting entity shall inform in writing the pre-qualified candidates concerned and specify the grounds of the decision. The pre-qualified candidates concerned shall make their comments in writing to the contracting entity within the time limit specified by the contracting entity.
9. The candidates are entitled to legal remedy against the rejection of their applications for pre-qualification and against their removal from the list. The candidate concerned may initiate the procedure of the Public Procurement Arbitration Board.

### ***6. Negotiated procedure without prior publication of a contract notice***

## **Article 11**

1. The contracting entity may apply a negotiated procedure without prior publication of a contract notice, where
  - (a) the lack of success of the contract award procedure according to Chapter XIV of the PPA is due to the fact that neither requests to participate nor tenders have been submitted, provided that the terms of the invitation and the documentation have not changed substantially;
  - (b) for technical or artistic reasons, or for reasons connected with the protection of exclusive rights the contract may only be concluded with a specific organisation, person;
  - (c) the procurement is required solely for the purpose of research, tests, education or development; this case shall not apply to instances where profit is intended to be made or where the costs of research and development are covered and the latter shall not jeopardise future procurement procedures of the same purpose;
  - (d) the contract is concluded on the basis of a framework agreement under a procedure pursuant to Chapter XIV of the PPA;

(e) it is strictly necessary by reasons of extreme urgency brought about by events unforeseeable to the contracting entity and the time limits laid down for procedures under this Decree may not be kept; however, the circumstances invoked to justify extreme urgency shall not be attributable to the negligence of the contracting entity.

2. Furthermore, the contracting entity may apply a negotiated procedure without prior publication of a contract notice for public supply contracts, if

(a) in the course of partial replacement or upgrading of previously procured supplies, the contract is concluded with the original winning tenderer, and the replacement of the original winning tenderer would result in the procurement of technically incompatible supplies or disproportionate technical difficulties in the operation and maintenance;

(b) the supplies quoted and purchased on a commodity market;

(c) the exceptionally favourable conditions of the procurement are offered for only a short period of time and the consideration is well below the market prices, and these favourable conditions would be lost in another type of procedure;

(d) the supplies are purchased under exceptionally favourable conditions in the course of liquidation, dissolution, judicial enforcement proceedings or through a similar procedure under the personal right of the organisation concerned.

3. Furthermore, the contracting entity may apply a negotiated procedure without prior publication of a contract notice for the public works or services, if the performance of a previous public works contract or public services contract requires the procurement of supplementary works or services because of unforeseeable conditions not specified in the previous contract, provided that, due to technical or economic reasons, the separation of the supplementary works or services from the previous contract would cause considerable difficulties for the contracting entity or, although the supplementary works or services could be separated but are strictly necessary for the performance of the original works or services.

4. Furthermore, the contracting entity may apply a negotiated procedure without prior publication of a contract notice for public works contracts, if the contract is concluded by the same contracting entity with the previous winning tenderer for new public works identical or similar to the original one, provided that the new public works is line with the original project for which the contract was concluded in the course of a procedure under this Decree and the contracting entity has indicated in the notice launching or publishing the original procedure that it may resort to a procedure without prior publication of a contract notice and the estimated value of the new public works was taken into account in the specification of the estimated value of the original works (from the point of view of reaching the EU threshold).

5. Furthermore, the contracting entity may apply a negotiated procedure without prior publication of a contract notice for public services contracts, if the contract is awarded after a design contest procedure - pursuant to a separate act of legislation on the rules pertaining to design contests – linked to the contracting entity's public utility activity, and the contract shall be concluded with the winner or, on the basis of the jury's recommendation, one of the winners (prize winners) of that design contest; in the latter case all the candidates (tenderers) recommended by the jury in the design contest procedure shall be invited to the negotiations.

## **Article 12**

1. Negotiated procedures without prior publication of a contract notice shall start with the sending of an invitation for submission of tenders, except in cases specified in Article 11(2)(b) and (d). In cases pursuant to Article 11(1)(e), where no invitation to tender may be drawn up, the contracting entity shall send an invitation to negotiation prior to the negotiation.

2. The Public Procurement Arbitration Board shall be notified of the starting of the procedure pursuant to Article 13(2). On the launching date of negotiated procedures specified in Article 11(2)(b) and (d), an information note stating the reasons for the use of negotiated procedure and, in cases according to Article 11(2)(d), the name and address of the organisation concerned shall be submitted by the contracting entity without delay via fax or electronically to the Public Procurement Arbitration Board.

3. In case of negotiated procedures under Article 11(1)(a) and (c), and if it may be reasonably ensured in a situation resulting in extreme urgency in the case of application of Article 11(1)(e) -, the contracting entity shall, if possible, send an invitation to tender to at least three tenderers.
4. The time limit for submission of tenders shall be set in such a way as to ensure sufficient amount of time to prepare suitable tenders.
5. In the case of negotiated procedures according to Article 11(5), the only evaluation criterion of tenders shall be the selection of the most economically advantageous tender.
6. Negotiated procedures according to Article 11(1)(e) shall be governed by Article 99 of the PPA.

### **Article 13**

1. In a negotiated procedure under Article 11(2)(c), the contracting entity shall send the invitation to tender via fax or e-mail immediately after being informed of the favourable conditions to the tenderer offering the favourable conditions and, if possible, to at least two other tenderers. The negotiations shall be conducted during the validity of the favourable conditions and the contract shall be concluded with the winner in writing, contrary to the stipulations pertaining to the standstill period.
2. The Public Procurement Arbitration Board shall be immediately informed via fax or e-mail of the launching of the procedure. The provision of information shall be made in accordance with Article 100(1) of the PPA, applied as appropriate.
3. The contracting entity shall also retain the document offering the favourable conditions, according to Article 34(2) of the PPA.

## **7. Framework agreements**

### **Article 14**

1. For the purposes of conclusion of a framework agreement, the contracting entity (entities) shall apply an open procedure specified in this Decree or a restricted or negotiated procedure specified in this Decree. The rules set out in Articles 108-110 of the PPA concerning framework agreements shall not apply to the framework agreements.
2. Under the framework agreement concluded in accordance with paragraph 1, the contracting entity may resort to one or more negotiated procedures without prior publication of a contract notice, in order to implement the public procurement (procurements) in question. The provisions of this Decree which set out different rules concerning negotiated procedures without prior publication of a contract notice shall apply to this second phase of the procedure accordingly, in compliance with the provisions set out in this Decree concerning framework agreements.

### **Article 15**

1. The contracting entity shall specify in the notice starting the contract award procedure aimed at the conclusion of the framework agreement or in the direct invitations to participate the range of those submitting the most advantageous tenders according to one of the evaluation criteria, which range shall be the upper limit of the number of tenderers with whom a framework agreement will be concluded. The range shall correspond to the subject-matter of the procurement and the specific conditions of the procedure and shall ensure genuine competition in any case. The range shall include at least three tenderers.
2. In such procedures, Article 72(2)-(4) may not be applied to the evaluation of identical tenders. If there are more identical tenders at the upper limit of the range of those submitting the most advantageous tenders, the framework agreement shall be concluded with all such tenderers.
3. Framework agreements shall include the substantial conditions of contracts to be concluded within a specified period of time under such framework agreements, in particular the subject-matter of the procurements, the amount of consideration and, if possible, the planned quantity of procurements.



## **Article 16**

1. Negotiated procedures without prior publication of a contract notice shall be started by sending out in writing the invitation to tender to the tenderer, or to all tenderers at the same time, who have entered into the framework agreement. No other tenderer may be involved in the procedure.
2. The contracting entity shall not be bound to start the negotiated procedure without prior publication of a contract notice if, after concluding the framework agreement – due to unforeseeable and unavoidable reasons beyond its control –, material circumstances arise that render it unable to conclude the contract (contracts) or to perform the contract once concluded. In such cases the contracting entity shall immediately notify in writing the tenderers who entered into the framework agreement and the Public Procurement Authority.
3. The contracting entity may use another type of procedure - pursuant to this Decree - to be started with a notice to the implementation of the public procurement specified in the framework agreement, in particular for framework agreements concluded for several years or, if the number of tenderers who entered into the framework agreement does not ensure genuine competition. In such cases the contracting entity shall refer to this fact in the new notice and shall inform the tenderers participating in the framework agreement at the same time and in writing of the publication of the new notice, immediately after the publication.

## **Article 17**

1. The invitation to tender shall include the following:
  - (a) name, address, phone and fax number (e-mail) of the contracting entity;
  - (b) reference to the notice launching or publishing the first part of the framework agreement and the day of publishing;
  - (c) reference to the concluded framework agreement;
  - (d) the method, place and financial conditions of receiving the documentation, if such documentation has been prepared by the contracting entity and provided it has not been sent together with the invitation to tender;
  - (e) the subject-matter and quantity of the public procurement in question;
  - (f) the specification of the contract;
  - (g) the term of the contract or the time limit for performance;
  - (h) the place of performance;
  - (i) the conditions for the payment of the consideration or reference to the relevant acts of legislation;
  - (j) the evaluation criteria of tenders;
  - (k) the time limit for submission of tenders, the address the tenders are to be sent to and, where the tenders may be submitted in another language in addition to the Hungarian, an indication to this effect;
  - (l) the place and time of the opening of tenders, the persons entitled to attend the opening of tenders;
  - (m) the process of the negotiations and the related fundamental rules specified by the contracting entity, and the date of the first negotiation;
  - (n) the date of sending the invitation to tender.
2. In the negotiated procedure without prior publication of a contract notice conducted on the basis of a framework agreement, the contracting entity shall not verify that the tenderers participating in the framework agreement are suitable for the performance of the contract and that any of the grounds for exclusion exist.

3. The contracting entity may apply award criteria that differ from the criteria used in the contract award procedure aimed at the conclusion of the framework agreement, where it has already specified thereto in the course of the contract award procedure aimed at the conclusion of the framework agreement in the invitation launching the procedure or in the documentation, and if such criteria formed part of the framework agreement.

#### **Article 18**

1. The terms and conditions specified in the framework agreement shall not be substantially modified in the invitation to tender, in the tender itself or as a result of the negotiation (negotiations). With regard to the amount of consideration and - in case of the award criteria for assessing the most economically advantageous tender - with regard to the content elements evaluated pursuant to the constituent factors the tenderer may only submit a more favourable tender than the conditions specified in the framework agreement. Such modification shall not entail any change in the characteristics or circumstances of the subject-matter or the terms of the contract concluded under the scope of the framework agreement compared to the relevant subject-matter or the terms set out in the framework agreement that would have not allowed the application of a negotiated procedure without prior publication of a contract notice.

2. The negotiations between the contracting entity (entities) and one or more tenderer(s) conducted in the course of a negotiated procedure without prior publication of a contract notice, are aimed at reaching an agreement on the contract terms not specified in the framework agreement and providing the contracting entity with the opportunity to conclude the contract with the tenderer offering the most advantageous valid offer.

#### ***8. Procedure for establishing that a given activity is directly exposed to competition***

#### **Article 19**

1. The applicability of Article 118(7) and (8) of the PPA shall be established in conformity with the provisions on competition set out by the Treaty on the Functioning of the European Union. The characteristics of the activity specified in Article 114(2) of the PPA, the existence of the alternative services, the prices and the actual or potential presence of more than one supplier of the services in question on the market shall be in particular examined.

2. For the purposes of paragraph 1, free access to a market shall be deemed not to be restricted if the Member State in question has implemented and applied the provisions of Annex XI of Directive 2004/17/EC of the European Parliament and of the Council. If the free access to a given market may not be presumed on the basis of this, it must be demonstrated that access to the market in question is free de facto and de jure.

3. The decision of the European Commission on the applicability of Article 118(7) and (8) of the PPA may be initiated by the Hungarian Competition Authority or the contracting entity, notifying the Public Procurement Authority at the same time, if it is believed that the conditions of the applicability of Article 118(7) and (8) of the PPA exist in case of an activity specified in Article 114(2) of the PPA. The European Commission may initiate a procedure to this effect ex officio as well.

4. If the procedure of the European Commission is initiated by the Hungarian Competition Authority, in addition to the dispatch of its reasoned opinion, it shall inform the European Commission at the same time of all relevant facts in relation to the performance of the given activity under conditions of competition, in particular of any legislative provision, administrative decision, agreement concerning compliance with the conditions set out in paragraph 1.

5. If the procedure of the European Commission is initiated by the contracting entity or the European Commission ex officio, the Hungarian Competition Authority shall notify the European Commission of the information specified in paragraph 4, if requested.

#### ***Final provisions***

#### **Article 20**

This Decree shall enter into force on 1 January 2012, the provisions herein shall be applied for public procurements launched after the entering into force of this Decree.

## **Article 21**

This Decree, together with the PPA, shall serve the purpose of compliance with the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.