

ORDINANCE on the Award of Special-Purpose Public Procurements

(Title amended, SG is. 7 of 23.01.2007)

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Adopted by Council of Ministers Decree No. 233 of 03.09.2004.

Chapter One

GENERAL PROVISIONS

Article 1. (1) This Ordinance establishes the terms and procedure for: 1. the award of public procurements under Items 1 and 2 of Article 13 (1) of the Public Procurement Act (PPA), hereinafter referred to as "special-purpose public procurements":

(a) procurements related to national defence or national security, which are subject of classified information constituting a state secret;

(b) procurements whereof the performance must be accompanied by special security measures in accordance with the effective legislation in Bulgaria;

(c) procurement of supplies and services associated with the manufacture and trade in weapons, ammunition, and military equipment;

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

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

(3) The rules of Article 15 of the Public Procurement Act shall apply accordingly in determining the value of special-purpose public procurements.

Article 2. (Amended – SG is. 49/2010, effective 29.06.2010;) (1) (Amended – SG is. 49/2010, effective 29.06.2010) Special-purpose public procurement contracting authorities shall be the entities under Article 7 of the Public Procurement Act.

(2) (amended, SG 86/2010) The contracting authorities or authorized officials thereby shall organize and conduct the contract award procedures under this ordinance and shall conclude the contracts and/or the framework agreements thereof.

(3) (new, SG 86/2010) When the contracting authority is a collective body or a legal entity, the powers under Paragraph 2 shall be exercised by the person who represents it.

Article 3. (Amended – SG is. 49/2010, effective 29.06.2010) Candidates for special-purpose public procurement contractors shall be the entities under Article. 9 of the Public Procurement Act which meet the requirements for access to classified information, or the requirements for application of special security measures, or for manufacture of, or trade in weapons, ammunition, and military equipment.

Article 4. (Amended – SG 49/2010, effective 29.06.2010) (1) (Amended – SG is. 49 of 2010, effective 29.06.2010) Annually, on or before the 31st day of January, and upon request, the contracting authorities shall dispatch to the Public Procurement Agency summary information regarding the special-purpose public procurements for the preceding year, which shall state:

1. (new – SG, is. 49/2010, effective 29.06.2010) subject, value, contractor and prime subcontractor (if any) for each special-purpose public procurement;

2.(previously item 1 – SG, is. 49/2010, effective 29.06.2010) the number and total value of procurements that have ended in conclusion of a contract, grouped by object of procurement (construction works, supplies and services) and by type of procedure;

3. (previously item 2 – SG is. 49/2010, effective 29.06.2010) number of compensatory (offset) arrangements concluded;

4. (previously item 3 – SG is. 49/2010, effective 29.06.2010) number of terminated procurements with the subject of procurement and the type of procedure specified.

(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 into the Public Procurement Register.

Chapter Two

SPECIAL-PURPOSE PUBLIC PROCUREMENTS AWARD

Article 5. (1) Special-purpose public procurements shall be awarded after conduct of a negotiation procedure or tender based on documents.

(2) The contracting authority shall adopt a decision on the conduct of a special-purpose public procurement award procedure by means of a negotiation procedure or tender based on documents at its own discretion.

(3) Where a special-purpose public procurement comes solely under Item 1 (c) of Article 1 (1) herein and the value thereof does not exceed BGN 30 000 exclusive of value added tax (VAT), the contracting authority may, without conducting a procedure, authorize a representative thereof to gather prices tendered from potential contractors of the said procurement and the documents under Article 9(1) herein from the candidate which has

tendered the lowest price, as well as to conclude therewith a public procurement award contract. The authorized person shall meet the eligibility requirements established by Article 35 of the Public Procurement Act.

Article 6. (1) The decision to initiate a procedure shall include:

1. a description of the subject of the special-purpose public procurement;
2. grounds of law and of fact for the award of procurement;
3. type of procedure;
4. level of information classification or special security measures provided for in the cases referred to in Item 1 (a) and (b) of Article 1(1) herein;
5. a scheme for classification of the stages for performance of the contract under Article 4 of the Ordinance on General Industrial Security Requirements, adopted by Council of Ministers Decree No. 51 of 2003 (promulgated in the State Gazette issue 22 of 2003; amended in SG is. 24/2003), in the cases referred to in Item 1 (a) of Article 1 (1) herein;
6. technical specifications and basic economic requirements for performance of the procurement;
7. time limit and place for performance of the procurement;
8. terms and amount of the contract performance guarantee;
9. persons who are to conduct a survey to identify potential contractors of the procurement and time limit for the conduct of such survey;
10. other requirements at the discretion of the contracting authority related to the subject of the procurement;
11. criteria for conduct of negotiations and/or for the evaluation of tenders, and a method to determine the relative weight of each such criterion in the integral evaluation of the tender.

(2) The decision to initiate a special-purpose public procurement award procedure in the cases referred to in Item 1 (a) and (b) of Article 1 (1) herein shall be adopted after a reasoned opinion in writing given by the information security officer as to whether the subject of the procurement includes any information that is subject to classification as a state secret according to the requirements established by the Classified Information Protection Act (CIPA), or from another competent authority as to the need to apply special security measures.

(3) The persons referred to in Item 9 of Paragraph (1) 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 sector organizations about the potential contractors,

depending on the subject of the procurement. The persons shall prepare 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 submit an expression of interest for participation in the procedure to the potential contractors named in the report referred to in Article 6 (3) herein.

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

(3) Upon expiry of the time limit as indicated and upon receipt of the representations covered under Paragraph (2), in the cases referred to in Item 1 (a) and (b) of Article 1(1) herein, the contracting authority shall submit a request to the competent security service for a background investigation within the meaning of the Classified Information Protection Act and/or to the competent authority for an opinion on execution of the special security measures.

(4) The written reply of the competent service referred to in Paragraph (3), containing the results of the background investigation or the relevant opinion, as the case may be, shall be dispatched to the contracting authority which shall inform the persons who have expressed interest in participation.

Article 8. (1) Upon receipt of the information referred to in Article 7 (4) herein, the contracting authority shall inform in writing the potential contractors, in respect of which clearance for access to the relevant classified information level has been issued and/or a favourable opinion on execution of the special security measures has been given, as to the terms whereunder the decision on initiation of the procedure and/or the tender documents (if any) can be requested and as to the address whereto tenders must be sent or delivered and the time limit for submission of tenders.

(2) The time limit for submission of tenders shall be fixed in accordance with the complexity of the procurement but it may not be shorter than 7 business days after receipt of the notice referred to in Paragraph (1).

(3) The contracting authority shall prepare tender documentation where the complexity and the specifics of the procurement require a detailed description and directions to the candidates that could not be included in the decision referred to in Article 6 (1) herein. The said 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) Tenders shall be prepared in accordance with the requirements of the contracting authority as indicated in the decision to initiate the procedure or in the tender documents, if any, and shall include:

1. a document certifying the current legal status of the candidate;
2. administrative data about the candidate: address, telephone and facsimile number, contact person, etc;
3. evidence of the technical capacity to perform the procurement;
4. declaration stating that the candidate envisages or does not envisage participation of subcontractors;
5. a technical solution proposed and a price tendered and conditions for performance of the procurement;
6. a document certifying that the candidates have the right of access to classified information under the Classified Information Protection Act;
7. other documents, according to the decision referred to in Article 6(1) herein.

(2) Subcontractors shall meet all requirements met by the prime contract candidate, which shall be proven by submission of the same documents.

(3) Tenders shall be submitted in writing, in the Bulgarian language, and any documents in a foreign language shall be produced accompanied by a translation into the Bulgarian language, with the document referred to in Item 1 of Paragraph (1) being accompanied by a legalized translation.

(4) The requirements established by Article 57 of the Public Procurement Act shall be satisfied upon submission of the tenders.

(5) Candidates whose tenders do not meet the requirements of the contracting authority shall be excluded from participation.

Article 10. (1) Upon expiry of the time limit for submission of tenders, the contracting authority shall appoint a commission to examine the said tenders and shall set a timeframe for the work thereof. The composition of the commission shall be announced on the day appointed for opening of tenders.

(2) The members of the commission shall be persons possessing the professional expertise and practical experience required in accordance with the subject and complexity of the special-purpose public procurement, whereas the commission shall include a qualified lawyer.

(3) Eligibility for appointment to the commission shall be limited to persons who possess the qualifications covered under Article 35 of the Public Procurement Act, who have not participated in the survey referred to in Article 6 (3) herein and who have the right to

access the relevant classification level, where such a level is indicated in the decision referred to in Article 6 (1) herein.

(4) The remunerations of the members of the commission and all expenses arising in connection with the work of the said 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 tenders as submitted, shall draw up a memorandum listing the candidates admitted to participation, and shall notify the said candidates in writing of the place, date and hour of 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 members of the commission and by the candidate.

Article 12. (1) Upon completion of the work thereof, the commission shall draw up a final memorandum on the operation thereof, which shall be signed by all members of the commission and shall include:

- 1.composition of the commission;
- 2.a list of tenders submitted;
- 3.a list of the candidates excluded and reasons for the exclusion thereof;
- 4.prices tendered;
- 5.evaluation of tenders;
- 6.ranking of candidates;
- 7.proposal to conclude a contract with the highest ranking candidate.

(2) The memorandum of the commission shall be endorsed by the contracting authority, which shall inform the candidates in writing of the results of the procedure as conducted and shall set a time limit for the signature of a procurement award contract.

Article 13. (1) The contracting authority shall conclude a contract with the highest ranking candidate within the time limit as specified in the notice referred to in Article 12 (2) herein or, should the said candidate decline - with the second highest ranking candidate.

(2) Failure to provide the contract performance guarantee and non-appearance of the candidate at the time appointed for signature of the contract shall be considered a decline to sign a contract.

(3) Revocation of the relevant document under the Classified Information Protection Act shall be grounds for non-conclusion of the contract.

(4) In the cases referred to in Item 1 (a) of Article 1 (1) herein, the special-purpose public procurement award contract shall also specify:

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 is to exercise control according to the procedure established in Article 105 of the Classified Information Protection Act.

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

Article 14. (1) The contracting authority shall terminate a special-purpose public procurement award procedure in the cases covered under Article 39 of the Public Procurement Act and shall notify the candidates thereof.

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

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 dispatched the letter.

(2) Any candidate, which has changed the indicated administrative data referred to in Item 2 of Article 9 (1) without notifying the contracting authority in writing, shall be presumed notified.

Chapter Three

AWARD OF SPECIAL-PURPOSE PUBLIC PROCUREMENTS UNDER A COMPENSATORY (OFFSET) AGREEMENT

Article 16. (Amended, SG is. 7/2007, effective 23.01.2007)) (1) Special-purpose public procurements under a compensatory (offset) agreement shall be awarded as set forth in this Chapter where the following conditions are simultaneously fulfilled:

1. a non-resident entity is a potential contractor and/or a prime subcontractor of the procurement;

2. the value of the procurement exceeds BGN 10 million exclusive of value added tax (VAT).

(2) (Amended – SG is. 78/2005, effective 01.10.2005, amended SG is. 7/2007, effective 23.01.2007) The award of special-purpose public procurements under a compensatory (offset) agreement as set forth in this Chapter may be applied at the discretion of the Minister of Economy, Energy and Tourism where the following conditions are simultaneously fulfilled:

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

Article 17. (Amended, SG is. 7/2007 effective 23.01.2007; supplemented, is. 49 of 2010, effective 29.06.2010) (1) Upon award of a special-purpose public procurement under a compensatory (offset) agreement, the negotiation procedure under Chapter Two herein shall be applied, save insofar as otherwise provided for in this Chapter.

(2) The negotiations on the award of special-purpose public procurements shall be conducted by the contracting authority and the contract for the 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 agreement shall be signed by the Minister of Economy, Energy and Tourism and by the selected contractor of the special-purpose public procurement.

(4) (New – SG is. 49/2010, effective 29.06.2010) The offset proposal shall be an obligatory condition for the eligibility of the tender of the candidate.

Article 17a. (New, SG is. 7/2007, effective 23.01.2007; amended SG is. 93/2009, effective 24.11.2009; amended and supplemented SG is. 49/2010, effective 29.06.2010)

(1) (Amended, SG is 49/2010, effective 29.06.2010) An Interagency Council on Special-Purpose Public Procurements under a Compensatory Agreement hereinafter referred to as "the Interagency Council" shall be established as a standing advisory body with the Council of Ministers. The Interagency Council shall be chaired by the Minister of Economy, Energy and Tourism. Members of the Council shall be: a Deputy Minister of Economy, Energy and Tourism, a Deputy Minister of Finance, a Deputy Minister of Defence, a Deputy Minister of Interior, a Deputy Minister of Foreign Affairs, a Deputy Minister of Transport, Information Technology and Communications and the Executive Director of the Invest Bulgaria Agency.

(2) The activity of the Interagency Council shall be administrated by the Minister of Economy, Energy and Tourism.

(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 concerning special-purpose public procurements under a compensatory agreement;

3. the analysis of particular special-purpose public procurements under a compensatory agreement.

(4) The Interagency Council shall prepare opinions under Item 3 of Paragraph (3) addressed to the Council of Ministers regarding:

1. (amended – SG is. 49/2010, effective 29.06.2010) the special-purpose public procurements under a compensatory agreement as proposed by the contracting authorities covered under Article 7 of the Public Procurement Act and as planned for award for the next financial year;

2. the parameters of each particular special-purpose public procurement under a compensatory agreement whereof the award is due during the current financial year.

(5) The Interagency Council shall discuss, at a meeting, the proposals by the Minister of Economy, Energy and Tourism covered under Article 19 (2) herein regarding:

1. the priority projects for assumption of indirect compensatory obligations;

2. (fully amended – SG, is. 49/2010, effective 29.06.2010) the eligibility criteria applicable to offset proposals in their part for indirect offset;

3. (repealed – SG is. 49/2010, effective 29.06.2010; previously item 6 - SG is. 49/2010, effective 29.06.2010) the time limits for the performance of the compensatory obligation;

4. (repealed – SG is. 49/2010, effective 29.06.2010; previously it. 7 - SG is. 49/2010, effective 29.06.2010) the amount of the compensatory agreement guarantee;

5. (repealed – SG is. 49/2010, effective 29.06.2010; previously it. 8 – SG is. 49/2010, effective 29.06.2010) the draft of the compensatory agreement for indirect offset and a reporting form;

6. (previously item 9 - SG is 49/2010, effective 29.06.2010) a possibility to admit third-parties to perform compensatory obligations;

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

Article 17b. (New, SG 7/2007, effective 23.01.2007)

(1) The Interagency Council shall hold regular meetings once every quarter and, where necessary, shall be called to an extraordinary meeting by the Chairperson thereof.

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

(3) At the first meeting thereof, the Interagency Council shall adopt Rules of Operation thereof.

(4) The opinions of the Interagency Council, as referred to in Article 17a (4) herein, and the proposals, as referred to in Paragraph (5), shall be signed by each member of the Council. In case of disagreement with the common opinion or proposal expressed, the member of the Interagency Council shall sign with a reasoned dissenting opinion.

Article 18. (Amended, SG is. 7/2007, effective 23.01.2007; amended SG is. 49/2010, effective 29.06.2010) Upon preparation and award of a special-purpose public procurement under a compensatory agreement, the following stages shall be observed:

1.the contracting authority shall send to the Interagency Council information about the special-purpose public procurements under a compensatory agreement as planned for the next financial year;

2.the contracting authority shall determine the basic parameters of the particular special-purpose public procurement for the current financial year and shall notify the Interagency Council thereof;

3., the contracting authority shall notify the Minister of Economy, Energy and Tourism and the Interagency Council in writing if the circumstances covered under Article 16 herein exist

4.within thirty days after receipt of the information referred to in Item 3, the Minister of Economy, Energy and Tourism shall send 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 covered under Article 16 herein, shall discuss the proposal of the contracting authority and of the Minister of Economy, Energy and Tourism and, within thirty days, shall present the opinion thereof to the Council of Ministers, notifying the contracting authority and the Minister of Economy, Energy and Tourism of this;

6.in the event of a dispute between the contracting authority and the Minister of Economy, Energy and Tourism, the Interagency Council shall submit a draft of a decision before the Council of Ministers within thirty days; the Council of Ministers shall pronounce on the matters in dispute by a reasoned decision;

7.the contracting authority shall initiate the special-purpose public procurement award procedure under a compensatory arrangement after receipt of the opinion of the Interagency Council referred to in Item 5, and in the event of a dispute with the Minister of Economy, Energy and Tourism - after receipt of the Council of Ministers decision referred to in Item 6;

8.the contracting authority shall appoint the commission referred to in Article 26 herein; the commission shall consist of two sub-commissions: a sub-commission on the

special-purpose public procurement, and a sub-commission on the compensatory (offset) agreement;

9. (amended – SG is. 49/2010, effective 29.06.2010) the commission shall examine and evaluate the tenders and shall verify the compliance of the offset proposals with the offset requirements;

10. the memorandum on the proceedings of the commission under Item 9 shall be endorsed by the contracting authority;

11. upon endorsement of the memorandum by the contracting authority, the commission shall conduct negotiations with the candidate ranked first on finalization of the clauses of the public procurement contract and of the compensatory agreement;

12. the special-purpose public procurement award contract and the compensatory agreement shall be concluded in accordance with Article 17 herein;

13. control over the performance of the special-purpose public procurement award contract and the performance of the direct offset obligations shall be exercised by the contracting authority, while control over the performance of a compensatory agreement in respect of the indirect offset obligations shall be exercised by the Minister of Economy, Energy and Tourism.

Article 19. (Amended, SG is. 7/2007, effective 23.01.2007; amended and supplemented SG is. 49/2010, effective 29.06.2010) (1) (Amended – SG is. 78/2005, effective 01.10.2005, amended SG is. 7 of 2007, effective 23.01.2007; supplemented SG is. 49/2010, effective 29.06.2010) Should the conditions covered under Article 16 herein be fulfilled, the contracting authority shall send to the Minister of Economy, Energy and Tourism information about the subject of the special-purpose public procurement planned and the basic requirements for performance of the procurement, the share of the preferred direct offset, specific programs and projects required by the contracting authority as a direct offset, as well as the eligibility criteria applicable to the offset proposals in their part concerning direct offset.

(2) (Amended – SG is. 78/2005, effective 01.10.2005, amended is. 7/2007, effective 23.01.2007) On the basis of the information referred to in Paragraph (1), the Minister of Economy, Energy and Tourism shall prepare a reasoned proposal as to the basic parameters of the compensatory agreement, which shall state:

1. (repealed – SG is. 49/2010, effective 29.06.2010);
2. particular priority projects for performance of the indirect offset;
3. (repealed – SG is. 49/2010, effective 29.06.2010);
4. (repealed – SG is. 49/2010, effective 29.06.2010);
5. time limits for performance of the indirect compensatory obligations;

6. amount of the compensatory agreement performance guarantee;
7. (fully amended – SG is. 49/2010, effective 29.06.2010) eligibility criteria applicable to the offset proposals in their part concerning indirect offset;
8. draft of a compensatory agreement 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-parties to perform compensatory obligations.

Article 20. (Amended, SG is. 7/2007, effective 23.01.2007; amended SG is. 49/2010, effective 29.06.2010) (1) The following can be the subject of a compensatory agreement:

1. (amended – SG is. 49/2010, effective 29.06.2010) Making investments in priority projects endorsed by the Minister of Economy, Energy and Tourism;
2. supplies, services or construction by resident entities;
3. provision of technical equipment and/or technologies to resident entities;
4. grant of licences for use of industrial property rights or transfer of intellectual property rights to resident entities.

(2) It shall be inadmissible to conclude a compensatory agreement with a subject including any investments which are subject of promotion and protection by the State under other statutory instruments.

(3) (repealed – SG, is. 49/2010, effective 29.06.2010)

Article 20a. (New – SG is. 49/2010, effective 29.06.2010) (1) The activities which might be the subject of compensatory agreement under art. 20, (1) and which have been completed or are currently underway prior to the conclusion of the offset agreement (pre-offset) shall be recognized as indirect offset under the following terms:

1. the proposed projects for implementation of pre-offset activities are related to strengthening national defence and security, the production of dual use products, transfer of technologies and industrial cooperation;

2. the Minister of Economy, Energy and Tourism shall approve of the projects under item 1 herein about pre-offset activities.

(2) The Minister of Economy, Energy and Tourism shall notify the contracting authority at least 10 days prior to the approval of the projects under paragraph. 1, item 1, related to strengthening defence and security of the country

(3) Pre-offset activities can be included in future offset agreements for a term of 7 years as of the date of issuing of an Offset Credit Certificate for recognized credits.

(4) The implementation of a pre- offset shall not give an advantage for the selection of a contractor for a special-purpose public procurement.

(5) The Ministry of Economy, Energy and Tourism shall keep a register of submitted and approved pre-offset activities and shall issue an Offset Credit Certificate;

(6) The accumulated offset credits from pre-offset activity shall be valid for a term of 7 years as of the date of issue of the Offset Credit Certificate and may be used to cover future indirect offset obligations of the performer of pre-offset or to be transferred to any other future contractor of a special-purpose public procurement to cover indirect offset obligations of the latter;

(7) The parties to each offset credit transaction shall present to the Ministry of Economy, Energy and Tourism a notarized contract for change of title on offset credits. By virtue of the presented contract, the Ministry of Economy, Energy and Tourism shall update the register under paragraph. 5 and shall issue new updated Offset Credit Certificates to the parties under this transaction.

(8) The Minister of Economy, Energy and Tourism shall notify the members of the Interagency Council for Special-Purpose Public Procurements under Compensatory Agreement at each meeting of the Council of the pre-offset activities and the status of their implementation to date.

Article 21. (Amended, SG is. 7/2007, effective 23.01.2007; fully amended is. 49/2010, effective 29.06.2010) The value of the compensatory agreement shall be equal to the value of the special-purpose public procurement award contract.

Article 21a. (New, SG is. 7/2007, effective 23.01.2007) (Previously the text of Art. 21 a – SG is. 49/2010; effective 29.06.2010) (1) The ratio of direct to indirect offset obligations shall be 30 per cent to 70 per cent.

(2) (New – SG is. 49/2010, effective 29.06.2010) A deviation by no more than 5% shall be deemed admissible in the ratio referred to in paragraph. 1 herein.

Article 22. (Amended, SG is. 7/2007, effective 23.01.2007; repealed SG is. 49/2010, effective 29.06.2010))

Article 23. (Amended, SG is. 7/2007, effective 23.01.2007) The term of performance of a compensatory agreement may not be longer than ten years, reckoned from the entry of the agreement into effect.

Article 24. (Amended, SG is. 7/2007, effective 23.01.2007; amended and supplemented SG is. 49/2010, effective 29.06.2010)) (1) Save insofar as otherwise provided for in this Chapter, the contracting authority shall adopt a decision on initiation of a special-purpose public procurement award procedure under a compensatory agreement, applying the provisions of Chapter Two herein.

(2) In addition to the requisites under Article 6 (1) herein, the decision on initiation of any such procedure shall contain the proposal of the Minister of Economy, Energy and Tourism referred to in Article 19 (2) herein and the Council of Ministers decision referred to in Item 6 of Article 18 herein.

(3) The decision on initiation of the procedure shall approve the tender documents for the special-purpose public procurement award procedure under a compensatory agreement and shall determine the final date, the price and method of payment of the price to be paid for such documents and the address wherefrom the said documents can be requested.

(4) The contract documents referred to in Paragraph (3) shall contain:

1. the decision on initiation of the procedure;
2. an exhaustive description of the subject of the special-purpose public procurement;
3. economic and financial requirements for the candidates;
4. technical and technological requirements for the candidates;
5. offset requirements:
 - (a) (amended – SG is. 49/2010, effective 29.06.2010) the priority projects (if any) for the performance of compensatory obligations;
 - (b) (fully amended – SG is. 49/2010, effective 29.06.2010) eligibility criteria applicable to the offset proposals in the special-purpose public procurement procedure;
 - (c) (repealed – SG is. 49/2010; effective 29.06.2010);
 - (d) the time limits for performance of the compensatory obligations;
 - (e) (repealed – SG, is. 49/2010; effective 29.06.2010);
 - (f) the ratio of the value of the indirect relative to the value of direct compensatory obligations;
 - (g) other offset beneficiaries upon performance of direct compensatory obligations;
 - (h) a possibility to admit third-parties to perform direct compensatory obligations;
6. (amended – SG is. 49/2010, effective 29.06.2010) the criteria and methods to be applied in the evaluation of tenders, which includes a mechanism to evaluate the technical and financial proposal;
7. terms and amount of the special-purpose public procurement contract performance guarantee and of the compensatory agreement performance guarantee;
8. draft of a special-purpose public procurement award contract;
9. draft of a compensatory agreement;
10. other documents, should any such be required for the performance of the special-purpose public procurement award contract under a compensatory arrangement.

Article 25. (Amended. SG is. 7/2007, effective 23.01.2007) (1) A tender shall meet the requirements covered under Article 9 herein.

(2) In addition, a tender shall include an offset proposal responsive to the requirements determined in the decision of the contracting authority.

(3) The following shall be attached to the offset proposal:

1.a declaration stating data on compensatory agreements previously concluded and performed by the candidate;

2.value of the compensatory agreement, divided into the values of the direct and the indirect offset;

3.subject of the compensatory agreement and method of performance of the said agreement;

4. time limits for performance;

5. third-parties to perform compensatory obligations, where such a possibility has been provided for.

Article 26. (Amended, SG is. 7/2007, effective 23.01.2007) (1) Upon expiry of the time limit for submission of tenders, the contracting authority shall appoint a commission according to the procedure established by Article 10 herein to examine the tenders and shall determine the memberships, the timeframe and the rules of operation of the commission.

(2) Within 7 days after receipt of a request from the contracting authority, the Minister of Economy, Energy and Tourism and the Minister of Finance shall issue orders designating the representatives thereof in the composition of the commission and shall notify the contracting authority thereof.

(3) The composition of the commission shall be announced on the day appointed for opening of tenders.

(4) The commission shall consist of two sub-commissions:

1.a sub-commission to examine the technical and financial parameters of the tenders for performance of special-purpose public procurements, which shall include, among others, representatives of the Minister of Finance and the Minister of Economy, Energy and Tourism;

2.a sub-commission to examine the offset proposals, which shall consist of two working groups: to examine the direct offset proposals and the indirect offset proposals:

(a) the working group on the indirect offset shall include representatives of the contracting authority and representatives of the Minister of Economy, Energy and Tourism, who shall have a majority of two-thirds of the members of the said working group;

(b) the working group on the direct offset shall include representatives of the Minister of Economy, Energy and Tourism and representatives of the contracting authority, who shall have a majority of two-thirds of the members of the working group.

(5) The composition of each sub-commission shall include persons who possess the professional expertise and practical experience required in accordance with the subject and complexity of the special-purpose public procurement under a compensatory agreement, and a qualified lawyer shall be included as well.

(6) Eligibility for appointment to the commission shall be limited to persons who possess the qualifications under Article 35 of the Public Procurement Act, who have not participated in the survey referred to in Article 6 (3) herein, and who have the right to access to the relevant classification level, where such a level is indicated in the decision referred to in Article 24 (1) herein.

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

Article 27. (Amended, SG is. 7/2007, effective 23.01.2007; fully amended SG is. 49/2010, effective 29.06.2010) (1)The commission shall examine and arrive at an integral evaluation of the tenders pursuant to the criteria and methods set forth in the tender documents for participation, whereas the Commission shall:

1. perform a preliminary ranking of the candidates for contractors of the special-purpose public procurement by evaluating the submitted tenders pursuant to the evaluation criteria envisaged in the decision for the initiation of the procedure. The preliminary ranking shall not take into account the submitted offset proposals of candidates, that are non-resident entities or their prime subcontractor is a non-resident entity;

2. verify whether the offset proposal is compliant with the requirements under Art. 24, paragraph 4, it. 5 herein.

(2) After the completion of the preliminary ranking the commission shall verify whether the offset proposals are compliant with the requirements of the contracting authority. Should any inconsistencies be established, the commission shall give to the candidate/s the opportunity within a term of 14 business days to amend and/or supplement or to confirm their offset proposals. After the expiry of that term the commission shall verify again whether the offset proposals are consistent with the requirements of the contracting authority by taking into account the amendments/supplements effected or the confirmation.

(3) When the amended and/or supplemented or confirmed offset proposal is not compliant with the requirements of the contracting authority, the commission shall propose this candidate for elimination from any further participation in the procedure.

(4) After having reviewed the offset proposals, the commission shall perform final ranking of candidates and shall carry out the negotiations for concluding a contract for special-purpose public procurement award and of compensatory agreement.

(5) The offset proposal shall not be taken into account during the performance of the integral evaluation of the tender submitted by the candidate.

Article 28. (Amended, SG is. 7/2007, effective 23.01.2007, amended and supplemented is. 49/2010, effective 29.06.2010)) (1) (new – SG is. 49/2010, effective 29.06.2010) Each of the two sub-commissions shall draw up a memorandum of its operation.

(2) (Previously para. 1 – SG is. 49/2010, effective 29.06.2010) Upon completion of the proceedings thereof, the commission shall draw up a memorandum on the operation thereof, summarizing therein the results of the proceedings of the two sub-commissions.

(3) (previously para. 2 – SG is. 49/2010, effective 29.06.2010) In addition to the information covered under Article 12 (1) herein, the memorandum shall include findings as to the conformity of the submitted offset proposals to the parameters as specified in the decision on initiation of the procedure.

(4) (Previously para. 3 - SG is. 49/2010, effective 29.06.2010) The memorandum shall be signed by all members of the commission and shall be presented to the contracting authority for endorsement.

(5) (New – SG is. 49/2010, effective 29.06.2010) In the memorandum of its operation the commission may suggest to the contracting authority :

1. to sign a contract with the candidate ranked first in the final ranking;
2. to terminate the procedure by a reasoned decision when the candidate ranked first in the final ranking is a non-resident entity or its prime subcontractor is a non-resident entity and the said candidate has not been ranked first in the preliminary ranking under Art. 27, paragraph 2;
3. to terminate the procedure in the cases set forth in Art. 39, paragraphs 1 and 2 of the Public Procurements Act.

Article 29. (Amended, SG is. 7/2007, effective 23.01.2007) (1) Upon endorsement 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 of the offset agreement.

(2) Should the candidate ranked first decline to participate in the negotiations referred to in Paragraph (1) or to sign the special-purpose public procurement contract

and/or the compensatory agreement, the commission referred to in Article 26 herein shall commence negotiations with the candidate ranked second.

Article 30. (Amended, SG is. 7/2007, effective 23.01.2007; amended is. 49/2010, effective 29.06.2010) Compensatory agreement shall state:

1. parties, date and place of signature of the agreement;
2. subject of the compensatory agreement;
3. value of the compensatory agreement;
4. schedule, time limit and scheme for performance of the compensatory obligations;
5. (repealed – SG, is. 49/2010, effective 29.06.2010);
6. third-parties to perform compensatory obligations, where admitted by the contracting authority in the decision on initiation of the procedure;
7. (amended – SG is. 49/2010, effective 29.06.2010) liability for non-performance of the compensatory obligation, which may not be less than 20 per cent of the value of the non-performance;
8. type and amount of the compensatory obligations performance guarantee;
9. manner of reporting the performance of the compensatory obligation.

Article 31. (Amended, SG is. 7/2007, effective 23.01.2007) Compensatory agreements shall enter into effect upon the entry into effect of the special-purpose public procurement award contract.

Article 32. (Amended, SG is. 7/2007, effective 23.01.2007) (1) Control over the performance of the compensatory agreement in the part thereof concerning the direct offset shall be exercised by the contracting authority, while control in respect of the indirect offset shall be exercised by the Minister of Economy, Energy and Tourism.

(2) The contractor shall be obligated to present to the control authority periodic (semi-annual and annual) reports regarding the performance of the compensatory obligations.

(3) The control authority referred to in Paragraph (1) may at any time require from the contractor and the offset beneficiary to provide information regarding the performance of the compensatory obligations, as well as inspect the financial and business documentation certifying the performance of the said obligations.

(4) The reporting of the performance of the compensatory obligations shall be certified according to a form endorsed by the control authority.

(5) Upon ascertainment of non-performance or of incorrect performance of the compensatory obligations, the control authority shall take action for enforcement of the relevant liability for non-performance, as provided for in the agreement, against the contractor.

(6)The contracting authority and the Minister of Economy, Energy and Tourism shall inform the Interagency Council on the progress of performance of the special-purpose procurement award contract and the compensatory (offset) agreement.

Chapter Four

FRAMEWORK AGREEMENTS

Article 33. (Amended, SG is. 7/2007, effective 23.01.2007) 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 initiation of the procedure.

Article 34. (Amended, SG is. 7/2007, effective 23.01.2007) (1) A framework agreement shall be signed in order to define in advance the terms and conditions on which the parties intend to conclude the special-purpose public procurement award contracts for a specific period, including in respect of the prices or the pricing mechanism.

(2)On the basis of the framework agreement, contracts shall be concluded, stipulating the specific parameters of financing, technical characteristics, quantities, stages of performance, acceptance and complete service of the respective activity.

(3)The conclusion of a framework agreement on the award of a special-purpose public procurement under a compensatory agreement shall be grounds for conclusion of a framework offset agreement and for preliminary performance of the offset obligations under the said agreement.

Chapter Five

ADMINISTRATIVE PENALTY PROVISIONS

Article 35. Any contracting authority, that shall fail to conduct a special-purpose public procurement award procedure when there are grounds for such a procedure shall be liable to the sanction referred to in Article 129 of the Public Procurement Act.

Article 36. For any other violations of this Ordinance, the blameful persons shall be penalized pursuant to the procedure established by Article 32 of the Administrative Violations and Sanctions Act.

Article 37. (1) (amended, SG 7/2007, in force from 23.01.2007, amended, SG 86/2010) The acts for establishing offences shall be drawn up by officials of the Public Financial Inspection Agency within 6 months from the day on which the violator has been

discovered, but not later than three years the offence has been committed.

(2) The penal provisions shall be issued by the Minister of Finance or officials authorized thereby.

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

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning given by this Ordinance:

1."Information security officers" shall be the persons referred to in § 1, it. 4 of the Supplementary Provisions of the Classified Information Protection Act.

2."Security services" shall be the services within the meaning of § 1, it. 1 of the Supplementary Provisions of the Classified Information Protection Act.

3."Non-resident entity" shall be a non-resident entity within the meaning of § 1, it. 1 of the Supplementary Provisions of the Investment Promotion Act.

4.(supplemented – SG is. 49/2010, effective 29.06.2010) "Compensatory (offset) obligations" shall be the obligations of a non-resident contractor and/or prime subcontractor of a special-purpose public procurement which the said entity undertakes to perform by virtue of a compensatory (offset) agreement concluded with a subject under Article 20 herein.

5."Direct compensatory (offset) obligations" shall be compensatory (offset) obligations related to the subject of the special-purpose public procurement award contract.

6.(Amended, SG is. 7/2007, effective 23.01.2007; fully amended, SG is. 49/2010, effective 29.06.2010) "Indirect compensatory (offset) obligations" shall be any activities under Art. 20 herein which are not directly related to the subject of the special-purpose public procurement award contract and are aimed at strengthening national defence and security through production and trade in weapons, military equipment, defence systems, dual-use products, transfer of technologies and industrial cooperation, as well as the provision of services related thereto.

7.(Amended, SG is. 7/2007, effective 23.01.2007; fully amended SG is. 49/2010, effective 29.06.2010) "Eligibility criteria applicable to offset proposals" shall be the terms and conditions included in the decision for initiation of a special-purpose public procurement award procedure which shall be met by the offset proposals of candidates upon the award of special-purpose public procurement following the procedure of Chapter Three herein.

8.(Amended, SG is. 7/2007, effective 23.01.2007) "Value of a compensatory (offset) agreement" shall be the nominal value of the offset agreement referred to in Article 21 herein, expressed as a number.

9.(New, SG is. 7/2007, effective 23.01.2007; fully amended is. 49/2010, effective 29.06.2010) "Pre-offset" shall be the preliminary performance of activities under the terms of Art. 20 herein.

10. (Previously Item 9 and amended, SG is. 7/2007, effective 23.01.2007) "Offset beneficiary" shall be the entity benefiting from the performance of compensatory (offset) obligations, which may be:

- (a) a Bulgarian trader;
- (b) Bulgarian science and educational institutions;
- (c) Bulgarian public-financed institutions and organizations.

11. (Previously Item 10 and amended, SG is. 7/2007, effective 23.01.2007; supplemented is. 49/2010, effective 29.06.2010) "Third-parties to perform compensatory (offset) obligations" shall be entities other than the special-purpose public procurement contractors, which are in contractual relationships with the said contractors for the performance of their offset obligations.

12. (new – SG is. 49/2010, effective 29.06.2010) "Prime subcontractor - non-resident entity" shall be a non-resident entity that has concluded a contract with the candidate for special-purpose public procurement contractor for the complete or partial performance of the activity for the implementation of special-purpose public procurement contract and without the activity of the said subcontractor the special-purpose public procurement cannot be performed in compliance with the requirements of the contracting authority.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. This Ordinance is adopted pursuant to the Public Procurements Act., Article 13, paragraph. 2

§ 3. The Ordinance Establishing Terms and a Procedure for the Award of Public Procurements Related to National Defence and Security, adopted by Council of Ministers Decree No. 303 of 2002 (State Gazette No. 119 of 2002), is hereby repealed.

§ 4. The procedures for the award of special-purpose public procurements, on which a decision to initiate has been adopted according to the procedure established by the Ordinance Establishing Terms and a Procedure for the Award of Public Procurements Related to National Defence and Security, shall be completed according to the hitherto effective procedure.

§ 5. This Ordinance shall furthermore apply to the conclusion of compensatory (offset) agreements with a selected contractor according to the procedure established by the Ordinance Establishing Terms and a Procedure for the Award of Public Procurements Related to National Defence and Security.

§ 6. (New, SG is. 22/2011) Chapter Three of the Ordinance shall not apply to supplies, services or construction works related to providing for the functioning of entities covered by Article 7 of the Public Procurement Act with regard to Bulgarian identity documents and residence documents or driving licenses as well as to maintenance and supplies of spare parts for equipment acquired under this Chapter or prior to entering into force of the same Ordinance.

§ 7. (Previously § 6, SG is. 83/2008) This Ordinance shall enter into force as from the 1st day of October 2004.