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Komisioni Rregullativ i Prokurimit Publik
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Public Procurement Regulatory Commission



RULES and OPERATIONAL GUIDELINES
for PUBLIC PROCUREMENT

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1. Scope of the Rules and the Operational Guideline

1.1 The rules and the Operational Guidelines on procurement procedures are set pursuant to Article 87.2.4 of the Law No. 04/L 042 on Public Procurement in the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No.05/L-092 (hereinafter the PPL). These Rules and Operational Guideline is designed to assist the procurement staff in the management of procurement activities and design contests. It gives details of the procedures governing the procurement of goods, services, works and design contests.

1.2 These Rules and Operational Guideline complements and clarifies the provisions of the Public Procurement Law,) and shall be read in compliance with the provisions of the PPL. These Rules and Operational Guideline give an overview of the procedures to be used in public procurement, and it gives an idea of the process, you will have to go through, when you procure and use public funds.

1.3 These Rules and Operational Guideline describes processes and technical requirements for electronic public procurement system and gives guidance and sets legal framework in cases where specifics of electronic conduction of public procurement processes cause differences from the previous procurement process which was based on paper.

1.4 All persons, economic operators (EOs), undertakings, and Contracting Authorities (CAs) including the Public Service Operators as these legal and natural persons are defined in the PPL involved in procurement activities will be bound by the policies, procedures and practices appearing in these Rules and Operational Guideline.

1.5 According to the PPL the following list of the CAs is simplified and mentions the groups in broad terms:

Contracting Authorities:

1. Public Authorities
 - a. Central and local authorities (ministries, municipalities etc);
 - b. “Bodies governed by Public Law” as defined in the Law, meaning bodies under dominant public influence;
 - c. Associations of the above.
2. Public Service Operators
 - a. Public authorities or public undertakings engaged in public service activity;
 - b. Other entities granted exclusive rights to perform public service activity (neither public authorities nor public undertaking).
3. Public undertaking
 - a. Any undertaking under dominant public influence.
4. Any person, committee or private company operating on basis of a special or exclusive right.
5. Anybody carrying out procurement activities on behalf of the above.

2. Objective of the Rules and of the guideline

2.1 The objectives of the Rules and of the Guideline are:

- a) To describe procedures to be followed and the documentation to be used while conducting procurement activities;
- b) To guide the procurement staff in the management of the procurement activities in order to create uniformity and consistency using best practices in order to achieve value for money.
- c) To define the specifics and rules of electronic public procurement processes.

2.2 It is very important that the public procurement process is discharged honestly, fairly, and in a manner that secures best value for public money. CAs must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity.

2.3 The Law imposes obligations on CAs to:

- a) publish notices;
- b) use procurement procedures that provide open and transparent competition;
- c) apply clear and objective criteria in selecting tenderers and awarding contracts;
- d) use non - discriminatory technical specifications;
- e) allow sufficient time for submission of requests for prequalification or tenders.

3. Requirements for the users of e-Procurement System

3.1 All named users of e-Procurement system that require some rights to execute processes on the system must first carry out the registration process. Through the registration process, users establish their virtual identity in the system that is linked to their physical identity and to the organization they represent in the system. Users that use the system on behalf of various organizations must have separate virtual identity for each organization they represent.

3.2 All users of the system must accept “General Terms and Conditions” that precisely defines their rights and obligations. “General Terms and Conditions” are approved by PPRC and are published on the system, with clear indication of the version and the validity period.

3.3 e-Procurement System collects and stores data necessary for identification of the Contracting Authorities and Economic Operators as well as personal data of the users necessary for their identification.

Data on the Economic Operators contains at least:

- Name
- State
- Registration number/Fiscal number
- Whether it is a legal, natural or legal foreign person

Personal data of the users consist of:

- Name and surname of the user
- E-mail of the users where he will receive all messages from the system

- Personal Identification number
- Address
- Telephone and/or fax number
- Name of CA/OE which is connected with the user
- Title or business responsibility of the user
- Password
- Username of the user

The system enables, but does not require, users to enter additional data that could improve system functionality and user experience.

3.4 The e-Procurement system implements appropriate technical measures to protect the users and their personal data. These technical measures consist of activation email. Secret question, password policy, robot protection (“captcha”). Each user must provide one official e-mail account that is used for communication with the system.

3.5 All users in the system are given the privileges according to the roles that have been assigned to them by the CA/OE that approved creation of their user account.

3.6 Every action particular user conducts on the system is considered to be conducted on behalf of the CA/OE that approved the user account of that user. All users are responsible for the actions they perform on the system and must not conduct actions for which are not legally entitled. It is strictly forbidden for every user to access the system using the identity of another user.

3.7 CA/OE of the system are responsible for ensuring for its users a reliable internet connection with minimal throughput of 1 mbit/s; Throughput of internet connection influences the speed of data transfer (upload or download); inadequate throughput might cause errors in the data transfer.

3.8 CA/OE of the system are responsible for providing and maintaining the equipment which its users use to access the system. The equipment should provide minimal screen resolution of 1024x768, adequate disc space for storing the documents

3.9 CA/OE of the system are responsible for installation, configuration and maintenance of the software on their equipment. The minimal software requirements are published in the Terms of use, and include:

- Internet browser from the list of the supported browsers published in the Terms of use, configured according to the user manual (enabled javascript support, disabled pop-up blocker etc)
- PDF reader from the list of supported software tools, configured for verification of electronic signatures
- Digital signature software that supports qualified signature of PDF document

3.10 CA/OE of the system are responsible for security of their equipment, including updated antivirus and malware protection tools.

4. General conduct of procurement procedures

4.1 CAs' conducting procurement procedures are obliged to take reasonable and necessary measures to ensure equality of treatment and non-discrimination among interested EOs.

4.2 When conducting procurement procedures, a CA shall have the following obligations:

- a) to play an active role in determining the terms of contracts, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
- b) to the greatest extent possible under the circumstances, to compare requests to participate and tenders effectively to ascertain their relative advantages and disadvantages; and
- c) to ensure that the contracted price is not higher than the concerned market price.

4.3 CAs' shall incur no liabilities towards any tenderer or candidate, or participant in a public procurement procedure, unless a decision is issued by the Procurement Review Body concerning compensation to a complainant.

4.4 All public procurement activities shall be conducted in accordance with the following basic principles:

- Competition - among suppliers should be encouraged in the most efficient and effective way.
- Efficiency & Effectiveness - should be sought in the procurement process to secure value for money for the CA.
- Fairness/ Non Discrimination – Act fairly during the whole procurement lifecycle without imposing unnecessary burdens or constraints on suppliers or potential suppliers. Avoid any favourable treatment to specific supplier or potential supplier.
- Objectivity/Integrity/ Honesty – Declare any conflict of interest that affects or appears to affect their judgment; Reject gifts, hospitality and benefits of any kind from supplier or a potential supplier, which might be reasonably seen to compromise their objectivity or integrity.
- Transparency – Ensure equal conditions and accessibility to all EOs, by informing them in an open and transparent way.
- Accountability – Be accountable for the responsibilities assigned to them, as well as for the decisions made by them, keep the appropriate records.
- Professionalism – Work to a high standard of professionalism by complying with the legislation in force and applying the best practices.

4.5 Each procurement process is conducted through the following 8 steps:

1 st STEP	Procurement Planning
2 nd STEP	Estimating the Value and Classifying the Contract
3 rd STEP	Determining the Procurement Procedure
4 th STEP	Preparing the Tender Dossier

5 th STEP	Publication
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6 th STEP	Opening and evaluation of tenders
7 th STEP	Award and signing of contract
8 th STEP	Contract management

5. Procurement forecast

5.1 The procurement forecast is a written document which indicates:

- a) the goods, works and services expected to be procured during the fiscal year;
- b) the intended starting date; and
- c) the estimated contract value.

5.2 This is the first step in the procurement process.

5.3 Procurement planning is a process undertaken by CAs to plan purchasing activities for a 12 months period of time. Production of the annual procurement plan:

- a) Eliminates the necessity of emergency procurements or waivers;
- b) Aggregates the requirements, wherever possible, to obtain value for money and reduce procurement costs;
- c) Enables the identification of framework contracts to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time; and
- d) Avoids splitting up of procurement requirements which are broadly similar or related.

5.4 Failure to undertake procurement planning is considered bad management and may:

- a) have a detrimental impact on the entire CA and the attainment of its objectives;
- b) result in emergency procurement or waivers, in which case punitive action shall be taken against such offenders; and
- c) Result in splitting of procurement requirements which are broadly similar or related.

5.5 A preliminary procurement forecast shall be prepared by each CA. In case of a public authority or a public undertaking the mentioned CA shall submit to the Chief Administrative Officer of the Contracting Authority hereafter “CAO”, in writing, the Preliminary Procurement Forecast. The Preliminary Procurement Forecast shall be sent to CAO not less than 30 days prior to the beginning of each fiscal year - which means at the latest 1st December every year.

5.6 The preliminary procurement forecast shall identify, “in reasonable detail”, all supplies, services and works that the CA intends to procure over the course of the coming fiscal year. Intended design contests shall reasonably be included in the forecasts as well.

5.7 Within 15 days after the appropriations legislation for the fiscal year is promulgated, each CA, which is a public authority or a public undertaking, shall prepare and shall submit to the Central Procurement Agency hereafter “CPA”, in writing, the Final Procurement Forecast. Contracting Authorities which use the electronic platform submit final procurement planning through the electronic platform.

5.8 The aim of providing the final procurement forecast to the CPA, is to provide the CPA with the aggregated information on the intended procurement in Kosovo in total, in order for the CPA to identify common use items and any other objects and items that may be acquired more efficiently through the application of a consolidated or common procurement procedure or through use of central framework contracts.

5.9 The CPA shall review and identify common use items to be procured through centralised procurement procedure on behalf of the CAs and shall submit the list to the Minister of the Ministry of Finance “MoF”. The Minister of the MoF shall submit the list to the Government for approval.

5.10 The Government as per the proposal from the MoF shall establish by the 31st of January each year a list of goods or commodities, works or services the procurement of which will be awarded by the CPA through the use of public framework contracts. Such list shall be adopted in the form of an Administrative Instruction which shall be published in the media and made accessible on the PPRC website.

5.11 All contracts signed by the CPA through centralized procurement procedures are obligatory for all CAs, which are part of the Administrative Instruction adopted by the Government. The contracting authority shall not conduct an independent procurement activity with respect to these goods, works or services. Any contract concluded in violation of this paragraph and shall be declared null.

5.12 As CPA may expect hundreds of procurement forecasts, the procurement plan must be prepared and sent electronically through the e-Procurement system by using standard form B01 “Procurement Forecast”, approved by the Public Procurement Regulatory Commission “PPRC”. The standard form is available through the e-Procurement system web interface or could be uploaded using the standard excel file.

5.13 Procurement forecasts shall not be published and are not publicly accessible. No information on intended procurement activities of a CA may be published or disclosed to anybody prior to the publication of the standard notices (indicative notice or contract notice). The reason for that is safeguarding the principle of equal treatment, which at this point means that information on a specific procurement activity shall be accessible to all EOs at the same time.

5.14 The procurement forecast must correspond to the budget of the CA for the concerned fiscal year. Where multi-year contracts are intended, there must be “reasonable basis to expect that appropriations will be made available” to the CA in such future fiscal years.

5.15 To do a good procurement planning the procurement officer will need close cooperation with budget department and other departments. The procurement officer will sit down with budgeting and requesting departments (users) and discuss their procurement requirement and the available budget for the coming year and decide which items to include within the preliminary and the final procurement forecast.

6. Indicative notice

6.1 After preparation of the final procurement forecast the procurement officer shall check if the CA has the intention of awarding over a future of 12 months period:

- (i) one or more supply contracts having an estimated value, alone or in the aggregate, of 500,000 Euros or more;
- (ii) one or more service contracts having an estimated value, alone or in the aggregate, of 500,000 Euros or more; or
- (iii) one or more works contracts having an estimated value, alone or in the aggregate, of 500,000 Euros or more.

6.2 If the CA has the intention of awarding over a future of 12- month period, one or more supply, service or works' contracts having an estimated value, of 500,000 Euros or more the time limit for the preparation of the Indicative notice by the procurement officer is:

- a) in case of an Indicative Notice for supplies or service as soon as possible after the beginning of the concerned fiscal year; and
- b) in case of an Indicative Notice for works contracts immediately after the decision approving the planning of the concerned works contract.

6.3 Immediately after the preparation of the Indicative Notice the procurement officer shall submit all language versions of the concerned Indicative Notice to the PPRC for publication. PPRC shall publish them on its website. No information in the Indicative Notice may be made public or disclosed to any person prior to its publication of the mentioned Notice. CAs which use the electronic platform shall publish all versions of the Notice on the electronic platform.

6.4 Publication of the Indicative Notice does not commit the CAs to purchasing or proceeding with an activity if circumstances change.

- It is intended as:
 - a) an aid to transparency and is for the benefit of the economic operators;
 - b) permits a CA to reduce the minimum time limits for tendering, in open or restricted procedure for the award of large value contracts, to not less than 24 days (instead of the normal minimal time limit of 40 days);
 - c) if the CA is a Public Service Operator the Indicative Notice may replace a Contract Notice in restricted or competitive negotiated procedure .

6.5 The reduction of the time limit may only be used if:

- a) the concerned Indicative Notice has all the necessary information specified; and
- b) it has been published not less than 40 days and not more than 12 months prior to the publication of the concerned Contract Notice.

6.6 An indicative notice shall be prepared in the Albanian, Serbian and English languages. The CA shall ensure that all language versions of an indicative notice contain materially identical information. A notice should be prepared for a procurement activity.

6.7 The standard forms "Indicative Notice", one for the Public Service Operators B03 and the other one for the other CAs B02, to be used by the CAs are adopted by the PPRC and can be downloaded from the PPRC's website.

6.8 Indicative notice is not mentioned in the PPL in connection with design contests therefore it is not required to prepare and publish a design contest indicative notice. However, where a design contest is intended to be followed by a service contract an indicative notice is obligatory for the service contract, insofar as the 500,000 Euro-limit is reached or exceeded.

7. Confidential business information and access to documentation

7.1 Tenders in a tendering process are normally submitted on a confidential basis. In order to preserve the integrity of the process and to respect the commercial and competitive positions of tenderers, details of tenders, apart from the information which are announced during the public opening session, must be kept confidential, until the procurement activity is concluded.

7.2 A procurement activity is deemed to have been concluded:

- a) on the date of the publication of the contract award or design contest result notice;
- b) if cancelled on the date of the publication of the cancellation notice;
- c) if the publication of the contract award is not required on the date of the contract award.

7.3 After the procurement activity is concluded only information classified, by the EO and accepted by the CA, as confidential business information shall remain confidential from all parties excluding the PPRC, the PRB, including its review expert and review panel and court of competent jurisdiction.

7.4 Other than those documents classified as confidential business information, upon the request of an interested party the CA shall provide such person prompt and reasonable access to all the records of the procurement activity. The concerned interested party shall have access to documents by consulting them in the procurement office. Consultation in the procurement office, copies of less than 20 A4 pages and direct access in electronic form shall be free of charge.

7.5 Information which can be classified as confidential business information is:

- a) the information regarding economical and financial standing, article 68 of the PPL; and
- b) the information regarding technical and/or professional capability, article 69 of the PPL.

7.6 The information can be classified as confidential only if:

- a) a written request is submitted by the potential tenderer using the standard form "Request for confidentiality", which is an Annex in the Tender Dossier; and

7.7 The e-Procurement System enables EO to declare the document as confidential if it contains parts which are classified as confidential. It is the responsibility of the CA to ensure that parts which are declared as confidential are not made available to other Economic Operators.

8. Statement of needs and determination of availability of funds

8.1 The CA shall initiate a procurement activity only after it has conducted a formal needs assessment clearing up, why exactly the procurement has to be done. The aim of the prior needs assessment is to ensure that only precise and necessary procurement is made, and to avoid inefficiency in procurement, and to ensure that objects meeting such needs are not available from any other public authority. Preliminary assessment shall include:

- a) a clear indication of the works, services or supplies required;
- b) the estimated value of the works, services or supplies;

- c) the proposed functional specifications;
- d) the benefits expected;
- e) cost of ownership;
- f) information whether it was included in the procurement plan; and
- g) a statement how the procurement will promote the CA's objectives.

8.2 The formal needs assessment shall be addressed, from the Requesting Unit, to the Chief Administrative Officer (CAO) for approval. If the CAO approves the conduct of the procurement activity the CAO shall provide a copy of the needs assessment to the Chief Financial Officer (CFO). The CFO shall ensure that the funds are available for the concerned procurement.

8.3 If the CA is a public authority or a budget organization the CFO shall ensure that:

- a) the funds have been appropriated; or
- b) that sufficient funds will be appropriated in such fiscal year. This provision shall have to be included in the public contract.

“Appropriated” shall here be understood as “the commitment is authorized”, in order to be in line with the budget and payment system. The aim of ensuring of commitment of funds is improvement of efficiency, as initiation of a procurement procedure for which no funds are committed simply may be waste of resources.

8.4 The CAs shall use the standard form B04 “Statement of needs and determination of availability of funds (SNDAF)” adopted by the PPRC for the determination of needs and availability of funds. The approval of the initiation of the procurement activity shall be evidenced by the signature of the SNDAF by the CAO and the CFO. The original copy of the signed SNDAF shall be maintained in the CA's records and a copy shall be provided to the CFO, to the Authorising Officer and, unless the CAO is the most senior official, to the most senior official of the CA. The filled form shall be maintained by the CA as documentation – available for auditing – that the needs assessment and ensuring of commitment has been conducted.

8.5 The Authorising Officer shall then authorise the Procurement Officer to initiate the procurement activity by providing him/her a written instruction to initiate the procurement activity and a copy of the signed SNDAF. A copy of the mentioned written instruction shall be provided by the Authorising Officer to the CFA, to the CAO and to the most senior official of the CA.

8.6 If the procurement activity was not included in the final procurement forecast, in case of a public authority or a public undertaking, a copy of the form shall be sent by the CAO to CPA at least 5 days before the Authorising Officer authorizes the Procurement Officer to initiate the procurement activity. This is done in order for the CPA to identify any commonly used items that may be procured more efficiently through a common procurement procedure.

8.7 The persons having authority to sign a contract are obliged, before the publication of the contract award notice, to reconfirm that the financial information (SNDAF) has not materially changed.

9. Functions of the Chief Administrative Officer

9.1 The Chief Administrative Officer shall have the overall responsibility:

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- a) of ensuring that the formal needs assessment is conducted for each procurement activity;
- b) of approving the initiation of each procurement activity;
- c) of designating one person to act as an Authorizing Officer for each procurement activity;
- d) of designating one person, who possesses the requisite qualifications and experience in public procurement, and is eligible, to serve as the responsible procurement officer;
- e) of taking steps to remove the procurement officer if he/she becomes ineligible in accordance with the Civil Servants Law;
- f) of ensuring that the procurement officer is supported by a sufficient number of other trained personnel;
- g) of appointing a Project Manager for each contract;
- h) of signing large value contracts (From this rule are exempted the President, the President of the Assembly, the Prime Minister and the Minister of Finance when the Government or the Ministry of Finance designates CPA to conduct a procurement activity, pursuant Article 95 of the PPL);
- i) If the procurement activity is divided into lots, to sign contracts for lots which are classified as large value contracts; and
- j) of approving the Tender Evaluation Committee Members.

10. Functions of the Requesting Unit

10.1 The Requesting Unit, who is the initiator of the requests for procurement, for each procurement activity, has the following responsibilities:

- a) Prepare a procurement request, formal needs assessment (DNDAF), and forward the same to the CAO for approval;
- b) Prepare/propose technical specifications (TS), Terms of References (ToR), and Scope of Work / Bill of Quantities (BoQ);
- c) Ensure there are no restrictions in the specifications, or TOR, so as to ensure that competition is maximized;
- d) Liaise with and assist the procurement department throughout the procurement process;
- e) Issue reports on the receipt of the goods/services/works for the arrangement of the payments to the providers;
- f) Report to the procurement department any departures from the terms and conditions of the contract; and
- g) Forward details of any required contract amendments to the procurement department.

10.2 The requesting department staff may be appointed to be member of the:

- a) Tender Opening Committee; or
- b) Tender Evaluation Committee (except the person(s) who established the TS/TOR/BoQ etc.).

11. Functions of the Procurement Department/Unit

11.1 The responsible procurement officer shall be responsible for the management of all procurement activities of the CA within its jurisdiction and in accordance with the provisions of the PPL.

11.2 The responsible procurement officer shall report and be accountable to the CAO.

11.3 The procurement department/unit among other obligations has the following responsibilities:

- a) Obtain estimated requirement of consumables and non-consumables, including cost estimates, for each financial year, from all departments;
- b) In consultation with all departments prepare an annual procurement plan and prioritise requirements. Where possible ensure common items are consolidated;
- c) Ensure that goods, services and works are procured in the most economical, efficient and effective manner;
- d) To the best of his/her ability make sure that no restrictions to the competition is exhibited in the technical specification;
- e) Advise the Requesting Units, on individual procurement methods and practices;
- f) In association with Heads of the Requesting Units, prepare and co-ordinate all the associated paperwork, specifications, ToR, BoQ and drawings;
- g) Prepare and publish notices;
- h) Prepare prequalification documents, tender dossiers, contract conditions, tender evaluation reports, contract awards, etc by using the approved standard forms;
- i) Prior to the commencement of the procurement activity ensure that the DNDAF is authorised in writing;
- j) Organise and manage quotations and tenders depending upon the estimated price;
- k) Organize and manage pre-bid meetings, tender openings and the evaluation process;
- l) Recommend the composition of the Evaluation Committee members;
- m) Established Opening Committee Members
- n) Take part in the Tender Negotiations and ensure an equitable outcome;
- o) Upon completion of the evaluation process, review the proposed contract recommended by the evaluation committee;
- p) Agree /reject the proposed recommendation;
- q) Prepare and publish the contract awards;
- r) Sign the contracts after reconfirming that the financial information have not materially changed (for minimal value contracts developed in educational institutions, the person authorized to sign a contract is the Director of the Educational Institution)
- s) Ensure records are kept of the participating EOs, proceedings and decisions that are made during each stage of the procurement process;
- t) Monitor the Purchase Orders, and ensure copies of all contracts and purchase orders are sent to the finance unit;
- u) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, saves all communications and evidences received;
- v) Follow-up the failures of contractors who have failed to fulfil their contractual obligations when informed by the Project manager in regard to adequate compensation, liquidating damages and arrange for the cancellation of the contract;
- w) Maintain and archive records of procurement; and
- x) Produce an annual report at the end of each fiscal year for the contracts signed.

12. Types of procurement procedures

12.1 When conducting procurement activities leading to the award of a public contract a CA shall use one of the following procedures:

- a) Open procedure;
- b) Restricted procedure;
- c) Competitive Negotiated procedure;
- d) Negotiated procedure without publication of a contract notice;
- e) Price quotation procedure; or
- f) Procedure for minimal value contracts.

12.2 When conducting procurement activities leading to acquiring a plan or design, a CA shall use the following procedure:

- a) Design contest.

12.3 The codes for the procedure used in establishing the “Procurement identification number” are as follows:

Code for procedure	
1	Open procedure
2	Restricted procedure
3	Design contest
4	Competitive Negotiated procedure
5	Negotiated procedure without publication of a contract notice
6	Price quotation procedure
7	Minimal value procedure

12.4 Public framework contracts do not constitute a new type of procedure. Public Framework contracts are concluded after an open, restricted or negotiated procedure has been carried out.

13. Estimating the value and classifying the contract

13.1 This is the second step in the procurement process. The value of an envisaged public contract shall be estimated prior to the initiation of the procurement procedure. Such estimate shall be reasonable and realistic for the envisaged contract from the point of view of the most efficient, cost-effective, and transparent and fair use of public funds and resources.

13.2 In estimating the value of the contract, the CA must take into account:

- published prices, from Kosovo Office of Statistics and/or other official indicative prices (such as tax office, customs office, chamber of commerce, etc); and/or
- local market prices;
- prices of previous contracts signed by the same or other contracting; and/or
- published international prices;
- unit prices published at PPRC’s website,
- Prices collected through e-Procurement system, etc.

13.3 In every case, the CA is responsible for comparing the abovementioned references, whenever they exist, with a cost analysis of the relevant technical specifications of the goods, services or works to be procured.

13.4 In case of contracts made up of a set of homogenous or heterogeneous works, goods or services, the contract may be divided into lots. This method may be used especially with the aim of encouraging the participation of the small and medium business. It may also be made in order to secure a wider competition through allowing for more specialised EO's only capable of supplying parts of the goods, services or works. In any case, the division into lots does not imply division of contract value or avoidance from the value thresholds, since it consist of the total value of all lots.

13.5 In case where public contracts that are regular in nature or is intended to be repeated within a given period, the calculation of the estimated value of the contract shall be based in the envisaged needs of the subject of such contracts for the certain period.

13.6 The estimated value of a proposed:

a) Supply contract - shall be equal to the estimated price to be paid by the CA for all products, services and other objects covered by the contract.

- In case of lease, rental or hire-purchase:
 - the total contract value, including the estimated residual value;
 - in the case of a contract for an indefinite period or where there is doubt as to the duration of the contract, the monthly value multiplied by 48.

b) Service contract – shall be equal to the estimated total remuneration and reimbursable amounts to be paid by the CA throughout the term of the contract.

- Specific rules:
 - in case of insurance services: the premium payable;
 - in case of banking and other financial services: fees, commissions, interests and other types of remuneration;
 - in case of design services: fees or commissions.
- In case the contract does not specify a total price, the estimated contract value shall be:
 - if the duration is 48 months or less, the total estimated value for the duration;
 - in case of a contract of indefinite duration or with a term of more than 48 months, the average estimated monthly value multiplied by 48.

c) Works contract – shall be equal to the estimated price to be paid by the contacting authority for all works, services, products and other objects that are needed to execute such contract and that are to be made available to the works contractor by the CA.

d) Design contest - if organized as part of a procedure leading to the award of a service contract, it shall be equal to the estimated value of that service contract whereas if solely

organized for the provision of projects, it shall be equal to the total amount of contest prizes and payments to participants.

13.7 The estimated value shall:

- a. include any and all applicable taxes, duties and other charges; and
- b. include reasonably foreseeable elements of the ultimate price to be paid.

13.8 If the procurement activity contains an option (option for extension of the contract), the value of the option shall be estimated and included in the estimated contract value. Option means the right of the contracting authority to request additional deliveries for the same price and under the same conditions specified in the contract. Such options should be included in publications and specified in the tender. Otherwise the options may not be required.

13.9 If the procurement activity is divided into several lots, and each one is the subject of a separate contract, the aggregate estimated value of all such lots shall be the “estimated contract value”.

13.10 A contract may normally not be extended, renewed or followed by a successor contract without the conduct of a new procedure. However, within an amount of up to 10 % of the contract value, a contract on additional supplies/services/works, which were neither included, nor provided for in the original contract, but which have, through unforeseen circumstances, become necessary for the performance of the contract, may be awarded to the same EO by conduct of a negotiated procedure without publication of a contract notice. Where such additional contract is reasonably foreseeable, its value shall be included in the originally estimated contract value.

13.11 A CA shall not select or use a valuation method for the purpose of lowering the estimated contract value below the relevant threshold value in order to avoid the application of the relevant procurement procedure.

13.12 A CA shall not split up a procurement requirement for a given quantity of products, or a given amount of services - or split up a work or a works contract – for the purpose of lowering the estimated contract value below the relevant threshold value in order to avoid the application of the relevant procurement procedure.

13.13 Based on the estimated contract value the contracts are classified into four different types of contracts:

- a) “large value contract”;
- b) “medium value contract”;
- c) “low value contract” and
- d) “minimal value contract”

13.14 The thresholds set for procurement activity at different levels are as follows:

ESTIMATED VALUE	SUPPLY	SERVICES	DESIGN CONTEST		WORKS
			Award of a service contract	Prizes and payments to participants	
LARGE VALUE	≥ 125,000 €		≥ 125,000 €	≥ 100,000 €	≥ 500,000 €
MEDIUM VALUE	< 125,000 € ≥ 10,000 €		< 125,000 € ≥ 10,000 €	< 100,000 € ≥ 10,000 €	< 500,000 € ≥ 10,000 €
LOW VALUE	< 10,000 € ≥ 1,000 €		< 10,000 €		< 10,000 € ≥ 1,000 €
MINIMAL VALUE	< 1,000 €		*		< 1,000 €

*) All minimal value design contests must be performed according to rules for low value design contests.

13.15 The codes for classifying the public contracts according to the estimated value in establishing the “procurement identification number” are as follows:

Code for range of estimated value	
1	Large value
2	Medium value
3	Low value
4	Minimal value

13.16 In classifying a design contest according to the estimated value for the establishment of the “procurement identification number” the above mentioned codes shall be used analogously, except the code “4” which is not applicable for design contests.

13.17 The estimated contract value is defined in the contract notice and in the tender dossier.

13.18. In cases where there are differences according to a decision of a competent body, in taxes, the VAT rate or changes in import duties, contract prices shall be adjusted accordingly.

13.19 Contracting Authorities are not allowed to terminate ongoing contracts and contracts for work or supplies, services and payments, when the changes were not known, as in the cases referred to under paragraph 13.18 of this Article.

14. Determination of Procedure

14.1 This is the third step in the procurement process.

14.2 The choice of a procurement procedure shall be on the basis of:

- (a) the estimated value of the requirement; or
- (b) the circumstances pertaining to the requirement.

14.3 The estimated value of the requirement shall be the main criteria for determining the choice of procurement procedure.

14.4 However, regardless of the estimated value of the requirement, the circumstances pertaining to the requirement may be used as additional criteria in determining the choice of procurement procedure. These circumstances constituent of:

- a) emergency situation;
- b) the availability of works, services or supplies only from a sole provider;
- c) the need for compatibility with existing works, services or supplies
- d) complexity of the requirements

15. Types of contracts

15.1 A public contract covers any of the following specific types of contracts:

Type of contract	Definition
Supply contract	A supply contract relates exclusively or mainly to the purchase of one or more products; but also contracts on lease, rental or hire-purchase of products are supply contracts
Service contract	A service contract relates exclusively or mainly to the provision of services. Service includes and consulting services.
Works contract	A works contract has as its principal object: - execution, - design and execution, or - realization by whatever means of a work, construction or civil engineering activities, including: - construction, - restoration, - repairing or - demolition of buildings, facilities, civil engineering structures, or any part or parts thereof
Public framework contract	A public framework contract relates exclusively to the establishment of the framework for contracts to be awarded during a limited period

Immovable property contract	An immovable property contract relates exclusively to the acquisition of immovable property or an interest in immovable property
Works concession contract	A works concession contract is a works contract, the performance of which is compensated – in whole or in part – by a grant of a right to exploit the object of such contract
Service concession contract	A service concession contract is of the same type as a service contract, except that the provision of the service is compensated either: With the right to exploit the service or With the right to exploit the service and payment.

15.2 Mainly there are three types of contracts that a CA can choose from when contracting with a potential EO. The choice of the type of contract depends:

- a) on the category and nature of the item (supply contract)
- b) service that needs to be provided (service contract) or
- c) works that need to be executed (works contract).

Duration of public contracts shall be determined by the Contracting Authority.

15.3 However it is possible for a public contract to be a “mix”: Supplies/Services, Works/Services; Works/Supplies; a mix of Supplies/Works/ Services. The basic way to handle this problem is always the simple cost model. Whichever element of the contract has the highest estimated expenditure then the contract should be classified under that type of contract. This should apply even if the contract is broken down into “Lots”; it shall be the total value of the complete contract (all the “lots”).

15.4 Therefore the following rules determine the type of a mixed contract:

Rules on mixed contracts	
Mix	Resulting contract
A supply contract which includes: - delivery, and/or - siting, and/or - installation	Supply contract
A contract on both supply of products and provision of services	Service contract, if the estimated value of the services exceeds the estimated value of the products. (Otherwise a supply contract).
A contract which has as its principal	Service contract

<p>object the provision of professional construction-related service, and in addition the performance of one or more activities referred to in the definition of “works contract”</p> <p>Construction-related service may be:</p> <ul style="list-style-type: none"> - architectural and/or engineering services, - geotechnical or geodetic site investigation services, - structure or structure design assessment services, - construction supervision services or management services, etc. 	
<p>A contract which has as its principal object the conduct of works but includes professional construction-related service (as explained above) necessary for the performance of the contract</p>	<p>Works contract</p>
<p>A contract on both supply of products and conduct of works</p>	<p>Works contract, if the works activities are not solely sitting and/or installation. (Otherwise a supply contract).</p>

15.5 The codes for classifying the type of the contracts in establishing the “procurement identification number” are as follows:

Code for type of procurement	
1	Supply
2	Service
3	Consulting Service
4	Design Contest
5	Works
6	Works Concession

16. Procurement number

16.1 Each procurement activity shall be codified by the CA with an “Internal Procurement number” for swift identification and for monitoring activities, statistical purposes etc.

16.2 The Internal Procurement number is composed of:

- (i) CA identification;
- (ii) Identification of the procurement year;
- (iii) A serial number of 3 digits, restarting at 1 each procurement year;
- (iv) Code for type of procurement;
- (v) Code for range of estimated value of the envisaged contract or design contest; and
- (vi) Code for procedure used.

16.3 An instructive description of the Procurement number is attached as Annex 1 to these rules and operational guideline.

16.4 In addition, when using the electronic platform, the system automatically generates a procurement activity number.

17. Summary procurement record

17.1 The CAs shall establish and maintain a summary procurement record in respect of each procurement procedure containing the steps of progress of the procedure and the outcome of the procedure.

17.2 Procurement records shall include the following:

- Request to initiate procurement activity and approval (SNDAF)
- Justification for accelerated procedure (when applicable)
- Justification and approval for negotiated procedure without publication of contract notice (when applicable)
- Copy of the Contract Notice - published at PPRC (when applicable)
- Copy of the pre-qualification and tender documents and any amendments or clarifications; (all language versions)
- Register of EO who received the TD/PD (when applicable)
- Tender submission record
- Establishment of opening committee members
- Minutes of Public Opening Session
- Establishment of the evaluation committee members
- Declaration under oath of the evaluation committee members
- All tenders evaluated, the clarifications requested and responses received
- Evaluation Report
- Notification of unsuccessful tenderers and eliminated tenders
- Notification of successful tenderer
- Copy of contract award - published at PPRC (when applicable)
- Contract and, if applicable, contract amendment
- All documentation in regard to a complaint including PRB's decision (when applicable)
- All other documents that are part of the procurement activity.

17.3 At the end of the year the contracting authorities shall compile a consolidated summary yearly report on every public contract, signed in the previous fiscal year. Such report shall be

prepared by use of the standard form B53 “Annual report for public signed contracts”

adopted by PPRC and shall be sent to PPRC within 5 days upon its written request but not later than January 31 of each previous fiscal year.

17.4 Relevant documents are stored pursuant to the applicable legislation on State Archives.

18. Tender dossier

18.1 This is the fourth step in the procurement process.

18.2 In compliance with article 27 of the PPL, the CA shall draw up a tender dossier for each envisaged contract or design contest, unless the contract is of minimal value. Tender dossiers and design contest dossiers shall be prepared by use of the relevant standard forms approved by the PPRC. PPRC has approved, depending on the procedure used, different types of standard Tender Dossiers (TD) which may be downloaded from PPRC's website.

1. TD for supplies;
2. TD for services;
3. TD for works;
4. TD for design contest;
5. TDs' for public framework contracts (supply, services and works);
6. TD for Price Quotation;
7. TD for Consultancy Services (two envelope system)

18.3 The structure of the tender dossier is composed of three parts:

Part A – Tendering Procedures

Part B – Draft Contract

Part C – Tender Form

Part A , tendering procedures , consists of two parts:

- Instructions to tenderers
- Tender data sheet and annexes
- Instruction to Tenderers is a standard form that does not need to be supplemented by CA.
- The Procurement Officer must complete the Tender Data Sheet for each procurement activity

Part B , the draft contract , contains conditions that must be accepted by the tenderer who competes , so no negotiations are allowed. It consists of two parts

- General Conditions
- Special conditions
- General conditions should not be changed
- The special conditions must be completed by the Procurement Officer

Part C, the Bid submission form, is the main part of the tender because in this part the bidder declares that he has checked and accepts all the terms of the tender and submits his financial offer. It consists of:

- Tender Form
- Price Schedule

EO is required to complete the form (both parts) because if the form is not completed it will mean that there is no offer. If the person signing and submitting the tender is not the responsible person for signing the tender (company director), but is authorized by OE, OE need to submit with his bid the authorization for signing the tender, otherwise his bid will be rejected. CA is obliged to define this requirement in the tender.

All prices specified in tenders shall be stated in Euro (€). The price offered is allowed to be marked with a maximum of two (2) decimal numbers after the decimal point. Any number listed after the second number (2) shall not be taken into account in the calculation of the value of the bid. If the CA allows prices with more than two (2) decimal numbers after the decimal point, then the CA should emphasize this in the tender dossier.

18.4 In the tender dossier the CA shall state all relevant information on the concerned contract that the interested EOs need to know in order to prepare their tenders without further information. Such information shall include all specifications, requirements, criteria, time limits, methodologies, contract conditions, site visits or pre-tender meeting etc. connected with the contract award procedure. Every sentence in the tender dossier must be well-considered, as the tender dossier is the basic material, upon which the economic operators shall establish their tenders. The tender dossier shall be prepared in such a way, that – as the main rule – no additional or clarifying information is needed. Specifically, the contracting authority shall have in mind, when the tender dossier is being prepared, that no communications, discussions or negotiations shall take place between the contracting authority and the tenderers. Requirements specified in the tender dossier and in the contract notice must be identical. If the CA organizes a site visit or a pre-bidding conference, the participation of the EO in the site visit / pre-bidding conference should not be mandatory. Site visits / pre-bidding conference are organized for the OEs and are in their best, so it assists the EO.

18.5 The tender dossiers or design contest dossiers, for minimal, low and medium value contracts shall be prepared in Albanian and Serbian languages, but may also be prepared in the English language, whereas for large values contracts the tender dossier shall be prepared in Albanian, Serbian and English version.

18.6 In case technical specifications and/or other commercial information included in the tender dossier or its annexes most efficiently are expressed by use of solely English language or any other commercially commonly used language, contracting authorities do not need to prepare such specifications and/or information in the Albanian and Serbian languages on the condition that no discrimination thereby is created.

18.7 The Procurement officer or the Procurement department/unit is responsible for the preparation of the tender dossier. They are fully responsible for the preparation of the tender documents, selection criteria, and the award criteria, whereas the technical specifications shall be prepared by structures specialized in the object to be procured, inside the CA. In case of

complex or specific contracts, the CA may appoint outside experts or contractors, in order to assist the unit in drafting the Tender Dossier. The CA shall follow PPL provisions when engaging outside experts or contractors.

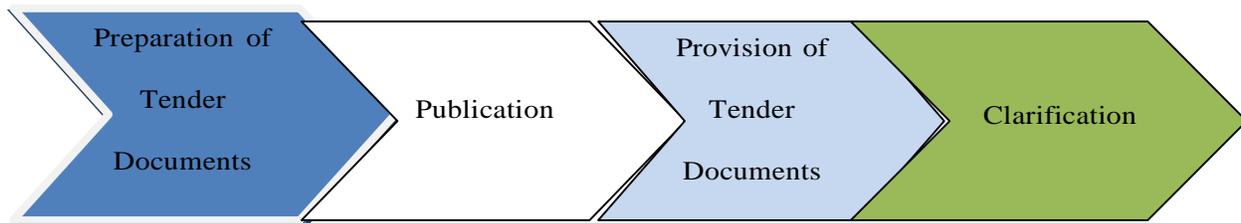
18.8 The CA shall always make tender dossier available through e-Procurement System free of charge to any EO. The CA may request a charge in cases where the price of production of the tender material is regarded as expensive e.g. printing models or large number of technical prints that are not suitable for delivery in electronic form through e-Procurement System. The amounts of money charged in such cases may not exceed the production costs of the material.

18.9 The tender dossier shall be prepared in a way that does not:

- restrict competition among the EOs, or
- discriminate against or act in favour of one or more EOs.

18.10 There are four processes which the CA has to follow until the receipt of the tenders:

1. Preparation of the tender dossier process ;
2. Publication process;
3. Provision of tender dossier process; and
4. Provision of clarifications and supplementary information on the tender dossier process.



18.11 If the CA is obliged to publish the Contract Notice, the tender dossier must be completed before the publication of such contract notice.

18.12 It is very important to ensure that persons, consultants or companies who have been involved in the setting of standards, specifications, ToR or related assistance, are not allowed to be involved in the tendering process, or its evaluation.

18.13 The CA shall as well state in the TD that the EO's must indicate in their tender any part of the contract that the EO intends to subcontract to third parties and each proposed subcontractor. Each proposed sub-contractor must meet eligibility requirements and must submit evidence on meeting the eligibility requirements. Subcontracting should not exceed 40 % of the contract value. Contracting authorities may provide, where they consider it necessary, direct payments to subcontractors. The Economic operator awarded with a contract is fully responsible for fulfilling the contract in accordance with the contract regardless of any part subcontracted to third parties. The tenderer must submit evidence regarding the fulfilment of the eligibility of subcontractors to participate in the tender procedure as required in Article 65 of the PPL. Economic operator must notify the contracting authority for any changes in subcontracting plans that occur after the submission of the tender. The contracting authority may reject any proposed subcontractors unless it meets the conditions of eligibility.

18.14 Whenever a tender dossier is required or not, the supplies, services or works of the contract must be described by means of the appropriate common procurement vocabularies (CPV) and codes. An instructive description of the CPV is attached as Annex 2 to these rules and operational guideline.

18.15 The obligatory information required when completing a Tender dossier, as per PPL, is as follows:

<u>Supplies</u>	<u>Services, both consultancy and non-consultancy</u>	<u>Works</u>
A statement of requirements for the procurement of supplies shall contain a complete, unambiguous and precise description of the supplies, delivery and completion schedule, list of supplies and quantities, technical specifications and drawings, and shall include as appropriate:	A statement of requirements for the procurement of services shall be defined in the terms of reference which shall contain a clear, unambiguous and precise description of the services and shall include as appropriate:	A statement of requirements for the procurement of works shall contain a clear, unambiguous and precise description or comprehensive scope of works, bill of quantities, technical specifications and drawings, and shall include as appropriate:
(a) a clear definition of the scope of the proposed purchase;	(a) a background narrative to the required services;	(a) a background narrative to the required works;
(b) the purpose and objectives of the proposed purchase;	(b) the objectives of the services required and a list of targets to be achieved by a service provider;	(b) the objectives of the required works;
(c) a full description of the requirement;	(c) a list of the specific tasks or duties to be performed;	(c) a list of specific tasks to be performed;
(d) a generic specification to an appropriate level of detail;	(d) a schedule of deliverables for the assignment or outputs against which the achievements of the services shall be measured;	(d) the supervision requirements, working relationships and specific administrative arrangements to be applied;
(e) a functional description of the qualities, including any environmental or safety features required of the subject of the procurement;	(e) the management and reporting lines of a service provider, to the CA and the specific administrative arrangements and reporting requirements that shall apply;	(e) the duration of the works;
(f) performance parameters, including outputs, timescales, and any indicators or criteria by which the satisfactory performance of the specification can be judged;	f) the duration and timetable of the assignment;	(f) a common specification standard;
(g) process and materials descriptions;	(g) the applicable industry standards for implementing an assignment; and	(g) the relevant industry standard; and
(h) dimensions, symbols, terminology, language, packaging, marking and labeling requirements	(h) any other relevant information.	(h) any other relevant information.
(i) a common specification standard;		

(j) the relevant industry standard; and		
(k) any other relevant information.		
No specification shall be issued with reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item. Where there is no other sufficiently precise or intelligible way of characterising a requirement except by the use of a reference the description shall be used, followed by the words "or equivalent"		
The Tender documents for supplies shall specify the following information:	The Tender documents for services shall require the economic operator to comment on the terms of references and shall specify the following information:	The Tender documents for works shall specify the following information:
(a) the specification and list of supplies, including the quantity;	(a) the terms of reference and expected input of key personnel	(a) design, specifications, drawings and bill of quantities
(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission is allowed;	(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission is allowed;	(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission is allowed;
(c) type of contract and procedure	(c) type of contract and procedure	(c) type of contract and procedure
(d) the qualification criteria's	(d) the qualification criteria's	(d) the qualification criteria's
(e) the amount and form of tender security required;	(e) the amount and form of the required tender security;	(e) the amount and form of the required tender security;
(f) the amount and form of the required performance security	(f) the amount and form of the required performance security	(f) the amount and form of the required performance security
(g) time limits, exact place, date and hour of tender submission and tender opening	(g) time limits, exact place, date and hour of tender submission and tender opening	(g) time limits, exact place, date and hour of tender submission and tender opening
(h) the form of a valid tender	(h) the form of a valid tender	(h) the form of a valid tender
(i) the tender submission methodology	(i) the tender submission methodology	(i) the tender submission methodology
(j) currency in which a tender is to be	(j) the currency in which a tender is to be	(j) the currency in which a tender is to be

submitted	be submitted	submitted
(k) tender validity period	(k) tender validity period	(k) tender validity period
(l) general information on complaints	(l) general information on complaints	(l) general information on complaints
(m) the payment terms, including any advance payment, stage payments, payment retentions and payment securities	(m) the payment terms, including any advance payment, stage payments, payment retentions and payment securities	(m) the payment terms, including any advance payments, interim or stage payments or payment retentions and the required payment securities
(n) the basis for fixed or variable prices, and the method for calculating variations in variable prices	(n) the basis for fixed or variable prices, and the method for calculating variations in variable prices	(n) the basis for fixed or variable prices, and the method for calculating variations in variable prices
(o) the method of payment	(o) the method of payment	(o) the method of payment
(p) the documentation required for payment	(p) the documentation required for payment;	(p) the documentation required for payment
(q) the required delivery terms and delivery period	(q) the duration, timing of inputs and completion schedule	(q) the schedule of execution of the works
(r) the award criteria including sub-criteria and weighing assigned	(r) the award criteria including sub-criteria and weighing assigned	(r) the award criteria including sub-criteria and weighing assigned
(s) the evaluation methodology	(s) the evaluation methodology	(s) the evaluation methodology
(t) any special requirements for packaging, marking and labelling	(t) the required deliverables or outputs	(t) the functions and authority of the CA's project manager
(u) any inspection or tests required	(u) any insurance requirements	(u) any inspection or tests required, and the test methods
(v) requirements relating to certification of conformity	(v) any other information, terms or conditions	(v) requirements relating to certification of conformity
(w) any insurance requirements		(w) any insurance requirements
(x) any required warranty		(x) any required warranty
(y) any other information, terms or conditions		(y) any other information, terms or conditions
A contract for supplies shall clearly indicate the scope of a provider's responsibilities under a contract, which shall include	A service contract shall state	A contract for works shall clearly indicate the scope of work and responsibility for design
(a) supply and delivery of supplies, in accordance with the specified INCOTERM;	(a) the ownership of all property purchased or used during implementation of the contract;	(a) the procedure for transfer of the completed works to a CA, including the transfer of title and the documentation of
(b) installation and commissioning of		

<p>supplies;</p> <p>(c) training in use, maintenance or repair of the supplies; or</p> <p>(d) provision of after-sales services, which may include the supply and delivery of consumables and spare parts and servicing, maintenance, repair, calibration and modification of equipment.</p>	<p>(b) the obligations of a provider in relation to the custody and care of property of the CA, being occupied or used during implementation of a contract;</p> <p>(c) arrangements for temporary handover and return of all property of a CA occupied or used during implementation of a contract; and</p> <p>(d) arrangements for the handover, if appropriate, of all property purchased during implementation of a contract</p>	<p>the transfer;</p> <p>(b) the ownership of the property on site during implementation of a contract;</p> <p>(c) the obligations of a provider in relation to the custody and care of property of a CA, occupied or used during implementation of a contract; and</p> <p>(d) arrangements for the temporary and final handover and return of all property of a CA, occupied or used during implementation of the contract.</p>
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It is prohibited to prepare the Tender Dossier in a manner that favours or discriminates against one or more of the potential Economic Operators

18.16 In line with the Article 31, Section 1 of the PPL, Contracting authorities can lay down special requirements concerning the manner in which the contract must be performed, provided that the requirements do not contravene the principles of Article 7 of PPL and are indicated in the tender dossier. Such requirements concerning performance of a contract have the purpose of ensuring a certain level of labour conditions or environmental protection.

18.17 Contracting Authorities may refer to conditions of the performance of the contract that concern employment protection and working conditions in force in Kosovo by law or regulation, provided that these conditions are indicated in the contract notice and included in the technical specifications.

18.18 The Contracting Authority may impose, among others, for example, specific condition in the contract which allow social objectives to be taken into account:

- a. the obligation to recruit unemployed persons, and in particular long-term unemployed persons, or
- b. to set up training programmes for the unemployed or for young people during the performance of the contract; or
- c. the obligation to implement, during the execution of the contract, measures that are designed to promote equality between men and women or ethnic or racial diversity; or
- d. the obligation to comply with the substance of the provisions of the ILO core conventions during the execution of the contract, in so far as these provisions have not already been implemented in national law.

18.19 A Contracting Authority may state in the contract documents the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force.

18.20 In line with Article 61 of the PPL, contracting authorities can reject abnormally low tenders where this is due, to non-compliance with employment or labour law rules.

18.21 By justifying the prices considered abnormally low by the Contracting Authority, as regulated in Article 61, the contracting authority can take into account such as the economy of the manufacturing process, technical solutions and exceptionally favourable conditions available to the tenderer. Elements relating to non-compliance with rules on safety, working conditions or employment can be taken into consideration to reject an abnormally low tender.

18.22 After taking into consideration the information and explanations provided by the tenderer, if the contracting authority concludes that the tenderer has provided a satisfactory explanation of the bases of its tender, the contracting authority shall treat such tender in the same manner as any other tender.

18.23 After taking into consideration the information and explanations provided by the tenderer, if the contracting authority concludes that the tender is abnormally low, the contracting authority shall reject the tender.

18.24 Tenders from tenderers who have not taken account of obligations on employment protection provisions and working conditions identified by the contracting authority in the contract documents cannot be considered as complying with the contract documents. Moreover, where tenderers have not taken sufficient account of these obligations in their tenders, their tenders might be considered as abnormally low and might be rejected for this reason.

18.25 In case the price offered by the Tenderer does not cover the minimum wages and salaries of the employees to be involved in the execution of the contract, regulated by Ministries in different sectors, the bid can be considered as abnormally low bid. By deciding the minimum wages and salaries to be paid to the employees, the Contracting Authorities and Tenderers have to respect the minimum requested salaries and corresponding taxes and social contributions published in the relevant sectors. The Contracting Authority might request information concerning the relevant applicable minimum salaries and wages from the economic operator during the evaluation of the justifications submitted by the economic operators.

18.26 The Contracting Authorities shall upon preparation of tendering materials including publications, tendering materials and contracts specify quantities.

18.27 In case of application of the framework contracts where quantities may not be precisely foreseen an estimate of quantities should be included. Such estimates may be based on earlier consumption corrected if needed for known variations. The quantities should as far as possible have an indication of delivery times.

18.28 Whenever the contracting authority does not know the indicative quantity, unit price contracts, the CA must determine weighting based on the importance of each "category of service" or "article" or "group items" so that the contracting authority can determine the bid with the lowest price on the basis of scoring, such as maintenance of vehicles, maintenance of generators etc.

18.29 Prices stated in tenders and subsequent prices in awarded contracts are fixed-prices and binding to the parties of the contract. Prices may not be changed during the duration of a contract; however long term contracts may contain possibilities of adjusting prices in accordance with the Paragraph 18.30 of this Section.

18.30 Contracts with a duration of more than one year may include a specific clause regarding adjustment of prices; however such adjustments must be index-linked to an official price-index settled authoritatively either in Kosovo or by other authorized international institutions. The price-index must be specified in the tender dossier.

19. Division of contracts into lots

19.1 The Contracting Authority may divide the procurement activity into **homogenous** or **heterogeneous** lots. In all cases, EOs shall be free to choose for how many and which parts to bid.

19.2 Whenever the CA divides the activity into lots, it shall specify in the Contract Notice or Tender Dossier whether EOs will be awarded:

- a) **all lots**; or
- b) a **certain number of lots**.

If the CA chooses **option (a)**, it shall award to the EO **all lots** for which it **ranked first**.

If the CA chooses **option (b)**, it shall specify in the Contract Notice and the Tender Dossier **the maximum number of lots** that may be awarded to a bidder. The CA shall also specify in the **Tender Dossier objective and non-discriminatory objectives or rules for awarding different lots**, where application for selection of award criteria would result in awarding to a bidder more lots than the maximum number.

Note: To encourage participation of small and medium enterprises (SME) in the national public procurement market, limitation of lots is preferred when there are many EOs and many SMEs.

*The following examples of objective and non-discriminatory criteria **are not the only criteria** and are not mandatory. The criteria may be chosen based on the Contracting Authority's needs and the object of contract.*

Example 1:

The object of contract is divided into **3 lots**.

The bidder may submit bids for all the lots.

The maximum number of lots that may be awarded to a single bidder is: **2 (two)**.

In case the bidder offers the lowest price in more than 2 lots, then he will be rewarded with a contract for lots offering the lowest possible price for the Contracting Authority and the remaining lot will be awarded to the second operator.

<u>Lot</u>	<u>EO 1</u>	<u>EO 2</u>
<u>1</u>	<u>190,000.00</u>	<u>200,000.00</u>
<u>2</u>	<u>225,000.00</u>	<u>250,000.00</u>
<u>3</u>	<u>175,000.00</u>	<u>200,000.00</u>

EO1 will be awarded Lots 2 and 3 (400,000.00), whereas EO2 will be awarded Lot 1 (200,000.00) because this is the best possible combination.

Example illustration:

Combination 1

	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
2	225,000	200,000	
3	175,000		
	400,000	200,000	600,000

Combination 2

	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
1	190,000	250,000	
3	175,000		
	365,000	250,000	615,000

Combination 3

	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
1	190,000	200,000	
2	225,000		
	415,000	200,000	615,000

19.3 Whenever the CA determines the minimum criteria for economic and financial situation or technical and professional capacity, *in cases where the number of lots to be rewarded to one EO is limited*, the CA should consider that the fulfillment of minimum requirements is the highest amount for the lots bid to by the EO.

Example 1: Financial situation and technical and professional requirements

Division into lots: 3 Lots

The bidder may submit bids for one or more lots.

The maximum number of lots that may be awarded to a bidder is: **1 (one)**.

If the bidder offers the lowest price in more than 1 Lot, he will be awarded a contract for the lot with the highest overall total value.

Economic and financial situation requirements

Requirement 1: The Economic Operator must provide satisfactory evidence to the CA that its annual turnover of the last three years (2013-2014-2015) amounted to, in aggregated form, no less than:

1. For lot 1, **300,000.00 Euros**
2. For lot 2, **200,000.00 Euros**
3. For lot 3, **100,000.00 Euros**

Evidence of economic and financial situation

Evidence 1: Annual Tax Statements submitted to the Tax Administration of Kosovo for the last three years (2013,2014,2015).

If the Economic Operator submits bids for 2 lots, it should meet the highest amount of financial turnover required for the lots to which it applies.

Note:

- ✓ *if the EO decides to bid for Lot 1 and 2, the minimum turnover requirement to be met by the EO is 300,000.00 Euros.*
- ✓ *if the EO decides to bid for Lot 2 and 3, the minimum turnover requirement to be met by the EO is 200,000.00 Euros.*
- ✓ *f the EO decides to bid for Lot 1, 2 and 3, the minimum turnover requirement to be met by the EO is 300,000.00 Euros.*

The same criterion shall apply to technical and/or professional capacity requirements.

19.4 Given the fact that the purpose of limiting the number of lots is to increase competition and, *in order to allow maximum access to public funds*, to divide the market among the large number of economic operators, this provision is only applicable when there are sufficient eligible bids to apply this rule. Where there are no sufficient eligible bids to reward all lots, the CA's interest reward all lots shall prevail. Thus, in the absence of other competitors, EO is awarded more lots than the maximum allowed number set by the CA.

Example:

Division into lots: **7 Lots**

Limitation of number of lots: **maximum 2 Lots.**

If 5 bids are received but only 2 are eligible, then **2 EOs are awarded 2 lots each (4 lots total)** according to the formula set out in the Tender Dossier, while the **3 other lots** are awarded to the EO who submitted the first ranking bid (lowest bid), even though it already has been awarded 2 lots

20. Technical Specifications

20.1 In compliance with article 27 and 28 of the PPL, the CA shall set forth in the tender dossier all technical specifications which any tender shall comply with.

20.2 If applicable, the CA shall set forth in the contract notice such technical specifications or provide a clear statement indicating where such technical specifications may be obtained.

20.3 The technical specifications shall describe and define, in a non-discriminating manner, the mandatory characteristics of the object of the contract, such as quality, performance, design requirements, dimensions, safety, quality assurance, terminology, symbols, testing and test methods, packaging, marking and labeling. The CA shall indicate whether the technical specifications set forth are obligatory or minimum requirements. The use of standards may include quality assurance standard as stated in Article 70 of the LPP.

20.4 The Specification / ToR shall be clear, unambiguous and precise and must not be unnecessarily restrictive, thereby unduly limiting competition. They must be defined so as to leave no doubt of the nature of the goods, works or services required.

As per the EU directives, the principle is spelled out as follows:

“Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.”

20.5 A technical specification shall, to the extent possible, be stated by reference to a widely recognised standard but it may as well be formulated in terms of performance or functional requirements. A CA may use the standards for certain characteristics and performance or functional requirements for other characteristics.

20.6 Reference to a recognized standard:

Hierarchy of Standards to be referred to when formulating technical specifications
(1) - a Kosovo standard implementing a European standard,
(2) - a European standard,
(3) - a European technical approval,
(4) - a common technical specification,
(5) - an international standard and/or
(6) - any other technical reference system produced by European standardisation bodies.

Re (1): Kosovo Standardization Agency is implementing European standards in Kosovo.

Re (2): European standards are approved by the European Committee for Standardization (CEN), www.cenorm.be, and the European Committee for Electro-technical Standardization (CENELEC), www.cenelec.org.

Re (3): European technical approvals (the building sector) are issued by approval bodies in the EU Member States on the basis of common “essential requirements”.

Re (4): A common technical specification means a technical specification established according to an EU procedure.

Re (5): International standards are for instance ISO, www.iso.org, ASTM, www.astm.org etc.

Re (6): Any other reference produced by European bodies.

20.7 If an applicable standard does not exist or such standards would not be efficient to apply from technical or economic reasons – the CA may refer to:

- a Kosovo standard, or
- a Kosovo technical approval.

20.8 Establishing a technical specification that refers to a specific make or source, or a particular process, or to trademarks, patents, types or a specific origin or production, is as a general rule prohibited. However, such reference may be used exceptionally, if such reference is accompanied by the words “or equivalent”.

20.9 If a contract is to be awarded to the most economically advantageous tender, the CA’s may authorise tenderers to submit variants. The CA shall state the minimum requirements to be met by the variants and only variants meeting the minimum requirements shall be taken into consideration.

The technical specifications are mandatory requirements, which all tenders must comply with in order to be responsive.

In some cases, the CA may specify desirable functions, performance etc. and let such specifications be included in the criteria, on which the tenders are evaluated (competition parameters). This means that such desirable functions may be established as sub-criteria (“functional characteristics”) for the most economically advantageous tender.

A responsive tender, thus, must meet all mandatory requirements, while desirable functions balance the price and other characteristics of the tender. A clear distinction between mandatory requirements and desirable functions must be observed by the CA.

20.10 Technical Specifications for works contracts shall determine the exact nature and performance characteristics of the required works. Technical Specifications shall include, as a substantial part of it, an Executive Project. Technical Specifications for works contracts shall be prepared in full compliance with the specific legislation in force in the Republic of Kosovo as well as, where required, the rules laid down in the administrative certificates and permission(s) required for the works to be executed.

20.11 Provided article 28 of the Public Procurement Law, Technical Specifications for works contracts shall indicate, where applicable:

- a) reference to the acts of national legislation which shall be complied with, certificates and administrative authorizations for the execution of the works as required by legislative acts, or, alternatively, exemptions or deviation permissions;

- b) general description of the site and/or the building (location, size, quantity of the parts of buildings, structural elements, built-in installations, etc.) and the site/building intended scope;
- c) scope of the works activity (construction of a new building/site, reconstruction, extension, demolition, modernization, restructuring etc.) and a detailed description of the intended technical solutions, making reference to the Executive Project in a way that allows identification thereof;
- d) a detailed description of the construction techniques, equipments and materials to be used, with the indication of possible alternatives and equivalent technical solutions, making reference to the Executive Project in a way that allows identification thereof;
- e) environmental and social standards;
- f) accessibility criteria for people with disabilities;
- g) quality levels and procedures relating to determine quality assurance;
- h) test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Contracting Authority may require under general or specific regulations in relation to the finished works and to the constituent materials or parts.
- i) conditions for installation, maintenance and after-sales service/works.
- j) work safety and security measures, including terminology, symbols, test methods and their implementation plan;
- k) starting date and completion date of the works;
- l) indication about the cost (unit price/lump sum)
- m) any other specific circumstances which may substantially affect the execution of the works

20.12 Given the technical complexity of some works contracts, preparation of the Technical Specifications may require the assistance of one or more external technical specialist(s). In such case, contracting authorities shall require the selected specialist to sign a Declaration of objectivity and confidentiality.

20.13 The Executive Project is the graphic design of all the administrative and engineering processes of the required works as described in the Technical Specifications and, therefore, sets forth, and in any particular, architectural, structural and plants of the works to be executed. The Contracting Authority is responsible for drawing up the Executive Project which shall be mandatorily attached (also on electronic devices) to the Technical Specifications, which are part of the Tender Documentations. No Contracting Authority is allowed to issue Tender Documentation without attaching the detailed project description.

20.14 The Executive Project shall include, where possible, the following:

- a) site plan(s), which shall include the graphic representation of the construction site, the existing, remaining and planned buildings and the buildings to be demolished, the vegetation, the determinant measures as well as an outline of the connections between the site and/or buildings and the energy network and connection to public utilities system thereof
- b) general plans and floor plans, vertical and horizontal sections, longitudinal sections, cross sections, views, etc. on the basis of which the buildings and its parts, spatial location, measures, structures, materials, installations, etc. may be determined, the quantities may be checked and the implementation plans may be prepared.

21. Time limits

20.1 To determine the time limits, the CAs should take into account the complexity of the contract and the time required for the preparation of tenders. In other words, the CAs are not allowed to set time limits which are shorter than those stated by the Law (minimum time limits) but they are free to set longer time limits so as to give the interested EOs the necessary time in preparing their offers.

Note: The time limits shall be calculated on the date of publication of the contract notice or on the date when all invitations to submit a tender are sent.

Normal time limits

	Procedures		
	Open	Restricted	Competitive Negotiated
Large Value	40 days	20 days receipt of requests 40 days receipt of tenders	10 days receipt of requests 20 days receipt of tenders
Medium Value	20 days	15 days receipt of requests 20 days receipt of tenders	10 days receipt of requests 20 days receipt of tenders
Low Value	5 days	/	/
Minimal value	1 day	/	/

If Indicative notice*

	Procedures	
	Open	Restricted
Large Value	24 days	20 days receipt of requests 24 days receipt of tenders

* only if the date of the publication of the Indicative notice occurred no less than 40 days and no more than 12 months prior to the date of publication.

Accelerated time limits

	Procedures	
	Open	Restricted
Large Value	15 days	15 days receipt of requests 10 days receipt of tenders
Medium Value	10 days	15 days receipt of requests 10 days receipt of tenders

22. Publication

22.1 This is the fifth step in the procurement process.

22.2 Publication is one of the main constituents of transparency. By publishing you inform the potential EOs on the upcoming public contracts or design contests and on the results of the procurement activities or design contests.

22.3 There are 7 types of notices:

- a. Indicative notice;
- b. Contract notice;
- c. Contract Award Notice;
- d. Cancellation Notice;
- e. Cancellation Notice of Contract Award;
- f. Notice for additional information or Corrigendum
- g. Contract signing Notice

a. Indicative Notice - Refer to Section 6 of these rules and operational guideline.

b. Contract Notice

- When a CA intends to conduct a procurement activity using the open, restricted, price quotation or competitive negotiated procedure or it intends to conduct a design contest the PO shall prepare the Contract Notice/Design Contest Notice, regardless of the type or of the estimated value.
- CAs which have started the use of the electronic platform must publish contract notices in the electronic procurement system in Kosovo, apart for the notices which are required for price quotation which must be submitted to the PPRC, until another decision is issued by PPRC. In order to increase transparency, CA's may publish Contract Notices also on the CA website.
- Contract Notice/Design Contest Notice must be drawn up in accordance with the standard forms approved by PPRC.
- The contract notice for low and medium value contracts shall be prepared in the Albanian and Serbian languages, whereas for large values contracts the contact notice shall be prepared in Albanian, Serbian and English version.
- The contract notice – and its content – shall be held confidential, until it is published, as all interested EOs shall have the information at the same time.

- The CA shall specify in the Contract Notice the deadline for the receipt of the requests for the tender dossier by interested EO. The time limit set for such request shall:
 - a. allow interested EO reasonable period of time to prepare and send their requests for clarification; and
 - b. leave interested EO reasonable period of time to prepare and submit their tender.
 This provision shall not apply in case of use of the electronic platform.

c. Contract Award Notice

- If a CA has awarded any public contract using the open, restricted, competitive negotiated, negotiated without the publication or price quotation procedure or has held a design contest the PO, within 2 days after the award, shall prepare the Contract Award Notice/Design Contest Result Notice regardless of the type or of the estimated value.
- CAs which have started the use of the electronic platform must publish contract award notices in the electronic procurement system in Kosovo, apart for the contract award notices which are required for price quotation which must be submitted to the PPRC, until another decision is issued by PPRC.
- Contracting authority shall, together with the contract award notice, submit to PPRC a copy of the Statement of Needs and Availability of Funds for the awarded contract. This provision does not apply for the procurement activities conducted by the Central Procurement Agency in accordance with article 95. CA have started the use of the electronic platform should upload the SNDAF at electronic procurement system in Kosovo.
- Publication of such notice is not required for minimal value contracts.
- The Contract Award Notice /Design Contest Result Notice must be drawn up in accordance with the standard forms approved by PPRC.
- The contract award notice for low and medium value contracts shall be prepared in the Albanian and Serbian languages whereas for large values contracts the contact award notice shall be prepared in Albanian, Serbian and English version.

The date of the publication of the contract award or the design contest result constitutes:

- a. The date of the conclusion of the procurement activity.
- b. All information relating to the procurement activity (apart from confidential business information) are open to the public access.

The date of the publication is “day 0” of the obligatory 5-days “stand-still” period.

If the contract award notice is published on Friday, the deadline for filing the complains begins on Friday because:

- Friday is a business day
- In accordance with Article 4, paragraph 4.2 of the Rules for the filing of complaints, the date of notification is "day 0" of 5 days
- In accordance with Article 4, paragraph 4.2 of the Rules for the filing of complaints, the date of publication should be the same with the date when the CA notifies the OE, and in case of inconsistency of dates, the date when the EO was notified prevails.

This Means:

- a. if the contracting authority officially notifies the EO on Friday the deadline for filing the complaint begins on Friday (day 0 of 5 days), while
- b. if the contracting authority fails to officially notify the EO on Friday the deadline for filing the complaint begins on Monday.

d.Cancellation Notice - Refer to Section 44 of these rules and operational guideline.

e.Cancellation Notice of Contract Award - Refer to Section 44 of these rules and operational guideline.

f.Notice for additional information or Corrigendum

- If a CA provides additional information for economic operators or corrects an error or extends the deadline of submission of tenders, while conducting a procurement activity through an open, restricted, competitive negotiation or price quotation procedure, the PO shall prepare a Notice for additional information, by using the standard form approved by the PPRC B54.
- CAs which have started the use of the electronic platform must publish all notices for additional information in the electronic procurement system in Kosovo, apart for the notices for price quotation which must be submitted to the PPRC, until another decision is issued by PPRC.
- Notices for additional information for low and medium value contracts shall be prepared in the Albanian and Serbian languages whereas for large values contracts the notice shall be prepared in Albanian, Serbian and English version.
- Should any corrected or added information lead to a substantial change of the conditions provided for in the original contract notice and the PO determines that there is a substantial change of the conditions the PO must cancel the procurement activity and to re-launch the same if there is still interest to continue with the same procurement activity.

g.Contract signing notice

- If the contracting authority has signed a public contract using open, restricted, competitive negotiated, negotiated without publication, price quotation procedures, or minimal value procedures within two (2) days after signing the PO prepares a contract signing notice regardless of the type or of the value.

- Contract signing notice shall be prepared by using the standard form approved by the PPRC B5.
- Contract signing notice for low and medium value contracts shall be prepared in the Albanian and Serbian languages whereas for large values contracts the Contract signing notice shall be prepared in Albanian, Serbian and English version.
- CAs which have started the use of the electronic platform must publish Contract signing notice in the electronic procurement system in Kosovo, apart for the contract signing notice which are required for price quotation which must be submitted to the PPRC, until another decision is issued by PPRC.

All notices have to be completed in a manner that makes it possible for the EOs to understand the intentions of the CA, which means that all relevant information must be given.

23. Issue of Tender/Prequalification documents

23.1 The CA shall issue the Tender Documents (TD) or the Prequalification Documents (PD), free of charge, to any EO requesting the TD/PD.

23.2 The CA may request a payment fee in cases where the price of production of tender material is regarded as exceptional expensive i.e. the TD contains models or large number of technical prints. This fee may not exceed the production costs of such material.

23.3 Responses to the EO requests must be issued by the CA without delay and in any event within a maximum of:

If Time limit for the receipt is	Not later than
More than 30 days	6 days of such request
More than 20 days but less than 30	4 days of such request
Less than 20 days	3 days of such request

23.4 In case of use of the electronic platform, provisions from 23.1-23.3 do not apply.

23.5 In restricted and competitive negotiated procedures the CA shall simultaneously dispatch the Invitation to tender, including the tender dossier, to all selected candidates.

23.6 Delivery of the tender dossiers/prequalification documents must be performed by electronic means through the Kosovo e-Procurement System website.

23.7 CA uploads prepared Tender Dossier and eventual additional documents. The e-Procurement System limits the number and size of files that together form the Tender Dossier.

23.8 Should there be a need that tender dossier contains more attachments or attachments larger than allowed by the limits of the e-Procurement System, CA could distribute these additional files using some other means, such as commercial online large file download facility or physical distribution. Instructions for access to these additional files must be provided

through the basic part of tender dossier that is available through e-Procurement System. EO must not bear the cost of distribution of such additional files.

23.9 For each procurement activity, the CA shall produce a register of the EOs who received the TD/PD, using the approved standard form by PPRC “Register of EO that have received the TD/PD” B13. In case of use of the electronic platform, this provision does not apply.

24. Publication of Contract Notices at Kosovo e-Procurement System

24.1 To start the publication of the Contract Notice, CA must enter the title of the procurement activity, the internal procurement number (number of procurement under which the contracting authority conducting the proceeding), identity of the CA, contact details of the person responsible for the procurement, short description of the contract or purchase, type of the procurement and the main place of delivery of goods or performance of services/works. While the system will automatically generate a number.

24.2 Object of the contract is described using Common Procurement Vocabulary (CPV). (CPV) is the reference nomenclature applicable to public procurement procedures, while ensuring equivalence with the other existing nomenclatures. If the object of the procurement is divided into groups, information about CPV for all groups is needed.

24.3 Proofs of the eligibility and the qualification of the Tenderers are defined according to the Tender Dossier. Proofs could relate to the:

- Eligibility Requirements
- Professional suitability
- Economic and Financial standing
- Technical and/or professional capability

24.4 Criteria for award can be the "Lowest price" or "Economically most advantageous tender". For each Lot award criteria can be different. If the option which is selected is "Economically most advantageous offer" the sub-criteria shall be set out in the contract notice.

24.5 “Validity period of tender submission“ refers to an open procedure. “Validity period for the request for participation“ refers to a restricted procedure, Negotiated Procedure and Competitive negotiated procedure. The system prevents the tender submission after the expiry of the period.

24.6 Two Authorized representatives of the Contracting Authority and two deputies should be nominated through the system. Authorized representatives of the Contracting Authority are users that are in charge of the implementation of the opening procedure and must be the registered as users in the system. Deputies of authorized representatives of the Contracting Authority are users (it is not necessary to choose them) who will actively participate in the further process of public procurement in the case of absence of authorized representatives, that is "Force majeure".

24.7 During the preparation process, the e-Procurement System creates two types of keys for encrypting and decrypting electronic offer on the public tender opening: a public and a private

key. The public key is used to encrypt the tenders, while the private key (XML file) is sent via e-mail to the authorized representative of the Contracting Authority to the e-mail address under which he is registered in the system.

24.8 Authorized representatives of the Contracting Authority and their deputies receive private keys (XML files) by which they start the procedure of public opening of tenders after the deadline for submission of tenders. The keys must be stored in the safe and secure place, because without them it is not possible to start the public tender opening.

24.9 Bill of quantities are submitted separately from the tender dossier. In case of procurement divided into groups, for each group there should be a separate bill of quantities document attached.

24.10 Standardized bill of quantities is bill of quantities that is generated from the system and contains predefined elements of the bill of quantities. This template (bill of quantities) is downloaded on the website of the Electronic Public Procurement in Kosovo. Standardized bill of quantities is generated in standardized Excel format or this list may be completed directly through the system or in case this list does not satisfy the CA needs, the CA may produce another list. After the completion/upload - the standard bill of quantities is transformed into a format of a bill of quantities that is adjusted to the tenderers, with locked fields defined by the contracting authority and with marked fields for tenderers to fill:

- Unit price
- VAT rate
- Manufacturers name
- Tenderer Note

24.11 After checking the validity of data, if everything is entered correctly, the form of publication is sent for publication. The system submits a certificate of successful delivery to the users e-mail address and to "Inbox" of Electronic Public Procurement System. The next business day (when the notice is published) system also sends a confirmation of the successful publication.

24.12 If the user doesn't have the appropriate user role to send for publication, release form is sent to the approval, by selecting the "Send for approval". In this case the administrator of the CA, after checking the data, sends the publication form to publication.

24.13. If errors are noticed after sending for publication, and before 18:00 pm, it is possible to change the data. By modifying data in appropriate steps, the previously created template is automatically deleted and sending is suspended. It is therefore important to repeat the process of creating and sending! Otherwise the notice will not be sent for publication!

24.14 If errors are noticed after the tender has been published or after the publication deadline, (18:00) correction procedure must be used to correct the errors.

25. Provision of additional or clarifying information and Time Extensions

25.1 An EO, in writing, may request additional or clarifying information on the tendering documents. A standard form “Request for additional information” for such request shall be included in the annexes to the tender dossier.

25.2 Such a written request should be sent by electronic means and shall be received by the CA within the time limits specified in the TD. If a request for clarification is received after the designated last day for clarifications the request may be rejected and the EO shall be informed of the reason. A request submitted after the deadline for clarification can be reviewed and if it is deemed in the interest of the CA, the same can be accepted.

25.3 The CA shall set in the TD the time limits for the receipt of such requests as follows:

If Time limit for the receipt of tenders is	Not less than
≥ 40 days	20 days prior to the receipt of the tenders
≥ 30 days but < 40 days	15 days prior to the receipt of the tenders
≥ 20 days but < 30 days	10 days prior to the receipt of the tenders
≥ 5 days but < 20 days	3 days prior to the receipt of the tenders

25.4 The CA shall immediately review such a request and determine whether additional information is needed or not.

- If not, the CA shall immediately inform, in writing, the concerned EO about the denial.
- If yes, the CA shall immediately provide additional information, in writing, to all EOs who collected the tendering documents, but must not reveal the source of the enquiry.

25.5 If, during an open, restricted or competitive negotiated procedure, additional or clarifying information are provided to the EOs, and the date on which such information is provided is less than ten (10) days from the deadline of the tender submission, the CA shall extend the deadline to give the EO at least 10 days for the tender submission and accordingly send the notification to all EO who received the TD.

25.6 If, during a price quotation procedure, additional or clarifying information are provided are provided to the EOs, and the date on which such information is provided is less than three (3) days from the deadline of the tender submission, the CA shall extend the deadline to give the EO at least 3 days for the tender submission and accordingly send the notification to all EO

who received the TD.

25.7 If before the deadline for submission of tenders, it becomes necessary by the CA to amend the TD, the changes to the TD shall be in the form of an corrigendum, and shall be published on the electronic platform/ issued to all EO who collected the TD and accordingly, as under section 25.5 and 25.6 above, the deadline for the tender submission shall be extended. (Examples: changes in technical specifications). Also, if there are changes in the information published in the contract notice (deadline for submission of tender, the criteria for selection etc.) the CA shall prepare and publish a Notice for additional information by using the standard form B54 and also send such notice to all EO that have received DT.

25.8 If it comes to the suspension of the procedure, the system user (RPO) must upload the decision for suspension so that the system automatically subsequent economic operators to submit their bids until a decision on the appeal.

25.9 If the procedure has been cancelled during the tender submission phase, all the eventually received offers must be deleted and made unavailable to the CA.

26. Selection Criteria

26.1 According to article 56 of the PPL, An EO shall be deemed to be qualified to participate in a procurement activity if:

- 1) Such EO proves to be eligible, according to article 65 of the PPL by providing the requested documentary evidence requested by the CA; and
- 2) Such EO, in the event the CA has established minimum qualification requirements, meets such requirements and provides the requested documentary evidence requested by the CA according to article 64-69 of the PPL.

The first group, eligibility requirements, shall always be met by the EO.

The second group, minimum qualification requirements, may be established by the CA where the CA deems it necessary to ensure, that only EO possessing certain professional, financial or technical abilities participate in the competition on the contract.

26.2 “Eligibility criteria” and “minimum qualification requirements” together are characterised as “Selection criteria”. Selection Criteria are requirements that an EO shall meet in order to be considered qualified to be awarded a public contract.

26.3 The Selection criteria shall be clearly specified in the contract notice and in the tender dossier, as well as, any and all documents or other information that an interested EO is required to submit with its tender or with its request to be pre-qualified in a restricted or competitive negotiated procedure in order to be considered qualified.

All minimum qualification requirements shall be both directly relevant and proportionate to the object of the concerned contract.

26.4 When establishing minimum qualification requirements, the CA shall pay due attention to the development of new EOs and formulate the minimum qualification requirements in a way that does not exclude new-established EOs which possess a reasonably sufficient economic,

financial and/or technical capability. "Reasonably sufficient" shall be understood in connection with:

- i. the estimated value of the contract, and
- ii. fair use of public funds.

26.5 Selection criteria:

- a. in no way may be used as award criteria's;
- b. cannot be given weights;
- c. they are either Pass/Fail requirement

EITHER

The requirements are fulfilled and the tenders submitted by such tenderers are still in consideration,

OR

The requirements are not fulfilled and the tenders submitted by such tenderers shall immediately be rejected.

26.6 A contracting authority shall accept the following as sufficient evidence that none of the cases specified in Articles 65 of the PPL applies to economic operators participating in a procurement activity or in the performance of any public contract:

- 1.1 as regards Article 65, paragraphs 1.1 and 1.2 of the PPL, under oath declaration signed by the concerned economic operator;
- 1.2 as regards Article 65, paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2 and 4.4 of the PPL, an extract from the "judicial record" or, failing that, an equivalent document issued by a competent judicial or administrative authority of the economic operator's country of establishment;
- 1.3 as regards Article 65, paragraphs 4.8, for the social security, and 4.9 of the PPL, a certificate issued by the competent authority or public operator attesting that such situation does not exist.
- 1.4 as regards Article 65, paragraphs 4.8 of the PPL, for tax contribution a proof issued by Tax administration of place of establishment of economic operator.

26.7 In the event, economic operators are required by the contracting authority to submit documentary evidence of professional suitability as mentioned in Article 66 of the PPL, an economic operator shall submit a copy of certificate, confirmed from the competent administrative body responsible for attesting professional suitability or licenses.

26.8 The table below presents the Selection criteria which may be used by the CA:

Selection Criteria			
	Concern	Requirement	Documentary evidence
Eligibility Requirements	1. Honesty - Avoidance of “conflict of interest”	<ul style="list-style-type: none"> a. No personnel of the EO may participate in preparation of the tender dossier b. No personnel of the EO may receive assistance in preparation of its tender from the personnel of the CA preparing the tender dossier c. No personnel of the EO may be in any case in a conflict of interest, as described in Article 4, paragraph 1.75 	<ul style="list-style-type: none"> a. Signed Declaration Under Oath b. Signed Declaration Under Oath c. Signed Declaration Under Oath
	2. Truthfulness - Ensuring honest behaviour of the	<ul style="list-style-type: none"> a. Not found guilty by a court for corrupt practices b. Not declared ineligible where the CA finds this constitute grave professional 	<ul style="list-style-type: none"> a. a proof issued by a competent judicial or administrative authority of the tenderer’s country of establishment b. a proof issued by a competent judicial or administrative authority of the tenderer’s country of establishment

	EOs or their executives the last 10 years	<p>misconduct verified by a competent court</p> <p>c. Not found guilty by a court for participation in the activities of a criminal organization</p> <p>d. Not found guilty by a court for committing an act of fraud or the equivalent</p> <p>e. Not found guilty by a court, administrative agency or organization responsible for enforcing standards of professional conduct, for unprofessional conduct</p> <p>f. Not determined by a court to have made serious misrepresentations</p>	<p>c. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>d. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>e. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>f. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p>
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	<p>3. Economic sincerity - Ensuring reliability of the EOs</p>	<p>a. Not adjudged by a court to be bankrupt or insolvent the last 2 years</p> <p>b. Not being wound up or administered by a court</p> <p>c. Not having an arrangement with its creditors on the basis of previously insolvency</p> <p>d. No situation analogous to a, b or c.</p> <p>e. Not currently lost its right to dispose of its property</p> <p>f. Not currently subject of proceedings that may result in e., if that also may result in bankruptcy</p> <p>g. Not adjudged by a court to have seriously breached a public contract the last 3 years</p> <p>h. Not delinquent in</p>	<p>a. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>b. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>c. Signed Declaration Under Oath</p> <p>d. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment</p> <p>e. Signed Declaration Under Oath</p> <p>f. Signed Declaration Under Oath</p> <p>g. Signed Declaration Under Oath</p> <p>h. In regard to taxes a proof issued by Tax administration of place of establishment</p>
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		<p>payment of social security contributions or in payment of taxes</p> <p>i. Not delinquent, for more than 90 days, in payment of wages to the employees or to the Public Service Operators in Kosovo</p> <p>j. Has not yet complied with an order issued by the court</p> <p>k. has made false statements in relation to the procedure for the award of a public contract, if these are related to the lack of grounds for disqualification, or the fulfilment of the selection criteria</p> <p>l. has not been disqualified from participation by the PRB</p>	<p>that the EO is not delinquent in the payment of taxes at least until the last quarter of the year; and in regard to social security a certificate issued by the competent authority or public operator attesting that such situation does not exist.</p> <p>i. a certificate issued by the competent authority or public operator attesting that such situation does not exist</p> <p>j. Signed Declaration Under Oath</p> <p>k. Signed Declaration Under Oath</p> <p>l. Signed Declaration Under Oath</p>
		<p>a. EO Business Registration in the</p>	<p>a. Evidence or a copy of business certificate</p>

Minimum Qualification Requirements	1. Professional suitability	EO's country of establishment evidencing the EO's registration in professional, commercial and/or corporate register b. Authorization or license or membership in a particular organisation for the professional services issued by a public authority	b. a copy of authorization/license/evidence of membership or a declaration under oath that no such requirement exists in their country
	2. Economic and financial standing	a. Minimum economical/financial standing requirement	a. appropriate statement or statements from one or more banks; or b. evidence of a relevant policy of insurance issued by a reputable licensed insurance company; or c. certified copies of one or more balance sheets or extracts from balance sheets if publication of such balance sheets is required under the law of the economic operator's country of establishment ; or d. copies of financial reports and management reports, certified by a known and licensed firm to examine or an independent licensed auditor; or e. Annual Tax Statements submitted to the Tax Administration of Kosovo

	<p>3. Technical and/or professional capability</p>	<p>In case of a contract on delivery of <u>products</u>:</p> <p>a. Minimum value of on previous deliveries the last 3 years</p> <p>b. Minimum technical facilities requirements</p> <p>c. Minimum requirements for quality assurance measures</p> <p>d. Required research and development facilities</p> <p>e. Minimum number of technicians or technical bodies involved, especially as to quality control</p> <p>f. Samples, descriptions, photos etc.</p> <p>g. Certificates on the products' conformity with specifications or standards</p> <p>h. Inspection, in case of</p>	<p>a. A list specifying the EO's relevant principal deliveries specifying: the products involved; contract amount; date and recipient /acceptance certificate</p> <p>b. Description of EO technical facilities</p> <p>c. Description of quality assurance organisation and measures</p> <p>d. Description of research and development facilities</p> <p>e. Indication of the technicians or technical bodies involved and their CV's</p> <p>f. Product samples, descriptions, graphic representations and/or photographs of the products to be supplied</p> <p>g. Copy of Certification</p>
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		<p>complex or special purpose products</p> <p>In case of a contract on provision of <u>services</u>:</p> <p>a. Minimum educational and professional qualifications of the managerial staff</p> <p>b. Minimum value of on previous performing the last 3 years</p> <p>c. Minimum number and qualification requirements of technicians or technical bodies involved, especially as to quality control</p> <p>d. Minimum average manpower and average number of managerial staff for each of the last 3 years</p> <p>e. Tools, plant or technical equipment minimum requirement</p> <p>f. Minimum</p>	<p>a. List of educational and professional qualifications and their CV's</p> <p>b. A list specifying the EO's relevant principal performance specifying: the services involved; contract amount; date and recipient /acceptance certificate</p> <p>c. Indication of the technicians or technical bodies involved and their CV's</p> <p>d. A statement of the EO's average manpower and average number of managerial staff for each of the last 3 years</p> <p>e. A statement of the tools, plant or technical equipment available to the tenderer for carrying out the services</p>
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		<p>requirements for quality assurance measures</p> <p>g. Required research and development facilities</p> <p>h. Elements intended for sub-contracting</p> <p>i. Other appropriate and relevant information</p> <p>j. Inspection, in case of complex or special purpose services</p> <p><u>In case of a contract on execution of works projects or the performance of construction activities:</u></p> <p>a. Educational and professional qualifications of managerial staff</p> <p>b. Minimum value of on previous works projects and construction activities the last 3 years</p>	<p>f. Description of quality assurance organisation and measures</p> <p>g. Description of research and development facilities</p> <p>h. an indication of the elements of the concerned contract that the tenderer intends to subcontract</p> <p>a. The educational and professional qualifications of the EO's managerial staff and their CV's</p> <p>b. A list specifying each of the EO's works projects and construction activities carried out by the EO in the past 3 years accompanied by certificates of satisfactory execution indicating value, date and nature and site of the works project and/or construction activities /acceptance certificate</p>
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		<p>c. Tools, plant and technical equipment minimum requirement</p> <p>d. Minimum average manpower and average number of managerial staff for each of the last 3 years</p> <p>e. Minimum number of technicians employed</p> <p>f. Other appropriate and relevant information</p>	<p>c. A statement of the tools, plant or technical equipment available to the EO for executing the works project</p> <p>d. A statement of the tenderer's average manpower and average number of managerial staff for each of the last three years</p> <p>e. Indication of the technicians or technical bodies involved</p>
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Note to the economic and financial standing requirements of (Article 68 of LPP)

- The aim of the Economic and Financial Selection criteria is to select companies who are capable to perform certain contract. Economic operators shall, as a general rule, be permitted to satisfy such a requirement by submitting, as may be relevant and appropriate, one or more of the following references:
 - 1) appropriate statement or statements from one or more banks; or
 - 2) evidence of a relevant policy of insurance issued by a reputable licensed insurance company; or
 - 3) certified copies of one or more balance sheets or extracts from balance sheets if publication of such balance sheets is required under the law of the economic operator's country of establishment ; or
 - 4) copies of financial reports and management reports, certified by a known and licensed firm to examine or an independent licensed auditor; or
 - 5) Annual Tax Statements submitted to the Tax Administration of Kosovo

1) appropriate statement or statements from one or more banks;

In case of large value contracts, when the economic operator has to finance the contract implementation, it is useful to ask certain amount of liquid money or same amount of promissory note for credit. It can ensure that either the economic operator will get credit from the bank if needed, or the company has cash is able to implement the contract without credit.

Furthermore, bank can certify that the economic operator is paying its credit redemption regularly without delay, which is also a surety that the economic operator has, solid financial background.

~~Requirement 1. The economic operator shall have in the last 3 years (2011 2012 2013) not less 500,000 Euro income as the average of the 3 years.~~

~~Evidence 1. Bank statement about the company's annual income.~~

Good example:

Requirement 1. The economic operator shall have at least 500,000 Euro liquid financial assets (for example on the bank account) or at least 500,000 EUR available credit promissory note.

Evidence 1. Statement from the bank certifying the availability of 500,000 EUR on the company's bank account or a bank statement (promissory note) confirming the company can receive 500,000 EUR credit if needed. The date of the bank statement cannot be earlier then the date of publication of the contract notice.

2. “evidence of a relevant policy of insurance issued by a reputable licensed insurance company”

The insurance company can only issue the insurance policy certifying that documentation that the economic operator has a valid insurance for a certain purpose (eg. product, liability), insurance amount and period of validity.

The Insurance Company has no other role and cannot proof anything about bank accounts, revenues, balance sheets.

Fields where it does have sense to ensure the services by insurance policy: construction works, design and supervision services, travel services. It is also important to stipulate the number of damage and value of damage to be covered by the insurance policy.

3. “certified copies of one or more balance sheets or extracts from balance sheets if publication of such balance sheets is required under the law of the economic operator's country of establishment”

A balance sheet is a snapshot of the company's financial position at a single point in time, in most cases at the end of business year. A balance sheet summarizes a company's assets, liabilities and shareholders' equity at a specific point in time. These three balance sheet segments give an idea as to what the company owns and owes, as well as the amount invested by the shareholders.

4. “copies of financial reports and management reports, certified by a known and licensed firm to examine or an independent licensed auditor”

Audited Accounts can only be required 3 years back. If a company only is for instance two years old the company cannot be rejected due to only two years audited accounts.

In determining the minimum turnover, contracting authorities shall not exceed two times the estimated contract value. The turnover requirement shall be expressed mandatorily in figures and shall refer maximum to the past three concluded financial years from the contract notice publication date. Such financial years shall be expressly indicated in the contract notice or in the invitation to tender or participate. Where in addition to the minimum turnover, a certain minimum turnover in the specific area covered by the contract is required, such turnover shall not exceed 1.50 times the estimated value of the contract.

5. Annual Tax Statements submitted to the Tax Administration of Kosovo

Requirement: The EO must provide satisfactory evidence that the OE's annual turnover during the last 3 years (2014, 2015 and 2016) has been in value, together in three years, of not less than: 500,000 Euro.

Evidence: annual tax declaration submitted in KTA for the last three years (2014, 2015, 2016)

Note: The financial requirement is a minimal condition for qualification. It means that all the tenders fulfilling that minimal requirement will be admitted to participate to the tender, having no relevance how much the requirement is superior to the minimum as required

In a specific case when the economic requirement refers to an aggregate turnover of 3.000.000 Euro in the last three year, and the economic operator fulfills the requirement with the turnover in only two year or one year , it is considered that the EO fulfils the requirement. The minimal condition is fulfilled simply by proving an aggregate turnover of 3.000.000 in three year, with no importance how this turnover is shared in the three years.

If the tender documents impose a minimal requirement for each year (for example 1.000.000 Euro for 2013, 1.000.000 euro for 2014 and 1.000.000 euro for 2015), this requirement imposes the economic operator to submit evidence of his turnover for each year. In

this case, the economic operator having a turnover of 3.000.000 euro in two years and no turnover in the third year (or less than 1.1.1 euro as required in the tender notice for each year) should be excluded because not fulfilling the conditions imposed for the economic requirement.

Note to the technical and professional capability of (Article 69 of LPP)

In accordance with the public procurement law, the CA may ask OE a list of projects completed in the past 3 years. This list should be attached as evidence:

- (i) where the delivery was made to a public authority in Kosovo or elsewhere, evidence of such delivery shall be a copy of the relevant certificate(s) issued or countersigned by such public authority;
- (ii) where the delivery was to a private purchaser, evidence of such delivery shall be a copy of any document executed by the purchaser and evidencing such delivery;

Note on documentary evidence:

- The historical time period of the documentary evidence under eligibility requirements is calculated from the date of the publication of the Contract Notice or in the case of negotiated procedures without the contract notice, the date when the invitation to participate is sent.
- In cases where the issue of documents or certificates, under eligibility or professional suitability requirements are not obtainable for objective reasons, or where these documents do not cover all cases for which the evidence has to be produced, a written under oath declaration made by the EO may be accepted as sufficient evidence. Notwithstanding Article 65 and 66 of the PPL, in all cases, the submitting economic operator shall be required to acknowledge the possibility of criminal and civil sanctions, penalties and damages, if such economic operator intentionally or negligently submits any document, declaration or statement containing materially false or misleading information.
- Proof regarding eligibility requirements (apart from eh Declaration under Oath) shall be requested to be submitted by the tenderer whom the contracting authority intends to award the contract. These documents must be submitted by the tenderer prior to the publication of the contract award. Failure to submit such documents, its tender will be rejected and the CA shall proceed with the second ranked tenderer, and the tender security will be confiscated, if it had been required, and the CA will initiate the procedure for disqualification in accordance with Article 99.2 of the PPL.

- In case of a restricted or competitive negotiated procedure, proof regarding eligibility requirements shall be requested to be submitted by the applicants whom the contracting authority intends to invite to tender (short-listed). These documents must be submitted by the Applicants prior to the Contracting Authority's final prequalification decision. Deadline for submitting the documentation mentioned is not less than five (5) days from the time of the receipt of the notice of the intention of the contracting authority to qualify the candidate. Failure to submit such documents, its application will be rejected and the CA shall proceed with the second ranked tenderer. The same condition applies to OE during the conclusion of a framework agreement with several EO - mini competition.

- The EO may be permitted to demonstrate its economical/financial standing by any other document than those requested by the CA if the EO provides a valid reason and the CA considers it appropriate.

- If, for any valid reason, an economic operator is unable to provide the references requested by the contracting authority pursuant to Articles 69 of the PPL, such economic operator may be permitted to demonstrate its technical and/or professional capability by any other document that the contracting authority, ensuring competition and reasonable treatment of newly established economic operators, considers appropriate. Alternatively the contracting authority can ask for lists of reference projects and contact details at the referee and verify the references if appropriate with the contact details. On requests from an economic operator to be permitted to make use of alternative documentation as mentioned in this Section, the contracting authority must grant the economic operator sufficient time for the mentioned documentation. Such time limit may not be less than five (5) days.

27. Group of Economic Operators

27.1 A tender may be submitted by a group of economic operators. In this case the group, with its tender, must:

- a. Submit a clear statement that all members of the group are jointly and severally liable for the contents of the group's tender and, in the event the group is awarded the contract, the performance of the contract;
- b. Submit a signed statement from each of the members, confirming their participation in the group and that they are not participating singularly and/or in any other group taking part in the same procurement procedure (electronic statement could be signed by using advanced electronic signature (and
- c. A statement signed by all members of the group authorising the lead partner to act on behalf of the group (electronic statement could be signed by using advanced electronic signature).

(Advanced electronic signature is not obligatory until the official announcement by the PPRC)

27.2 Such a group shall not be required to assume a specific legal form in order to submit the tender but the CA reserves the right, if such requirement is necessary for the satisfactory performance of the contract, to request from the selected group to assume such a legal form if the contract is awarded to such a group as a pre-condition to the signing of the contract.

27.3 Each member of the group must fulfill the eligibility requirements, article 65 of the PPL. Any requirements imposed by a contracting authority under Articles 66.2, 68 and 69 of the LPP will only apply to the group as a whole and not to individual members of the group.

27.4 Where appropriate, contracting authorities may define in the tender dossier and in the contract notice how a group of economic operators must meet the requirements for economic and financial standing and technical or professional capacity referred to in Article 68 and 69 of the LPP that. This means that CA may define a minimum percentage in terms of meeting the requirements by each member of the group of EO.

Example:

The minimum required turnover is 2,000,000 Euros and the CA may specify in the contract notice that the leader of the group must fulfil at least 60% of this minimum turnover.

27.5 EOs are not allowed to present a tender as individual and as a member of a “group” at the same time in one procurement activity. The consortium of EOs shall not be modified after the submission of the tender (evaluation phase), if so the tender must be refused. If during the execution one of the members of the group withdraws, the composition of the group cannot be changed without the consent of AK. In this case the CA should consider whether the selection criteria continue to be met.

28. Contract Award criteria

28.1 Contracting authorities may choose to award contracts on the basis of:

- the lowest priced responsive tender or
- the most economically advantageous responsive tender

Other award criteria are not allowed

28.2 Where price is the sole criteria, the contract shall be awarded to the lowest priced tender complying with the specified requirements.

28.3 Where the 'most economically advantageous tender' is the criteria, the contract must be awarded to the tender which best meets the relevant criteria. In addition to price the CA may include other criteria relevant to the subject of the contract. For example, they may include:

- quality characteristics;
- operating, maintenance and other life-time costs;
- functional, technical, environmental, aesthetic or similar characteristics;
- after sales service and technical assistance;

28.4 The criteria must be weighted according to the relative importance.

28.5 For Design contests and consultancy services other criteria may be considered. Refer to Section 57 (Design Contests) and Section 59 (Consultancy Services) of this Operational Guidelines.

28.6 The award criteria chosen must be specified in the Contract Notice and in the Tender Dossier.

28.7 When a contract is being awarded on the most economically advantageous basis, the tender dossier and, if applicable, the contract notice must state all of the criteria (in an objective and quantifiable manner) being applied in the award process, giving the relative weightings (in monetary terms) assigned to each criteria. They have to be pre – established and made known to the tenderers. New or amended criteria must not be introduced in the course of the contract award procedure. If the contracting authority during the procurement procedure realises that the criteria used are unsuited for establishing the most economic advantageous tender, the only remedy to the situation is to cancel the procedure and retender.

28.8 It is the duty of the Procurement Department/Unit to ensure that the best buy (most economical value) is obtained by taking into account the optimum combination of costs, which will include the total life cycle costs of the goods, works or services. It is necessary to look at all those costs that will contribute to the running or operational costs of the project that will be reasonable to expect, over the lifetime of the project. It is not just the cost of the items, goods or services in the tender, but the inclusion of all the costs, both direct and indirect, for example:

THE ITEM COST + THE OPERATIONAL COSTS:

THE ITEM COST + Costs of Consumable items (items used with the equipment)

THE ITEM COST + The running cost (operational cost)

THE ITEM COST + The human resources involved (labor costs)

THE ITEM COST + Cost of a recommended spare parts list
THE ITEM COST + Maintenance costs / servicing costs (weekly, monthly)
THE ITEM COST + Repair costs
THE ITEM COST + Inclusion of rental or lease costs
THE ITEM COST + Insurance cover
THE ITEM COST + Environmental Impact considerations
THE ITEM COST + Health and Safety considerations

28.9 Tenders must be evaluated objectively and transparently against the published weighted criteria. Objectivity and transparency is best achieved by the use of a scoring system or marking sheet based on the weighted criteria, indicating a comparative assessment of tenders under each criterion.

28.10 Care should be taken to ensure that the minimum qualification criteria (selection criteria) are not used as criteria in the contract award process. Tenderers shall be deemed to have met the minimum requirements in regard to their capacity to perform the contract meaning that the criteria relating to past experience and track record of the company shall not feature as criteria in the contract award process.

28.11 In case of economically most advantageous award criteria it is compulsory to convert each element of the award criteria into scores and then weigh it based on formula and the weights indicated in the Contract Notice and Tender Dossier.

28.12 However, in case of lowest price criteria it is not allowed to convert the prices into scores and weight the scores.

In case of multiple service contracts or in case of unit price contracts, the prices may be eventually weighted based on the importance of each “service category” or “item” so that the Contracting Authority could determine which the lowest priced bid is. In these cases, the Tenderer who submitted the lowest contract price can only be determined after having some calculations. In certain cases, for example in case of framework contracts where the contract contains several items or multiple service contracts the exact quantity cannot be calculated before the contract implementation. In that case the Contracting Authority shall estimate the frequency and importance of each items or service categories and weigh the price based on the importance. These weights shall be used only for the purpose to articulate the importance of each service or item, and to be able to select the lowest priced bid.

28.13 In case of lowest price, by weighting the prices, the weighted prices are based on the price offered by the individual Economic Operator; therefore it is not allowed to establish scores by comparing the different tenderers’ prices.

28.14 The only function of the weighted total price is to determine the lowest priced contract, but the payment is always based on the offered prices.

28.15 It is strictly forbidden to compare the prices of different bids to each other and convert the calculated value into scores, then weight the scores as in that way the highest weighted score will not necessarily result in the lowest price.

28.16 The Contracting Authority shall indicate in the Tender Dossier the weight (importance) of the specific price categories, and articulate the importance in %. The total % shall be 100.

GOOD EXAMPLE:

- Subject of the contract: Vehicle maintenance
- Contract award criteria: Lowest price

Categories		Weight based on importance		Weighted price	Company A		Company B		Company C	
					Price	Weighted price	Price	Weighted price	Price	Weighted price
1	Price for Basic scheduled services	60	%	Price x 60%	€ 100,00	€ 60,00	€ 80,00	€ 48,00	€ 110,00	€ 66,00
2	Price for Maintenance and spare parts	20	%	Price x 20%	€ 100,00	€ 20,00	€ 80,00	€ 16,00	€ 50,00	€ 10,00
3	Price for Repair services and Painting	5	%	Price x 5%	€ 120,00	€ 6,00	€ 200,00	€ 10,00	€ 70,00	€ 3,50
4	Price for Karroserise parts	15	%	Price x 15%	€ 100,00	€ 15,00	€ 150,00	€ 22,50	€ 120,00	€ 18,00
		100%								
Total price (without weighting based on importance and frequency):					€ 420,00		€ 510,00		€ 350,00	
Total weighted price - Lowest priced contract:						101€		97€		98€

The winner based on the lowest price award criteria: Company B.

The reason is, that although the total sum of unit prices is the lowest at Company C, but the Price of Scheduled Service (Item Nr. 1) will be ordered in most cases (60%) which is the most expensive in case of Company C.

The total sum of unit prices of Company B is the highest, however, the most frequently needed item (Nr. 1) is the cheapest at that firm therefore the total weighted price is the lowest at that firm.

The invoice will be issued in any case based on the real quantities and real, non-weighted prices! In this example we did not use scoring, only weighted the unit prices based on its importance!

29. Tender Security

29.1 Tender security is meant to support that:

- the tenderer has provided honest information;
- the tender is valid for the required validity period;
- the tenderer complies with the conditions precedent to the signing of the contract, including posting of performance security; and
- the tenderer concludes the contract.

29.2 Tender security is optional meaning that in case of large and medium value contracts the CA may impose the tender security requirement.

29.3 If the CA imposes the tender security requirement, such requirement shall apply to all tenderers and the conditions shall be set forth in the tender dossier and in the contract notice.

29.4 The amount of the tender security shall be 1-3% of the estimated contract value (yet not less than 1000 Euros). The amount shall be expressed in the tender dossier as a fixed amount and not as a percentage.

29.5 The tender security may be submitted in any of the following formats:

- a) check certified by a first-class bank;
- b) letter of credit, opened and confirmed by a first-class bank;
- c) unconditional bank guarantee, issued by a first-class bank; or
- d) insurance policy issued by a licensed Insurance Company

The following definitions apply:

- (i) a bank “with reputation” means a bank which has a long-term classification at least “A” according to one or more evaluation agencies or in case of one bank in Kosovo (if the bank has not been evaluated in that form) a bank that has been licensed by Central Bank Authority of Kosovo.
- (ii) an insurance company “with reputation” means an insurance company which has a long-term classification at least “A” according to one or more evaluation agencies or in case of one insurance company in Kosovo (if the insurance company has not been evaluated in that form) a bank that has been licensed by Central Bank Authority of Kosovo.

29.6 The tender security shall remain valid for a period of thirty (30) days after the expiry of the tender validity period.

29.7 The deadline for submission of the tender security shall be the same as that for the submission of tenders. Tender securities received after the deadline for tender submission shall be rejected and accordingly lead to the rejection of the tender.

29.8 The CA shall forfeit the tender security under the following circumstances:

1. The CA determines that the EO has submitted false or misleading information;
2. The EO withdraws its tender after the deadline for submissions of tenders, but before the expiry of the tender validity period; and
3. The EO is awarded the contract but refuses or fails:
 - a. to provide the performance security, as specified in the TD;
 - b. to comply with other conditions preceding to the signing of the contract, as specified in the TD; or
 - c. to execute the contract, as specified in the TD.

29.9 Tender securities shall be released and returned to the EO, within 5 days, under the following circumstances:

- expiration date of the tender validity;
- contract awarded and entered into force;
- cancellation or completion of the procurement activity prior to the award or entry into force; or
- Upon withdrawal of a tender before the deadline for the tender submission unless it is stated in the TD that no such withdrawal is permitted.

29.10 A contracting authorities shall not restrict at the tendering documents discretion of tenderers to submit tender security in any form specified at article 29.5 of these rules. Any provision which restricts form in which such insurances are submitted can be delivered except those referred at article 29.5, are to be considered invalid.

29.11 Notwithstanding Articles 57 PPL, the tender security shall be unconditional. For the purposes of the above, the word “unconditional” means a guarantee on demand and that there should not be any conditions or requirements for any evidence inserted in the tender security other than a requirement that the Contracting Authority shall provide a document that breaches in the tender rules have occurred. Therefore there is no further need for the contracting authority to prove breach.

29.12 Pursuant to Articles 57, paragraph 5 of the PPL, qualification requirements of tender security’s issuers, as set forth in the tender dossier, shall be non-discriminatory, shall not require the issuer itself to have a business in a specific location, and in any case shall be limited to requirements that are directly related to ensuring the financial stability and reliability of such issuers.

29.13 In case of use of the electronic platform, the tender security is submitted in a scanned version, while the original form of the tender security must be received by the CA before the deadline for submission of tenders, and the CA must issue a confirmation on the acceptance of tender security.

30. Performance Security

30.1 Performance security is meant to support the fulfilment of the contract.

30.2 A performance security shall be required to be posted, as a pre-condition to the signing and entry into force of the contract, in anyone of the following cases:

- A works contract;
- A contract for software development services; or
- There is a risk that the breach of the contract will cause substantial damage and further expenses to the CA;.

30.3 The performance security requirement shall apply to all tenderers and the conditions shall be set forth in the tender dossier and in the contract notice.

30.4 The amount of the Performance security shall be equal to at least 10% of the value of the contract. When determining the percentage of the performance security, in case of a medium or large value contract, the CA shall ensure that the percentage is sufficient to cover the damages and the expenses that the CA reasonably expects will occur in the event of the break of the contract. The contracting authority has, after complying with Section 61 of the LPP, has good reason to believe that the economic operator has submitted an un-performable (abnormally low) tender, the right to request an increase on the percentage of performance security to cover losses and expenses that the CA may foresee that will occur if the contract is terminated.

30.5 The performance security may be submitted in any of the following formats:

- a) check certified by a first-class bank;
- b) letter of credit, opened and confirmed by a first-class bank;
- c) unconditional bank guarantee, issued by a first-class bank; or
- d) insurance policy issued by a licensed Insurance Company

The definitions mentioned in Section 29.5 of these rules and Operational Guideline, for a “first-class” bank and a “reputable” surety or insurance company apply analogous.

30.6 The performance security shall remain valid for a period of thirty (30) days after the contract completion.

30.7 The performance security shall be released and returned to the EO, within 30 days, after the contract completion.

30.8 The CA shall forfeit the performance security under the following circumstances:

- a) of breach of the signed contract, which causes material damage to the CA and/or requires the CA to incur substantial expenses in obtaining the completion of such contract; or
- b) of breach of signed contract many workers, subcontractors and/or suppliers are left unpaid.

30.9 Before the CA starts with the procedure of the forfeiture of the performance security the CA must inform, in writing, the EO of any alleged failure under the contract and give the EO

sufficient time to correct such failure. Failure of the EO to correct, in time, such alleged failure will lead to the procedures of the forfeiture.

30.10 Forfeiture of the performance security does not prevent the contracting authority from seeking additional damages under the contract and equally if the performance security is of a higher value than the damages from the breach, the contracting authority should refund the difference.

30.11 A contracting authority shall not restrict at the tendering documents discretion of tenderers to submit performance security in any form specified at article 30.5 of these rules. Any provision which restricts form in which such insurances are submitted can be delivered except those referred at article 29.5, are to be considered invalid.

30.12 Notwithstanding Articles 63 PPL, the performance security shall be unconditional. For the purposes of the above, the word “unconditional” means a guarantee on demand and that there should not be any conditions or requirements for any evidence inserted in the performance security other than a requirement that the Contracting Authority shall provide a document that breaches in the tender rules have occurred. Therefore there is no further need for the contracting authority to prove breach.

30.13 Pursuant to Articles 63, paragraph 5 of the PPL, qualification requirements of performance security’s issuers, as set forth in the tender dossier, shall be non-discriminatory, shall not require the issuer itself to have a business in a specific location, and in any case shall be limited to requirements that are directly related to ensuring the financial stability and reliability of such issuers.

31 Tender validity

31.1 CAs’ shall state in the tender dossier the required tender validity period specified as number of calendar days from the deadline for submission of tenders.

31.2 The tender validity period requirement shall be:

- minimum 90 days for large value contracts;
- minimum 60 days for medium value contracts; and
- minimum 30 days for low value contracts.

31.3 The tender validity period specified in the tender dossier shall vary depending on the complexity of the procurement. The required tender validity period shall be no longer than necessary, and shall be long enough for the CA to evaluate the received tenders and to award and sign the contract.

31.4 Under justifiable and/or exceptional circumstances unexpected delays appear, meaning that the evaluation process cannot be finalized within the validity period of the tenders because of clarification of technically complex details, the CA shall request the EOs to extend the validity of their tenders. The request for extension of the tender validity shall be in writing and it must be requested before the expiration date (it is important to verify that all tenderers receive the request for the tender validity extension).

31.5 Accordingly, all tenderers shall also be requested to extend the validity of their tender security.

31.6 It is open to each EO to decide whether it wishes to renew the tender validity or not. EOs' who choose not to extend the validity of their tenders shall be rejected as "not responsive" and accordingly the CA shall not forfeit their Tender Security.

32 Hardcopy tender submission

32.1 CAs' shall specify in the tender dossier the tender form which shall be filled in and signed by tenderers. Such tender form shall contain:

- Economic operator's identification
- Tenderer's declaration(s)
- Tender price specifications.

32.2 The tender form together with all other required documents, duly filled and signed constitutes the tender. All pages of the tender shall be JOINED and NUMBERED.

32.3 The tender shall be submitted to the CA in one original exemplar and the number of copies that the CA has clearly stated in the tender dossier. The original tender as well as all the copies required shall be identical. One of the submitted copies shall be kept unopened by the CA for the Procurement Review Body "PRB" as evidence in case of doubt on the content of the tender while the other copies shall be opened by the evaluation committee.

32.4 The tenderer shall seal the original tender and each copy in separate envelopes and shall on the front of each one of such envelopes:

- Mark clearly as "Original" or "Copy";
- Indicate the Procurement number as stated in the tender dossier; and
- Indicate the name and address of the tenderer.

32.5 The envelopes shall then be sealed in an outer envelope marked with:

- The address of the place for submission of tenders;
- The Procurement number;
- Warning that the envelope should not be opened before the date and time of tender opening; and
- The name and address of the tenderer.

32.6 Guidelines on form and submission of projects in a design contest are specified under Section 57 "Design Contests" of these rules and Operational Guidelines.

32.7 The CA shall state in the Tender dossier that an EO may submit a tender, a request to participate or other document required or permitted to be filed during the conduct of a procurement activity in the Albanian, Serbian or English languages.

32.8 All tenders, withdrawals, substitutions or modifications received prior to the time of the

tender opening shall be kept unopened in a secure place.

32.9 Tenders received after the closing date and time shall be marked "late tender" and returned unopened to the respective tenderers.

32.10 Tenders shall be submitted in hard copies. Telegraphic, email or faxed tenders shall not be accepted.

33 Submission of electronic tenders

33.1 Electronic submission of tender is done on the e-Tendering platform and consists of four key processes:

1. Create a new tender
2. Uploading tender documents which have been required + attachments (if any)
3. Enter tender price
4. Generation of the Tender submission form

33.2. Before the submission of tenders it is necessary to prepare all the documents required by the tender dossier, such as for example proofs of the ability, the technical description of the supply and bill of quantity, in electronic format (the original electronic documents or scanned). The tenderer must provide documents in one of the formats supported by the system, as defined in the Terms of usage.

33.3 It is responsibility of the tenderer to upload all the required documents to the Kosovo e-Procurement System before the deadline for submission of tenders. The upload time may vary depending on the speed (throughput) of tenderer's internet connection and the overall traffic on the system. After the deadline for submission of tender the system must not allow upload of any additional of the documents related to the tender.

33.4 In the "standardized" bill of quantity (template from e-Procurement System), users may enter the prices manually or upload pre-filled bill of quantity document in xls format;

Bids may be accompanied by hardcopy documents such as samples, catalogs and any other evidence that cannot be sent through the electronic procurement system; when drafting the electronic offer, economic operators shall specify the documents which are submitted in hardcopy.

33.5 After all of the documents have been uploaded to the system and attached to the tender, the tenderer initiates generation of the Tender submission form document. Tender Submission Form is a PDF document which is generated by the system and contains all the information relevant to tender submission on the basis of entered information and files.

33.6 The Tender Submission Form is protected by the server signature Tender Submission Form contains XML data with the MD5 hash value of each tender documents uploaded as integral parts of the overall tender. This way it ensures the consistency and integrity of the submitted tenders (the same way as physical binding ensures the integrity of the tender submitted in paper form), so it is not necessary to number each page of the submitted tender.

33.7 Tenderers download the Tender Submission Form on their computer and sign it using their advanced digital signature(s). Tenderers MUST NOT change or modify content and structure of Tender Submission Form. It is responsibility of the tenderer to use certificates for digital signature that is legally acceptable in Kosovo and to use tools for application of the digital signatures in accordance with the technical standards defined by the Terms of use; Terms of usage must propose at least one freely available tool for the application of advanced digital signature to the Tender Submission Form.

33.8 If the tender is submitted on behalf of the Group of Economic Operators, Tender submission Form must be signed by the person authorized by the group of the EO.

33.9 After the Tender Submission Form has been signed, it should be uploaded back to the Kosovo e-Procurement System so that the tender could be submitted. It is responsibility of the tenderer to upload the Tender Submission Form to the Kosovo e-Procurement System and submit the tender before the deadline for submission of tenders. The upload time may vary depending on the speed (throughput) of tenderer's internet connection and the overall traffic on the system. After the deadline for submission of tender the system must not allow submission of the tenders.

33.10 The system allows the tenderer to check validity of the Tender Submission Form and provided electronic signature before the tender has been submitted. Check of the validity is of informative nature and is not legally binding with respect to the validity of the submitted tender.

33.11 At the time of the submission, e-Procurement System applies timestamp to the submitted Tender Submission Form. The time of the timestamp is the official time of the tender submission. The system does not allow submission of the tenders after the deadline for submission. It is the responsibility of the tenderer to submit the tender prior to the deadline of the tender submission.

33.13. e-Procurement System will provide confirmation of successfully submitted tender to the tenderers personal e-mail, selected by the registration and to its Inbox in the system.

33.14 If the e-Procurement System is not available for tender submission on the day of the tender submission deadline due to technical or network problems that is not responsibility of the tenderer and that lasts longer than 15 minutes, the deadline should be prolonged for the equal time as the duration of the system unavailability plus one additional hour, after the users have been notified of the restoration of the normal functioning of the system. Every problem with the Kosovo e-Procurement System that satisfied the criteria above must be immediately reported to the PPRC (using telephone, official e-mail, fax or some other appropriate communication channel). When the problem is corrected, PPRC must inform the CAs that are affected by the problem about the duration of the system unavailability and inform them how for how long they must postpone the submission deadline. If the new deadline for any particular tender opening would have fallen after 15:00 hours on that day, it could be moved to the next business day at some appropriate time.

33.15 If the tender consists of multiple groups (lots), the tenderer could submit one tender for multiple groups or one separate tender for each group; Tender Submission Form contains as many bid sheets as the number of lots in the submitted tender. Each of the submitted tenders must contain all of the proofs of the tenderer's ability required by the tender dossier.

33.16 Amendments or editing of the tender will be available until the deadline for submission of tenders. Any change of the tender requires creation, signature and upload of the new Tender Submission Form and new submission of the tender. The time of submission of the tender is the time of submission of the last version of the tender.

33.17 Withdrawal of tender will be available until the deadline for tender submission. The system displays a notice to the tenderer that if the offer is deactivated, all tender subject and evaluated criteria will be deactivated. If the tenderer wants to continue giving up the tender, he needs to click on the "OK" button. This action deletes the tender from the system.

33.18 If the deadline expires during the process of tender amendment or withdrawal the system will print the message "The deadline for submission of tenders has expired," and tenderers will not be able to submit / amend / edit the tender. Previously submitted tender will remain valid until the successful submission of new tender or its withdrawal.

(Advanced electronic signature and time stamping of the bid by the server is not obligatory until the official announcement by the PPRC)

34 Receipt of tenders

34.1 Immediately at the receipt of the envelopes containing the submitted tenders/requests to participate/quotations submitted in hardcopy, the CA shall mark the sealed outer envelopes with a serial number as well as the date and time of the receipt. If a tender/request to participate/quotation is delivered personally, the CA shall issue to the bringer a receipt of delivery bearing the number, the date and time information.

34.2 Information on the number, date, time and identity of receiving officer as well as of the bringer of the envelope shall, for the timely received tenders, be entered into the, standard form approved by the PPRC, "Tender submission record"/ "Request to participate record"B14.

34.3 In the event that tenders/requests to participate/quotations, are submitted to the CA after expiry of the time limit for submission, receipt of such tenders/requests to participate/quotations, shall be denied or received envelopes shall be kept unopened with a view to immediate return to the sender. A "Belatedly tender submission record" shall be established analogous to the "Tender submission record" mentioned under section 34.2 of these rules and Operational Guideline.

34.4 For electronic tenders received through the Kosovo e-Procurement System, Tender Submission Form must be time-stamped using national or commercially available timestamp service that is compliant to the EU EIDAS regulation. Timestamp on the Tender submission form guarantees the time of reception of the tender as well as guarantees that the data in the

tender submission form document have not been changed after the reception of the tender submission form on the system.

34.5 After reception on the e-Procurement System, electronic tenders will be automatically encrypted by the system using the public keys of the two committee members created during the process of publication of the tender at the Kosovo e-Procurement System. The user **MUST NOT** encrypt the Tender Submission Form document itself, because in that case the information in the Tender Submission Form document will not be available to the system and the system would not be able to extract prices and check the integrity of the Tender Submission Form document.

34.6 Prices and other commercially sensitive information must not at any time be stored in the decrypted form anywhere in the database, file system or any other place where they could be accessible by any third party or personnel responsible for the Kosovo e-Procurement System maintenance.

34.7 The system must ensure that tender could not be decrypted earlier than the opening of the tenders will have been successfully finished.

34.8 In case of application of electronic platform, the system generates a register of bids received, while for the tenders submitted in physical form the PO is obliged to register the same in the register generated by the system. EO submitting bids in physical form must be registered in the system.

35 Opening of Tenders – in physical copy

35.1 Opening and evaluation of the tenders is the sixth step in the procurement process.

35.2 The Procurement officer shall appoint an opening commission, not less than 2 (two) members, for the Opening of the tenders/request to participate/quotations. The members are appointed on adhoc basis.

35.3 Timely received tenders/requests to participate/quotations shall be opened, by the procurement officer, immediately after the deadline for submission (30 minutes after the deadline) at the place and at the time fixed in the contract notice and in the tender dossier, or if applicable, in the document extending the time limit.

35.4 Tenders received, through open, restricted procedure or price quotation (apart from the minimal value contracts), shall be opened publicly while every tenderer shall have the right to have a representative present to observe the opening of the tenders.

35.5 The CA does not need to arrange a public opening session for the Opening of the Requests to Participate, for tenders received through competitive negotiated procedure or restricted procedure.

36 Opening of electronic Tenders

36.1 For the tenders that allowed electronic tender submission, tender opening is performed using the Kosovo e-Procurement System tender opening functionality. If the tender has been published on the Kosovo e-Procurement System, opening commission should consist of the

users of the Kosovo e-Procurement System that have been assigned during the tender publication, or their deputies, that have the private keys needed to successfully conduct electronic tender opening and decryption.

36.2 It is important to prepare the corresponding private keys. In any process of e-Procurement are created two keys that belong exclusively to the proceedings in which they are created. With the loss of the private key it is not possible to start the process of public tender opening, and thus neither review the submitted tenders. It is therefore very important to secure the key from losing. The recommendation is to store the key in the CA.

36.3 In the case the private key is lost, it is recommended to cancel the procurement procedure.

36.4 The process of public opening can start with the expiration of validity period for submission of tenders. Upon the expiration of the validity period automatic form for loading private keys appears. Authorized representatives are required to apply to the platform and each separately enclosed assigned private key that was initially submitted to them by e-mail.

36.5 Tender opening procedure starts with entering the authorized representatives of the contracting authorities.

36.6 Overview of submitted tenders refers to the total number of electronic tenders received by the validity period for submission of tenders.

36.7 After the upload of both private keys of the authorized representatives or their deputies, the system decrypts all the electronic tenders

36.8 For each tender, the system verifies tender integrity (Integrity of the data in the Tender Submission Form).

36.9 In the case of any inconsistencies found, the system will mark the offer. Inconsistencies marked by the system do not automatically mean that the offer is inadmissible, but that the offer should be manually inspected by the CA committee.

36.10 Prices in the offers are decrypted, presented at the screen and stored into the database. Prices in the database are used for creation Minutes of the public opening document

36.11 After successful public opening, public keys needed to decrypt the tenders are stored in the database, so that the tenders could be analyzed without providing the keys (the data in the tenders have become public at the public opening, so there is no need to keep them encrypted any longer).

36.12 In the case of technical difficulties during the public opening procedure, the public opening could be suspended and continued within 48 hours. The system ensures that the tenders received in the system have not been changed or deleted during that period and that no new tenders could have been submitted.

36.13 Besides electronically submitted tenders, tenders that arrived traditional manner (paper) have to be entered in the system. On the list there are already tenderers who have submitted tenders electronically, and the data from the paper tenders should be entered manually to create complete minutes of the public opening

36.14 Tender must not be submitted both electronic and paper way. Such a case must be considered as submitting two tenders at the same tendering procedure and be treated as nonresponsive.

36.15 Minutes of the public opening are created as the word file on the Kosovo e-Procurement System. The minutes need to be downloaded, verified/modified so that they contain accurate and full data and presented to all the parties present at the opening for signature.

36.16 Final version of the minutes of the public opening should be uploaded back to the system and sent to the EO.

36.17 Detailed log of all the actions of all the participants related to the given tender should be created by the system and available for inspection at any time. The full log with all recorded data should be available only to PPRC for forensic purposes, and must contain at least the following data:

- Exact time of the transaction
- Name of the user that executed the transaction
- Identification of the transaction
- Optional parameters of the transaction required to understand the business context

36.18 The log available to CA must contain the data necessary for monitoring and management purposes. The log must not reveal to CA the data on which economic operators have submitted the bids prior to the tender has been successfully opened, except on how many electronic offers have been submitted

36.19 In case of electronic and physical submission of bids a, the responsible procurement officer, opens first the bids submitted in electronic form, and immediately proceeds with the opening of the bids submitted in physical form.

37 Opening of Tenders received in hardcopy

37.1 As each tender is opened, the Procurement Officer shall announce to those present:

- (i) the name and place of the concerned tenderer;
- (ii) the total tender price specified in such tender; and
- (iii) whenever possible, unit prices.

37.2 When for not instantaneous reasons unit prices cannot be read (when there are many items), such prices in any case shall be visible to all representatives of tenderers in the public

opening, e.g. posting them or using any other appropriate method that guarantees transparency. In any case, every page of any financial tender shall be signed during the public opening by a representative of another tenderer. From this provision are excluded tenders submitted in electronic form.

37.3 In the event of a procurement activity where the contract award criterion is economically most advantageous tender everything that has to do with figures should be read at loud, such as time of delivery, warranty period and similar.

37.4 If the tender is composed of two-parts (technical and financial proposal) the tenderer has to submit both proposals, in separate envelopes, at the same time. The CA shall arrange separate public opening sessions for both proposals. The proposals shall be opened in different dates.

- The Procurement Officer during the public opening of the technical proposal shall announce to those present only:
 - (i) the name and place of the concerned tenderer and the remarks.

Whereas

- The Procurement Officer during the public opening of the financial proposal shall announce to those present:
 - (i) the name, place and score of the technical proposal of the concerned tenderer; and
 - (ii) the total tender price specified in the financial proposal.

37.5 All information announced at the tender opening meeting shall immediately be recorded in the standard form approved by the PPRC, “Minutes of the tender opening” B12. The Minutes need to be signed by the opening committee members, by the procurement officer and, if applicable, by each representative of the tenderer who is present in the Public Opening Session. Copies of the minutes of the tender opening, whenever a public opening session is arranged, shall be distributed to all tenderers who participated in that procurement activity.

37.6 It is a good practice that the procurement officer, after announcing the total tender price, shows the price to a member of the audience.

37.7 The original copy of each tender shall be initialled by the opening committee members. From this provision are excluded tenders submitted in electronic form

37.8 In the event that the CA conducts a procurement activity using open procedures, the Price quotation procedure or the procedure for minimum value, and the CA receives only one tender / bid, the CA shall continue with the evaluation of the tender received.

37.9 If the CA conducts a procurement activity using a restricted procedure, it is good international practice, that in the event that the CA receives less than 3 requests to participate, to cancel the procedure and to return the received applications unopened with clarification that less than 3 requests to participate are received.

37.10 If the CA conducts a procurement activity using competitive negotiated procedure, and in case the CA receives less than 3 requests to participate, the CA shall cancel the procedure

and return the received applications unopened with clarification that less than 3 requests to participate are received.

37.11 In the event where the number of the responsive EO for public framework contract with more than one EO - is less than 3 the CA shall:

- a. cancel the procedure and if it still desires to procure the concerned works/goods/services shall initiate a new procedure.

38 Tender samples

38.1 Where samples are called for they may be submitted before, or at, the time of the tender closing. They must be submitted before the deadline for submission of tenders.

38.2 Samples submitted by EO as a condition must be inspected by a committee.

38.3 In order to prevent the possibility of bias in selection, prior to the evaluation process the submitted samples shall:

- a. be stripped of any marks which may identify them with the EO; and
- b. shall be coded.

38.4 The person who strips and codes the samples shall not participate in the evaluation process and shall not disclose the identification of the samples to the evaluation committee members.

38.5 The samples requested are part of the tenders, and they form part of the technical test necessary for the assessment of each tender. As a consequence, the tests become part of the assessment process to determine the most favorable tender, and consequently the selected contractor. The samples of the awarded company must be retained by the contracting authority for the whole duration of the contract. For what concerns non-successful tenderers, their samples can be sent back (upon specific request) to the tenderers provided that they still physically exist (in the sense that the test does not involve the destruction of the sample) and the time to submit a complaint against the decision taken by the contracting authority to award the contract is expired.

38.6 On the contrary, where the tender procedure has been cancelled all the samples shall be given back to the tenderers provided that the time for submitting a complaint against the decision of cancelling the procedure itself has expired, and consequently the decision is definitive. The return of the samples falls under the same conditions above mentioned (no physical destruction and upon request).

39 Clarification of tenders

39.1 To facilitate the examination, evaluation and comparison of tenders, the CA may ask each tenderer individually for clarification of his/her tender. PPRC has approved a standard form for clarifications to be used by the CA "Request for clarification of tender" B47. The request for clarification and the response must be in writing only.

39.2 No change in price or any other material term or aspect of the tender may be sought,

offered or permitted.

39.3 However, it is permissible for a contracting authority during the evaluation to request and receive information or documents that had been missing from the original application/tender. Those documents, however, had to be objectively shown as pre-dating the deadline for applications or tender submission. In addition, the request shall not unduly favour or disadvantage the relevant candidate.

39.4 The Contracting Authority shall ensure the possibility of supplying missing information under the same conditions for all economic operators and it shall request information from the economic operators for the purpose of clarifying the content of ambiguous statements, declarations, certificates included in the tenders or requests to participate. The clarification and request for additional, supplementary information and documents is part of the evaluation procedure. The pass/fail requirements and the validity of the bids / applications can only be decided after the submission of the answers for the clarification questions and having examined the submitted additional documents as requested by the Contracting authority.

39.5 The Contracting Authority may invite economic operators to supplement or clarify the certificates and documents submitted in accordance with Articles 65-71 of the Law ie evidence submitted to the eligibility requirements, professional suitability requirements, economic and financial standing and technical and

39.6 The CA shall give a reasonable time limit to the EO for clarifying its tender.

39.7 If the EO fails to reply within the time limit specified by the CA its tenders shall be rejected.

39.8 If the offer has been submitted electronically, the CA must send the “Request for clarification of the tender” to the EO through the Kosovo e-Procurement System, and the EO must submit their response in a written document through the system back to CA. Advanced electronic signature is not obligatory until further official announcement by the PPRC.

Problem	How to act?	PPL article
Missing reference / acceptance certificate from the list of contracts presented	Clarifying information may be required	69
The submitted List of contracts executed does not meet the minimum requirements specified	Reject the tender without seeking further information	69
List of contracts executed is not submitted	Reject the tender without seeking further information	69
Business registration certificate is missing	Clarifying information may be required	66
VAT Certificate is missing	Clarifying information may be required	66
Certificate for Fiscal number is missing	Clarifying information may be required	66
License is missing	Clarifying information may	66

	be required	
Declaration under oath is missing	Reject the tender without seeking further information	65
ISO Certificate is missing	Clarifying information may be required	69
Price is missing	Reject the tender without seeking further information	Administrative condition
Submitted CV obviously does not fulfil the requirements	Reject the tender without requesting further information	69
Requested CV is not submitted	Clarifying information may be required	69
Submitted CV does not contain the information requested	Clarifying information may be required	69
Declaration on the annual turnover is missing	Clarifying information may be required	68
The declaration on the annual turnover does not fulfil the minimum requirement	Reject the tender without requesting further information	68
The tender form is not filled out properly or missing	Reject the tender without requesting further information	Administrative condition
Price list is completed but not signed	Reject the tender without requesting further information	Administrative condition
Tender security does not contain conditions defined by the standard form part of DT	Reject the tender without requesting further information	57
List price is not completed	Reject the tender without requesting further information	Administrative condition
A clear statement that all members of the group are jointly and severally liable is missing	Clarifying information may be required	Administrative condition
A signed statement by each member for confirmation of participation is missing	Clarifying information may be required	Administrative condition
A statement signed by all members of the group for authorization to the lead partner is missing	Clarifying information may be required	Administrative condition
Statement on technical specifications and the catalogue for the goods offered is missing	Reject the tender without requesting further information	28
Statement on technical specifications is submitted but the catalogue for the goods offered is missing	Clarifying information may be required	69
Catalogue is submitted but the Statement on technical specifications for the goods offered	Clarifying information may be required	69

is missing		
Original authorization is requested but the EO submitted a scanned authorization	Clarifying information may be required	68
Due to technical failures by the CA in the TD (tender submission form) the validity of the offer is missing	Clarifying information may be required	59

40 Establishment of the Tender Evaluation Committees

40.1 Refereeing to article 59, paragraph 1 of the PPL, for all procurement activities the CA, respectively the “CAO” in close cooperation with the responsible procurement officer must establish the tender evaluation committee with solely advisory functions to the responsible Procurement Officer. From this rule are excluded procurement activities for minimal value. The responsible procurement officer shall make recommendations of membership for the Tender Evaluation Committee to the CAO, who shall either approve all the nominations or where appropriate elect alternative members to the Committee.

40.2 The evaluation committee is formed on a case by case basis. The evaluation committee shall assess the tenders in accordance with the specified criteria with a view of determining the best-evaluated tender.

40.3 The following principles shall form basis for establishing and functioning of such committee:

- a. The members of the committee shall fulfil the requirements of eligibility meaning that the persons who meet at just one of the following conditions are not eligible:
 - been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in Article 130.1 of the PPL under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;
 - been declared ineligible, where the CA finds this to constitute grave professional misconduct, verified by a competent court;
 - been determined by a court of competent jurisdiction to have committed a serious offence by participating in the activities of a criminal organization, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial gain through activities that are criminal or otherwise illegal where they take place;
 - been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;
 - been determined to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct; or
 - been determined by a court of competent jurisdiction to have made serious misrepresentations to any public authority in Kosovo or elsewhere.

- b. All members of the committee are strictly subject to the provisions of the PPL with regard to the protection of confidential business information, article 11 of the PPL.

Each member shall sign a written declaration using the standard form approved by PPRC “Declaration under Oath” declaring that he/she will honestly and faithfully conduct the evaluation task in conformity with the PPL. All members of the Evaluation Commission assume full individual responsibility for the performed bid evaluation in regard to the technical evaluation of the Tender.

40.4 The responsible Procurement Officer may not serve as members of the evaluation committee. The staff members of the Procurement Department may serve as members of the evaluation committee. The responsible Procurement Officer shall organise, advice and direct the evaluation committee’s work and ensure compliance with the provisions of the PPL.

40.5 The number of the members of the evaluation committee shall depend on the value and complexity of the procurement activity, but shall in all cases be a minimum of (3) three and the number shall always be odd. The committee shall be composed of members with the necessary skills, knowledge and experience, relevant to procurement requirements. Persons, who have been members of the bid opening committee, may be members of the evaluation committee.

40.6 The contracting authority shall clearly set the tasks to be performed by the Committee, which in any case shall not restrict the independence of the Committee in the decision-making process.

40.7 The committee shall function from the day of adoption of the decision concerning its establishment until the fulfilment in writing of all tasks given by the CA, or until a decision to terminate the procurement procedure may be taken. In case one or more members are not able to participate in the committee, due to objective factors and circumstances, they shall be substituted on the same way as their nomination.

40.8 The committee shall adopt decisions at the meetings by a simple majority vote, voting by open ballot. The voting process shall be recorded in the minutes.

40.9 Voting only applies to the criteria’s and conditions specified in the tender dossier. In cases where the contracting authority receives 2 or more responsive bids with the same prices (identical) the voting of the evaluation committee for the selection of EO is not applicable, but the selection is made according to the time of tender submission (the EO which has submitted first the offer).

40.10 The CA shall have the right to invite external experts where specific technical or specialized knowledge is required by the object of the procurement and is not otherwise available within the CA. Such experts shall acknowledge in writing that they are strictly subject to the provisions of article 11 of the PPL with regard to protection of confidential business information.

40.11 The committee, at the end of its task, shall provide the responsible Procurement Officer a recommendation together with a report on its work and a statement of reasons supporting

that recommendation, including a statement as to the strengths and weaknesses of each tenderers proposal. The report of the committee should be kept in records of the procedure.

40.12 If the evaluation is to be seen as fairly appraised, it will be expected that the points awarded to each criteria should be reasonably close to one another. Where some points clearly diverge from the points of other members, the responsible procurement officer shall ask for an explanation. The member may have misunderstood the criteria, or the proposal. Without any pressure, the responsible procurement officer shall explain any misconception and request the member to re-examine that particular section of the tender submission, once again. The member may, or may not, revise his points.

40.13 The final decision on the award of the contract remains the responsibility of the responsible procurement officer. The responsible procurement officer may accept the committee's recommendation or reject it. Where the committee's recommendation is rejected, the responsible procurement officer shall explain the reasons in writing. In such cases the responsible procurement officer shall take a final decision for the contract award, or shall form a new committee for re-assessment with the similar procedure. Such explanation shall be contained in the record of the procurement activity. The CA's CAO shall immediately be informed about such rejection. The information should be given in writing.

40.14 To ensure there is no conflict of interest, the members of the Tender Evaluation Committee should be members not involved in the preparation of the specifications or TOR.

40.15 In the event that a member of the Tender Evaluation Committee finds out that he/she has a conflict of interest in the tender evaluation, he/she shall declare his/her interest in the tender and leave the meeting and shall not participate further in the evaluation process in relation to the said activity. The individual, who no longer takes part in the evaluation, is still sworn to confidentiality.

41 Examination, Evaluation and Comparison of Tenders

41.1 Timely received tenders submitted by the EOs' shall be examined, evaluated and compared in accordance with the procedures and criteria set out in the contract Notice/Tender Dossier and the contract shall be awarded to the highest ranked tenderer. Accordingly, the contracting authorities cannot change, modify or omit already introduced requirements, criteria or specifications or introduce new ones during the procurement procedure. This also applies when the contracting authorities re-evaluate the procurement procedure in order to correct wrong decisions and when a re-evaluation is done as a result of a PRB decision including an order for re-evaluation. A decision to re-evaluate the selection of tenderers and award of the contract does not imply a change in the initial results.

41.2 The procedure for examination, evaluation and comparison of tenders shall be completed by the CA within the shortest possible period of time and no more than 30 days from the opening of the tenders. Only in exceptional and well justified cases, in particular with the contracts of a complex nature, this period may be extended for additional term of 20 days. The tender evaluation process shall start immediately after the completion of the tender opening process and not later than 5 days after the completion of the tender opening process.

41.3 The main principles for the evaluation procedure according to the PPL are:

1. Tenders shall comply substantially in administrative terms with the formal requirements specified.
2. Tenderers shall be eligible and shall meet the minimum qualification requirements (if established).
3. Tenders shall comply substantially in technical terms with the mandatory technical requirements specified.
4. Responsive tenders shall be evaluated against the specified contract award criteria.
5. Only the requirements and the contract award criteria's specified in the contract notice/tender dossier may be used as basis for the evaluation.
6. No negotiations shall take place between the contracting authority and the tenderers during the evaluation procedure, except for communications that are specifically authorized by Sections 34 and 35 of LPP.
7. Yet, sole clarification of tenders may take place without any change of material terms or aspects of the tender, except for communications that are specifically authorized by Sections 59 and 72 of LPP.
8. The contract shall be awarded in strict accordance with the evaluation conducted pursuant to the above mentioned 7 principles.

41.4 The CA shall use the standard forms approved by the PPRC for the evaluation of the tenders/quotations/requests to participate.

41.5 A tender is considered to be responsive when it:

- a. complies in administrative terms with the formal requirements of the tender dossier;
- b. is submitted by an EO meeting the selection criteria established in the tender dossier; and
- c. complies in technical terms with the description, requirements and specifications established in the tender dossier;

41.6 To “comply” in administrative and technical terms shall be understood as to satisfy administrative and technical requirements and specifications set forth in this tender dossier without substantially departing from or attaching restrictions to them.

“Substantial departures or restrictions” are those which:

- (i) differ essentially from the terms and specifications of the tender dossier; and/or
- (ii) affect the scope, quality or execution of the contract; and/or
- (iii) limit the rights of the CA or the tenderer's obligations under the contract; and/or
- (iv) distort competition for tenderers whose tenders do comply.

As long as a deviation of a tender from the specified requirements and specifications does not imply unequal treatment of the tenderers, if such tender is accepted, and has only negligible influence on the free and fair competition between them, such deviation shall not be regarded as “substantial”.

41.7 To facilitate the examination, evaluation and comparison of tenders, the contracting authority may ask each tenderer individually for clarification of his/her tender. The request for clarification and the response must be in writing only, but no change in price or any other material term or aspect of the tender may be sought, offered or permitted.

41.8 A contracting authority shall correct an error in a tender that is of a purely arithmetical nature if such an error is discovered during the examination of tenders, however, this correction cannot be higher than two percent (2%).

- i. If the corrected amount is less than +/- 2%, the CA will correct such mistakes and will inform in writing the EO in question by using the standard form B49. If EO in question refuses to correct the error, the mentioned offer will be rejected. The CA shall as well send to all relevant tenders (EO which have submitted tenders) a written notice of such changes.
- ii. If the corrected amount is more than +/- 2%, the CA will eliminate the EO and will inform in writing the EO in question by using the standard form B42.

41.9 The tenderer will be informed in writing immediately for such corrections. Errors in price calculation will be corrected by the CA in this way:

- a) In the event if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected;

41.10 Amounts corrected in this way are binding on the tenderer;

- a) If the tenderer does not accept them, his tender will be rejected;
- b) In no case may the unit price be corrected. If the tenderer claims to have made a mistake in the unit price of its tender, its tender will be rejected and deemed to be withdrawn.

41.11 A tenderer shall not be disqualified, excluded or eliminated from the procurement procedure on the basis of any requirement or criteria not specified in the contract notice/tender dossier.

40.12 The CA shall evaluate and compare the responsive tenders according to the contract award criteria specified in the contract notice/tender dossier.

40.13 If the CA has determined the contract award criteria the “most economically advantageous tender”, such award shall be based on the criteria and the weight of the criteria that were specified in the Tender Dossier /Contract Notice.

40.14 During the course of the tender evaluation, information relating to the examination, clarification, evaluation, comparison of tenders, points awarded, and the recommendation for the award, shall not be disclosed to tenderers or to any other persons who are not officially involved in the examination, evaluation of the Tenders until the contract award notice has been published.

41.15 If OE, offers a price with 00:00 Euro for a particular item, there might be various reasons and therefore there is a need to sent a clarifying question to the economic operator seeking explanation for the item 0.00 Euro.

1. If the economic operator admits that the particular item is not included in the tender, the tender must be rejected.
2. If the economic operator says that this article is offered for free, the tender must be rejected since the gifts are not acceptable.

42 Abnormally Low Tenders

Refer to the rules approved by the PPRC, published on the website of the PPRC, B57 "Rules for abnormally low tenders".

43 Notifying Tenderers/Candidates

43.1 All tenderers/candidates must be informed by the CA, in writing, of the result of a tendering process without delay.

43.2 The CA must issue notification letters to all eliminated tenderers/candidates, immediately after elimination, thanking them for their interest, indicating why they were eliminated and informing them of their rights to complain in case he/she feels that the process has been unfair or unlawful. The CA shall use the B42 standard form approved by PPRC "Standard letter for eliminated tenderer/candidates".

43.3 The CA must issue notification letters to all non-qualified candidates thanking them for their interest and indicating the reasons of their exclusion and informing them of their rights to complain. The CA shall use B43 the standard form approved by PPRC "Standard letter for non-qualified candidates".

43.4 The CA must issue notification letters to all qualified candidates informing them that they were qualified and that they will soon receive an invitation to tender. The CA shall use B44 the standard form approved by PPRC "Standard letter for qualified candidates".

43.5 The CA must issue notification letters to all unsuccessful tenderers thanking them for their interest and indicating the characteristics and relative advantages of the winning tender and the name of the winner. The CA shall use 46 the standard form approved by PPRC "Standard letter for unsuccessful tenderer".

43.6 The CA must issue a letter to the successful tenderer thanking the EO for its interest and informing him that he has been awarded the contract. The CA shall use the B45 standard form approved by PPRC "Standard letter of successful tenderer".

43.7 All tenderers must be notified that the award during an interval, during which an unsuccessful tenderer/candidate can seek a review of the decision if he/she feels that the process has been unfair or unlawful has elapsed, is provisional and does not constitute a contractual arrangement.

44 Termination of a procurement procedure

44.1 A procurement activity is concluded either:

- a. On the day of the publication of the Contract Award Notice or the publication of the Design Contest Result Notice; or
- b. If the publication of the contract award is not required on the date of the contract award; or
- c. On the day of the publication of the Cancellation Notice.

44.2 In case the cancellation of the procurement procedure is decided, the CA shall immediately prepare a cancellation notice setting forth the factual reasons and the legal basis of such cancellation and submits it to the PPRC for publication.

44.3 Submission of such Cancellation Notice to the PPRC and publication of such notice is not required for minimal value contracts.

44.4 Immediately after the preparation of the Cancellation Notice and, if applicable, the dispatch of the Cancellation Notice for publication, the PO shall dispatch such cancellation notice to all EOs that have showed an interest in the procurement activity.

44.5 The Cancellation Notice must be drawn up in accordance with the standard form approved by PPRC, B10.

44.6 The Cancellation notice for low and medium value contracts shall be prepared in the Albanian and Serbian languages whereas for large value contracts in Albanian, Serbian and English language.

44.7 The procurement procedure after the receipt of the offers shall be cancelled for one of the following reasons:

- i. no tenders are submitted within the specified deadline;
- ii. none of the received tenders are responsive;
- iii. the number of the responsive EO for public framework contract with more than one EO - is less than 3;
- iv. no requests to participate, in restricted or competitive negotiated procedures, are submitted within the specified deadline;
- v. the number of qualified candidates in restricted/competitive negotiated procedure is less than 3;
- vi. no projects are submitted within the specified deadline;
- vii. none of the received projects in a design contest are responsive;
- viii. if ordered by Procurement Review Body; or
- ix. a violation of the law has occurred or will occur and it cannot be remedied or prevented through an amendment.

44.8 The procurement procedure after the receipt of the offers may be cancelled for the following reasons:

- i. All responsive tenders contain prices that substantially exceed the contracting authority's budget for the procurement activity

44.9 The procurement procedure prior to the opening of the offers may be cancelled for the following reason:

(i) due to the demonstrable events and/or reasons that were beyond the CA's control and that were not predictable at the time of the initiation of the procurement procedure, but this has to be done at least three (3) days before the tender opening.

44.10 In case of termination based on the circumstances and reasons stated in this Article, the CA shall have no liability towards tenderers, participants or candidates for cancellation of a procurement procedure subject to the provisions of Article 105, paragraph 2.9 of the PPL concerning compensation to the complainant.

44.11 If a procurement procedure is cancelled and the CA still wants to proceed with the respective procurement activity, the CA shall initiate a new procurement procedure without changing the procurement number, but by identifying it with "Re-tender". Word "Re-tender" should be written immediately after title "Contract Notice". If the same procurement activity is re-tendered in the coming fiscal year, the procurement activity must take a new procurement number.

44.12 Notwithstanding the above, the CA shall cancel a Contract Award Notice if ordered by the Procurement Review Body "PRB", recommended by the Public Procurement Regulatory Commission "PPRC" or in accordance with paragraph 10.2 of the LPP. In such a case the CA shall prepare a cancellation notice of the Contract Award, shall submit it to the PPRC for publication and shall dispatch such cancellation notice to all EOs that have showed an interest in the procurement activity.

44.13 The provisions of these rules and the Operational Guidelines apply equally to the preparation and publication of the cancellation notice for the contract award.

44.14 The Cancellation Notice of the Contract Award must be drawn up in accordance with the standard form approved by the PPRC, B11.

45 Standard Forms

45.1 The CA shall prepare their procurement documents by using the relevant standard forms to be found in the PPRC's web-site.

45.2 "Using the standard forms" here means that procurement documents shall contain at least all the information, requirements, specifications and conditions stated in the standard forms as obligatory information, and in general appear clear and understandable for the interested EO.

45.3 The purpose of the standard documents is to help the economic operators during the preparation of their tenders. The statements should contain the minimum requirements specified in the standard forms without changes in the content, without introducing additional restrictions or conditions, or without the deletion of any condition defined by the contracting authority in the standard forms. But the company that makes the statement has the right to put the logo, company's name or graphics at the top of the page "header" or anywhere else in the standard documents.

45.4 In addition, CA during the preparation of the Tender Dossier, in addition to standard annexes part of the tender dossier, may add other Annexes such as Form for the establishment of the Group of the EO, the Manufacturer Authorization Form, Form for the list of projects completed etc.

45.5 Also in accordance with Article 13.2 of the PPL, the CA may determine The terms and conditions of public contracts shall conform to usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract. This means that the CA, instead of the draft general and special conditions determined in the draft standard dossiers, can use e.g. FIDIC conditions. FIDIC Conditions are designed for complex work contracts where due to the complexity of the work, more flexibility is required in order to implement the project properly.

46 Conduct of the procedures

46.1 It is a basic principle of public procurement that a competitive process should be used unless there are justifiably exceptional circumstances. The type of competitive process can vary depending on the size and characteristics of the contract to be awarded.

47 Open Procedure

47.1 An open procedure is, according to Article 32 and 33 of the PPL, together with the restricted procedure, applicable on all contracts and does not require specific justification or permission.

47.2 The open procedure is characterised by the fact that anyone, despite qualification and capacity, can tender on the contract. This does on the other hand not mean that prequalification is excluded. It merely means that prequalification is not a separate phase as in the case of restricted procedure.

Thus, in all procedures the eligibility requirements, according to Article 65 of the PPL, will always apply and will always need to be verified. In addition, it is of course possible also in an open procedure to set requirements concerning technical and financial capacity.

47.3 In the context of an open procedure the economic operator submits the required information concerning eligibility plus technical and financial capacity together with his tender. The contracting authority must nevertheless plan the tender evaluation in such a way that eligibility, professional suitability and technical/financial capacity is evaluated first. This follows directly from Article 56 of PPL. Since the contract can only be awarded to a qualified economic operator it follows from the provision that only tenders received from economic operators that fulfil these requirements will be included in the evaluation of the tenders as such.

47.4 The practical difference between open and restricted procedure is in other words that the economic operator must accept the risk of wasting resources making a tender that might end up not being evaluated at all. Economic operators will therefore be hesitant to join open procedures in cases where it requires a lot of resources to draw up a tender. The open procedure may also prove costly from the point of view of the contracting authority. This is the reason why open procedure should be used mainly in the case of less complex procurements.

Publication of contract notice

47.5 An open procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL. Such contract notice shall be prepared by use of the standard form approved by the PPRC, B05, and to be found in PPRC's web-site.

47.6 Contracting authority may use accelerated procedure when circumstances provided in Article 46 of the PPL exist. The circumstances must be justified in writing. Of particular importance is the requirement in article 46.1 of the PPL that the urgency must not be "attributable to the acts and omissions of a contracting authority". The concept of acts and omissions is wide and goes beyond mere actions. It means for example that an urgency that has arisen for example as a result of insufficient planning or evaluation of future needs does not justify use of the accelerated procedure.

47.7 The different language versions of a Contract Notice must be identical as regards the information they provide.

47.8 In the contract notice, if required, shall be indicated any fee to be paid by economic operators to cover the expenses for copying of the tender dossier. Such a fee can only be charged in cases where the price of copying of the tender material is exceptionally high. In general, fees would be excluded when tender dossiers can be sent electronically despite the volume. The price charged in such cases may not exceed the production costs of the material. It is therefore not allowed to include personnel costs or mailing/transport costs.

Delivery of tender dossier

47.9 The tender dossier shall be sent or delivered to the requesting economic operators in accordance with Article 48 of the PPL. The contracting authority shall establish a "Tender dossier request record" and indicate on such list names of requesting economic operators, date of receipt of requests and date of sending or delivery of the tender dossier. The standard form approved by the PPRC, B13, shall be used for this purpose. This provision does not apply for the CA which use the electronic platform.

Additional or clarifying information

47.10 In case an economic operator, after having received the tender dossier, needs additional or clarifying information on certain element(s) of the tender dossier, a request for such information must be submitted to the contracting authority within the deadline specified in the tender dossier pursuant to Article 53 of the PPL. A standard form for such request is included in the annexes to the tender dossier, and the same may be used by the EO.

47.11 The contracting authority having received a request as mentioned in Section 47.10 above, shall immediately review such a request and react in accordance with the provisions of Article 53.4 to 53.6 of the PPL, including the circulation of the required information to recipients of the tender dossier or, for the CA which use the electronic platform to publish the information in the electronic platform.

47.12 The processing of such a request includes an evaluation of the actual need for the information requested. This question of need arises especially in cases where the request concerns additional information.

47.13 When it comes to evaluation of need for additional information the approach of the contracting authority should not be too restrictive. Outside cases where the additional information is obviously irrelevant for the contract or not immediately available, it should be assumed that additional information generally will benefit the quality of tenders and the competition as a whole.

47.14 The contracting authority should take a similar non-restrictive approach when it discovers that the tender dossier that it has issued may be lacking certain information or may be less clear on some points. This should however under no circumstances lead to any de facto changes in technical or other requirements of the tender dossier. If the contracting authority comes to the conclusion that the planned tender is in fact inappropriate then it will not be possible to “repair” on the tender dossier by means of additional information or clarifications. The only approach available in such situations is to cancel the tender and commence another procedure on the basis of an amended tender dossier.

Tender Envelopes and Receipt of tenders

47.15 The contracting authority must specify in the tender dossier that the tender submitted for the open procedure must consist of on the one hand documentation concerning eligibility, including financial/technical capacity and on the other hand the tender as such.

47.16 For the receipt of the tenders, refer to Section 34.

47.17 In the event that tenders are submitted to the contracting authority after expiry of the time limit for submission of tenders, receipt of such tenders shall be denied only if they are submitted by mail courier, the received tenders shall be kept unopened with a view to immediate return to the sender. A “Belatedly tender submission record” shall be established analogous to the “Tender submission record” mentioned in Section 47.16 of these rules and Operational Guidelines. This provision does not apply to the CAs which use the electronic platform.

Tender opening

47.18 Tenders shall be opened publicly while every tenderer shall have the right to have a representative present to observe the opening of tenders. A main objective of the procedure is to provide sufficient transparency for a clear documentation that tenders have been duly received at the place and time fixed in the contract notice and the tender dossier¹. According to Article 58 of the PPL, the responsible Procurement officer shall appoint a Tender Opening Commission to supervise the opening procedure.

47.19 As each tender is opened, the Procurement Officer, in pursuance of Article 58.3 of the PPL shall announce to those present:

- a) the name and address of the concerned tenderer;
- b) the total tender price specified in such tender;
- c) whenever possible, unit price; and
- d) any remarks.

When for not instantaneous reasons unit prices cannot be read, such prices in any case shall be visible to all representatives of tenderers in the public opening, e.g. posting them or using any other appropriate method that guarantees transparency. In any case, every page of any

¹ Or if applicable, in the document extending the time limit

financial tender shall be signed during the public opening by a representative of another tenderer. In the event of a procurement activity where the contract award criterion is economically most advantageous tender everything that has to do with figures should be read at loud, such as time of delivery, warranty period and similar. This provision excludes tenders submitted in electronic form.

47.20 After the communication of the information provided in Section 47.19 of these rules and Operational Guidelines, the tender documents are administered by the Procurement Officer. All information announced at the tender opening meeting shall immediately be recorded in B12 “Minutes of tender opening”, prepared by use of the standard form to be found in PPRC’s web-site. At the conclusion of the meeting, the minutes shall be signed by those present at the meeting. The minutes shall be included in the records for the procedure. A copy of the minutes shall be sent to all tenderers. For the tenders submitted in electronic form the system generates the minutes of the tender opening.

47.21 The above information required to be announced at the tender opening can under no circumstances be classified as confidential business information, see Article 11.2 of the PPL. Any indications in the tender that information mentioned in Section 47.19 of these rules and Operational Guidelines is confidential must therefore be ignored by the contracting authority.

47.22 The CA shall proceed with one responsive tender,

Procedure for examination, evaluation and comparison of tenders

47.23 The procedure includes essentially three phases, namely first an evaluation of the formal responsiveness of tenderers, then an evaluation of the eligibility and the qualification of the tenderers, the technical evaluation of the tender and finally the financial evaluation.

47.24 As a preliminary measure, the contracting authority shall check that tenders comply with any formal requirements of the tender dossier, in other words responsiveness in a formal sense. A tender is deemed to be formally responsive, if it satisfies all the formal requirements in the tender dossier without substantially departing from or attaching restrictions to them. These formal requirements may concern the number of copies to be submitted, properly filled in tender forms, duly signed and formulated tender securities etc. Such examination of formal responsiveness of tenders shall be completed by use of standard form to be found in PPRC’s web-site, B36 (page 2).

47.25 For tenders that fulfil the requirements concerning formal responsiveness, the contracting authority shall then proceed to evaluate the eligibility, and, if applicable, the qualifications of the tenderers according to the selection criteria specified in the contract notice and the tender dossier, on basis of the required documentary evidence. Such evaluation of eligibility and qualification of tenderers shall be completed by use of standard form to be found in PPRC’s web-site, B36 (page 3 and 4).

47.26 The contracting authority shall evaluate whether tenders having passed the tests of Section 47.24 and 47.25 of these rules and Operational Guidelines, comply in technical terms, requirements and specifications of the tender dossier. A tender is as a main rule only considered to be responsive if it is in accordance with the technical specifications in the contract notice/tender dossier. Such evaluation of technical conformity shall be completed by use of standard form to be found in PPRC’s web-site, B36 (page 5).

47.27 Article 59.4 of the PPL also allows the contracting authority to accept tenders in case of errors or oversights and in case of minor deviations. In both cases it is a condition that material aspects of the contract notice/tender dossier are not affected.

47.28 The possibility for accepting tenders therefore depends on what “material aspects” are. As regards the contractual elements of the tender dossier, any aspect would be considered material if it changes contractual conditions concerning for example quality or performance requirements, price or payment terms, guarantees, insurance or liability and especially in cases where the change leads to a reduction of the contractual rights of the contracting authority or the contractual obligations of the tenderer. As regards technical specifications, it is difficult in general to exemplify what “material” is. At one end of the spectrum there are deviations that are in reality variants in cases where such variants are not allowed, see Article 29 of the PPL, these would obviously be material. However, also less far reaching deviations will in most cases be considered material when they concern for example the basic scope or functional capacities of what is to be delivered according to the contract. Whether a deviation is material or for that matter a deviation at all will depend on the concrete formulation of the tender dossier. In some cases a proposed solution may deviate from what the contracting authority had imagined and yet be contained within broad or vague terms of the tender dossier. In these cases it is of course the wording of the tender dossier and not the expectations of the contracting authority that matters. The yardstick is at the end of the day whether the deviation would make it impossible to compare the tenders and therefore to evaluate the tenders in an equal manner. As it is mentioned in 47.29 of these rules Operational Guidelines the contracting authority will be able to accept minor deviation in cases where such deviation can be quantified.

47.29 Article 59.4 of PPL requires that errors and oversights must be corrected and that minor deviations must be quantified. The errors and oversights are other than the arithmetic ones dealt with in Section 41.9 of these rules and Operational Guidelines. Errors and oversights can be textual or they may concern other aspects of the tender. Textual errors and oversights must be so objectively obvious that the contracting authority is capable of identifying them as errors and oversights! Any ambiguity or contradiction that can not readily be identified as an error or oversight cannot be corrected. The contracting authority must in such cases proceed by asking for clarification according to Article 59.2 of PPL. The quantification of minor deviations has the purpose of neutralising the effect that this deviation would have on the comparison of tenders. The quantification must end up in some value expressed in monetary terms.

47.30 According to Article 59.2 of the PPL, the contracting authority may request clarification of any aspect of a tender from the concerned economic operator in writing. This dialogue between the parties can not under any circumstances justify any amendments to the tender initiated by any of the parties, unless it turns out exceptionally that the need for clarification is caused by an error or oversight that can be corrected unilaterally by the contracting authority according to Article 59.4 of the PPL. Such clarifications must under no circumstances institute negotiations. Without response from the concerned economic operator, the contracting authority shall reject the tenderer. Contracting authorities’ request for clarification of tenders shall be made by use of the standard form approved by the PPRC, B47.

47.31 With reference to Article 59.3 of the PPL the contracting authority may correct a purely arithmetical error in a tender, if such an error is discovered during the examination of tenders, however, this correction cannot be higher than two percent (2%) of the total amount of the bid. Notification to the concerned tenderer on such correction of a tender shall be made by use of

the standard form approved by PPRC, B49. However, in no case may the price per unit be corrected. For more details see Section 41 of these rules and guidelines

47.32 It is made clear in Article 56.3 of the PPL, that a tenderer shall not be disqualified, excluded or eliminated from the procurement procedure on basis of any requirement or criterion not specified in the contract notice and/or the tender dossier. Notification to disqualified or eliminated tenderers shall be prepared and dispatched promptly by use of the standard form approved by the PPRC.

47.33 Tenders not rejected under the above Sections, shall be considered to be “responsive” tenders. The contracting authority shall evaluate and compare the responsive tenders according to the contract award criteria specified in the contract notice and the tender dossier.

47.34 If in the Tender Dossier and in the Contract Notice, the contracting authority has determined the award criteria “most economically advantageous tender”, such award shall be made only based on the criteria and the weight of the criteria that were specified in the Tender Dossier and in the Contract Notice. These criteria must according to Article 52 of PPL fulfil the following requirements:

1. The criteria must be objectively assessable, which essentially means that they must be sufficiently concrete and clear to allow the tenders to be measured in relation to each other. In the case of for example after sales services, the criterion could be a maximum time limit for the provision of such services.
2. The criteria must be directly relevant for the subject matter of the contract. Criteria concerning aesthetics would be difficult to justify in the case of photo copiers but would be acceptable in the case of office furniture. In any case, the purpose of the requirement on relevance is to ensure that competition is not becoming unnecessarily restricted and that any risk of undue advantage to certain tenderers is minimised.
3. The criteria can concern issues such as price, operating/maintenance /other life-time costs, functional/technical/environmental/aesthetic characteristics, after sales services, and/or quality characteristics. It will of course not be sufficient to indicate “quality” or “after sales service” as criteria. The criteria must be made concrete and measurable, see the example under 1). Such elaboration on the criteria must be included in the contract notice/tender dossier in order to allow the tenderers to take it into account when establishing the price and other conditions.

47.35 Article 52.4 of the PPL requires a clear distinction to be made between award criteria and the selection criteria. The award criteria relate to the tender whereas the selection criteria concern the qualifications and capacities of the tenderer. The contracting authority must therefore be aware that for example the award criterion environmental characteristics should relate strictly to the characteristics of the subject matter of the contract (the machine must be composed of a high degree of recyclable material, the photo copier must have low energy consumption). Any such characteristics on the part of the tenderer (low emissions from production sites, environmental management of production processes) should not be included as award criteria.

47.36 In the event that the contracting authority objectively considers a tender abnormally low it shall proceed as per the procedure described under Section 42 of these rules and Operational Guidelines.

47.37 Evaluation minutes shall be prepared, containing deliberations and assessments of the tender examination, evaluation and comparison procedure. After determining the final ranking, the evaluation committee must prepare a report to the responsible procurement officer.

Contract award and signing

47.38 The evaluation and comparison procedure shall result in ranking of tenders. The tenderer having offered the best ranked tender according to the contract award criteria shall be awarded the contract.

47.39 The Contract award notice according to Article 41 of the PPL shall be prepared by using of the standard form B08 to be found in PPRC's web-site.

The prepared contract award notice shall be published in accordance with Section 21.c of these rules.

47.40 The tender dossier, including annexes, lays down all material terms and conditions of the contract and there is therefore no scope for any negotiation of contract terms before the signing. Further such negotiations will establish a breach of the principle of equal treatment.

The Procurement officer shall make a contract document ready for signing on the basis of the tender dossier and the winning tender. When the pre-conditions to the signing are fulfilled, for instance submission of the performance security, and the final contract is signed by both parties, it enters into force. When a public contract has entered into force, the procurement officer within two (2) days after the signing of such contract shall prepare a contract signing notice by using the standard form B52 and will send to the PPRC for publication. CA which uses the electronic platform, upload such notice in the platform. The contract shall be performed in conformity with its contract terms and conditions and the contract management plan according to Article 81 of the PPL. This plan is developed as part of the preparation of the procurement activity and must be agreed and signed between the parties as a condition for implementing the contract.

Distribution of Signed Contract

47.41 The tender documents shall indicate the numbers of copies of the contract to be signed. After the contract has been duly signed, by both parties, legible copies of the signed contract shall be distributed internally in the organisation, as follows:

1. Finance department;
2. Originating Requesting Unit (User Department);
3. Project Manager responsible for managing the contract.

47.42 The original copy of the Contract is kept within the Procurement Department/Unit.

48 One-envelope and Two-Envelope Tendering Procedure

48.1 A one envelope approach contains both the technical and the financial proposal in a single envelope, while a two envelope approach requires the technical proposal and the financial proposal in separate envelopes.

48.2 In the case of the one-envelope approach, commonly used for competitions, the financial and technical proposals are contained in the same envelope and the financial offers are read out at the opening ceremony. The advantage is that tenderers know immediately what their competition has their tender and there is a high level of transparency.

48.3 The two-envelope approach means that the economic operators submit two sealed envelopes simultaneously, one containing the Technical Proposal and the other the Financial Proposal enclosed together in an outer single envelope. Two-envelope approach applies only when using a restricted procedure for consulting services.

48.4 The Technical Proposal shall only contain non-price related details including tenderer's experience, expertise, financial capabilities and detailed technical proposals related to the project as outlined in the tender documents.

48.5 The Financial Proposal shall only contain price-related information based on the scope of the project specifications and requirements.

48.6 Only the technical proposals are opened at the date and time specified in the Tender Dossier and the financial proposals remain sealed and are held in custody by the Procurement Officer until the time of the opening of the Financial Proposals. The advantage is that the evaluation concerning eligibility and qualifications will not be influenced by the price of the tenderers. The envelopes containing the financial part of the tender cannot be opened until the end of the technical evaluation and ranking of bids and the bidders listed are notified of the time and place of opening by informing them of their rights to be present at the meeting.

48.7 Initially only the technical proposals are evaluated. Each member of the evaluation committee evaluates each technical proposal separately and properly points (scores) the proposal. The final points of each technical proposal are achieved by collecting points from all members and dividing it by the number of the evaluation committee members. It must be emphasized that the Contracting Authority shall determine in the Tender documents the balance between the ratio of the technical and the financial weighting and the minimum number of points for the technical proposals which the Tenderers will have to achieve in order to be qualified (considered responsive).

48.8 At the end of the evaluation of the Technical Proposals, the Contracting Authority shall invite tenderers who have submitted responsive Technical Proposals and who have been determined as being qualified for award to attend the opening of the Financial Proposals. The date, time, and location of the opening of Financial Proposals will be set in writing by the Contracting Authority. Tenderers shall be given reasonable notice of the opening of Financial Proposals.

48.9 The Contracting Authority shall notify Tenderers in writing that have been rejected on the grounds of being non-responsive to the requirements of the Tender Dossier and return their Financial Proposals unopened.

48.10 The Contracting Authority shall conduct the opening of Financial Proposals of all Tenderers who submitted responsive Technical Proposals, in the presence of Tenderers` representatives who choose to attend at the address, date and time specified by the Contracting Authority.

48.11 During the public opening of the financial proposals the Procurement officer shall first announce the scores of all technical proposals and then open the financial proposals and announce the prices.

48.12 The Contracting Authority shall evaluate and compare combined technical and financial proposals to determine the best evaluated tender and award the contract.

49 RESTRICTED procedure

49.1 A Restricted Procedure is a two-stage procedure. It is a two stage process where only those economic operators who meet minimum requirements, in regard to professional or technical capability, economical and financial standing to carry out a project, are invited to tender.

- In the first stage, Pre-qualification stage, all economic operators are invited to submit requests to participate in the procedure. The Contracting Authority selects the Economic Operators who meet the minimum requirements of the selection criteria specified in the contract notice.
- In the second stage, Award stage, only selected Economic Operators are allowed to tender. The Contracting Authority invites the selected Economic Operators to submit their tenders and evaluates the tenders using the award criteria specified in the invitation to tender.

49.2 Economic operators participating in a Restricted Procedure are called “candidates”.

Phases of the procedure

49.3 The restricted procedure as defined in Article 4.1.53 of the PPL is a procurement procedure allowing any economic operator to request to participate whereas allowing only those economic operators qualified by the contracting authority to submit a tender. This means, that there shall be an open possibility for the interested economic operators to apply for pre-qualification.

49.4 A candidate participates in the procedure by submitting a request to participate. There is no public opening of requests to participate.

49.5 After the time limit for receipt of requests to participate, the contracting authority evaluates the candidates qualification in accordance with the published qualification requirements. Candidates that meet the required qualification requirements are invited to submit a tender. Candidates that do not meet the qualification criteria are eliminated. Candidates invited to

tender are required to submit tenders by the time limit specified in the tender dossier. A public opening of tenders is held. Tenders are evaluated in accordance with the award criteria specified in the tender dossier and the winning candidate is awarded the contract.

Publication of contract notice

49.6 A restricted procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL. Such contract notice shall be prepared by use of the standard form to be found in PPRC's web-site.

49.7 For publication of the contract notice, Sections 47.7- 47.8 of these rules and Operational Guidelines apply analogously.

49.8 In the contract notice the Contracting Authority shall specify the minimum selection criteria (eligibility requirements, professional suitability, economical and financial standing, technical and/or professional capability and any Quality Assurance Standards) which interested economic operators must meet in order to become pre-qualified to participate in the procedure. The Contracting Authority shall as well indicate that if more than 6 eligible candidates meet the selection criteria the CA shall re-examine the applications in order to identify the 6 best applications for the tender procedure. The CA shall specify factors which will be taken into consideration during this re-examination of the applications.

49.9 In the contract notice shall be specified the time limit for receipt of the applications from the interested economic operators. The contracting authority shall set a time limit for such request which is in accordance with the time limits specified in the PPL.

Delivery of the Prequalification Document

49.10 The Prequalification document, produced by the Contracting Authority by using the standard form approved by the PPRC B33 "Prequalification Document" shall be sent or delivered to the requesting economic operators no later than three (3) days after receiving such a request. This provision does not apply to the CAs which use the electronic platform.

The contracting authority shall establish a "Prequalification request record" and indicate on such list names of requesting economic operators, date of receipt of requests and date of sending or delivery of the prequalification document. For this purpose the CA shall use the standard form approved by the PPRC. For tenders submitted in electronic form the system generates the minutes of requests for pre-qualification.

Receipt and opening of requests to participate

49.11 Immediately at the receipt of envelopes containing the submitted Requests to participate, the contracting authority shall mark the sealed outer envelopes with a serial number as well as date and time of receipt. If a Request to participate is delivered personally, the contracting authority shall issue to the deliverer a receipt of delivery bearing the number, date and time information. This provision does not apply to the CAs which use the electronic platform.

49.12 Information on number, date, time and identity of receiving officer, and if applicable the name of the bringer of the envelope shall, for the timely received requests to participate, be

entered into a "Requests to participate submission record" by using the standard form to be found in PPRC's web-site. For tenders submitted in electronic form the system generates the minutes of the application submission.

49.13 If applications are submitted to the contracting authority after the deadline for submission of applications, such applications will not be accepted except in the case of applications submitted by mail, applications received should be kept unopened with the a view to immediate return to the sender. A "Belatedly requests to participate submission record" shall be established similar to "Requests to participate submission record." This provision does not apply to CA which use electronic platform.

49.14 Timely received applications shall be opened by the contracting authority immediately after the expiration of the deadline for submission of the applications. There shall be no public opening meeting but the opening shall be arranged in such a way that the integrity and fairness of the opening procedure is ensured meaning that the minutes of the internal opening session shall be prepared. The CA does not need to send the minutes of the internal opening session to the candidates but the list of the received envelopes and the minutes of the internal opening session shall be open to access for interested parties having a specific material interest in the concerned procurement activity. The contracting authority shall respect and safeguard confidential business information, if any, as provided for in Article 11 of the PPL.

49.15 PPL determines the maximum number of EO who should be invited to the second phase but does not determine the minimum number of EO who should be invited to the second phase, however, the word "Economic Operators chosen" or "candidates" is always mentions meaning that in the second stage there should be more than one EO in order for the Contracting Authority to have competition in the second phase. Given the fact that in the EU Directive on public procurement the minimum number of EO in the restricted procedure is defined to 5 (five), and based on best international practices and in order to ensure adequate competition and transparency, the CA should not proceed with the second phase if it has received less than 3 (three) responsive applications.

49.16 In case a cancellation of the procedure is decided, a cancellation notice shall immediately be prepared and published according to Section 44 of these rules and Operational Guidelines.

Procedure for examination of requests to participate (applications) – 1st stage

49.17 The procedure includes essentially two phases, namely first the evaluation of the formal responsiveness of the candidates then the evaluation of the eligibility and the qualification of the candidates.

49.18 As a preliminary measure, the contracting authority shall check that requests comply with any formal requirements of the prequalification documents, in other words responsiveness in a formal sense. A request is deemed to be formally responsive, if it satisfies all the formal requirements in the prequalification documents without substantially departing from or attaching restrictions to them. Such examination of formal responsiveness of the applications shall be completed by use of standard form to be found in PPRC's web-site, B37 (page 1).

49.19 For requests that fulfil the requirements concerning formal responsiveness, the contracting authority shall then proceed to evaluate the eligibility and the qualifications of the candidates according to the selection criteria specified in the contract notice and the

prequalification document, on basis of the required documentary evidence. Such evaluation of eligibility and qualification of candidates shall be completed by use of standard form to be found in PPRC's web-site "Application Evaluation Report".

49.20 A candidate that has failed to submit the required documentation demonstrating or affirming that the candidate is eligible, or has failed to submit sufficient evidence that the candidate meets the minimum qualification requirements shall be disqualified.

49.21 According to Article 59.2 and Article 72 of the PPL, the contracting authority may request clarification of any aspect of a request from the concerned economic operator in writing. Without response from the concerned economic operator, the contracting authority shall reject the candidate. Contracting authorities' request for clarification shall be made by use of the standard form to be found in PPRC's web-site.

49.22 It is made clear in Article 56.3 of the PPL, that a candidate shall not be disqualified, excluded or eliminated from the procurement procedure on basis of any requirement or criterion not specified in the contract notice and/or the prequalification document. Notification to disqualified candidates shall be prepared and dispatched promptly by use of the standard form approved by the PPRC.

49.23 All candidates having submitted the required documentation demonstrating or affirming that the candidates are eligible and meet the minimum qualification requirements shall be considered pre-qualified and selected to receive an invitation to tender unless the number of such candidates exceeds six (6). If the number of eligible candidates meeting the selection criteria is greater than the maximum of six, the relative strengths and weaknesses of the applications of these candidates must be re-examined to identify the six best applications for the tender procedure. During the re-examination the CA shall take into consideration only the factors, published on the Contract Notice, for re-examination. Contracting Authority may consider only financial or technical capacity criteria as additional criteria.

49.24 The criteria that may be taken into account to determine the relative ranking of the qualified economic operators do not need to be the same as those used for establishing whether economic operators are qualified. Additional criteria (chosen from among the admissible selection criteria listed by the PPL) could also be used. In any event, these additional criteria are to be aimed at identifying those economic operators that are best qualified to perform the contract. Therefore, they must relate to the contract to be awarded.

Example No. 1:

In a restricted procedure for the award of a contract to supply computers to a university, one of the selection criteria (relating to technical capacity) to be applied might require that:

"Technical capacity criterion:

- a) past experience: economic operators have successfully completed at least two contracts for the supply of computers of a minimum value of 100,000 EUR each in the last two years".

As an example, the contracting authority might state the following:

IV.1.2) Limitations on the number of the operators who will be invited to tender (restricted or negotiated procedure)

“On the basis of the applications received, at least 2 and at most 6 candidates will be invited to submit detailed tenders for this contract. If more than 6 eligible candidates meet the above selection criteria, the relative strengths and weaknesses of the applications of these candidates shall be re-examined to identify the six best applications for the tender procedure. The only factors which will be taken into consideration during this re-examination are:

Highest total number of successfully completed contracts meeting the technical capacity criterion stated in Contract Notice Section III.2.4 Point a) (“economic operators have successfully completed at least two contracts for the supply of computers of a minimum value of 100,000 EUR each in the last two years”);

In the above example, the ranking will be as follows:

	Reference 1	Reference 2	Reference 3	Reference 4	Reference 5	Total	Rank
Economic Operator “1”	100,000 EUR	110,000 EUR	115,000 EUR			3 references	Invited
Economic Operator “2”	150,000 EUR	300,000 EUR				2 references	Not invited
Economic Operator “3”	120,000 EUR	125,000 EUR	340,000 EUR	170,000 EUR		4 references	Invited
Economic Operator “4”	600,00 EUR	700,000 EUR				2 references	Not invited
Economic Operator “5”	150,000 EUR	190,000 EUR	320,000 EUR	500,000 EUR	180,000 EUR	5 references	Invited
Economic Operator “6”	170,000 EUR	700,000 EUR	130,000 EUR			3 references	Invited
Economic Operator “7”	200,000 EUR	100,200 EUR	110,000 EUR			3 references	Invited
Economic Operator “8”	100,000 EUR	130,000 EUR	130,000 EUR	120,000 EUR		4 references	Invited

Example No. 2:

In a restricted procedure for the award of a contract to supply computers to a university, one of the selection criteria (relating to technical capacity) to be applied might require that:

“Technical capacity criterion:

- a) past experience: economic operators have successfully completed at least two contracts for the supply of computers of a minimum value of 100,000 EUR each in the

last two years”.

As an example, and supposing that the contracting authority has fixed at 6 the maximum number of economic operators to be invited to tender, the contracting authority might state the following:

In the above example, the ranking will be as follows:

	Reference 1	Reference 2	Reference 3	Reference 4	Reference 5	Total value	Rank
Economic Operator “1”	100,000 EUR	110,000 EUR	115,000 EUR			325,000 EUR	Not invited
Economic Operator “2”	150,000 EUR	300,000 EUR				450,000 EUR	5
Economic Operator “3”	120,000 EUR	<u>125,000 EUR</u>	<u>340,000 EUR</u>	<u>170,000 EUR</u>		635,000 EUR	4
Economic Operator “4”	<u>600,00 EUR</u>	<u>700,000 EUR</u>				1,300,000 EUR	1
Economic Operator “5”	150,000 EUR	<u>190,000 EUR</u>	<u>320,000 EUR</u>	<u>500,000 EUR</u>	180,000 EUR	1,010,000 EUR	2
Economic Operator “6”	<u>170,000 EUR</u>	<u>700,000 EUR</u>	<u>130,000 EUR</u>			1,000,000 EUR	3
Economic Operator “7”	<u>200,000 EUR</u>	<u>100,200 EUR</u>	<u>110,000 EUR</u>			410,200 EUR	6
Economic Operator “8”	100,000 EUR	<u>130,000 EUR</u>	<u>130,000 EUR</u>	<u>120,000 EUR</u>		360,000 EUR	Not invited

Invitation to tender

49.25 With reference to Article 50 of the PPL, the pre-qualified candidates selected shall be invited to tender simultaneously, by sending the TD.

49.26 In the invitation to tender as well as in the tender dossier, the deadline for the invited candidates’ possible request for additional or clarifying information shall be specified pursuant to Article 53.1 of the PPL. The provisions of Section 47.10-47.14 of these rules and Operational Guidelines apply analogous.

Receipt of tenders. Tender Opening. Procedure for examination, evaluation and comparisons of tenders. Contract award and signing – 2nd stage

49.27 Section 47.15 - 47.17 of these rules and Operational Guidelines apply for receipt of tenders.

49.28 Tender opening shall take place according to Section 47.18-47.22 of these rules and Operational Guidelines.

49.29 The examination procedure includes essentially two phases, namely first an evaluation of the formal responsiveness of tenders and then the technical evaluation of the tender as such.

49.30 As a preliminary measure, the contracting authority shall check that tenders comply with any formal requirements of the tender dossier, in other words responsiveness in a formal sense. A tender is deemed to be formally responsive, if it satisfies all the formal requirements in the tender dossier without substantially departing from or attaching restrictions to them. These formal requirements may concern the amount of copies to be submitted, properly filled in tender forms, duly signed and formulated tender securities etc. Such examination of formal responsiveness of tenders shall be completed by use of standard evaluation form approved by the PPRC.

49.31 The contracting authority shall evaluate that the tenders having passed the tests of Section 47.24 and 47.25 of these rules and Operational Guidelines comply in technical terms with the description, requirements and specifications of the tender dossier. A tender is as a main rule only considered to be responsive if it is in accordance with all the technical and contractual requirements and specifications in the tender dossier. Such evaluation of technical conformity shall be completed by use of standard evaluation form approved by the PPRC.

49.32 The provisions of Sections 47.26 - 47.37 of these rules and Operational Guidelines apply analogous for the procedure for examination, evaluation and comparison of tenders.

49.33 The provisions of Sections 47.38 – 47.42 of these rules and Operational Guidelines apply analogous for the contract award and signing and for the distribution of the signed contract.

50 Emergency Procurement

50.1 Cases of Emergency are divided into two types of emergencies:

- a. extreme emergency; and
- b. urgency.

Cases of extreme emergency

50.2 For cases of extreme emergency – the possibility exists to use negotiated procedure without publication of a contract notice, Article 35.2.1(iii) of the PPL. This procedure may be conducted with one or more economic operators selected by the contracting authority. There are no minimum time limits connected with the conduct of such procedure.

50.3 The conditions for use of the emergency procedures are that the circumstances imply the following:

- strictly necessity of the conduct of a procurement activity on emergency basis,
- motivated by objectively verifiable events that were not reasonably foreseeable by the contracting authority,
- cannot afford the time limits required, and

- the emergency circumstances are not attributed to negligent or purposeful acts or omissions of the contracting authority.

“Emergency basis” means, that the circumstances require the conduct of the concerned procurement on a more accelerated basis than even the accelerated time limits provided for in Article 46 of the PPL.

50.4 Still, the requirements of Article 35.3 of the PPL shall be held in mind by the contracting authority: “The conduct of a negotiated procedure without publication of a contract notice shall not in any way relieve a contracting authority of its obligations to:

- (i) play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
- (ii) ensure that the contracted price is not higher than the concerned market price; and
- (iii) Carefully assess the quality of the concerned product, service or works.”

50.5 Whenever the Contracting Authority uses negotiated procedure without publication of the Contract Notice, as per Article 35.2.1(iii) of the PPL, the Contracting Authority shall notify PPRC by using the standard form.

Cases of urgency

50.6 For cases of urgency, the PPL contains rules permitting the reduction of the time limits for the receipt of tenders/requests to participate, Article 46 of the PPL. Such procedures are called “accelerated procedures”, and the reduced time limits are called “accelerated time limits”.

50.7 The conditions for use of accelerated procedures are that the circumstances imply the following:

- necessity of conduct of a procurement activity on an urgent basis,
- it is impracticable to observe the normal time limits,
- extreme urgency is not involved, and
- such circumstances are not attributable to acts or omissions of the contracting authority.

50.8 The minimum time limits for receipt of tenders/request to participate in accelerated procedure are mentioned in Section 21 of these rules and Operational Guidelines. These accelerated time limits are minimum time limits. If at-all possible more days shall be given to the economic operators to prepare and submit their tenders.

50.9 The contracting authority shall send the documents to those EO who request the documents within 3 days from receipt of the request. Also, the time limit for economic operators’ request of additional or clarifying information is shortened. The requests of additional or clarifying information shall be received by the contracting authority no less than 3 days prior to the date set for receipt.

50.10 Apart from what is mentioned in this Section the rules for conduct of accelerated procedures are the same as for the normal procedures.

51 Competitive Negotiated procedure

Phases of the procedure

51.1 The Competitive Negotiated Procedure is an exceptional, multi-phased procedure that involves the contracting authority consulting with qualified economic operators to negotiate the terms of the contract under which supplies/services/works will be provided. It is a procedure carried out in three stages.

The first stage, Pre-qualification stage, is carried out exactly as for the restricted procedure.

The second stage, Preliminary examination and evaluation stage, is carried out partly the same as stage 2 in the restricted procedure as it implies: (i) check of the formal/administrative conformity of the proposals, and (ii) preliminary examination and evaluation of the technical conformity of the tenders.

In the third stage, Negotiations and award stage, only candidates having submitted acceptable proposals are invited to participate in further negotiations and get the same chance to amend and/or complete their original tenders.

51.2 Economic operators participating in a Competitive Negotiated procedure are called “candidates.”

51.3 Whenever the Contracting Authority uses this procedure it must in advance make a formal written statement with clear explanation of using this procedure and this statement shall be included in the tender dossier.

51.4 The Competitive Negotiated procedure may only be used if justified by objectively verifiable factors and without any discriminatory intent.

51.5 Use of the Competitive Negotiated procedure does not preclude the requirement on Contracting Authorities to define its requirements, with as much particularity as possible, by reference to applicable technical standards, and to otherwise comply with rules on transparency, competition and non-discrimination.

Publication of contract notice. Pre-qualification. Invitation to submit proposal. Tender dossier – 1st stage

51.6 A Competitive Negotiated procedure is initiated by publication of a contract notice prepared pursuant to Article 40 of the PPL. Such contract notice shall be prepared by use of the standard form to be found in PPRC’s web-site.

51.7 For publication of the contract notice, Sections 49.6-49.9 of these rules and Operational Guidelines apply analogously.

51.8 The pre-qualification procedure shall be performed in accordance with the provisions of Sections 49.10-49.24 of these rules and Operational Guidelines.

51.9 All pre-qualified candidates, minimum 6, shall be invited simultaneously to submit a tender which can serve as basis for negotiations of terms and conditions of the contract, unless the number of such candidates exceeds six (6). If the number of eligible candidates meeting the selection criteria is greater than the maximum of six, the relative strengths and weaknesses of the applications of these candidates must be re-examined to identify the six best applications for the tender procedure. During the re-examination the CA shall take into consideration only the factors, published on the Contract Notice, for re-examination. This must be known to the candidates therefore this must be indicated in the Contract Notice. The provisions of Section 49.24 of these rules and Operational Guidelines apply analogously.

Receipt and opening of tenders. Examination and evaluation of proposals. Invitation to further negotiations – 2nd stage

50.10 Section 47.15 - 47.17 of these rules and Operational Guidelines apply for receipt of tenders, taking into account that the “Tender submission record” shall be based on an “Invited candidate’s record”. Timely received proposals shall be opened by the Contracting Authority immediately after the expiration of the deadline for submission of proposals. There shall be no public opening meeting but the opening shall be arranged in such a way that the integrity and fairness of the opening procedure is ensured meaning that the minutes of the internal opening session shall be prepared. The Contracting Authority does not need to send the minutes of the internal opening session to the candidates but the list of the received envelopes and the minutes of the internal opening session shall be open to access for interested parties having a specific material interest in the concerned procurement activity. The contracting authority shall respect and safeguard confidential business information, if any, as provided for in Article 11 of the PPL.

51.11 The procedure for examination and evaluation of proposals shall be conducted in analogy of Section 49.29-49.32 of this Operational Guidelines. The examination and evaluation of the proposals at this stage shall be made preliminarily, as the proposals shall serve as basis for further negotiations of the contract terms and conditions.

51.12 The CA will determine in the contract notice if:

1. it will negotiate with tenderers, initial tenders and all subsequent tenders submitted by them, with the exemption of final tenders, to improve its content; or
2. Award contracts based on initial tenders without negotiations.

51.13 In case of negotiations, the CA will also specify in the contract notice whether it will:

1. Conduct the negotiations in successive stages in order to reduce the number of tenders to be negotiated; or
2. Conduct the negotiations with all the candidates who have submitted responsive tenders

51.14 in case of negotiations, candidates having submitted acceptable tenders shall be invited to participate in further negotiations of terms and conditions of the contract.

Conduct of negotiations. Evaluation of final tenders. Contract award and signing- 3rd stage

51.15 During the negotiations, the contracting authority shall ensure equality of treatment of all participants in the negotiations. In particular, the contracting authority shall not provide information to the participants on terms and conditions of the contract in a discriminatory manner, which may give some participants an advantage over others.

51.16 Negotiations may concern the technical, economic, legal and other aspects of the contract, including the price or prices. Minimum requirements and the award criteria will not be subject to negotiation.

51.17 Negotiations shall be held with each selected participant separately. All selected participants shall be subject to the same requirements and shall be provided with the same information on background, terms and conditions of the contract.

51.18 No information obtained from one participant and no information about the solutions proposed by one participant may be revealed to any other participant without the prior consent of the participant having provided such information.

51.19 The contracting authority shall fully document any stage of the negotiations, reporting in particular: the object of the negotiations, the methods used, and all written and oral communications held with participants. The standard form, to be found in PPRC's web-site, shall be used to record the negotiations held separately with each participant.

51.20 Upon completion of the negotiations, the participants with whom negotiation has taken place shall be invited to submit their final tenders. The standard form shall be used for recording of the final negotiation stage.

51.21 The time limits fixed for receipt of amended and/or completed proposals shall be sufficiently to give the participants reasonable time for drawing up and submitting their proposals or final tenders.

51.22 The final tenders shall be evaluated and compared according to the contract award criteria specified in the tender dossier by use of the standard form to be found in PPRC's web-site.

51.23 The provisions of Sections 47.38 – 47.42 of these rules and Operational Guidelines apply analogous for the contract award and signing and for the distribution of the signed contract.

52 Negotiated procedure without publication of a contract notice

Phases of the procedure

52.1 The negotiated procedure without publication of a contract notice is a procedure that involves the Contracting Authority negotiating, without advertising, the terms of the contract directly with one or more economic operators. This is a departure from the core principles of openness, transparency and competition and is a very exceptional procedure.

52.2 According to Article 35 of the PPL, a contracting authority, exceptionally, may use the negotiated procedure without publication of a contract notice for the award of any type or class of contract, if the circumstances justify the use of the mentioned procedure.

52.3 Contracting authorities should ensure that the precise circumstances justifying negotiations exist before deciding on the use of this procedure. The main instances where this procedure may be used are:

Any public contract

- when, for technical or artistic reasons there is only one possible economic operator;
- due to the existence of special intellectual or industrial property right or exclusive rights there is only one possible economic operator;
- in cases of extreme urgency.

Supply Contract

- for additional deliveries by the same supplier, not more than 10% of the value of the contract, subject to certain conditions;
- if the CA is a Public Service Operator for purchase of commodities at a commodities market, commodities exchange, or similar open trading platform or system.

Service Contract

- if it follows from a design contest;
- if a CA enjoys exclusive rights to provide such services.

Service or Works Contract:

- for additional services or works not included in the original contract subject to certain conditions (original EO performs the additional services or works, cannot technically or economically be separated, although separable are strictly necessary for the completion, and the value is not more than 10% of the value of the original contract);
- for new services or works consisting in the repetition of similar works or services entrusted to the EO subject to certain conditions (are in conformity with the basic project, this possibility is disclosed in the tender, it happens during a period of two years after the conclusion of the original contract and the value is not more than 10% of the value of the original contract).

52.4 When a contracting authority uses the negotiated procedure without publication of the contract notice it shall notify PPRC, within two days of the date when the decision is taken by using the standard form approved by the PPRC. PPRC in each case can decide to check the aforementioned decisions and, if necessary, invite the concerned contracting authority to review its decision in accordance with the opinion issued. If the PPRC decides to check the

above decisions, PPRC should do it within two (2) days after receipt of such report. PPRC opinions issued in accordance with this paragraph, have a non-binding character for contracting authorities, but competent authorities may take them into account when handling the complaints submitted in accordance with Part IX of this Law.

52.5 Notification may be done by e-mail, fax or hard copy, and shall contain information regarding identification of the procurement and a legal reasoning for the use of the exemption. Whenever the notification is sent to the PPRC by electronic means the signatures of the CAO and of the responsible Procurement Manager shall be scanned into the files or the signed document shall be scanned and submitted to PPRC in a PDF format. .

Invitation of participants. Conduct of negotiations. Contract award and signing

52.6 Participants to a negotiated procedure without publication of contract notice shall be selected among eligible economic operators and shall be invited to participate by the contracting authority with no intention to discriminate against or to favour any economic operator.

52.7 Where only one supplier exists according to Section 35 of the PPL and there is no other alternative, then the contracting authority shall:

- (i) play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
- (ii) ensure that the contracted price is not higher than the concerned market price; and
- (iii) assess carefully the quality of the concerned product, service or works.

52.8 Where the contracting authority determines to conduct the negotiations with more than one economic operator, the negotiations shall take place according to the provisions of Sections 51.15 - 51.22 of these rules and Operational Guidelines.

52.9 The provisions of Section 47.38 – 47.42 of these rules Operational Guidelines apply analogous for the contract award and signing and for the distribution of the signed contract.

52.10 Depending on the nature of the procurement activity, the contracting authority during the conduct of the negotiated procedures without publication of the contract notice may use one of the tender dossiers approved by PPRC.

53 Price quotation procedure

Phases of procedure

53.1 A price quotation procedure shall be conducted pursuant to Article 36 of the PPL and in the phases following this Section of these rules. The standard tender dossier for Price Quotation approved by PPRC shall be used for the conduct of this procedure.

53.2 In the tender dossier the Contracting Authority shall indicate that the quotation must contain a fixed price including any and all applicable taxes and duties as well as any transportation, insurance, installation or other charges, fees or expenses of any description, that the contracting authority will need to pay to obtain the concerned works, supplies or services.

53.3 A contracting authority may use the price quotation procedure, if the intended contract concerns:

- a minimal or low value contract for works, supplies or services;
- such works consist only of repair and maintenance;
- such supplies or services are readily available;
- such supplies or services do not need to be specially produced or customized; or
- There is an established market for such supplies services.

Conduct of price quotation procedure

53.4 A price quotation procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL. Such contract notice shall be prepared by use of the standard form approved by the PPRC, B05, and to be found in PPRC's web-site.

53.5 The provisions of Sections 47.5 - 47.9 of these rules apply analogously for the publication of the contract notice and for delivery of the tender dossier. The minimum time limit for submission of price quotations in accordance with article 47 of the PPL must be five (5) days from the date of publication of the contract notice. Date of notification is "day 0" of 5 mandatory days.

53.6 Article 25 of these rules, in accordance with Article 53 of the PPL which deals with additional information applies analogously.

Receipt of price quotations. Opening. Evaluation. Contract award and signing

53.7 Section 32 or 33 of these rules and Operational Guidelines concerning receipt of tenders applies analogous to receipt of price quotations. Offers received from EO who have not made a request in writing for the receipt of the tender dossier are not accepted. This provision does not apply to the CA which use the electronic platform.

53.8 Section 47-18-47.22 of these rules and Operational Guidelines concerning opening of tenders in an open procedure applies analogous to opening of timely received price quotations.

53.9 Examination, evaluation and comparison of timely received price quotations shall take place according to essentially the same rules as the rules for the open procedure apart that the examination, evaluation and comparison of quotations shall be completed by the use of the standard form approved by PPRC, Tender Evaluation Report for Price Quotation procedure, B39.

53.10 The provisions of Sections 47.38 – 47.42 of these rules apply analogous for the contract award, signing and for the distribution of the signed contract.

54 Procedure for minimal value contracts

General Principles

54.1 The Contracting authority may use the minimal value procedure for any public contract the estimated value of which is less than 1,000 Euros. By award of purchase orders with regard to minimal value procurement, the contracting authority shall ensure adequate competition, transparency and the most cost-effective use of public funds. The Director of the Educational Institution is the person authorized to sign a minimal value contract in educational institutions.

54.2 In calculating the contract value for the use of the minimal value procedure, the contracting authority shall take into account only a group of similar supplies, services or works, which are usually procured altogether.

Conduct of Minimal Value Procedure

54.3 The Minimal Value Procedure shall be performed by the contracting authority with no intention to discriminate against or favour any economic operator.

54.4 The contracting authority is obliged to (i) ensure that the agreed price is not higher than the concerned market price, and (ii) carefully assess the quality of the concerned products, services or respective works.

54.5 At least 3 (three) economic operators of the concerned goods/services/works shall be contacted. This does not mean that the Contracting Authority is obliged to receive 3 (three) offers but the Contracting Authority is obliged to document that at least 3 economic operators were contacted by producing a register of the contacted Economic Operators. It means, that the CA shall continue with one responsive offer.

54.6 When contacting economic operators, the Contracting Authority shall compile the Quoted prices, by using the standard form approved by the PPRC, "Quoted Prices for minimal values", B19.

54.7 Each "Quoted Prices" shall be signed by each of the contacted economic operators and by the Procurement officer. The given prices must not be revealed to any of the economic operator contacted.

54.8 The Procurement Officer shall produce the "Minutes of the Quoted Prices", that will contain the names and address of contacted economic operators and the offered prices. There is no need to establish an opening and evaluation committee and there is no need to prepare the evaluation report. Minutes of the Quoted Prices are considered as opening and evaluation report. At the same time, the "Price quoted" signed by the winning economic operator is considered as contract which must be signed by the responsible procurement officer.

54.9 The Procurement Officer shall award and issue the purchase order to the economic operator who has offered the lowest price. Contract signing notice shall be prepared within 2 days after signing the contract and shall be sent to PPRC for publication.

54.10 The Contracting Authority shall compile a report on receiving goods, works or services.

54.11 All procurement activities with minimal value shall be included in the Annual Report for Public Signed Contract".

54.12 Without prejudice of the above, in cases of emergency, when the written approval of the Chief Administrative Officer proves to be impossible, the service, works or goods can be ordered by any person subject of the emergency. The use of the standard form "Quoted

Prices” and the minimal number set out in Section 54.5 of these rules and Operational Guidelines is not required in such circumstances.

54.13 As soon as possible, the officials who have ordered such supplies/services must present to the Procurement Officer the invoice for the services/goods received, a detail written report on the circumstances justifying the emergency, and shall provide appropriate evidences on the received supplies/services.

55 Immoveable Property Contracts

55.1 According to Article 3.9 of the Public Procurement Law, immovable property is exempted. This means that contracting authorities shall not apply the law on contracts regarding acquisition or rental of land, buildings or other immovable property or rights in relation to such except when foreseen in other laws. These contracts are governed by the CA internal procedures.

56 Framework Contracts

Definition and principles

56.1 “Public framework contract” means an agreement for a limited period between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to the price and, where appropriate, the quantity envisaged.

56.2 In other words, a public framework contract is a general term for agreements, between the Contracting Authorities and economic operators of supplies, services and works (repair/maintenance works), which establishes the terms and conditions under which subsidiary contracts or place orders can be made throughout the term of the agreement.

56.3 Public framework contracts set out the terms and the conditions under which subsidiary contracts or orders will be. With this approach, contracts are formed only when goods, works and services are ordered or “called off” under the public framework contract.

56.4 The key is that the means of awarding contracts under public framework agreements is provided for without the need to re-advertise and re-apply the selection and award criteria from the outset. Further it is possible for one contracting authority to make a contract on behalf of a number of other contracting authorities, which then may use the contract without having to tender according to the PPL. In this way a lot of resources are saved.

56.5 Public Framework Contracts may be used only by parties who were party to that activity.

56.6 A number of contracting authorities can make arrangements to use joint framework contracts. When a public framework contract is to be used by several Contracting Authorities they must be identified explicitly in the Contract Notice, either by naming them directly in the contract notice or through reference to other documents.

56.7 The Contracting Authority before the initiation of the procedure must consider whether a public framework contract is the best approach for the particular procurement. This will involve making value for money judgments taking into account the nature of the procurement and the ability to specify the procurement with sufficient precision at the outset.

56.8 The government may decide that all contracting authorities as defined in Article 4 of the PPL, should be subject to framework contracts and thus not allowed to procure goods, services or works from other economic operators and other conditions of those agreed in the framework contract. CPA, in accordance with Article 95 of the LPP, will conduct and will be responsible for such procurements under the framework contract. In case of central procurement activities, like public framework contracts conducted by the Central Procurement Agency on behalf of other Contracting Authorities, use of these central contracts are mandatory for the Contracting Authorities.

56.9 A Contracting Authority may not use public framework contracts in such a way as to prevent, restrict or distort competition.

56.10 The estimated quantity specified in the tender documents is only indicative quantity. Whenever the Contracting Authority specifies the indicative quantity, the Contracting Authority shall specify in the tender dossier the value or quantity of the contract as a threshold or a ceiling and allow derivation therefrom, stating also the percentage of permitted discrepancy. The permitted discrepancy cannot be higher than plus/minus thirty percent (30%). If the orders exceed the total indicated quantity or total indicated value of the public framework contract, regardless the original expiry date of the Public Framework Contract, it will be automatically ceased.

56.11 Whenever the contracting authority does not know the indicative quantity, unit price contracts, the CA must determine weighting based on the importance of each "category of service" or "article" or "group items" so that the contracting authority can determine the bid with the lowest price on the basis of scoring, such as maintenance of vehicles, maintenance of generators etc. In these cases in the public opening session the weighted total price is read out which serves only for the purpose of evaluating the bids and the contracts is concluded with unit prices. The amount of the performance security in these cases should be defined as a fixed amount, whereas for PPRC's reporting purposes the estimated contract value shall be noted.

Duration of public framework contract

56.12 The duration of public framework contract cannot be more than 36 months.

56.13 However, contracts arising from the public framework contract may extend beyond the expiry time of the public framework contract, meaning that if a subsidiary contract or placed order is awarded a short time before the public framework contract elapses, delivery may happen after the date of expiry. Misuse of public framework contracts is not allowed, so care should be taken not to circumvent the rules by asking for delivery a long time after the public framework contract is closed.

56.14 A public framework contract cannot be extended or renewed meaning the duration of the contract shall be determined in the beginning of the procurement process. If the public framework contract is concluded for less than thirty-six (36) months, it cannot be extended over the time specified, without conducting a new procurement procedure.

Procurement procedures for public framework contract

56.15 Where the contracting authority intends to award a public framework contract, it shall either use:

- (a) the open procedure;
- (b) the restricted procedure; or

- (c) the negotiated procedure.

56.16 The procurement steps as determined in these rules and Operational Guidelines, regarding each specific procedure, apply analogous for:

- a) The publication of Notices;
- b) The time limits;
- c) The selection Criteria's;
- d) The award Criteria's; and
- e) The procedures regarding opening of tenders and award of contracts.

56.17 Where the Contracting Authority awards a subsidiary contract or places an order, based on a public framework contract, it shall;

- (a) Comply with the rules set out in these rules;
- (b) apply those rules only to the Economic Operators, which are party to the public framework contract;
- (c) neither the Contracting Authority nor the Economic Operator shall include terms that are substantially amended from the terms laid down in that public framework contract;
- (d) only goods included in the public framework contract may consequently be ordered or called-off;
- (e) only the Contracting Authority tendering for the public framework contract and those contracting authorities subject to the agreement may use it.

Number of Economic Operators in a public framework contract

56.18 A public framework contract can be concluded either with:

- a) One economic operator; or
- b) More than one economic operator. In this case, there must be at least three EO parties to the public framework contract. In case not all economic operators that are party to the public contract submit their bids, the procedure of mini-tender shall be valid.

It means that the CA shall:

- a) have at least 3 economic operators parties to the framework contract;
- b) invite all economic operators parties to the framework contract; and
- c) if one EO submits a bid, to proceed with the procurement activity.

Types of public framework contract

56.19 There are two types of public framework contracts:

- a) Those that establish all the terms of the contract; and
- b) Those which do not establish all the terms of the contract and accordingly need some further competition to establish the terms of a contract.

56.20 Depending on the circumstances (type of the public framework contract concluded) orders may be placed with or without further competition.

- a) Without further competition, on the basis of the previously held competition, referred to as "Public framework contracts which establish all the terms"; or

- b) With further competition, on the basis of a “mini-competition” between Economic Operators party to the framework contract, referred to as “Public framework contracts which do NOT establish all the terms”.

Public framework contract with one economic operator

56.21 Whenever the Contracting Authority intends to conclude a public framework contract with one economic operator it shall use type (a) of public framework contract – establish all the terms and conditions.

56.22 The terms laid down in the public framework contract shall be precise to cover the particular requirement.

56.23 The tender dossier must state that it is intended to establish all the terms for contracts placed through the public framework contract and the specification must be sufficiently detailed to enable all the terms to be so established.

56.24 However, this does not mean that actual prices should always be fixed, but the mechanism that will be applied to pricing particular requirements for orders placed during the period of the public framework contract (example supply with fuel) shall be determined at the time of establishment of the public framework contract.

56.25 The Contracting Authority shall place the order whenever the needs for supply of the kind mentioned in the public framework contract appear.

56.26 The orders must be within the limits of the terms laid down in the public framework contract without reopening competition.

56.27 The terms applicable to any orders under this type of framework agreement are set out in a binding manner and no further agreement by tender, negotiation etc. is required. Provided that mechanisms that facilitate such change are incorporated, this does not, however, mean that nothing can change e.g. price adjustment related to a recognized index.

56.28 Contracts placed in this manner are typically referred to as Place orders (“call-off” contracts).

Public framework contract with more than one economic operator

56.29 Whenever the Contracting Authority intends to conclude a public framework contract with several Economic Operators it shall use type (b) of public framework contract – do NOT establish all the terms and conditions.

56.30 The terms laid down in the public framework contract are not precise or complete enough to allow for delivery without further competition between the Economic Operators parties to the public framework contract.

56.31 The tender dossier must state that it is not intended to establish all the terms for contracts placed through the public framework contract and that certain specific terms will be established in the subsidiary contracts.

56.32 However, the minimum selection criteria have to be determined in order to select the Economic Operators, who will become party to the public framework contract.

56.33 The award criteria and weightings to be used for subsidiary contracts must be stated in the tender dossier.

56.34 This procedure is only considered appropriate under a limited number of special circumstances, where it is not possible to determine price or a pricing structure at the time the public framework contract is established.

56.35 In such cases the Contracting Authority shall award any subsidiary contract by re-opening competition (also called a mini-tender) between the Economic Operators, which are parties to that framework agreement, and which are capable of performing the proposed contract.

56.36 Re-opening of competition (mini-competition) in cases of central procurement activities conducted by the central Procurement Agency on behalf of other Contracting Authorities shall be conducted by the Contracting Authority itself whenever the need arises.

56.37 The reopening of competition must be on the basis of the “the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the public framework contract”. This is subject to the prohibition of “substantial departures or restrictions” to the terms set out in the public framework contract.

56.38 For each subsidiary contract to be awarded the Contracting Authority shall:

- (a) Contact in writing all economic operators which are parties to the framework agreement and invite them within a specified time limit, to submit their tender in writing for each subsidiary contract to be awarded;
- (b) The Contracting Authority reserves the right to verify the eligibility requirements during the mini-tendering phase;
- (c) Set the time limit for the receipt of the tenders, not less than 5 days. The CA shall take into account factors such as the complexity of the subject matter of the contract and the time needed for the EOs to prepare and send their tenders;
- (d) Keep each tender confidential until the conclusion of the procurement activity;
- (e) Opening & Evaluation of Tenders shall be based on rules established in these rules;
- (f) The award of the contract is made “on the basis of the award criteria set out in the invitation to Quote.” The award criteria does not mean that they t have to be identical as those used for the conclusion of the public framework contract. For instance, some terms may have been definitively established when the public framework contract was concluded and do not require further competition. The award criteria for elements yet to be established must be declared in the tender dossier of the framework agreement;
- (g) Award each subsidiary contract to the economic operator which has submitted the best tender on the basis of the award criteria’s specified in the invitation for the mini-tenders;
- (h) Each subsidiary contract shall be subject to the preparation and the publication of the contract award notice requirements;
- (i) Each subsidiary contract shall be subject to the signing requirements of Article 26 of PPL; and

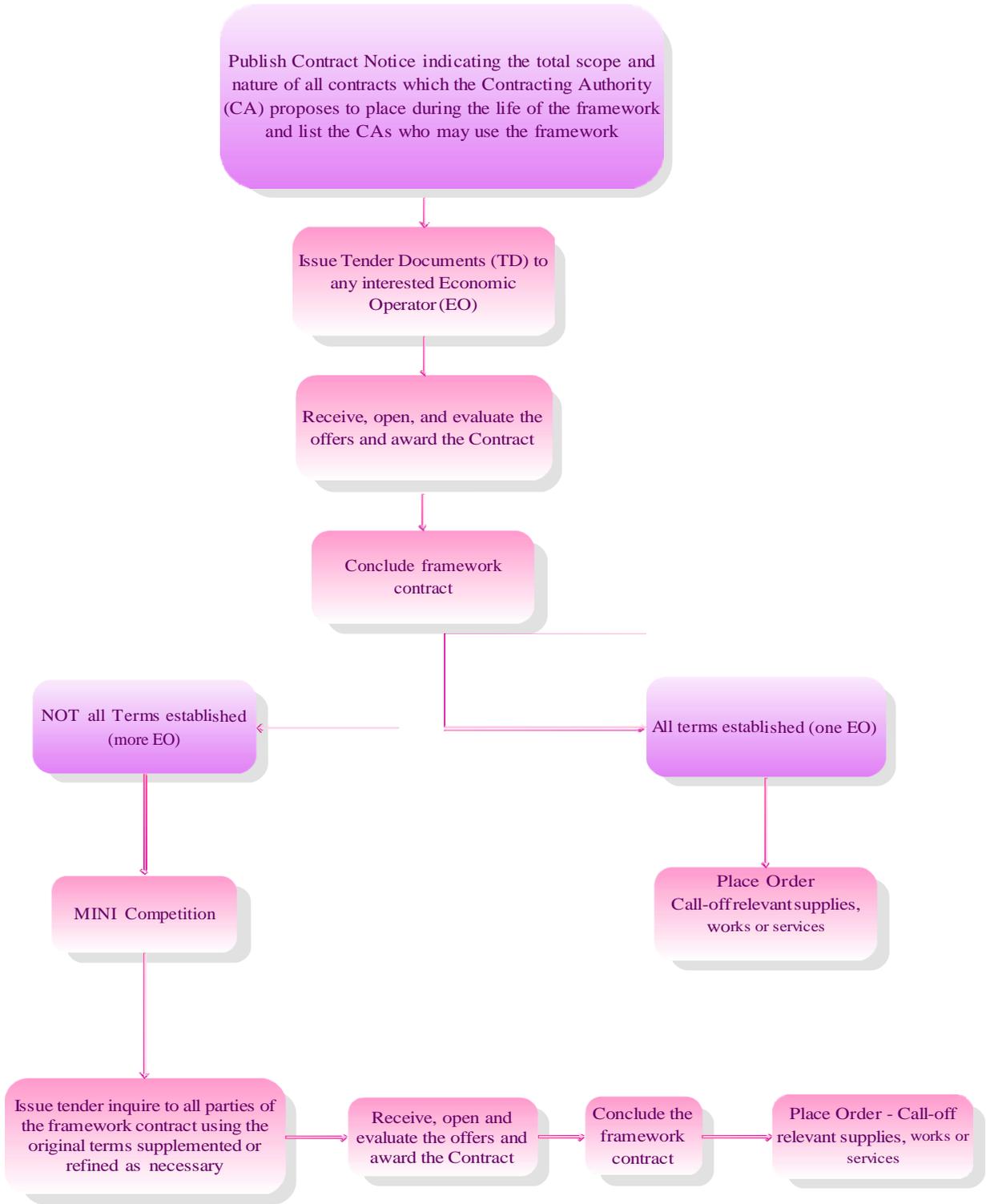
- (j) Each subsidiary contract shall be subject to the rules governing the filing of complaints and other review provisions of Title IX of PPL.

Tender Security and other payments

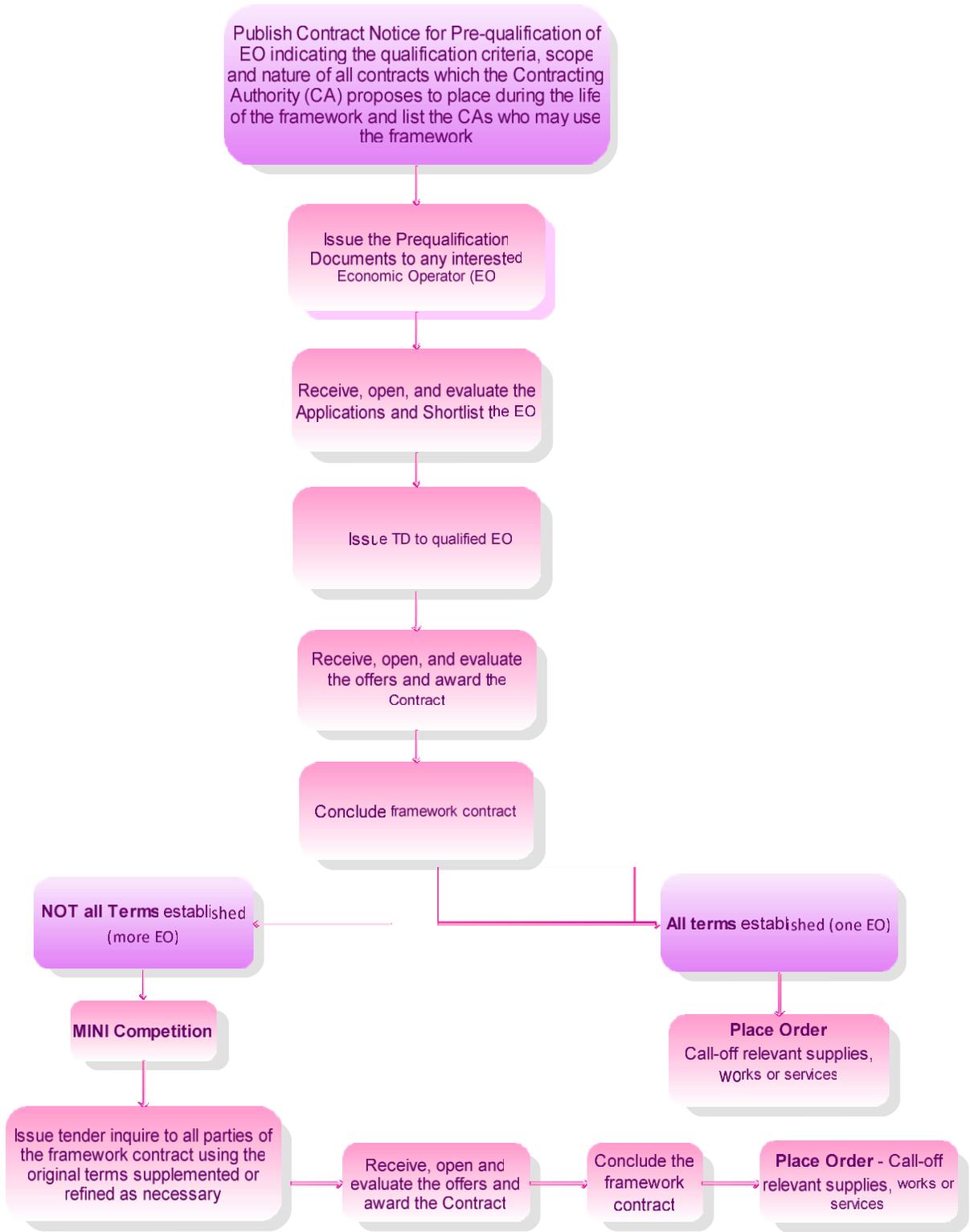
56.39 In case of a public framework contract with more than one EO - mini-competition.

- a. the Tender security, if determined in the first phase, when concluding the public framework agreement, shall be submitted to the Contracting Authority during the Mini-competition process.
- b. the Performance security, if determined in the first phase, when concluding the public framework agreement, shall be submitted to the Contracting Authority by the winning EO only after the mini-competition process and before Contract signature. The amount of the performance security shall be at least 10% of the value of the subsidiary contract.

Open Procedure - Flow Chart



Restricted Procedure



57 Design contest

57.1 A design contest is a procurement procedure under which economic operators are invited to submit their conceptual design of a physical project. The conceptual design forming the main component of the Design Contest is expected to highlight the aesthetic aspects of the project in addition to technical characteristics. The conceptual design is a preliminary design to be followed by a detailed design.

57.2 The winning design is selected by an independent jury.

57.3 A design contest may be organized as part of a procedure:

- a. leading to or involving the award of a service contract (the winner of the contest is awarded the contract for the subsequent design phase); or
- b. leading to money prizes (the winners are paid prizes and the best design is used as basis of technical specifications in a subsequent procurement activity).

57.4 In case of a procedure leading to or involving the award of a service contract “detailed design” the Contracting Authority shall request from the economic operators to submit with their proposal the “financial offer” for the detailed engineering design which shall be sealed in the envelope containing the “Candidate’s Documentation”. In this case the Contracting authority shall specify in the TD the weight scores of the conceptual design and the weight scores of the financial offer.

Use of the Design Contest

57.5 A design contest can be used for any project in which the contracting authority relies on candidates to supply solutions to a particular requirement that can be represented in a plan, design, schematic drawing, model or some other visual forms.

57.6 The design contest is limited to obtaining the plan or design for a project, whether with or without supporting narrative or explanation, in respect of which the contracting authority has only some basic stipulations.

57.7 The procedure cannot be used for the supply of products or services (other than the plan or design itself). Where works or services are required in order to give effect to the plan or design then the contract to execute the services or works must be awarded separately.

57.8 A design contest shall not be used for particularly complex projects when the technical means to satisfy a contracting authority's requirements cannot be simply or objectively defined or cannot be represented in a plan or design. For example, a contracting authority may use the design contest procedure to invite candidates to submit a conceptual plan, design, etc., of:

- a town or area, in terms of its layout, or its economic / tourist development;
- buildings and structures, when architectural or aesthetic qualities, as well as functional qualities, are of primary importance;
- utility network infrastructure, such as a transport network, rail and road connections, ports and airports, or water engineering projects;

- machinery or apparatus, intended for a specific purpose, or with aesthetic qualities;
- computer systems, such as for data processing and storage, access to public information and online services to the public;
- social and communication networks, such as systems or organisations for community or professional interaction or networking;
- works of art of any description, genre or medium; or
- any other project for which intellectual input or creativity is a key element.

Phases of the procedure

57.9 A design contest shall be conducted pursuant to Articles 73-80 of the PPL and in the phases following this Section of these rules and Operational Guidelines. The procedure is conducted in the same manner and using the same time limits as applicable for large value contracts conducted through open or restricted procedures. A design contest is initiated by the publication of a design contest notice. Design contests are put before a jury, which deliberates autonomously and in secret. There is no public bid opening as the design contests put before the jury are anonymous. The jury's decision is final, but the contracting authority is not obliged to adopt the design unless it has declared it will be.

Publication of design contest notice

57.10 A design contest is initiated by the publication of a design contest notice prepared pursuant to Article 75 of the PPL. Such design contest notice shall be prepared by use of the standard form to be found in PPRC's web-site. Such design notice must indicate:

- whether open or restricted procedure applies, and all the information required by open or restricted procedure;
- whether candidates must be in possession of a specific professional qualification or equivalent;
- the criteria which will be applied in the evaluation of the projects;
- the number and value of any prizes to be made to participants;
- whether a contract following the contest will be awarded to the winner.

57.11 For publication of the design contest notice, Sections 47.5-47.8 of these rules and Operational Guidelines apply analogous.

57.12 Sections 47.7-47.8 of these rules and Operational Guidelines apply analogous to specification in the design contest notice of time limit for request of design contest dossier and any fee to be paid for a paper version of the design contest dossier, respectively.

Design contest dossier. Delivery of design contest dossier

57.13 With reference to Section 18 of these rules and Operational Guidelines, the Design Contest dossier comprises of (i) a letter of invitation; (ii) information to the economic operators; and (iii) technical/aesthetic requirements. The contracting authority shall indicate in the design contest dossier that the participants to the contest shall, simultaneously, submit their proposals in two separate sealed envelopes:

- a. One containing the Conceptual Project; and
- b. the other one containing the Candidate's Documentation.

57.14 The envelope containing the Conceptual project shall contain:

a. the original exemplar of the project; and

- b. the required number of copies of the project”.

The participant shall seal the original project and each copy in separate envelopes and shall on the front of each one of such envelopes:

- a. Mark clearly as “Original – Conceptual Project” or “Copy – Conceptual Project”;
- b. Indicate the Procurement number as stated in the design contest dossier; and
- c. An anonymous four digit number of the participant's own choice.

The envelopes shall then be sealed in an outer envelope clearly marked “Conceptual Project” and bearing only the procurement number and an anonymous four digit number of the participant's own choice.

57.15 The envelope containing the Candidate’s Documentation shall contain:

- a. the original exemplar of all other requirements, (name, address, eligibility, economical/financial and technical requirements, and if applicable, the financial offer), marked as “Original”; and
- b. the required number of copies of the candidate’s documentation”.

The participant shall seal the original exemplar of the candidate’s documentation and each copy in separate envelopes and shall on the front of each one of such envelopes:

- a. Mark clearly as “Original – Candidate’s Documentation” or “Copy – Candidate’s Documentation”;
- b. Indicate the Procurement number as stated in the design contest dossier;
- c. An anonymous four digit number of the participant's own choice; and
- d. Warning “do not open with the Conceptual project”.

The envelopes shall then be sealed in an outer envelope clearly marked “Candidate’s Documentation” and bearing only the Procurement number and an anonymous four digit number of the participant's own choice.

57.16 The two envelopes, containing “the Conceptual Design” and the “Candidate’s Documentation”, shall then be sealed in an outer envelope marked with:

- The address of the place for submission of design contests;
- The Procurement number; and
- An anonymous four digit number of the participant's own choice.

57.17 Section 22 of these rules and Operational Guidelines applies analogous to delivery of design contest dossier.

Award criteria for the conceptual design

57.18 Award criteria which may be used for the evaluation of the conceptual designs may include:

- (i) innovation;
- (ii) aesthetic content;
- (iii) adequate blending with the surroundings;
- (iv) efficient use of the available space; and
- (v) attractiveness for the potential users.

Additional or clarifying information

57.19 Section 25 of these rules and Operational Guidelines applies analogous to additional or clarifying information to participants.

57.20 Communication and information exchange in connection with a design contest takes place according to the provisions of Article 79 of the PPL.

Receipt of projects

57.21 Immediately at the receipt of the envelopes containing the proposals the CA shall mark the sealed outer envelopes with a serial number as well as the date and time of the receipt. If the proposal is delivered personally, the CA shall issue to the bringer a receipt of delivery bearing the serial number, the date and time information.

57.22 Information on the serial number, date, time and identity of receiving officer as well as the four digit number chosen by the participant shall, for the timely received proposals, be entered into the, standard form approved by the PPRC. "Tender submission record".

57.23 In the event that proposals are submitted to the CA after expiry of the time limit for submission, receipt of such proposals shall be denied or received envelopes shall be kept unopened with a view to immediate return to the sender. A "Belatedly tender submission record" shall be established analogous to the "Tender submission record". Due to the fact that the envelopes do not contain the identification of the participants the CA shall open the envelope containing the Candidate's Documentation in order to identify the name and address of the participant in order to return the proposal to the sender.

Opening and evaluation of projects

57.24 As the identity of the participants shall not be disclosed to the jury, the responsible procurement officer shall open the timely received envelopes and shall split the envelopes containing "the conceptual projects" from those containing "the candidate's documentation".

57.25 The procurement officer shall transfer only the envelopes containing "the Conceptual projects" to the jury established pursuant to Article 80 of the PPL. The envelopes containing "the Candidates Documentation" shall be kept unopened by the responsible procurement officer deposited in a safe place.

57.26 The jury shall organise the evaluation process in such a way that the integrity and fairness of the procedure is ensured. The jury shall evaluate the designs only on the basis of the criteria indicated (weight scores indicated in the Design Contest Dossier).

57.27 The jury shall make reasonable efforts to reach a consensus decision.

57.28 If a consensus decision cannot be reached each member of the jury shall evaluate each conceptual project separately and shall properly point (score) the conceptual project based on the criteria indicated in the design contest dossier. The final points of each conceptual project are achieved by collecting points from all jury members and dividing it by the number of the jury members. The conceptual proposal which achieves the highest score is ranked first and the second scored is ranked second and so on.

57.29 The substance of the deliberations of the jury and the opinions of the individual jury members shall be maintained confidential by all jury members. The jury's evaluation and final ranking of projects shall be recorded by use of the standard form. The ranking list of the

projects established by the Jury shall than be submitted to the responsible Procurement Officer.

57.30 After the Procurement Officer receives the ranking list of the projects the Procurement Officer establishes an evaluation committee for the evaluation of the responsiveness of the Candidate.

57.31 In case of a procedure leading to money prices the project which is ranked first, and is accepted as responsive, shall be the winning project.

57.32 In case of a procedure leading to or involving the award of a service contract for example “detailed engineering design” the Evaluation Committee shall first evaluate the responsiveness of the candidate and then the financial offer. There is no public opening session. The financial offer with the lowest price will be given the maximum financial score determined in the design contest dossier and the other offers will be given financial scores that are inversely proportional to their offered prices. The total score shall be obtained by rating the weight scores of the conceptual design and the weight scores of the financial offer and adding them. The methodology to be used shall be described in the Design contest dossier.

57.33 In case a second and/or a third winner is permitted a second/or a third winner shall be designated according to the obtained total number of points.

57.34 If the candidate, whose project is ranked as the best “first” one by the Jury, is not responsive the respective design shall be rejected and the second one shall be ranked as the best “first” one.

Result of design contest

57.35 A design contest result notice shall be prepared in pursuance of Article 78 of the PPL by use of the standard form approved by the PPRC and shall be dispatched in pursuance of Article 42.3 of the PPL. The prepared design contest result notice shall be published in accordance with Article 42.1-42.2 of the PPL.

57.36 In case the winner or one of the winners of the design contest shall be awarded a service contract as follow-up of the design contest, a negotiated procedure without publication of a contract notice is conducted according to Sections 52 of these rules and Operational Guidelines.

57.37 In case the winner or the winners of the design contest shall be rewarded with prizes or payments as specified in the design contest dossier, the contracting authority shall do so with due care.

58 Public Service Operators

Introduction

58.1 The provisions in Title V, Article 82-85, of the PPL apply to public service operators only.

58.2 The rules are not mandatory so the Public Service Operators can use them if they wish.

58.3 To accommodate the specific needs of these operators, in the case of restricted procedure and competitive negotiated procedures, the rules basically allow them to proceed relatively quickly:

- a. without publishing a contract notice (calling for requests to participate) when the Indicative Notice is used; and
- b. without the selection phase (publishing the contract notice and selection of participants) when the Qualification System is used.

58.4 Thus, Article 83 of the PPL allows the use of the Indicative Notice as an invitation to tender including several tenders and Article 84 and 85 of the PPL makes it possible to replace – for entire categories of contracts - individual calls for selection and the selection phase as such by establishing a qualification system and periodically alerting interested economic operators to the existence of the system. Otherwise, the normal rules apply.

58.5 In the case of the Indicative Notice, the pre-selection and the award procedures run as normal with participation of those amongst the invited economic operators that choose to join the selection process.

58.6 In the case of the Qualification System it is the entire pre-selection process that is replaced. Interested economic operators included in the System are invited to submit tenders and for each tender the normal rules concerning the award phase apply.

Call for tender by Indicative Notice

58.7 The main difference between the normal Indicative Notice according to Article 39 of the PPL and the one that is possible according to Article 83 of the PPL is that there is no relation to size of contracts. Article 83 of the PPL is intended to be used in any case where a public service operator finds it most efficient to “bundle” together all planned tenders over a 12 month period rather than issuing contract notices in each individual case.

58.8 When the Indicative Notice is used as an invitation to tender in accordance with Article 83 of the PPL, the Indicative Notice must contain the same information as in the normal Indicative Notice, refer to Section 6 of these rules and Operational Guidelines, and in addition the following:

- (a) An invitation to interested economic operators to express their interest in writing in the contract or contracts included in the Indicative Notice;
- (b) Time limit for the receipt of expressions of interest from economic operators and the address where they should be sent;
- (c) A clear indication that there will be no further publication of the notices concerning the contracts included and that only economic operators that in a timely manner have expressed an interest will be involved in the tenders;
- (d) Nature and quantity of the supplies, services or works to be provided;
- (e) Estimated starting date for the award procedures in respect of the contracts;

- (f) Whether restricted or negotiated procedure will be used;
- (g) Estimated period for delivery of supplies or the execution of works or services;
- (h) If known already, any of the information below in 52.11, notably (d), (e) and (f);
- (i) information concerning time limits for lodging appeals.

58.9 The above information must be provided by using the standard form adopted by the PPRC, "Indicative Notice - Public Service Operators".

58.10 The Public Service Operator shall produce a register of the Economic Operators who have expressed an interest, indicating each specific contract or contracts they have expressed interest in, and accordingly shall inform them in writing.

58.11 Within a period of 12 months, following the date of the publication of the Indicative Notice, the Public Service Operator, for each concerned contract, shall invite all registered economic operators, who have expressed an interest on the concerned contract, to confirm their interest on the basis of detailed information on the contract concerned. The detailed information shall be provided to the registered economic operators by using the standard form adopted by PPRC "Prequalification Documents – Public Service Operators" which, apart from other, must include the following:

- (a) A reference to the Indicative Notice and to the expression of interest from the economic operator plus a description of the type and quantity of supplies, services and works to be procured;
- (b) Whether restricted or competitive negotiated procedure will be used;
- (c) Eventual fee to be paid for the tender dossier (subject to the conditions of PPL Article 48.2) and the method of payment;
- (d) Eligibility requirements and requirements concerning financial and technical capacity that candidates will need to fulfil and the documentation required as proof;
- (e) Any particular conditions as regards performance of the contract concerning for example labour conditions and environmental protection see Article 31 of PPL;
- (f) The contract award criteria their order of importance and their weighing of such criteria;
- (g) information concerning time limits for lodging appeals;
- (h) Any other information concerning the future tenders that the public service operator may find useful to communicate.

58.12 The registered economic operators will be invited to submit their prequalification documents within the time limit prescribed in the PPL and subject to evaluation according to

the normal rules in Article 56 of the PPL. The tender procedure will also subsequently proceed according to the normal rules for restricted or competitive negotiated procedure.

Establishment of a Qualification System - the Call for Tender by means of a Qualification System

58.13 The Qualification System essentially consists of:

(a) One or several sets of criteria concerning eligibility and technical and financial capacity, requirements concerning documentation that economic operators must submit as proof of fulfilling the criteria and a description of the method for verification of the criteria. Whether there are one or several sets of criteria there must always be a clear indication of the type of contracts to which they relate, see also 58.16 below.

(b) Procedures for review and updating of such criteria and a minimum time limit of at least 6 months for the validity of the criteria.

(c) Preparation, submission to PPRC, and publication according to the general rules in Article 40 and 42 of the PPL of an initial notice concerning the establishment of the Qualification System. Procedure to ensure that a similar notice alerting economic operators to the Qualification System is submitted and publicised annually and that notices are submitted and publicised whenever criteria are being updated. At the expiry of the three year period prescribed in Article 84.2 of the PPL the duration of the Qualification System cannot be extended by a mere updating. A new initial notice concerning establishment of a new Qualification System must therefore be prepared, submitted and publicised.

(d) Information material updated and available in paper version or electronic version concerning the Qualification System. Such information material must include 1) the criteria and corresponding documentation requirements, 2) the method for verification of the criteria and 3) the address and contact person to whom application for inclusion and the required documentation must be sent.

(e) A list of the economic operators which are included as qualified. The list must include their name, address, contact person and the contract types for which they are registered. Some included economic operators may cover several contract types and this must be duly reflected in the manner in which the list is structured.

(f) Procedures for evaluating quickly any requests from economic operators to be included in the Qualification System and for quickly sending the information material mentioned in 58.13 (d) to interested economic operators.

The rules in this and the following articles concerning an economic operator apply equally to a group of economic operators which fulfils the conditions in Article 85.2 of the PPL for being included in the Qualification System.

58.14 The Qualification System is established by publication of a notice alerting economic operators to its existence and inviting them to qualify to be included in the System. The Public Service operators shall use the standard form adopted by the PPRC to alter the economic

operators – “Qualification System Notice – Public Service Operators”. This notice is at the same time a call for competition as regards the contracts that the Qualification System covers.

58.15 The public service operator must immediately and at the latest 15 days after the receipt of a request send the information material mentioned in 58.13 (d) to the economic operator in question. The information material shall be established by the use of the standard form adapted by the PPRC “Prequalification Document - Qualification System – Public Service Operators”.

58.16 Criteria in a qualification system must like other selection criteria respect the fundamental requirements expressed in Article 7 and 51.2 of the PPL in the sense that the criteria must not be disproportionate and thereby unnecessarily restrict competition. This also means that in case of several sets of criteria the differences between such sets must be justified in relevant differences between contracts in terms of scale or technical complexity.

58.17 The mandatory eligibility requirements in Article 65 of the PPL must by their nature be included as part of any set of criteria.

58.18 The application of the criteria must follow the general principles of notably equal treatment in Article 7 of the PPL and comply with normal rules on selection in Article 56 and in Article 65 – 70 of the PPL.

58.19 The public service operator must treat any request for inclusion in the same manner as previous requests from economic operators already included in the Qualification System, unless the criteria are updated according to 58.20 below. This means that economic operators can apply at any time.

58.20 Whenever criteria are updated according to 58.13 (b) the public service operator must ask existing economic operators included in the Qualification System to submit updated documentation concerning such updated criteria.

58.21 The public service operator must within the time limits of Article 85.4 – 6 of the PPL evaluate requests for inclusion as well as submission of updated documentation, see 58.19 and 58.20, and must within the time limits prescribed reject any requests or submissions that do not fulfil the criteria for inclusion in the Qualification System. The economic operators in question must be informed about the decision and the justification within 15 days of the date of the decision to reject.

58.22 Economic operators included in the System who has been rejected according to 58.21 must be given a justification for the rejection and may only be removed from the list mentioned in 58.13 (e) following a period of a minimum of 15 days from the date of the decision concerning rejection.

58.23 Decisions of rejections is, as any decisions from contracting authorities, subject to review according to the rule in Title IX of the PPL.

58.24 The notice concerning the establishment of a Qualification System according to Article 84.2 of the PPL is according to Article 84.1 of the PPL also a call for tender. The notice must for these purposes include at least the following information:

- a) Name, address, telephone number, email and fax number of the contracting authority.
- b) Purpose of the Qualification System, notably a description of the types of goods, services or works or categories thereof to be procured through the System, including appropriate nomenclature.
- c) Reference to the fact that the notice acts as the call for competition and that only economic operators included in the Qualification System will be invited to submit tenders in restricted or negotiated procedures after the publication of the contract notice concerning the procurements mentioned in (b) above.
- d) Criteria on eligibility and financial and technical capacity that must be fulfilled to be included and at least a summary the methods according to which each of those criteria will be verified.
- e) Period of validity of the Qualification System.
- f) Address where further information and documentation concerning the qualification system can be obtained.
- g) Where known, the criteria to be used for award of the contract, including the priority and weighing of each criterion.
- h) information concerning time limits for lodging appeals.

58.25 The list mentioned in 57.13 (e) must according to Article 84.4 of the PPL, for each contract type, contain at least three economic operators. No maximum can be set for the amount of economic operators that can be included in the Qualification System. The public service operator must keep a record of qualified candidates which must be updated whenever it is revised.

58.26 For each contract covered by the Qualification System the public service operator shall invite the economic operators included in the Qualification System for the type of contract in question according to Article 50 of the PPL. The tender procedure will subsequently proceed according to the normal rules for restricted or competitive negotiated procedure.

59 Consultancy Services

General Information

59.1 "consultancy services" - means a service of an intellectual or advisory nature, provided by a consultant who is skilled and qualified in a particular field or profession and includes services where the intellectual aspect and inputs dominate and exceed the other physical aspects of the contract. The examples of the consultancy services include, but are not limited to Advisory (policies, tourism, and health), Studies (environmental impact, population, health, education, market prices), Design (paintings, sculptures, architecture, advertising), Institutional

(procurement, taxation, budgets, police, pensions, customs) Training (music, sports, educational) and other services of intellectual and professional nature.

59.2 Consultants may associate with each other in the form of a consultants' joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term, independent of any particular assignment, or for a specific assignment.

59.3 In addition to the exclusion criteria of candidates or tenderers set forth in the PPL, the Contracting Authority must exclude candidates in the circumstances described below.

- (i) Conflict between consulting activities and procurement of goods, works or services: a firm that has been engaged by the Contracting Authority to provide goods, works or services (other than consulting services) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services) resulting from or directly related to the firm's consulting services for such preparation or implementation.
- (ii) Conflict among consulting assignments: neither consultants nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.
- (iii) Relationship with the Contracting Authority's staff: consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Contracting Authority's staff who are directly or indirectly involved in any part with the preparation of the terms of the contract, and/or the selection process for such contract, and/or supervision of such contract, shall be disqualified from providing consulting services related to this contract.

Developing the Terms of Reference (TOR)

59.4 The Terms of Reference (TOR) are the key document in the Tender Dossier for Consultancy Services. They explain the objectives, scope of work, activities and tasks to be performed, respective responsibilities of the CA and consultant, as well as expected results and deliverables of the assignment. An adequate and clear TOR is important for the understanding of the assignment and its correct execution. Drafting the TOR requires expertise with the type of assignment and needed resources as well as familiarity with the project background and knowledge of the CA's organisation. If the needed qualifications to produce the TOR are not available in-house, CA should hire a specialised independent consultant.

59.5 The TOR normally consists of:

1. Background of the project - The background summarises the main features of the project and describes the assignment's objectives and general purpose. In particular, it should include: a) Name of the Contracting Authority; b) Rationale of the project; c) Need for consultants in the project and issues to be resolved; d) Activities to be carried out; e) Supervision arrangements.

2.Objectives of the consulting assignment - The TOR should precisely describe the objectives and expected results, and should include: a) Design of project; b) Preparation of tender documents; c) Supervision of works; d) Provision of training; e) Collection and analysis of data.

3.Scope of work - The TOR should describe only the activities, not the approach or methodology. The scope of work is defined by addressing the following: a) Definition, scope, limits and criteria of acceptance of the assignment; b) Level of detail; c) Main issues to be addressed; d) Special equipment requirements; e) Legal framework; f) Transfer of knowledge; g) Need for continuity; h) Quality management requirements (if needed).

4.Transfer of knowledge - The TOR should provide specific details on the characteristics of the required services.

5.Reports and schedule of deliveries - The TOR should indicate the estimated duration of the assignment, from the date of commencement to the date the CA receives and accepts the consultant's final report. The TOR should indicate the format, frequency and content of reports.

6.Data, local services, personnel and facilities - The TOR may provide all the needed facilities (office space, vehicles, survey equipment, office and computer equipment, and telecommunication systems).

Development of Cost Estimates and Budget

59.6 Following the development of the TOR, the CA shall estimate the costs of the assignment. When developing the cost estimates the CA should factor in the cost of staff, office accommodation, operating costs, transportation and disbursements, and optionally the costs for undertaking tests or obtaining samples. The cost estimate will be used as the basis for determining the availability of funding. Costs shall be divided into two broad categories:

- a. fee (or remuneration) - key staff and other staff; and
- b. reimbursable – Transportation (Air/Ground), Staff Accommodation (Office/Rent), Furniture/Equipment, Supplies/ Utilities, Reports,/Documents/translation, editing/printing).

Publication of contract notice. Pre-qualification

59.7 The procedure is initiated by publication of a contract notice prepared pursuant to Article 40 of the PPL. Such contract notice shall be prepared by use of the standard form to be found in PPRC's web-site.

59.8 For publication of the contract notice Sections 49.6-49.9 of these rules apply analogous.

59.9 The pre-qualification procedure shall be performed in accordance with the provisions of Sections 49.10-48.24 of these rules.

Issue of the Tedner Dossier

59.10 The short-listed companies shall be directly invited to submit proposals. The CA shall address the request to the shortlisted candidates, which shall include:

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- a) The Invitation Letter stating the intention of the Contracting Authority to enter into a contract for the provision of consulting services, the details of the client; and the date, time and address for submission of proposals; and
- b) The Tender Dossier containing all necessary information that would help tenderers to prepare responsive proposals, including information on the evaluation process and evaluation criteria/factors as well as their respective weighting and the minimum quality score.

Receipt of Tenders

59.11 The CA shall set a time-limit for submitting tenders which allows enough time for the tenderers to prepare their tenders. The period of time allowed shall depend on the object of the contract to be awarded and shall not be less than 20 days for medium value contracts, and not less than 40 days for large value contracts. During this time, the tenderers may request clarifications about the information provided in the tender dossier. The CA shall provide these clarifications by written communication and copy them to all shortlisted candidates and if necessary shall extend the time-limit for submission.

59.12 Technical and financial proposals shall be submitted at the same time in separate sealed envelopes. No amendments to technical or financial proposals shall be accepted after the time-limit for submission has expired.

59.13 The envelopes containing the technical proposals shall be opened immediately after the closing time for submission of proposals while the financial proposals shall remain sealed. Any proposal received after the closing time for submission of proposals shall be returned unopened.

Evaluation of Technical Proposals

59.14 The evaluation of technical proposals shall be carried out immediately taking into account several criteria, such as:

- (i) consultant’s relevant experience;
- (ii) the quality of the methodology proposed;
- (iii) qualifications of the key staff proposed;
- (iv) the transfer of knowledge, if required.

59.15 Each criterion shall be marked and then the marks shall be rated to become scores. The rating system shall be disclosed in the Tender Dossier. The CA shall inform the tenderers who have submitted proposals on the technical score assigned to each consultant, and shall notify those consultants whose proposals did not meet the minimum qualifying score or were considered non responsive. The CA shall simultaneously notify the consultants who have reached the minimum qualifying score, on the date, time and place set for the opening of the financial proposals. Short listed candidates shall be invited at least two (2) weeks (international), or one (1) week (local), prior to the opening of the financial proposals.

59.16 The criteria to be used under technical evaluation and the indicative weights are as follows, the weights may be adjusted to suite the specific procurement:

Criteria	weights
Specific experience	0-10
Adequacy of methodology / work plan	20-50

Key staff qualifications	30-60
Transfer of knowledge (optional)	0-10
Total points	100

Public Opening of Financial Proposals

59.17 The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend. The name of each tenderer, its technical score and the proposed prices shall be read aloud and recorded when the financial proposals are opened. For the purpose of evaluation, the price shall include all consultants' remuneration and other expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price shall be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their offered prices. The methodology to be used shall be described in the Tender Dossier.

Final Evaluation of Quality & Cost and Contract Award

59.18 The total score shall be obtained by adding together the weighted score for both quality (technical proposal) and cost (financial proposal). The marks for the "cost" shall be chosen taking into account the complexity of the object of the contract to be awarded and the relative importance of quality. The weight score of the financial proposal shall be specified in the RFP, it may be up to 30 points.

59.19 After the identification of the best tender, the CA shall inform the tenderers about the final classification and shall initiate negotiations to clarify and eventually improve the terms of the contract, the methodology, staffing and special conditions. Negotiations must not substantially alter the original terms of the contract or the selected proposal. The financial offer must not be altered in any case.

60 Complaints

Refer to the rules approved by the PPRC, published on the PPRC's website, F03 "Rules for filing complaints."

61 Contract Management

Introduction

61.1 The point at which an Economic Operator begins the execution of the contract responsibilities is dependent on the terms and conditions stated within the Tender Dossier and the signing of the contract by those authorised to sign.

61.2 The term contract refers to the General Conditions of Contract "GCC" and the Special Conditions of Contract "SCC".

61.3 The GCC cover all possible aspects relating to the obligations of the Economic Operator in relation to the contract and define breach, fundamental breach of the terms and remedies applicable to either party. The GCC remain unchanged in the format laid out in the tender dossier. The SCC complement, supplement or amend the provisions of the GCC. Wherever there is a conflict the Special Conditions of the Contract prevail.

Transfer of responsibility to the Project Manager

61.4 After a contract has been signed by both parties the responsible Procurement Officer shall inform the Chief Administrative Officer “CAO” and the CAO shall, appoint in writing, a Project Manager responsible for the management (supervision) of the specific contract and for informing the responsible Procurement Officer.

61.5 The procurement officer shall inform the nominated Project manager about his appointment and shall distribute internally in the organisation a copy of the signed contract to the:

1. Originating Requesting Unit;
2. Finance department; and
3. Project Manager responsible for managing the specific contract.

61.6 After a contract has been distributed, contract management, except the capacity to amend or terminate, shall pass from the Procurement Department to the Project Manager.

61.7 Upon receipt of the contract, the project manager shall prepare a contract management plan, using the standard form adopted by the PPPC. The contract management plan shall be prepared for all contracts for medium and large value contracts.

61.8 The contract management plan shall be prepared before the initiation of the implementation of the contract and shall be agreed between the parties of the contract. This shall be documented with the signatures of both parties, respectively the Project Manager and the Economic Operator.

61.9 The Project Manager, within 2 working days, shall forward a copy of the signed contract management plan to the procurement department.

61.10 After the responsible Procurement Officer receives the signed contract management plan the Project Manager shall issue to the Economic Operator:

- a. The Letter of commencement, in case of a works contract;
- b. The Letter of notification, in case of a service contract; and
- c. The Purchase Order, in case of a supply contract.

61.11 The Project manager shall provide the responsible Procurement officer with a copy of the document mentioned under 61.10 which shall become an integral part of the contract.

61.12 In case of a public framework agreement or long term agreements, whenever possible, the project manager shall issue the Purchase Orders each time the need arises.

61.13 Whenever the project manager has any reservations or difficulties with the terms or conditions of the contract, they shall be discussed and resolved with the procurement department.

61.14 The Project Manager shall report to the Procurement Department:

- (a) any departure from the terms and conditions of a contract; and
- (b) any alterations to the conditions of the contract, either before or during the course of implementation, that in effect could have impacted on the evaluation and rankings of the tenders and the selection of the economic operator.

Appointment of the Project Manager

61.15 The CAO shall nominate a staff member from the Requesting Unit, with appropriate skills and experience, as a Project Manager.

61.16 Where appropriate, the CAO may nominate a staff member from another department as Project Manager.

61.17 A contract of large value or which is complex or forms part of a larger project may be assigned to a Project Management Team, which shall have the same responsibilities as a Project Manager.

61.18 A contract may be managed by a body or person external to the Contracting Authority, provided that the Requesting Unit supervises the external Project Manager. The appointment of the external body or person shall be done by using the appropriate procurement procedure for services.

Responsibilities of the Project manager

61.19 The project manager shall:

- (a) Manage the obligations and duties of the Contracting authority specified in the contract; and
- (b) Ensure that the economic operator performs the contract in accordance with the terms and conditions specified in the contract.

61.20 The functions of the Project Manager are:

- a) to ensure that the economic operator meets all performance or delivery obligations in accordance with the terms and conditions of a contract;
- b) to ensure that the economic operator submits all required documentation in accordance with the terms and conditions of a contract;
- c) to ensure that the Contracting Authority meets all payment and other obligations in accordance with the terms and conditions of a contract;
- d) to ensure that there is adequate cost, quality and time control where appropriate;
- e) to ensure that all contract obligations are complete prior to closure of the contract file;
- f) to ensure that all contract management records are kept and archived as required;
- g) to issue any required variations or change orders, in accordance with the terms and conditions of a contract;
- h) to provide full details of a required contract amendment to the Procurement Department and to obtain the approval;
- i) to manage handover or acceptance procedures;
- j) to provide full details of any proposed termination of a contract to the Procurement Department; and
- k) to submit reports on the progress or completion of a contract as required by the procurement Department or the CAO.

Contract amendment

61.21 An amendment to a contract refers to a change in the terms and conditions of an awarded contract.

61.22 Where a contract is amended in order to change the original terms and conditions, the amendment to the contract shall be prepared by the procurement department.

61.23 A contract amendment shall not be issued to the economic operator prior to:

- (a) Obtaining approval from the CAO;
- (b) Commitment of the full amount of funding of the amended contract price.

61.24 A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

61.25 No contract amendment shall increase the total contract price by more than 10 % of the original contract price.

Termination of contract

61.26 Where the Project manager believes that a contract should be terminated, the Project manager shall submit a recommendation for termination to the Procurement department.

61.27 The recommendation for termination of a contract shall state:

- (a) the name of the Economic Operator and the procurement reference number;
- (b) the reasons for the termination;
- (c) the actions taken to avoid termination;
- (d) the contractual grounds for the termination;
- (e) the costs, if any, resulting from the termination; and
- (f) any other relevant information.

61.28 No contract shall be terminated prior to obtaining the approval of the Procurement Department.

61.29 Where a contract is terminated the Procurement Department shall inform the Economic Operator involved the reasons for the termination and shall take immediate steps in accordance with the conditions of the Contract.

Summary of contract management records

61.30 The contracting authorities shall establish and maintain a summary contract management record in respect of each procurement procedure containing the following:

- Signed contract document, including any signed contract amendments;
- Copy of contract management plan;
- Any variations or change orders issued under the contract;
- Contract documents relating to the fulfilment of contract obligations, in particular bank securities or payment guarantees;
- Minutes of any meetings related to contracts management, including contract progress or review meetings;
- Delivery documents evidencing delivery of supplies or completion certificates in relation to a contract for services or works;
- Copy of all invoices for works, services or supplies including work papers verifying the accuracy of payments claimed and details of the actual payment authorized by the project manager;
- Copy of the payment worksheets evidencing management of all payments made;
- Copy of any claims made by the project manager on behalf of the CA in respect of any warranty, non-warranty, short supply, damage and other claims upon the provider.

Contract Monitoring

61.31 According to Article 81 of the PPL, PPRC is responsible to monitor Contract managing. The contract managing starts when the contract is signed and goes on until after expiry of the guarantees and warranties.

61.32 PPRC shall monitor if the contract has been implemented in accordance to the conditions of the contract. A contract defines the objective of the contract, the scope, specification and the responsibilities of the Contracting Authority and the Supplier /Contractor/Service Provider. It binds the Contracting Authority and the Supplier /Contractor/Service Provider to be committed to the contract and their respective obligations.

61.33 The PPRC shall mainly focus on the facts whether:

1. Signed certifications (provisional/temporarily certificates) had been issued by the Project Manager for the handovers;
2. If handovers not in time, whether the liquidated damages had been imposed;
3. The contract was terminated and performance security confiscated if the liquidated damages imposed reached the maximum limit allowed for liquidated damages;
4. Performance security had been furnished, if applicable;
5. Advance security had been furnished, if applicable;
6. Insurance policy had been submitted, if applicable;
7. Guarantee for the defects liability period had been furnished, if applicable;
8. Payments were done in due time.

62 Separation of Duties

62.1 "Separation of Duties" means that the authority of a person(s) to approve and sign approval in one area of responsibility does not also include those of another area of responsibility. The specialist disciplines of contract preparation (legal & technical), contract implementation and payments (invoices) must be kept as separate activities with separate signatory approvals. The Chief Financial Officer, the Procurement officer and the receiving Unit/Project manager may not sign any documentation outside their area of responsibility.

62.2 Under the separation of Duties a department may only sign a document originating from inside of their own department. No department is allowed to approve a document from the other department.

62.3 The separation of duties principles are as follows and give authority only to the following persons (or designated deputy/ assistant of that department) in the management of all procurement and contract activities carried out in the name of the Contracting Authority.

1. The responsible Procurement Officer shall sign a Contract, but is forbidden to sign for the receipt of the goods, items installed, completion of a Project, phased handovers, or the payment of an Invoice;
2. The Chief Financial Officer shall sign the payment of an Invoice, or their associated documents, but is forbidden to sign for the receipt of the goods, items installed, completion of a Project, phased handovers, or the Contract;

3. The Receiving unit, project manager, Engineer, Consultant shall sign for the receipt of the goods, items installed, Quality Standards, completion of a Project , phased handovers, but not the payment of an Invoice, or the Contract;
4. An official from a department who prepared the Specification and/or the TOR, or determined Quality Standards, or prepared Drawings, cannot sign for any of the articles 1 or 2 above, nor may participate as an evaluation committee member.
5. An OE who designed a project may supervise the same project.
6. An OE who designed a project may not execute the project (a new procedure should be initiated for the execution).
7. A member of the evaluation committee cannot be appointed as the project manager, but in case of re-evaluation, the committee members of the previous evaluation may serve as project manager.

63. Use of electronic means including e-procurements, e-auctions and a dynamic purchasing system

63.1. Requirements relating to devices for the electronic receipt of tenders, requests to participate.

1. Contracting authorities may make use of electronic means of communications, as defined in the Article 4, paragraph 1.21, of the PPL, and recur to electronic purchasing techniques based on the use of electronic means of communications provided that such use complies with Article 129 of the PPL and do not in any way conflict with the principles of equal treatment, non-discrimination and transparency.

2. Contracting authorities may provide that all communications, except site visits and pre-tender meetings in accordance with Article 55 of the PPL, or some of the communication and information exchange with the economic operators, may be conducted by electronic means in accordance with paragraphs 3 and 4 of this Section.

In such cases the electronic means of communication chosen by the contracting authority shall be generally available and interoperable with the information and communication technology products in general use, and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information by electronic means shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

4. Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

4.1 electronic signatures relating to tenders, requests to participate and the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;

4.2 the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;

4.3 it may be reasonably ensured that, before the time limits laid down, no one can have access to data transmitted under these requirements;

4.4 if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;

4.5 only authorised persons may set or change the dates for opening data received;

4.6 during the different stages of the contract award procedure or of the contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;

4.7 simultaneous actions by authorised persons must give access to data transmitted only after the prescribed date;

4.8 data received and opened in accordance with these requirements must remain accessible only to persons authorized to acquaint themselves therewith.

63.2 Use of electronic auctions

1. In compliance with Article 4, Paragraph 1.20 of the PPL, the contracting authorities in open and restricted procedures may decide that the award of a public contract shall be preceded by an electronic auction, when the contract specifications can be established with precision and do not require a discretionary appraisal.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement and on the opening for competition of contracts to be awarded under the dynamic purchasing system.

The electronic auction shall be based solely on prices when the contract is awarded to the lowest price.

2. Contracting authorities who decide to hold an electronic auction shall state that fact in the contract notice.

The specifications shall include, amongst other things, the following details:

2.1 the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

2.2 Any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

2.3 the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

2.4 the relevant information concerning the electronic auction process;

2.5 the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

2.6 the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

3. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction.

The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than three working days after the date on which invitations are sent out.

4. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications.

5. CA may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

6. Contracting authorities shall close an electronic auction in one or more of the following manners:

6.1 in the invitation to take part in the auction they shall indicate the date and time fixed in advance;

6.2 when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;

6.3 when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

7. After closing an electronic auction contracting authorities shall award the contract on the basis of the results of the electronic auction.

8. Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.

9. In particular, tenders which as per the contracting authority are abnormally low tenders or price exceeds the contracting authority's budget as determined in the documents before the initiation of the procurement procedures will be considered as unacceptable.

63.3 Dynamic Purchasing System

1. In order to set up a dynamic purchasing system, as defined in the Article 4, sub-paragraph 1.18 of the PPL, contracting authorities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting authorities shall use solely electronic means in accordance with Section 32 of these Rules.

2. For the purposes of setting up the dynamic purchasing system, contracting authorities shall:
- 2.1 publish a contract notice making it clear that a dynamic purchasing system is involved;
 - 2.2 indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;
 - 2.3 offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

3. Contracting authorities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 2 of this Section. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime. The contracting authority shall inform the tenderer referred to in the first subparagraph at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

4. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 3, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

5. Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end they shall set a time limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing

system. Those criteria may, if appropriate, be formulated more precisely in the aforementioned invitation.

6. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition. No charges may be billed to the interested economic operators or to parties to the system.

Enter into force: _____

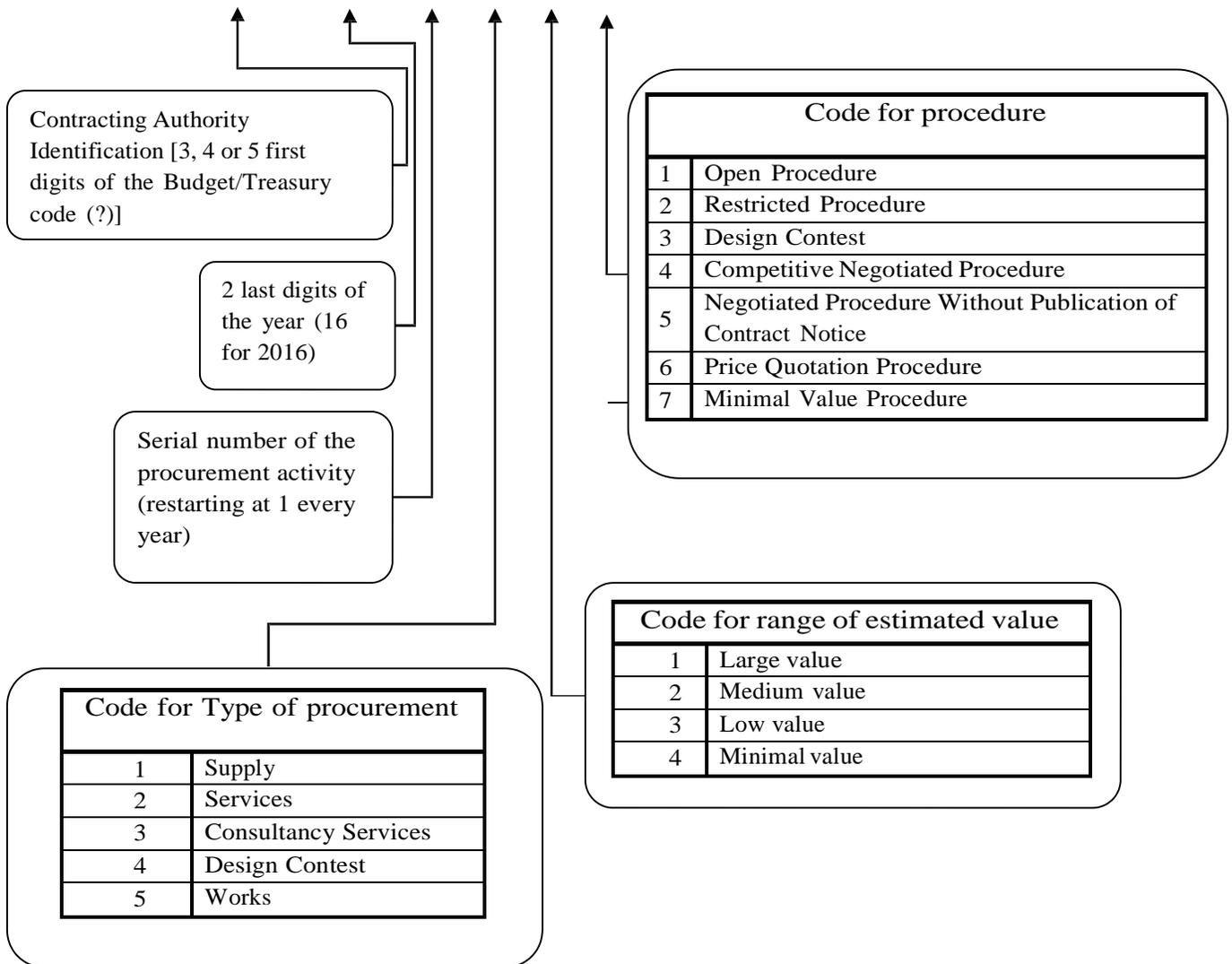
Safet Hoxha, PPRC President

Annex 1 PROCUREMENT Number

In all forms the procurement identification number is formed as follows:

Procurement No:

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Annex 2
Common Procurement Vocabularies (CPV)

Refer to the PPRC's website, the secondary legislation, A02.