



Republika e Kosovës/Republika Kosova/Republic of Kosovo  
Komisioni Rregullativ i Prokurimit Publik  
Regulatorna Komisija Javne Nabavke  
Public Procurement Regulatory Commission



## **REGULATION No.001/2022 ON PUBLIC PROCUREMENT**

**November 2022**

## Content

CHAPTER I - General provisions .....	6
Article 1 - Purpose and Scope of the Regulation on Public Procurement .....	6
Article 2 - Definitions .....	6
Article 3 - Requirements for users of the e-Procurement System.....	6
Article 4 - General administration of procurement procedures.....	9
Article 5 - Procurement Forecast .....	10
Article 6 - Indicative Notice.....	12
Article 7 - Confidential Business Information and Access to Documentation .....	13
Article 8 - Statement of needs and determination of availability of funds .....	14
Article 9 - Functions of the Chief Administrative Officer .....	15
Article 10 - Functions of the Requesting Unit .....	15
Article 11- Functions of the Procurement Department/Unit .....	16
Article 12 - Types of procurement procedures.....	18
Article 13 - Estimating the value and classifying the contract.....	19
Article 14 - Determination of procedure and types of contract .....	20
Article 15 - Procurement Forecast .....	22
Article 16 - Summary procurement record.....	22
Article 17 - Tender Dossier.....	23
Article 18 - Division of contracts into lots .....	34
Article 19 - Technical Specifications.....	35
Article 20 - Time limits of the tendering phase .....	38
Article 21 - Publication.....	38
Article 22 - Issue of Tender/Prequalification Documents.....	42
Article 23 - Publication of contract notices on Kosovo e-Procurement System .....	43
Article 24 - Provision of additional or clarifying information and time extensions .....	45
Article 25 - Selection Criteria .....	47
Article 26 - Group of Economic Operators.....	49
Article 27 - Contract Award criteria .....	52

Article 28 - Tender Security.....	55
Article 29 - Performance Security .....	57
Article 30 - Tender Validity .....	58
Article 31 - Hardcopy tender submission.....	59
Article 32 - Electronic tender submission .....	60
Article 33 - Receipt of Tenders.....	64
Article 34 - Tender Opening Committee .....	65
Article 35 - Opening of electronic tenders.....	65
Article 36 - Opening of Tenders in physical form .....	68
Article 37 - Tender samples .....	69
Article 38 - Clarification of Tenders .....	70
Article 39 - Establishment of the Tender Evaluation Committees.....	71
Article 40 - Examination, Evaluation and Comparison of Tenders .....	73
Article 41 - Abnormally Low Tenders.....	76
Article 42 - Notifying the Tenderers/Candidates .....	78
Article 43 - Termination of procurement procedures .....	79
Article 44 - Standard Forms .....	81
CHAPTER II – Procurement procedures .....	82
Article 45 - Open Procedure .....	82
Article 46 - One-Envelope and Two-Envelope Tendering Procedure .....	88
Article 47 - Restricted Procedure .....	89
Article 48 - Emergency procedure .....	93
Article 49 - Competitive Negotiated Procedure .....	94
Article 50 - Negotiated procedure without publication of a contract notice .....	99
Article 51 - Price quotation procedure .....	100
Article 52 - Procedure for minimal value contracts.....	101
Article 53 - Immovable Property Contracts .....	102
Article 54 - Framework Contracts .....	103
Article 55 - Design contest .....	111
Article 56 - Consultancy services .....	118
Article 57 - Procurement procedure for special services.....	123
CHAPTER III - Public Service Operators.....	126

Article 58 - General provisions.....	126
CHAPTER IV - Complaints in procurement procedures.....	132
Article 59 - General provisions.....	132
Article 60 - The time period for submission of a request for review.....	132
Article 61 - Suspension of the procurement activity .....	134
Article 62 - Rejection of the request for review .....	134
Article 63 - Decision of the Contracting Authority.....	135
Article 64 - Filing a complaint and time period for filing a complaint to the PRB .....	136
Article 65 - Basics contents of a complaint filed to the PRB .....	137
Article 66 - The suspensive effect of complaints .....	138
Article 67 - PRB's Decision.....	138
Article 68 - Filing a complaint before the Basic Court .....	139
Article 69 - Complaints fee.....	139
CHAPTER V - Contract Management and Performance Evaluation of Contractors.....	141
Article 70 - General provisions.....	141
Article 71 - Contract amendment .....	145
Article 72 - Termination of the contract .....	147
Article 73 - Summary of contract management records .....	148
Article 74 - Contract Monitoring.....	149
Article 75 - Separation of duties .....	149
CHAPTER VI - Use of electronic means including e-procurements, e-auctions, and a dynamic purchasing system .....	151
Article 76 - Requirements relating to devices for the electronic receipt of tenders, requests to participate .....	151
Article 77 - Use of auctions/electronic returning auctions.....	152
Article 78 - Dynamic Purchasing System.....	154
CHAPTER VII – Training and revocation of public procurement certificates .....	156
Article 79 - General provisions.....	156
Article 90 - Revocation of procurement certificates.....	161
Article 91 Initiation of revocation of the professional procurement certificate .....	161
Article 92 The form and content of the request.....	161
Article 93 Establishment of the Commission .....	162

Article 94 Powers of the Commission ..... 162

Article 95 Classification of LPP violations for certificate revocation ..... 162

Article 97 Serious violations..... 163

Article 98 Disciplinary measures for minor violations ..... 164

Article 99 Disciplinary measures for serious violations ..... 164

Article 100 Time frame for examining requests ..... 165

Article 101 The right to appeal ..... 165

Article 102 Repeal Provisions..... 166

## **CHAPTER I - General provisions**

### **Article 1 - Purpose and Scope of the Regulation on Public Procurement**

- 1.1 The Regulation on Public Procurement is issued pursuant to Article 87.2.4 of Law No. 04/L-042 of Public Procurement in the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-92 (hereinafter LPP), and is intended to supplement and clarify the provisions of the Public Procurement Law and will be interpreted in accordance with the provisions of the LPP.
- 1.2 This Regulation shall be applied by contracting authorities, natural persons and economic operators as defined in Article 4, paragraph 1 of LPP.

### **Article 2 - Definitions**

- 2.1 All terms used in this Regulation shall have the same meaning as the terms defined in Article 4 of LPP.

### **Article 3 - Requirements for users of the e-Procurement System**

- 3.1 Users of the e-Procurement System must initially carry out the registration process. Through the registration process, users shall create their virtual identity (account) in the system that is linked to their physical identity and to the identity of the organization (Contracting Authority or Economic Operator) they represent in the system. Users that use the system on behalf of various organizations must have a separate virtual identity for each organization they represent.
- 3.2 All users must, during the registration process, accept the “General Terms and Conditions” that precisely define their rights and obligations. “General Terms and Conditions” shall be approved by PPRC and shall be published on the system, with a clear indication of the version and the validity period.
- 3.3 The e-Procurement System shall collect and store data necessary for the 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 shall contain at least:

- Name
- State
- Registration number/fiscal number/unique identification number

- Whether it is a legal, natural or legal foreign person

Personal data of the users shall consist of:

- Name and surname of the user
- E-mail of the users, where they will receive messages from the electronic procurement system
- Personal identification number
- Address
- Telephone and/or fax number
- Name of CA/EO (organization) associated with the user
- Title 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 shall implement appropriate technical measures to protect the users and their personal data. These technical measures shall consist of e-mail activation, secret questions, password policy, robot protection (“captcha”). Each user must provide one official e-mail account that is used for communication with the system.

3.5 The account approval and activation in the e-Procurement System for organizations as Contracting Authority shall be done by PPRC after a request/form received by the CA is registered in the system.

3.6 The activation of the account of Economic Operators and natural persons registered in the e-Procurement System shall be done by the EO and the natural person through an e-mail received by the e-Procurement System after the completion of the registration process.

3.7 If for technical reasons, the EO and the registered natural persons do not receive an e-mail from the e-Procurement System (as specified in the previous paragraph), the EO and the natural persons should send an e-mail to PPRC Help Desk regarding the problem encountered. If it is verified that the confirmation e-mail for registration has not been sent, PPRC shall confirm and approve the registration of the EO or natural person.

3.8 If for any reason, the EO and natural persons cannot complete the registration process in the e-Procurement System, in which registration is attempted on the same day as the deadline for the submission of the bid, the responsibility shall be on the EO or the natural person who failed to register.

- 3.9 All system users shall be granted privileges and roles according to the functions assigned to them by the CA/EO that approved the creation of the user account. The “Organization Administrator” shall play the highest role within an organization. The “Organization Administrator” user shall have the possibility to set any role for any user within the organization, including CAO.
- 3.10 Any particular action the user performs in the system shall be considered to have been performed on behalf of the CA/EO that approved the user account for such user. All users shall be responsible for the actions they perform in the system and must not perform actions for which they are not legally entitled. It is strictly forbidden for any user to log into the system using the identity of another user.
- 3.11 CAs/EOs shall be responsible for providing users with a reliable internet connection with a minimum speed of 1MB/s; the Internet connection speed affects the data transfer speed (upload or download); Insufficient output may cause data transfer errors. PPRC shall not be responsible for a failure in data transfer due to insufficiency/problems of the user’s Internet connection.
- 3.12 CAs/EOs shall be responsible for providing and maintaining the equipment their users use to access the system. Equipment must offer a screen with a minimum resolution of 1024x768, sufficient disk space for storing documents.
- 3.13 CAs/EOs shall be responsible for installing, configuring and maintaining the software on their equipment. The minimum software requirements shall be published in the terms of use, and shall include:
- Internet browsers from a list of supported browsers published in the Terms of Use, configured in accordance with the user manual (with javascript support enabled, with limited pop-up blocker features, etc.)
- PDF reader from a list of supporting software tools configured to verify electronic signatures (if applicable)
  - Digital signature software supporting qualified PDF document signature (if applicable)
- 3.14 CAs/EOs shall be responsible for the security of their equipment, including updated antivirus and malware protection tools.
- 3.15 All Contracting Authorities registered and active in the e-Procurement platform shall be obliged to immediately notify the PPRC of any changes in the status of the organization, which results in a change of the designation, budget code and fiscal number. Notice to the



PPRC shall be in writing, confirming changes in the status of the organization and requiring the update of data in the e-Procurement platform with the old fiscal number.

- 3.16 All Economic Operators registered and active in the e-Procurement platform shall, for any change of business data in the Business Registration Agency (KBRA) and Tax Administration (TAK), which results in a change of the designation and fiscal/business number, be obliged to promptly update the data on the e-Procurement platform. Updating of data shall be done in accordance with the PPRC guidelines, via the help desk or the guideline published on the e-Procurement website.
- 3.17 All registered and active users of Contracting Authorities, Economic Operators or as a natural person receive messages (e-mails) sent automatically by the electronic procurement system. Messages are received in the "Inbox" within the account created in the electronic procurement system and in the user's private e-mail address. PPRC is only responsible for automatic e-mails sent/received in the inbox of the user's account within the electronic procurement system. Users of the e-procurement system should always check their account inbox within the e-procurement system.

#### **Article 4 - General administration of procurement procedures**

- 4.1 When administering procurement procedures, a Contracting Authority shall have the following obligations:
- a) play an active role in determining the terms of contracts, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
  - b) effectively compare, the greatest extent possible under the circumstances, the requests to participate and tenders in order to ascertain their relative advantages and disadvantages; and
  - c) to ensure that the contracted price is not higher than the concerned market price
- 4.2 A Contracting Authority shall incur no liabilities towards any tenderer or candidate, or participant in a public procurement procedure unless a decision is issued by the Competent Authority (PRB or Competent Court) concerning compensation to a complainant.
- 4.3 All public procurement activities shall be conducted in accordance with the following basic principles:
- a. Competition – Among Economic operators should be encouraged in the most efficient and effective way.

- b. Efficiency & Effectiveness – Must be demonstrated in the procurement process to ensure value for money for the Contracting Authority.
- c. Fairness/Non-discrimination – Act fairly throughout the procurement lifecycle without imposing unnecessary burdens or constraints on Economic operators or potential Economic operators . Avoid any favourable treatment to the specific Economic operators or potential Economic operators .
- d. Objectivity/Integrity/Honesty – Declare any conflict of interest affecting or appearing to affect their judgment; Reject gifts, hospitality and benefits of any kind from a Economic operators or a potential Economic operators, which might be reasonably seen to compromise their objectivity or integrity.
- e. Transparency – Ensure equal conditions and accessibility to all EOs by informing them in an open and transparent way.
- f. Accountability – Ensure accountability for the responsibilities assigned, as well as for the decisions made, and the recording of necessary data
- g. Professionalism – Work to a high standard of professionalism by complying with the legislation in force and applying the best practices.

## **Article 5 - Procurement Forecast**

- 5.1 The procurement forecast is a process of gathering data on the needs of the contracting authority summarized in document which must contain all the information as required in Standard Form B01 “Procurement Forecast”.
- 5.2 The Contracting Authority shall prepare the Procurement Forecast for a period of 12 months.
- 5.3 Preliminary Procurement Forecast shall be prepared by each Contracting Authority. In the case of a public authority or a public undertaking, the Contracting Authority concerned shall submit to the Chief Administrative Officer of the Contracting Authority, hereinafter “CAO”, in writing, the Preliminary Procurement Forecast. The Preliminary Procurement Forecast shall be sent to CAO not less than 30 days before the beginning of each fiscal year - which means by 1 December every year at the latest.
- 5.4 Within 15 days after the appropriations legislation for the fiscal year is promulgated, each Contracting Authority, which is a public authority or a public undertaking, shall prepare, publish it on the website of the Contracting Authority concerned and shall submit it to the Central Procurement Agency, hereinafter “CPA”, in writing, the Final Procurement Forecast. Contracting Authorities use the electronic platform to submit the final procurement forecast to the CPA, which is automatically published on the electronic platform in the menu Notices - Procurement Plans.

Following its submission to the CPA and publication on the e-platform, the Final Procurement Forecast shall not undergo changes, unless any planned procurement activity is subject to changes by budget revision. For contracting authorities at the municipal level, the final Procurement Forecast, in addition to the budget revision, can also be changed in case of budget reallocation or the benefit of additional financing sources during the fiscal year (donations or own source revenues beyond the projections).

- 5.5 The aim of submitting 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 common or consolidated procurement procedure or through use of central framework contracts.
- 5.6 The CPA shall review and identify common use items to be procured through a centralized procurement procedure on behalf of the Contracting Authorities and shall submit the list to the Minister of the relevant Ministry. The submitted list must include an analysis, assessment and justification for the categories of items for which the centralized procurement procedure will be concluded under framework agreements. The Minister shall submit the list to the Government for approval.
- 5.7 The Government shall as per the proposal of the relevant Ministry, establish by the 31 January of each year a list of common use goods or items, works or services to be awarded by the CPA through the use of framework contracts. Such a list shall be adopted in the form of an Administrative Instruction which shall be published in the media and made accessible on the electronic platform.
- 5.8 All contracts signed by the CPA through centralized procurement procedures are obligatory for all Contracting Authorities, 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 items, works or services. Any contract concluded in violation of this paragraph shall be declared null.
- 5.9 The Procurement Forecast must be in line with the Contracting Authority's budget for the fiscal year concerned. When it comes to multi-year contracts, there should be a “reasonable basis that budget approval will be done” for the Contracting Authority in the next fiscal years. Table of Law on Budget Appropriations shall provide a reasonable basis for expecting that sufficient funds will be provided to meet such obligations in future fiscal years. The “multi-year contract” term shall not apply in the case of public works contracts unless the execution of works lasts more than one (1) calendar year.

5.10 To do a good Procurement Forecast, the Procurement Officer shall need close cooperation with the budget department and other departments. The responsible Procurement Officer shall cooperate with persons responsible for budget and requesting departments (users) and discuss their procurement requirements and the available budget for the coming year and decide which items to include within the preliminary and the final Procurement Forecast.

## **Article 6 - Indicative Notice**

6.1 After preparation of the final Procurement Forecast, the responsible Procurement Officer shall check if the CA has the intention of awarding over a future 12-month period:

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

6.2 If the CA has the intention of awarding, over a future 12-month period, one or more supply, service or works' contracts having an estimated value of 500,000 Euro 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 services, *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 Indicative Notice shall be prepared and published for high-value contracts:

- a) A single contract whether supply, service or work contract, if the estimated value is five hundred thousand (500,000) Euro; or
- b) All supply, service or works contracts that together reach the estimated value of five hundred thousand (500,000) Euro and the CA decides to conduct a single procurement activity by dividing each contract into homogeneous or heterogeneous lots.

6.4 Publication of the Indicative Notice shall not commit the CAs to purchase or proceed with an activity if circumstances change.

6.5 The Indicative Notice is intended as:

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

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

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

6.7 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.

6.8 The Indicative Notice shall not be mentioned in the LPP 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.

## **Article 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 is announced during the public opening session, must be kept confidential, until the publication of the result on the CA decision.

7.2 Access to the data of the procurement activity shall be initiated on the date of acceptance by the EO of the notice on the result of the procurement activity - the publication of the Notice on the CA decision.

7.3 After the publication of the result of the CA decision, only the information classified by the EO and accepted by the CA, as confidential business information shall remain confidential from all parties excluding PPRC, PRB, including its review expert and review panels and courts of competent jurisdiction.

7.4 In addition to the documents classified as confidential business information, upon the request of an interested party, the CA shall provide such party 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,

if it is about copies of less than 20 A4 pages and direct access in electronic form, shall be free of charge.

7.5 The information which can be classified as confidential business information shall be:

- a. the information regarding economical and financial standing, Article 68 of LPP; and
- b. the information regarding technical and/or professional capacity, Article 69 of LPP

7.6 The information can be classified as confidential only if:

- a. The Economic Operator, in addition to identifying (“marking”) the documents as “business secret” when uploading them to the e-Public Procurement System, must also complete Annex 3 of the Tender Dossier “*Requirement for business secret*”.
- b. If the Economic Operator considers that the information submitted under Articles 68 and 69 of LPP is treated by the Contracting Authority as business secret information pursuant to Article 11 of LPP, the same must download from the system *Annex 3 “Requirement for business secret”*, complete it by giving reasons for each document identified as “business secret”, sign and seal the annex, as well as upload it to the system along with other his tender documentation.

7.7 It is the CA's responsibility to ensure that the parts stated as a business secret are not made available to other economic operators.

## **Article 8 - Statement of needs and determination of availability of funds**

8.1 The statement of needs and determination of availability of funds by the Contracting Authorities shall be done pursuant to Article 9 of LPP

8.2 Pursuant to Article 9, paragraph 5 of LPP, the Contracting Authorities shall use the standard form B04 “Statement of needs and determination of availability of fund (SND AF)” prepared and approved by the PPRC for the assessment of needs and determination of availability of funds. The approval of the initiation of the procurement activity shall be confirmed when signing the SND AF by CAO and CFO.

8.3 SND AF shall be part of the procurement activity documentation register.

8.4 During the preparation of the SND AF, the CA must accurately and clearly fill in all statement parts.

8.5 The persons responsible for signing the contract and SND AF shall be obliged to reconfirm that the financial information (SND AF) has not changed before the publication of Form B58 “Notice on the Contracting Authority Decision”.

## **Article 9 - Functions of the Chief Administrative Officer**

9.1 The Chief Administrative Officer shall have the overall responsibility for:

- a. Ensuring that the formal needs assessment is conducted for each procurement activity included in the procurement forecast;
- b. Approving the initiation of each procurement activity;
- c. Approving the initiation of each procurement activity;
- d. Designating a person, who possesses the requisite qualifications and experience in public procurement, and is eligible to serve as the responsible Procurement Officer;
- e. Taking steps to remove the procurement officer/the responsible procurement officer if he/she becomes ineligible under Article 23, paragraph 4 of PPL;
- f. Designating one person to act as an Authorizing Officer for each procurement activity;
- g. Ensuring that the responsible Procurement Officer is supported by a sufficient number of other trained personnel;
- h. Appointing a Contract Manager and the Direct Supervisor of the manager/managers assigned to each contract;
- i. Signing high-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 to Article 95 of LPP);
- j. If the procurement activity is divided into lots, sign contracts for lots which are classified as high-value contracts; and
- k. Approving the Tender Evaluation Committee Members.

## **Article 10 - Functions of the Requesting Unit**

The Requesting Unit, which is the initiator of the request for procurement, for each procurement activity, has the following responsibilities:

- a) Prepare a procurement request, formal needs assessment (SNDAP), and forward the same to the CAO for approval;
- b) Prepare/propose technical specifications (TS), Terms of References (ToR), and Bill of Quantities (BoQ);
- c) Ensure that technical specifications, projects are prepared pursuant to Article 28 of LPP and Article 19 of this Regulation.;
- 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 deviations 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 as a member of the:

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

### **Article 11- Functions of the Procurement Department/Unit**

11.1 The responsible Procurement Officer (RPO) shall be responsible for the management of all procurement activities of the CA within his/her jurisdiction and in accordance with the provisions of LPP. The RPO shall, among other obligations, have the following responsibilities:

- a) In consultation with all departments, prepares an annual procurement plan;
- b) Ensure that goods, services and works are procured in the most economical, efficient and effective manner;
- c) Before starting the procurement activity, ensure that SNDAF is authorized in writing
- d) To the best of his/her ability, make sure that no restrictions to the competition are exhibited in the technical specifications;
- e) Advise the Requesting Units on individual procurement methods and practices;
- f) In cooperation with Heads of the Requesting Units, co-ordinate all the associated paperwork, specifications, ToR, Bill of Quantities and drawings;
- g) Organize and manage procurement activities;
- h) Recommend the composition of the Tender Evaluation Committee members;
- i) Takes part in the Tender Negotiations and ensures an equitable outcome;
- j) Upon completion of the evaluation process, review the proposed contract recommended by the Evaluation Committee;
- k) Agree on/reject the proposed recommendation;
- l) Sign the contracts after reconfirming that the financial information has 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);
- m) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, saves all communications and evidence received;



- n) Follows up on the failures of contractors who have failed to fulfil their contractual obligations when informed by the Project Manager regarding adequate compensation, liquidating damages and arranging for the cancellation of the contract;
- o) Produce an annual report at the end of each fiscal year for the contracts signed.

11.2 The responsible procurement officer will report and be accountable to the CAO. If other contracting authority employees are civil servants, the responsible procurement officer is a civil servant.

11.3 The Procurement Officer (PO), among other obligations, has the following responsibilities:

- a) To the best of his/her ability, make sure that no restrictions to the competition are exhibited in the technical specifications;
- b) In cooperation with Heads of the Requesting Units, co-ordinate all the associated paperwork, specifications, ToR, Bill of Quantities and drawings;
- c) Prepare and publish notices;
- d) Prepare pre-qualification documents, tender dossiers, contract conditions, tender evaluation reports, contract awards, etc. by using the approved standard forms;
- e) Organize and manages quotations and tenders depending upon the estimated price;
- f) Organize and manage pre-bid meetings, tender openings and the evaluation process;
- g) Establish and notify the Opening Committee in cooperation with the RPO;
- h) Prepare and publish the contract awards;
- i) Ensures records are kept of the participating EOs, proceedings and decisions that are made during each stage of the procurement process;
- j) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, save all communications and evidence received;
- k) Follow up on the failures of contractors who have failed to fulfil their contractual obligations when informed by the Project Manager regarding adequate compensation, liquidating damages and arranging for the cancellation of the contract;
- l) Maintain and archive records of procurement.

## **Article 12 - Types of procurement procedures**

12.11 When conducting procurement activities leading to the award of a public contract, a Contracting Authority 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.

When conducting procurement activities leading to acquiring a plan or design, a

CA shall use the following procedure:

- a. Design Contest

12.13 The codes for the procedure used in establishing the “Procurement identification number” shall be as follows:

- |          |   |
|----------|---|
| <b>1</b> | Open procedure  |
| <b>2</b> | Restricted procedure  |
| <b>3</b> | Design contest  |
| <b>4</b> | Negotiated competitive procedure                              |
| <b>5</b> | Negotiated procedure without publication of a contract notice |
| <b>6</b> | Price quotation procedure                                     |
| <b>7</b> | Minimum value procedure                                       |
| <b>8</b> | Mini-competition  |

### **Article 13 - Estimating the value and classifying the contract**

- 13.1 The estimated value of a public contract must be pre-calculated before the initiation of the procurement procedure. Such estimation must be reasonable and realistic for the envisaged contract.
- 13.3 In estimating the value of the contract, the CA shall be responsible for comparing market prices, prices of preliminary contracts if applicable, etc., with cost analysis of relevant technical specifications of goods, services or works for procurement.
- 13.4 In the 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 specially to encourage the participation of small and medium businesses. It may also be made in order to secure wider competition by allowing for more specialised EOs only capable of supplying parts of the goods, services or works. In any case, the division into lots does not imply a division of contract value or avoidance of the value thresholds, since it consists of the total value of all lots
- 13.5 In the case of public contracts that are regular in nature or are intended to be repeated within a given period, the calculation of the estimated value of the contract shall be based on the envisaged needs of the subject matter of such contracts for a certain period.
- 13.6 A contract cannot be extended, renewed or transferred by a subsequent contract without the administration of the new procedure. However, within an amount of 10% of the contract value, a contract for supplies/services/additional works, which were neither included nor performed in the original contract, but which, for unforeseen reasons, have become necessary for the execution of the contract, can be realized as an annex contract through the negotiated procedure without publication of the contract notice. Where such an additional contract is relatively foreseeable, such value should be included in the original estimated value of the contract.
- 13.7 Based on the estimated contract value, the contracts shall be classified into four different types of contracts:
- a. High-value contract
  - b. Medium-value contract
  - c. Low-value contract
  - d. Minimal value contract
- 13.8 The dividing thresholds to classify contracts by value and category must be in compliance with Article 19 and Article 20 of LPP.
- 13.9 The signing of contracts with unit prices is done according to the estimated value, while the signing of other contracts is done according to the value of the given contract.

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

- a. “1” - High value
- b. “2” - Medium value
- c. “3” - Small value
- d. “4” - Minimal value

13.11 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.

13.12 The estimated contract value is defined in the Contract Notice and the Tender Dossier.

13.13 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.

13.14 Contracting Authorities are not allowed to terminate on-going contracts and contracts for work or supplies, services and payments, when the changes were not known, as in the cases referred to under paragraph 13.12 of this Article.

#### **Article 14 - Determination of procedure and types of contract**

14.1 The determination of the procurement procedure and the type of contract shall be done based on:

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

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

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

- 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 requirement.

14.4 A public contract shall cover any of the following specific types of contracts:

- a. *Supply contract* - A supply contract relates exclusively or mainly to the purchase of *one or more products*; but also the contracts on the lease, rental or hire-purchase of *products* are supply contracts
- b. *Contract for services* - A service contract relates exclusively or mainly to the *provision of services*. Services include also consulting services.
- c. *Work contract* - A works contract has as its principal object: i) execution, ii) design and execution, or iii) realization by whatever means of *work, construction or civil engineering activities*, including construction, restoration, repairing or demolition of buildings, facilities, civil engineering structures, or parts thereof.
- d. *Public framework contract* - A public framework contract relates exclusively to the *establishment of the framework for contracts* to be awarded during a limited period

14.5 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 on:

- a. 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***).

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

14.7 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 division 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 divided into Lots; it shall be the total value of the complete contract (all the “lots”).

14.8 The codes for classifying the public contracts for the creation of the “procurement identification number” shall be as follows:

- a. “1” - Supply
- b. “2” - Service
- c. “3” - Consulting services

- d. “4” - Design contest
- e. “5” - Works

## **Article 15 - Procurement Forecast**

15.1 Each procurement activity initiated and conducted by the CA in the e-Procurement System shall automatically receive a procurement number, which is unique and a reference for the procurement activity.

15.2 The procurement activity number shall consist of:

- (i) CA identification (budget organization code);
- (ii) Identification of the procurement year;
- (iii) A serial number assigned by the e-Procurement System
- (iv) Code for the type of procurement;
- (v) Code for the range of estimated value of the envisaged contract or design contest; and
- (vi) Code for the procedure used.

15.3 An instructive description of the Procurement number is attached as Annex 1 to this Regulation.

## **Article 16 - Summary procurement record**

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

Procurement data shall include the following:

- Request to initiate procurement activity and approval (SNDAF)
- Justification and approval for the negotiated procedure without publication of contract notice (*when applicable*)
- Copy of the Contract Notice - published (*if applicable*)
- Copy of the pre-qualification and tender documents and any amendments or clarifications; (all language versions)
- Register of bids submitted
- Minutes of Public Opening Session
- The decision to establish Evaluation Committee

- Declaration under oath of the Evaluation Committee members
- The bid of the winning tenderer
- The clarifications requested and responses received
- Evaluation Report
- Notice on the CA decision
- Copy of contract award - published (*if applicable*)
- Copy of procedure annulment - published (*if applicable*)
- Copy of the notice on contract signature - published (*if applicable*)
- contract and, *if applicable*, contract amendment
- All documentation in regard to a complaint including PRB's decision (*if applicable*)
- Copy of the Plan of contract management.

16.3 At the end of the year, the contracting authorities shall compile a summary yearly report on every public contract, signed in the previous fiscal year. Such report shall be prepared using the standard form B53 "Annual report on public signed contracts" adopted by PPRC and shall be sent within the time limit specified in the written request by PPRC.

16.4 Relevant documents shall be stored pursuant to the applicable legislation in State Archives.

## **Article 17 - Tender Dossier**

17.1 In compliance with Article 27 of LPP, 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 using 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.

- a. TD for supplies
- b. TD for services
- c. TD for works
- d. TD for design contest
- e. TD for public framework contracts (supply, services and works)
- f. TD for price quotation
- g. DT for consultancy services (two-envelope system).

The structure of the Tender Dossier is composed of three parts:

*Part A – Tendering Procedures*

*Part B – Draft Contract*

*Part C – Tender Form*

17.3 *Part A, Tendering Procedure* shall consist of two parts:

- Instructions for Bidders is a standard form that does not need to be completed by CA.
- The Procurement Officer must complete the Tender Data Sheet for each procurement activity.

17.4 Part B, Draft Contract, shall contain the general conditions and the special conditions that must be accepted by the competing tenderer,

17.5 The General Conditions must not be changed,

17.6 Special Conditions must be completed by the Procurement Officer when preparing the Tender Dossier.

17.7 *Part C, Bid Submission Form*, shall be the main part of the tender because in this part the bidder declares that he/she has checked and accepted all the terms of the tender and submits his/her financial offer. Part C shall consist of:

- Tender Form
- Pricelist

17.8 For all procedures prepared through the electronic platform, CAs should only use the standard or non-standard pricelist in excel format from the electronic platform.

The price list which is part of the Tender Dossier, should not be completed, and thus should be removed from the Tender Dossier.

17.9 During the preparation and submission of tenders, the EO should not manually sign the tender form (generated by the system) and the pricelist, regardless of whether standard or non-standard pricelist has been used.



17.10 The tender submission form is generated by the system and as a result, it is not possible to enter the bid value in letters, therefore the bid is not rejected.

17.11 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. If an EO offers a price with more than two (2) numbers after the decimal point, such bid shall be deemed as not responsive. If the CA allows prices with more than two (2) numbers after the decimal point, then the CA should emphasize this in the tender dossier and should use the non-standard pricelist.

17.12 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 seeking further information. Such information shall include all specifications, requirements, criteria, time limits, methodologies, contract conditions, site visits or pre-tender meetings etc. connected with the contract award procedure. Every sentence in the tender dossier must be well-compiled, as the tender dossier is the basic material, based on 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 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. The requirements specified in the tender dossier and 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. The site visit/pre-bidding conference is organized for the EOs and their benefit, therefore it is helpful to EOs.

17.13 The tender dossiers or design contest dossiers for low and medium-value contracts shall be prepared in Albanian and Serbian languages, *but may also be prepared in the English language*, whereas for high-value contracts, the tender dossier shall be prepared in Albanian, Serbian and English version

17.14 In case technical specifications and/or other commercial information included in the tender dossier or its annexes are expressed most efficiently by using only the 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 provided that no discrimination is created thereby.

17.15 The Procurement Officer is responsible for the preparation of the Tender Dossier. He/she is fully responsible for the preparation of the tender documents, selection criteria, and award criteria, whereas the technical specifications shall be prepared by structures specialized in the subject matter to be procured, within 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 external experts or contractors.

17.16 The CA shall always make tender dossier available through the 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 a large number of technical points that are not suitable for delivery in electronic form through the e-Procurement System. In such cases, the required payment amounts cannot exceed the costs of material production

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

- Restrict competition among the EOs,
- Discriminate against or act in favour of one or more EOs.

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

1. Preparation of the tender dossier process;
2. Publication process
3. Process of providing additional clarification and information in the tender dossier;
4. Request reconsideration process (if any)
5. Receipt of tenders,

17.19 The CA shall declare also in the TD that EOs must indicate in their tenders any part of the contract that EO intends to subcontract to third parties and every proposed subcontractor. Each proposed subcontractor shall meet the eligibility requirements and shall submit evidence of meeting the eligibility requirements. In case the EO has not declared outsourcing of any part in its tender, it shall not be allowed to outsource any part of the contract during the execution of the contract. The outsourcing cannot exceed 40% of the total value of the contract, whereas the same subcontractor may be proposed by more than one EO.

17.20 Contracting Authorities may provide for, where they deem it necessary, direct payments for subcontractors. The Economic Operator that is awarded the contract assumes full responsibility for the performance of the contract in accordance with the contract regardless of any part being subcontracted to third parties. The tenderer must submit evidence regarding the subcontractor meeting the eligibility requirements for participation in the tender procedure as required by Article 65 of LPP. The Economic Operator must notify the Contracting Authority of any change in subcontracting plans that occur after the tender submission. The Contracting Authority may reject any proposed subcontractor if the same does not meet the eligibility requirements.

17.21 The Tender Dossier for supplies, services or works must be described by means of the appropriate common procurement vocabularies (CPV) and codes.

17.22 The obligatory information required when completing a Tender Dossier, as per LPP, shall be as follows:

**Supplies:**

1. A statement of requirements for the procurement of supplies shall contain a complete, accurate and precise description of supplies, delivery and completion schedule, list of supplies and quantities, technical specifications and drawings, and shall include as appropriate:

- a. a clear definition of the parameters of the proposed purchase;
- b. purpose and objectives of the proposed purchase;
- c. full description of the requirement;
- d. general specification to an appropriate level of details;
- e. functional description of the qualities, including any environmental or safety features required of the subject of the procurement;
- f. performance parameters, including results, timescales, and any indicator or criteria by which the satisfactory performance of the specifications can be estimated;
- g. process and materials descriptions;
- h. dimensions, symbols, terminology, language, packaging, marking and labelling requirements
- i. a common specification standard;
- j. the relevant industry-standard; and
- k. any other relevant information

2. 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 adequate way of characterizing a requirement except by the use of a reference the description shall be used followed by the words **“or equivalent”**

3. The Tender documents for supplies shall specify the following information:

- a. specification and list of supplies, including quantity;
- b. composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission
- c. type of contract and procedure
- d. qualification criteria
- e. amount and form required of tender security
- f. amount and form required of the performance security
- g. time limits, exact place, date and hour of tender submission and tender opening;
- h. the form of a valid tender
- i. the tender submission methodology

- j. currency in which a tender is to be submitted
- k. tender validity period
- l. general information on complaints
- m. the payment terms, including any advance payment, stage payments, payment retentions and payment securities
- n. the basis for fixed or variable prices, and the method for calculating variations in variable prices
- o. the method of payment
- p. the documentation required for payment
- q. the required delivery terms and delivery period
- r. the award criteria including sub-criteria and weighting set
- s. the evaluation methodology
- t. any special requirements for packaging, marking and labelling
- u. any inspection or test required
- v. requirements relating to certification of conformity
- w. any insurance requirements
- x. any required warranty
- y. any other information, terms or conditions

**4. A contract for supplies shall clearly indicate the parameters of an operator's**

responsibilities under a contract, which shall include:

- a. supply and delivery of supplies, in accordance with the specified INCOTERM;
- b. installation and commissioning of supplies;
- c. training in the use, maintenance or repair of the supplies; or
- d. provisions 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.

**Services, both consultancy and non-consultancy**

**1.** A statement of requirements for the procurement of services shall be defined in the terms of reference which shall contain a clear, accurate and precise description of the services and shall include as appropriate:

- a. a narrative of the background of the required services;
- b. objectives of the services required and a list of targets to be achieved by a service provider;
- c. a list of the specific tasks or duties to be performed;

- d. a schedule of deliverables for results of the assignment toward which the achievements of the services shall be compared;
- e. the management and reporting manners of a service provider, to the CA and the specific administrative arrangements and reporting requirements that shall apply;
- f. the duration and timetable of the assignment;
- g. the applicable industry standards for assignment implementation; and
- h. any other additional information.

2. The Tender documents for services shall require the economic operator to comment on the terms of references and shall specify the following information:

- a. the terms of reference and expected input of key personnel;
- b. composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission are allowed;
- c. type of contract and procedure
- d. the qualification criteria
- e. the amount and form of the required tender 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
- h. the form of a valid tender
- i. the tender submission methodology
- j. currency in which a tender is to be submitted
- k. tender validity period
- l. general information on complaints
- m. the payment terms, including any advance payment, stage payments, payment retentions and payment securities
- n. the basis for fixed or variable prices, and the method for calculating variations in variable prices
- o. the method of payment
- p. the documentation required for payment
- q. the duration, timing of contributions and completion schedule
- r. the award criteria including sub-criteria and weighting set
- s. the evaluation methodology
- t. the required deliverables or results
- u. any insurance requirements
- v. any other information, or conditions

3. A service contract shall include”

- a. the ownership of all property purchased or used during contract implementation;
- b. the obligations of an operator in relation to the care and supervision of property of the CA, which is occupied or used during contract implementation;
- c. arrangements for temporary handover and return of all CA’s property occupied or used during contract implementation; and
- d. arrangements for the handover, if applicable, of all property purchased during contract implementation.

**Works**

1. A statement of requirements for the procurement of works shall contain a clear, accurate and precise description or parameters of works, bill of quantities, technical specifications and drawings, and shall include as appropriate:

- a. a narrative of the background of the required works;
- b. the objectives of the required works;
- c. a list of specific tasks to be performed;
- d. the supervision requirements, working reports and specific administrative arrangements to be applied;
- e. the duration of the works;
- f. a common specification standard;
- g. the relevant industry standard; and
- h. any other additional information.

**2. The Tender documents for works shall specify the following information:**

- a. the design, specifics, drawings and bill of quantities
- b. composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission are allowed;
- c. type of contract and procedure
- d. the qualification criteria
- e. the amount and form of the required tender 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
- h. the form of a valid tender
- i. the tender submission methodology
- j. currency in which a tender is to be submitted
- k. tender validity period

- l. general information on complaints
- m. the payment terms, including any advance payment, stage payments, payment retentions and payment securities
- n. the basis for fixed or variable prices, and the method for calculating variations in variable prices
- o. the method of payment
- p. the documentation required for payment
- q. the schedule of the execution of works
- r. the award criteria including sub-criteria and weighting set
- s. the evaluation methodology
- t. the functions and authority of the CA's project manager
- u. any inspection or tests required, and the test methods
- v. requirements relating to certification of conformity
- w. any insurance requirements
- x. any required warranty
- y. any other information, or conditions

**3. A work contract shall clearly indicate the parameters of work and responsibility for design:**

- a. the procedure for transfer of the completed works to a CA, including the transfer of titles and the documentation of the transfer;
- b. the ownership of the property on-site during contract implementation;
- c. the obligations of an operator in relation to the care and maintenance of CA's property occupied or used during contract implementation; and
- d. arrangements for the temporary and final handover of all CA's property occupied or used during contract implementation.

17.23 Pursuant to Article 31, paragraph 1 of LPP, the Contracting Authorities can lay down special requirements concerning how the contract must be performed, provided that the requirements do not violate the principles of Article 7 of LPP and are indicated in the tender dossier. Such requirements concerning the performance of a contract intend to ensure a certain level of labour conditions or environmental protection

17.24 Contracting Authorities may refer to conditions of the contract performance that are related to the protection of employees 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.

17.25 The Contracting Authority may set, among others, specific conditions in the contract which allow social objectives to be taken into account, for example:

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

17.26 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, environmental protection, employees' protection provisions and working conditions which are in force.

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

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

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

17.30 The CA must act in compliance with Article 42 of this Regulation when evaluating and finding an abnormally low tender.

17.31 Tenders from tenderers who have not taken account of obligations on employee 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 abnormally low and might be rejected for this reason.



17.32 In case the price offered by the Tenderer does not cover the minimum wages and salaries of employees to be involved in the execution of the contract, regulated by Ministries in different sectors, the bid can be considered as an abnormally low bid. When deciding the minimum wages and salaries to be paid to employees, the Contracting Authorities and Bidders 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.

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

17.33 In case of application of the framework contracts where quantities may not be precisely foreseen a prediction of quantities should be included. The such approximate prediction may be based on earlier consumption corrected, if needed, by known variations. The quantities should, as far as possible, have an indication of delivery times

17.35 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 “item” or “group of items” so that the contracting authority can determine the bid with the lowest price based on scoring, such as maintenance of vehicles, maintenance of generators, etc.

17.36 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 contract duration; however contracts may contain possibilities of adjusting prices in accordance with paragraph 17.37 of this Article.

17.37 Contracts may include a specific clause regarding the adjustment of prices; however, such adjustments must be linked to an official price-index set either by authorities in Kosovo or by other authorized international institutions. The price index must be specified in the tender dossier.

17.38 The official price index specified in paragraph 17.37 of this Regulation must be included in advance in the Tender Dossier.

## Article 18 - Division of contracts into lots

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

18.2 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.

18.3 If the CA chooses option (a) from paragraph 18.2, it shall award to the EO all lots for which it ranked first.

18.4 If the CA chooses option (b) from paragraph 18.2, it shall specify in the Contract Notice and the Tender Dossier the maximum number of Lots that may be awarded to a tenderer. The CA shall also define in the Tender Dossier the objective and non-discriminatory criteria or rules for awarding different Lots, where the application for selection of award criteria would result in awarding a tenderer more lots than the maximum number.

18.5 Whenever the CA determines the minimum criteria for economic and financial standing or technical and professional capability, *in cases where the number of Lots to be rewarded to one EO is limited*, the CA should consider that the fulfilment of minimum requirements is the highest amount for Lots for which the EO competes.

18.6 *In cases where the number of Lots to be awarded to an EO is limited*, the EO can submit a tender for one or more lots, while the maximum number of lots that can be awarded to a tenderer is 1 (one) or more.

18.7 If the bidding EO submits a tender for one or more Lots and offers the lowest price in more than 1 Lot, the CA shall reward the EO for the Lot which is most favourable to the CA.

18.8 When there is a limitation of the number of Lots but there is no sufficiently enough responsive tender to award all the Lots, the CA's interest to award all the Lots shall prevail. Thus, in the absence of other competitors, the EOs shall be awarded for more Lots than the maximum number determined by the CA by awarding the EOs with the lots for which they offered the lowest bid.

18.9 Economic Operators can rely on the financial, technical and/or professional capacities every time the Contracting Authority conducts the procurement activity aiming at awarding a public contract, but it cannot rely on the same capacities of other EOs participating in procurement activity that is divided into lots.

## **Article 19 - Technical Specifications**

19.1 Pursuant to Articles 28 and 29 of LPP, the CA shall be outlined in the Tender Dossier all technical specifications which any tender shall comply with.

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

19.3 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 testing methods, packaging, marking and labelling. The CA shall indicate whether the technical specifications set forth are mandatory or minimum requirements. The use of standards may include quality assurance standards as stated in Article 70 of LPP.

19.4 Specifications/ToR shall be clear, accurate and precise and must not present unnecessarily restrictions, thereby unduly limiting competition. They must be defined to leave no doubt of the nature of the goods, works or services required.

19.5 A technical specification shall, to the extent possible, be stated by reference to widely recognized standards 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

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

19.7 During preparation of the Technical Specifications for works, supplies or services required in the area of information technology and telecommunications, the CA must prohibit technical descriptions that: a) specify equipment, services and questionable manufacturers of information technology and telecommunications; b) pose a risk to cyber security and the country’s critical infrastructure, and c) pose a risk to the country’s national security.

19.8 For applying of paragraph 19.7, the Contracting Authorities must ensure that the specified equipment, services and manufacturers do not belong to countries (states) for which the Government of Kosovo has imposed import/export sanctions, or countries, products, services and

supplies of which are considered unreliable by any of the organizations/countries, such as: European Union, United States of America, NATO, OECD or European Free Trade Association.

19.9 In any case, in addition to the preparation of Technical Specifications by CA, paragraphs 19.7 and 19.8 must be taken into account and applied during the stage of evaluation of bids and selection of the contractor, and if the supplier, manufacturer, service (including under supplies/products/services) included in the bid belong to the measures according to paragraph 19.7 and 19.8 of this Regulation, the CA must automatically exclude them from the competition.

19.12 If a contract is to be awarded to the most economically favourable tender, the CA may authorize 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 account.

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

19.12 If the most economically advantageous tender criterion is applied for the award of a contract, the Technical Specifications, in addition to the mandatory requirements, may contain desirable functional and performance requirements, etc., based on which the tenderers are evaluated. Such technical specifications can be defined as sub-criteria (“functional characteristics”) for the most economically advantageous tender.

19.13 During the preparation of the Technical Specifications, a clear distinction between mandatory requirements and desired functions should be made by the CA.

19.14 Technical Specifications for works contracts shall accurately determine the nature and performance characteristics of the required works. Technical Specifications shall include, as own substantial part, an Executive Project. Technical Specifications for employment contracts shall be prepared in full compliance with the relevant legislation in force in the Republic of Kosovo as well as, where required, the rules laid down in the administrative certificates and permissions required for the works to be executed.

19.15 Pursuant to Article 28 of Law on Public Procurement, Technical Specifications for works contracts shall indicate, where applicable:

- a. reference to the acts of national legislation which shall comply with certificates and administrative authorizations for the execution of the works as required by legislative acts, or, alternatively, permitted exemptions or deviations;
- b. general description of the site and/or the building (location, size, the quantity of the parts of the building, structural elements, existing installations, etc.) and the site/building intended scope;

- c. scope of the working activities (construction of a new facility, 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, equipment and materials to be used, with the indication of possible alternatives and equivalent technical solutions, referring to the Executive Project in a way that allows identification thereof
- e. environmental and social standards;
- f. the criterion of accessibility for people with disabilities;
- g. quality levels and procedures relating to determining quality assurance;
- h. testing, inspecting and accepting 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 completed works and constituent materials or parts;
- i. conditions for installation, maintenance and after-sales service/works;
- j. safety at work and security measures, including terminology, symbols, test methods and their implementation plan;
- k. works starting date and completion date;
- l. indication about the cost (unit price/total price)
- m. any other specific circumstances which may substantially affect the execution of the works.

19.16 Given the complexity of some employment contracts, the preparation of the Technical Specifications may require the assistance of one or more external technical specialists. In such cases, contracting authorities shall require the selected specialists to sign a Declaration of Objectivity and Confidentiality.

19.7 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, particularly, architectural and structural works of the works to be executed. The Contracting Authority is responsible for drawing up the Executive Project which shall be, vendndalimet, attached (also on electronic devices) to the Technical Specifications, which are part of the Tender Dossier. No Contracting Authority is allowed to issue Tender Documentation without attaching the detailed project description.

19.18 Each Executive Project that is planned to be implemented by CA through a procurement procedure shall include:

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

19.19 No works contract can be initiated without obtaining a permit/consent on the spatial location where the execution of the project will take place and all permits from the relevant regulatory authorities for interactions with energy networks and connections with public utility systems.

## **Article 20 - Time limits of the tendering phase**

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. The Contracting Authorities shall not be allowed to set time limits for the preparation and submission of tenders which are shorter than those stated by the Law (minimum time limits) but they are free to set longer time limits in order to enable EOs the necessary time in preparing their bids.

20.2 The time limits shall be calculated on the date of publication of the contract notice or the date when all invitations to submit a tender are sent. The calculation of time limits must comply with Articles 44, 45 and 46 of LPP.

## **Article 21 - Publication**

21.1 Contracting Authorities shall be obliged to publish all notices of procurement activity in the electronic procurement system.

21.2 Notifications for procurement activities shall include:

- a. Indicative notice - which is published in accordance with Article 6 of this Regulation;
- b. Contract notice;
- c. Notice on the CA decision;
- d. Contract award notice;

- e. Notice of cancellation of procurement activity;
- f. Notice of additional information or corrigendum; and
- g. Contract signing notice;

### 21.3 Contract Notice

- a) When a CA intends to conduct a procurement activity using the open, restricted, price quotation, competitive procedure with negotiation or intends to conduct a design contest, the PO shall prepare the Contract Notice/Design Contest Notice, regardless of the type or of the foreseen value.
- b) CAs must publish all contract notices in the electronic procurement system in Kosovo. In order to increase transparency, CAs may publish Contract Notices also on the CA website.
- c) Contract notice for low and medium-value contracts will be prepared in Albanian, and Serbian languages, whereas as per high-value contracts, the contract notice will be prepared in Albanian, Serbian and English versions
- d) 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*.

### 21.4 Notice on the CA Decision

- a) If a CA has taken a decision to award a public contract by using an open, restrictive, competitive procedure with negotiations negotiated without publication or price quotation or has administered a design contest, the RPO shall prepare a **Notice on the CA Decision** regardless of the type or foreseen value.
- b) CA shall publish the Notice on the CA Decision in the e-procurement system as an additional document via the option “Publication of B58”.
- c) In the case of the decision to award a contract using the negotiated procedure without publication of the contract notice, the RPO shall prepare and publish at the same time a Notice on the CA Decision (B58) and the Contract Award Notice (B08), since B08 is the first notice published and accessible by interested parties.
- d) The Contracting Authority should upload at “Eligibility Evidence” a copy of the declaration of needs and availability of means of the awarded contract, whenever it

publishes the notice on the CA Decision. This provision shall not apply to procurement activities led by the Central Procurement Agency pursuant to Article 95 of LPP.

- e) The Contracting Authority shall, in addition to the information required in the standard form of the Notice on the CA Decision, enter the names of all bidders and the total price of each bid.
- f) The Contracting Authority must publish the Notice on the CA Decision (B58) even if the decision concerns the cancellation of the procurement activity as a whole or one/several Lots within the procurement activity.

## 21.5 Contract Award Notice

- a) If a CA has awarded any public contract using the open, restricted procedure, competitive procedure with negotiation, negotiated without publication or price quotation procedure or has administered a design contest, the PO shall, after the expiry of the deadline for submission and review of complaints pursuant to Article 108/A of LPP, prepare the Contract Award Notice/Design Contest Result Notice regardless of the type or of the estimated value.
- b) In the case of the decision to award a contract using the negotiated procedure without publication of the contract notice, the RPO shall publish the Contract Award Notice (B08) pursuant to Article 21.4 (c) of this Regulation.
- c) Preparation of the Contract Award Notice shall be done through an e-Procurement System, filling in the data for each step of the operation “Contract Award”.
- d) After completing the data in the steps related to “Contract Award”, the CA, respectively RPO shall generate a contract award notice and before sending it for publication, he/she should check that all the records entered are correct.
- e) The CAs must publish all contract award notices in the e-procurement system. For purpose of increased transparency, the CAs may publish Contract Award Notices on the CA website as well.
- f) Publication of the such notice is not required for minimal value contracts.
- g) The Contract Award Notice for low and medium-value contracts shall be prepared in the Albanian and Serbian languages, whereas for high-value contracts, the Contract Award Notice shall be prepared in Albanian, Serbian and English versions.



## 21.6 Cancellation Notice – Refer to Article 43 of this Regulation

## 21.7 Notice of additional information or corrigendum

- a) 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, using the B54 standard form approved by the PPRC*.
- b) CAs must publish all notices for additional information in the e-procurement system in Kosovo.
- c) Notices for *additional information or corrigendum* for low and medium-value contracts shall be prepared in the Albanian and Serbian languages, whereas for high-value contracts, the notice shall be prepared in Albanian, Serbian and English version.
- d) 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 in the conditions, the PO must cancel the procurement activity and re-launch the same if there is still interest to continue with the same procurement activity.

## 21.8 Contract Signing Notice;

- a) If the CA has published the Contract Award Notice, prepared the draft contract and signed a public contract using open, restricted, competitive negotiated, negotiated without publication, price quotation procedures, or minimal value procedures, ***within 2 days*** upon signing, the RPO prepares a **Contract Signing Notice** regardless of the type or the foreseen value.
- b) Contract Signing Notice for low and medium-value contracts shall be prepared in the Albanian and Serbian languages, whereas for high-value contracts, the Contract Signing Notice shall be prepared in Albanian, Serbian and English versions.
- c) CAs must publish all Contract Signing Notice in the e-procurement system in Kosovo.
- d) The CA must prepare the Contract Singing Notice through the “Contract Singing” function in the e-Procurement System. During the preparation of the Contract Signing Notice, the CA must fill in carefully all data required in the respective steps of the function “Contract Singing”, including the upload of the signed contract. The term “contract”

refers to the Contract, General Terms of the Contract, Special Conditions of the Contract and the Pricelist.

- e) Upon preparation, creation and publication of the Contract Signing Notice, the signed contract shall be published and the transfer of responsibilities for contract management and implementation by the procurement office to the contract manager shall take place.

21.9 All notices published by the CA must be completed with all relevant information and must be completed clearly to understand the purpose of the CA.

## **Article 22 - Issue of Tender/Prequalification Documents**

22.1 Tender Dossier (TD) documents or Prequalification Documents (PD) are downloaded from the electronic platform.

22.2 CA may request payment if the price of production of the tender material is considered expensive, e.g. TD containing printed patterns or a high number of technical prints. This payment cannot exceed the cost of production of such materials.

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

22.4 The CA uploads the prepared tender dossier and eventual additional documents. The e-procurement system limits the number and size of files which together form the Tender Dossier.

22.5 Should there be a need that a Tender Dossier contains more files attached or annexes larger than allowed by the limits of the e-Procurement System, CA could distribute these additional files using some other means, such as online downloaders of large commercial files or physical distribution. Instructions for access to such additional files must be provided through the basic part of the tender dossier which is available using the e-Procurement System.

## **Article 23 - Publication of contract notices on Kosovo e-Procurement System**

23.1 To start the publication of the Contract Notice, the CA must enter the title of the procurement activity, the internal procurement number (number of procurement under which the contracting authority develops the procedure), the 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/services/works, etc. While the system shall automatically generate the number of procurement activities.

23.2 The subject matter of the contract shall be described using Common Procurement Vocabulary (CPV). CPV shall be 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 shall be needed.

Proofs of the eligibility and the qualification of the tenderers shall be defined according to the Tender Dossier. Proofs could relate to the:

- Eligibility requirements
- Professional suitability
- Economic and financial standing
- Technical and/or professional capability

23.4 Criteria for award can be the “Lowest price” or “Economically most advantageous tender”. If the option which is selected is “Economically most advantageous bid”, the sub-criteria shall be set in the Contract Notice and the Tender Dossier.

23.5 “Validity period of tender submission” refers to an open procedure and price quotation procedure. “Validity period for submitting the request for participation” refers to a restricted procedure, negotiated procedure without publication of the contract notice and competitive negotiated procedure. The system prevents the tender submission after the expiry of the deadline for submission.

23.6 During the preparation and conduct of procurement activity in the e-procurement system, the Contracting Authority shall appoint two authorized representatives and two substitutes for opening bids of the Contracting Authority’s procurement activity. The authorized representatives of the Contracting Authority shall be users that are responsible for the implementation of the opening procedure and must be registered as users in the system. The substitutes of authorized representatives of the Contracting Authority shall be users who will actively participate in the further processes of public procurement in the case of the absence of authorized representatives.

23.7 During the preparation process, the e-Procurement System shall generate two types of keys for encrypting and decrypting electronic bids 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 email to the authorized representatives of the Contracting Authority to the e-mail address under which he/she is registered in the system. It is very important and the responsibility of the PO to promptly check and verify during the preparation of the procedure in the corresponding step of generating the keys whether the generated keys have reached the electronic accounts of the officers designated as members of the opening committee.

23.8 Authorized representatives of the Contracting Authority and their substitutes shall receive private keys (XML files) by which they start the procedure of public opening of tenders after the deadline for submission of tenders. The authorized representatives of the Contracting Authority shall be responsible for storing keys received because without them it is not possible to start the opening of public tender. In order to maintain the confidentiality of the bids, the responsible procurement officer shall, upon completion of the opening process, deactivate the role of the members of the opening committee. If any member of the opening committee will be a member of the evaluation committee, the responsible officer will change the role by deactivating the role of the member for opening and activating the role of the member for evaluation.

23.9 Pricelist shall be published separately from the tender dossier. In the case of procurement divided into Lots, for each Lot, there should be a separate pricelist attached to the document.

23.10 Standardized pricelist shall be a pricelist that is generated from the system and contains predefined elements of the pricelist. This pricelist shall be downloaded on the e-Procurement System. A standardized pricelist shall be generated in standardized Excel format or this list may be completed directly through the system form. In case the pricelist contains a considerable number of positions and the standardized list does not meet the needs (various specifications, recapitulation of positions) of the CA, the CA can generate a new non-standard list which should be in excel format. After the completion and upload, the standard pricelist is transformed into a format of a pricelist that is tailored to the tenderers, with locked fields defined by the Contracting Authority and with marked fields for tenderers to fill:

- Unit price
- VAT rate
- Manufacturer's name
- Bidder's note

23.11 After checking the validity of data, if everything is entered correctly and after the generation of the contract notice, the notice shall be published on the e-procurement platform. The system sends a notice for successful delivery and publication in the email of the user and the “Inbox” of the e-Public Procurement System.

23.12 If the user does not have the appropriate user role to send for publication, the release form shall be sent for approval, by selecting the “Send for approval” option. In this case, the CA administrator shall, after checking the data, send the publication notice.

23.13 If errors are noticed after the tender has been published, the error correction procedure (Form B54) should be used to address the errors and should be published in the e-procurement system.

## **Article 24 - Provision of additional or clarifying information and time extensions**

24.1 An EO may request, *in writing*, additional clarification information for the tender documents through the e-procurement system - the function dedicated to requests for clarifications.

24.2 Such a written request should be sent via the “DT clarifications” function on the electronic platform 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, such request shall be rejected and the EO shall be informed of the reason for refusal. 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.

24.3 The CA shall define in the Tender Dossier the time limits for the receipt of such requests for additional information or clarifications. Time limits must comply with Article 53 of LPP.

24.4 The CA shall immediately review the request according to paragraph 24.3 of this Regulation and shall find whether additional information or the requested clarification is necessary or not.

- a. *If not, the CA shall immediately inform, via the platform, the concerned EO about the refusal.*
- b. *If yes, the CA shall immediately provide additional information, via the platform, but must not reveal the source of such request.*

24.5 If, during an open, restricted or competitive negotiated procedure, additional or clarifying information is 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 opportunity to EOs at least *10 days* for tender submission by preparing and publishing the notice for procedure correction.

24.6 If during a price quotation procedure, additional or clarifying information is 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 opportunity to EOs for at least **3 days** for the tender submission by preparing and publishing the notice for procedure correction.

24.7 If before the deadline for submission of tenders, it becomes necessary for the CA to amend or improve the Tender Dossier, Pricelist, data in the contract notice, the deadline for submission of tenders should be extended and the changes or improvements by the CA should be made only by preparing and publishing the Notice of additional information or corrigendum using the standard Form B54.

24.8 For any case specified above in paragraphs 24.5, 24.6, and 24.7 during the preparation and publication of the *Notice for procedure correction (B54)*, the CAs shall not have to re-generate private keys to open bids.

24.9 If it is necessary to suspend the procurement procedure during the tendering phase due to a complaint received by the EO, the RPO shall, through the option “Complaints”, suspend the procedure by submitting the procedure status to the “Appeal”

In this case:

- a. the system automatically disables the opening of bids until a decision is taken related to the complaint;
- b. all bids submitted until the moment of suspension shall be deleted from the system and it is necessary that all bids of EOs be recreated and resubmitted in case there is a change of procedure status and is continued with the tendering phase;
- c. the system user (RPO) shall, besides the change of the procedure status to “in appeal”, upload the decision for suspension in order for the EO users to be informed that the opening of bids is suspended until there is a decision related to the complaint; in the decision for suspension, the RPO shall necessarily specify/describe the previous paragraph (paragraph (b));
- d. the system user (RPO) shall, upon the decision on the complaint, change, through the procedure correction (B54), the procedure status and make any necessary change regarding the relevant procedure.

24.10 The system user (RPO) shall, during the action according to paragraph 24.9 (d), regenerate the keys for opening tenders.

24.11 If the procedure is cancelled during the tendering phase, all bids received shall be deleted from the system and shall not be available to the CA.

## **Article 25 - Selection Criteria**

25.1 According to Article 56 of LPP, an EO shall be deemed to be qualified for participating in a procurement activity if:

- a) Such EO proves to be eligible according to Article 65 of LPP by providing the evidence requested by the Contracting Authority; and
- b) Such EO, in the event the CA has established minimum qualification requirements, meets such requirements and proves that by providing the evidence requested by the Contracting Authority according to Articles 64 to 69 of LPP.

25.2 Eligibility requirements shall always be met by the EO.

25.3 Minimum qualification requirements may be established by the CA where the CA deems it necessary to ensure that only EOs possessing certain professional, financial or technical abilities participate in the competition on the contract.

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

25.5 Selection criteria shall be clearly specified in the contract notice and the Tender Dossier, as well as in any other documents or information that an interested EO is required to submit in order to be considered qualified.

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

25.7 When establishing minimum qualification requirements, the CA shall pay due attention to the development of EOs and formulate the minimum qualification requirements in a way that does not exclude newly-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.

25.8 Selection criteria:

- a. in no way may be used as contract award criteria;
- b. cannot have certain weights;
- c. they are Pass/Fail requirements

25.9 A Contracting Authority shall accept the following as sufficient evidence that none of the cases specified in Article 65 of LPP applies to economic operators participating in a procurement activity or in the performance of any public contract:

- a. Regarding Article 65, paragraphs 1.1, 1.2 and 1.3 of LPP, under oath declaration signed by the concerned economic operator;
- b. Regarding Article 65, paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2 and 4.4 of LPP, 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;
- c. Regarding Article 65, paragraphs 4.8, for the social security, and 4.9 of LPP, a certificate issued by the competent authority or public operator attesting that such a situation does not exist
- d. Regarding Article 65, paragraph 4.8 of LPP, for tax contribution, a proof issued by the Tax Administration of the Economic Operator’s country of establishment.

25.30 In the event when the Economic Operators are required by the Contracting Authority to submit documentary evidence of professional suitability as mentioned in Article 66 of LPP, an Economic Operator shall submit a copy of a certificate, confirmed by the competent administrative body responsible for attesting professional suitability or licenses.

25.11 Concerning the financial-economic situation, in the case of large value contracts, when an Economic Operator has to finance the implementation of the contract, it is useful to request a certain amount of liquidity or for the same value a promissory note for a loan. It can ensure that the Economic Operator shall receive a loan from the bank in case of need, or the company has money (cash) and can implement the contract without a loan. In addition, the bank may warrant that the Economic Operator regularly pays his/her loan instalment without delay, which is also a guarantee that the Economic Operator has financial capacity.

25.12 Certifications regarding eligibility requirements (other than the Declaration under Oath) shall be required to be submitted by a tenderer whom the Contracting Authority intends to award with a contract. These documents must be submitted by the tenderer before the publication of Notice B58 on the CA Decision. The deadline for the submission of the said documentation shall be no more than five (5) days from the receipt of the Contracting Authority’s intended contract award notice. Failure to submit such documents shall result in rejecting the tender and the CA shall continue with the tenderer listed in second place, as well as the tender security will be confiscated if the same has been requested and the CA shall initiate the procedure for disqualification pursuant to Article 99.2 of LPP.



25.13 In cases where the issuance of documents or certificates, under the requirements of professional suitability or eligibility are not achievable for objective reasons, or when such documents do not cover all the cases for which the evidence must be produced, a written Declaration under Oath by the EO can be accepted as sufficient evidence. Regardless of Article 65 of the LPP and Article 66 of the LPP.

25.14 In the case of a limited or competitive procedure with negotiations, certifications regarding eligibility requirements shall be required to be submitted by candidates whom the Contracting Authority intends to invite to tender (shortlisting). These documents must be submitted by the Candidates before the final pre-qualification decision by the Contracting Authority. The deadline for the submission of the said documentation shall be no more than five (5) days from the receipt of the Contracting Authority's notification of the intention to pre-qualify the candidate. Failure to submit such documents shall imply the candidate shall be rejected and the Contracting Authority shall proceed with the next tenderer in the ranking list. The same condition shall also apply to EOs when concluding a framework agreement with several EOs - mini-competition.

25.15 The Economic Operator may be allowed to show its economic/financial situation through any other document than those required by the CA if the EO provides valid reasons and the CA considers them adequate.

## **Article 26 - Group of Economic Operators**

26.1 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 an advanced electronic signature if applicable);*
- 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 an advanced electronic signature if applicable); and*
- d. Each member of the group must register on the electronic platform. However, this requirement must be specified in the Tender Dossier.  
*(Advanced digital signature is not mandatory until official notification by PPRC);*

26.2 The statements required under (a), (b) and (c) of paragraph 26.1 may be included in a single document.

26.3 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 precondition to the signing of the contract.

26.4 Each member of the group must fulfil the eligibility requirements, Article 65 of LPP. In accordance with this Article, each member of the group must submit jointly with their tender a Declaration under Oath and in case the Contracting Authority intends to award the contract to the group concerned, each member of the group must bring the relevant certifications with the eligibility requirements in accordance with Article 65 of LPP specified in the Tender Dossier and the Contract Notice.

26.5 Each member of the group must individually submit the Business Registration Certificate. Any requirement imposed by a Contracting Authority under Article 66.2 (Authorization/License), Article 68 of LPP, *economic and financial situation* and article 69 of LPP, technical and/or professional capability, shall be applied only to the group as a whole and not to the individual members of the group.

26.6 Quality assurance certificates shall be mentioned in Article 70 of LPP and shall aim at certifying the Economic Operator's compliance with a certain number of quality assurance standards. If the Contracting Authority requires certificates drawn up by independent bodies that carry out certification activities providing that the Economic Operator meets certain quality assurance standards based on Kosovo, European or international standards, each member of the group shall certify that they meet the relevant standards.

26.7 References to completed contracts can be proven by the final report of the completion of works or certificates for completion and/or satisfactory completion of projects, which as evidence is mentioned in Article 69 of LPP.

26.8 If the Contracting Authority requires references for satisfactory performance of contracts by specifying the minimum number of references in the Tender Dossier and the Contract Notice, the references must be for the contracts specified in the List of Contracts and must be brought by the group member if the same has been performing the relevant contracts, in order to consider that the requirement has been fulfilled by the group as a whole.

26.9 If the subject of the procurement activity is a public contract that includes the provision of professional services and if such services belong to the type that can normally be provided only by the economic operator that has the authorization or the license, it is sufficient for a member of the group to have the authorization, or it is sufficient for a member of the group to be licensed and submit the certificate together with other tender documents of the group of economic operators in order to consider that the group has fulfilled this requirement as a whole.

26.10 When necessary, the Contracting Authorities may define in the Tender Dossier and the Contract Notice how the groups of Economic Operators must fulfil the requirements for the economic and financial standing or the technical and professional capability referred to in Articles 68 and 69 of LPP, where the CAs may define a minimum percentage in terms of meeting the requirements of the EO group leader.

26.11 EOs shall not be allowed to present a tender as an individual and as a member of a group at the same time in one procurement activity. The group of EOs shall not be modified after the submission of the tender (evaluation phase), and if this happens, the tender must be refused. If during the execution phase one member of the group withdraws and the remaining member cannot ensure the implementation of the contract alone, then it may be proposed to change the composition of the group, but this change cannot be made without the CA consent. In this case, the CA must ensure that the execution of the contract is implemented according to the terms of the contract and the EO proposed for replacement must fulfil the eligibility requirements and the selection requirements that were met by the withdrawn EO.

26.12 If an Economic Operator in a procurement activity divided into Lots competes alone in one Lot while competing in a group in another Lot, this company cannot submit a statement confirming that the member is not participating individually and/or in any other group in the same procurement procedure and consequently both tenders are rejected.

26.13 Whenever a public undertaking cannot perform alone the services specified by the CA in the Tender Dossier, it may participate in a consortium with an Economic Operator, but under no circumstances the CA shall be allowed to create an advantage for the group of EOs concerned for the reason of being a public entity. Each participant must be treated in full compliance with the fundamental principles of public procurement such as economy and efficiency, equality of treatment, non-discrimination and transparency.

## Article 27 - Contract Award criteria

27.1 Contracting Authorities may choose to award contracts based on the following criteria:

- The lowest-priced responsive tender, or
- The most economically advantageous responsive tender

27.2 Other award criteria other than those specified in paragraph 27.1 shall not apply.

27.3 Where “*lowest priced responsive tenders*” is the sole criteria, the contract shall be awarded to the lowest priced tender complying with the specified requirements.

27.4 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 matter of the contract, such as:

- a. Quality characteristics
- b. Operating, maintenance and other lifetime costs
- c. Functional, technical, environmental, aesthetic or similar characteristics
- d. After-sales service and technical assistance

27.5 The criteria must be weighted according to their relative importance.

27.6 For Design Contests and Consultancy Services, other criteria may be considered. Refer to Article 57 (Design Contests) and Article 59 (Consultancy Services) of this Regulation.

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

27.8 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 criterion. 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 realizes that the criteria used are unsuited for establishing the most economically advantageous tender, the only remedy to the situation is to cancel the procedure and tender.

27.9 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 maintenance and running or operational costs of the project

that will be reasonable 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, such as:

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 (labour 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

The Item Cost + Environmental impact considerations

The Item Cost + Health and safety considerations

Tenders must be evaluated objectively and transparently against the published weighted criteria. Objectivity and transparency are 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.

27.10 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 concerning their capacity *to perform the contract meaning that the criteria relating to past experience and the background of the company shall not feature as criteria in the contract award process.*

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

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

In the case of multiple service contracts or in the 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 the case of framework contracts where the contract contains several items or multiple services, the exact quantity cannot be calculated before the contract implementation. In that case, the Contracting Authority shall estimate the frequency and

importance of each item or service category and weigh the price based on the importance. These weights shall be used only for the purpose of articulating the importance of each service or item, and to be able to select the lowest priced bid.

27.13 In the case of the lowest price, by weighting the prices, the weighted prices are based on the price offered by the individual Economic Operators; therefore, it is not allowed to establish scores by comparing the different bidders' prices.

27.14 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. The total weighted price is indicated during the bid opening process.

17.15 It is strictly forbidden to compare the prices of bids which are different from 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.

27.16. 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%.

## Article 28 - Tender Security

28.1 *Tender Security* is meant to support that:

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

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

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

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

28.5 Tender Security can be submitted in one of the forms defined in Article 57, paragraph 5, of LPP in accordance with the Law on Insurance.

28.6 The Tender Security shall remain valid for a period of thirty (30) days after the expiry of the tender validity period.

28.7 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 thus lead to the rejection of the tender.

28.8 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. EO withdraws its tender after the deadline for submission of tenders, but before the expiration 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 the signing of the contract, as specified in the TD; or
  - c. To execute the contract, as specified in the TD.

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

- a. The expiration date of the tender validity;
- b. Contract awarded and entered into force;
- c. Cancellation or completion of the procurement activity before the award or entry into force;  
or
- d. 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.

28.10 Contracting Authorities shall not restrict at the tender documents the discretion of tenderers to submit tender security in any of the forms specified in Article 28.5 of these rules. Any provision which restricts the form in which such securities are submitted can be delivered, except those referred to in Article 29.5, shall be considered invalid.

28.11 Notwithstanding Article 57 of LPP, 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 included in the tender security other than a requirement that the Contracting Authority shall provide a document showing that breaches in the tender rules have occurred. Therefore, there is no further need for the Contracting Authority to prove the breach.

28.12 Pursuant to Article 57, paragraph 5 of LPP, requirements on the eligibility of tender security issuers, as outlined 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 institutions.

28.13 Tender Security shall be submitted in a scanned version together with the bid, while the original form of the tender security shall be required to be submitted by a tenderer to whom the contracting authority intends to award a contract. Failure to submit the original form of the tender security shall lead to the application of Article 99.2 of LPP.



## Article 29 - Performance Security

29.1 Performance Security is meant to support the performance of the contract.

29.1 A contract performance security may be required to be posted, *as a precondition to the signing and entry into force of the contract*, in any of the following cases:

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

29.3 The Performance Security requirement shall apply to all tenderers and the conditions shall be outlined in the Tender Dossier and the Contract Notice.

29.4 The amount of the Performance Security shall be equal to at least **10%** of the value of the contract, while for contracts with unit price or points, 10% of the estimated value is required. When determining the percentage of the Performance Security, in the case of a medium or high-value contract, the CA shall ensure that the percentage is sufficient to cover the damages and the expenses that the CA may reasonably expect will occur in the event of the termination of the contract. The Contracting Authority shall have, after complying with Article 61 of LPP, good reason to believe that the economic operator has submitted a non-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 reasonably expect will occur in the event of the termination of the contract.

29.5 Performance Security can be submitted in one of the forms

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

29.6 The Performance Security shall remain valid for a period of thirty (30) days after the contract completion.

29.7 The Performance Security shall be released and returned to the EO within 30 days after the contract completion.

29.8 The CA shall forfeit the Performance Security under the following circumstances:

- a) In case 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) As a result of the breach of the signed contract, many workers, subcontractors and/or suppliers have not been paid.

29.9 Before the CA starts with the procedure of the forfeiture of the Performance Security, the CA shall 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.

29.10 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 shall refund the difference.

29.11 A Contracting Authority shall not restrict at the tendering documents the discretion of tenderers to submit Performance Security in any form specified under Article 29.5 of this Regulation. Any provision which restricts the form in which such insurances are submitted can be delivered except those referred at Article 29.5, which are to be considered invalid.

29.12 Notwithstanding Article 63 of LPP, the Performance Security shall be unconditional. For the above-mentioned purposes, the word “unconditional” means a guarantee on demand and that there should not be any conditions or requirements for any evidence included in the Performance Security other than a requirement that the Contracting Authority shall provide a document showing that breaches in the tender rules have occurred. Therefore, there is no further need for the Contracting Authority to prove the breach.

29.13 Pursuant to Article 63, paragraph 5 of LPP, requirements on the eligibility of Performance Security issuers, as outlined 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 institutions.

## **Article 30 - Tender Validity**

30.1 Contracting Authorities shall state in the Tender Dossier the required tender validity period specified as a number of calendar days from the deadline for submission of tenders.

30.2 The tender validity period requirement shall be:

- a) Minimum 90 days for high-value contracts;
- b) Minimum 60 days for medium-value contracts; and
- c) Minimum 30 days for low-value contracts.

30.3 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.

30.4 Under justifiable and/or exceptional circumstances when unexpected delays appear, meaning that the evaluation process cannot be finalized within the tender validity period 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 shall be requested before the expiration date (it is important to verify that all tenderers receive the request for the tender validity extension).

30.5 Accordingly, all tenderers shall also be requested to extend the validity of their Tender Security.

30.6 It is up 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.

### **Article 31 - Hardcopy tender submission**

31.1 Hardcopy tender submission shall apply only to activities for which the electronic tender submission is not possible (design contest, consultancy services, (two-envelope system)). 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 operators’ identification
- Tenderers’ declarations
- Tender price specifications

31.2 The tender form, together with all other required documents, duly filled and signed, shall constitute the tender.

31.3 The tender shall be submitted to the CA in one original copy 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. The copies shall be opened by the Evaluation Committee.

31.4 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 procurement activity in the Albanian, Serbian or English languages.

31.5 All tenders, withdrawals, substitutions or modifications received before the time of the tender opening shall be kept unopened in a secure place.

31.6 Tenders received after the last deadline for submission shall be indicated as “delayed tender” and shall be sent back to the relevant tenderer without opening it.

## **Article 32 - Electronic tender submission**

32.1 Electronic tender submission shall be done on the electronic platform.

32.2 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 pricelist, 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 and conditions of use*.

32.3 Considering that the Tender Dossier is only one document that serves the Economic Operator in preparing the bid, the Tender Dossier shall not be uploaded on the platform by the EO when submitting the tender.

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

32.5 Tenders may be accompanied by hardcopy documents such as samples, catalogues and any other evidence that cannot be uploaded through the e-procurement system, but when drafting the electronic offer, the Economic Operators shall specify the documents which are submitted in hard copy;

32.6 After all of the documents have been uploaded to the system and attached to the tender, the tenderer initiates generation of Tender Submission Form which is a PDF document generated by

the system and contains all the information relevant to tender submission based on entered information and files.

32.7 The Tender Submission Form shall be protected by the server signature. The Tender Submission Form shall contain XML data with the MD5 hash value of each tender document 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.

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

32.9 If the tender is submitted on behalf of the Group of Economic Operators, Tender Submission Form must be signed by the person authorized, using the advanced digital signature, on behalf of the group of EOs.

32.10 The Tender Submission Form must be checked if it contains all the data noted and uploaded in the preliminary steps of the bid preparation and uploaded to the e-Procurement System so that the tender can be submitted. It is the responsibility of the bidder to upload the Tender Submission Form to the 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 the bidder's internet connection and the overall traffic on the system. After the deadline for submission of the tender, the system must not allow the upload of any documents related to the tender.

3.11 The system allows the tenderer to check the validity of the Tender Submission Form and of the electronic signature given before the tender has been submitted. Check of the validity shall be informative in nature and shall not be legally binding concerning the validity of the submitted tender.

32.12 At the time of the submission, the e-Procurement System applies a timestamp (if applicable) to the submitted Tender Submission Form. The time of the timestamp is the official time of the tender submission. The system does not allow the submission of the tenders after the deadline for submission. It is the responsibility of the bidder to submit the tender before the deadline of the tender submission.

32.13 Confirmation of successful tender submission shall be made by the e-Procurement System by sending a confirmation e-mail to the user account (inbox) of the EO within the e-Procurement System and the e-mail of the EO registered in the system. PPRC shall only be responsible for the confirmation e-mails sent/received in the user's inbox within the e-Procurement System.

32.14 In case of obstacles in the functioning of the e-Platform for public procurement during the period for submission of bids, requests for participation, obstacles such as i) Providing access to the e-Procurement System through the link <https://e-prokurimi.rks-gov.net>; and ii) For any situation created by obstacles in the e-procurement system that affect the impossibility of successful submission of the bid; then the actions of the Contracting Authorities, Economic Operators and the PPRC help desk shall be as follows::

a) The Contracting Authority or Economic Operator is obliged to immediately notify/report in writing to the IT Support Desk to the PPRC through the fastest means of communication (telephone line and e-mail) from Monday to Friday in the time period from 8:00 to 16:00.

b) Upon receipt of the notification/reporting referred to in paragraph 33.14, a) IT Help Desk and e-Procurement System administration in the PPRC, the same shall check and in case of verification and confirmation of the obstacles set out in paragraph 32.14 points i) and ii) thereof, and shall be obliged in accordance with the internal procedure of the PPRC to undertake technical actions in the e-Procurement Systems, which actions will enable all procurement activities of the same day and affected by technical obstacles to be postponed for another deadline for submitting electronic bids by the EO.

c) Technical action shall be taken for all procurement activities for which less than **120 minutes** until the deadline for submission of bids/applications remained. The actions that will be taken shall be:

1. Stopping/deactivating the bid opening process:
2. Allowing the correction of the procedure by the CA after the expiration of the deadline for submission of electronic bids/applications; and
3. Activation of the bid opening process
- 4.

d) After verifying/confirming the obstacles and also after avoiding the obstacle, the IT Help Desk in the PPRC, if possible, shall notify the CA and EO regarding the presentation of obstacles and avoidance of obstacles as well. The announcement will be made on the website of the e-Procurement System.

e) After the actions taken and receiving the notification mentioned in paragraph 32.14. b), the Contracting Authorities shall be obliged through the B54 form to extend the tender deadline for at

least **three (3) days** (for high-value procedures), **two (2) days** (for medium value procedures) and **one (1) day** (for small value procedures) after the date of publication of the Notice for Correction of the Procedure/Invitation for participation.

f) In case of technical problems during the period for submission of bids, requests to participate and in case the IT Help Desk and the administration of the e-Procurement System in the PPRC is not able to take action under paragraph 32.14. b), and the deadline for submission of bids/applications has expired for procurement procedures of the same day, then the Contracting Authorities **shall not** initiate in any way the bid opening process without receiving a notice/instruction from the PPRC on how to proceed further.

g) At the moment that the IT Help Desk and the e-Procurement System administration in the PPRC undertake actions according to paragraph 32.14. b), then CAs shall be obliged to act according to the instruction described in paragraph 32.14. e).

h) IT Help Desk at the PPRC shall keep a record of cases presented and the treatment of technical obstacles in accordance with the internal procedures of the PPRC.

32.15 If the tender consists of multiple groups (lots), the tenderer may submit one tender for multiple groups or one separate tender for each group; The Tender Submission Form shall contain as many bid sheets as the number of lots in the submitted tender. Each of the submitted bids must contain all of the proofs of the Economic Operator's ability required by the Tender Dossier.

32.16 Amendments or editing of the tender shall be available until the deadline for submission of tenders. Any amendment of the tender shall require the 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.

32.17 If a tender has been submitted, the withdrawal of the tender shall be available until the deadline for the submission of bids. The tender withdrawal action shall delete the tender from the system. After the withdrawal, a new tender can be prepared and submitted within the tender submission deadline.

31. 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 bidders will not be able to submit/amend/edit the tender. Previously submitted tenders will remain valid until the successful submission of a new tender or its withdrawal.

32.19 In relation to the actions described in paragraphs 32.16, 32.17 and 32.18 above, the EOs must necessarily refer to the manual "EO Manual - preparation and submission of the bid".

32.20 Advanced digital signature and time stamping of the bid by the server **shall not be mandatory** until the official announcement by the PPRC.

### **Article 33 - Receipt of Tenders**

33.1 Receipt of the tender in hard copy only applies to activities for which the electronic tender submission is not possible (design contest, consultancy services).

33.2 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*.

33.3 For electronic tenders received through the e-Procurement System, the Tender Submission Form, *if applicable*, must be time-stamped using a national or commercially available timestamp service that is compliant with the EU EIDAS Regulation (Electronic Identification, Authentication and Trusted Services). The 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.

33.4 After the reception on the e-Procurement System, electronic tenders shall 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 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.

33.4 Prices and other commercially sensitive information shall 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.

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

33.7 In the case of the application of an electronic platform, the system automatically generates a register of bids received.



## **Article 34 - Tender Opening Committee**

34.1 The officer responsible for the procurement activity shall appoint an Opening Committee, composed of not less than 2 (two) members, for the opening of the tenders. The appointment of the members of the Opening Committee shall be made ad-hoc basis during the preparation of the procurement procedure. The members of the Opening Committee shall be notified via e-mail sent by the e-Procurement System. The Opening Committee may be composed of the procurement officers.

34.2 The tender Opening Committee must start the tender opening procedure immediately after the deadline for the submission/receipt of tenders. The mandate of the tender Opening Committee shall be terminated once the opening and closing record of the tender opening is produced.

## **Article 35 - Opening of electronic tenders**

35.1 Tender opening is performed using the e-Procurement System tender opening functionality. The Opening Committee should consist of the users of the Kosovo e-Procurement System that have been assigned during the tender publication, or their deputies, who have the private keys needed to successfully conduct electronic tender opening and decryption.

35.2 Two keys shall be generated in any e-procurement process that belong exclusively to the proceedings in which they are generated. It is therefore very important and responsibility of the RPO, in the course of preparation of procedures in the respective step for generating the keys, to check and verify promptly if the generated keys have reached the e-accounts of the member assigned as a member of the Opening Committee.

35.3 Keys received by the Opening Committee members should be safeguarded carefully because in case of loss of private keys it is not possible to start the process of the public opening of tenders, nor to review the submitted bids. It is the RPO's responsibility the availability of private keys, in addition to the verification as in paragraph 35.2, must be done at least 24 hours before the deadline for submitting tenders. In any case of loss of private keys, the Contracting Authority - RPO must immediately report to PPRC.

35.4 The process of public opening can start with the expiration of the validity period for the submission of bids. Upon the expiration of the deadline for submission of bids, an automatic form

for loading private keys appears. Authorized representatives should get access to the platform and each separately encloses an assigned private key that was initially submitted to them by e-mail.

35.5 Tender opening procedure shall be initiated by entering the authorized representatives of the Contracting Authorities.

35.6 Overview of submitted bids shall refer to the total number of electronic tenders received by the validity period for submission of tenders.

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

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

35.10 Prices in the bids are decrypted, presented on the screen and stored in the database. Prices in the database are used for the creation of minutes of the public opening document.

35.11 After a successful public opening, public keys needed to decrypt the tenders are stored in the database of the system, so that the tenders could be analysed 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).

35.12 In case of technical problems during the public opening procedure of electronic offers in the system of electronic procurement, obstacles appear such as *i) private keys are displayed; ii) inspecting the register of bids submitted electronically; iii) inspecting the submitted bids*, then the actions of the Contracting Authorities, Economic Operators and the PPRC Help Desk shall be as follows:

a) The Contracting Authority or Economic Operator is obliged to immediately notify/report in writing to the IT Support Desk to the PPRC through the fastest means of communication (telephone line and e-mail) from Monday to Friday in the time period from 8:00 to 16:00.

b) Upon receipt of the notification/reporting referred to in paragraph 35.12, a) IT Help Desk and e-Procurement System administration in the PPRC, the same shall check in case of verification and confirmation of the obstacles set out in paragraph 35.12 point i) and ii) thereof, and shall be obliged in accordance with the internal procedure of the PPRC to undertake technical actions in the e-Procurement Systems, which actions shall enable the opening of bids after avoiding technical obstacles, in accordance with the internal procedure of PPRC. Exceptionally to this rule, if the obstruction is eliminated in less than 30 minutes, it shall be considered that the obstruction has not occurred.

- c) If an obstacle was found from the IT Help Desk of the PPRC at the time of bid opening, the deadline for bid opening shall cease as long as the obstacle lasts and starts at the time when the IT Help Desk within the PPRC notifies the CA affected by this obstacle or publishes a *Notice of obstacle avoidance*.
- d) After receiving the notification from paragraph 35.12. point c), the Contracting Authority shall be obliged to make the public opening of bids no later than 48 hours from the receipt of the notice and if the deadline expires on Saturday, Sunday or a public holiday, the public opening will take place on the first upcoming working day.
- e) The Contracting Authority shall be obliged to immediately inform the participating economic operators of the place and time of public opening of bids.
- f) From the avoidance of the obstacle until the continuation of the public opening of bids, the system ensures that the tenders received in the system have not been changed or deleted during this period and that no new tenders can be submitted.
- g) IT Help Desk within the PPRC shall keep a record of cases presented and the treatment of technical obstacles in accordance with the internal procedures of the PPRC.

35.13 Minutes of the public opening are created as a word file on the e-Procurement System. The final version of the minutes of the public opening should be uploaded back to the system and sent to the EO.

35.14 Detailed log of all the actions of all the participants related to the given tender should be created by the system and be available for inspection at any time.

35.15 The full log with all recorded data should be available only to PPRC for monitoring purposes and must contain at least the following data:

- The exact time of the transaction
- Name of the user that executes the transaction
- Identification of the transaction
- Optional parameters of the transaction required to understand the business context

35.16 The log available to the CA must contain the data necessary for monitoring and management purposes. The log must not reveal to the CA the data on which Economic Operators have submitted the bids before the tender has been successfully opened, except on how many electronic bids have been submitted.

### **Article 36 - Opening of Tenders in physical form**

36.1 As each tender is opened, the Procurement Officer shall read loudly before those present:

- (i) the name and place of the concerned tenderer; and
- (ii) the total tender price specified in the such tender;

36.2 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 loudly, such as time of delivery, warranty period etc.

36.3 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 on different dates.

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

36.4 It is the responsibility of the Procurement Officer to register the financial offers opened according to paragraphs 36.1 and 36.3 in the e-Procurement System within the relevant step of the procurement procedure.

36.5 The system shall automatically generate the “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 shall be uploaded to - published in the e-Procurement System.

36.5 If the CA conducts a procurement activity using a restricted 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 the clarification that less than 3 requests to participate have been received.

36.7 If the CA conducts a procurement activity using a 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.

36.8 If the number of the responsive EOs for a 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, it initiates a new procedure.

### **Article 37 - Tender samples**

37.1 Tender documents should generally avoid the requirement to submit samples, as this requirement discourages competition and increases bid prices. Alternatively, tenderers should be required to confirm that their product meets the required specifications and in support attach appropriate test certificates from recognized testing laboratories.

37.2 Where samples are required, they can be submitted in advance, or during the closing time of the tender. They must be submitted before the deadline for the submission of tenders.

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

37.4 To prevent the possibility of bias in selection, before 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.

37.5 The person who strips and codes the samples shall not participate in the evaluation process and shall not disclose the identity of the samples to the Evaluation Committee members.

37.6 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 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. Concerning 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 has expired.

37.7 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 mentioned above (no physical destruction and upon request).

### **Article 38 - Clarification of Tenders**

38.1 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 B47 for clarifications to be used by the CA “Request for clarification of tender”. The request for clarification and the response must be through the electronic platform.

38.2 No change in price or any other material term or aspect of the tender may be sought, offered or permitted.

38.3 However, it is permissible for a contracting authority to request and receive, during the evaluation, information or documents that had been missing from the original application/tender. Those documents, however, have to objectively show sufficient proofs that reasonably reflect the existing situation before the date of publication of the Contract Notice.

38.4 The Contracting Authority shall ensure the possibility of supplying additional 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, certificates included in the tenders or requests to participate. The clarification and request for additional, supplementary information and documents are 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 to the questions asked by the Contracting Authority and after the examination of the submitted additional documents.

39.6 The Contracting Authority may invite economic operators to supplement or clarify the certificates and documents submitted in accordance with Articles 65-71 of LPP, i.e. evidence submitted on the eligibility requirements, professional suitability requirements, economic and financial standing as well as technical and professional capability, quality certificates, requirements of the groups of EOs.

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

38.7 If the EO fails to reply within the time limit specified by the CA, its tender shall be rejected.

38.8 The CA must send the “Request for clarification of the tender” through the e-Procurement System. The EO must submit their response to the “Request for clarification of the tender” through the e-Procurement System.

### **Article 39 - Establishment of the Tender Evaluation Committees**

39.1 Refereeing to Article 59, paragraph 1 of LPP, for all procurement activities, the CA, namely the “CAO”, in close cooperation with the responsible procurement officer, must establish the tender evaluation committee with the only function of advising 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. Tender Opening Committee members may serve as members of the Evaluation Committee.

39.2 The Evaluation Committee shall be established on a case-by-case basis on the procurement activity.

39.3 The following principles shall form the basis for establishing and functioning of such a committee:

- (i) The members of the committee shall fulfil the requirements of eligibility meaning that the persons who meet just one of the following conditions are not eligible:
  - a) 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;
  - b) been declared ineligible, where the Contracting Authority finds this to constitute grave professional misconduct, verified by a competent court;
  - c) 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;
  - d) been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;
  - e) 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
  - f) been determined by a court of competent jurisdiction to have made serious misrepresentations to any public authority in Kosovo or elsewhere.

(ii) All members of the committee are strictly subject to the provisions of Article 11 of LPP with regard to the protection of confidential business information.

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 LPP.

39.4 The Responsible Procurement Officer may not serve as a member 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, advise and direct the Evaluation Committee’s work and ensure compliance with the provisions of LPP.

39.5 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 tender Opening Committee may be members of the Evaluation Committee.

39.6 The Evaluation Committee shall function from the day of adoption of the decision on establishment until receiving the recommendation of the commission within the deadlines defined in paragraph 40.3. In case one or more members are not able to participate in the committee, due to objective factors and circumstances, they shall be substituted in the same way as their nomination.

39.7 The Evaluation 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.

39.8 Voting shall only apply to the criteria 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 valid, but the selection is made according to the time of tender submission (the EO which has submitted first the offer).

39.9 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 LPP concerning the protection of confidential business information.

39.10 The Evaluation Committee shall, at the end of its task, provide the responsible Procurement Officer with 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 proposal of tenderers. The report of the committee should be kept in records of the procedure.

39.11 The final decision on awarding the contract remains the responsibility of the Responsible Procurement Officer. The responsible Procurement Officer may accept the committee's recommendation or reject it. When the committee's recommendation is rejected, the Procurement Officer will explain the reasons in writing. In such situations, the responsible Procurement Officer may issue the final decision or form a new commission for re-evaluation. Such explanation will be included in the minutes of the procurement activity. The CA's CAO shall immediately be informed of this refusal. Information must be provided in writing.

39.12 Members of the Tender Evaluation Committee must be members who are not involved in the preparation of specifications or terms of reference.

39.13 If 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 concerning the said activity. The individual, who no longer takes part in the evaluation, is still sworn to confidentiality.

#### **Article 40 - Examination, Evaluation and Comparison of Tenders**

40.1 Examination, Evaluation and Comparison of Tenders shall be done in compliance with the basic principles defined by LPP.

40.2 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 bidders or award of the contract does not imply a change in the initial results.

40.3 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 justified cases, in particular with contracts of a complex nature, this period may be extended for an additional term of 20 days. The tender evaluation process shall start immediately after the completion of the tender opening process.

40.4 No negotiations shall take place between the contracting authority and the tenderers during the examination, evaluation and comparison procedure between the Contracting Authority and tenderers, except for communications specifically authorized by Articles 34 and 35 of LPP. However, only the clarification of tenders may take place without any change of material terms or aspects of the tender, except for those that are allowed by Articles 59 and 72 of LPP.

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

40.6 A tender is considered to be responsive when it:

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

40.7 To “comply” in administrative and technical terms shall be understood as to satisfy administrative and technical requirements and specifications outlined in this Tender Dossier without substantially deviating from or attaching restrictions to them.

“Substantial deviations or restrictions” shall be 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 with the rules.

40.8 To facilitate the examination, evaluation, and comparison of tenders, the Contracting Authority may ask each tenderer individually for clarification of his/her tender pursuant to Article 38 of this Regulation. 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.

40.9 A Contracting Authority shall correct an error in a tender that is purely arithmetical if such an error is discovered during the examination of tenders, however, this correction cannot be higher than two per cent (2%) of the total value

- i. If the corrected amount is less than +/- 2%, the CA will correct such errors 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 said bid shall be rejected. The CA shall as well send to all relevant tenders (EO which have submitted tenders) 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.

40.10 The tenderer shall be informed in writing immediately of such corrections. Errors in the calculation of the price shall be corrected by the CA in this way:

- a. 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;
- b. In case there is a discrepancy between the total price in the Tender Form and the total in the Description of prices, the offer shall be rejected.

40.11 The amounts corrected in this way shall be binding on the tenderer;

- a. If the tenderer does not accept them, his/her 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, his/her tender will be rejected and deemed to be withdrawn.

40.12 A tenderer shall not be disqualified, excluded or eliminated from the procurement procedure based on any requirement or criteria not specified in the Contract Notice/Tender Dossier.

40.13 The CA shall evaluate and compare the responsive tenders according to the contract award criteria specified in the Contract Notice/Tender Dossier.

40.14 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.

40.15 During 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 other persons who are not officially involved in the examination, evaluation of the tenders until the *Form B58 - Notice on the CA Decision* has been published.

40.16 If the OE offers a price of EUR 0.00 for a particular item, there might be various reasons and therefore there is a need to send a clarifying question to the economic operator seeking an explanation for the item EUR 0.00.

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 item is offered for free, the tender must be rejected since the gifts are not acceptable.

40.17 If during the procedure for the examination, evaluation and comparison of tenders, the Evaluation Committee cannot download the electronic bids, or open any part or document of the electronic bid, then the RPO shall be obliged to request verification from the PPRC.

## **Article 41 - Abnormally Low Tenders**

41.1 The concept of an abnormally low tender refers to tenders that appear to the Contracting Authority, at first sight, to be unreliable if compared to the scope of the contract and accordingly to the circumstances, and which are likely to have a negative impact on the performance of the implementation of the contract.

41.2 In any case, where there is an abnormally low tender threshold, the automatic exclusion of abnormally low bids without using a procedure shall be prohibited *inter partes* with the relevant Economic Operator for the examination of the tender which is considered by the Contracting Authority as abnormally low.

41.3 The Contracting Authorities shall require the Economic Operators to explain the price offered for responsive tenders when all the following conditions are met:

- i. the price offered is more than 30% lower than the average price of responsive tenders;
- ii. the price offered is more than 10% lower than the price or costs of the second lowest tender;
- iii. at least 3 (three) tenders have been submitted.

41.4 When tenders appear to be abnormally low for reasons other than those provided for in paragraph 41.3 of this Regulation, the Contracting Authorities may assess the credibility of such tenders and consequently request explanations in accordance with the following paragraphs and Article 61 of LPP.

41.5 When a tender is considered abnormally low in accordance with Article 61 of LPP and paragraph 41.3 or 41.4 of this Regulation, such a tender cannot be rejected without investigation and consideration of the important elements that triggered the abnormally low tender.

41.6 If a tender (or a tender position where the unit price is applied) appears to be abnormally low, the Contracting Authority must request in writing from the Economic Operator who submitted the tender or tender position that appears to be abnormally low pursuant to paragraph 41.3 or 41.4 of this Regulation, a written statement including a detailed breakdown of the parts relevant to the tender and including an explanation for the low price using the standard form approved by the PPRC “*Stanard notice for abnormally low tenders*”.

41.7 The Economic Operator shall respond in writing to the Contracting Authority. If not, the tender shall be rejected.

41.8 When determining whether a tender is abnormally low, the Contracting Authority must consider:

- a) the economy of the production process, the services provided and/or the construction methods;
- b) any technical solutions offered or chosen;
- c) any particularly favourable conditions that are available to the tenderer for the supply of products, provision of services, execution of works projects and/or exercise of construction activities that are being procured; and/or
- d) the originality of the supplies, services, works or proposed works.

41.9 In addition to the elements of the tender defined in Article 41.8 of this Regulation, the Contracting Authority should consider:

- a) the tender elements including elements of sub-totals for salaries as well as compensations, materials, fixed costs and profits.

41.10 After the Contracting Authority receives a written explanation from the Economic Operator, the Contracting Authority must either:

- a) If the clarification is sufficient, treat the tender the same as other tenders; or
- b) If the clarification is not sufficient, reject the tender and, pursuant to Article 61 of LPP, notify the PPRC, using the standard form approved by the PPRC, “Notice of rejection of the abnormally low tender”, within two days from the date of the decision.

41.11 The tenderer concerned shall be informed of the final evaluation result.

## **Article 42 - Notifying the Tenderers/Candidates**

32.1 All tenderers/candidates must be duly informed by the CA upon the publication of Form B58 - “Notice on the CA Decision”.

42.2 In the negotiated procedure without publication of the contract notice, the tenderers/candidates and any interested party must be informed by the CA through the publication of Form B58 - “Notice on the CA Decision” and the Contract Award Notice (B08) simultaneously, and from which publication the time limits for submission and review of complaints begin.

42.3 Form B58 shall contain the decision on the outcome of the procurement activity and the relevant Standard Letters to Tenderers with the necessary justifications.

42.4 Upon expiry of the time limit for the submission and review of complaints in the Notice on the CA Decision, the Contracting Authority shall prepare and publish the Contract Award Notice within 30 calendar days.

42.5 Date of publication of the Notice on the CA Decision, namely the notification of the tenderers/candidates shall consist:

a) The date when all information related to the procurement activity (other than business secret information) is available to stakeholders.

42.6 The date of notification of the tenderers/candidates shall be “day 0” of the mandatory 5 days of the “pending” period.

42.7 If the notice is published on Friday, the time limit for filing a complaint shall start on Friday since:

- Friday is a working day
- In accordance with Article 60, paragraph (b) of Regulation, the date of notification is “*day 0*” of the 5 days.

### **Article 43 - Termination of procurement procedures**

43.1 In case the cancellation of the procurement procedure is decided, the CA shall immediately prepare and publish Form B58 “*Notice on the Contracting Authority Decision*” setting forth the factual reasons and the legal basis of such cancellation.

43.2 Upon the expiry of the time limit for the submission and review of complaints, a *Notice on cancellation of the procurement activity* shall be prepared/published and such notice shall be published on the e-procurement platform.

43.3 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 languages.

43.4 The procurement procedure *after the opening of bids* shall be cancelled for one of the following reasons:

- a. no tenders are submitted within the specified deadline;
- b. none of the received tenders is responsive;
- c. the number of the responsive EOs for public framework contracts with more than one EOs is less than 3 (three);
- d. no requests to participate, in restricted or competitive negotiated procedures, are submitted within the specified deadline;
- e. the number of qualified candidates in restricted/competitive negotiated procedure is less than 3;
- f. no projects are submitted within the specified deadline;
- g. none of the received projects in a design contest is responsive;
- h. if ordered by Procurement Review Body;
- i. a violation of the law has occurred or will occur and it cannot be remedied or prevented through an amendment;
- j. if the CA has, during the preparation and management of the procedure incorrectly used the option for the relevant procedure and such error after PPRC verification is irreparable; or
- k. if there is a technical error in the e-procurement platform due to any unforeseen situation and out of CA’s control and which error is irreparable according to the verification and ascertainment by PPRC.

43.5 In the event that the procurement procedure is composed of several Lots, and if for one or several Lots they end with the signing of the contract (the “Contract Signing Notice (B52)” has been published), while one or several Lots must be cancelled, the CA shall not prepare and publish the “Notice on cancellation of the procurement activity (B10)”, but only the B58 announcement shall be published for the cancelled Lots.

All Lots shall remain in evaluation status until they receive the final outcome.

43.6 The procurement procedure *after the opening of bids may* be cancelled for the following reasons:

- a. all responsive tenders contain prices that exceed the CA’s budget.

43.7 The procurement procedures may *prior to the opening of bids* be cancelled for the following reason:

- a. 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.
- b. if the CA has, during the preparation and conduct of the procedure, incorrectly used the option for the relevant procedure and which error after verification of PPRC is irreparable;
- c. there is a technical error in the e-procurement platform due to any unforeseen situation, under the control and domain of the PPRC and out of the CA’s control and which error is irreparable according to the verification and ascertainment by the PPRC;
- d. if the inability to use the electronic platform has been reported by all users as a result of technical problems beyond the control and domain of the PPRC and CA and according to the verification and ascertainment by the PPRC.

43.8 In case of cancellation based on the circumstances and reasons stated in this Article, the Contracting Authority shall assume no liability towards tenderers, participants or candidates for cancellation of a procurement procedure subject to the provisions of Article 105, paragraph 2.9 of LPP concerning compensation to the complainant.

4.9 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 naming and identifying it with “Re-tender”.



## Article 44 - Standard Forms

44.1 The CA shall prepare their procurement documents by using the relevant standard forms to be found on the PPRC's website.

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

44.3 The purpose of the standard documents is to help the economic operators during the preparation of their bids. 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.

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

44.5 Also, in accordance with Article 13.2 of LPP, the CA may determine the terms and conditions of public contracts which shall comply with the usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract. This means that the CA may, instead of drafting general and special conditions determined in the draft standard dossiers, use, for example, the 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.

## **CHAPTER II – Procurement procedures**

### **Article 45 - Open Procedure**

45.1 An open procedure, according to Articles 31 and 33 of LPP, together with the restricted procedure, shall apply to all the contracts and does not require specific justification or permission.

45.2 The open procedure is characterized 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 the restricted procedure.

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

45.3 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 LPP. 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.

### **Publication of the contract notice**

45.5 An open procedure shall be initiated by the publication of a contract notice prepared pursuant to Article 40 of LPP.

45.6 The Contracting Authority may use accelerated procedure when circumstances

provided in Article 46 of the PPL exist. The circumstances must be justified in writing. The requirement in Article 46.1 of LPP is of particular importance since the urgency must not be “attributable to the acts and omissions of a Contracting Authority”.

45.7 Different language versions of tender notices and dossiers for a procurement activity must be identical concerning the information they provide. During the preparation of the CA procedure, the CA must specify the language which should prevail in case of inconsistency of the language versions.

### **Tender Dossier**

45.9 The tender dossier shall be downloaded on the e-procurement platform by the interested parties.

### **Additional or clarifying information**

45.10 In case an Economic Operator needs additional or clarifying information on certain elements of the Tender Dossier, after having received the Tender Dossier, a request for such information must be submitted through the e-platform to the Contracting Authority within the deadline specified in the Tender Dossier pursuant to Article 53 of LPP. A standard form for such request is included in the annexes to the Tender Dossier, and the same may be used by the EO.

45.11 The Contracting Authority having received a request as mentioned in Article.

45.12 above, shall immediately review such a request and react in accordance with the provisions of Articles 53.4 to 53.6 of LPP, and shall upload information regarding additional clarifications in the e-procurement platform. The Contracting Authority shall not reveal the identity of the Economic Operator that requested the clarifying information.

45.13 For the receipt and opening of the tenders, refer to Articles 33 - 35 of this Regulation.

### **Procedure for examination, evaluation, and comparison of tenders**

45.16 The procedure shall include essentially three phases, firstly an evaluation of the formal responsiveness of tenderers, secondly an evaluation of the eligibility and the qualification of the bidders, the technical evaluation of the tender, and finally the financial evaluation.

45.17 As a preliminary measure, the Contracting Authority shall ensure 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 relate to a well-completed tender form, tender security, etc.

45.18 The Contracting Authority shall evaluate whether tenders having passed the tests of Article 45.17 of Regulation comply with the technical terms, requirements and specifications of the Tender Dossier. A tender, as the main rule, shall be only considered to be responsive if it complies with the technical specifications in the Tender Dossier.

45.19 Article 59.4 of LPP shall also allow the Contracting Authority to accept bids in case of errors or oversights and case of minor deviations. In both cases, it is a condition that material aspects of the Contract Notice/Tender Dossier are not affected.

45.20 The possibility of accepting tenders shall therefore depend on what “material aspects” are. Regarding the contractual elements of the tender dossier, any aspect would be considered material if it can change contractual conditions concerning, for example, the quality or performance requirements, price or payment method, guarantees, insurance or liability, and especially in cases where the change leads to a reduction of the contractual rights of the contracting authority or a reduction of the obligations of the contractual tenderer. As regards technical specifications, it is generally difficult to exemplify what “material” is. At one end of the spectrum, there are deviations that are in reality variants, and where such variants are not allowed, see Article 29 of LPP, these will be considered to be material. However, even minor 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. A deviation, be it material or other, 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, what matters is the wording of the Tender Dossier rather than the expectations of the Contracting Authority. The yardstick indicates 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 45.21 of this Regulation, the Contracting Authority shall be able to accept minor deviations in cases where such deviation can be quantified.

45.21 Article 59.4 of LPP requires that errors and oversights must be corrected and those minor deviations must be quantified. The errors and oversights are different from the arithmetic ones referred to in Article 41.9 of this Regulation. 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 cannot easily 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 LPP. The quantification of minor deviations shall aim at neutralising the effect that this deviation would have on the comparison of tenders. The calculation must end up in some value expressed in monetary terms.

45.22 Pursuant to Article 59.2 of LPP, the Contracting Authority may request clarification of any aspect of a tender from the concerned Economic Operator in writing. This dialogue between the parties cannot, under any circumstances, justify any amendments to the tender initiated by any of the parties, unless it, in exceptional cases, turns out 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 LPP. Such clarifications must, under no circumstance, institute negotiations. If there

is no response from the concerned Economic Operator, the Contracting Authority shall reject the tenderer. The Contracting Authorities' request for clarification of tenders shall be made by use of the standard form B45 approved by the PPRC.

45.23 Regarding Article 59.3 of LPP, 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 exceed two per cent (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 B49 approved by PPRC. However, the price per unit may in no case be corrected. For more details, see Article 40 of this Regulation.

45.24 Article 56.3 of LPP clarifies that the tenderer shall not be disqualified or excluded from the procurement procedure based on any requirement or criterion not specified in the Contract Notice and/or the Tender Dossier.

45.25 Tenders that are not rejected under the above Articles shall be deemed to be “responsive”. The Contracting Authority shall evaluate and compare responsive tenders based on the contract award criteria outline in the Contract Notice and the Tender Dossier.

45.26 If in the Tender Dossier and the Contract Notice the Contracting Authority has set the award criteria for “Most economically advantageous tender”, such award shall be made only based on the criteria and weight of the criteria specified in the Tender Dossier and the Contract Notice. These criteria must meet the following requirements in accordance with Article 52 of LPP:

- a. The criteria must be measurable; which essentially means they must be concrete and clear enough to enable tenders to be evaluated in relation to each other. For example, in the case of after-sale services, the criterion may be a maximum time limit for the provision of such services.
- b. The criteria should be directly relevant to the subject matter of the contract. Aesthetic criteria would hardly be justified in the case of photocopiers but would be acceptable in the case of office furniture. In any case, the purpose of the relevance requirement is to ensure that competition is not unnecessarily restricted and that any risk of unfair advantage to certain bidders is minimized.
- c. The criteria may be related to issues such as price, operating costs, maintenance/longevity, functional/technical/environmental/aesthetic characteristics, after-sale services and/or quality characteristics. It shall not be sufficient to require “quality” or “after-sale services” as criteria. The criteria must be made concrete and measurable, see the following example:
  - 1). Such elaboration on the criteria should be included in the Contract Notice/Tender

Dossier in order to allow bidders to take them into account when setting prices and other conditions.

45.27 Article 52.4 of LPP requires that a clear distinction be made between the award criteria and the selection criteria. The award criteria relate to the tender, whereas selection criteria relate to the qualifications and capacities of the tenderer. Contracting Authorities should, therefore, be aware that, for example, the award criteria such as environmental characteristics must be strictly related to the subject matter characteristics of the contract (the device should consist of a high rate of recyclable materials; the photocopier should have low power consumption). Any such characteristics on the part of the bidder (low emissions from production sites, environmental management of production processes), shall not be included as award criteria.

45.28 In case the Contracting Authority objectively considers a bid as abnormally low, it shall proceed according to the procedure prescribed under Article 42 of this Regulation.

45.29 For tenders meeting the requirements concerning formal accountability, technical conditions, description and specifications of the tender dossier, and financial evaluation, the Contracting Authority shall continue to evaluate/verify eligibility, and if applicable, the bidders' qualifications according to the selection criteria specified in the contract notice and the Tender Dossier, based on the necessary documentary evidence.

45.30 Verification of eligibility, and the bidder's qualifications, if applicable, shall be made through the B47 standard letter "Request for clarification of tender" through the electronic platform.

45.31 The evaluation report shall include discussions, evaluation of tender examination and the same shall be submitted to the RPO for approval. Before approval of the Evaluation Report, the RPO shall request from the recommended EO for contract award the evidence of compliance with the eligibility requirements specified in the Tender Dossier and the Contract Notice. Upon receipt of eligibility evidence, the RPO shall sign the Evaluation Report and upload it to the platform.

45.31 The CA shall, upon the approval of the evaluation report by the RPO, prepare and publish the Form B58 Notice on the CA Decision on the e-procurement platform.

## **Contract award and signing**

45.33 The evaluation and comparison procedure shall result in the ranking of tenders. The tenderer with the best bid ranked according to the contract award criteria shall be awarded the contract.

45.34 The Contract Award Notice according to Article 41 of LPP shall be prepared by using the Standard Form B08 generated by the e-procurement system.

The prepared Contract Award Notice shall be published in accordance with Article 21.d of this Regulation.

45.35 The Procurement Officer shall make a contract document (draft contract) ready for signing based on the Tender Dossier and the winning tender. The RPO should prepare and create the draft contract through the function “Draft Contract” in the e-procurement system and the same should be shared with the winning EO for review and approval. The Draft Contract created by the e-procurement system must contain the contract number, contract name, contracting parties and contract price. When the pre-conditions for signing are fulfilled, for instance, the submission of the performance security, and when the final contract is signed by both parties, it shall enter into force. When a public contract has entered into force, the procurement officer shall, within two (2) days after the signing of such contract, prepare a notice for contract signing by using the standard form B52 pursuant to point 21.3 (f) of this Regulation. The contract shall be performed in conformity with its contract terms and conditions and the contract management plan according to Article 81 of LPP. This plan is developed as part of the preparation of the procurement activity and must be agreed upon and signed between the parties as a condition for implementing the contract.

## **Distribution of the signed contract**

45.36 The tender documents shall indicate the numbers of copies of the contract to be signed. After the signing of the contract, by both parties, and the publication of the Contract Signing Notice (B52), the contract shall be available for download by the public, and officials within the Contracting Authority concerned with the implementation of the contract:

- a. Finance Department
- b. Originating Requesting Unit (User Department)
- c. Project Manager responsible for managing the contract

45.37 The original copy of the contract shall be kept within the Procurement Department/Unit.

## Article 46 - One-Envelope and Two-Envelope Tendering Procedure

46.1 One-envelope approach contains both the technical and the financial proposal in a single envelope, while the two-envelope approach requires the technical proposal and the financial proposal in separate envelopes.

46.2 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 bids are read out at the opening ceremony. The advantage is that tenderers know immediately what competition for the tender they face and there is a high level of transparency.

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

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

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

46.6 Only the technical proposals are opened at the date and time specified in the Tender Dossier and the financial proposals remain sealed and 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 tenders and until the tenderers listed are notified of the time and place of opening by informing them of their rights to be present at the meeting.

46.7 Initially only the technical proposals are evaluated. Each member of the evaluation committee shall evaluate each technical proposal separately and shall properly score the proposal. The final points of each technical proposal are achieved by collecting points from all members and dividing them by the number of 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 that the Tenderers will have to achieve to be qualified (considered responsive).

46.8 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 shall be determined in writing by the Contracting Authority. Tenderers shall be informed of the time of opening of Financial Proposals.

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

46.10 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.

46.11 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.

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

#### **Article 47 - Restricted Procedure**

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

- a. In the first stage, namely the 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.
- b. In the second stage, namely the 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.

47.2 Restricted procedure as defined in Article 4.1.53 of the Law on Public Procurement is a procurement procedure that allows any economic operator to request to participate while allowing only those economic operators qualified by the contracting authority to submit a tender. This means that it will be an open opportunity for interested economic operators to apply for pre-qualification.

47.3 After the time limit for receipt of requests to participate, the contracting authority evaluates the candidates' qualifications in accordance with the published qualification requirements. Candidates that meet the required qualification requirements shall be invited to submit a tender. Candidates that do not meet the qualification criteria shall be eliminated. Candidates invited to tender are required to submit tenders by the time limit specified in the tender dossier. A public opening of tenders shall be held. Tenders shall be evaluated in accordance with the award criteria specified in the tender dossier and the winning candidate is awarded the contract.

### **Publication of the contract notice**

47.5 A restricted procedure shall be initiated by the publication of a contract notice prepared pursuant to Article 40 of LPP.

47.6 For publication of the contract notice, Articles 45.5 - 45.8 of this Regulation shall apply.

47.7 In the contract notice, the Contracting Authority shall specify the minimum selection criteria (eligibility requirements, professional suitability, economic 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.

47.8 The Contract Notice shall specify the time limit for receipt of the applications from the interested economic operators. The Contracting Authority shall set a time limit for such requests which is in accordance with the time limits specified in LPP.

### **Delivery of the Prequalification Document**

47.9 The Prequalification document, produced by the Contracting Authority by using the standard form approved by the PPRC B33 **“Prequalification Document”** shall be downloaded by the interested economic operators from the electronic platform. For information/clarification refer to Articles 45.10 - 45.14 of these Rules.

## **Receipt and opening of requests to participate**

47.10 For receipt of the participation requests refer to Article 33 of this Regulation.

47.11 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 are 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 and accessible 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 LPP.

47.12 The Law on PP shall define the maximum number of EOs that must be invited in the second phase, but does not define the minimum number of EOs that must be invited in the second phase, however, in order to ensure adequate competition and transparency, the CA should not continue with the second stage if it has received less than 3 (three) responsible applications.

47.13 In case of cancellation of the procedure, the CA shall act in accordance with Article 43 of this Regulation.

## **Evaluation of applications**

47.14 Evaluation of applications shall include evaluation of the candidate's eligibility and evaluation of candidates' qualifications.

47.15 Initially, the Contracting Authority shall verify that the applications meet the formal conditions specified in the prequalification document and shall proceed to evaluate the eligibility and qualifications of the candidates according to the selection criteria specified in the Contract Notice and in the Tender Dossier, based on the necessary documentary evidence.

47.16 Verification of eligibility and qualifications of bidders shall be made through standard Letter B47 "Request for clarification of tender/application" through the electronic platform.

47.17 All candidates shall, upon submitting the required documentation demonstrating or affirming that they are eligible and meet the minimum qualification requirements, be considered prequalified 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 shall above 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 reexamination, the Contracting Authority shall take into consideration only the factors, published on the Contract Notice. The Contracting Authority may consider only financial or technical capacity criteria as additional criteria.

47.18 The CA shall, upon the approval of the report by the RPO, prepare and publish the Form B58 **Notice on the CA Decision** on the e-procurement platform.

### **Invitation to tender**

47.19 Pursuant to Article 50 of LPP, the pre-qualified candidates selected shall be invited to tender at the same time.

47.20 In the invitation to tender as well as in the tender dossier, the deadline for the candidates' possible request for additional or clarifying information shall be specified pursuant to Article 53.1 of LPP. The provisions of Article 45.10 - 45.14 of this Regulation shall apply mutatis mutandis.

### **Procedure for examination, evaluation and comparison of tenders Contract award and signing**

47.21 The examination, evaluation and comparison procedure shall include the formal examination and evaluation of tenders and then the technical evaluation of the tender as such.

47.22 Initially, the Contracting Authority shall verify whether the tenders meet the requirements. 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 completion of the tender form, tender security, etc. Such examination of the responsiveness of tenders shall be completed by using the standard evaluation form approved by the PPRC.

47.23 The Contracting Authority shall evaluate that the tenders that have met the formal requirements comply with the technical terms in the description, requirements, and specifications of the Tender Dossier. A tender, as the main rule, shall only be considered to be responsive if it is in accordance with all the specifications in the Tender Dossier. Such evaluation of technical conformity shall be completed by use of a standard evaluation form approved by the PPRC.

47.24 The provisions of Articles 45.16 - 45.31 of this Regulation shall apply analogously to the procedure for examination, evaluation, and comparison of tenders.

47.25 The provisions of Articles 45.33 – 45.37 of this Regulation shall apply analogously for the contract award and signing and the distribution of the signed contract.

### **Article 48 - Emergency procedure**

48.1 Emergencies and cases shall be categorized into:

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

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

48.3 The conditions and circumstances for using emergency procedures shall be as follows:

- a. The strict necessity of the conduct of a procurement activity on an emergency basis,
- b. Motivated by objectively verifiable events that were not reasonably foreseeable by the Contracting Authority,
- c. Cannot afford the time limits required, and
- d. The emergency circumstances are not attributed to negligent or purposeful acts or

omissions of the Contracting Authority.

*“Emergency basis” shall mean 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 LPP.*

48.4 However, the requirements of Article 35.3 of LPP shall be considered by the Contracting Authority: The conduct of a negotiated procedure without publication of a contract notice shall, in no way, relieve a Contracting Authority of its obligations to:

- a. Play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
- b. Ensure that the contracted price is not higher than the concerned market price; and
- c. Carefully assess the quality of the concerned product, service or works.

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

## Cases of urgency

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

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

- a. the necessity of conducting a procurement activity on an urgent basis,
- b. it is impracticable to observe the normal time limits,
- c. it is not a situation of emergency (extreme urgency), and
- d. such circumstances are not attributable to acts or omissions of the Contracting

Authority.

48.8 The minimum time limits for receipt of tenders/requests to participate in the accelerated procedure are mentioned in Article 21 of this Regulation. These accelerated time limits are minimum time limits. If possible, more days shall be given to the economic operators to prepare and submit their tenders.

48.9 Requests for additional or clarifying information will be received by the Contracting Authority not less than 3 days before the due date for admission.

48.10 Apart from what is mentioned in this Article, the rules for the conduct of accelerated procedures shall be the same as for the normal procedures.

## Article 49 - Competitive Negotiated Procedure

49.1 The Competitive Negotiated Procedure is an exceptional, multi-staged procedure that involves the Contracting Authority consultations with Economic Operators qualified to negotiate the terms of the contract under which supplies/services/works will be provided. It is a procedure carried out in three stages.

- a. The first stage includes the pre-qualification phase which is carried out in the same way as for the limited procedure.
- b. The second stage includes the stage of sending the Tender Dossier and tender invitations to the pre-qualified Economic Operators, and the submission/receipt of the initial tenders in compliance with the TD and the tender invitation.
- c. The third stage includes

- the examination and evaluation of the initial tenders, which is carried out as the second stage in the limited procedure and ends with the award and signing of the contract if the CA has determined Contract Notice that it *shall award the contract based on initial tenders, without negotiations, or*
- *the stage of negotiations, awarding and signing of the contract, with tenderers who have submitted initial eligible tenders if the CA has determined in the Contract Notice that it shall negotiate with the bidders the initial tenders and all subsequent tenders submitted by them to improve their content, except for the final tenders.* At this stage, tenderers shall be invited to participate in further negotiations and shall have the same opportunity to amend and/or complete their initial tenders in accordance with the invitation and the final Tender Dossier to **submit their final tenders.**

49.2 Whenever the Contracting Authority uses this procedure it must in advance make a formal written statement with clear explanations on the use of this procedure and this statement shall be included in the Tender Dossier.

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

49.4 Use of the Competitive Negotiated Procedure shall not preclude the requirement of Contracting Authority to define its requirements, with as much particularity as possible, by reference to applicable technical standards, and to comply with rules on transparency, competition, and non-discrimination.

### **Publication of the Contract Notice. Pre-qualification. Invitation to submit the initial tender and the Tender Dossier**

47.5 A Competitive Negotiated Procedure shall be initiated by the publication of a Contract Notice prepared pursuant to Article 40 of LPP.

49.6 Articles 47.6-47.9 of this Regulation shall equally apply to the publication of the Contract Notice.

49.7 The pre-qualification procedure shall be performed in accordance with the provisions of Articles 47.15-47.22 of this Regulation.

49.8 All pre-qualified candidates, minimally 3 candidates, shall be invited simultaneously to submit a tender that can serve as the basis for negotiations of terms and conditions of the contract, except the cases when the number of such candidates exceeds six (6). If the number of eligible candidates meeting the selection criteria is above six, then 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 Contracting Authority 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 Article 47.19 of Regulation shall apply analogously.

49.9 The CA shall determine in the Contract Notice if:

- a. it will negotiate with bidders the initial tenders and all subsequent tenders submitted by them, with the exemption of final tenders, to improve their content; or
- b. it will award contracts based on initial tenders without negotiations.

49.10 In case of negotiations, the CA shall also specify in the Contract Notice whether it will:

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

49.11 In case of negotiations, candidates who have submitted acceptable tenders **shall be invited to participate** in further negotiations of the terms and conditions of the contract.

#### **Receipt, opening and evaluation of initial tenders. Invitation to further negotiations**

49.12 Timely received proposals shall be **opened** by the Contracting Authority immediately after the expiration of the deadline for submission of proposals.

49.13 In case the CA has determined in the Contract Notice that it will award a contract based on initial tenders, without negotiations, then the opening of initial tenders shall be done as for the restricted procedure.

49.14 The procedure for examination and evaluation of initial tenders shall be conducted similarly pursuant to Article 47.22-47.25 of this Regulation.

49.15 In case the CA has determined in the Contract notice that *it will negotiate with the bidders the initial tenders and all subsequent tenders submitted by them to improve their content, except for the final tenders, then* there shall be no public opening, but the opening shall be done in such a way as to ensure the integrity and impartiality of the opening procedure, meaning that the minutes of the internal opening session will 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 accessible to the 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 LPP.

49.16 Pursuant to paragraph 49.15 of this Regulation, the CA shall examine and evaluate the initial tenders received and shall prepare/send invitations for further negotiations.

### **Conduct of negotiations, Evaluation of final tenders, Contract Award and Signing**

49.17 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 the terms and conditions of the contract in a discriminatory manner, which may give some participants an advantage over others.

49.18 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.

49.19 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 the background and the terms and conditions of the contract.

49.20 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 who has provided such information.

49.21 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, available on the PPRC's web-site, shall be used to record the negotiations held separately with each participant.

49.22 Upon completion of the negotiations, the participants with whom the negotiation has taken place shall be invited to **submit their final tenders** in accordance with the invitation and the final Tender Dossier. The standard form shall be used for recording the final negotiation stage.

49.23 The time limits fixed for receipt of amended and/or completed proposals shall be sufficient to give the participants reasonable time for drafting and submitting their proposals or final tenders.

49.24 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 available in PPRC's website.

49.25 The provisions of Articles 45.33 - 45.37 of Regulation shall apply comparably to the contract award and signature as well as to the distribution of the signed contract.

## Article 50 - Negotiated procedure without publication of a contract notice

50.1 The negotiated procedure without publication of a contract notice is a procedure that involves the Contracting Authority negotiating, without publication, 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.

50.4 When the Contracting Authority uses the negotiated procedure without publication of a contract notice it must notify the PPRC within 2 days from the date of making a decision using the standard form approved by the PPRC. The PPRC may in any case decide to examine the CA decision and, if necessary, may invite the CA to revise its decision in accordance with the issued opinion. If the PPRC decides to check the CA decision, it should do it within two (2) days after receipt of such report. PPRC opinions 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 LPP.

50.5 The notice must be signed by the CAO and the responsible Procurement Officer, scanned, uploaded, and submitted to the PPRC through the e-procurement platform. In case of cancellation of the procedure, the CA must also create and upload to the system the procedure Cancellation Decision using the B58 form.

50.6 Participants in 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.

50.7 Where only one supplier exists according to Article 35 of LPP 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, services, or works.

50.8 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 Articles 49.15 - 49.19 of this Regulation.

50.9 The provisions of Article 45.33 – 45.35 of this Regulation shall apply mutatis mutandis to the contract award and signing and the distribution of the signed contract.

50.10 Depending on the nature of the procurement activity, the Contracting Authority during the conduct of the negotiated procedures without publication of the Contract notice, must use one of the Tender Dossiers authorized by the PPRC.

### **Article 51 - Price quotation procedure**

51.1 A Price Quotation Procedure shall be conducted pursuant to Article 36 of LPP and in the stages following this Article of this Regulation. The standard Tender Dossier for the quotation procedure approved by PPRC shall be used for the conduct of this procedure.

51.2 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.

51.3 A Contracting Authority may use the Price Quotation Procedure if the intended contract is related to:

- 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 and services.

### **Conduct of Price Quotation Procedure**

51.4 A Price Quotation Procedure shall be initiated by the publication of a Contract Notice prepared pursuant to Article 40 of LPP.

51.5 The provisions of Articles 45.5 - 45.8 of this Regulation shall apply *mutatis mutandis* for the publication of the Contract Notice. The minimum time limit for submission of price quotations in accordance with Article 47 of LPP must be five (5) days from the date of publication of the Contract Notice. The date of notice shall be “day 0”.

51.6 Article 24 of this Regulation, in accordance with Article 51 of LPP, shall also apply to the Price Quotation Procedure.

## **Contract award and signing**

51.7 Examination, evaluation and comparison of timely received price quotations shall essentially take place according to the same rules, similar to the rules for the open procedure, but the examination, evaluation, and comparison of quotations shall be completed by the use of the standard form approved by PPRC, Evaluation Report for Price Quotation, Standard Form B39.

51.8 The provisions of Articles 45.33 – 45.35 of this Regulation shall apply mutatis mutandis for the contract award, signing and for distribution of the signed contract.

## **Article 52 - Procedure for minimal value contracts**

52.1 The Contracting Authority may use the minimal value procedure for any public contract the estimated value of which is less than EUR 1,000. By the award of purchase orders with regard to minimal value procurement, the contracting authority shall ensure adequate competition, transparency and high effectiveness of the use of public funds. For minimal value contracts that are developed in educational institutions, the person authorized to sign a contract is the Director of the Educational Institution, and the procedure must therefore be developed by the educational institution in the e-Procurement System.

52.2 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 and should not be divided for the purpose of using such a procedure.

### **Conduct of Minimal Value Procedure**

52.3 The Contracting Authority must conduct the minimal value procedure in the e-Procurement System.

52.4 The minimal value procedure shall be performed by the Contracting Authority with no intention to discriminate against or favour any Economic Operator. (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.

52.5 At least 3 (three) Economic Operators of the concerned goods/services/works must be sent an invitation through the e-Procurement System. This does not mean that the Contracting Authority is obliged to receive 3 (three) bids, it may continue with one responsive bid, but the Contracting Authority shall be obliged to document that at least 3 Economic Operators were sent the invitations.

52.6 The Contracting Authority must accept the Quoted prices using the standard form approved by PPRC, “Quoted Prices for minimal values”, standard form B19

52.7 The Procurement Officer must open the bids, prepare the minutes of the bid opening, evaluate the bids and prepare an evaluation report which must contain the names and addresses of the Economic Operators contacted as well as the prices offered. There is no need to establish an opening and evaluation committee. Minutes of the “Quoted Prices” shall be considered as a contract which must be signed by the responsible Procurement Officer.

52.8 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.

52.9 The Contracting Authority shall compile a report on receiving goods, works or services.

52.10 All procurement activities with minimal value shall be included in the “Annual Report for Public Signed Contract”.

52.11 Without prejudice of the above, in cases of emergency, when the written approval of the Authorizing Officer proves to be impossible, the service or goods can be ordered by any person subject to the emergency. The use of the standard form “Quoted Prices” and the minimal number set out in Article 50.5 of this Regulation shall not be required in such circumstances.

52.12 The official who has ordered such supplies/services must, as soon as possible, present to the Procurement Officer the invoice for the services/goods received, a detailed written report on the circumstances justifying the emergency, and shall provide appropriate evidence on the received supplies and services.

### **Article 53 - Immovable Property Contracts**

53.1 Pursuant to Article 3.9 of the Law on Public Procurement, the immovable property shall be exempted. This means that Contracting Authorities shall not apply the law on contracts regarding the acquisition or rental of land, buildings or other immovable property or rights thereof except when foreseen in other laws. These contracts are governed by the CA's internal procedures.

## Article 54 - Framework Contracts

54.1 “Public Framework Contract” shall mean 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.

54.2 *In other words*, a Public Framework Contract is a general term for agreements, between the Contracting Authorities and economic operators for supplies, services, and works (repair/maintenance works), which establishes the terms and conditions under which subsidiary contracts or placing of orders can be made throughout the terms of the agreement.

54.3 Public Framework Contracts shall set out the terms and conditions under which subsidiary contracts or orders will be made. With this approach, contracts are only reached when goods and services are ordered or “requested” under the Public Framework Contract.

54.4 The advantage is that the means of awarding contracts under public framework agreements are provided for without the need to *re-announce* and *re-apply the selection* and award criteria at the outset. Furthermore, it is possible for one Contracting Authority to conclude a contract on behalf of a number of other contracting authorities, which then may use the contract without having to tender according to LPP. In this way, a lot of resources are saved.

54.5 Public Framework Contracts may be used only by parties who participated in that activity.

54.6 Several Contracting Authorities can make arrangements to use the 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.

54.7 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.

54.8 The Government may decide that all Contracting Authorities, as defined in Article 4 of LPP, should be subject to framework contracts and thus are 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 PPL, will conduct and will be responsible for such procurements under the framework contract. In the case of central procurement activities, like

public framework contracts conducted by the Central Procurement Agency on behalf of other Contracting Authorities, the use of these central contracts shall be mandatory for the Contracting Authorities.

54.9 A Contracting Authority may not use public framework contracts in such a way as to prevent, restrict or distort competition.

54.10 The estimated quantity specified in the tender documents is *only an 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 per cent (30%)*. If the CA does not declare the percentage of discrepancy in the Tender Dossier, then the contract shall be completed with *contract value or quantity* as a threshold or an established ceiling. If the CA declares the percentage of discrepancy in the Tender Dossier and if the purchase order exceeds *the total indicative quantity or the total indicative value* of the Public Framework Contract (including + thirty per cent (30%)), regardless of the original expiration date of the Public Framework Contract, the contract shall be automatically terminated. The allowed discrepancy plus/minus thirty per cent (30%) applies to Lot and position/item, and in case the threshold allowed is reached the CA may not place further orders for that Lot or position/item.

54.11 The allowed discrepancy shall consist of *plus/minus thirty per cent (30%)* of the threshold of the total quantities or total indicative value of the contract, however, *this does not mean that the Economic Operator must be paid for works, services or supplies not ordered by the Contracting Authority*. Under this restriction (+/-30%), the Contracting Authority shall undertake to order, receive and pay the total amount of at least seventy per cent (70%) of the indicative amount set out in the tender dossier, respectively in the contract, therefore the Contracting Authorities must consider this fact, notably at the preparation stage of indicative amounts in the Tender Dossier, which in each case must not change to plus/minus 30% of the indicative value.

54.12 In any case where for any objective reason such a thing would have happened (the need for such supplies has ceased), the CA shall:

- Make efforts through contract provisions for amicable settlement of contractual disputes with the contractor - the dispute in question shall be settled by mutual understanding and trust agreement with the Economic Operator;
- If the parties fail to resolve the dispute by agreement, the aggrieved party may refer to the competent Court.



54.13 Whereas the Contracting Authorities shall:

- When selecting initiating and developing the procurement procedures always take into account the fulfilment of the necessary needs and do this according to the purpose of the Law on Public Procurement defined in paragraph 1 of Article 1 of LPP.
- Take the necessary measures to ensure that procurement planning activities are carried out efficiently and fairly, especially in clearly defining needs and always respecting procurement legal provisions.
- Have special care to play an active role in determining the conditions of contracts when administering procedures, with emphasis on **prices**, and **quantities** and in particular the fair determination of needs so that the indicative quantity in no case will suffer a change of +/- 30% of the quantity designated as indicative.

54.14 Measures shall be taken to ensure that the Contracting Authority, as a result of their failure to act, their negligence or unwillingness, does not conflict with the provisions of the Law and secondary Legislation on Public Procurement and/or other applicable legislation as a result of inaccurate forecasting of indicative quantities, or for other reasons which should have been foreseen in due course in forecasting quantities; the Contracting Authority shall take legal action against the official(s) who prepared such requests.

54.15 Whenever the Contracting Authority does not know the indicative quantities, or unit price contracts, the CA must determine the weights based on the importance of each “service category” or each “item” in order for the Contracting Authority to determine what is the lowest bid. In these cases, the threshold or ceiling *plus/minus thirty per cent (30%)* is not applicable, such as car maintenance, generator maintenance, etc. In these cases, the public opening of bids reads the total weighted price which serves only for the purpose of evaluating the bids while the contract relates to unit prices and can be realized up to the estimated value.

The amount of performance security for the execution of the contract in these cases must be defined as a fixed amount. Contracts with unit prices can be managed for all types of contracts, contracts for supplies, services and works (repairs and maintenance).

For reporting and statistical purposes in case of application of the Framework Contract when the indicative quantities are not known and the contract is with unit prices, the Contracting Authority shall, in the preparation and publication of “*Notice on the CA decision*” must decide the total prices of the tenderers, while during the preparation and publication of “*Contract Award Notice (B08)*”, for the Framework contract signed and the “*Contract Signing Notice*” must set the estimated value of the Framework Contract, clearly specifying by a paragraph (in B08, B52 – in part V: additional information and in the signed contract) the purpose of setting the estimated value.

## **Duration of Public Framework Contract**

54.16 The duration of the Public Framework Contract shall not exceed **36 months**.

54.17 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 expires, the delivery may take place 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.

54.18 A Public Framework Contract cannot be extended or renewed meaning the duration of the contract shall be determined at 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**

54.19 Where the Contracting Authority intends to award a Public Framework Contract, it shall either use:

- (a) The open procedure
- (b) The restricted procedure
- (c) The negotiated procedure

54.20 The procurement steps as determined in this Regulation regarding each specific procedure, shall apply *mutatis mutandis* for:

- a) The publication of notices
- b) The time limits
- c) The Selection criteria
- d) The award criteria, and
- e) The procedures regarding the opening of tenders and award of contracts.

54.21 Where the Contracting Authority awards a subsidiary contract or places an order, it shall:

- (a) Comply with the rules set out in these Rules;
- (b) Apply those rules only to the Economic Operators, that 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;
- (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**

54.22 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 EOs that are party 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 that are party to the Public Framework Contract;
- b) invite all Economic Operators that are party to the Public Framework Contract; and
- c) if one EO submits a bid, proceed with the procurement activity.

### **Type of Public Framework Contracts**

54.23 Pursuant to paragraph 54.1, there are two types of Public Framework contracts:

- a) Public Framework Contracts which establish all the terms of the contract; and
- b) Public Framework Contracts which do not establish all the terms of the contract and accordingly need some further competition to establish the terms of a contract.

54.24 Depending on the type of the Public Framework Contract concluded, orders may be placed with or without further competition.

- a) Without further competition, based on the previously held competition, referred to as “Public Framework Contracts which establish all the terms”; or
- b) With further competition, based on a “mini-competition” between Economic Operators that are 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**

54.25 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*.

54.26 The terms laid down in the Public Framework Contract shall be precise to cover specific requirements.

54.27 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.

54.28 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 (for example supply with fuel) shall be determined at the time of the establishment of the Public Framework Contract.

54.29 The Contracting Authority shall place the order whenever the needs for supply of the kind mentioned in the Public Framework Contract appear.

54.30 The orders must be within the limits of the terms laid down in the Public Framework Contract without reopening competition.

54.31 The terms applicable to any orders under this type of framework contract shall be set out in a binding manner and no further agreement or negotiation 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.

54.32 Contracts placed in this manner are typically referred to as *Place Orders* (“call-off” contracts).

## **Public Framework Contract with more than one Economic Operator**

54.33 Whenever the Contracting Authority intends to conclude a public framework contract with several Economic Operators it shall use type *(b) of public framework contract – does NOT establish all the terms and conditions*.

54.34 The terms laid down in the public framework contract are not precise or sufficiently complete to enable the delivery without further competition between the Economic Operators that are party to the Public Framework Contract.

54.35 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.

54.36 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.

54.37 The award criteria and weightings to be used for subsidiary contracts must be stated in the Tender Dossier.

54.38 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.

54.39 In such cases, the Contracting Authority shall award any subsidiary contract by re-opening competition (also called a mini-tender) between the Economic Operators that are party to that framework agreement, and that are capable of performing the proposed contract.

54.40 Re-opening of competition (mini-tender) 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.

54.41 The reopening of competition must be based on “the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specification of the Public Framework Contract”. This is subject to the prohibition of (substantial departures or restrictions) the terms set out in the Public Framework Contract.

54.42 For each subsidiary contract to be awarded the Contracting Authority shall:

- (a) Send invitations through the e-Procurement System to Economic Operators who are parties to the Public Framework Agreement. The invitation must specify the deadline for submission of bids, which deadline cannot be less than **10** days.
- (b) The Contracting Authority shall reserve the right to verify
- (c) which has submitted the best tender based on the award criteria specified in the invitation for the mini- tenders;
- (d) Each subsidiary contract shall be subject to the preparation and the publication of the contract award notice requirements;
- (e) Each subsidiary contract shall be subject to the signing requirements of Article 26 of LPP; and
- (f) Each subsidiary contract shall be subject to the rules governing the filing of complaints and other review provisions of Title IX of LPP.

54.43 In the case of a public framework contract with more than one EO - mini-tendering.

- 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-tendering 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-tendering process and before signing the contract. The amount of the Performance Security shall be at least 10% of the value of the subsidiary contract.

## **Article 55 - Design contest**

55.1 A design contest shall be a 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 shall be a preliminary design to be followed by a *detailed design*.

55.2 The winning design is selected by an independent jury.

55.3 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 a basis of technical specifications in a subsequent procurement activity).

55.4 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 technical design the weight scores of the conceptual design and the weight scores of the financial offer.

## **Use of the Design Contest**

55.5 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.

55.6 The design contest is limited to obtaining the plan or design for a project, whether with or without a supporting narrative or explanation, in respect of which the contracting authority has only some basic stipulations.

55.7 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.

55.8 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 organizations 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.

### **Stages of the procedure**

55.9 A design contest shall be conducted pursuant to Articles 73-80 of LPP and this Article. The procedure is conducted in the same manner and using the same time limits as applicable for high-value contracts conducted **through open or restricted procedures**. A design contest is initiated by the publication of a design contest notice.

### **Publication of design contest notice**

55.10 A design contest is initiated by the publication of a design contest notice prepared pursuant to Article 75 of LPP. 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 awarded to participants;
- Whether a contract following the contest will be awarded to the winner.



55.11 For publication of the design contest notice, Articles 45.5-45.8 of this Regulation shall apply *mutatis mutandis*.

55.12 Articles 45.7-45.8 of this Regulation shall apply *mutatis mutandis* to the specification in the design contest notice of time limit for the request of design contest dossier.

### **Design contest dossier. Delivery of design contest dossier**

55.13 The design contest dossier shall comprise of (i) a letter of invitation; (ii) information to the Economic Operators; and (iii) technical/esthetical requirements. The Contracting Authority shall indicate in the design contest dossier that the participants in 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.

55.14 The envelope containing the Conceptual project shall contain:

- a. the original exemplar of the project; and
- b. the required number of copies as *specified in the design contest dossier*

The participant shall seal the *original project* and each copy *in separate envelopes* and each one of such envelopes, on the front, shall:

- 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.

55.15 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 copy* of the candidate's documentation and each copy in *separate envelopes* and each one of such envelopes, on the front, shall:

- 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. Write an anonymous four-digit number of the participant's own choice; and
- d. Have a warning that reads "do not open with the Conceptual Design".

55.16 The two envelopes, containing "the Conceptual Design" and the "Candidate's Documentation", shall then be sealed in an outer envelope marked with:

- a. The address of the place for submission of design contests;
- b. The procurement number; and
- c. An anonymous four-digit number of the participant's own choice.

55.17 Article 22 of this Regulation shall apply *mutatis mutandis* to the delivery of the design contest dossier.

### **Award criteria for the conceptual design**

55.18 Award criteria which may be used for the evaluation of the conceptual designs may include:

- a. innovation;
- b. aesthetic content;
- c. adequate blending with the surroundings;
- d. efficient use of the available space; and
- e. attractiveness for the potential users.

### **Additional or clarifying information**

55.19 Article 24 of this Regulation shall apply similarly to additional or clarifying information to participants.

55.20 Communication and information exchange regarding the design contest shall take place according to the provisions of Article 79 of LPP.

## Receipt of projects

55.21 Proposals should only be submitted in hard copy. Immediately at the receipt of the envelopes containing the proposals, the Contracting Authority 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 in person, the Contracting Authority shall issue to the person submitting it a receipt of delivery bearing the serial number, the date, and the time.

55.22 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”.

55.23 If proposals are submitted to the Contracting Authority after the expiry of the time limit for submission, receipt of such proposals shall be denied or received envelopes shall remain unopened with a view to an immediate return to the sender. A *“Record of delayed tender submission” shall be established similarly to the “Tender submission record”*. Because 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

55.24 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 Designs”* from those containing *“the Candidate’s Documentation”*.

55.25 The Procurement Officer shall transfer only the envelopes containing “the Conceptual Designs” to the jury pursuant to Article 80 of LPP. The envelopes containing “the Candidates Documentation” shall be kept unopened by the responsible Procurement Officer and deposited in a safe place.

55.26 The jury shall organise the evaluation process in such a way that the integrity and fairness of the procedure are ensured. The jury shall evaluate the designs only based on the criteria indicated (weight scores indicated in the Design Contest Dossier).

55.27 The jury shall make reasonable efforts to reach a consensus decision.

55.28 If a consensus decision cannot be reached each member of the jury shall evaluate each conceptual project separately and shall properly 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 them by the number of jury members. The conceptual proposal which achieves the highest score is ranked first and the second score is ranked second and so on.

55.29 The substance of the deliberations of the jury and the opinions of the individual jury members shall be maintained confidentially by all jury members. The jury's evaluation and the final ranking of projects shall be recorded by use of the standard form. The ranking list of the projects established by the Jury shall then be submitted to the responsible Procurement Officer.

55.30 After the Procurement Officer receives the ranking list of the projects the Procurement Officer should prepare the B58 Form "*Notice on the CA decision*" and upload it to the e-procurement platform, awaiting the expiration of the interval *during which bidders may request a review of the decision* and thereafter establish an evaluation committee to evaluate the eligibility of the candidate.

55.31 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.

55.32 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 eligibility of the candidate and then the financial bid. There shall be no public opening session. The financial bid with the lowest price shall be given the maximum financial score determined in the design contest dossier and the other bids shall 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 bid and adding them. The methodology to be used shall be described in the design contest dossier.

55.33 In case a second and/or a third winner is permitted then the second/or the third winner shall be designated according to the total number of points obtained.

55.34 If the candidate, whose project is ranked as the best "first" one by the Jury, is not responsive then the respective design shall be rejected and the second one shall be ranked as the best "first" one.

55.35 Upon completion of the opening and evaluation process, the PO shall record the data on the electronic platform from the opening and evaluation process in order to enable the continuation of

the process in the system. The Procurement Officer should prepare the B58 Form “*Notice on the CA decision*” and upload it to the e-procurement platform.

### **Result of the design contest**

55.36 The result of the design contest shall be published in accordance with Article 42.1-42.2 of LPP.

55.37 In case the winner or one of the winners of the design contest shall be awarded a service contract as a follow-up of the design contest, a negotiated procedure without publication of a contract notice is conducted according to Article 50 of this Regulation.

55.38 In case the winner of the winners are awarded prizes or payments as specified in the design contest file, the Contracting Authority shall do so with due diligence.

## Article 56 - Consultancy services

56.1 **“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 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.

56.2 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 and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term, independent of any particular assignment, or for a specific assignment.

56.3 In addition to the exclusion criteria of candidates or tenderers outlined in the PPL, the Contracting Authority must exclude candidates in the circumstances described below.

- (i) The 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 other of their affiliates shall be hired for any assignment that, by its nature, may 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)**

56.4 The Terms of Reference (ToR) are the key document in the Tender Dossier for Consultancy Services. They explain the objectives, scope of activity, and tasks to be performed, respective responsibilities of the CA and of the consultant, as well as expected results and deliverables of the assignment. An adequate and clear ToR is important for understanding 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.

56.5 Terms of reference shall normally consist 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) Project design; 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 the budget**

56.6 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**

56.7 The procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of LPP.

56.8 For publication of the contract notice, Articles 47.6-47.9 of this Regulation shall apply *mutatis mutandis*.

56.9 The pre-qualification procedure shall be performed in accordance with the provisions of Articles 47.10-47.22 of this Regulation.

### **Issue of the Tender Dossier**

56.10 The short-listed companies shall be directly invited to submit their proposals. The CA shall address the request to the shortlisted candidates, which shall include:

- 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**

56.11 Tenders should only be submitted in hard copy. 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 high-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 shall copy them for all the shortlisted candidates and if necessary shall extend the time limit for submission.

56.12 Technical and financial proposals shall be submitted at the same time in a separate sealed envelope. No amendments to technical or financial proposals shall be accepted after the time limit for submission has expired.

56.13 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**

56.14 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.

56.15 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 venue set for the opening of the technical proposals. Shortlisted candidates shall be invited at least two (2) weeks (for international candidates), and one (1) week (for local candidates), before the opening of the financial proposals.

56.16 The criteria to be used under technical evaluation and the indicative weights are as follows, the weights may be adjusted to suit the specific procurement:

<b>Criteria</b>	<b>Weight</b>
Specific experience	0-10
Adequacy of methodology/work plan	20-50
Key staff qualifications	30-60
Transfer of knowledge (optional)	0-10
<b>Total points</b>	<b>100</b>

### **The public opening of financial proposals**

56.17 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 shall be 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**

56.18 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 to take into account the complexity of the object of the contract to be awarded and the relevant importance of quality. The weight score of the financial proposal shall be specified in the RFP, and it may be up to 30 points.

56.19 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 bid must not be altered in any case.

56.20 Upon completion of the opening and evaluation process, the PO shall record data on the electronic platform from the opening and evaluation process in order to enable the continuation of the procedure in the system.

56.21 The Procurement Officer should prepare B58 Form “*Notice on the CA Decision*” and upload it to the e-procurement platform - as an additional document through the “add a new document” option, await the expiration of the interval during which bidders may request the review of the decision.

56.22 The provisions of Articles 45.33 – 45.37 of this Regulation shall apply mutatis mutandis to the contract award and signing and the distribution of the signed contract.

### **Article 57 - Procurement procedure for special services**

57.1 The purpose of this Article shall be to define within this Regulation the steps that must be followed to conduct a procedure for engaging Consultants/Individual Contractors for Special Services.

57.2 The paragraphs of this Article shall apply only to the procurement of Special Services which cannot be provided through recruitment procedures according to the Law on Public Officials No. 06-L-114.

57.3 Special services that cannot be provided through recruitment procedures shall be professional services that are needed by the Contracting Authority needs but which cannot be provided by its staff.

57.4 The Consultant/Individual Contractor shall be a specialist in a specific field, engaged by the Contracting Authority in a consultant role.

57.5 Only natural persons who are not required to have a registered business, but the natural person must be registered in the e-Procurement System as EO-Natural Person, can bid for individual Consultancy Services.

57.6 The rules defined in Article 56 of this Regulation shall apply to the contracting of Consulting Companies, while this Article shall apply to the contracting of persons as defined in Article 4.1.38 of LPP.

57.7 The contracting of Individual Consultants shall be done through procurement procedures, public contracts for services with the reward criterion “The most economically advantageous

tender”. Depending on the estimated value, the Contracting Authority shall set the deadlines for the submission of tenders as defined in Article 44 of LPP.

57.8 The duration of contracts for special services shall not be more than thirty-six (36) months.

57.9 The procedure shall be initiated and conducted on the electronic platform, in accordance with the established procedures of LPP.

57.10 For publication of the contract notice, Articles 45.6-45.7 of this Regulation shall apply *mutatis mutandis*.

57.11 The Tender Dossier shall be downloaded in the e-procurement platform by the interested persons.

57.12 For clarification or additional information, Articles 45.10-45.14 of this Regulation apply *mutatis mutandis*.

57.13 Opening of tenders shall be done in accordance with Article 35 of this Regulation.

57.14 The evaluation of tenders shall be carried out immediately taking into account several criteria, such as:

- a. consultant’s relevant experience;
- b. the quality of the methodology proposed;
- c. qualification; and/or
- d. the transfer of knowledge, if required.

57.15 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.

57.16 The criteria to be used under technical evaluation and the indicative weights are as follows: Weights can be adjusted to suit specific procurements:

<b>Criteria</b>	<b>Weight</b>
Specific experience	20-50
Adequacy of methodology/work plan	20-50
Qualification	20-40
Transfer of knowledge (optional)	0-10
<b>Total points</b>	<b>100</b>

57.17 Total points shall be obtained by aggregating technical and financial points. The marks for the “cost” shall be chosen to take into account the complexity of the object of the contract to be awarded

and the relevant importance of quality. The weight score of the financial proposal shall be specified in the Tender Dossier, and it may be up to 30 points.

57.18 After identifying the best tender, the Procurement Officer must prepare Form B58 “*Notice on the CA Decision*” and publish it on the e-procurement platform and wait for the interval to expire *during which bidders may request a review of the decision*.

57.19 The provisions of Articles 45.34 – 45.37 of this Regulation shall apply *mutatis mutandis* for the contract award and signing and the distribution of the signed contract.

## CHAPTER III - Public Service Operators

### Article 58 - General provisions

58.1 The provisions in Part V, Articles 82-85 of LPP shall apply to Public Service Operators only.

58.2 The rules shall not be 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 the 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 stage* (publishing the contract notice and selection of participants) when the Qualification System is used.

58.4 Thus, Article 83 of LPP allows the use of the Indicative Notice as an invitation to tender including several tenders, and Articles 84 and 85 of LPP make it possible, for entire categories of contracts, to replace 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 shall apply.

58.5 In the case of the Indicative Notice, the pre-selection and the award procedures run normally with the participation of those invited Economic Operators who choose to join the selection process.

58.6 In the case of the Qualification System, the entire pre-selection process is replaced. Interested Economic Operators included in the System shall be invited to submit tenders and for each tender, the normal rules concerning the award phase shall apply.

## Call for tender by Indicative Notice

58.7 The main difference between the normal Indicative Notice according to Article 39 of LPP and the one that is possible according to Article 83 LPP is that they are not related to the size of contracts. Article 83 of LPP 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 LPP, the Indicative Notice must contain the same information as in the normal Indicative Notice, refer to Article 6 of these rules, and in addition to 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) The 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 who have expressed their interest in time 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) If the 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 58.11, notably (d), (e) and (f);
- (i) Information concerning time limits for filing 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 based on the detailed information in the contract concerned. The detailed information shall be provided to the registered Economic Operators by using the standard form adopted by PPRC *“Pre-qualification Documents – Public Service Operators”* which, inter alia, must include:

- 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 a restricted or competitive negotiated procedure will be used;
- c. The eventual fee to be paid for the tender dossier (subject to the conditions of LPP, Article 48.2) and the method of payment;
- d. Requirements of eligibility and requirements concerning financial and technical capacities of candidates to be met, and the documentation required as proof;
- e. Any particular conditions as regards the performance of the contract concerning for example work conditions and environmental protection, see Article 31 of the PPL;
- f. The contract award criteria in their order of importance and their weighing of such criteria;
- g. Information concerning time limits for filing 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 shall be invited to submit their prequalification documents within the time limit prescribed in LPP and shall be subject to evaluation according to the normal rules in Article 56 of LPP. The tender procedure shall also subsequently proceed according to the normal rules for restricted or competitive negotiated procedures.

### **Establishment of a Qualification System - the Call for Tender using a Qualification System**

58.13 The Qualification System shall essentially consist 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 reviewing and updating 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 Articles 40 and 42 of LPP of an indicative notice concerning the establishment of the Qualification System. Procedure to ensure that a similar notice alerting economic operators to the Qualification System shall be submitted and published annually and that notices shall be submitted and published whenever criteria are being updated. At the *expiry of the **three-year period*** prescribed in Article 84.2 of LPP, the duration of the Qualification System cannot be extended with a simple update. A new initial notice concerning the establishment of a new Qualification System must therefore be prepared, submitted, and published.

(d) Information material shall be updated and available in hard copy or electronically 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 the application for inclusion and the required documentation must be sent.

(e) A list of the economic operators who 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 list structure.

(f) Procedures for quick evaluation of 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.

Rules in this Article and in the following articles concerning an Economic Operator shall apply equally to a group of economic operators who fulfil the conditions in Article 85.2 of LPP for being included in the Qualification System.

58.14 The Qualification System is established by the 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 notify 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 concerned. The information material shall be established by the use of the standard form adopted by the PPRC *“Prequalification Document - Qualification System – Public Service Operators”*.

58.16 Criteria in a qualification system, like other selection criteria, must comply with the fundamental requirements expressed in Articles 7 and 51.2 of LPP in the sense that the criteria must not be disproportionate and thereby unnecessarily restrict competition. This also means that in the 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 LPP 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 LPP and shall comply with normal rules of selection in Article 56 and in Articles 65 – 70 of LPP.

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 LPP, evaluate the requests for inclusion as well as the 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 concerned must be informed about the decision and the justification within 15 days of the date of the decision to reject.

58.22 The Economic Operators included in the System who have been rejected according to Article 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 on rejections shall, as any decisions from Contracting Authorities, be subject to review according to the rule in Part IX of LPP.

58.24 The notice concerning the establishment of a Qualification System according to Article 84.2 of LPP shall also be 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, works or categories thereof to be procured through the System, including appropriate terminology.

- c) Reference to the fact that the notice acts as a call for competition and that 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 of 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 the award of the contract, including the priority and weighting of each criterion.
- h) Information concerning time limits for filing appeals.

58.25 The list mentioned in 58.13 (e) must, according to Article 84.4 of LPP, *for each contract type, contain* at least *three Economic Operators*. No maximum number of Economic Operators who can be included in the Qualification System can be set. 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 LPP. The tender procedure will subsequently proceed according to the normal rules for restricted or competitive negotiated procedures.

## **CHAPTER IV - Complaints in procurement procedures**

### **Article 59 - General provisions**

59.1 Pursuant to Article 108/A of Law No. 04/L-042 of Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, a request for review may be submitted, free of charge, by an interested party at any stage of any procurement activity and with respect to any act or omission of the concerned Contracting Authority that is alleged to violate the present law, or acts issued in its implementation within the Contracting Authority which conducted the procurement activity. Review requests may relate to contract notices, tender documents or other announcements and decisions, in the course of performance of the concerned procurement activity.

59.2 The Standard forms may be downloaded from the PPRC or PRB's websites.

- a) Standard Form F01 - Standard form for filing a complaint to the PRB
- b) Standard Form F02 - Standard form for filing a request for review to the Contracting Authority

59.3 In accordance with paragraph 1 of Article 109 of LPP, a complaint to the PRB may be submitted only after a preliminary procedure for the resolution of the dispute. Thus, the complaint initially has to be submitted to the Contracting Authority and if the interested party is not satisfied with the decision taken by the Contracting Authority concerned, it may file a complaint to the PRB.

### **Article 60 - The time period for submission of a request for review**

60.1 The request for review must contain the data in accordance with the Form F02 and must be submitted to the relevant Contracting Authority through the e-Procurement System, the function "requests for review" within the following deadlines:

- a) Whenever the request for review relates to the contract notice or the tender documents at least five (5) days prior to the deadline for submission of bids. In calculating the time limits, the day of submission of bids shall be the day (0). This deadline shall not apply in cases where the CA extends the deadlines for submission of bids after refusal of request for review according to Article 63.1.1 (b) of this Regulation.

- b) Whenever the request for review relates to the decision to award a contract or design contest, within five (5) days after the date of notification of the contract award notice or the design contest results in the e-Procurement System. In calculating the time limits, the day of publication of the Notice on the CA Decision (B58) shall be the day (0).
- c) Whenever the request for review relates to the CA decision to cancel the procurement procedure, within five (5) days from the date when the Notice on the CA Decision (B58) to cancel the procurement procedure related to the procurement activity is announced in the e-Procurement System. In calculating the time limits, the day of publication of the Notice on the CA Decision shall be the day (0).

60.2 It is the responsibility of the applicant to review that the request is prepared and sent to the Contracting Authority before the expiration of the deadline for submitting the request for reconsideration. If the applicant fails to prepare and submit the request for review within the time limits due to any technical problem that occurs in the last two (2) hours before the deadline for submitting the request for review, the applicant shall be held liable for such failure.

60.3 The request for review shall contain:

- a. the name, the postal address, the electronic address, and contact information of the complainant;
- b. the name of the concerned contracting authority;
- c. sets forth a reasonably specific description of the concerned procurement activity;
- d. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published;
- e. demonstrates that the complainant qualifies as an “interested party”, as defined under Article 4 of the present law;
- f. describes the factual circumstances constituting or giving rise to the alleged violation;
- g. specifies the provision or provisions of the PPL law that is alleged to have been violated; and
- h. describes how the alleged violation has caused or threatens to cause, material damage to the complainant in cases where the complainant includes a compensation claim.

## **Article 61 - Suspension of the procurement activity**

61.1 The filing of the request for review shall suspend automatically the procurement procedure and in this case, the Contracting Authority, respectively the responsible Procurement Officer, shall notify in writing all interested parties regarding the suspension of the procurement procedure concerned.

- a. Whenever the mentioned suspension is related to *the decision of the CA to award the contract*, such suspension shall not cease before the expiration of a period of at least 10 calendar days from the date of publication of the CA decision.
- b. Whenever the suspension mentioned relates to the *contract notices, or tender documents*, such suspension shall cease by complying with the request according to Article 63.1.1 (b) of this Regulation.

61.2 If the request does not contain part of the information referred to in article 4 of these rules, the Contracting Authority, respectively the responsible Procurement Officer, will require the applicant to complete the request within a period not longer than two (2) days from receipt of the request. If the complainant does not act upon the above request, the request for review will be rejected as incomplete.

61.3 The Contracting Authority, respectively the responsible Procurement Officer, will examine the request within three (3) business days from the date of lodging the application or, where applicable, from the date of receipt of additional information and documents outlined in Article 60.2 of these rules. This time limit, in justified specific cases, may be extended but not longer than three (3) additional days, and the complainant will be informed thereof.

## **Article 62 - Rejection of the request for review**

62.1 The Contracting Authority, respectively the Responsible Procurement Officer, shall reject a request for a review when:

- a) the request is not submitted within the time limits outlined in Article 60.1 of this Regulation;
- b) the request is not filed against a notification or decision as referred to in Article 59.1 of this Regulation;
- c) the request does not comply with the requirements referred to in Article 60.1 and Article 60.2 of this Regulation;

- d) the allegations presented in the request for review are unfounded.

62.2 The decision on rejection shall be justified and shall be published in the e-Procurement System by the Responsible Procurement Officer.

62.3 In case of withdrawal of the request for review by the complainant, the Contracting Authority, **respectively Responsible Procurement Officer**, shall have the authority to terminate the further review of the procedure or to continue the review of the allegations presented in the request for review.

### **Article 63 - Decision of the Contracting Authority**

63.1 The Contracting Authority, respectively the Responsible Procurement Officer may, by the means of a decision:

63.1.1 **Reject** the request for review pursuant to Article 62 of this Regulation;

- a. Whenever the rejection of the request relates to the **decision of the award of the contract**, the Contracting Authority, for the contract signature, must wait at least 10 calendar days with effect from the day following the date on which the Contracting Authority has taken a decision.

Whenever the rejection of the request relates to **the contract notices or tender documents**, the contracting authority continues with the procurement activity by evaluating and considering the reasons for the rejection and the circumstances in which the procurement activity is located.

- b. **Approve** a request for review as grounded whenever the request relates to the **CA decision on contract award**.

63.1.2 **Approve** a request for review as fully or partially grounded whenever the request relates to **contract notices, tender documents**,

- a. Whenever the rejection of the request relates to the CA decision on contract award (according to paragraph 63.1.2), such suspension shall cease before the expiration of a period of at least 10 calendar days from the date of publication of the CA decision. After the decision to approve the request, the CA shall use form B58 to publish the cancellation of the preliminary decision and send back the decision on contract award/reward for reconsideration.
- b. Whenever the rejection of the request relates to the contract notices or tender documents, the Contracting Authority shall publish the notice for the correction of errors by using the

standard form B54 and shall extend the deadline of submission of tenders in accordance with Article 53 of LPP.

63.2 The decision on rejection or approval shall be binding and shall be announced in the e-Procurement System by the Responsible Procurement Officer.

In cases where the Responsible Procurement Officers do not issue a **decision** on the request for review and do not notify the Economic Operator of an additional deadline, the Economic Operator shall be entitled to file a complaint to the Procurement Review Body after the expiration of the deadline of **3 (three) working days** from the date of submission of the request for review. In calculating the time limits, the day of submission of the request for review shall be the day (0).

63.3 Against any decision of the Contracting Authority, the complainant or any interested party, if any, may, in any case, file a complaint to the PRB in accordance with Article 109 of LPP.

#### **Article 64 - Filing a complaint and time period for filing a complaint to the PRB**

64.1 A complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute and submitted within ten (10) days **following a decision issued by the Contracting Authority in the preliminary dispute resolution procedure in accordance with Article 108/A of LPP.**

64.2 The complaint shall be prepared and filed to the Procurement Review Body through the e-Procurement System, under the “Complaints” designated function. Complaint allegations must be the same as those presented in the request for review before the Contracting Authority.

64.3 It is the responsibility of the appellant that the request is prepared and sent to the PRB before the expiration of the deadline for filing the complaint. If the complainant fails to prepare and submit the complaint within the time limits due to any technical problem that occurs in the last two (2) hours before the deadline for filing the complaint, the complainant shall be held liable for such failure.

64.4 In case of withdrawal of complaints filed, the PRB shall have the authority to continue on its own behalf the examination of the assumptions directly or indirectly presented in a complaint.



## **Article 65 - Basics contents of a complaint filed to the PRB**

65.1 The complaint shall contain:

- a. the name, the postal address, the electronic address, and contact information of the complainant;
- b. the name of the concerned contracting authority;
- c. sets forth a reasonably specific description of the concerned procurement activity;
- d. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published;
- e. demonstrates that the complainant qualifies as an “interested party”, as defined under Article 4 of the present law;
- f. describes the factual circumstances constituting or giving rise to the alleged violation;
- g. specifies the provision or provisions of LPP that is alleged to have been violated;
- h. describes how the alleged violation has caused or threatens to cause, material damage to the complainant in cases where the complainant includes a compensation claim;
- i. has attached a copy of the decision approved by the Contracting Authority during the preliminary context of dispute resolution in accordance with Article 108/A; and
- j. provides proof of receipt of the appeal fee payment, referred to in Article 118 of this law.

65.2 If any of the above elements mentioned under article 65.1 is missing, the PRB shall immediately notify the complainant in writing, by the most rapid means possible, of the nature of the deficiencies. If the filing period has expired or will expire in less than four (4) days, the complainant shall have four (4) days after receiving such a notification to correct the deficiencies and to resubmit the complaint. If the filing period has not yet expired and will not expire in less than two (2) days, the complainant may re-submit the complaint any time before the expiration of the filing period.

65.3 If the PRB determines that the complaint has been timely filed and meets the requirements under Article 64.1 of this Regulation, the PRB shall immediately:

- i. assign to one of its review experts the task of reviewing all allegations contained in the complaint; and
- ii. establish a review panel to review the allegations alleged in such a complaint.

## **Article 66 - The suspensive effect of complaints**

66.1 Unless and until the concerned review panel makes another determination in writing, the **filing of a complaint shall automatically require the concerned contracting authority to suspend the conduct of the procurement activity** to which the complaint relates.

66.2 Notwithstanding the foregoing, and when required by the Contracting Authority, the President of the PRB may issue an order removing the automatic suspension if after taking into account the probable consequences of such suspension for all interests likely to be harmed, including the public interest and the complainant's interest, the President determines that the negative consequences of such suspension exceed the benefits that may be achieved thereby. Before taking any action on the Contracting Authority's request, the complainant shall be allowed to submit written arguments to the President as to why the suspension should not be removed. The President will inform the complainant and the contracting authority about the decision.

## **Article 67 - PRB's Decision**

67.1 In accordance with Article 105 of LKPP, in repeated cases of the same complaint allegations, where the subject of the dispute and the parties are the same, for cases earlier examined, the chairman of the review panel should treat them as a matter already judged "res judicata".

67.2 The Contracting Authorities shall, in compliance with Article 115.1 of LPP, within 15 days from the date of the complaint (calculated as follows: 1 day for PRB to review the complaint; 10 days for the expert's assessment; 4 days for the contracting authority to reply to the expert's assessment), must inform the complainant, the review expert and the review panel, about its decision regarding the matters outlined in the complaint.

67.3 If, in its decision, the contracting authority determines that any or all of the allegations are valid, and the complainant has not objected, the Contracting Authority shall, within 5 days or time allowed by the expert, take corrective action recommended by the expert.

67.4 If, within the time limits specified, the contracting authority fails to issue the required decision or issues a decision that rejects or denies the validity of an allegation or that fails to assess the validity of an allegation, the complaint shall be referred to the review panel.

67.5 If the Contracting Authority issues a decision determining that an allegation contained in the complaint is valid, but fails to take appropriate and effective corrective action the complainant may then, within three (3) days file a written notice with the review panel and the contracting authority

regarding such failure and requesting the review panel to review the matter and to issue an order to the contracting authority requiring such authority to correct an alleged violation and/or to prevent further damage to the complainant and/or another interested party. In this case, the CA shall, within three (3) days, transfer all documents to the review panel.

67.6 The PRB shall issue its final written decision, together with a written statement of the factual and legal bases justifying the such decision, and any order required to give effect to such decision.

67.7 A PRB decision to re-evaluate the selection of tenderers or award the contract does not imply a change in the initial result.

67.8 The PRB's decision will be published on the PRB's website, within 5 days in the original language of the decision, and within fifteen (15) days in other languages, as well as in the English language for all cases related to large value contracts, in PRB's website [www.oshp.rks-gov.net](http://www.oshp.rks-gov.net), and the e-Procurement System within the complaint module.

67.9 In case the PRB issues a decision to disqualify an Economic Operator from participating in public procurement, then the disqualified EO shall have no right to participate in any procurement activity from the date of such decision.

## **Article 68 - Filing a complaint before the Basic Court**

68.1 If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present Law, the complainant may request the Basic Court to review such decision. The request to the Basic Court must be filed within a time limit of thirty (30) days from the publication of the PRB decision.

## **Article 69 - Complaints fee**

69.1 Pursuant to Article 108/A of LPP, a request for review may be submitted, free of charge, by an interested party at any stage of any procurement activity and with respect to any act or omission of the Contracting Authority.

69.2 Pursuant to Article 118 of LPP, all complainants are required to pay a complaint fee to the PRB.

- a. Whenever the complaint relates to the decision of the award of the contract, the value of the complaint fee shall be equal to one percent (1%) of the value of the offer, but not less than 100 Euro and not more than 5,000 Euro.
- b. Whenever the complaint relates to the contract notices or tender documents, the value of the complaint fee shall be equal to one percent (1%) of the estimated contract value, but not less than 100 Euro and not more than 5,000 Euro.

69.3 Payment shall be made in cash or equivalent in the account created by the PRB.

69.4 The complaint shall be rejected by the PRB if it is not accompanied by a payment receipt.

69.5 The payment shall be reimbursed to the complainant whenever the PRB approves the complaint as grounded.

69.6 If the review panel determines that all allegations made in the complaint are frivolous, the PRB may require the complainant to pay an additional penalty of up to **5,000 Euro**. In such event, the complainant shall be ineligible to participate in any manner in a procurement activity covered by the present law until:

- I. Such penalty is paid in full; or
- II. A court of competent jurisdiction rescinds the order of the PRB requiring the payment of such penalty.

## **CHAPTER V - Contract Management and Performance Evaluation of Contractors**

### **Article 70 - General provisions**

70.1 Contract Management - refers to the administration of the performance of contracts by the Contracting Authority through the module for contract management in the e-procurement system. All officers/persons assigned/appointed as contract managers by the CA and EO must administer and manage the performance of contracts in accordance with the manuals for use of the contract management module.

70.2 Contractor performance evaluation - refers to the evaluation of the performance of contractors during the implementation of public contracts and framework contracts. The evaluation of the performance of the contractors shall be done: i) in the e-Procurement System through the module for evaluation of the performance of contractors; ii) by the contract managers and the direct supervisor of the contract manager, and iii) in accordance with the manuals for using the contractor performance evaluation module.

70.3 The term “contract” shall refer to the General Conditions of the Contract (GCC) and the Special Conditions of the Contract (SCC), and the Pricelist.

70.4 The GCC shall cover all possible aspects relating to the obligations of the Economic Operator in relation to the contract and define breach as a fundamental breach of the terms and remedies applicable to either party. The GCC shall 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 shall prevail. The Pricelist must contain the complete pricelist of the EO to which the contract is awarded.

### **Transfer of responsibility to the Project/Contract Manager**

70.5 After a contract has been signed by both parties the responsible Procurement Officer shall inform the Chief Administrative Officer CAO”, and the CAO shall, in writing, appoint a Contract Manager responsible for the management of the specific contract and a direct supervisor of the Contract Manager, who shall have the responsibilities as in paragraphs 70.23-25.

70.6 The Procurement Officer shall involve the Contract Manager (for small, medium and large value) and the direct supervisor (medium value and large value) appointed by the CAO in the appropriate steps during the preparation of the contract signing notice according to to point 22.3 of this Regulation.

70.7 Contract management shall be done for small, medium and large value contracts, while the performance evaluation of contractors shall be done only for medium and large value contracts

70.8 Upon publication of the contract signing notice, the Contract Manager and the direct supervisor of the Contract Manager shall be automatically notified by the e-Procurement System of the respective appointments and the signed contract. Upon publication of the contract signing notice, the signed contract shall be available for download by all interested parties.

70.9 Once the contract has been published and the Contract Manager appointed, contract management, except the competence to amend or terminate, shall pass from the Procurement Department to the Contract Manager. In case of amendment or termination of the contract, the process of uploading documents on the final decision on amendment or termination (notified to the contractor) in the e-Procurement System shall be made by the Contract Manager.

70.10 Upon receipt of the notice of appointment as Contract Manager, the Contract Manager should be logged into the e-Procurement System and should begin the stages of contract management through contract management functions. As a first step, the Contract Manager should prepare and create a contract management plan, using the “Start/mobilize contract” function. The contract management plan will be created by the e-Procurement System and must be prepared for all contracts of large, medium and small value.

70.11 The contract management plan shall be prepared before the commencement of the contract implementation and with the consent of the parties to the contract. This shall be documented by the signature of both parties, namely the Contract Manager from the CA and the Contract Manager from the Economic Operator.

70.12 Following the approval and signing of the Contract Management Plan, the same shall be available for download by the Procurement Department.

70.13 The Contract Manager shall issue to the Economic Operator:

- a. The Letter of commencement, in case of a work contract;
- b. The Letter of notification, in case of a service contract; and
- c. The Purchase Order, in case of a supply contract.

70.14 The Project Manager shall provide the responsible Procurement Officer with a copy of the document mentioned under 70.10 which shall become an integral part of the contract.

70.15 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.

70.16 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.

70.17 The Project Manager shall report to the Procurement Department:

- (a) any departure from the terms and conditions of a contract.

### **Appointment of the Project/Contract Manager and Direct Supervisor of Contract Manager**

70.18 The CAO shall appoint a person from the Requesting Unit, with appropriate skills and experience as a Contract Manager and a person from the Requesting Unit or the institution as a Direct Supervisor of Contract Manager.

70.19 Where appropriate, the CAO may appoint a person from another department as a Project Manager.

70.20 A high-value contract 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, but the Contract Management Team shall necessarily have a team leader, who shall perform the contract manager functions in the e-procurement system.

70.21 A contract may be managed by an external contractor (EO or a person outside the Contracting Authority). The appointment of the external body or person shall be done by using the appropriate procurement procedure for services. Paragraph 70.15 shall apply to all contracts signed by contractors outside the CA *mutatis mutandis*.

70. 22 Contract management shall be done for small, medium and large value contracts, while the evaluation of contractors' performance shall be done only for medium and large value contracts, therefore during the preparation and publication of the Contract Signing Notice ( B52) the Contract Manager shall be appointed for small, medium and large value contracts, while the Direct Supervisor of the Contract Manager shall be appointed only for large and medium value contracts.

## **Responsibilities of the Project/Contract Manager**

70.23 The Contract Manager shall:

- (a) Manage the obligations and duties of the Contracting Authority specified in the contract;
- (b) Ensure that the Economic Operator performs the contract in accordance with the terms and conditions specified in the contract; and
- (c) Conduct the **contractors' performance evaluation** for contracts under his/her management.

70.24 The functions of the Project Manager shall be:

- 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 payments 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 before the closure of the contract file;
- f) To ensure that all contract management records are prepared, kept and archived in the **contract management module** in the e-procurement system;
- 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 its approval;
- i) To manage handover or acceptance procedures for acceptance of works, goods and services;
- 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.



## **Responsibilities of Direct Supervisor of Contract Manager**

70.25 Director Supervisor of Contract Manager shall be responsible for:

- a) Direct monitoring of the Contract Manager, and
- b) Revision, approval and processing of the contractor performance evaluation – evaluation proposed by the Contract Managers under their supervision.

## **Article 71 - Contract amendment**

71.1 An amendment to a contract shall refer to a change in the terms and conditions of an awarded contract. The amendment of the contract is initiated by the Contract Manager. In the case of work contracts, prior approval of the designer is required.

71.2 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.

71.3 A contract amendment shall not be issued to the Economic Operator before:

- (a) Obtaining approval from the CAO;
- (b) Commitment to the funding of the amended contract.

71.4 A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract. For positions for which there are no prices in the initial contract, the CA must comply with Article 35.3 of LPP.

71.5 No contract amendment shall increase the total contract price by more than 10 % of the original contract price.

71.6 Contracts during execution may be amended only in cases where such amendments are non-essential.

71.7 A contract amendment, regardless of its value, shall be allowed without a new procurement procedure when they are initially provided in the tender documents with a special provision for price revision, such as amendments in price, taxes, fees or price index and this amendment does not constitute a new contract but simply includes the implementation of the existing contract.

71.8 The replacement of the contractor to whom the CA initially awarded the contract with a new contractor shall constitute **a fundamental amendment** of the contract. In accordance with the principles of equal treatment and transparency, no other Economic Operator shall be allowed to replace the successful bidder without a new procurement procedure, except in cases where the legal identity of the contractor changes (facing structural changes such as internal re-organizations of the company, merging with another company) but in fact, remains the same contractor. In any case, the CA must examine whether the new legal entity fulfils the eligibility requirements defined by Article 65 of LPP.

71.9 In order to allow modification of the contract without a new procurement procedure, three conditions must be met:

1. When the financial value of the modification is up to 10% of the total value of the contract;
2. the modification is not essential, i.e. it does not change the nature or economic balance of the contract; and
3. when the modification of the contract becomes necessary due to circumstances which CA cannot foresee regarding the additional work, products or services required, but which, for technical reasons, can only be provided by the company which is a party to the current contract.

71.10 Under certain circumstances, it may be considered necessary to amend the scope of the contract in such a way that it is necessary to provide products of better quality or to provide services of a better type compared to those defined in the original contract without amending the total value of the contract. In such circumstances, the modification would be acceptable. For example, during the execution of the contract, a certain product may be no longer produced, and in such cases the EO notifies the CA, providing evidence and proposing another product of better quality at the same price.

71.11 The review clause shall not provide for modifications or options that will change the general nature of the works, services or supplies that are the subject of the contract.

When the needs of the contracting authority cannot be met without making substantial amendments to the contract, then the only alternative is to terminate the current contract and initiate a new procurement.

71.12 The modification shall be considered “substantial” when one or more of the following four conditions are met:

- a) Whenever the contract amendment includes conditions which, had they been part of the initial procurement procedure, would have allowed the acceptance of bidders/candidates other than those initially selected or the acceptance of a different bid than the one initially

accepted, or would have attracted other participants in the procurement procedure, such changes shall be considered essential and shall therefore not be allowed. For example, the fact that the amendment of the contract start date or the duration of the contract from the one announced at the beginning would have attracted other Economic Operators in the initial procurement procedure cannot be excluded.

In accordance with this condition, the CA shall evaluate the proposed amendment in order to determine whether it would have allowed for wider participation of EOs, had it been included as part of the initial procurement procedure.

- b) Whenever an amendment in contract prices is proposed in favour of the contractor and a such amendment was not included in the initial contract, it shall be considered an essential and unacceptable amendment.
- c) Whenever a contract amendment significantly expands the scope of the contract in order to include more quantities of supplies, services or additional work, it shall be considered a substantial amendment and shall therefore not be allowed.
- d) In case the proposed contract amendment includes supplies, services or works of a different quality than what was defined in the initial contract, it shall be considered a substantial amendment, when:
  - (i) Amendments in the contract exceed 10% of the contract value in the case of public contracts for supply, services and additional works;
  - (ii) Amendments in the contract exceed 30% of the value of the contract or the value of the position in the case of public framework contracts; and
  - (iii) Substitution of supplies, works or services of inferior quality, even of a position from those described in the original contract.

71.13 The burden of proof shall rest with the Contracting Authority to ensure that the proposed amendments are necessary, are not detrimental to the Contracting Authority as a result of the quantitative or qualitative amendment, as a result of misinterpretation of existing specifications or terms and conditions, are cost-effective, and are in accordance with the provisions of LPP and secondary legislation.

## **Article 72 - Termination of the contract**

72.1 Where the Project Manager believes that a contract should be terminated, the Project manager shall submit a recommendation for termination to the Procurement Department.

72.2 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.

72.3 No contract shall be terminated before obtaining the approval of the Procurement Department and the CAO of the Contracting Authority. The contract shall be terminated when the Decision for termination of the CAO and the Responsible Procurement Officer becomes final. The decision becomes final when signed by the Chief Administrative Officer and the Responsible Procurement Officer.

72.4 Where a contract is terminated, the Procurement Department shall inform the involved Economic Operator of the reasons for the termination and shall take immediate steps in accordance with the conditions of the Contract.

### **Article 73 - Summary of contract management records**

73.1 The Contracting Authorities shall, through contract managers and the e-Procurement System, establish and maintain a summary of the contract management records related to each procurement procedure containing the following:

- a) Signed contract document, including any signed contract amendments;
- b) Copy of the contract management plan;
- c) Any variations or change orders issued under the contract;
- d) Contract documents relating to the fulfilment of contract obligations, in particular, bank securities or payment guarantees;
- e) Minutes of any meetings related to contracts management, including contract progress or review meetings;
- f) Delivery documents evidencing delivery of supplies or completion certificates in relation to a contract for services or works;
- g) 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;
- h) Copy of the payment worksheets evidencing management of all payments made;
- i) 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.

## **Article 74 - Contract Monitoring**

74.1 Pursuant to Article 81 of LPP, the PPRC shall be responsible to monitor contract management. The contract management shall start when the contract is signed and shall run until after the expiry of the guarantees and warranties.

74.2 The PPRC shall monitor if the contract has been implemented in accordance with the conditions of the contract. A contract shall define the purpose of the contract, the scope, specification and the responsibilities of the Contracting Authority and the Supplier/Contractor/Service provider. It shall bind the Contracting Authority and the Supplier/Contractor/Service Provider to be committed to the contract and their respective obligations.

74.3 The PPRC shall mainly focus on the facts:

1. Signed certifications (temporary/permanent certificates) had been issued by the Project Manager for the deliverables;
2. If the deliverables were not on time, were liquidated damages imposed;
3. The contract was terminated and the 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. The 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.

## **Article 75 - Separation of duties**

75.1 “*Separation of duties*” shall mean the authority of a person(s) to approve and sign approval in one area of responsibility. The specialized disciplines of contract preparation (legal and technical), contract implementation and payments (invoices) must be kept as separate activities with separate signing approvals. The Chief Financial Officer, the Responsible Procurement officer and the Receiving Unit/Project Manager may not sign any documentation outside their area of responsibility.

72.2 According to the separation of duties, the 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.

75.3 The separation of duties principles shall be 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 on behalf 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 deliverables, 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 deliverables, or the Contract;
3. The Receiving Unit, the Project Manager, the Engineer shall sign for the receipt of the goods, items installed, Quality Standards, completion of a Project, and phased deliverables, but not for the payment of an Invoice, or the Contract;
4. An officer from a department who prepared the Specification and/or the TOR, or determined the 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 drafted a project may supervise the same project.
6. An OE who drafted 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 Contract Managers.

## **CHAPTER VI - Use of electronic means including e-procurements, e-auctions, and a dynamic purchasing system**

### **Article 76 - Requirements relating to devices for the electronic receipt of tenders, requests to participate**

76.1 The Contracting Authorities may make use of electronic means of communications, as defined in Article 4, paragraph 1.21, of LPP, and build on electronic purchasing techniques based on the use of electronic means of communication provided that such use complies with Article 129 of LPP and in no way conflicts with the principles of equal treatment, non-discrimination, and transparency.

76.2 The Contracting Authorities may provide that all communications, except site visits and pre-tender meetings in accordance with Article 55 of LPP, or some of the communication and information exchange with the economic operators, may be conducted by electronic means.

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.

76.3 Communication and the exchange and storage of information by electronic means shall be carried out in such a way so 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.

76.4 The system 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:

- a) electronic signatures relating to tenders, requests to participate and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;
- b) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
- c) it may be reasonably ensured that, before the time limits determined, no one can have access to data transmitted under these requirements;
- d) of that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- e) only authorised persons may set or change the dates for opening data received;

- f) 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;
- g) simultaneous actions by authorized persons must enable access to data transmitted only after the prescribed date;
- h) data received and opened in accordance with these requirements must remain accessible only to persons authorized for reference.

## **Article 77 - Use of auctions/electronic returning auctions**

77.1 Pursuant to Article 4, paragraph 1.20 of LPP, the Contracting Authorities in open and restricted procedures may decide that the award of a public contract shall be preceded by an e-auction when the contract specifications can be established with precision and do not require a discretionary appraisal.

77.2 In the same circumstances, an e-auction may be held with the reopening of competition among the parties to a framework agreement and with the opening for the competition of contracts to be awarded under the dynamic purchasing system.

77.3 The e-auction shall be based solely on prices when the contract is awarded to the lowest price.

77.4 The Contracting Authorities that decide to hold an e-auction shall state that fact in the contract notice.

77.5 The auction specifications shall include, inter alia, the following details:

- a) the features, the values for which will be the subject of the e-auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- b) any limits on the values which may be submitted, as they result from the specifications relating to the subject matter of the contract;
- c) the information which will be made available to tenderers in the course of the e-auction and, where appropriate, when it will be made available to them;
- d) the relevant information concerning the e-auction process;
- e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which, where appropriate, will be required when bidding;
- f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.



77.6 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.

77.7 All tenderers who have submitted eligible 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 e-auction.

77.8 The e-auction may take place in a number of successive phases. The e-auction may not start sooner than three working days after the date on which invitations are sent out.

77.9 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.

77.10 The 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 e-auction.

77.11 The Contracting Authorities shall close an e-auction in one or more of the following methods:

- a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
- b) 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 participate in the auction the time which they will allow to elapse after receiving the last submission before they close the e-auction;
- c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

77.12 After closing an e-auction, the Contracting Authorities shall award the contract based on the results of the public auction.

77.13. The Contracting Authorities may not interfere with e-auctions nor may they use them in such a way so as to prevent, restrict or distort competition or to change the subject matter of the contract, as set out in the published contract notice for tender and defined in the specification

77.14. In particular, tenders which according to the contracting authority are abnormally low tenders or tenders whose price exceeds the contracting authority's budget as determined in the documents before the initiation of the procurement procedures will be considered ineligible.

## **Article 78 - Dynamic Purchasing System**

78.1 In order to set up a dynamic purchasing system, as defined in Article 4, subparagraph 1.18 of LPP, the 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 specifications. To set up the system and to award contracts under that system, the Contracting Authorities shall solely use electronic means.

78.2 For the purposes of setting up the dynamic purchasing system, the Contracting

Authorities shall:

- a. publish a contract notice making it clear that a dynamic purchasing system is involved;
- b. indicate in the specification, inter alia, the nature of the purchase envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical arrangements of connections and specifications;
- c. provide by electronic means, as of the publication of the notice and up to the expiry of the system, unrestricted, direct and full access to specifications and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

78.3 The Contracting Authorities shall, throughout the entire period of the dynamic purchasing system, give any economic operator the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 78.2 of this Article.

78.4 They shall complete the 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 tender notice is issued in the meantime.

78.5 The Contracting Authority shall, at the earliest convenience, inform the tenderer referred to in the first subparagraph of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

78.6 Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, the Contracting Authorities shall publish a simplified contract notice inviting all interested Economic Operators to submit an indicative tender, in accordance with paragraph 75.22, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. The Contracting Authorities may not proceed with tendering until they have completed the evaluation of all the indicative tenders received by that deadline.

78.7 The 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.

78.8 The Contracting Authorities shall award the contract to the tenderer who has submitted the best tender based on the award criteria defined 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.

78.9 A dynamic purchasing system cannot last more than four years, except in special justifiable cases.

78.10 Contracting authorities may not use the dynamic purchasing system to prevent, limit or distort competition.

78.11 No fees may be charged to Economic Operators or system parties.

## **CHAPTER VII – Training and revocation of public procurement certificates**

### **Article 79 - General provisions**

79.1 This part of the Regulation shall aim to regulate the issues related to the training of procurement officers, including the types of training, the procedures for organizing training within the public procurement in Kosovo, as well as the PPRC's role and obligations regarding the training in accordance with Article 25 of LPP.

79.2 The PPRC shall develop modules and curricula for basic and advanced training in public procurement, and shall identify persons with experience in public procurement suitable for teaching in procurement modules drawn up and prepared by the PPRC in cooperation with procurement trainers or partners.

79.3 The PPRC shall, in accordance with the legal mandate and the work plan, develop and promote strategic policy to fulfil its mission in the process of capacity building in procurement.

### **Article 80 Basic training programs**

80.1 Basic professional training - shall be a basic introductory professional program for the Contracting Authorities' officers who directly or indirectly participate in procurement activities, including any other interested person if there is sufficient space after the accommodation of the Contracting Authorities' officers.

80.2 The program shall aim at developing professional capacities, and ethical and interpersonal values.

80.3 The duration of the program shall be determined by law to last 15 days and its structure shall be divided into 15 modules.

## **Article 81 Advanced training programs**

81.1 Advanced procurement training shall include advanced public procurement modules. Beneficiaries of advanced procurement training shall be all those who have a valid basic professional certificate.

81.2 The duration of the training program shall be determined by law to last 10 days and its structure shall be divided into 10 modules.

## **Article 82 Additional training**

82.1 Each Contracting Authority shall have the right to submit a request to PPRC for additional training in certain training modules. Submitted requests shall be evaluated and reviewed by the PPRC regarding the rationale and objectives of the required training.

82.2 If the PPRC estimates that the request for additional training is reasonable, the PPRCC shall, in cooperation with the relevant CA, specify the details of the training organization including: number of participants, number of modules, trainers, accommodation for training, etc. The training details may be accompanied by a cooperation agreement between the parties.

## **Article 83 Engagement of trainers to conduct trainings**

83.1 The PPRC shall, based on the list of certified procurement trainers, identify persons with experience in public procurement, suitable for teaching in procurement training programs designed by the PPRC.

83.2 The selection of trainers by the KRPP is based on the performance evaluation of all the trainers who express interest in the invitation published by the KRPP.

83.3 Performance evaluation is based on performance system data for trainers evaluated by training participants. A standardized evaluation format should be used and completed immediately after the completion of the training activity – module.

83.4 During the process of selecting trainers, the PPRC shall equally determine the number and distribution of training modules. The distribution of modules shall be in the format of at least 2 trainers per module.

83.55 The PPRC may also engage other trainers, in accordance with the specific needs required in the area of public procurement training.

## **Article 84 Organizing the trainings**

84.1 The PPRC shall, in cooperation with KIPA, be responsible for organizing trainings, testing and issuing certificates.

84.2 The PPRC shall, at the beginning of each year, assess the training needs in the public procurement sector.

84.3 Any person can participate in procurement training programs if he or she has met the conditions defined by the PPRC in published notices.

84.4 Training can be attended by:

- a. persons serving as procurement officers, staff members of procurement units and public officials;
- b. persons holding an internationally recognized bachelor or Master's degree certificate which was obtained in a licensed educational institution inside or outside Kosovo.and
- c. any other person.

84.5 For the persons mentioned under point (c) of paragraph 84.4, the PPRC shall decide on the number of persons who can be accommodated in the training. Applicants shall be selected based on the order of application dates.

84.6 The PPRC may set a fee to be paid by the persons included in paragraph 84.4.c, which must be determined based on the calculation of the training cost including accommodation and the trainer's payment.

## **Article 85 Forms of organizing the trainings**

85.1 Training activities may be organized, but will not be limited to the following formats;

- a. Trainings with physical attendance.
- b. Training conducted on the distance learning platform
- c. Trainings, workshops and seminars where specific issues will be addressed;

## **Article 86 Procedures for conducting the procurement training testing**

86.1 The PPRC shall, in cooperation with KIPA, organize the testing for the training participants, who have attended the training for at least 12 days out of 15 days determined for the basic program, while at least 8 days out of the total 10 days determined for the advanced professional program.

86.2 The PPRC shall, in cooperation with KIPA, compile and publish on the PPRC website a list of candidates who will undergo the exam, after the completion of the training.

86.3 Testing of candidates shall be organized within 30 calendar days from the day of completion of the training.

86.4 Successful candidates who have passed the exam shall be certified in the basic or advanced programs.

## **Article 87 Test content and assessment scheme**

87.1 Test questions should reflect proportionally the subject matter, literature and other materials used during the training.

87.2 The tests for the basic and advanced program must contain 100 points each. The minimum number of points for passing the exam for the basic professional certificate shall be over 65 out of 100 possible points, while for the advanced professional certificate over 75 out of 100 possible points.

87.3 The PPRC Chairman shall establish a commission for the design and evaluation of the test.

87.4 The commission shall consist of professional experts in the area of procurement.

87.5 Test questions shall be prepared one day before the test is held and must be kept confidential.

## **Article 88 Evaluation, publication of test results and complaints**

88.1 The test evaluation commission must evaluate the tests as soon as possible and must compile a report on the test results and shall, after approval by the PPRC Chairman, publish it on the PPRC website.

88.2 The published result must include the candidate's code and the points earned.

88.3 Candidates who have accumulated fewer points than the limit set for passing points, shall have the right to complain to PPRC about the result of the exam no later than 7 calendar days from the day of publication of the result.

88.4 The PPRC shall establish a commission to examine complaints.

## **Article 89 Issuance of procurement certificates**

89.1 A candidate who has passed the test shall be provided with a procurement certificate which is signed by PPRC and KIPA.

89.2 A candidate shall be provided with a procurement certificate no later than 30 days after the results of the tests have been published.

89.3 For candidates who have attended the trainings as a category specified in paragraph 84.4 (b), the PPRC shall issue evidence for attending the trainings in compliance with Article 25, paragraph 6 of LPP.

89.4 The PPRC shall ensure that the documentation of participants in training and testing is kept for up to three years.



## **Article 90 - Revocation of procurement certificates**

90.1 This part of the Regulation shall define the rules for revocation of procurement certificates, the procedures for initiating requests, the classification of violations of public procurement legislation, the appointment procedures and the powers of the commission for handling requests, punitive measures and the rights and responsibilities of parties in the process.

## **Article 91 Initiation of revocation of the professional procurement certificate**

90.1 The revocation of the professional procurement certificate can be initiated by:

- a. Public Procurement Regulatory Commission;
- b. Procurement Review Body; and
- c. Any Contracting Authority, whenever it finds a violation of public procurement legislation.

## **Article 92 The form and content of the request**

92.1 The request for the revocation of the professional procurement certificate can be submitted in hard copy or electronically.

92.2 The request form submitted by the Procurement Review Body and the Contracting Authority must contain the following data:

- a. the name of the Contracting Authority;
- b. the name of the applicant and the Chief Administration Officer with the relevant signatures;
- c. the date and number of the authority's protocol; and
- d. the justification for submitting the request.

92.3 The request form initiated by the PPRC must contain the following data:

- a. the PPRC name
- b. the name of the applicant and the name of the department.
- c. the date the protocol number; and
- d. the justification for submitting the request.

### **Article 93 Establishment of the Commission**

93.1 The Commission shall be established by the PPRC Board's decision.

93.2 The Commission established according to point (1) shall consist of three members, 2 (two) members for a 3-year term, while the 3 (third) members shall be elected on an ad-hoc basis.

### **Article 94 Powers of the Commission**

94.1 The Commission shall have the following powers:

- a. Examine the submitted requests;
- b. Hear the evidence of the parties regarding the alleged violation;
- c. Analyze the evidence of the parties and prepare a report on the violations found and recommend measures to be taken.
- d. The prepared report shall be sent to the PPRC Board.

### **Article 95 Classification of LPP violations for certificate revocation**

95.1 Violations of public procurement legislation shall be classified into:

- a. Minor violations, and
- b. Serious violations

### **Article 96 Minor violations**

96.1 Minor violations shall be considered:

- a. Neglecting the deadlines regarding the provision of additional clarifications requested by the Economic Operators;
- b. Neglecting the time limits for evaluating tenders defined in the Public Procurement Rules;
- c. Failure to address the PPRC recommendations resulting from monitoring activities;
- d. Failure to submit the Declaration under Oath for Procurement Officer to PPRC;
- e. Delay in preparation and publication of the Final Public Procurement Plan;
- f. Failure to submit the Statement of Needs and Availability of Funds (SNAF) to CPA for procurement activities that are not included in the final Procurement Plan;
- g. Non-verification of the receipt of the private keys of the procurement procedure sent to the members of the bid opening committee

96.2 Violations provided for above, if repeated twice within a year, shall be considered serious violations.

### **Article 97 Serious violations**

97.1 Serious violations shall be considered:

- a. Fraud, threat, or the exercise of any pressure or influence of any kind that is exerted on the Procurement Officer or on another person involved in a procurement activity so that the other officers evaluate violation of this law.
- b. Falsification, concealment or elimination of documents during the conduct of a procurement procedure;
- c. Denying and/or neglecting access to official documents upon a written request submitted by the interested party when such requested access is in accordance with Articles 10 and 11 of the Law on Public Procurement.
- d. Non-compliance or violation of the basic public procurement principles defined by LPP. Violations of the basic principles shall include the establishment of criteria or evidence not in accordance with LPP or adaptation for a certain bidder, unequal treatment of bidders during the conduct of procurement procedures, except for the technical specification that falls under the responsibility of the Requesting Unit.
- e. Failure to comply with the rules for handling requests for reconsideration by the Contracting Authority.
- f. Non-implementation of Article 30.4 of the Regulation on Public Procurement by the responsible officer of the procurement and, as a result, the expiration of the time limits of validity and security of tenders.
- g. If in the period of one year, two (2) written warnings for minor violations are issued by PPRC.
- h. Failure to comply with the PRB and PPRC decisions.
- i. Failure to submit the Final Public Procurement Plan to CPA
- j. Non-utilization of contracts concluded by centralized procurements;
- k. Cancellation of procurement activities contrary to Article 62 of the Law on Public Procurement.
- l. If the eligibility requirements and/or qualification conditions defined by Article 23 of the Law on Public Procurement have not been met, or are no longer met.
- m. The public contract is signed during the waiting period according to Article 26 of the Law on Public Procurement or during the period of imposing any temporary measure ordered by PRB.

- n. For any action specified in Article 130 of the Law on Public Procurement that the Procurement Officer actually performed or was involved in and that results in the prosecution of such an action.
- o. If there is sufficient evidence proving that the Procurement Officer had wrong or unprofessional behaviour towards the Economic Operator or any person during the conduct of the procurement procedure.
- p. Failure to comply with the time limits in issuing the decision on requests for reconsideration and the time limits in case of complaints to the PRB.

97.2 The review of violations by commission shall not be limited to violations as specified in paragraphs 96.1 and 97.1, but any other violation claimed by the applicant.

### **Article 98 Disciplinary measures for minor violations**

98.1 A written warning shall be imposed proportionally to the consequences caused and shall have the purpose of advising and warning the targeted party about other more serious measures in case of repetition of the violation. This measure shall be imposed within (10) working days from the date when the Board issue decision . The warning issued shall be served on the CA's Chief Administrative Officer. The such warning shall expire after one year from the day it was issued.

98.2 A written notice shall be imposed proportionally to the consequences caused and shall be published on the PPRC website. This measure shall be imposed within (10) working days from the date when the Board issues a decision. The written notices imposed shall expire after one year from the day of their issuance.

### **Article 99 Disciplinary measures for serious violations**

99.1 For serious violations of the provisions of the Law on Public Procurement and secondary legislation, including those specified in paragraph 97.1 of this Regulation, the PPRC Board shall, at the commission's proposal, decide on the revocation of the professional procurement certificate within ten (10) working days from the date when the commission gave its recommendation.

99.2 For serious violations of the provisions of the Public Procurement Law and secondary legislation, including those specified in paragraph 97.1 of this regulation, the decision of the PPRC Board may include revocation of the procurement certificate or suspension of the procurement certificate for a period certain time but not more than one year.

99.3 Any decision issued in accordance with paragraphs 98.1, 98.2 and 99.1, 99.2 of this Regulation shall be published on the PPRC website.

### **Article 100 Time frame for examining requests**

100.1 The written request and the completed documentation shall be examined and reviewed by the commission within 30 calendar days from the date of the PPRC Board's decision to establish the commission. For complicated cases the Commission shall have an additional period of 5 working days to give its recommendation. The PPRC Board takes a final decision within 15 calendar days after receiving the recommendation report.

### **Article 101 The right to appeal**

101.1 The Procurement Officer, aggrieved with the PPRC Board's decision, shall be entitled to appeal to the Independent Oversight Board for the Kosovo Civil Service within thirty (30) days from the day of notification of the decision if the same is a civil servant.

101.2 If the Procurement Officer is not a civil servant, the disgruntled official he or she shall be entitled to appeal according to paragraph 8 of Article 25 of the LPP.

101.3 The person whose professional procurement certificate has been revoked may, after one year, begin the basic training to obtain a basic professional procurement certificate and after that, attend training to obtain an advanced professional procurement certificate.

### **Article 102 Repeal Provisions**

With the entry into force of this regulation, the following are repealed:

1. A01 Rules and Operational Guide for Public Procurement - dated 01.02.2021
2. Administrative Instruction No. 1/2019
3. B57 Rules for Abnormally Low Tenders
4. F03 Rules for submitting complaints
5. Regulation No. 2/2017 for the procedures for granting and revoking the professional certificate for public procurement
6. B59 Rules for Special Services (Individual Consultants/Contractors), and
7. All interpretations published in "Frequently Asked Questions" and the "News" column at <https://e-prokurimi.rks-gov.net/>, which contradict the provisions of this regulation.

### **Article 103 Entry into force**

This regulation enters into force on November 1, 2022.

Pristina, October 20, 2022

Osman Vishaj

---

Chairman of the Board of KRPP