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Regulatorna Komisija Javne Nabavke  
Public Procurement Regulatory Commission



***RULES and OPERATIONAL GUIDELINE***  
***for PUBLIC PROCUREMENT***

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## *1. Scope of the Rules and of the Operational Guideline*

1.1 The Rules and the Operational Guideline for procurement procedures are issued pursuant to Article 87.2.4 of the Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, amended and supplemented by the Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 (hereinafter the PPL). These Rules and Operational Guideline are designed to assist the procurement staff in the management of **procurement activities**. The Rules and Guideline provide details of running the procedures for the procurement of goods, services, works, and **design contests**.

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

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

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

1.1 According to the PPL, the following list of the CAs is simplified and refers to the groups in broad terms:

### **Contracting Authorities:**

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

## ***2. Purpose of the Rules and of the Guideline***

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

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

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

2.3 The Law imposes obligations on CAs to:

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

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

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

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

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

Data on the Economic Operators contain at least:

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

Personal data of the users consist of:

- Name and surname of the user
- E-mail of the users, where they will receive all messages from the system
- Personal Identification number
- Address
- Telephone and/or fax number
- Name of CA/OE which is connected with the user
- Title of the user
- Password
- Username of the user

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

3.4 The e-Procurement system implements appropriate technical measures to protect the users and their personal data. These technical measures consist of 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 All users in the system are given the privileges according to the roles that have been assigned to them by the CA/EO that approved creation of their user account.

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

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

3.8 CAs/EOs shall be responsible for providing and maintaining the equipment which their users use to access the system. The equipment shall provide screens with minimal resolution of 1024x768, adequate disc space for storing the documents.

3.9 CAs/EOs shall be responsible for installation, configuration and maintenance of the software on their equipment. The minimal software requirements are published in the Terms of use, and include:

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

3.10 CAs/Eos shall be responsible for security of their equipment, including updated antivirus and malware protection tools.

3.11 All Contracting Authorities that are registered and are active in the e-Procurement platform are obliged to immediately notify the PPRC of any change 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.

3.12 All Economic Operators that are 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 immediately update the data on the e-Procurement platform. Updating of data is done in accordance with the PPRC guidelines, via the help desk or the guideline published on the e-Procurement website.

#### ***4. General administration of procurement procedures***

4.1 When running the procurement procedures, CAs are obliged to take necessary measures to ensure equal treatment and non-discrimination among interested Economic Operators.

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

- a) to play an active role in determining the terms of contracts, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees;
- b) to effectively compare, to 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.

4.3 CA 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.

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

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



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

<b>STEP 1</b>	<b>Procurement Forecast</b>
<b>STEP 2</b>	<b>Estimating the Value and Classifying the Contract</b>
<b>STEP 3</b>	<b>Determining the Procurement Procedure</b>
<b>STEP 4</b>	<b>Preparing the Tender Dossier</b>
<b>STEP 5</b>	<b>Publishing</b>
<b>STEP 6</b>	<b>Opening and evaluating the Tenders</b>
<b>STEP 7</b>	<b>Contract Award and Signing</b>
<b>STEP 8</b>	<b>Contract Management</b>

## ***5. Procurement Forecast***

5.1 The procurement forecast is a written document which indicates:

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

5.2 This is the **first step** in the procurement process:

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

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

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

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

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

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

5.7 **Within 15 days** after the appropriations legislation for the fiscal year is promulgated, each CA, which is a public authority or a public undertaking, shall prepare, publish on the website of the concerned Contracting Authority and **shall submit** to the Central Procurement Agency, hereinafter “CPA”, in writing, the **Final Procurement Forecast**. Contracting Authorities use the electronic platform to submit final procurement forecast **to the CPA, which is automatically published on the electronic platform in the menu Notices - Procurement Plans**.

5.8 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.

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

5.10 The Government shall, as per the proposal of the MoF, establish by the 31<sup>st</sup> of 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 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**.

5.11 All contracts signed by the CPA through centralized procurement procedures are obligatory for all CAs, which are part of the AI 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.

5.12 Procurement forecast must be in line with the CA budget for the fiscal year in question. When it comes to multi-year contracts, there should be a *“reasonable basis that budget approval will be done”* for the CA in the next 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 (1) one calendar year.

5.13 To do a **good procurement forecast**, the procurement officer will need **close cooperation with budget department and other departments**. The procurement officer will meet 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.

## 6. Indicative Notice

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

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

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

- a. in case of an Indicative Notice for supplies or 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 is prepared and published for high-value contracts:**

- A single contract whether supply, service or work contract, if the estimated value is of five hundred thousand (500,000) Euro; or
- 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 does not commit the CAs to purchasing or proceeding with an activity if circumstances change.

- The Notice is intended as:
  - a) an aid to transparency and is for the benefit of the economic operators; and
  - b) permits a CA to reduce the minimum time limits for tendering, in 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);
  - c) if the CA is a Public Service Operator, the Indicative Notice may replace a Contract Notice in restricted or competitive negotiated procedure.

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

- 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.

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

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

## ***7. Confidential Business Information and Access to Documentation***

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

7.2 A procurement activity is deemed to have been concluded on the date of notification of the EO on the outcome of the procurement activity. Access to the procurement activity data begins on the date **the EO receives the notification on the outcome of the procurement activity**.

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

7.4 Other than those documents classified as confidential business information, upon the request of an interested party, the CA shall provide such 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 Information which can be classified as confidential business information is:  
a. the information regarding economical and financial standing, Article 68 of the PPL; and  
b. the information regarding technical and/or professional capability, Article 69 of the PPL.

7.6 The information can be classified as confidential **only if**:  
a. a written request is submitted by the potential tenderer using the **standard form “Request for confidentiality”**, which is an Annex in the Tender Dossier.

7.7 The e-Procurement System enables EOs to declare the documents as confidential in accordance with Articles 68 and 69 of the PPL. It is the responsibility of the CA to ensure that parts which are declared as confidential are not made available to other economic operators.

## ***8. Statement of needs and determination of availability of funds***

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

assessment shall include:

- (a) a clear indication of the works, services or supplies required;
- (b) the estimated value of the works, services or supplies;
- (c) the proposed functional specifications;
- (d) the benefits expected;
- (e) cost of ownership;
- (f) information whether it was included in the procurement plan; and
- (g) a statement how the procurement will promote the CA's objectives.

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

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

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

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

8.4 The CAs shall use the standard form B04 “Statement of needs and determination of availability of funds (SND AF)” adopted by the PPRC for the determination of needs and availability of funds. The approval of the initiation of the procurement activity shall be evidenced by the signature of the SND AF by the CAO and the CFO. The original copy of the signed SND AF shall be maintained in the CA's records and a copy shall be provided to the CFO, to the Authorising Officer and, unless the CAO is the most senior official, to the most senior official of the CA.

The form submitted will be maintained by the CA as documentation - **available for audit** - that the needs assessment and allocation assurance has been completed.

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

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

8.7 The persons having authority to sign a contract are obliged, before the publication of the B58 Form **“Notice on the Contracting Authority Decision”**, to reconfirm that the financial information (SND AF) has not materially changed.

## ***9. Functions of the Chief Administrative Officer***

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

- a. of ensuring that the formal needs assessment is conducted for each procurement activity;
- b. of approving the initiation of each procurement activity;
- c. of designating one person, who possesses the requisite qualifications and experience in public procurement, and is eligible, to serve as the responsible procurement officer;
- d. of taking steps to remove the procurement officer/**the responsible procurement officer if he/she becomes ineligible under Article 23, paragraph 4 of the PPL;**
- e. of designating one person to act as an Authorizing Officer for each procurement activity;
- f. of ensuring that the procurement officer is supported by a sufficient number of other trained personnel;
- g. of appointing a Project Manager for each contract;
- h. of signing 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 the PPL);
- i. if the procurement activity is divided into lots, to sign contracts for lots which are classified as high value contracts; and
- j. of approving the Tender Evaluation Committee Members.

## ***10. Functions of the Requesting Unit***

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

- a) Prepare a procurement request, formal needs assessment (SNDAF), 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 there are no restrictions in the specifications, or ToR, so as to ensure that competition is maximized;
- d) Liaise with and assist the procurement department throughout the procurement process;
- e) Issue reports on the receipt of the goods/services/works for the arrangement of the payments to the providers;
- f) Report to the procurement department any 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.).

## ***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 its jurisdiction and in accordance with the provisions of the PPL. The RPO, among other obligations, has the following responsibilities:

- a) In consultation with all departments, prepares an annual procurement plan. Where possible, ensures common use items are consolidated;
- b) Ensures that goods, services and works are procured in the most economical, efficient and effective manner;
- c) To the best of his/her ability, makes sure that no restrictions to the competition is exhibited in the technical specifications;
- d) Advises the Requesting Units on individual procurement methods and practices;
- e) In cooperation with Heads of the Requesting Units, co-ordinates all the associated paperwork, specifications, ToR, Bill of Quantities and drawings;
- f) Organizes and manages procurement activities;
- g) Recommends the composition of the Tender Evaluation Committee members;
- h) Takes part in the Tender Negotiations and ensures an equitable outcome;
- i) Upon completion of the evaluation process, reviews the proposed contract recommended by the evaluation committee;
- j) Agrees/rejects the proposed recommendation;
- k) Signs the contracts after reconfirming that the financial information have not materially changed (for minimal value contracts developed in educational institutions, the person authorized to sign a contract is the Director of the Educational Institution);
- l) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, saves all communications and evidences received;
- m) Follows up the failures of contractors who have failed to fulfil their contractual obligations when informed by the Project Manager in regard to adequate compensation, liquidating damages and arrange for the cancellation of the contract;
- n) Produces 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, among other obligations, has the following responsibilities:

- a) To the best of his/her ability, makes sure that no restrictions to the competition is exhibited in the technical specifications;
- b) In cooperation with Heads of the Requesting Units, co-ordinates all the associated paperwork, specifications, ToR, BoQ and drawings;
- c) Prepares and publishes notices;
- d) Prepares prequalification documents, tender dossiers, contract conditions, tender evaluation reports, contract awards, etc. by using the approved standard forms;
- e) Prior to the commencement of the procurement activity, ensures that the SNDAF is authorised in writing;
- f) Organises and manages quotations and tenders depending upon the estimated price;
- g) Organizes and manages pre-bid meetings, tender openings and the evaluation process;

- h) Establishes and notifies the Opening Committee in cooperation with the RPO;
- i) Prepares and publishes the contract awards;
- j) Ensures records are kept of the participating EOs, proceedings and decisions that are made during each stage of the procurement process;
- k) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, saves all communications and evidences received;
- l) Follows up the failures of contractors who have failed to fulfil their contractual obligations when informed by the Project Manager in regard to adequate compensation, liquidating damages and arrange for the cancellation of the contract;
- m) Maintains and archives records of procurement.

## ***12. Types of procurement procedures***

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

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

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

- a. Design contest.

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

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

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

## ***13. Estimating the value and classifying the contract***

13.1 This is the second step in the procurement process. The value of an envisaged public contract shall be estimated prior to the initiation of the procurement procedure.



Such estimation shall be reasonable and realistic for the envisaged contract from the point of view of the most efficient, cost-effective, and transparent and fair use of public funds and resources.

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

- prices published by Kosovo Office of Statistics and/or other official indicative prices (such as tax office, customs office, chamber of commerce, etc.); and/or
- local market prices; and/or
- prices of previous contracts signed by the same or other contracting; and/or
- published international prices; and / or
- unit prices published on PPRC website; etc.

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

13.4 In case of contracts made up of a set of homogenous or heterogeneous works, goods or services, the contract may be divided into lots. This method may be used especially with the aim of encouraging the participation of the small and medium business. It may also be made in order to secure a wider competition 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 division of contract value or avoidance from the value thresholds, since it consist of the total value of all lots.

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

13.6 The estimated value of a proposed:

- a. **Supply contract** – shall be equal to the estimated price to be paid by the CA for all products, services and other objects covered by the contract.
- *In case of lease, rental or hire-purchase:*
  - the total contract value, including the estimated residual value;
  - in the case of a contract for an indefinite period or where there is doubt as to the duration of the contract, the monthly value multiplied by 48.
- b. **Service contract** – shall be equal to the estimated total remuneration and reimbursable amounts to be paid by the CA throughout the term of the contract.
- *Specific rules:*
  - in case of insurance services: *the premium payable;*
  - in case of banking and other financial services: *fees, commissions, interests and other types of remuneration;*
  - in case of design services: *fees or commissions.*
- In case the contract does not specify a total price, the estimated contract value shall be:
  - if the duration is 48 months or less, the total estimated value for the duration;
  - in case of a contract of indefinite duration or with a term of more than 48 months, the average estimated monthly value multiplied by 48.

- c. **Works contract** – shall be equal to the estimated price to be paid by the contacting authority for all works, services, products and other objects that are needed to execute such contract and that are to be made available to the works contractor by the CA.
- d. **Design contest** – if organized as part of a procedure leading to the award of a service contract, it shall be equal to the estimated value of that service contract, whereas if solely organized for the provision of projects, it shall be equal to the total amount of contest prizes and payments to participants.

13.7 The estimated value shall:

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

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

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

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

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

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

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

- a. *“high value contract”*;
- b. *“medium value contract”*;
- c. *“low value contract”* and
- d. *“minimal value contract”*

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

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

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

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

<b><i>Code for range of estimated value</i></b>	
<b><i>1</i></b>	<b><i>High value</i></b>
<b><i>2</i></b>	<b><i>Medium value</i></b>
<b><i>3</i></b>	<b><i>Low value</i></b>
<b><i>4</i></b>	<b><i>Minimal value</i></b>

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

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

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

13.19 Contracting Authorities are not allowed to terminate 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 13.18 of this Article.

## ***14. Determination of Procedure***

14.1 This is the ***third step*** in the procurement process.

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

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

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

14.4 However, regardless of the estimated value, the circumstances pertaining to the requirement may be used as additional criteria in determining the choice of 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 requirements.

## ***15. Types of contracts***

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

<b>Type of contract</b>	<b>Definition</b>
<b><i>Supply contract</i></b>	A supply contract relates exclusively or mainly to <b><i>the purchase of one or more products</i></b> ; but also the contracts on lease, rental or hire-purchase of <i>products</i> are supply contracts
<b><i>Service contract</i></b>	A service contract relates exclusively or mainly to the <b><i>provision of services</i></b> . Services include also <b><i>consulting services</i></b> .
<b><i>Works contract</i></b>	A works contract has as its principal object: <ul style="list-style-type: none"><li>- execution,</li><li>- design and execution, or</li><li>- realization by whatever means of <b><i>a work, construction or civil engineering activities</i></b>, including:<ul style="list-style-type: none"><li>- construction,</li><li>- restoration,</li><li>- repairing or</li><li>- demolition of buildings, facilities, civil engineering structures, or parts thereof</li></ul></li></ul>
<b><i>Public framework contract</i></b>	A public framework contract relates exclusively to <b><i>the establishment of the framework for contracts to be awarded</i></b> during a limited period

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

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

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

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

15.3 However, it is possible for a public contract to be a “mix”: Supplies/Services, Works/Services; Works/Supplies; a mix of Supplies/Works/Services. The basic way to handle this 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”).

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

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

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

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

<b><i>Code for type of procurement</i></b>	
<b><i>1</i></b>	<b><i>Supply</i></b>
<b><i>2</i></b>	<b><i>Service</i></b>
<b><i>3</i></b>	<b><i>Consulting Service</i></b>
<b><i>4</i></b>	<b><i>Design Contest</i></b>
<b><i>5</i></b>	<b><i>Works</i></b>

## ***16. Procurement number***

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

16.2 The Internal Procurement number is composed of:

- (i) CA identification;
- (ii) Identification of the procurement year;
- (iii) A serial number of 3 digits, restarting at 1 each procurement year;
- (iv) Code for type of procurement;

- (v) Code for range of estimated value of the envisaged contract or design contest; and
- (vi) Code for the procedure used.

16.3 In case of Annex Contracts, CA should use the base number of the procurement activity by adding at the end the number /5. If there is more than one Annex Contract for the same procurement activity, CA should add the number /5-1, /5-2 etc.

16.4 In case of mini-tenders, CA should use the base number of the procurement activity by adding at the end the number /1. If there is more than one mini-tender for the same procurement activity, CA should add the number 1, 2 etc. after the base number.

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

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

## ***17. Summary procurement record***

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

17.2 Procurement data shall include the following:

- Request to initiate procurement activity and approval (SND AF)
- Justification and approval for negotiated procedure without publication of contract notice (*when applicable*)
- Copy of the Contract Notice - published (*when 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
- Decision of establishment of the 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 (*when applicable*)
- Copy of procedure annulment – published (*when applicable*)
- Copy of the notice on contract signature – published (*when applicable*)
- Contract and, *if applicable*, contract amendment
- All documentation in regard to a complaint including PRB's decision (*when applicable*)
- Copy of the Plan of contract management.

17.3 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 to PPRC within 5 days upon the written request but not later than 31 January of each previous fiscal year.

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

## **18. *Tender Dossier***

18.1 This is the **fourth step** in the procurement process.

18.2 In compliance with Article 27 of the PPL, the CA shall draw up a tender dossier for each envisaged contract or design contest, unless the contract is of minimal value. Tender dossiers and design contest dossiers shall be prepared by 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. **TD for Consultancy Services (two envelope system)**

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

***PART A*** – Tendering Procedures

***PART B*** – Draft Contract

***PART C*** – Tender Form

**Part A , tendering procedures**, consists of two parts:

- Instructions for Bidders
- Tender data sheet and annexes
- 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**.

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

- General Conditions
- Special Conditions
- General Conditions should not be changed.
- Special Conditions must be completed by the **Procurement Officer when preparing the Tender Dossier**.

**Part C, the Bid Submission Form**, is the main part of the tender because in this part the bidder declares that he/she has checked and accepts all the terms of the tender and submits his/her financial offer. It consists of:

- Tender Form
- Pricelist

As regards all procedures prepared through electronic platform, CAs should only use the standard or non-standard pricelist from the electronic platform. The pricelist which is part of the tender dossier, should not be completed, **thus should be removed from the tender dossier**.

**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.**

**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.**

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**.

18.4 In the tender dossier, the CA shall state **all relevant information** on the concerned contract that the interested EOs need to know in order to prepare their tenders without seeking further information. Such information shall **include** all specifications, requirements, criteria, time limits, methodologies, contract conditions, site visits or pre-tender meeting etc. connected with the contract award procedure. **Every sentence in the tender dossier must be well-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. Requirements specified in the tender dossier and in the contract notice must be identical. If the CA organizes a site visit or a pre-bidding conference, the participation of the EO in the site visit/pre-bidding conference should not be mandatory. Site visit/pre-bidding conference is organized for the EOs and for their benefit, therefore it is helpful to EOs.

18.5 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.

18.6 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.

18.7 **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 the 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.

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

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

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

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

1. Preparation of the tender dossier process;
2. Publication process;
3. Process of providing additional clarification and information in the tender dossier;
4. Receipt of tenders.

18.11 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 the evidence on meeting the eligibility requirements. The subcontracting cannot exceed 40% of the total value of the contract, whereas the same subcontractor may be proposed by more than one EO.

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 the PPL. 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.

18.12 Whenever a tender dossier is required or not, the supplies, services or works of the contract must be described by means of the appropriate common procurement vocabularies (CPV) and codes.

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

<b><u>Supplies</u></b>	<b><u>Services, both consultancy and non-consultancy</u></b>	<b><u>Works</u></b>
<i>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:</i>	<i>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:</i>	<i>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:</i>
<i>(a) a clear definition of parameters of the proposed purchase;</i>	<i>(a) a narrative of the background of the required services;</i>	<i>(a) a narrative of the background of the required works;</i>
<i>(b) purpose and objectives of the proposed purchase;</i>	<i>(b) objectives of the services required and a list of targets to be achieved by a service provider;</i>	<i>(b) the objectives of the required works;</i>
<i>(c) full description of the requirement;</i>	<i>(c) a list of the specific tasks or duties to be performed;</i>	<i>(c) a list of specific tasks to be performed;</i>
<i>(d) general specification to an appropriate level of details;</i>	<i>(d) a schedule of deliverables for results of the assignment toward which the achievements of the services shall be compared;</i>	<i>(d) the supervision requirements, working reports and specific administrative arrangements to be applied;</i>
<i>(e) functional description of the qualities, including any environmental or safety features required of the subject of the procurement;</i>	<i>(e) the management and reporting manners of a service provider, to the CA and the specific administrative arrangements and reporting requirements that shall apply;</i>	<i>(e) the duration of the works;</i>
<i>(f) performance parameters, including results, timescales, and any indicator or criteria by which the satisfactory performance of the specifications can be estimated;</i>	<i>f) the duration and timetable of the assignment;</i>	<i>(f) a common specification standard;</i>
<i>(g) process and materials descriptions;</i>	<i>(g) the applicable industry standards for assignment implementation; and</i>	<i>(g) the relevant industry standard; and</i>
<i>(h) dimensions, symbols, terminology, language, packaging, marking and labelling requirements</i>	<i>(h) any other additional information.</i>	<i>(h) any other additional information.</i>
<i>(i) a common specification standard;</i>		

<i>(j) the relevant industry standard; and</i>		
<i>(k) any other relevant information.</i>		
<p><b>No specification shall be issued with reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item.</b></p> <p><b>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"</b></p>		
<b><i>The Tender documents for supplies shall specify the following information:</i></b>	<b><i>The Tender documents for services shall require the economic operator to comment on the terms of references and shall specify the following information:</i></b>	<b><i>The Tender documents for works shall specify the following information:</i></b>
<i>(a) specification and list of supplies, including quantity;</i>	<i>(a) the terms of reference and expected input of key personnel</i>	<i>(a) the design, specifics, drawings and bill of quantities</i>
<i>(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission is</i>	<i>(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission are allowed;</i>	<i>(b) composition of Lots; whether the variants are allowed; whether withdrawals of Tenders before the deadline for submission are allowed;</i>
<i>(c) type of contract and procedure</i>	<i>(c) type of contract and procedure</i>	<i>(c) type of contract and procedure</i>
<i>(d) qualification criteria</i>	<i>(d) the qualification criteria</i>	<i>(d) the qualification criteria</i>
<i>(e) amount and form required of tender security;</i>	<i>(e) the amount and form of the required tender security;</i>	<i>(e) the amount and form of the required tender security;</i>
<i>(f) amount and form required of the performance security</i>	<i>(f) the amount and form of the required performance security</i>	<i>(f) the amount and form of the required performance security</i>
<i>(g) time limits, exact place, date and hour of tender submission and tender opening</i>	<i>(g) time limits, exact place, date and hour of tender submission and tender opening</i>	<i>(g) time limits, exact place, date and hour of tender submission and tender opening</i>
<i>(h) the form of a valid tender</i>	<i>(h) the form of a valid tender</i>	<i>(h) the form of a valid tender</i>
<i>(i) the tender submission methodology</i>	<i>(i) the tender submission methodology</i>	<i>(i) the tender submission methodology</i>

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

<p><i>(c) training in use, maintenance or repair of the supplies; or</i></p> <p><i>(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.</i></p>	<p><i>(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;</i></p> <p><i>(c) arrangements for temporary handover and return of all CA's property occupied or used during contract implementation; and</i></p> <p><i>(d) arrangements for the handover, if applicable, of all property purchased during contract implementation</i></p>	<p><i>the transfer;</i></p> <p><i>(b) the ownership of the property on site during contract implementation;</i></p> <p><i>(c) the obligations of an operator in relation to the care and maintenance of CA's property occupied or used during contract implementation; and</i></p> <p><i>(d) arrangements for temporary and final handover of all CA's property occupied or used during contract implementation.</i></p>
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***It is prohibited to prepare the Tender Dossier in a manner that favours or discriminates against one or more of the potential Economic Operators***

18.16 In line with the Article 31, paragraph 1 of the PPL, Contracting Authorities can lay down special requirements concerning the manner in which the contract must be performed, provided that the requirements do not violate the principles of Article 7 of PPL 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.

18.17 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.

18.18 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 for 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 ILO's core conventions during the execution of the contract, if these provisions have not already been implemented in national law.

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

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

18.21 By justifying the prices considered abnormally low by the Contracting Authority, as regulated in Article 61 of the PPL, the contracting authority can take into account 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.

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

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



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

18.25 In case the price offered by the Tenderer does not cover the minimum wages and salaries of 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.

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

18.27 In case of application of the framework contracts where quantities may not be precisely foreseen a prediction of quantities should be included. 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.

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

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

18.30 Contracts with duration of more than one year 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.

## 19. Division of contracts into lots

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

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

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

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

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

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

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

### Example 1:

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

The tenderer may submit bids for all the Lots.

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

In case the tenderer offers the lowest price in more than 2 Lots, then he/she will be awarded a contract for Lots offering the lowest possible price for the Contracting Authority and the remaining Lot will be awarded to the second operator.

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

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

Example illustration:

Combination 1			
	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
2	225,000	200,000	
3	175,000		
	<b>400,000</b>	<b>200,000</b>	<b>600,000</b>
Combination 2			
	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
1	190,000	250,000	
3	175,000		
	<b>365,000</b>	<b>250,000</b>	<b>615,000</b>
Combination 3			
	<u>EO 1</u>	<u>EO 2</u>	<u>CA pays</u>
1	190,000	200,000	
2	225,000		
	<b>415,000</b>	<b>200,000</b>	<b>615,000</b>

19.3 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.

**Example 1:** Requirements of economic standing and technical and professional capability

Division into lots: 3 Lots

Tenderer may submit a tender **for one or more lots**.

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

**If the Tenderer offers a lower price in more than 1 Lot, he/she will be awarded a contract for the lot with the highest overall total value.**

**Economic and financial standing requirements**

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

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

## **Evidence of economic and financial standing**

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

***If the Economic Operator submits a tender for 2 lots, the highest amount of financial turnover required for the lots for which it applies must be met by the EO.***

*Note:*

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

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

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

Example:

Division into lots: **7 Lots**

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

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

## **20. Technical Specifications**

20.1 Pursuant to Articles 28 and 29 of the PPL, the CA shall set forth in the tender dossier all technical specifications which any tender shall comply with.

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

20.3 The technical specifications shall describe and define, in a non-discriminating manner, the mandatory characteristics of the object of the contract, such as quality, performance, design requirements, dimensions, safety, quality assurance, terminology, symbols, testing and testing methods, packaging, marking and labelling. The CA shall

indicate whether the technical specifications set forth are **obligatory or minimum requirements**. The use of standards may include quality assurance standards as stated in Article 70 of the PPL.

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

*As per the EU directives, the principle is stated as follows:*

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

20.5 A technical specification shall, to the extent possible, be stated by reference to 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.

20.6 Reference to a recognized standard:

**Hierarchy of Standards to be referred to when formulating technical specifications**

- (1) a Kosovo standard implementing a European standard,**
- (2) a European standard,**
- (3) a European technical approval,**
- (4) a common technical specification,**
- (5) an international standard and/or**
- (6) any other technical reference system produced by European standardisation bodies.**

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

**Re(2):** European standards are approved by the European Committee for Standardization (CEN), [www.cenorm.be](http://www.cenorm.be), and the European Committee for Electrotechnical Standardization (CENELEC), [www.cenelec.org](http://www.cenelec.org).

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

**Re(4):** A common technical specification means a technical specification set by an EU procedure.

**Re(5):** International standards are for instance ISO, [www.iso.org](http://www.iso.org), ASTM, [www.astm.org](http://www.astm.org) etc.

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

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

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

20.8 Establishing a technical specification that refers to a specific 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**”.

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

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

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

*A responsive tender, thus, must meet all mandatory requirements, while desirable functions balance the price and other characteristics of the tender.*

*A **clear distinction** between mandatory requirements and desirable functions must be carried out by the CA.*

20.10 Technical Specifications for employment 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.

20.11 Pursuant to Article 28 of the Public Procurement Law, Technical Specifications for employment 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, 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, making reference to the Executive Project in a way that allows identification thereof;
- e) environmental and social standards;
- f) criterion of accessibility for people with disabilities;
- g) quality levels and procedures relating to determined 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.

20.12 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.

20.13 **The Executive Project** is the graphic design of all the administrative and engineering processes of the required works as described in the Technical Specifications and, therefore, sets forth, 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, mandatorily, 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.

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

- a) Site plan(s), which shall include the graphic representation of the construction site, the existing, remaining 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. on the basis of which the buildings and its parts, spatial location, measures, structures, materials, installations, etc., may be determined,

the quantities may be checked and the implementation plans may be prepared.

## **21. Time limits**

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

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

### **Normal time limits**

<b><i>Procedures</i></b>			
	<b><i>Open</i></b>	<b><i>Restricted</i></b>	<b><i>Competitive with negotiations</i></b>
<i>High Value</i>	<b>40 days</b>	<b>20 days receipt of requests 40 days receipt of tenders</b>	<b>10 days receipt of requests 20 days receipt of tenders</b>
<i>Medium Value</i>	<b>20 days</b>	<b>15 days receipt of requests 20 days receipt of tenders</b>	<b>10 days receipt of requests 20 days receipt of tenders</b>
<i>Low Value</i>	<b>5 days</b>	/	/
<i>Minimal value</i>	<b>1 day</b>	/	/

### **If Indicative Notice\***

<b><i>Procedures</i></b>		
	<b><i>Open</i></b>	<b><i>Restricted</i></b>
<i>High Value</i>	<b>24 days</b>	<b>20 days receipt of requests 24 days receipt of tenders</b>

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

### **Accelerated time limits**

<b><i>Procedures</i></b>		
	<b><i>Open</i></b>	<b><i>Restricted</i></b>
<i>High Value</i>	<b>15 days</b>	<b>15 days receipt of requests 10 days receipt of tenders</b>
<i>Medium Value</i>	<b>10 days</b>	<b>15 days receipt of requests 10 days receipt of tenders</b>



## 22. Publication

21.2 This is the **fifth step** in the procurement process.

21.3 **Publications** are one of the **main constituents of transparency**. By publishing you inform the potential EOs of the **foreseen public contracts** or design contests and of the **results of the procurement activities or design contests**.

21.4 There are **7 types of notices**:

*a. Indicative notice;*

*b. Contract notice;*

***c. Notice on the CA Decision;***

*d. Contract award notice;*

*e. Notice for cancellation of procurement activities;*

*f. Notice for additional information or corrigendum; and*

*g. Contract signing notice*

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

**b. Contract Notice**

- When a CA intends to conduct a procurement activity using the open, restricted, price quotation, 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.
- 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.
- 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.
- 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*.

**c. Notice on the CA Decision;**

- 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 PO will prepare the **Notice on the CA Decision** regardless of the type or foreseen value.

- CA shall publish the Notice on the CA Decision in the e-procurement system as an additional document via the option Tender Dossier - "**add new document**".
- 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 the PPL.
- The contracting authority, besides information required in the standard form of the Notice on the CA Decision, shall enter the names of all bidders and total price of each bid.

**d. Contract Award Notice**

- 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 **in line with Article 108/A of the PPL**, prepare the **Contract Award Notice/Design Contest Result Notice** regardless of the type or of the estimated value.
- CAs must publish all contract award notices in the e-procurement system. In order to increase transparency, CAs may publish contract award notices also on the CA website. **Upon publication of the contract award notice, the Contracting Authority shall sign the contract.**
- Publication of such notice is not required for **minimal value contracts**.
- The contract award notice for low and medium value contracts shall be prepared in the Albanian and Serbian languages, whereas for high values contracts, the contract award notice shall be prepared in Albanian, Serbian and English version.

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

**e. Notice for additional information or Corrigendum**

- If a CA provides **additional information** for economic operators or **corrects an error or extends the deadline of submission of tenders**, while conducting a procurement activity through an open, restricted, competitive negotiation or price quotation procedure, the PO shall prepare a ***Notice for additional information, using the B54 standard form approved by the PPRC.***
- **CAs must publish all notices for additional information in the e-procurement system in Kosovo.**
- 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.

- Should any corrected or added information lead to a **substantial change of the conditions provided for in the original contract notice** and the PO determines that there is a substantial change of the conditions, the PO must cancel the procurement activity and re-launch the same if there is still interest to continue with the same procurement activity.

***f. Contract signing notice***

- If the CA has 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 PO prepares a **contract signing notice** regardless of the type or the foreseen value.
- 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 version.
- CAs must publish all contract signing notices in the e-procurement system in Kosovo, except notice for minimal values which must be submitted to the PPRC, until another decision is issued by PPRC.
- In addition to the contract signing notice, the CA must publish the contract signed. The publication should be done in the e-procurement platform, as an additional document to the tender dossier through the option "add new document". The term "contract" refers to the contract, general terms of the contract, special terms of the contract and the pricelist.

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

## ***23. Issue of Tender/Prequalification documents***

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

23.2 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.

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

23.4 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.

23.5 Should there be a need that 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 by means of the e-procurement system

## **24. Publication of contract notices on Kosovo e-Procurement System**

24.1 To start the publication of the Contract Notice, CA must enter the title of the procurement activity, the internal procurement number (number of procurement under which the contracting authority develops the procedure), 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 will automatically generate the number of procurement activities.

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

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

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

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

24.5 "Validity period of tender submission" refers to an open procedure and a 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.

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

24.7 During the preparation process, the e-Procurement System creates 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.

24.8 Authorized representatives of the Contracting Authority and their deputies receive private keys (XML files) by which they start the procedure of public opening of tenders after the

deadline for submission of tenders. The authorized representatives of the contracting authority are 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.

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

24.10 Standardized pricelist is a pricelist that is generated from the system and contains predefined elements of the pricelist. This pricelist is downloaded on the website of the Electronic Public Procurement in Kosovo. Standardized pricelist is generated in standardized Excel format or this list may be completed directly through the system or in case this list does not satisfy the CA needs (various specifications), the CA may create another list. 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
- Manufacturers name
- Bidder Note

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

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

24.13 If errors are noticed after the tender has been published, correction procedure must be used to correct the errors.

## ***25. Provision of additional or clarifying information and Time Extensions***

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

25.2 Such a written request should be sent via **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 of 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.

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

<i>If time limit for the receipt of tenders is</i>	<i>Not less than</i>
<b>≥ 40 days</b>	<b>20 days</b> prior to the receipt of the tenders
<b>≥ 30 days but &lt; 40 days</b>	<b>15 days</b> prior to the receipt of the tenders
<b>≥ 20 days but &lt; 30 days</b>	<b>10 days</b> prior to the receipt of the tenders
<b>≥ 5 days but &lt; 20 days</b>	<b>3 days</b> prior to the receipt of the tenders

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

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

25.5 If, during an open, restricted or competitive negotiated procedure, additional or clarifying information are provided to the EOs, and the date on which such information is provided is less than **ten (10) days** from the deadline of the tender submission, the CA shall extend the deadline to give the opportunity to EOs at least **10 days** for tender submission **by preparing and publishing the notice for procedure correction**.

25.6 If, during a price quotation procedure, additional or clarifying information are provided to the EOs, and the date on which such information is provided is less than **three (3) days** from the deadline of the tender submission, the CA shall extend the deadline to give the opportunity to EOs for at least **3 days** for the tender submission **by preparing and publishing the notice for procedure correction**.

25.7 If before the deadline for submission of tenders, it becomes necessary for the CA to amend the TD/Pricelist, the changes to the TD shall be in the form of an annex, the changes of the Pricelist will be by uploading a new Pricelist in the electronic platform "Change of price description" and shall be published on the electronic platform and thus, under Article 25.5 and 25.6 above, the deadline for the tender submission shall be extended. Also, if there are changes to the information published on the tender dossier/contract notice (deadline for submission of tender, the selection criteria, etc.), the CA shall prepare and publish a Notice for additional information or corrigendum by using the B54 standard form.

25.8 If it is necessary to suspend the procurement procedure during the tendering phase, 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 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 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.

Moreover, in such case, the system requires the recreation of tender opening keys.

25.9 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.

## 26. Selection Criteria

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

- 1) *Such EO proves to be* eligible according to Article 65 of the PPL by providing the evidence requested by the Contracting Authority; and
- 2) *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 the PPL.

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

*In the second group, **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.*

26.2 “**Eligibility criteria**” and “**minimum qualification requirements**” together are 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.

26.3 *Selection criteria* shall be clearly specified in the contract notice and in 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.

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

26.4 When establishing minimum qualification requirements, the CA shall pay due attention to the development of 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.

**26.5 Selection criteria:**

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

**EITHER**

**The requirements are fulfilled and the tenders submitted by such tenderers are still being considered**

**or**

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

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

- 1.1 as regards Article 65, paragraphs 1.1, 1.2 and 1.3 of the PPL, under oath declaration signed by the concerned economic operator;
- 1.2 as regards Article 65, paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2 and 4.4 of the PPL, an extract from the “judicial record” or, failing that, an equivalent document issued by a competent judicial or administrative authority of the economic operator’s country of establishment;
- 1.3 as regards Article 65, paragraphs 4.8, for the social security, and 4.9 of the PPL, a



certificate issued by the competent authority or public operator attesting that such situation does not exist.

1.4 as regards Article 65, paragraphs 4.8 of the PPL, for tax contribution, a proof issued by Tax Administration of the economic operator's country of establishment.

26.7 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 the PPL, an economic operator shall submit a copy of certificate, confirmed by the competent administrative body responsible for attesting professional suitability or licenses.

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

Selection Criteria			
	Concern	Requirement	Documentary evidence
Eligibility Requirements	1. Honesty - Avoidance of “conflict of interest”	a. No personnel of the EO may participate in preparation of the tender dossier  b. No personnel of the EO may receive assistance in preparation of its tender from the personnel of the CA preparing the tender dossier  c. No personnel of the EO may be in any case in a conflict of interest, as described in Article 4, paragraph 1.75 of PPL.	a. Signed Declaration Under Oath  b. Signed Declaration Under Oath  c. Signed Declaration Under Oath
	2. Truthfulness - Ensuring honest behaviour of the	a. Not found guilty by a court for corrupt practices  b. Not declared ineligible by a court where the CA finds this constitutes grave professional	a. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment  b. a proof issued by a competent judicial or administrative authority of the tenderer's country of establishment

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

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

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

- *The purpose of this criterion is to assess whether the tenderer has sufficient financial and economic stability to perform the proposed contract. Economic operators shall, as a general rule, be permitted to satisfy such a requirement by submitting, as may be relevant and appropriate, one or more of the following references:*
  1. *appropriate statement or statements from one or more banks; or*
  2. *evidence of a relevant policy of insurance issued by a reputable licensed insurance company; or*
  3. *certified copies of one or more balance sheets or extracts from balance sheets if publication of such balance sheets is required under the law of the economic operator's country of establishment; or*
  4. *copies of financial reports and management reports, certified by a known and licensed firm to examine or an independent licensed auditor; or*
  5. *Annual Tax Statements submitted to the Tax Administration of Kosovo.*

**1. appropriate statement or statements from one or more banks;**

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

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

~~**Requirement 1.** *The economic operator shall have in the last 3 years (2013-2014-2015) not less 500,000 Euro income as the average of the 3 years.*~~

~~**Documentary evidence 1.** *Bank statement about the company's annual income.*~~

**Good example:**

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

**Documentary evidence 1.** Statement from the bank certifying the availability of EUR 500,000 on the company's bank account or a bank statement (promissory note) confirming the company can receive EUR 500,000 credit if needed. The date of the bank statement cannot be earlier than the date of publication of the contract notice and refers to the respective activity.

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

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

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

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

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

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

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

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

In determining the minimum turnover, contracting authorities **shall not exceed two times** the estimated contract value. The turnover requirement shall be expressed mandatorily in figures and shall refer maximum to the past three financial years. Such financial years shall be expressly indicated in the contract notice or in the invitation to tender or participate. *Where, in addition to the minimum turnover, a certain minimum turnover in the specific area covered by the contract is required, such turnover shall not exceed 1.5 times the estimated value of the contract.*

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

***Example:***

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

***Evidence:*** Annual Tax Statement submitted to TAK for the last three years (2014, 2015, 2016)

Note: Requirement of economic and financial standing is a minimum requirement for qualification. It means that all the tenders fulfilling that minimal requirement fulfil the condition of economic standing, having no relevance when the evidence is greater than the minimum requirement specified.

In the case when the requirement of economic and financial standing refers to an aggregate turnover of EUR 3.000.000 in the last three year, and the economic operator fulfils the requirement set out in the tender documents in only two years or one year, it is considered that the EO fulfils the minimal requirement. The minimal condition is fulfilled by presenting evidence of the total turnover of EUR 3.000.000 in three years, with no importance how this turnover is shared in the three years.

***Note to the requirements of technical and/or professional capability (Article 69 of PPL)***

- In accordance with the public procurement law, the CA may ask OE a list of projects completed in the past 3 years. This list should be attached as evidence:
  - (i) where the delivery was made to a public authority in Kosovo or elsewhere, evidence of such delivery shall be a copy of the relevant certificate (certificate/report of acceptance/reference) issued or countersigned by such authority. All of this evidence must have the realized value.
  - (ii) where the delivery was to a private purchaser, evidence of such delivery shall be a copy of any document signed by the purchaser and evidencing such delivery;
- In all cases **included in 2.1, 4.2 and 6.2 of Article 69 of the PPL**, the following expression is mentioned: “.....performed *in the past three years*” or “*...over the past three years...*”. For the purpose of the Law, the expression “**the past three years**” means: “The period laid down in these articles which relates to the period preceding the date of publication of the contract notice or, in the case of negotiated procedures without the publication of the contract notice, the submission of the invitation to participate or tender.

For purposes of Article 69, paragraphs 2.1, 4.2 and 6.2, the expression “.....performed in the past three years” means the **Contracts on supply, services and/or works carried out** in the past three years (as explained above).

In such situations, it is recommended that the date from which the last three year period begins to be calculated be the date of publication of the Contract Notice, namely the date of sending the invitation to participate.

**Advice:** Many CAs apply the requirements of Article 68 and/or 69 of the PPL even in cases where there is no relevance or need to prove (e.g. for activities aimed at supplying goods not produced by their supplier). In these activities, the application of the criteria referred to in Articles 68 and/or 69 of the PPL is unreasonable and unprofessional and may cause unnecessary problems.

***Note on documentary evidence:***

- *The time period of the background documentary evidence under eligibility requirements is calculated from the date of the publication of the Contract Notice or, in the case of negotiated procedures without the contract notice, the date when the invitation to participate is sent.*

- Proof regarding eligibility requirements (apart from the Declaration under Oath) shall be requested to be submitted by the tenderer whom the contracting authority intends to award the contract. These documents must be submitted by the tenderer prior to the publication **of the Notice B58 on CA decision**. The deadline for the submission of the said documentation is not less than five (5) days from the receipt of the contracting authority's notice of the intention to award the contract. *Failure to submit such documents, its tender will be rejected and the CA shall proceed with the second ranked tenderer, and the tender security will be confiscated, if it had been required, and the CA will initiate the procedure for disqualification in accordance with Article 99.2 of the PPL.*
- *In cases where the issue of documents or certificates, under **eligibility or professional suitability requirements** are not obtainable for objective reasons, or where these documents do not cover all cases for which the evidence has to be produced, a written under oath declaration made by the EO may be accepted as sufficient evidence, notwithstanding Articles 65 and 66 of the PPL.*
- In case of a restricted or competitive negotiated procedure, proof regarding eligibility requirements shall be requested to be submitted by the applicants whom the contracting authority intends to invite to tender (short-listed). These documents must be submitted by the Applicants prior to the Contracting Authority's final prequalification decision. Deadline for submitting the documentation mentioned is not less than five (5) days from the time of the receipt of the notice of the intention of the contracting authority to pre-qualify the candidate. Failure to submit such documents means the candidate will be rejected and the Contracting Authority shall proceed with the second ranked tenderer. The same condition applies to OE during the conclusion of a framework agreement with several EOs - mini competition.
- *The Economic Operator may be permitted to demonstrate **its economical/financial standing** by any other document than those requested by the CA if the EO provides a valid reason and the CA considers it appropriate.*
- If, for any valid reason, an economic operator is unable to provide the references requested by the contracting authority pursuant to Article 69 of the PPL, such economic operator may be permitted to demonstrate its **technical and/or professional capability** by any other document that the contracting authority, ensuring competition and reasonable treatment of economic operators, considers appropriate. Alternatively, the contracting authority can ask for reference lists of projects and contact details from the contact person and verify the references if deems it appropriate. On the request of an economic operator to be permitted to make use of alternative documentation as mentioned in this Section, the contracting authority must grant the economic operator sufficient time for the mentioned documentation. Such time limit may not be less than five (5) days.

## 27. Group of Economic Operators

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

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

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

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

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

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

Example:

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

27.5 EOs are not allowed to present a tender as 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 of the members of the group withdraws, the composition of the group cannot be changed without the consent of CA. In this case, the CA should consider whether the selection criteria continue to be met.

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

## **28. Contract Award criteria**

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

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

### **Other award criteria are not allowed**

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

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

- **Quality characteristics;**
- **Operating, maintenance and other life-time costs;**
- **Functional, technical, environmental, aesthetic or similar Characteristics;**
- **After sales service and technical assistance;**

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

28.5 For Design contests and consultancy services, other criteria may be considered. Refer to Article 57 (Design Contests) and Article 59 (Consultancy Services) of these rules and operational guideline.

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

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

28.8 It is the duty of the Procurement Department/Unit to ensure that the best buy (most economical value) is obtained by taking into account the optimum combination of costs, which will include the total life cycle costs of the goods, works or services. It is necessary to look at all



those costs that will contribute to the 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, for example:

THE ITEM COST + THE OPERATIONAL COSTS:

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

THE ITEM COST + The running cost (operational cost)

THE ITEM COST + The human resources involved (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

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

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

28.11 In 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 formula and the weights indicated in the Contract Notice and Tender Dossier.

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

In case of multiple service contracts or in case of unit price contracts, the prices may be eventually weighted based on the importance of each “service category” or “item” so that the Contracting Authority could determine which the lowest priced bid is. In these cases, the Tenderer who submitted the lowest contract price can only be determined after having some calculations. In these cases, the Tenderer who has submitted the lowest price of the contract may be determined only after some calculations have been made. In certain cases, for example in 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 categories 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.

28.13 In case of 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.

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

28.15 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.

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

**GOOD EXAMPLE:**

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

Categories		Weight based on importance		Weighted price	Company A		Company B		Company C	
					Price	Weighted price	Price	Weighted price	Price	Weighted price
1	Price for scheduled services	60	%	Price x 60%	€ 100.00	€ 60.00	€ 80.00	€ 48.00	€ 110.00	€ 66.00
2	Price for maintenance and spare parts	20	%	Price x 20%	€ 100.00	€ 20.00	€ 80.00	€ 16.00	€ 50.00	€ 10.00
3	Price for repair services and Painting	5	%	Price x 5%	€ 120.00	€ 6.00	€ 200.00	€ 10.00	€ 70.00	€ 3.50
4	Price for vehicle frame parts	15	%	Price x 15%	€ 100.00	€ 15.00	€ 150.00	€ 22.50	€ 120.00	€ 18.00
		100%								
Total price (without weighting based on importance and frequency):					€ 420.00		€ 510.00		€ 350.00	
Total weighted price - Lowest priced contract:					101€		97€		98€	

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

The reason is that, although the total sum of unit prices is the lowest at Company C, but the Price of Scheduled Services (Item No. 1) will be ordered in most cases (60%), which is the most expensive in case of Company C.

The total sum of unit prices of Company B is the highest, however, the most frequently needed item (No. 1) is the cheapest at that firm therefore the total weighted price is the lowest at that firm. The invoice will be issued in any case based on the real quantities and not weighted prices! In this example, we only weighted the unit prices based on its importance!

## 29. *TenderSecurity*

29.1 Tender security is meant to support that:

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

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

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

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

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

- 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

**The following definitions apply:**

- (i) "bank" means a bank that is licensed by the Central Banking Authority of Kosovo or, in the case of an international bank, a bank licensed by a relevant National Central Banking Authority or other equivalent entity, in accordance with relevant national law in force.
- (ii) "insurance company" means an insurance company licensed by the Central Banking Authority of Kosovo or, in the case of an international insurance company, an insurance company licensed by a relevant National Central Banking Authority or by any other equivalent entity, in accordance with the relevant national law in force.

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

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

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

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

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

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

29.10 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 29.5 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, are to be considered invalid.

29.11 Notwithstanding Article 57 of the PPL, the tender security shall be unconditional. For the purposes of the above, the word “unconditional” means a guarantee on demand and that there should not be any conditions or requirements for any evidence 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.

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

29.13 **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 the PPL.

### 30. *Performance Security*

30.1 *Performance security* is meant to support the performance of the contract.

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

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

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

30.4 The amount of the performance security shall be equal to at least **10% of the value of the contract**. When determining the percentage of the performance security, in case of a medium or high value contracts, 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 has, after complying with Article 61 of the PPL, 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.

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

- 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.

*A “bank” and an “insurance company” shall have the same meaning as the one given in Article 29.5 of these rules and this Operational Guideline.*

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

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

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

- a) 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.

30.9 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.

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

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

30.12 Notwithstanding Article 63 of the PPL, 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.

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

## ***31. Tender Validity***

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

31.2 The tender validity period requirement shall be:

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

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

31.4 Under justifiable and/or exceptional circumstances 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).

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

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

## **32. *Hardcopy tender submission***

32.1 **Hardcopy tender submission shall apply only to activities for which the electronic tender submission is not possible (design contest, consultancy services, minimum-value contracts).** 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

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

32.3 The tender shall be submitted to the CA in one **original** exemplar and **the number of copies** that the CA has clearly stated in the tender dossier. The original tender as well as all the copies required shall be identical. **The copies shall be opened by the evaluation committee.**

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

- Mark clearly as “***Original***” or “***Copy***”;
- Indicate the procurement number as stated in the tender dossier; and
- Indicate the name and address of the tenderer.

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

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

32.6 Guidelines on form and submission of projects in a design contest are specified under Article 57 “Design Contests” of these rules.

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

32.8 All tenders, withdrawals, substitutions or modifications received prior to the time of the tender opening shall **be kept unopened in a secure place.**



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

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

### **33. *Electronic tender submission***

33.1 Electronic tender submission is done on the electronic platform.

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

33.3 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.

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

33.5 Tenders may be accompanied by hardcopy documents such as samples, catalogues and any other evidence that cannot be sent through the electronic procurement system; when drafting the electronic offer, economic operators **shall specify the documents which are submitted in hard copy**;

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

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

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

33.9 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.

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

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

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

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

33.14 If the e-Procurement system is not available (according to PPRC verification and confirmation) for the submission of bids on the day of the tender submission deadline due to technical or network problems, which is not the bidder's responsibility, then PPRC will inform the CA on how to act on procurement procedures on the same day. PPRC assumes no responsibility if the bidders are not able to submit bids by the deadline for submission of bids due to technical problems that are the bidder's responsibility.

33.15 If the tender consists of multiple groups (lots), the tenderer may submit one tender for multiple groups or one separate tender for each group; Tender Submission Form contains 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.

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

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

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

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

33.19 In relation to the actions described in paragraphs 33.16, 33.17 and 33.18 above, EOs must necessarily refer to the manual ***“EO Manual - preparation and submission of the bid”***.

## **34. Receipt of Tenders**

34.1 Receipt of the tender in hard copy only applies to activities for which the electronic tender submission is not possible (design contest, consultancy services, minimum-value contracts). Immediately at the receipt of the envelopes containing the tenders submitted in hardcopy, the CA shall mark the sealed outer envelopes with a serial number as well as the date and time of the receipt. If a tender is delivered personally, the CA shall issue to the bringer a receipt of delivery bearing the number, the date and time information.

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

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

34.4 For electronic tenders received through the Kosovo e-Procurement System, **Tender**

**Submission Form** must be time-stamped using national or commercially available timestamp service that is compliant to the EU EIDAS Regulation. Timestamp on the Tender Submission Form guarantees the time of reception of the tender as well as guarantees that the data in the tender submission form document have not been changed after the reception of the Tender Submission Form on the system.

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

34.6 Prices and other commercially sensitive information **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.

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

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

## **35. *Tender Opening Committee***

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

35.2 **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 members are appointed on ad hoc basis **and are notified in writing by the Officer responsible for the procurement activity**. The opening committee may be composed of the procurement officers.

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

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

## **36. *Opening of electronic tenders***

36.1 **Tender opening is performed using the Kosovo 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.

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

36.3 In the case the private key is lost, the procurement procedure is cancelled.

36.4 The process of public opening can start with the expiration of validity period for 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 assigned private key that was initially submitted to them by e-mail.

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

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

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

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

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

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

36.11 After 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).

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

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

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

36.15 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.

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

- 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

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

## **37. Tender Opening Process**

37.1 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 such tender;

37.2 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.**

37.3 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 in 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.

Whereas

- 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 specified in the financial proposal.

37.4 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 system as an additional document through the function Tender Dossier - “**add new document**”.

37.5 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 clarification that less than 3 requests to participate have been received.

37.6 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 that less than 3 requests to participate have been received.

37.7 In the event where the number of the responsive EOs for public framework contract with more than one EO is **less than 3**, the CA shall:

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

### **38. *Tender samples***

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

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

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

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

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

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

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

### **39. *Clarification of tenders***

39.1 To facilitate the examination, evaluation and comparison of tenders, the CA may ask each



tenderer individually for clarification of his/her tender. PPRC has approved a **standard form 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**.

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

39.3 However, it is permissible for a contracting authority 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**.

39.4 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 is part of the evaluation procedure. **The pass/fail requirements and the validity of the bids/applications can only be decided after the submission of the answers to the questions asked by the Contracting Authority and after the examination of the submitted additional documents.**

39.5 The Contracting Authority may invite economic operators to supplement or clarify the certificates and documents submitted in accordance with Articles 65-71 of the PPL, 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.

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

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

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

*The following examples are not the only cases. Depending on the case, the CA shall act in accordance with Articles 72 and 59 of the PPL*

Problem	How to act?	PPL Article
Missing reference/acceptance certificate from the list of contracts presented	Clarifying information may be required	69
The submitted List of contracts executed does not meet the minimum requirements specified	Reject the tender without seeking further information	69



List of contracts executed is not submitted but the proofs have been submitted (reference/acceptance certificate/contract)	Clarifying information may be required	69
Business registration certificate is missing	Clarifying information may be required	66
VAT Certificate is missing	Clarifying information may be required	66
Fiscal number certificate is missing	Clarifying information may be required	66
License is missing	Clarifying information may be required	66
ISO Certificate is missing	Clarifying information may be required	69
Price is missing	Reject the tender without seeking further information	Administrative condition
Submitted CV obviously does not fulfil the requirements	Reject the tender without seeking further information	69
Requested CV is not submitted	Clarifying information may be required	69
Submitted CV does not contain the information requested, the CA cannot decide over it	Clarifying information may be required	69
The proof on the economic and financial standing is missing	Clarifying information may be required	68
The proofs on economic and financial standing do not fulfil the minimum requirements	Reject the tender without seeking further information	68
The tender form is not filled out properly or missing	Reject the tender without seeking further information	Administrative condition
Price list is completed but not signed (tenders submitted in hard copy)	Reject the tender without seeking further information	Administrative condition
Tender security does not contain conditions defined by the standard form part of TD	Reject the tender without seeking further information	57
List price is not completed	Reject the tender without seeking further information	Administrative condition
A <b>clear</b> statement that all members of the group are jointly and individually liable is missing	Clarifying information may be required	Administrative condition
A statement signed by each member for confirmation of participation is missing	Clarifying information may be required	Administrative condition
A statement signed by all members of the group for authorization to the lead partner is missing	Clarifying information may be required	Administrative condition

The technical specification for the offered goods and catalogue is missing (" <b>Technical specification</b> " - the CA sets the minimum and maximum requirements of a product, while the EO must submit the detailed specification of goods offered. Unless the EO cannot submit the technical specification of a certain product e.g. fruits/vegetables etc., the EO submits a statement stating that the goods will comply with the required specification)	Reject the tender without seeking further information	28
Technical specification for the goods offered is submitted but the catalogue is missing	Clarifying information may be required	69
Catalogue is submitted but the technical specification for the goods offered is missing	Reject the tender without seeking further information	69
Original authorization is requested but the EO submitted a scanned authorization	Clarifying information may be required	66

#### ***40. Establishment of the Tender Evaluation Committees***

40.1 Refereeing to Article 59, paragraph 1 of the PPL, 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.

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

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

- a. The members of the committee shall fulfil the requirements of eligibility meaning that the persons who meet at just one of the following conditions are not eligible:
  - *been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described in Article 130.1 of the PPL under the*

*laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;*

- been declared ineligible, where the Contracting Authority finds this to constitute grave professional misconduct, verified by a competent court;*
- been determined by a court of competent jurisdiction to have committed a serious offence by participating in the activities of a criminal organization, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial gain through activities that are criminal or otherwise illegal where they take place;*
- been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;*
- been determined to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct; or*
- been determined by a court of competent jurisdiction to have made serious misrepresentations to any public authority in Kosovo or elsewhere.*

- b. All members of the committee are strictly subject to the provisions of Article 11 of the PPL 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 the PPL. All members of the Evaluation Committee assume full individual responsibility for the performed bid evaluation in regard to the technical evaluation of the Tender.

40.4 The Responsible Procurement Officer may not serve as 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 the PPL.

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

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

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

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

40.9 Voting only applies to the criteria 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)**.

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

40.11 The committee shall, at the end of its task, provide the responsible Procurement Officer a recommendation together with a report on its work and a statement of reasons supporting that recommendation, including a statement as to the strengths and weaknesses of each proposal of tenderers. The report of the committee should be kept in records of the procedure.

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

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

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

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

## ***41. Examination, Evaluation and Comparison of Tenders***

41.1 Timely received tenders submitted by the EOs shall be examined, evaluated, and compared in accordance with the procedures and criteria set out in the contract Notice/Tender Dossier and the contract shall be awarded to the highest ranked tenderer. Accordingly, the contracting authorities cannot change, modify, or omit already introduced requirements, criteria or specifications or introduce new ones during the procurement procedure. This also applies

when the contracting authorities re-evaluate the procurement procedure in order to correct wrong decisions and when a re-evaluation is done as a result of a PRB decision including an order for re-evaluation. A decision to re-evaluate the selection of bidders or award of the contract does not imply a change in the initial results.

41.2 The procedure for examination, evaluation, and comparison of tenders shall be completed by the CA within the shortest possible period of time and no more than 30 days from the opening of the tenders. Only in exceptional and justified cases, in particular with the 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 and not later than 5 days after the completion of the tender opening process.

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

1. Tenders shall comply substantially in administrative terms with the formal requirements specified.
2. Tenderers shall be eligible and shall meet the minimum qualification requirements (if established).
3. Tenders shall comply substantially in technical terms with the mandatory technical requirements specified.
4. Responsive tenders shall be evaluated against the specified contract award criteria.
5. Only the requirements and the contract award criteria specified in the contract notice/tender dossier may be used as basis for the evaluation.
6. No negotiations shall take place between the contracting authority and the tenderers during the evaluation procedure, except for communications that are specifically authorized by Articles 34 and 35 of the PPL.
7. 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 PPL.
8. The contract shall be awarded in strict accordance with the evaluation conducted pursuant to the above mentioned 7 principles.

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

41.5 A tender is considered to be responsive when it:

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

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

“**Substantial departures or restrictions**” are those which:

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

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

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

41.8 A contracting authority shall correct an error in a tender that is of a purely arithmetical nature if such an error is discovered during the examination of tenders, however, this correction cannot be higher than two 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 mentioned bid will be rejected. The CA shall as well send to all relevant tenders (EO which have submitted tenders) a written notice of such changes.
- ii. If the corrected amount is **more than +/- 2%, the CA will eliminate the EO** and will inform in writing the EO in question by using the standard form B42.

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

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

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

- a. If the tenderer does not accept them, his/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.

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

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

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

41.14 During the course of the tender evaluation, information relating to the examination, clarification, evaluation, comparison of tenders, points awarded, and the recommendation for the award, shall not be disclosed to tenderers or to 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**.

41.15 If the OE offers a price with 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 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.

## **42. Abnormally Low Tenders**

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

## **43. Notifying Tenderers/Candidates**

43.1 All tenderers/candidates must be duly informed by the CA upon the publication of the Form B58 - Notice on the CA Decision in the electronic platform as an additional document through the option Tender Dossier - "**add a new document**".

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

43.3 Upon expiry of the time limit for the submission and review of complaints, the CA shall prepare and publish the **Contract Award Notice** on the e-procurement platform.

***Date of publication of the Notice on the CA Decision, namely the notification of the tenderers/candidates, means:***

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

***The date of notification of the tenderers/candidates is "day 0" of the mandatory 5 days of the "pending" period.***



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 4, paragraph 4.2 of the Rules of Appeal, the date of notification is “*day 0 of the 5 days*”

#### ***44. Termination of a procurement procedure***

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

44.2 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 regardless of the type or value anticipated and such notice shall be published on the e-procurement platform.

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

44.4 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.

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

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

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

- (i) All responsive tenders contain prices that exceed the CA's budget.

44.7 The procurement procedure **may, prior to the opening of bids**, be cancelled for the following reason:

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

44.8 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 the PPL concerning compensation to the complainant.

44.9 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 number but identifying it with "Re-tender".

## **45. Standard Forms**

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

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

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

45.4 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 Form for the establishment of the Group of the EO, the Manufacturer Authorization Form, the Form for the list of projects completed, etc.

45.5 Also, in accordance with Article 13.2 of the PPL, the CA may determine the terms and conditions of public contracts 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.

## **46. *Administration of procedures***

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

## **47. *OPEN Procedure***

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

47.2 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 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.

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

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

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

47.5 An open procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL.

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

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

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

### ***Tender dossier***

47.9 The tender dossier shall be downloaded in the e-platform by the stakeholders.

### ***Additional or clarifying information***

47.10 In case an economic operator needs additional or clarifying information on certain element(s) 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 the PPL. A standard form for such request is included in the annexes to the tender dossier, and the same may be used by the EO.

47.11 The contracting authority having received a request as mentioned in Article 47.10 above, shall immediately review such a request and react in accordance with the provisions of Article 53.4 to 53.6 of the PPL, **and shall upload information regarding additional clarifications in the e-procurement platform as an additional document through the Tender Dossier option - "add a new document".**

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

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

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

47.15 For the receipt and opening of the tenders, refer to Articles 34-36 of these Rules.

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

47.16 The procedure includes 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.

47.17 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.**

47.18 The contracting authority shall evaluate whether tenders having passed the tests of Section 47.7 of these Rules and Operational Guidelines, **comply with the technical terms, requirements and specifications of the tender dossier**. A tender, as a main rule, is only considered to be responsive if it complies with the technical specifications in the tender dossier.

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

47.20 The possibility for accepting tenders therefore depends on what “material aspects” are. As regards the contractual elements of the tender dossier, any aspect would be considered material if it 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 to 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 the PPL) 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 47.21 of these Rules and this Guideline, the contracting authority will be able to accept minor deviation in cases where such deviation can be quantified.

47.21 Article 59.4 of PPL requires that errors and oversights must be corrected and that minor deviations must be quantified. The errors and oversights are different from the arithmetic ones referred to in Article 41.9 of these Rules and this Guideline. Errors and oversights can be textual or they may concern other aspects of the tender. Textual errors and oversights must be so objectively obvious so 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 PPL. The quantification of minor deviations is aimed 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.

47.22 According to Article 59.2 of the PPL, the contracting authority may request clarification of any aspect of a tender from the concerned economic operator in writing. This dialogue between the parties 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 the PPL. Such clarifications must, under no circumstance, institute negotiations. Without response from the concerned economic operator, the contracting authority shall reject the tenderer. Contracting authorities’ request for clarification of tenders shall be made by use of the standard form B47 approved by the PPRC.

47.23 With reference to Article 59.3 of the PPL, **the contracting authority may correct a purely arithmetical error in a tender, if such an error is discovered during the**

**examination of tenders. However, this correction cannot 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 41 of these Rules and of this Guideline.

47.24 Article 56.3 of the PPL clarifies that the tenderer shall not be disqualified or excluded from the procurement procedure on the basis of any requirement or criterion not specified in the contract notice and/or the tender dossier.

47.25 Tenders that are not rejected under the above Articles shall be deemed to be "responsive". The contracting authority will evaluate and compare responsive tenders based on the contract award criteria set out in the contract notice and in the tender dossier.

47.26 If in the tender dossier and in 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 in the contract notice. These criteria must meet the following requirements in accordance with Article 52 of the PPL:

1. 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.
2. 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.
3. 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 will 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.

47.27 Article 52.4 of the PPL 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.

47.28 In case the contracting authority objectively considers a bid as abnormally low, it shall proceed according to the procedure prescribed under Article 42 of these Rules and this

Guideline.

47.29 For tenders meeting the requirements concerning formal accountability, technical conditions, description and specifications of the tender dossier, and financial evaluation, the contracting authority will continue to **evaluate/verify eligibility**, and if applicable, the bidders' qualifications according to the selection criteria specified in the contract notice and in the tender dossier, based on the necessary documentary evidence.

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

47.31 The evaluation report includes discussions, evaluation of tender examination and the same is submitted to the RPO for approval. Prior to 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 in the Contract Notice. Upon receipt of eligibility evidence, the RPO shall sign the Evaluation Report and upload it to the platform.

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



***Contract award and signing***

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

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

The prepared contract award notice shall be published in accordance with Article 22.c of these Rules.

47.35 The tender dossier, including annexes, lays down all material terms and conditions of the contract and there is therefore no scope for any negotiation of contract terms before the signing. Additionally, such negotiations will establish a breach of the principle of equal treatment. The Procurement officer shall make a contract document ready for signing on the basis of the tender dossier and the winning tender. When the pre-conditions 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 and shall send it to the PPRC for publication. The CA using the electronic platform shall upload such notice in the platform. The contract shall be performed in conformity with its contract terms and conditions and the contract management plan according to Article 81 of the PPL. This plan is developed as part of the preparation of the procurement activity and must be agreed upon and signed between the parties as a condition for implementing the contract.

***Distribution of the signed contract***

47.36 The tender documents shall indicate the numbers of copies of the contract to be signed. After the contract has been duly signed, both parties shall distribute legible copies of the signed contract within the organization, to the following:

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

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

## **48. One-envelope and Two-Envelope Tendering Procedure**

48.1 **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**.

48.2 In the case of the **one-envelope approach**, commonly used for competitions, the financial and technical proposals are contained in the same envelope and the financial 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.

48.3 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**. Two-envelope approach applies only when using a restricted procedure for consulting services.

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

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

48.6 Only the technical proposals are opened at the date and time specified in the **Tender Dossier** and the financial proposals remain sealed and 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.

48.7 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 it by the number of the evaluation committee members. It must be emphasized that the Contracting Authority shall determine, in the Tender documents, the balance between the ratio of the technical and the financial weighting **and** the minimum number of points for the technical proposals which the Tenderers will have to achieve in order to be qualified (considered responsive).

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

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

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

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

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

## **49. RESTRICTED procedure**

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

- 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.
- In the first 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.

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

### ***Phases of the procedure***

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

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

49.5 After the time limit for receipt of requests to participate, the contracting authority evaluates the candidates qualification in accordance with the published qualification requirements. Candidates that meet the required qualification requirements 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 contract notice***

49.6 A restricted procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL.

49.7 For publication of the contract notice, Articles 47.5 - 47.8 of these Rules shall apply.

49.8 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.

49.9 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 the PPL.

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

49.10 The Prequalification document, produced by the Contracting Authority by using the standard form approved by the PPRC B33 ***“Prequalification Document”*** shall be downloaded by the interested economic operators from the electronic platform. **For additional information/clarification refer to Articles 47.10 - 47.14 of these Rules.**

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

**49.11 Upon receipt of the participation requests, refer to Article 34 of these Rules.**

49.12 Timely received applications shall be opened by the contracting authority immediately after the expiration of the deadline for submission of the applications. There shall be no public opening meeting but the opening shall be arranged in such a way that the integrity and fairness of the opening procedure is ensured meaning that the minutes of the internal opening session shall be prepared. The CA does not need to send the minutes of the internal opening session to the candidates but the list of the received envelopes and the minutes of the internal opening session shall be open 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 the PPL.

49.13 The PPL defines **the maximum number** of EOs who should be invited in the second phase BUT does not specify **the minimum number** of EOs who should be invited in the second stage, however, the word "*Selected Economic Operators*" or "*Candidates*" is always mentioned which means that in the second phase it takes more than one EO in order for the Contracting Authority to have competition in the second stage. Given that in the EU Public Procurement Directives the minimum number of EOs in the restricted procedure is set at 5 (five), and based on international best practice and in order to ensure adequate competition and transparency, CA should not proceed to the second phase if it has received less than 3 (three) responsive applications.

49.14 If the procedure is cancelled, a notice of cancellation shall be prepared promptly and shall be published in accordance with Article 44 of these Rules.

### **Procedure for examination of requests to participate (applications) – 1<sup>st</sup> stage**

49.15 The procedure essentially includes two stages, which means first evaluating the responsibility of the candidates and evaluating the eligibility and qualification of the candidates.

49.16 The contracting authority, as an initial measure, will verify whether the requirements **meet any of the formal conditions of pre-qualification documents**, or in other words, responsibility in the formal sense. An application is considered to be formally completed if it meets all the formal requirements in the pre-qualification documents, not significantly departing from or imposing restrictions on them.

49.17 For applications that meet requirements concerning formal accountability, **the contracting authority will continue to evaluate the eligibility, and qualifications of the bidders who have passed the 49.16 test**, according to the selection criteria specified in the contract notice and in the tender dossier, based on the necessary documentary evidence.

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

49.19 In Article 56.3 of the PPL, it is made clear that a candidate shall not be disqualified, excluded or eliminated from such procurement procedures on the basis of any requirement or criterion not specified in the contract notice and/or in the pre-qualification document.

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

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

the contract. Therefore, they must relate to the contract to be awarded.

**Example No. 1:**

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

“Technical capacity criterion:

- a) experience: economic operators have successfully completed at least two contracts for the supply of computers of a minimum value of EUR 100,000 every year during the last two years”.

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

***IV.1.2) Limitations on the number of the operators to be invited to tender (restricted procedure)***

*“Based on the applications received, at least 3 and at most 6 candidates will be invited to submit detailed tenders for this contract. If more than 6 eligible candidates meet the above selection criteria, the relative strengths and weaknesses of the applications of these candidates shall be re-examined to identify the six best applications for the tender procedure. The only factors which will be taken into consideration during this re-examination are:*

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

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

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

**Example No. 2:**

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

“Technical capacity criterion:

- a) experience: economic operators have successfully completed at least two contracts for computers supply of a minimum value of EUR 100,000 every year during the last two years”.

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

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

*Based on the applications received, at least 3 and at most 6 candidates will be invited to submit detailed tenders for this contract. If more than 6 eligible candidates meet the above selection criteria, the relative strengths and weaknesses of the applications of these candidates must be re-examined to identify the 6 best applications for the tender procedure. The only factors to consider during this re-examination are:*

***The total value of the three (3) successfully completed contracts that meet the technical capacity criterion set out in the Contract Notice Section III.2.4 point a) ("economic operators have successfully completed at least two computer supply contracts of a minimum value of EUR 100,000 every year during the last two years");***

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

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

49.22 Following the approval of the application report by the RPO, the CA shall prepare and publish Form B58 ***Notice on the decision of the CA*** on the e-procurement platform.

***Invitation to tender***

49.23 With reference to Article 50 of the PPL, the pre-qualified candidates selected shall be invited to tender at the same time.

49.24 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 the PPL. The provisions of Article 47.10 - 47.14 of these Rules and Operational Guidelines apply similarly.

## ***Procedure for examination, evaluation, and comparisons of tenders. Contract award and signing – 2<sup>nd</sup> stage***

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

49.26 As a preliminary measure, the contracting authority shall check that tenders comply with any formal requirements of the tender dossier, in other words responsiveness in a formal sense. A tender is deemed to be formally responsive, if it satisfies all the formal requirements in the tender dossier without substantially departing from or attaching restrictions to them. These formal requirements may concern the completion of the tender form, tender security, etc. Such examination of responsiveness of tenders shall be completed by using the standard evaluation form approved by the PPRC.

49.27 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 a main rule, is only 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 standard evaluation form approved by the PPRC.

49.28 The provisions of Articles 47.16 - 47.32 of these Rules and Operational Guidelines shall apply analogously for the procedure for examination, evaluation, and comparison of tenders.

49.29 The provisions of Articles 47.33 – 47.37 of these Rules and Operational Guidelines shall apply analogously for the contract award and signing and for the distribution of the signed contract.

## ***50. Emergency Procurement***

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

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

### **Cases of extreme emergency**

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

50.3 The **conditions** for use of the emergency procedures are, accordingly, the following:

- **strict necessity** of the conduct of a procurement activity on emergency basis,
- motivated by **objectively** verifiable events that were **not** reasonably foreseeable by the contracting authority,
- **cannot** afford the time limits required, and
- the emergency circumstances are **not** attributed to negligent or purposeful acts or omissions of the contracting authority.

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

50.4 However, the requirements of Article 35.3 of the PPL 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:

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

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

### **Cases of urgency**

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

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

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

50.8 The minimum time limits for receipt of tenders/request to participate in accelerated procedure are mentioned in Article 21 of these Rules. 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.

50.9 Requests for additional or clarifying information will be received by the contracting authority not less than 3 days before the due date for admission.

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

## ***51 Competitivenegotiatedprocedure***

### ***Stages of the procedure***

51.1 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**.

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

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

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

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

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

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

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

### ***Publication of the contract notice. Pre-qualification. Invitation to submit the proposal. Tender dossier – 1<sup>st</sup> stage***

51.6 A competitive negotiated procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL.

51.7 For publication of the contract notice, Articles 49.6-49.9 of these Rules shall apply.

51.8 The pre-qualification procedure shall be performed in accordance with the provisions of Articles 49.15-49.22 of these Rules.

51.9 All pre-qualified candidates, minimally 3 candidates, shall be invited simultaneously to submit a tender that can serve as 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 CA shall take into consideration only the factors, published on the Contract Notice, for re-examination. This must be known to the candidates therefore this must be indicated in the Contract Notice. The provisions of Article 49.19 of these Rules shall apply analogously.

**Receipt and opening of tenders. Examination and evaluation of proposals.  
Invitation to further negotiations – 2<sup>nd</sup> stage**

50.10 Timely received proposals shall be **opened** by the Contracting Authority immediately after the expiration of the deadline for submission of proposals. There shall be no public opening meeting but the opening shall be arranged in such a way that the integrity and fairness of the opening procedure is ensured meaning that the minutes of the internal opening session shall be prepared. The Contracting Authority does not need to send the minutes of the internal opening session to the candidates but the list of the received envelopes and the minutes of the internal opening session shall be 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 the PPL.

51.11 The procedure for **examination and evaluation** of proposals shall be conducted similarly pursuant to Article 49.25-49.27 of these Rules.

51.12 The CA will determine in the contract notice if:

1. 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
2. it will award contracts based on initial tenders without negotiations.

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

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

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

***Conduct of negotiations. Evaluation of final tenders. Contract award and signing-3<sup>rd</sup> stage***

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

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

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

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

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

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

51.21 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.

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

51.23 The provisions of Articles 47.33 - 47.37 of these Rules shall apply comparably to the contract award and signature as well as to the distribution of the signed contract.

## 52 *Negotiated procedure without publication of a contract notice*

### *Stages of the procedure*

52.1 The negotiated procedure without publication of a contract notice is a procedure that involves the Contracting Authority to negotiate, 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**.

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

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

#### Any public contract

- when, for technical or artistic reasons there is only one possible economic operator;
- due to the existence of exclusive copyrights there is only one possible economic operator;
- in cases of extreme urgency.

#### Supply Contract

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

#### Service Contract

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

#### Service or Works Contract:

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

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

do it within two (2) days after receipt of such report. PPRC opinions 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 the PPL.

52.5 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 Cancellation Decision in the "other documents" option.

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

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

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

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

52.8 Where the contracting authority determines to conduct the negotiations ***with more than one economic operator***, the negotiations shall take place according to the provisions of Articles 51.15 - 51.19 of these rules.

52.9 The provisions of Article 47.33 – 47.35 of these Rules shall apply analogously to the contract award and signing and to the distribution of the signed contract.

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

## ***53 Price quotation procedure***

### ***Stages of the procedure***

53.1 A price quotation procedure shall be conducted pursuant to Article 36 of the PPL and in the phases following this Article of these rules. The standard tender dossier for quotation procedure approved by PPRC shall be used for the conduct of this procedure.

53.2 In the tender dossier the Contracting Authority shall indicate that the quotation must contain a fixed price including any and all applicable taxes and duties as well as any transportation, insurance, installation or other charges, fees or expenses of any description, that the contracting authority will need to pay to obtain the concerned works, supplies or services.



53.3 A contracting authority may use the price quotation procedure, if the intended contract 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.

#### ***Development of price quotation procedure***

53.4 A price quotation procedure is initiated by the publication of a contract notice prepared pursuant to Article 40 of the PPL.

53.5 The provisions of Articles 47.5 - 47.8 of these rules shall apply analogously for the publication of the contract notice. The minimum time limit for submission of price quotations in accordance with Article 47 of the PPL must be **five (5) days** from the date of publication of the contract notice. Date of notice shall be "day 0" of 5 mandatory days.

53.6 Article 25 of these Rules, in accordance with Article 53 of the PPL which deals with additional information shall apply analogously.

#### ***Contract award and signing***

53.7 **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. 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.

53.8 The provisions of Articles 47.33 – 47.35 of these Rules shall apply analogously for **the contract award, signing and for the distribution of the signed contract**.

### ***54 Procedure for minimal value contracts***

#### ***General Principles***

54.1 The Contracting authority may use the minimal value procedure for any public contract the estimated value of which is **less than EUR 1,000**. By 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. The Director of the Educational Institution is the person authorized to sign a minimal value contract in educational institutions.

54.2 In calculating the contract value for the use of the minimal value procedure, the contracting authority shall take into account only a group of similar supplies, services or works, which are usually procured altogether and should not be divided for the purpose of using such a procedure.

#### ***Development of Minimal Value Procedure***

54.3 The Minimal Value Procedure shall be performed by the contracting authority with no intention to discriminate against or favour any economic operator.

54.4 The contracting authority is obliged to (i) ensure that the agreed price is not higher than the concerned market price, and (ii) carefully assess the quality of the concerned products, services or respective works.

54.5 At least **3 (three) economic operators** of the concerned goods/services/works shall be contacted. This does not mean that the Contracting Authority is obliged to receive 3 (three) bids but the Contracting Authority is obliged to document that at least 3 economic operators were contacted by producing a register of the contacted Economic Operators. It means, that the CA shall continue with one responsive bid.

54.6 When contacting economic operators, the Contracting Authority shall compile the Quoted prices, by using the standard form approved by the PPRC, **“Quoted Prices for minimal values”, B19 standard form.**

54.7 Each “Quoted Price” shall be signed by each of the contacted economic operators and by the Procurement officer. The given prices must not be revealed to any of the economic operator contacted.

54.8 The Procurement Officer shall produce the **“Minutes of the Quoted Prices”**, that will contain the names and address of contacted economic operators and the offered prices. There is no need to establish an opening and evaluation committee and there is no need to prepare the evaluation report. Minutes of the Quoted Prices are considered as opening and evaluation report. At the same time, the "Price quoted" signed by the winning economic operator is considered as contract which must be signed by the responsible procurement officer.

54.9 The Procurement Officer shall award and issue the purchase order to the economic operator who has offered **the lowest price**. Contract signing notice shall be prepared within 2 days after signing the contract and shall be sent to PPRC for publication.

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

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

54.12 Without prejudice of the above, in cases of emergency, when the written approval of the Authorizing Officer proves to be impossible, the service, works or goods can be ordered by any person subject of the emergency. The use of the standard form “Quoted

Prices” and the minimal number set out in Article 54.5 of these rules is not required in such circumstances.

54.13 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 detail written report on the circumstances justifying the emergency, and shall provide appropriate evidence on the received supplies/services.

## **55 *Immoveable Property Contracts***

55.1 According to Article 3.9 of the Law on Public Procurement, immovable property is exempted. This means that contracting authorities shall not apply the law on contracts regarding acquisition or rental of land, buildings or other immovable property or rights thereof except when foreseen in other laws. These contracts are governed by the CA internal procedures.

## **56 *Framework Contracts***

### ***Definition and principles***

56.1 “**Public framework contract**” means an agreement for a limited period between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to the price and, where appropriate, the quantity envisaged.

56.2 *In other words*, a public framework contract is a general term for agreements, between the Contracting Authorities and economic operators 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.

56.3 Public framework contracts set out the terms and conditions under which subsidiary contracts or orders will be made. With this approach, contracts are reached only when goods and services are ordered or “requested” under the public framework contract.

56.4 *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 the PPL. In this way a lot of resources are saved.

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

56.6 A number of 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.

56.7 The Contracting Authority before the initiation of the procedure must consider whether a public framework contract is the best approach for the particular procurement. This will involve making value for money judgments taking into account the nature of the procurement and the ability to specify the procurement with sufficient precision at the outset.

56.8 The government may decide that all contracting authorities, as defined in Article 4 of the PPL, should be subject to framework contracts and thus 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 case of central procurement activities, like public framework contracts conducted by the Central Procurement Agency on behalf of other Contracting Authorities, use of these central contracts are mandatory for the Contracting Authorities.

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

56.10 The estimated quantity specified in the tender documents is **only 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 payment orders exceed **the total indicated quantity or total indicated value** of the public framework contract (including + thirty per cent (30%)), regardless the original expiry date of the Public Framework Contract, it will be automatically ceased. **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.**

56.11 Allowed discrepancy consists 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 undertakes 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.

56.12 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 dissatisfied party may refer to the competent Court.

56.13 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 the PPL.
- 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.

56.14 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.

56.15 Whenever the Contracting Authority does not know the indicative quantities, **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. The amount of performance security in these cases should be determined as a fixed amount, while for the purposes of reporting to the PPRC the estimated value of the contract is recorded. **Unit price contracts can be guided for all types of contracts, supply contracts, services and works.**

#### ***Duration of public framework contract***

56.16 The duration of public framework contract cannot exceed **36 months**.

56.17 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, 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.

56.18 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***

56.19 Where the contracting authority intends to award a public framework contract, it shall either use:

- (a) **the open procedure;**
- (b) **the restricted procedure; or**
- (c) **the negotiated procedure.**

56.20 The procurement steps as determined in these Rules regarding each specific procedure, shall apply analogously for:

- a) **The publication of Notices;**
- b) **The time limits;**
- c) **The selection Criteria;**
- d) **The award Criteria's; and**
- e) **The procedures regarding opening of tenders and award of contracts.**

56.21 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***

56.22 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.

### ***Types of public framework contract***

56.23 There are two types of public framework contracts:

- a) Those that **establish all the terms** of the contract; and
- b) Those which **do not establish all the terms** of the contract and accordingly need some further competition to establish the terms of a contract.

56.24 Depending on the circumstances (type of the public framework contract concluded) orders may be placed with or without further competition.

- a) **Without further competition**, on the basis of the previously held competition, referred to as “Public framework contracts which establish all the terms”; or

- b) **With further competition**, on the basis of a “mini-competition” between Economic Operators 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***

56.25 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***.

56.26 The terms laid down in the public framework contract shall **be precise** to cover specific requirements.

56.27 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.

56.28 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 establishment of the public framework contract.

56.29 The Contracting Authority shall place the order whenever the needs for supply of the kind mentioned in the public framework contract appear.

56.30 The orders must be within the limits of the terms laid down in the public framework contract without reopening competition.

56.31 The terms applicable to any orders under this type of framework agreement are set out in a binding manner and no further agreement by tender, negotiation, etc. is required. Provided that mechanisms that facilitate such change are incorporated, this does not, however, mean that nothing can change e.g. price adjustment related to a recognized index.

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

***Public framework contract with more than one economic operator***

56.33 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**.

56.34 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.

56.35 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.

56.36 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.

56.37 The award criteria and weightings to be used for subsidiary contracts must be stated in the tender dossier.

56.38 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.

56.39 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.

56.40 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.

56.41 The reopening of competition must be on the basis of the “the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the 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.

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

- (a) Contact in writing all economic operators which are parties to the framework agreement and invite them within a specified time limit, to submit their tender in writing for each subsidiary contract to be awarded;
- (b) The Contracting Authority reserves the right to verify the eligibility requirements during the mini-tendering phase;
- (c) Set the time limit for the receipt of the bids, not less than **5 days**. The CA shall take into account factors such as the complexity of the subject matter of the contract and the time needed for the EOs to prepare and submit their tenders;
- (d) Keep each tender confidential until the conclusion of the procurement activity;
- (e) Opening & Evaluation of Tenders shall be based on rules established in these rules;
- (f) The award of the contract is made “on the basis of the award criteria set out in the invitation to Quote”. The award criteria do not mean that they have to be identical as those used for the conclusion of the public framework contract. For instance, some terms may have been definitively established when the public framework contract was concluded and do not require further competition. The award criteria for elements yet to be established must be declared in the tender dossier of the framework agreement;
- (g) Award each subsidiary contract to the economic operator which has submitted the best tender on the basis of the award criteria specified in the invitation for the mini-tenders;
- (h) Each subsidiary contract shall be subject to the preparation and the publication of the contract award notice requirements;
- (i) Each subsidiary contract shall be subject to the signing requirements of Article 26 of PPL; and

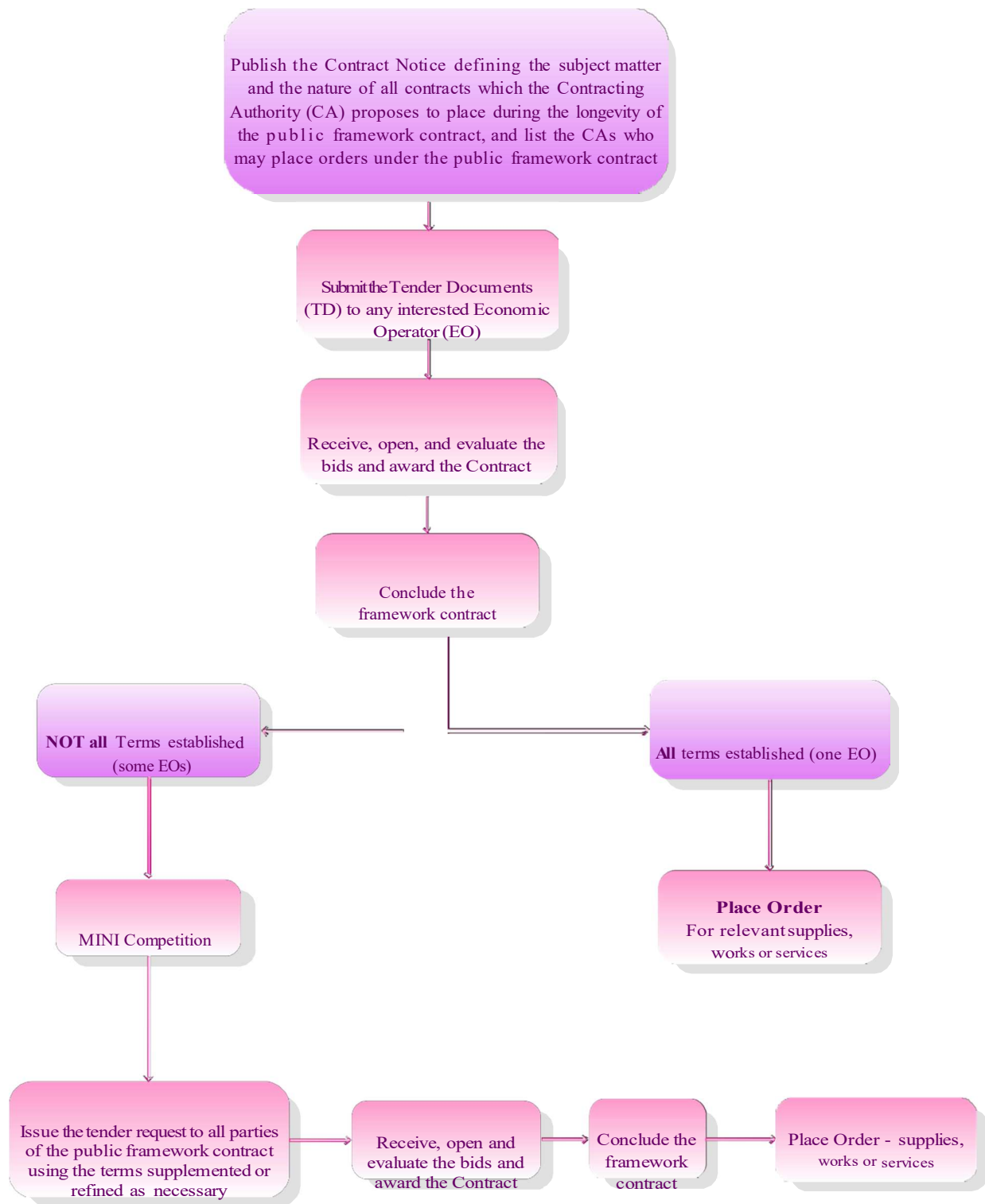


- (j) Each subsidiary contract shall be subject to the rules governing the filing of complaints and other review provisions of Title IX of the PPL.

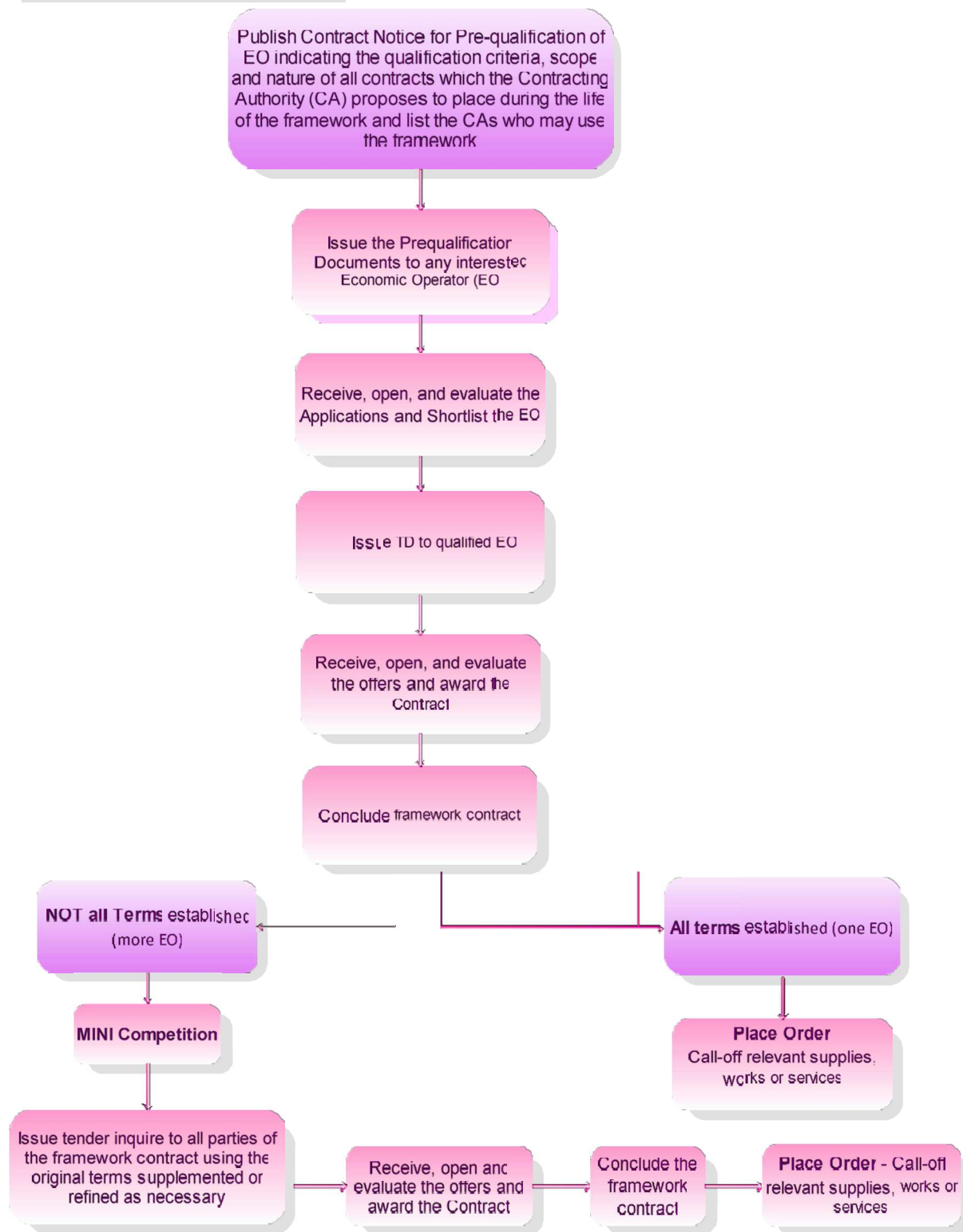
56.43 In case of a public framework contract with more than one EO - mini-tendering.

- 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.

## Open Procedure – Procedure steps



## Restricted Procedure



## 57 *Design contest*

57.1 A design contest is 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 is a preliminary design to be followed by a **detailed design**.

57.2 The winning design is selected by an independent jury.

57.3 A design contest may be organized as part of a procedure:

- a. **leading to or involving the award of a service contract** (the winner of the contest is awarded the contract for the subsequent design phase); or
- b. **leading to money prizes** (the winners are paid prizes and the best design is used as basis of technical specifications in a subsequent procurement activity).

57.4 In case of a procedure **leading to or involving the award of a service contract “detailed design”**, the Contracting Authority shall request from the economic operators to submit with their proposal the “financial offer” for the detailed engineering design which shall be sealed in the envelope containing the “Candidate’s Documentation”. In this case the Contracting authority shall specify in the technical design the weight scores of the conceptual design and the weight scores of the financial offer.

### *Use of the Design Contest*

57.5 A design contest can be used for any project in which the contracting authority relies on candidates to supply solutions to a particular requirement that can be represented in a plan, design, schematic drawing, model or some other visual forms.

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

57.7 The procedure cannot be used for the supply of products or services (*other than the plan or design itself*). Where works or services are required in order to give effect to the plan or design then the contract to execute the services or works must be awarded separately.

57.8 A design contest shall not be used for particularly complex projects when the technical means to satisfy a contracting authority's requirements cannot be simply or objectively defined or cannot be represented in a plan or design. For example, a contracting authority may use the design contest procedure to invite candidates to submit a conceptual plan, design, etc., of:

- a town or area, in terms of its layout, or its economic/tourist development;
- buildings and structures, when architectural or aesthetic qualities, as well as functional qualities, are of primary importance;
- utility network infrastructure, such as a transport network, rail and road connections, ports and airports, or water engineering projects

- machinery or apparatus, intended for a specific purpose, or with aesthetic qualities;
- computer systems, such as for data processing and storage, access to public information and online services to the public;
- social and communication networks, such as systems or 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*

57.9 A design contest shall be conducted pursuant to Articles 73-80 of the PPL 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. Design contests are put before a jury, which deliberates autonomously and in secret. There is no public bid opening as the design contests put before the jury are anonymous. The jury's decision is final, but the contracting authority is not obliged to adopt the design unless it has declared otherwise.

### *Publication of design contest notice*

57.10 A design contest is initiated by the publication of a design contest notice prepared pursuant to Article 75 of the PPL. Such design 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.

57.11 For publication of the design contest notice, Articles 47.5-47.8 of these Rules shall apply analogously.

57.12 Articles 47.7-47.8 of these Rules shall apply analogously to the specification in the design contest notice of time limit for request of design contest dossier and any fee to be paid for a paper version of the design contest dossier, respectively.

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

57.13 With reference to Article 18 of these Rules, the Design Contest dossier comprises 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 to the contest shall, simultaneously, submit their proposals **in two separate sealed envelopes:**

#### **a. one containing the Conceptual Project; and**

**b. the other one containing the Candidate's Documentation.**

57.14 The envelope containing the Conceptual project shall contain:

- a. the original exemplar of the project; and
- b. the required **number of copies** of the project".

The participant shall **seal the original project** and each copy *in separate envelopes* and 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. Write an anonymous four digit number of the participant's own choice.

The envelopes shall then be sealed in an **outer envelope** clearly marked "**Conceptual Project**" and bearing only the procurement number and an anonymous four digit number of the participant's own choice.

57.15 The envelope contacting the Candidate's Documentation shall contain:

- a. the original exemplar of all other requirements, (name, address, eligibility, economical/financial and technical requirements, *and if applicable*, the financial offer), marked as "**Original**"; and
- b. the required **number of copies** of the candidate's documentation.

The participant shall **seal the original exemplar** of the candidate's documentation and each copy *in separate envelopes* and 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 project".

The envelopes shall then be sealed in an **outer envelope** clearly marked "**Candidate's Documentation**" and bearing only the Procurement number and an anonymous four digit number of the participant's own choice.

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

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

**57.17** Article 23 of these rules shall apply analogously to the **delivery of the design contest dossier**.

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

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

- (i) innovation;
- (ii) aesthetic content;

- (iii) adequate blending with the surroundings;
- (iv) efficient use of the available space; and
- (v) attractiveness for the potential users.

***Additional or clarifying information***

57.19 Article 25 of these Rules applies similarly to **additional or clarifying information** to participants.

57.20 Communication and information exchange regarding the design contest takes place according to the provisions of Article 79 of the PPL.

***Receipt of projects***

57.21 **Proposals should only be submitted in hard copy.** Immediately at the receipt of the envelopes containing the proposals, the CA shall mark the sealed outer envelopes with a serial number as well as the date and time of the receipt. If the proposal is delivered in personal, the CA shall issue to the person submitting it a receipt of delivery bearing the serial number, the date, and the time.

57.22 Information on the serial number, date, time and identity of receiving officer as well as the four digit number chosen by the participant shall, for the timely received proposals, be entered into the, **standard form approved by the PPRC. "Tender submission record"**

57.23 In the event that proposals are submitted to the Contracting Authority after expiry of the time limit for submission, receipt of such proposals shall be denied or received envelopes shall remain unopened with a view to immediate return to the sender. A **"Record of delayed tender submission"** shall be established similarly to the **"Tender submission record"**. Due to the fact that the envelopes do not contain the identification of the participants the CA shall open the envelope containing the Candidate's Documentation in order to identify the name and address of the participant in order to return the proposal to the sender.

***Opening and evaluation of projects***

57.24 As the identity of the participants shall not be disclosed to the jury, the responsible procurement officer shall open the timely received envelopes and shall split the envelopes containing *"the conceptual projects"* from those containing *"the candidate's documentation"*.

57.25 The procurement officer shall transfer only the envelopes containing **"the Conceptual projects"** to the jury pursuant to Article 80 of the PPL. The envelopes containing **"the Candidates Documentation"** shall be kept unopened by the responsible procurement officer deposited in a safe place.

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

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

57.28 If a consensus decision cannot be reached each member of the jury shall evaluate each conceptual project separately and shall properly score the conceptual project based on the criteria indicated in the design contest dossier. The final points of each conceptual project are achieved by

collecting points from all jury members and dividing it by the number of the jury members. The conceptual proposal which achieves the highest score is ranked first and the second scored is ranked second and so on.

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

57.30 After the Procurement Officer receives the ranking list of the projects the Procurement Officer should prepare the B58 Form ***“Notice on the decision of the CA”*** and upload it to the e-procurement platform - as an additional document through the option ***“add a new document”***, await the expiration of the interval *during which bidders may request review of the decision* and thereafter establish an evaluation committee to evaluate the eligibility of the candidate.

57.31 In case of a procedure **leading to money prices** the project which is ranked first, and is accepted as responsive, shall be the winning project.

57.32 In case of a procedure **leading to or involving the award of a service contract for example “detailed engineering design”** the Evaluation Committee shall first evaluate the eligibility of the candidate and then the financial bid. There is no public opening session. The financial bid with the lowest price will be given the maximum financial score determined in the design contest dossier and the other bids will be given financial scores that are inversely proportional to their offered prices. The total score shall be obtained by rating the weight scores of the conceptual design and the weight scores of the financial bid and adding them. The methodology to be used shall be described in the design contest dossier.

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

57.34 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**.

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

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

57.36 The result of the design contest will be published in accordance with the Article 42.1-42.2 of the PPL.

57.37 In case the winner or one of the winners of the design contest shall be awarded a service contract as follow-up of the design contest, a negotiated procedure without publication of a contract notice is conducted according to Article 52 of these Rules.



57.38 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.

## **58 Public Service Operators**

### ***Introduction***

58.1 The provisions in Part V, Articles 82-85, of the PPL apply to public service operators ***only***.

58.2 The rules are ***not mandatory*** so the Public Service Operators can use them if *they wish*.

58.3 To accommodate the specific needs of these operators, **in the case of restricted procedure and competitive negotiated procedures**, the rules basically allow them to proceed relatively **quickly**:

a. ***without publishing a contract notice*** (calling for requests to participate) when the Indicative Notice is used; and

b. ***without the selection phase*** (publishing the contract notice and selection of participants) when the Qualification System is used.

58.4 Thus, Article 83 of the PPL allows the use of the Indicative Notice as an invitation to tender including several tenders, and Articles 84 and 85 of the PPL 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 apply.

58.5 *In the case of the Indicative Notice*, the pre-selection and the award procedures run normally with 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 are 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 the PPL and the one that is possible according to Article 83 of the PPL is that they are not related to the size of contracts. Article 83 of the PPL is intended to be used in any case where a public service operator finds it most efficient to “bundle” together all planned tenders over a 12 month period rather than issuing contract notices in each individual case.

58.8 When the Indicative Notice is used as an invitation to tender in accordance with Article 83 of the PPL, the Indicative Notice must contain the same information as in the normal Indicative Notice, refer to *Article 6 of these rules*, and in addition the following:

(a) An invitation to interested economic operators to express their interest in writing in the contract or contracts included in the Indicative Notice;

(b) Time limit for the receipt of expressions of interest from economic operators and the address where they should be sent;

- (c) A clear indication that there will be no further publication of the notices concerning the contracts included and that only economic operators 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) Whether restricted or negotiated procedure will be used;
- (g) Estimated period for delivery of supplies or the execution of works or services;
- (h) *If known already*, any of the information below in 58.11, notably (d), (e) and (f);
- (i) Information concerning time limits for lodging appeals.

58.9 The above information must be provided by using the standard form adopted by the PPRC, “**Indicative Notice - Public Service Operators**”.

58.10 The Public Service Operator shall produce **a register** of the Economic Operators who have expressed an interest, indicating each specific contract or contracts they have expressed interest in, and accordingly shall inform them in writing.

58.11 **Within a period of 12 months**, following the date of the publication of the Indicative Notice, the Public Service Operator, **for each concerned contract**, shall invite all registered economic operators, who have expressed an interest on the concerned contract, **to confirm their interest** 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 “**Prequalification 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 r e s t r i c t e d or competitive negotiated procedure will be used;
- c. Eventual f e e to be paid for the tender dossier (subject to the conditions of PPL, 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 performance of the contract concerning for example work c o n d i t i o n s and environmental protection, see Article 31 of the PPL;
- f. The c o n t r a c t award criteria their order of importance and their weighing of such criteria;
- g. information concerning time limits for lodging appeals;
- h. Any other information concerning the future tenders that the public service operator

may find useful to communicate.

58.12 The registered economic operators will be invited to submit their prequalification documents within the time limit prescribed in the PPL and shall be subject to evaluation according to the normal rules in Article 56 of the PPL. The tender procedure will also subsequently proceed according to the normal rules for restricted or competitive negotiated procedure.

***Establishment of a Qualification System - the Call for Tender by means of a Qualification System***

58.13 The Qualification System 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 Article 40 and 42 of the PPL of an initial notice concerning the establishment of the Qualification System. Procedure to ensure that a similar notice alerting economic operators to the Qualification System is submitted and publicised annually and that notices are submitted and publicised whenever criteria are being updated. At the expiry of the **three year period** prescribed in Article 84.2 of the PPL the duration of the Qualification System cannot be extended with a simple update. A new initial notice concerning 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 structured.
- (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 the PPL for being included in the Qualification System.

58.14 The Qualification System is established by publication of a notice alerting economic operators to its existence and inviting them to qualify to be included in the System. The Public Service operators shall use the standard form adopted by the PPRC to 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 in question. The information material shall be established by the use of the standard form adapted by the PPRC “**Prequalification Document - Qualification System – Public Service Operators**”.

58.16 Criteria in a qualification system, like other selection criteria, must comply with the fundamental requirements expressed in Article 7 and 51.2 of the PPL in the sense that the criteria must not be disproportionate and thereby unnecessarily restrict competition. This also means that in case of several sets of criteria the differences between such sets must be justified in relevant differences between contracts in terms of scale or technical complexity.

58.17 The mandatory eligibility requirements in Article 65 of the PPL must, by their nature, be included as part of any set of criteria.

58.18 The application of the criteria must follow the general principles of notably equal treatment in Article 7 of the PPL and shall comply with normal rules of selection in Article 56 and in Article 65 – 70 of the PPL.

58.19 The public service operator must treat any request for inclusion in the same manner as previous requests from economic operators already included in the Qualification System, unless the criteria are updated according to 58.20 below. This means that economic operators can apply at any time.

58.20 Whenever criteria are updated according to 58.13 (b) the public service operator must ask existing economic operators included in the Qualification System to submit updated documentation concerning such updated criteria.

58.21 The public service operator must, within the time limits of Article 85.4 – 6 of the PPL, evaluate the requests for inclusion as well as the submission of updated documentation, see 57.19 and 57.20, and must, within the time limits prescribed, reject any requests or submissions that do not fulfil the criteria for inclusion in the Qualification System. The economic operators in question must be informed about the decision and the justification within 15 days of the date of the decision to reject.

58.22 Economic operators included in the System who has been rejected according to 58.21 must be given a justification for the rejection and may only be removed from the list mentioned in 58.13 (e) following a period of a minimum of 15 days from the date of the decision concerning rejection.

58.23 Decisions on rejections are, as any decisions from contracting authorities, subject to review according to the rule in Part IX of the PPL.

58.24 The notice concerning the establishment of a Qualification System according to Article 84.2 of the PPL is also a call for tender. The notice must, for these purposes, include at least the following information:

- a) Name, address, telephone number, email, and fax number of the contracting authority.
- b) Purpose of the Qualification System, notably a description of the types of goods, services, 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 only economic operators included in the Qualification System will be invited to submit tenders in restricted or negotiated procedures after the publication of the contract notice concerning the procurements mentioned in (b) above.
- d) Criteria on eligibility and financial and technical capacity that must be fulfilled to be included and at least a summary 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 award of the contract, including the priority and weighing of each criterion.
- h) Information concerning time limits for lodging appeals.

58.25 The list mentioned in 58.13 (e) must, according to Article 84.4 of the PPL, ***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 the PPL. The tender procedure will subsequently proceed according to the normal rules for restricted or competitive negotiated procedure.

## **59 Consultancy Services**

### ***General Information***

59.1 ***"Consultancy services"*** - means a service of an intellectual or advisory nature, provided by a consultant who is skilled and qualified in a particular field or profession and includes services where the intellectual aspect and inputs dominate and exceed the other physical aspects of the contract. The examples of the consultancy services include, but are not limited to advisory (policies, tourism, and health), studies (environmental impact, population, health, education, market prices), design (paintings, sculptures, architecture, advertising), institutional (procurement, taxation, budgets, police, pensions, customs) training (music, sports,

educational) and other services of intellectual and professional nature.

59.2 Consultants may associate with each other in the form of a consultants' joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness 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.

59.3 *In addition* to the exclusion criteria of candidates or tenderers set forth in the PPL, the Contracting Authority must exclude candidates in the circumstances described below.

- (i) Conflict between consulting activities and procurement of goods, works or services: a firm that has been engaged by the Contracting Authority to provide goods, works or services (other than consulting services) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services) resulting from or directly related to the firm's consulting services for such preparation or implementation.
- (ii) Conflict among consulting assignments: neither consultants nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.
- (iii) Relationship with the Contracting Authority's staff: consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Contracting Authority's staff who are directly or indirectly involved in any part with the preparation of the terms of the contract, and/or the selection process for such contract, and/or supervision of such contract, shall be disqualified from providing consulting services related to this contract.

### ***Developing the Terms of Reference (ToR)***

59.4 The Terms of Reference (ToR) are the key document in the Tender Dossier for Consultancy Services. They explain the objectives, scope of 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 the 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.

59.5 Terms of reference normally consists of:

1. Background of the project - The background summarises the main features of the project and describes the assignment's objectives and general purpose. In particular, it should include: a) Name of the Contracting Authority; b) Rationale of the project; c) Need for consultants in the project and issues to be resolved; d) Activities to be carried out; e) Supervision arrangements.

2. Objectives of the consulting assignment - The ToR should precisely describe the objectives and expected results, and should include: a) 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 telecommunications systems).

#### ***Development of Cost Estimates and the Budget***

59.6 Following the development of the ToR, the CA shall estimate the costs of the assignment. When developing the cost estimates the CA should factor in the cost of staff, office accommodation, operating costs, transportation and disbursements, and optionally the costs for undertaking tests or obtaining samples. The cost estimate will be used as the basis for determining the availability of funding. Costs shall be divided into two broad categories:

- a. *fee* (or remuneration) - key staff and other staff; and
- b. *reimbursable* – Transportation (Air/Ground), Staff Accommodation (Office/Rent), Furniture/Equipment, Supplies/ Utilities, Reports, Documents/translation, editing/printing).

#### ***Publication of contract notice. Pre-qualification***

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

59.8 For publication of the contract notice Articles 49.6-49.9 of these Rules shall apply similarly.

59.9 The pre-qualification procedure shall be performed in accordance with the provisions of Articles 49.10-48.24 of these Rules.

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

59.10 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**

59.11 **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.

59.12 **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.

59.13 The envelopes containing the technical proposals shall be opened immediately after the closing time for submission of proposals while the financial proposals shall remain sealed. Any proposal received after the closing time for submission of proposals shall be returned unopened.

### ***Evaluation of Technical Proposals***

59.14 The evaluation of technical proposals shall be carried out immediately taking into account several criteria, such as:

- (i) consultant's relevant experience;
- (ii) the quality of the methodology proposed;
- (iii) qualifications of the key staff proposed;
- (iv) the transfer of knowledge, if required.

59.15 Each criterion shall be marked and then the marks shall be rated to become scores. The rating system shall be disclosed in the Tender Dossier. The CA shall inform the tenderers who have submitted proposals on the technical score assigned to each consultant, and shall notify those consultants whose proposals did not meet the minimum qualifying score or were considered non responsive. The CA shall simultaneously notify the consultants who have reached the minimum qualifying score, on the date, time, and venue set for the opening of the technical proposals. Short listed candidates shall be invited at least two (2) weeks (for international candidates), and one (1) week (for local candidates), prior to the opening of the financial proposals.

59.16 The criteria to be used under technical evaluation and the indicative weights are as follows, the weights may be adjusted to 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>

### ***Public Opening of Financial Proposals***

59.17 The financial proposals shall be opened publicly in the presence of representatives



of the consultants who choose to attend. The name of each tenderer, its technical score and the proposed prices shall be read aloud and recorded when the financial proposals are opened.

For the purpose of evaluation, the price shall include all consultants' remuneration and other expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price shall be given a financial score of 100 and other proposals 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***

59.18 The total score shall be obtained by adding together the weighted score for both **quality (technical proposal) and cost (financial proposal)**. The marks for the "cost" shall be chosen taking into account the complexity of the object of the contract to be awarded and the 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.

59.19 After the identification of the best tender, the CA shall inform the tenderers about the final classification and shall initiate negotiations to clarify and eventually improve the terms of the contract, the methodology, staffing, and special conditions. Negotiations must not substantially alter the original terms of the contract or the selected proposal. The financial bid must not be altered in any case.

59.20 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 procedure into the system.

59.21 The Procurement Officer should prepare B58 Form "***Notice on the Decision of the CA***" 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*.

59.22 The provisions of Articles 47.33 - 47.37 of these Rules shall apply comparably to the contract award and signature and to the distribution of the signed contract.

## ***60 Complaints***

Refer to the rules approved by the PPRC, published on the PPRC's website, F03 "Rules for filing complaints."

## ***61 Contract Management***

### ***Introduction***

61.1 The point at which an Economic Operator begins the execution of the **contract responsibilities** is dependent on the terms and conditions stated within the Tender Dossier and the signing of the contract by those authorised to sign.

61.2 The term *contract* refers to the **General Conditions of the Contract "GCC" and**

## **the Special Conditions of the Contract “SCC”.**

61.3 The GCC shall cover all possible aspects relating to the obligations of the Economic Operator in relation to the contract and define breach, fundamental breach of the terms and remedies applicable to either party. The GCC 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.

### ***Transfer of responsibility to the Project Manager***

61.4 After a contract has been signed by both parties the responsible Procurement Officer shall inform the Chief Administrative Officer “CAO” and the CAO shall, in writing, appoint a *Project Manager* responsible for the management (supervision) of the specific contract and for informing the responsible Procurement Officer.

61.5 The procurement officer shall inform the appointed Project manager about his appointment and shall distribute internally in the organisation a copy of the signed contract to the:

1. Originating Requesting Unit;
2. Finance department; and
3. Project Manager responsible for managing the specific contract.

61.6 After the contract has been distributed, the **contract management**, except the capacity to amend or terminate, shall be transferred from the Procurement Department to the Project Manager.

61.7 Upon receipt of the contract, the project manager shall prepare a **contract management plan**, using the ***standard form adopted by the PPPC***. The contract management plan shall be prepared for all **medium- and high-value contracts**.

61.8 The contract management plan shall be prepared before the initiation of the implementation of the contract and shall be agreed between the parties of the contract. This shall be documented with the signatures of both parties, respectively the Project Manager and the Economic Operator.

61.9 Within 2 working days, the Project Manager shall forward a copy of the signed contract management plan to the procurement department.

61.10 After the responsible Procurement Officer receives the signed contract management plan the Project Manager shall issue to the Economic Operator:

- a. The Letter of commencement, *in case of a work contract*;
- b. The Letter of notification, *in case of a service contract*; and
- c. The Purchase Order, *in case of a supply contract*.

61.11 The Project manager shall provide the responsible Procurement officer with a copy of the document mentioned under 61.10 which shall become an integral part of the contract.

61.12 In case of a public framework agreement or long term agreements, whenever possible, the project manager shall issue the Purchase Orders each time the need arises.

61.13 Whenever the project manager has any reservations or difficulties with the terms or conditions of the contract, they shall be discussed and resolved with the procurement department.

61.14 The Project Manager shall report to the Procurement Department:

- (a) any departure from the terms and conditions of a contract; and
- (b) any alterations to the conditions of the contract, either before or during the course of implementation, that in effect could have impacted on the evaluation and rankings of the tenders and the selection of the economic operator.

### ***Appointment of the Project Manager***

61.15 The CAO shall appoint as a Project Manager a staff member from the Requesting Unit, with appropriate skills and experience.

61.16 Where appropriate, the CAO may appoint a staff member from another department as a Project Manager.

61.17 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.

61.18 A contract may be managed by a body or person external to the Contracting Authority, provided that the Requesting Unit supervises the external Project Manager. The appointment of the external body or person shall be done by using the appropriate procurement procedure for services.

### ***Responsibilities of the Project Manager***

61.19 The Project Manager shall:

- (a) Manage the obligations and duties of the Contracting authority specified in the contract; and
- (b) Ensure that the economic operator performs the contract in accordance with the terms and conditions specified in the contract.

61.20 The functions of the Project Manager are:

- a) to ensure that the economic operator meets all performance or delivery obligations in accordance with the terms and conditions of a contract;
- b) to ensure that the economic operator submits all required documentation in accordance with the terms and conditions of a contract;
- c) to ensure that the Contracting Authority meets all payment and other obligations in accordance with the terms and conditions of a contract;
- d) to ensure that there is adequate cost, quality and time control where appropriate;
- e) to ensure that all contract obligations are complete prior to closure of the contract file;
- f) to ensure that all contract management records are kept and archived as required;
- g) to issue any required variations or change orders, in accordance with the terms and conditions of a contract;
- h) to provide full details of a required contract amendment to the Procurement Department and to

- obtain its approval;
- i) to manage handover or acceptance procedures;
- j) to provide full details of any proposed termination of a contract to the Procurement Department; and
- k) to submit reports on the progress or completion of a contract as required by the procurement Department or the CAO.

### ***Contract amendment***

61.21 An amendment to a contract refers to a change in the terms and conditions of an awarded contract. The change of contract is initiated by the Contract Manager. In case of work contracts, prior approval of the designer is required.

61.22 Where a contract is amended in order to change the original terms and conditions, the amendment to the contract shall be prepared by the procurement department.

61.23 A contract amendment shall not be issued to the economic operator prior to:

- (a) Obtaining approval from the CAO;
- (b) Commitment of the funding of the amended contract.

61.24 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 the PPL.

61.25 No contract amendment shall increase the total contract price by more than 10 % of the original contract price.

### ***Termination of the contract***

61.26 Where the Project manager believes that a contract should be terminated, the Project manager shall submit a recommendation for termination to the Procurement department.

61.27 The recommendation for termination of a contract shall state:

- (a) the name of the Economic Operator and the procurement reference number;
- (b) the reasons for the termination;
- (c) the actions taken to avoid termination;
- (d) the contractual grounds for the termination;
- (e) the costs, if any, resulting from the termination; and
- (f) any other relevant information.

61.28 No contract shall be terminated prior to obtaining the approval of the Procurement Department and the CAO of the contracting authority. The contract is 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.

61.29 Where a contract is terminated, the Procurement Department shall inform the involved Economic Operator on the reasons for the termination and shall take immediate steps in accordance with the conditions of the Contract.

### ***Summary of contract management records***

61.30 The contracting authorities shall establish and maintain a summary of the contract management records related to each procurement procedure containing the following:

- Signed contract document, including any signed contract amendments;
- Copy of the contract management plan;
- Any variations or change orders issued under the contract;
- Contract documents relating to the fulfilment of contract obligations, in particular bank securities or payment guarantees;
- Minutes of any meetings related to contracts management, including contract progress or review meetings;
- Delivery documents evidencing delivery of supplies or completion certificates in relation to a contract for services or works;
- Copy of all invoices for works, services or supplies including work papers verifying the accuracy of payments claimed and details of the actual payment authorized by the project manager;
- Copy of the payment worksheets evidencing management of all payments made;
- Copy of any claims made by the project manager on behalf of the CA in respect of any warranty, non-warranty, short supply, damage, and other claims upon the provider.

### ***Contract Monitoring***

61.31 According to Article 81 of the PPL, PPRC is responsible to monitor Contract management. The contract management starts when the contract is signed and continues on until after expiry of the guarantees and warranties.

61.32 PPRC shall monitor if the contract has been implemented in accordance to the conditions of the contract. A contract defines the purpose of the contract, the scope, specification and the responsibilities of the Contracting Authority and the Supplier/Contractor/Service provider. It binds the Contracting Authority and the Supplier/Contractor/Service provider to be committed to the contract and their respective obligations.

61.33 The PPRC shall mainly focus on the facts whether:

1. Signed certifications (temporary/permanent certificates) had been issued by the Project Manager for the handovers;
2. The liquidated damages had been imposed if handovers were timely;
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. Insurance policy had been submitted, if applicable;

7. Guarantee for the defects liability period had been furnished, *if applicable*;
8. Payments were done in due time.

## ***62 Separation of duties***

62.1 "Separation of duties" means that the authority of a person(s) to approve and sign approval in one area of responsibility does not also include those of another area of responsibility. The 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.

62.2 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.

62.3 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 handovers, or the payment of an Invoice;
  2. The Chief Financial Officer shall sign the payment of an Invoice, or their associated documents, but is forbidden to sign for the receipt of the goods, items installed, completion of a Project, phased handovers, or the Contract;
3. The Receiving Unit, the Project Manager, the Engineer shall sign for the receipt of the goods, items installed, Quality Standards, completion of a Project, phased handovers, but not for the payment of an Invoice, or the Contract;
4. An official 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 Project Managers.

## ***63 Use of electronic means including e-procurements, e-auctions, and a dynamic purchasing system***

**63.1 Requirements relating to devices for the electronic receipt of tenders, requests to participate.**

1. Contracting authorities may make use of electronic means of communications, as defined in the Article 4, paragraph 1.21, of the PPL, and build on electronic purchasing techniques based on the use of electronic means of communication provided that such use complies with Article 129 of the PPL and in no way conflicts with the principles of equal treatment, non-discrimination, and transparency.

2. Contracting authorities may provide that all communications, except site visits and pre-tender meetings in accordance with Article 55 of the PPL, or some of the communication and information exchange with the economic operators, may be conducted by electronic means.

In such cases, the electronic means of communication chosen by the contracting authority shall be generally available and interoperable with the information and communication technology products in general use, and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information by electronic means shall be carried out in such a way 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.

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:

- 4.1 electronic signatures relating to tenders, requests to participate and projects comply with national provisions adopted pursuant to Directive 1999/93/EC;
- 4.2 the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
- 4.3 it may be reasonably ensured that, before the time limits determined, no one can have access to data transmitted under these requirements;
- 4.4 if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- 4.5 only authorised persons may set or change the dates for opening data received;
- 4.6 during the different stages of the contract award procedure or of the contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- 4.7 simultaneous actions by authorized persons must enable the access to data transmitted only after the prescribed date;
- 4.8 data received and opened in accordance with these requirements must remain accessible only to persons authorized for reference.

## **63.2 Use of electronic auctions**

1. In compliance with Article 4, Paragraph 1.20 of the PPL, the contracting authorities in open and restricted procedures may decide that the award of a public contract shall be preceded by an e-auction, when the contract specifications can be established with precision and do not require a discretionary appraisal.

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 competition of contracts to be awarded under the dynamic purchasing system.

The e-auction shall be based solely on prices when the contract is awarded to the lowest price.

2. Contracting authorities who decide to hold an e-auction shall state that fact in the contract notice.

The specifications shall include, inter alia, the following details:

- 2.1 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;
- 2.2 any limits on the values which may be submitted, as they result from the specifications relating to the subject matter of the contract;
- 2.3 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;
- 2.4 the relevant information concerning the e-auction process;
- 2.5 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;
- 2.6 the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

3. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted 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.

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.

4. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information



concerning other prices or values submitted, provided that that is stated in the specifications.

5. CA may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an e-auction.

6. Contracting authorities shall close an e-auction in one or more of the following methods:

6.1 in the invitation to take part in the auction they shall indicate the date and time fixed in advance;

6.2 when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to participate in the auction the time which they will allow to elapse after receiving the last submission, before they close the e-auction;

6.3 when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

7. After closing an e-auction, the contracting authorities shall award the contract based on the results of the public auction.

8. Contracting authorities may not interfere to 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.

9. 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 as ineligible.

### **63.3 Dynamic Purchasing System**

1. In order to set up a dynamic purchasing system, as defined in the Article 4, sub-paragraph 1.18 of the PPL, contracting authorities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specifications. With a view to setting up the system and to the award of contracts under that system, contracting authorities shall solely use electronic means.

2. For the purposes of setting up the dynamic purchasing system, contracting authorities shall:

2.1 Publish a contract notice making it clear that a dynamic purchasing system is involved;

2.2 indicate in the specification, 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;

2.3 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.

3. 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 2 of this Article.

They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no tender notice is issued in the meantime.

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.

4. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with paragraph 3, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.
5. Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end they shall set a time limit for the submission of tenders.

They shall award the contract to the tenderer which submitted the best tender based on the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the aforementioned invitation.

6. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition. No charges may be billed to the interested economic operators or to parties to the system.

## ***64 Repeal of the previous Rules***

64.1 These Rules shall apply to all procurement activities initiated after the date of entry into force of these rules.

Entry into force: 10.04.2019

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**Osman Vishaj, PPRC President**

## Annex 1 PROCUREMENT Number

In all the forms the procurement identification number is formed as follows:

Procurement No: 

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