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REGULATIVNA KOMISIJA ZA JAVNE NABAVKE
PUBLIC PROCUREMENT REGULATORY COMMISSION



GUIDELINE No. 001/2023 FOR PUBLIC PROCUREMENT

February 2023

General provisions

1. Purpose and Scope of the Operational Guideline for Public Procurement

1.1 The Operational Guideline for Public Procurement is 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-92 (hereafter LPP), and it aims to guide all parties in the development and management of procurement activities.

1.2 This guideline will be applied by contracting authorities, natural persons and economic operators as defined in article 4, paragraph 1, of the LPP.

1.3 According to the LPP, the following list of CAs is simplified and refers to groups in general terms:

Contracting Authorities:

1. Public Authorities

- a. Central and local authorities (ministries, municipalities, etc.);
- b. “Bodies established based on the Public Law” as defined in the Law, meaning bodies under dominant public influence;

2. Public Service Operators

- a. Public authorities or public undertakings engaged in public service activities;
- 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. Operation with the electronic procurement system

- 2.1 During the preparation and development of electronic procurement procedures, procurement officers of contracting authorities, in addition to the instructions in the CA manuals, must always follow the instructions given in the relevant steps of the procurement procedure.
- 2.2 As the classification of contracts is determined by the PPR, CA procurement officers are obliged to prepare and create all procurement activity documents in mandatory languages, therefore they are always instructed to complete the data in the relevant steps of the procedure to all selected languages, especially for mandatory data.
- 2.3 The creation of documents of a procurement procedure in the selected languages (Tender dossier, Description of prices, forms: B04, B05, B06, B08, B10, B11, B12, B52, B54) is successful only if the mandatory data are completed for all selected languages, therefore if a document is not created in the selected language, then the procurement officer must check the data entry for each language and each step.
- 2.4 During the preparation and development of all types of procurement procedures, design contests, including sales procedures and correction of the procedure with “in appeal” status, the procurement officer is obliged and must create two private keys (1 and 2) for the procedure (which are sent to the selected officers), but whenever possible the procurement officers are also instructed to create substitute private keys (3 and 4) which can be used as a substitute during the opening and decryption process in any case of offers. In such case the substitution combination is 1-3 and 2-4.
- 2.5 Exceptions to the previous paragraph are minimal value procedures where the procurement officer is required to generate private procedure keys only for bid decryption, since they are not required to be uploaded during the opening process and the opening is performed only by a procurement officer as specified in PPR, Article 52, paragraph 52.7. The minutes created from the opening of the tenders of the minimum value procedure can be used by the procurement officer as an evaluation report since it contains all the required data, the names and addresses of the Economic Operators contacted as well as the prices offered. If a special evaluation report is created, then the procurement officer is instructed to upload the created report (outside the electronic procurement system) as a document to the “publication of B58”.
- 2.6 During the preparation and publication of notices (B05, B06, B08, B10, B11, B52, B54) in a procurement procedure, the procurement officer must calculate the time limits based on the date of publication of the notice and not on date of submission for publication.
- 2.7 As defined in PPR, paragraph 24.7, “Notice for additional information or correction of errors (B54)” it is used to change or improve the Tender Dossier, Price List, data in the contract notice and extension of the deadline for the submission of tenders, then the procurement officer is instructed that during the preparation and publication of the B54 form, to fill in only the necessary data depending on the purpose. For example:
- a) If the correction concerns the TD and the data in the Contract Notice, then only the textual part is changed/completed which must be changed in both documents.
 - b) If the correction concerns the Price List, then the changed Price List is uploaded to the Price List

section, while in the B54 form, in the “additional information” section, only the purpose of the publication of the correction (change of the Price List) is specified.

c) If the purpose of publishing the correction is only to extend/change the date for Closing/Deadline for submission of bids-request for participation, then CA procurement officials are instructed to:

1. change the dates only in step 8. *Administrative information*, and step 10. *Conditions for receiving the tender dossier*;
2. other steps in the procedure for any other changes/corrections are used in accordance with the instructions in each step (e.g. steps for textual changes are instructed to be deleted if there is no text to change)
3. After creating the B54 form, the form should be checked if all the data entered in the previous steps are correctly submitted and if so, then the B54 notice is sent for publication.
4. After sending for publication and publication of the “Standard form for correcting errors in published notices (B54)” to verify in the electronic procurement system whether with the publication of form B54 (which is published the next day after sending for publication) the dates/deadlines for the submission of offers have also been changed, a change which is possible only if the change of dates has been made in accordance with points 1 and 2 above.

2.8 Extension/change of the date for Closing/Deadline for the submission of offers in a limited, competitive procedure with negotiations (second phase), negotiated without publication of the contract notice and mini-tender, is done through re-creation and re-sending of invitations to participating EOs.

2.9 When preparing and sending “Requests for reconsideration: to CA and preparing and sending “Complaints” to PRB, EOs are always instructed that “Request for reconsideration” and “Complaint” should be prepared and sent before the deadline for submitting the request for reconsideration/complaint. This instruction is important to be followed by the EO because as specified in the PPR, if the applicant fails to prepare and submit the request for reconsideration/complaint within the time limits due to any technical problem that occurs in the last two (2) hours before the expiration of the deadline for submitting the request/complaint, the responsibility for failure remains with the applicant (EO).

2.10 In the case of the development of procurement activities divided into LOTs, and if the CA intends or needs to create a separate contract for each LOT, then the PPO is advised to divide the LOTs into separate contracts during preparation of the “Contract Award Notice (B08)” - where in the relevant step (5) shall be created a contract number for each LOT and then such a contract is treated as a separate contract in all the following stages, creating contract draft, Contract Signing Notice and contract management as well.

2.11 In the case of the development of procurement activities divided into LOTs, and if the CA intends or needs to create a separate contract for each LOT, then the PPO is advised to divide the LOTs into separate contracts during preparation of the “Contract Award Notice (B08)” - where in the relevant step (5) shall be created a contract number for each LOT and then such a contract is treated as a separate contract in all the following stages, creating contract draft, Contract Signing Notice and contract management as well.

3. Classification of public contracts according to the value

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

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

3.2 The thresholds set for different procurement activities are as follows:

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

3.3 Each procurement activity must have a Procurement Number, which is created in accordance with Article 15 of the Regulation on Public Procurement. (*See Annex I, attached to this Guideline*).

3.4 Public contracts include any specific type of the following contracts:

| Type of Contract | Definition |
|------------------|--|
| Supply contract | The supply contract is exclusively or mainly related to the <i>purchase of one or more products</i> ; but also leasing and rental contracts. |
| Service contract | The service contract relates exclusively or mainly to <i>providing of services</i> . Services also include <i>consulting services</i> . |

| | |
|----------------------------------|--|
| Works contract | <p>The Works contract has the main purpose:</p> <ul style="list-style-type: none"> - execution, - design and execution, or - carrying out in any way <i>a work, construction or civil engineering activity</i> that includes: <ul style="list-style-type: none"> - constructions, - restorations, - repairs or - demolition of buildings, spaces, civil engineering structures, or any part of them |
| Public framework contract | The framework contract relates exclusively to the creation of the framework for orders or ancillary contracts during a certain period. |

3.5 However, it is possible for a public contract to be a “combination”: Supply/Service, Works/Service; Works/Supply; combination in Supply/Works/Services. The basic method to handle this division is always the *simple cost model*. Whichever element of the contract having the highest anticipated costs, the contract should be classified under that type of contract. This should be applied even if the contract is divided into “Lots”; it will be the total value of the entire contract (all “lots”).

3.6 All CAs during the preparation and development of a procurement procedure must apply the following rules in the table below that define the type of combined contracts:

| Rules of Combined Contracts | |
|--|---|
| Combination | Created Contract |
| <p>A contract for supply that includes:</p> <ul style="list-style-type: none"> - <i>delivery, and/or</i> - <i>the site, and/or</i> - <i>installation</i> | <i>Supply contract</i> |
| A contract for the <i>supply of products and provision of services</i> | <i>Service contract</i> , if the estimated value of the services exceeds the estimated value of the products. (otherwise it is a supply contract). |

| | |
|---|---|
| <p>A contract with <i>the main purpose of provision of professional services related to construction</i>, and for more, the execution of one or more activities referred to in the definition of “<i>works contract</i>”</p> <p>Services related to construction can be:</p> <ul style="list-style-type: none">- architectural services and/or engineering services,- geotechnical or geodetic research services,- structure assessment or structure design services,- construction supervision services or management services, etc. | <p><i>Service contract</i></p> |
| <p>A contract with the <i>main purpose of execution of works</i> but includes professional services related to construction (as explained above) necessary for the execution of the contract.</p> | <p><i>Works contract</i></p> |
| <p>Contract for supply of products and execution of works</p> | <p><i>Works contract, if</i> the activities of the works are not the site and/or installation itself. (Otherwise supply contract).</p> |

3.7. **Mandatory information** required during the completion of the Tender Dossier, regarding the LPP, are as follows

| <u>Supplies</u> | <u>Services</u> Consulting and non-consulting | <u>Works</u> |
|---|--|---|
| A statement of requirements for procurement of supplies shall contain complete, accurate and precise descriptions of supplies, schedule of delivery and completion, list of supplies and quantities, technical specifications and designs, and shall include as necessary: | A statement of requirements for the procurement of services shall be defined in terms of reference which shall contain a clear, accurate and precise description of the services, and shall include as necessary: | A statement of requirements for the procurement of works shall contain a clear, accurate and precise description or parameters of the works, bill of quantities, technical specifications and designs, and shall include as necessary: |
| (a) clear definition of the parameters of the proposed purchase; | (a) a narrative of the background of required services; | (a) a narrative of the background of Required works; |
| (b) the purpose and objectives of the proposed purchase; | (b) the objectives of the services required and a list of goals to achieve from a service provider; | (b) the objectives of the required works; |
| (c) full description of the request; | (c) a list of specific tasks or powers to be executed; | (c) a list of specific tasks to be executed; |
| (d) general specification at a sufficient level of detail; | (d) a schedule of deliverables for the outputs of the tasks against which the service achievements will be compared; | (d) supervisory requirements, work reports and specific administrative arrangements that will be applied; |
| (e) functional description of the qualities, including required environmental or safety features of the procurement subject; | (e) the ways of management and reporting of the Service Operator, CA and the specific administrative arrangements and reporting requirements that will be applied; | (e) duration of Works; |
| (f) performance parameters, including outputs, timelines, and any other indicators or criteria by which satisfactory performance of the specifications can be evaluated; | f) duration and schedule of engagement; | (f) a common communication standard; |

| | | |
|---|--|--|
| (g) description of process and materials; | (g) applicable industry standards for the implementation of engagement; and | (g) relevant industry standard; and |
| (h) dimensions, symbols, terminology, language, packaging, marking and labelling requirements; | (h) any other additional information. | (h) any other additional information. |
| (i) a common specification standard; | | |
| (j) the relevant industry standard; and | | |
| (k) any other relevant information. | | |
| <p>No specification shall be issued by reference to a particular trade mark, brand name, patent, design, type, specific origin, manufacturer, assembler, catalogue or item with a number.</p> <p>When there is no other precise or convenient way of characterizing the requirements than by reference, the description shall be used, followed by the words “or equivalent”.</p> | | |
| Tender documents for supplies shall specify the following information: | The Tender Documents for services will require the Economic Operator to comment on the terms of reference and will specify the following information: | The tender documents for works will specify the following information: |
| (a) specifications and supply list by including quantities; | (a) terms of reference and the expected contribution of key personnel; | (a) drafting, specifications, designs and bill of quantities; |
| (b) the composition of Lots; whether variants are allowed or not; if withdrawals of Tenders are allowed before the expiration of the submission deadline; | (b) composition of Lots; whether variants are allowed or not; if withdrawals of Tenders are allowed before the deadline for submission or not; | (b) composition of Lots; whether variants are allowed or not; if withdrawals of Tenders are allowed before the deadline for submission or not; |
| (c) type of contract and procedure | (c) type of contract and procedure | (c) type of contract and procedure |

| | | |
|---|---|---|
| (d) qualification criteria | (d) qualification criteria | (d) qualification criteria |
| (e) the amount and form of the request of the tender insurance; | (e) the amount and form of the required tender insurance; | (e) the amount and form of the required tender insurance; |
| (f) required amount and form of execution insurance | (f) required amount and form of execution insurance | (f) required amount and form of execution insurance |
| (g) deadlines, exact place, date and time of tender submission and tender opening | (g) deadlines, exact place, date and time of tender submission and tender opening | (g) deadlines, exact place, date and time of tender submission and tender opening |
| (h) form of valid tender | (h) form of valid tender | (h) form of valid tender |
| (i) tender submission methodology | (i) tender submission methodology | (i) tender submission methodology |
| (j) the currency in which the tender must be submitted | (j) the currency in which the tender must be submitted | (j) the currency in which the tender must be submitted |
| (k) the period of validity of the tender | (k) the period of validity of the tender | (k) the period of validity of the tender |
| (l) general information on complaints | (l) general information on complaints | (l) general information on complaints |
| (m) payment terms, including any advance payment, instalment payments, withheld payments and payment insurances | (m)) payment terms, including any advance payment, instalment payments, withheld payments and payment insurances | (m)) payment terms, including any advance payment, instalment payments, withheld payments and payment insurances |
| (n) the basis for fixed or variable prices, and the method of calculating variations in variable prices | (n) the basis for fixed or variable prices, and the method of calculating variations in variable prices | (n) the basis for fixed or variable prices, and the method of calculating variations in variable prices |
| (o) payment method | (o) payment method | (o) payment method |
| (p) required documentation for payment | (p) required documentation for payment | (p) required documentation for payment |
| (q) the required terms of submission and submission period | (q) duration, time of contributions and completion schedule | (q) work execution schedule |
| (r) contract award criteria including sub-criteria and defined weights | (r) contract award criteria including sub-criteria and defined weights | (r) contract award criteria including sub-criteria and defined weights |
| (s) evaluation methodology | (s) evaluation methodology | (s) evaluation methodology |
| (t) any special requirements for packaging, marking and labelling | (t) deliverables or outputs required | (t) functions and authority of the manager of the CA project |

| | | |
|--|--|--|
| (u) any required inspection or testing | (u)) any requirements for insurance | (u) any required inspection or testing, and testing methods |
| (v) requirement regarding certification of conformity | (v) any other information or term | (v) requirement regarding certification of conformity |
| (ë) any requirements for insurance | | (ë)) any requirements for insurance |
| (x) any warranty requirement | | (x) any warranty requirement |
| (y) any other information or term | | (y) any other information or term |
| A supply contract shall clearly indicate the parameters of responsibilities of an Operator under the contract, which shall include | A service contract shall include | A works contract shall clearly state the parameters of the work and responsibility for designing |
| <p>(a) supply and delivery of supplies, in accordance with INCOTERM;</p> <p>(b) installations and commissioning of supplies;</p> <p>(c) training for use, maintenance or repair of supplies; or</p> <p>(d) Provision of after-sales services, which may include supply and delivery of consumable materials and spare parts and servicing, maintenance, repair, calibration and modification of equipment.</p> | <p>(a) ownership of all property purchased or used during the implementation of the contract;</p> <p>(b) the obligations of an Operator regarding the care and supervision of the property of the CA, which is in use during the implementation of the contract;</p> <p>(c) arrangements for the delivery and return of all CA property in use during the implementation of the contract; and</p> <p>(d) arrangements for delivery, if applicable, of all property purchased during the implementation of the contract</p> | <p>(a) procedures for the transfer of completed CA works, including the transfer of titles and transfer documentation;</p> <p>(b) ownership of the property at the site of the works during the implementation of the contract;</p> <p>(c) the obligations of an Operator regarding the care and maintenance of CA property, in use during the implementation of the contract; and</p> <p>(d) arrangements for temporary and final delivery of all CA property used during the implementation of the contract.</p> |

Note: The mandatory information required during the completion of the Tender Dossier and specified in the table above are also included in the PPR, but which are repeated in this guideline so that the CAs are instructed to take them into account during the preparation of the Tender Dossier, always avoiding the preparation of the TD in a way that favours or discriminates against one or more potential Economic Operators.

4. Division of contracts into Lots

4.1 The Contacting Authority can divide the procurement activity into homogeneous or heterogeneous Lots. In all cases, EOs are free to choose how many and which parts they will bid for.

4.2 Whenever the CA divides the activity into Lots, the CA must specify, in the Contract Notice and Tender Dossier whether EOs will be awarded for:

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

Note: In order to encourage the inclusion of small and medium-sized enterprises (SMEs) in the national public procurement market, limiting the number 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 should be selected according to the needs of the Contracting Authority and the subject of the contract.*

Example 1:

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

The tenderer can submit a tender for all Lots.

The maximum number of Lots that can be awarded to one tenderer is: **2 (two)**.

In case the Tenderer offers the lowest price in more than 2 Lots, then he will be awarded the contract for the lots that offer the lowest possible price to the contracting authority and the other Lot will be awarded to the second Operator in a row.

| <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> |

OE1 will be awarded for Lot 2 and 3 (400,000.00) while OE2 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 | | |
| | 400,000 | 200,000 | 600,000 |
| Combination 2 | | | |
| | <u>EO 1</u> | <u>EO 2</u> | <u>CA pays</u> |
| 1 | 190,000 | 250,000 | |
| 3 | 175,000 | | |
| | 365,000 | 250,000 | 615,000 |
| Combination 3 | | | |
| | <u>EO 1</u> | <u>EO 2</u> | <u>CA pays</u> |
| 1 | 190,000 | 200,000 | |
| 2 | 225,000 | | |
| | 415,000 | 200,000 | 615,000 |

4.3 Whenever the CA determines the minimum criteria for the economic and financial condition or the technical and professional ability, *in cases where it limits the number of Lots that will be awarded to an EO*, the CA must take into account that the fulfilment of the minimum requirements is the highest amount for Lots for which the EO competes.

Example 2: The requirements of the economic and technical

professional situation

Division in Lots: 3 Lots

The tenderer can submit a tender for one or more parts (lots).

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

In case the tendering EO submits a tender in one or more LOTs and offers the lowest price in more than 1 Lot, the CA will reward the EO for the LOT most favourable to the CA.

Requirements on the economic and financial situation

Request 1: The economic operator must provide evidence that the annual turnover of the Economic Operator, during the last three years (2020-2021-2022), has been worth, together in the three years, no less than:

1. For Lot 1, **300,000.00 Euro**
2. For Lot 2, **200,000.00 Euro**
3. For Lot 3, **100,000.00 Euro**

Evidence documents for the economic and financial situation

Evidence 1: Annual Tax Statements submitted to the Tax Administration of Kosovo or the country of establishment for the last three years (*the three years must be full fiscal years*).

In case the Economic Operator submits a tender for 2 Lots, the highest amount of financial turnover required for the Lots for which it competes must be met by the EO.

Note:

- if the EO decides to compete in Lot 1 and 2, then the minimum turnover requirement that must be met by the EO is 300,000.00 euros.
- if the EO decides to compete in Lot 2 and 3, then the minimum turnover requirement that must be met by the EO is 200,000.00 euros.
- if the EO decides to compete in Lot 1, 2 and 3, then the minimum turnover requirement that must be met by the EO is 300,000.00 euros.

The same criterion also applies to the requirements of technical and/or professional ability.

4.4 Given the fact that the purpose of limiting the number of Lots is to increase competition and, *in order to allow maximum access to public funds*, to divide the market among the large number of Economic Operators, this provision is applicable only when there is sufficient responsive tenders to apply this rule. When there is insufficient responsive tenders to award all Lots, CA's interest in awarding all Lots prevails. So, in the absence of other competitors, EOs are awarded for more Lots than the maximum number determined by CA.

Example:

Division in Lots: **7 Lots**

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

5 bids are accepted but only 2 are responsive, then **2 EOs are awarded with 2 Lots each (4 lots in total)** according to the formula defined in the Tender Dossier, while the **3 other Lots** are awarded to the EO who submitted the first ranked tender (the lowest offer), even though it already has 2 Lots awarded.

5. Technical specifications

- 5.1 Pursuant to Article 28 and 29 of the LPP, CA will submit in the tender dossier all the technical specifications that each tender must fulfil.
- 5.2 The technical specifications shall provide equal access to tenderers and shall not have the effect of creating unreasonable obstacles to the opening of competition in public procurement.
- 5.3 A technical specification shall be stated, as far as possible, by referring to well-known **standards** but may also be formulated in terms of performance or functional requirements. A CA may use standards for certain characteristics and performance or functionality requirements for other characteristics.

Reference to a known standard:

| |
|--|
| Hierarchy of Standards that will be referred to during the formulation of technical specifications |
|--|

- | |
|---|
| <ul style="list-style-type: none">(1) a Kosovo standard implementing an European standard,(2) an European standard,(3) an European technical approval,(4) a common technical specification,(5) an international standard and/or(6) any other technical reference system produced by European standardization bodies. |
|---|

Re(1): The Kosovo Agency for Standardization implements European standards in Kosovo.

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

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

Re(4): Common technical specification means a technical specification established under an

EU procedure.

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

Re (6): any other reference produced by European institutions.

5.4 If there is no applicable standard or such standards would not be efficient in application for technical or economic reasons – CA may refer to:

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

5.5 Defining technical specifications that refer to a specific product or source, or a specific process, or trademarks, patents, specific types or origins or products, as a general rule **is prohibited**. However, such a reference may be used in special cases, if such reference is accompanied by the words “**or equivalent**”.

5.6 Technical specifications are mandatory requirements, which all tenderers must comply with in order to be responsive.

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

5.8 A clear distinction between mandatory requirements and desired functions should be made by the CA.

6. Time limits

6.1 In order to determine the time limits, the CA must 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 set by the Law (minimum time limits) but are free to set longer time limits in order to allow the EO the appropriate time for the preparation of offers.

6.2 Time limits shall be calculated on the date of publication of the contract notice or on the date when all invitations for tender submission are sent.

Normal time limits

| | Procedures | | |
|---------------|----------------|---|---|
| | Open | Restricted | Competitive with negotiations |
| High value | 40 days | 20 days receiving of requests 40 days receiving of tenders | 10 days receiving of requests 20 days receiving of tenders |
| Medium value | 20 days | 15 days receiving of requests 20 days receiving of tenders | 10 days receiving of requests 20 days receiving of tenders |
| Low value | 5 days | / | / |
| Minimal value | 1 day | / | / |

*If the Previous Notice **

| | Procedures | |
|-------------------|-----------------------|---|
| | <i>Open</i> | <i>Restricted</i> |
| <i>High value</i> | <i>24 days</i> | <i>20 days receiving of requests 24 days receiving of tenders</i> |

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

Accelerated time limits

| | Procedures | |
|---------------------|-----------------------|---|
| | <i>Open</i> | <i>Restricted</i> |
| <i>High value</i> | <i>15 days</i> | <i>15 days receiving of requests 10 days receiving of tenders</i> |
| <i>Medium value</i> | <i>10 days</i> | <i>15 days receiving of requests 10 days receiving of tenders</i> |

7. Provision of additional information or clarifications and extensions of time limits

7.1 An EO may request, *in writing*, additional clarifying information for the tender documents through the electronic procurement system - only through the function dedicated to requests for clarifications.

7.2 CA will determine the deadlines in TD for receiving such requests as follows:

| <i>If the time limit for the receiving of tenders is</i> | <i>Not less than</i> |
|--|---|
| ≥ 40 days | 20 days Before receiving of tenders |
| ≥ 30 days but < 40 days | 15 days Before receiving of tenders |
| ≥ 20 days but < 30 days | 10 days Before receiving of tenders |
| ≥ 5 days but < 20 days | 3 days Before receiving of tenders |

8. Selection criteria

8.1 According to Article 56 of the LPP, an EO will be considered qualified for participation in the procurement activity if:

1. An EO ***certifies that it is*** suitable according to Article 65 of the LPP by providing evidence required by the contracting authority *and*
2. *Such* an EO, *in case the CA has determined* ***minimum requirements for qualification, fulfils such requirements*** and proves it by providing evidence requested by the contracting authority in accordance with articles 64 to 69 of the LPP.

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

*The second group, **the minimum qualification requirements**, may be determined by the CA when the CA determines that it is necessary to ensure that only EOs possessing certain professional, financial or technical skills will participate in the competition for the contract.*

8.2 “**Eligibility criteria**” and “**minimum qualification requirements**” together are characterized as “Selection Criteria”. Selection Criteria are the requirements that an EO must fulfil to be considered qualified for awarding a public contract.

8.3 *The selection criteria will be clearly specified in the contract notice and in the tender dossier, as well as **any other document or information that the** interested EO is required to submit in order to be considered qualified.*

*All minimum qualification requirements shall be **directly relevant and proportionate** for the object of the contract in question.*

8.4 When determining the minimum qualification requirements, the CA will pay special attention to the development of the EO and will formulate the minimum qualification requirements in such a way as not to exclude newly established EOs possessing reasonable and sufficient economic, financial and/or technical skills. “Reasonable and sufficient” shall mean in relation to:

- i. the estimated value of the contract, a
- ii. fair use of public fund.

8.5 Selection criteria:

- i. **in no way**, they cannot be used as criteria for awarding the contract
- ii. **cannot have** certain weights;
- iii. they are **Pass/Fail assessment requirements**

One or the other

The requirements have been met and the tenders submitted by such tenderers are still under consideration, or

The requirements have not been met and the tenders submitted by such tenderers will be rejected immediately

- The following table presents the *Selection criteria* that can be used by the Contracting Authority:

| Selection Criteria | | | |
|--------------------------|--|---|--|
| | Matter | Requirement | Documentary Evidence |
| Eligibility Requirements | Avoidance of “conflict of interest” | a) No EO personnel may participate in the preparation of the tender dossier | a.Signed Affidavit |
| | | b) No EO personnel can accept assistance in the preparation of his/her tender from the CA personnel who prepared the tender dossier | b.Signed Affidavit |
| | | c) No EO personnel can have a conflict of interest, as defined in article 4, paragraph 1.75 of the LPP | c.Signed Affidavit |
| | History of EO and its management for the last 10 years | a) Has not been declared guilty for corruption practices, by a court | a. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | b) Has not been declared ineligible by a court when the contracting authority finds | b.A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |

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| | | that this is a serious professional misconduct | |
| | | c) Has not been declared guilty by a court, for participation in the activities of a criminal organization | c. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | d) Has not been declared guilty by a court, for committing an act of fraud or a similar act | d. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | e) It has not been declared by a competent court, administrative agency or organization for the implementation of professional conduct standards, that it has behaved in an unprofessional manner | e. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | f) Has not been declared by a competent court to have made serious misrepresentations | f. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | Economic background – Ensuring the credibility of EO | a) during the past two (2) years has been declared bankrupt or insolvent by a competent court | a. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | b) by decision of a competent court, it has not been liquidated or placed under supervision | b. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |

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|--|--|---|---|
| | | c) There is no arrangement with creditors based on prior insolvency | c. Signed Affidavit |
| | | d) It is not in a condition comparable to a, b or c. | d. A certificate issued by a competent judicial or administrative authority of the tenderer's country of establishment |
| | | e) Has not currently lost the right to sell his property | e. Signed Affidavit |
| | | f) Is not in proceedings that could result in bankruptcy | f. Signed Affidavit |
| | | g) it has not been established by a competent court that it has not fulfilled a contract during the last three (3) years | g. Signed Affidavit |
| | | h) is not late in paying taxes or social security contributions | h. Regarding taxes, a certificate issued by the tax administration of the country of establishment that the EO is not in arrears in the payment of taxes at least until the last quarter of the year; and in relation to social security, a certificate issued by the competent authorities or Public Operators certifying that such a condition does not exist |
| | | i) Is not more than ninety (90) days late in the payment of employee salaries or in the payment of obligations to a public service Operator | i. A certificate issued by the competent authorities or Public Operator certifying that such a condition does not exist |

| | | | |
|---|--|---|---|
| Minimum qualification requirements | | j) has not yet implemented a decision issued by a Kosovo court | j. Signed Affidavit |
| | | k) has given false statements regarding the procedure for awarding a public contract, if these are related to the lack of reasons for exclusion, or to the fulfilment of the selection criteria | k. Signed Affidavit |
| | | l) is not disqualified by PRB | l. Signed Affidavit |
| | 1. Professional suitability | a) Business Registration in the place of establishment of the EO that proves the registration of the EO in the professional, commercial and/or corporate register. | a. Evidence or a copy of the business certificate |
| | | a) Authorization or licensing or membership in a special organization for professional services issued by a public authority | a. A copy of authorization/license/proof of membership or an affidavit that such a requirement does not exist in their state |
| | 2. Economic and financial situation | a) Minimum economic/financial condition requirements | a. Adequate statement or statements from one or more banks; or |
| | | | a. Evidence of relevant insurance policy issued by a licensed and reputable company; OR |
| | | | a. Certified copies of one or more balance sheets or parts of balance sheets; or |
| | | | a. Copies of financial reports and management reports certified by a recognized firm licensed for control or a licensed independent auditor; or |

| | | | |
|--|--|--|---|
| | 3. Technical and/or professional skills | | a. Annual Tax Statements submitted to the Tax Administration of Kosovo. |
| | | In the case of a contract for the supply of products: | |
| | | a) Minimum value related to supplies in the last 3 years | a. A list listing the main relevant supplies of the EO specifying: the products involved, the contractual amount, the date and the acceptor / certificate of acceptance |
| | | a) Minimum requirements of the technical capabilities of the EO | a. Description of the technical capabilities of the EO |
| | | a) Minimum requirements for quality assurance measures | a. Description of the quality assurance organization and measures |
| | | a) Opportunities required for research and development | a. Description of opportunities for research and development |
| | | a) The minimum number of technicians or technical bodies involved, in particular for quality control | a. Description of technicians or technical bodies involved and their CVs |
| | | a) Samples, descriptions, photographs, etc. | a. Product samples, graphic presentations and/or photographs of products for supply |
| | | a) Certificate of products regarding adaptation and specifications or standards. | a. Copy of the Certificate |
| | | a) Inspection, in case of complex or special use products | |

| | | | |
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| | | In the case of a contract for the provision of services: | |
| | | a) The minimum professional and educational qualifications of the managerial staff | a. List of professional and educational qualifications and their CV |
| | | a) Minimum value related to services in the last 3 years | a. A list specifying the relevant performance principles specifying: the services involved; the amount of the contract; date and acceptor/certificate of acceptance |
| | | a) The number and minimum qualifications of technicians or technical bodies included in particular those of quality control | a. Notes on the technicians and technical bodies involved and their CVs |
| | | a) Minimum average workforce for each of the 3 years | a. Statement of the average workforce of the EO and the average number of managerial staff for each of the 3 years |
| | | a) Minimum requirements for tools, spaces or technical equipment | a. A statement of the tools, spaces or technical equipment available to the tenderer providing the services |
| | | a) Minimum requirements for quality assurance measures | a. Description of the organization and quality assurance measures |
| | | a) Spaces necessary for research and development | a. Description of research and development spaces |
| | | a) Elements foreseen for sub-contracting | a. A note of the elements of the contract in question that the tenderer intends to subcontract |
| | | a) Other appropriate and relevant information | |
| | | a) Inspection, in case of complex services or special purposes | |
| | | In the case of a contract for the execution of work projects or | |

| | | | |
|--|--|--|--|
| | | the performance of construction activities: | |
| | | a) Professional and educational qualifications of the managerial staff | a. Professional and educational qualifications of managerial staff and their CVs |
| | | a) Minimum value related to services in the last 3 years | b. A list specifying each of the EO's works projects and construction activities carried out by the EO in the last 3 years accompanied by a good execution certificate indicating the value, date and type and location of the work project and/or construction activities/ acceptance certificate |
| | | a) Minimum requirements for tools, spaces or technical equipment | c. A statement of tools, spaces or technical equipment available to the tenderer executing the project for works |
| | | a) Minimum of average workforce and managerial staff for each of the 3 years | d. Statement of the average workforce of the EO and the average number of managerial staff for each of the 3 years |
| | | a) Minimum number of employed technicians | e. Notes for technicians and technical bodies involved |
| | | a) Other relevant and necessary information | |

i. Note on eligibility requirements (Article 65 of the LPP):

The purpose of this criterion is to assess whether the tenderer meets the eligibility requirements defined by Article 65 of the LPP as follows:

- a. in relation to Article 65, paragraphs 1.1, 1.2 and 1.3 of the LPP, affidavit signed by the Economic Operator in question;
- b. in relation to Article 65, paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2 and 4.4 of the LPP, an extract from the “court register” or, in the absence thereof, an equivalent document issued by a competent judicial or administrative authority of the country of establishment of the Economic Operator;
- c. in relation to Article 65, paragraph 4.8, for social insurance, and 4.9 of the LPP, a certificate issued by the competent authority or the Public Operator proving that such a situation does not exist.
- d. in relation to Article 65, paragraph 4.8 of the LPP, for the contribution of taxes, a certificate issued by the Tax Administration of the country of establishment of the Economic Operator.

Certifications regarding eligibility requirements (other than the Affidavit) will be required to be submitted by a tenderer whom the contracting authority intends to award with a contract. These documents must be submitted by the tenderer before the publication of Notice B58 on the decision of the CA. The deadline for the submission of the mentioned documentation is not less than five (5) days from the receipt of the notification of the contracting authority for the intention of awarding the contract.

Failure to submit such documents, his/her tender will be rejected and the CA will continue with the tenderer listed in second place, as well as the tender security will be confiscated if the same has been requested and the CA will initiate the procedure for disqualification in accordance with article 99.2 of the LPP.

ii. Note on the requirements of the economic and financial situation (Article 68 of the LPP):

The purpose of this criterion is to assess whether the tenderer has sufficient financial and economic stability to perform the proposed contract. In general, Economic Operators are allowed to meet this requirement by presenting, if relevant and necessary, one or more of the references given below:

- a. The relevant report or reports from one or more banks;
- b. Evidence of an insurance policy issued by a recognized licensed insurance company;
- c. Certified copies of one or more balance sheets or extracts from balance sheets if the publication of such balance sheets is required under the law in the country of establishment of the Economic Operator
- d. Copies of financial reports and management reports certified by a recognized firm licensed for control or a licensed independent auditor; or;
- e. Annual Tax Statements submitted to the Tax Administration of Kosovo or from the country of establishment.

a. The relevant report or reports from one or more banks

In the case of contracts with a high value, when the economic operator has to finance the implementation of the contract, it is useful to request a certain amount of liquidity or for the same value a promissory note for credit. It can ensure that the Economic Operator will receive a loan from the bank in case of need, or the company has money (cash) and is able to implement the contract without a loan.

In addition, the bank can prove that the Economic Operator regularly pays his loan repayment without delay, which is also a guarantee that the Economic Operator has a solid financial background.

Example:

Requirement 1. The economic operator must have at least 500.000 euros of liquid financial assets (for example in the bank account) or at least 500.000 euros of credit access available.

***Documentary evidence 1.** Statement from the bank confirming the availability of Euro 500.000 in the company's bank account or a bank certificate (promissory note) confirming that the company can obtain a loan of Euro 500.000, if necessary. The date of the bank statement cannot be earlier than the date of publication of the contract notice and refers to the activity in question.*

b. Evidence of an insurance policy issued by a recognized licensed insurance company

The insurance company can only issue the insurance policy that certifies that the Economic Operator has a valid insurance for a certain purpose (e.g.: products, liability), the insurance amount and the validity period.

The Insurance Company has no other role and cannot prove anything about bank accounts, income, balances.

Areas where it makes sense to require the provision of services with insurance policies: construction works, design and supervision services, travel services. It is also important to determine the number of damages and the value of the damage that will be covered by the insurance policy.

- c. “Certified copies of one or more balance sheets or extracts from balance sheets if the publication of such balance sheets is required under the law in the country of establishment of the Economic Operator”**

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

- d. Copies of financial reports and management reports certified by a recognized licensed auditing firm or a licensed independent auditor.**

Audited accounts can only be requested for the last 3 years. If the company was established 1 or 2 years ago, for example, the company cannot be rejected because it has audited accounts for only one or two years.

In determining the minimum turnover, the contracting authorities **shall not exceed twice** the estimated value of the contract. The requirement for the turnover must be expressed in figures and must refer to the last three financial years at most. Such financial years must be clearly defined in the contract notice or in the invitation to tender or to participate. *Where, in addition to the minimum turnover, a specified minimum turnover in the specific areas covered by the contract is necessary, such turnover must not exceed 1.5 times the estimated value of the contract.*

- e. Annual Tax Statements submitted to the Tax Administration of Kosovo**

Example:

Requirement: The EO must provide satisfactory evidence that the annual turnover of the EO, during the last 3 years, has been in value, together in the last three financial years, of no less than: 500.000 Euro.

Evidence: Annual Tax Statements submitted to TAK for the last three financial years.

Note: The economic and financial situation requirement is a minimum condition for qualification. It means that all the tenders that fulfil this minimum requirement fulfil the condition of the economic situation, and the cases where the evidence is much greater than the defined minimum requirement are not important.

In the case where the requirement of the economic and financial situation refers to a total turnover of 3,000,000 euros in the last three years and the Economic Operator fulfils the requirement defined in the tender documents in only two years or one year, it is considered that the EO has fulfilled the minimum requirement. The minimum condition is met by presenting evidence of a total turnover of €3,000,000 in three years, and it does not matter how much the turnover was in each year separately.

iii. Note on technical and/or professional skill requirements (Article 69 of the LPP):

- *In accordance with the law on public procurement, CA can request from EO a list of projects implemented in the last 3 years. The following must be attached to this list as evidence:*
 1. When the supply is made to a public authority in Kosovo or in another country, a copy of the relevant certificate (certificate / acceptance report / reference) issued or co-signed by such authority serves as proof of this delivery and all these evidences must have the executed value.
 2. When the supply is made to a private buyer, the copy of any document signed by the buyer and the evidence of such delivery serves as an evidence of this delivery;
- In all the cases included in 2.1, 4.2 and 6.2 of Article 69 of the LPP, the following expression is mentioned: “implemented (completed) in the past three years” or “in the past three-year period...”). Pursuant to the Law, the expression “the past three years” means: “the time period defined in these articles which is related to the period that preceded the date of publication of the contract notice or, in the case of procedures negotiated without the publication of the contract notice, sending the invitation for participation or tendering.
- Pursuant to Article 69, paragraph 2.1, 4.2 and 6.2, the expression “...implemented in the past three years” means **Contracts for supplies, services and/or works implemented** (completed) in the past three-year period (period explained as above).
- In these situations, it is recommended that the date from which the past three-year period begins to be calculated should be set to the date of the publication of the Contract Notice, or of the sending of the invitation to participate.

Advice: Many CAs apply the requirements of article 68 and/or 69 of the LPP even for cases where they do not have any importance or need to be proven (e.g. for activities aimed at supplying goods that are not produced by their provider). In these activities, the application of the criteria from article 68 and/or 69 of the LPP is not reasonable, on the contrary, it is unprofessional and may cause unnecessary problems.

iv. Note for documentary evidence:

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

- Certifications regarding eligibility requirements will be required to be submitted by a tenderer whom the contracting authority intends to award the contract. These documents must be submitted by the tenderer before the publication of Notice B58 on the decision of the CA. The deadline for the submission of the mentioned documentation is not less than five (5) days from the receipt of the notification of the contracting authority for the intention of awarding the contract. *Failure to submit such documents, his/her tender will be rejected and the CA will continue with the tenderer listed in second place, as well as the tender security will be confiscated if the same has been requested and the CA will initiate the procedure for disqualification in accordance with article 99.2 of the LPP.*
- In cases where the issuance of documents or certificates, under the **requirements of professional suitability** are not achievable for objective reasons, or when these documents do not cover all the cases for which the evidence must be produced, a written statement under oath by the EO may be accepted as sufficient evidence. (Article 66 of the LPP).
-
- In the case of a restricted or competitive procedure with negotiations, certifications regarding eligibility requirements will be required to be submitted by candidates whom the contracting authority intends to invite to tender (short list). These documents must be submitted by the Candidates before the final pre-qualification decision by the Contracting Authority. The deadline for the submission of the mentioned documentation is no less than five (5) days from the receipt of the contracting authority's notification of the intention to pre-qualify the candidate. Failure to submit such documents means the candidate will be rejected and the contracting authority will proceed with the next tenderer in the ranking list. The same condition also applies to EOs when concluding a framework agreement with several EOs - mini competition.
- The Economic Operator may be allowed to show his/her **economic/financial situation** through any other documents than those required by the CA if the EO provides valid reasons and the CA considers them adequate (Article 68.3 of the LPP). Upon the request of an Economic Operator to be allowed to use the alternative documentation as mentioned in this part, the contracting authority must give sufficient time to the Economic Operator for the documentation in question. Such time limit cannot be less than five (5) days.
- When necessary, the contracting authorities can determine in the tender dossier and in the contract notice how groups of Economic Operators must fulfil the requirements for the economic and

financial situation or the technical and professional ability referred to in article 68 and 69 of the LPP- that. CAs can determine a minimum percentage in terms of meeting the requirements for the economic and financial situation by the EO group leader.

Example:

The minimum turnover required by the CA is 2,000,000 euros and the CA can determine In the contract notice that the group leader is preferred to fulfil at least 51% of this minimum turnover.

9. Contract award criteria

9.1 Contracting authorities may choose to award the contract on the basis of:

- a) *Responsive tender with the lowest price or*
- b) *The most economically advantageous responsive tender*

9.2 When price is the only criterion, the contract will be awarded to the tender with the lowest price that meets the specified requirements.

9.3 If the criterion for awarding the contract is “Most Economically Advantageous Tender (MEAT)”, the contract must be awarded to the tender that best fulfils the relevant criteria. In addition to the price, the CA may include other relevant criteria for the subject of the contract. For example, the following can be included:

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

9.4 The criteria must be weighted according to relative importance, with a percentage where all sub-criteria components reach 100%.

9.5 The contracting authority may specify the relative weight it gives to each of the selected criteria to determine the economically advantageous tender.

Example: Price 50%, Quality 30%, Delivery Time 20%.

9.6 According to the best practice, the best balance in scoring to guarantee the best value for money, except for some specific situations related to the uniqueness of the market (for example, the purchase of innovative solutions or the development of high-tech supplies), usually determined by citing the two components 60 points (technical offer) versus 40 points (economic offer), or 70 to 30.

9.7 The identification of the criteria (and any sub-criteria) to be applied must be carried out with due care at the stage of preparation of the Tender Dossier and the Contract Notice and their determination must aim at achieving the best value for money.

9.8 Failure to include relevant criteria or inclusion of inappropriate criteria in error may mean that the offer offering the best value for money is not selected. Criteria will generally be assessed using a scoring system or scoring rule, which assigns coefficients to the criteria used.

- 9.9 Also, the criteria and sub-criteria must be clearly formulated so that they are fully understandable to the tenderer. For example, it is recommended to formulate the “quality” criteria from one or more sub-criteria and also to formulate each sub-criterion by describing the minimum and maximum levels for each of the sub-criteria. Each sub-criterion represents the division of the corresponding criterion. The weight assigned to each sub-criterion (in order of importance, as usual) will be within the limits of points provided for the criterion itself. The sum of the weights of all sub-criteria referring to the same criterion must not exceed the total weight assigned to the criterion itself.
- 9.10 The tenderer must, based on the description in the tender documents, see how he/she will prepare his tender to achieve a good result and the tender must be completed with documentation explaining how the tenderer will deliver the quality and service offered.

Example:

The maximum submission period is 15 days from the date of issuing the order by the CA and the minimum delivery period is 5 days. The tenderer will tender between 15 and 5 days. There will be no additional points for the tenderer who offers submission in less than 5 days. The scoring model can be defined as follows:

< 5 days = 5 points

5-7 days = 4 points

7-10 days = 3 points

10-13 days = 2 points

15 days = 1 points

>15 days = 0 points.

- 9.11 When determining the criteria and their relative importance, the following may be taken into account:

- Criteria should be determined on a case-by-case basis.
- Relative importance should reflect relative importance for the contracting authority.
- The criteria must be directly related to the object of the procurement and not to the ability of the economic operators to fulfil the contract.
- The criteria must be compliant to the specifications.
- The criteria must be formulated in a clear, simple and understandable way for economic operators.

- Only the criteria determined in the tender dossier and in the Contract Notice can be applied.
- The criteria must be determined in accordance with the LPP and basic principles of procurement.

9.12 General principles regulating the determination of evaluation criteria.

The evaluation criteria must be determined by the Contracting Authorities in order to guarantee compliance with the **principles of transparency, non-discrimination and equal treatment. Moreover, they must ensure an appropriate level of competition.**

Consequently, they should:

- **turn out to be non-arbitrary.** Under the discretion of the CA in their determination (as defined by Article 52.4 of the LPP), they should not in any case have **the effect of granting an unlimited freedom according to the choice of the contracting authority.** Their definition should in fact ensure the possibility of effective competition, not create distorting effects and not allow any advantage for one competitor, not respecting the other.
- **be related to the subject of the contract.** The evaluation criteria, in accordance with article 52.2 of the LPP, must be considered related to the subject of the contract **when they relate to the works, supplies or services** to be provided under that contract in any aspect and at any stage of the cycle of their lifespan, including the factors involved in:
 - the specific process of producing, providing or trading those works, supplies or services; or
 - the specific process of another stage of their life span cycle, even when such factors are not part of their material substance.
- **be objective** to the greatest extent possible. The evaluation criteria (Article 52.3 of the LPP) are objective when they reflect the elements present in the relevant market and suitable to put all competitors present in the market in a position to express a proposal. Accordingly, their definition includes reference to specifications that allow information provided by bidders to be effectively verified to assess how well the bids meet the contract award criteria.
- **refer to quantifiable elements.** The evaluation criteria shall refer to the components of the offer, which are suitable to be expressed in numbers (Article 52.5 of the LPP), and thus, objectively comparable and ranked.
- **be non-discriminatory.** This includes that the evaluation criteria should not be individualized in such a way as to prejudice or favour a particular competitor present in the market. To avoid as much as possible such a risk and to limit the freedom of CAs in their choice, the identified evaluation criteria should only be commonly present in the relevant market and sufficiently precise in their definition.

- **be clearly identified and described in the tender dossier.** The evaluation criteria will be provided in the tender documents, and it is not allowed to change or replace any of them after the publication of the tender procedure. They should be expressed (along with the weights and scoring formula used) in a clear and precise manner to enable EOs to submit bids with accurate knowledge of the CA's needs and the rules to be applied for the evaluation of a tender. Only in this way the principle of equal treatment and full transparency can be effectively guaranteed.
- **not refer to or overlap with the selection criteria (Article 52.4)**

9.13 The use of the criterion of awarding the responsive tender with the “lowest price”

The “*lowest price*” criterion can be used in the following cases:

- **Price** is the only important purchasing feature. For the CA, it is important only what must be purchased under predetermined conditions and relevant price, without any implications regarding the characteristics and elements of quality.
- **Standardized purchases:** purchases that cannot be modified at the request of the contracting authority due to the nature and/or production cycle (e.g. water, gasoline, electricity, natural gas, software, etc.); or supplies technical characteristics of which are precisely predetermined in technical standards (at national, European or international level) and for which there is no need to receive, during tendering procedures, different offers to compare in terms of quality.
- **Repetitive purchases and contracts of low value,** when the characteristics of the procurement are such that they impose the purchase of goods/services/works with conditions already known to the contracting authority or when, for contracts of limited value, the expected advantages, as regarding quality are limited in relation to the speed of the procedure. For example, all cases where the CA prepares the executive project and does not request a competition for the project itself; or purchases where the CA has gained a great deal of experience due to the periodic recurrence of that purchases. More generally, in all those cases the benefits derived from the competition for the best quality/price ratio are zero or very low.

9.14 Use of the award criterion “The most economically advantageous tender”

- MEAT is usually used for complex supplies, services and works contracts, where there are different products/solutions and which do not differ only in price.
- The use of MEAT means that the contracting authority is willing to pay more money to achieve a better quality result.
- MEAT is based on the methodology which, by improving the technical-quality component, alongside the economic element of the service, work or supply, guarantees the selection of the tender offering the best value for money.

- The term “**value for money**” indicates the optimal combination between the **cost** (*such as the price and lifetime costs of goods, works or services*) and the **quality elements of the tender** (*functional, technical, environmental, aesthetic, social aspects*), in order to meet better the needs of the CA.

Some cases where it may be considered appropriate to use **MEAT** are as follows.

- **Procurement of supplies** - *for supply contracts involving significant and specialized product installations and/or maintenance and/or user training activities, it is usual to award the contract on the basis of the MEAT criterion. For this type of contract, in fact, quality is normally of particular importance.*
- **Procurement of works** - *for works designed by the tenderer, the MEAT criterion is often used.*
- **Procurement of services** - *for the procurement of consulting services and generally intellectual services, quality is normally very important. Experience has shown that when looking for this type of service, the best results in terms of best value for money are achieved when the MEAT criterion is used.*

EXAMPLE:

- Subject of the contract: Vehicle maintenance
- Criterion for awarding the contract: *Lowest price with points*

| 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 regular servicing | 60% | Price x60% | € 100,00 | € 60,00 | € 80,00 | € 48,00 | € 110,00 | € 66,00 |
| 2 | Price for maintenance and spare parts | 20% | Price x20% | € 100,00 | € 20,00 | € 80,00 | € 16,00 | € 50,00 | € 10,00 |
| 3 | Price for repairs and painting | 5% | Price x 5% | € 120,00 | € 6,00 | € 200,00 | € 10,00 | € 70,00 | € 3,50 |
| 4 | Price for vehicle body parts | 15% | Price x15% | € 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 price contract: | | | | 101€ | | 96.50€ | | 97.50€ | |

- The winner based on the tender criteria with the lowest price: **Company B**.
- The reason is that, although the total amount of prices per unit is the lowest at Company C, but the Price of Regular Servicing (item No. 1) will be ordered in most cases (60%), which is the most expensive in the case of company C.
- The total price per unit is the highest at Company B, however, the item that is needed most often (No. 1) is the cheapest from this company, therefore the overall Price Score is the lowest from this Company. The invoice will be issued in any case based on real quantities and not weighted prices! In this example we have only weighted the prices per unit based on their importance!

10. Clarification of tenders during the tender evaluation process

10.1 *The following examples are not the only cases. Depending on the case presented, CA must act in accordance with Article 72 and Article 59 of the LPP*

| Problem | How to act? | LPP article |
|---|--|--------------------------|
| Missing reference/certificate of acceptance from the list of contracts presented | Clarifying information may be requested | 69 |
| List of executed contracts submitted does not fulfil minimum value requirements | Reject the tender without asking for further information | 69 |
| The list of executed contracts has not been submitted, but there have been submitted Evidence (reference/certificate of acceptance/contract) | Clarifying information may be requested | 69 |
| Business Registration Certificate is missing | Clarifying information may be requested | 66 |
| VAT Certificate is missing | Clarifying information may be requested | 66 |
| Fiscal number Certificate is missing | Clarifying information may be requested | 66 |
| Licence is missing | Clarifying information may be requested | 66 |
| ISO Certificate is missing | Clarifying information may be requested | 69 |
| Price is missing | Reject the tender without asking for further information | Administrative condition |
| The submitted CV does not fulfils the requirements | Reject the tender without asking for further information | 69 |
| The required CV is not submitted | Clarifying information may be requested | 69 |

| | | |
|---|--|--------------------------|
| The submitted CV does not contain the required information, CA cannot decide | Clarifying information may be requested | 69 |
| Evidence on the economic and financial situation is missing | Clarifying information may be requested | 68 |
| Evidences on the economic and financial situation do not meet the minimum requirements | Reject the tender without asking for further information | 68 |
| The tender form is not filled in correctly or is missing | Reject the tender without asking for further information | Administrative condition |
| The price list has been completed but not signed (tenders delivered in physical form) | Reject the tender without asking for further information | Administrative condition |
| The Tender Security is missing or does not contain the conditions defined according to the standard form part of the TD | Reject the tender without asking for further information | 57 |
| The price list is not filled in | Reject the tender without asking for further information | Administrative condition |
| The clear statement where all members of the group are jointly and individually responsible is missing | Reject the tender without asking for further information | Administrative condition |
| The statement signed by each member is missing for confirmation of participation | Reject the tender without asking for further information | Administrative condition |
| The signed statement by all group members is missing for the authorization of the leader partner | Reject the tender without asking for further information | Administrative condition |
| Affidavit is missing | Reject the tender without asking for further information | Administrative condition |
| Technical specification is missing for the goods offered and catalogue (“technical specification” – CA determines the minimum and maximum requirements of a product, while the EO must submit | Reject the tender without asking for further information | 28 |

| | | |
|---|--|----|
| detailed specification of goods offered. Except in cases when EO cannot submit the technical specification of a certain product e.g. fruits/vegetables etc. EO submits the statement where he/she declares that the goods will be in accordance with the required specification). | | |
| The technical specification has been submitted for the goods offered but the catalogue is missing | Clarifying information may be requested | 69 |
| The catalogue has been submitted the technical specification is missing for the goods offered | Reject the tender without asking for further information | 69 |
| Original Authorization has been requested but scanned authorization submitted | Clarifying information may be requested | 66 |

11. Abnormally Low Tenders

- 11.1 In any case where the tenders seem abnormally low, the Contracting Authority will act in accordance with Article 61 of the LPP and Article 41 of the Regulation on Public Procurement.

EXAMPLE 1

| No. | Lot 1 | | | |
|-----|--|--|----------------------|--|
| | A | B | C | D |
| 1 | Condition 1: the first condition is met because 6 offers have been received | 6 offers received | | |
| 2 | | 1 | 2,021,514.20 | |
| 3 | | 2 | 1,334,220.45 | |
| 4 | | 3 | 2,151,997.25 | |
| 5 | | 4 | 1,899,832.59 | |
| 6 | | 5 | 2,494,303.84 | |
| 7 | | 6 | 1,987,499.90 | |
| 8 | | Total (C2+C3+C4+C5+C6+C7) | 11,889,368.23 | |
| 9 | | Average (C8/6) | 1,981,561.37 | |
| 10 | Condition 2: all offers under this price fulfil the second condition | threshold 30% (average /1.3) | 1,524,277.98 | in this case, only Offer 2 fulfils the second condition, so it continues with the third condition |
| 11 | Condition 3: threshold 10% between the lowest price offer compared to the second lowest price offer | threshold 10% (second offer /1.1) | 1,727,120.54 | in this case Offer 2 fulfils the third condition as well |

| Condition | Requirement | Justification |
|-------------------|--|---|
| 1 | More than 3 offers have been received | The first condition has been fulfilled because 6 offers have been received |
| 2 | The offered price is more than 30% lower than the average price of responsive tenders | The second offer fulfils the second condition (30%) because the price offered is more than 30% lower than the average of the tenders. See the threshold in column C10 |
| 3 | The Price offered is more than 10% lower than the Price or costs of the second lowest price tender | The second offer also fulfils the third condition (10%) because compared to the second offer in a row, it is more than 10% lower. See threshold C11 |
| Conclusion | <u>Offer with the ordinal nr. 2</u> fulfils the 3 defined conditions and therefore can be considered as an abnormally low offer | |

EXAMPLE 2

| No. | Lot 2 | | | |
|-----|---|-------------------------------------|---------------------|--|
| | A | B | C | D |
| 1 | Condition 1 - the first condition is fulfilled because 4 offers have been received | 4 offers received | | |
| 2 | | 1 | 2,684,598.09 | |
| 3 | | 2 | 1,888,880.48 | |
| 4 | | 3 | 1,878,488.51 | |
| 5 | | 4 | 2,497,038.42 | |
| 6 | | | | |
| 7 | | | | |
| 8 | | Total (C2+C3+C4+C5) | 8,949,005.50 | |
| 9 | | Average (C8/4) | 2,237,251.38 | |
| 10 | Condition 2 - all offers under this price fulfil the second condition | threshold 30% (average /1.3) | 1,720,962.60 | in this case, no offer fulfils the second condition, therefore it is NOT continued with the third condition |

| Condition | Requirement | Justification |
|-------------------|---|---|
| 1 | More than 3 offers have been received | The first condition has been fulfilled because 4 offers have been received. |
| 2 | The offered price is more than 30% lower than the average price of responsive tenders | No offer meets the second condition (30%) because the price offered is less than 30% lower than the average of the tenders. See the threshold in column C10 |
| Conclusion | <u>None of the offers</u> can be considered as an abnormally low offer according to paragraph 3.1 but CA can continue according to paragraph 3.2 of the regulation | |

GUIDELINE No.001/2023 FOR PUBLIC PROCUREMENT

12. Entry in force

This guideline enters into force on the date of signature.

Datë: 01/02/2023

Osman Vishaj

Kryetar i KRPP-së



Annex 1

PROCUREMENT NUMBER

In all forms, the procurement identification number is formed as follows:

