

RULES GOVERNING SALE AND DISPOSALS OF ASSETS

*According to Article 87.2.18 of Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092*

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# General Provisions

* 1. The Public Procurement Regulatory Commission provides the rules for organizing and conducting the sale of asset disposals by Contracting Authorities.

1.2 The sale of assets must be conducted by adhering to strict procedures foreseen under these rules and must be managed by the Procurement Department of the Contracting Authority.

1.3 All public disposal activities shall be conducted in a manner which promotes transparency, accountability and fairness.

1.4 Detailed operational guidelines and standard forms for Disposal processes are made accessible to the public on the Public Procurement Regulatory Commission website.

1.5 If, without any intent to discriminate against or in favour of any person or undertaking, a Contracting Authority determines that:

1. the solicited asset disposal can only be performed by a person or undertaking having adequate technical or professional qualifications; or
2. there are predetermined conditions of sale e.g. used for citizens sale, or particular organisations sale, end-user restrictions (such as restricted sale of military / police equipment, and certain items that may have export restrictions), and
3. Such Contracting Authority will only accept offers from persons or undertakings possessing certain minimum qualifications, the contracting authority shall establish such qualification requirements in a manner that is clear, objective and non-discriminatory and publish all such requirements in the asset disposal notice.

# Scope

2.1 The provisions of these Rules shall apply to any disposal of Contracting Authorities’ surplus.

2.2 Assets obtained as the result of the expenditure of public funds in the acquisition of Goods, Works and Services, or those supplied through Donor assistance which are beyond reasonable repair or reuse must be disposed of through a disposal process.

# Purpose

3.1 The purpose of the rules is to establish and define standards, methods, and/or restrictions for the disposal of the assets in a legal, accountable and cost-effective manner. The rules aim to achieve the best possible outcome for the Contracting Authority by gaining the best available net return when selling and to ensure transparency of action.

# Definitions

4.1 ***“Assets”*** *-*Anything tangible or intangible that is capable of being owned or controlled to produce value and that is held to have positive economic value. Assets are economic resources which can be physical, such as stock (inventory), capital purchases (plant and equipment), or anything of material value, or usefulness, that is owned by a person, or government organisation/ institution or a business.

4.2***"Disposal"*** - means the divestiture of public assets, including intellectual and proprietary rights and goodwill, and any other rights of a Contracting Authority by any means, including sale, auction, or any combination.

4.3***"Disposal process****"* - means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract.

4.4***“Intangible assets”*** - are something valuable which an organisation has which is not material, such as non-physical resources and rights that has a value to the organisation because they give the organisation some kind of advantage in the market place. Examples of intangible assets are goodwill, copyrights, trademarks, patents, good reputation, computer programs, and financial assets, including such items as accounts receivable, government bonds and stocks.

4.5**“*Market price*”** - means a price that may be either an actual price, an assumed market price, or a realisable price that the market will offer. The market price may bear no actual relationship to the ‘accounting value’ of the asset, or inventory item.

4.6***“Reserve price”*** - means the minimum sale price of the asset (see also “*Market price” as a reserve price may not be a realistic or realized price).*

4.7***“Tangible assets****”* - are those that have a physical substance and can be touched. Tangible assets contain various subclasses, including current assets and fixed assets. Current assets include inventory, while fixed assets include such items as equipment

4.8***“User Department"*** *-* means any department, division, branch or section of the Contracting Authority, including any project unit working under the authority of the Contracting Authority, which initiates the disposal requirement and is the user of the assets.

# Identification of asset type

5.1 The Contracting Authority at the end of each financial year shall survey all stock items, parts, equipment, held in the Warehouse /Stores, and other government assets, ageing animals, equipment, to ascertain whether any of the items have become surplus.

* 1. All Assets of the Contracting Authority shall be compared to the Asset register and shall be:
1. Checked, recorded and re-valued in the asset register;
2. Determined if it has a high market value and may be offered for sale; or
3. Identified as surplus, or of no economic value, or beyond economic repair, and therefore be registered in the Asset Disposal Register.

# Initiation and approval of a Disposal process

6.1 Prior to initiating the conduct of any specific disposal process the Head of the User Department shall request in writing from the person responsible for the management of the assets to give an assessment of the condition of the asset for disposal.

6.2 The person responsible for the management of assets shall provide an assessment and grade of the condition and shall initiate the disposal procedure by sending the request for approval to the Chief Administrative Officer (CAO).

6.3 The Chief Administrative Officer shall appoint a Disposal Survey Team, consisting of at least 3 members, (i) to inspect the assets, (ii) to ascertain their serviceability or otherwise, (iii) to determine the market value of the asset, and (iv) to propose the method of disposal.

6.4 After the approval, which shall be evidenced by the signature of the Chief Administrative Officer, the person responsible for the management of the assets shall forward the documentation to the Procurement Department to commence and conduct the disposal process. The Procurement Department will use appropriate forms and follow instructions in the rules for asset disposals to obtain best prices from the market.

# Selecting a Disposal Method

7.1 When selecting a disposal method for the disposal of an asset the Procurement Department of the Contracting Authority shall take into account the following factors:

1. The potential market value of the asset;
2. The volume / quantity of the asset;
3. The number and location of potential bidders;
4. The location of the asset;
5. Restrictions on export or on the end users;
6. National security or public interest issues;
7. Health and safety issues;
8. Legal or human rights issues;
9. Environmental considerations;
10. The trade-in value of the asset; and
11. The possibility of transferring the asset to another Contracting Authority.

# Methods for Disposal of Public Asset

A Contracting Authority shall select one of the following disposal methods:

* 1. ***Sale by Public Auction***

8.1.1 A public auction may be used where (a) there are no conditions of end-user or export restrictions attached to the sale; or (b) there are a large number of potential bidders, or assets to be disposed of in one location, and where an onsite auction is arranged to avoid transport costs.

8.1.2 Where an asset is disposed of through this method the Contracting Authority may conduct the sale, or appoint a licensed professional auctioneer to conduct the public auction on its behalf. The appointment of the auctioneer shall be done by using the appropriate procurement method for consultancy services.

* 1. ***Sale by Sealed Public Bidding***

8.2.1 Sealed public bidding may be used (a) for high-value or unusual assets; (b) for assets located in remote areas; (c) for assets that have a geographically dispersed potential market; (d) for assets with end-user or export restrictions attached to their sale; (e) where conditions need to be attached to the sale of the asset; or (f) where post-bid negotiations may be required.

* 1. ***Sale to Public Officials***

8.3.1 Sale to Public Officials may be used (a) where there is no likely benefit or financial advantage to the Contracting Authority, in using any other disposal method; (b) where the assets for disposal are a small number of low value items which are unlikely to attract public interest; (c) where the personal use of disposal assets would directly benefit the performance of a public officer in the execution of his or her duties within a Contracting Authority; or (d) in remote locations, where any other method of disposal would be difficult.

8.3.2 Where an asset is disposed of through this method the Contracting Authority may contract, through procurement procedures, an independent agent to conduct the sale on its behalf.

8.3.3 Assets for sale to public officials shall be for personal use only and not business or commercial use.

* 1. ***Direct negotiations***

8.4.1 Direct negotiations may be used where (a) the market is limited and a single buyer who is willing to pay the reserve price, or near to the reserve price has been identified; (b) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual.

* 1. ***Trade-in***

8.5.1 Trade-in may be used where (a) the trade-in of surplus assets to offset the purchase price of new items provides a convenient, economic and efficient way of upgrading equipment.

8.5.2 Trade-in shall not be used where (a) it prevents the operation of open and fair competition or where it reduces the value for money in a procurement process and (b) where factors other than price have to be taken into account in the disposal process.

8.5.3 Under a trade-in, the disposal process shall be an integral part of the procurement process and shall follow the procurement rules.

* 1. ***Transfer to another Contracting Authority***

8.6.1 Transfer to any other Contracting Authority may be used where the other Contracting Authority can make further use of the asset.

* 1. ***Conversion or classification of assets into another form***

8.7.1 Conversion or classification of an asset into any other form may be used (a) on grounds of national security or public interest, legal or human rights issues or environment considerations; or (b) where the asset has no residual value in its current form, but where some sale value can be obtained through conversion or classification into any other form.

8.7.2 The Contracting Authority shall identify a competent authority or an appropriate provider to undertake the conversion or re-classification.

* 1. ***Destruction of assets***

8.8.1 Destruction of an asset, shall be the least favoured method, but may be used (a) on grounds of national security or public interest, health and safety, legal or human rights issues or environment considerations; or (b) where the asset has no residual value and it cannot be transferred to any other Contracting Authority or converted or classified into another form with any value.

8.8.2 Destruction of an asset may be used when the asset may be inherently dangerous, or may become dangerous through external factors, or that may affect a person, or the environment (pharmaceuticals, chemicals, radio isotopes, hazardous items). The destruction will be carried out by suitably qualified specialists under controlled conditions. The Contracting Authority will identify a competent authority or an appropriate provider to undertake the destruction.

# Valuations (Market Value of Assets)

9.1 A valuation of any asset due for disposal should be obtained prior to the commencement of any disposal process. The valuations shall be used to determine a realistic or realisable reserve price.

#  Revenue from the Sale of Assets

10.1 All the revenue proceeds from the sale of assets shall be deposited into the Contracting Authorities bank account.

10.2 The Contracting Authority must observe provisions of the Law on Public Finance Management for the revenues received after the sale of public assets.

#  Publication of Disposal Notices and Contract Award

11.1 A public invitation notice, a notification of a public auction and a contract award, apart from the award of a contract under public auction, which shall be by a declaration of the successful bidder at the time of bidding, shall be published at the PPRC’s website.

11.2 A non-public invitation notice and a contract award, under the method “Sale to Public Officials” shall be published at (a) the Contracting Authority’s website and (b) the PPRC’s website.

#  Language

12.1 All documentation in regard to disposal process shall be prepared in the official languages required by the Law on Languages of the Republic of Kosovo.

#  Time Limit for receipt of Offers

13.1 Any time limit set by the Contracting Authority for the receipt of offers, or for the conduct of the public auction shall be of a duration that is sufficient to give all potential economic operators sufficient time to inspect the asset, and if applicable prepare and submit offers.

13.2 In a disposal process using the public auction method, the period between the publication of the notification of a public auction and the date of the auction shall be at least ten calendar days.

13.3 In a disposal process using the sealed public bidding method, the period between the publication of the public invitation notice and the date of the receipt of the offers shall be at least fifteen calendar days.

13.4 In a disposal process using the sale to public official’s method, the period between the publication of the non-public invitation and the date of the receipt of the offers shall be at least ten calendar days.

13.5 In a disposal process using the trade-in method the time-limits of the procurement rules apply.

#  Submission and withdrawal of Bids, Bid closing and Bid Opening processes

14.1 The rules for acceptance of bids, withdrawal of bids, bid closing and bid opening times shall be clearly stated in the bidding documents.

#  Contract Award Criteria

15.1 Contract Award shall be based on price, which is the preferred evaluation methodology, but can also be based on price and other factors.

15.2 Other factors which may be taken into consideration are:

1. There are end-user restrictions;
2. There are export restrictions;
3. There is a need to attach conditions to a sale;
4. Nationality, under a reservation scheme;
5. Environmental impact;
6. Risks or conditions associated with health and safety, legal or human rights issues, national security or public interest;
7. The need to retain an asset within Kosovo, or within a given region;
8. The need to maintain an asset in working order or to maintain accessibility for the public; or
9. any other performance conditions and means of monitoring compliance with such conditions.

15.3 Contract award criteria’s shall be specified in the bidding documents and in the invitation notice.

15.4 If the contract award is based on factors other than the price, post-bid negotiations may be undertaken, under the public sealed bidding method, only in relation to the conditions of the sale, whereas, under the direct negotiations method, post-bid negotiations may be undertaken in relation to the conditions of the sale, or the price of the Bid. Negotiations shall only be held with the recommended best evaluated bidder.

#  Evaluation, re-bidding and failure to reach the reserve price

16.1 Subject to any reservations in regard to the valuation or reserve price, whenever the contract award is based only on price the contract shall be awarded to the bidder with the highest price, whereas whenever the contract award is based on price and other factors, the contract shall be awarded to the best evaluated bid.

16.2 Where written bids have been requested and the highest priced bid has been submitted by more than one bidder (offering the same price), the Procurement Department should arrange a re-bidding procedure where only the bidders who submitted the highest identically priced bids are allowed to submit revised bids. The revised bid shall contain the revised price only, and the bidders should not be permitted to change any other aspect of the bid. The revised price should not be lower than the original price, otherwise they shall be rejected.

16.3 Where the best evaluated bid is less than the reserve price, the Contracting Authority may:

1. obtain a further valuation from an independent source;
2. negotiate the price with the best evaluated bidder;
3. arrange for new bids to be submitted; or
4. use an alternative disposal method likely to obtain a higher price.

#  Review procedures

17.1 The procedures in respect to the process of appeal shall be those determined in Title IX of Law no. 04/L-042, on Public Procurement of the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092.