

LAW

NO 7971 date 26.07.1995

ON PUBLIC PROCUREMENT

THE PEOPLE' ASSEMBLE OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of this Law

The purpose of this Law is to promote economy and efficiency in the use of public funds by procuring entities while ensuring that public procurement procedure are fair, transparent and non-discriminatory.

Article 2. Definitions

In this Law :

“procurement” means the purchasing, hiring or obtaining by any other contractual means of goods, construction and services;

“procuring entity” means any organ of the State or regional and local authorities as well as any other juridical person to whom public funds have been allocated for use in public procurement;

“public procurement” means procurement by procuring entities;

“goods” means raw materials, products, machineries and equipments, objects in solid, liquid or gaseous form and electricity, as well as transport, installation, maintenance or similar obligations related to the supply of the goods if their value does not exceed that of the goods themselves;

“construction” means all work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure, such as site preparation, excavation, installation of equipment and materials, decoration, as well as services incidental to construction, if the value of those services does not exceed that of the construction itself;

“services” means any object of procurement other than construction and goods;

“tendering” means a procurement procedure under which tenders are invited, received, examined and evaluated for the purpose of awarding a contract;

“open tendering” means a procurement procedure whereby all interested candidates may submit tenders;

“restricted tendering” means a procurement procedure whereby only those candidates which are invited by the procuring entity may submit tenders;

“two-stage tendering” means a procurement procedure whereby the procuring entity invites tenders in two stages, in the first stage tenders with full information without prices and in the second stage tenders with prices;

“request for proposals” means a procurement procedure whereby the procuring entity invites proposals from selected candidates;

“direct procurement” means a procurement procedure whereby the procuring entity contacts and seeks a proposal from one candidate;

“request for quotations” means a procurement procedure whereby the procuring entity invites quotations from candidates selected by it;

“candidate” means a physical or juridical person invited to take part in public procurement or seeking to be so invited;

“procurement regulations” are the regulations issued by the competent authority under this Law;

“supplier” means a physical or juridical person under contract with a procuring entity to supply goods, construction or services;

“tender documents” means the documents provided by the procuring entity to tenderers as a basis for preparation of their tenders;

“tenderer” means a physical or juridical person submitting a tender;

“public funds” means every monetary value originated from the state budget, from revenues of state enterprises and companies with the Government as a majority shareholder.

Article 3. Scope of application

This Law applies to public procurement, except the cases where the Council of Ministers, for the reason of national security or national defence, may define an other procedure for public procurement of goods, constructions or services.

Article 4. International obligations

To extent that this Law conflicts with an obligation of the State under or arising out of an agreement with one or more other states or with an international organisation, the provisions of that agreement shall prevail; but in all other respects, public procurement shall be governed by this Law.

Article 5. Procurement regulations

1. The Council of Ministers is authorised to promulgate procurement regulations to fulfil the objectives and to carry out the provisions of this Law.

2. If more than one procuring entity needs the same kind of goods, construction or services, the Council of Ministers may assign to one of those entities the task of procuring such items on behalf of the other entities.

Article 6. Public accessibility of legal texts.

This Law, the procurement regulations and all instructions of the Agency shall be promptly made accessible to the public and systematically maintained.

CHAPTER II. PUBLIC PROCUREMENT ORGANIZATION

Article 7. Responsibility of the procuring entity

1. The procuring entity is responsible for procurement with public funds at its disposal subject to the provisions of this Law and to any such further condition as may be laid known in the procurement regulations and the instructions of the Agency.

2. With respect to contracts above thresholds stated in the procurement regulations, the procuring entity shall submit to the higher central or local authority or to the Council of Ministers for prior review and approval, before a contract is awarded or concluded, a summary report containing:

- a) justification for the choice of procurement procedure, if other than open tendering,
- b) the evaluation of tenders of proposals received, and
- c) the proposed award or conclusion of contract.

3. Procuring entities must make records and documents regarding their public procurement available for inspection by the Agency and must submit reports regarding their procurement activities in such detail and at such intervals as the Agency may require.

Article 8. The public Procurement Agency

1. The Public Procurement Agency is reporting to the Council of Ministers and is the central organ for co-ordination and perfection of the public procurement process.

2. In the performance of its tasks, the Agency;

- a) submits proposals for procurement regulations to the Council of Ministers;
- b) promotes and supports training of central and local government officials engaged in public procurement;
- c) edits and issues a Public Procurement Bulletin to be used for invitations to tender and other announcements relevant to public procurement;
- c) prepares standard documents to be used in connection with public procurement;
- d) gives instructions, and, or request, advice and assistance to procuring entities in undertaking procurement;
- dh) presents an annual report to the Council of Ministers regarding the overall functioning of the public procurement system;
- e) inspects the records of procuring entities to the extent it deems appropriate in order to check on the proper application of this Law by them;
- e) performs administrative review of complaints as foreseen in Chapter VIII;
- f) cooperates with international institutions and with other foreign entities on matters associated with the public procurement system; and
- g) plans and coordinates foreign technical assistance to Albania in the field of public procurement.

3. The Director of the Agency is appointed and dismissed by the Prime Minister.

4. The Prime Ministers also appoints an inter-disciplinary consultative board, composed of representatives from major procuring entities at the central and local government levels, to give advise and comments on the overall functioning of the public procurement system in Albania and on proposals to be submitted by the Agency for consideration by the Council of Ministers.

CHAPTER III. COMMON PROCUREMENT RULES

Article 9. Non-discrimination on the basis of nationality

Physical or juridical persons shall not be excluded from participation in public procurement on the basis of nationality.

Article 10. Records of procurement

(1) Procuring entities shall maintain records of public procurement in sufficient detail to allow control and verification that the provisions of this Law have been respected. With respect to each transaction the record shall contain, as a minimum, justification of the procurement procedure chosen, if other than open tendering, information concerning the goods, construction or services procured, the names of candidates, the name of the supplier to whom the contract was awarded, and the contract price.

(2) The minimum information to be recorded according to paragraph (1) shall, on request, be made available to interested persons after a contract has been awarded. Other information shall remain confidential.

(3) The procuring entity shall preserve and keep the record and documents relating to any procurement available for inspection by the competent authorities during a period of time stated in the procurement regulations.

Article 11. Form of communications

Communications between candidates and procuring entities shall be only in writing. If the communication is made in any other form, it shall referred only to the written documents and the content of that communication shall be confirmed in writing, immediately after that communication.

Article 12 Qualification of candidates

(1) In order to participate in public procurement, candidates must qualify by meeting such of the following criteria as the procuring entity considers appropriate under the circumstances:

(a) that they possess the necessary professional, technical and organisative capacity, personel, financial resources, maschineries and other physical facilities, reputation and reliability to perform the contract;

(b) that they shall have before performed similar contracts in compliance with they stated in procurement regulations;

(c) that they have the legal capacity to enter into the contract;

(c) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not subject of legal proceedings for any of the foregoing;

(d) that they have fulfilled their obligations to pay taxes and social security contributions. Documentary evidence to be provided by a foreign candidate to demonstrate that it meets the criterion in this paragraph may consist of a written declaration to that effect by the candidate;

(2) The procuring entity may require candidates to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the candidates are qualified in accordance with the criteria referred to in paragraph (1).

(3) Any requirement established pursuant to this Article shall be set forth in the prequalification documents, if any, and in the tender documents or other documents for solicitation of proposals, and shall apply equally to all candidates.

(4) The procuring entity shall evaluate the qualifications of candidates in accordance with the criteria and procedures set forth in the documents referred to in paragraph (3).

(5) The procuring entity shall disqualify a candidate who submits a document containing false information for purposes of qualification. In such case the procuring entity can propose to the Public Procurement Agency that the candidate be expelled from all public procurement for a period up to one year. If the Public Procurement Agency shall approve this proposal, this shall be published in the Public Procurement Bulletin.

(6) The procuring entity has the right to disqualify a candidate, if it, at any time up to the signing of the contract will find out that the information submitted related to the qualification or other data presented by and for the candidate are inaccurate or incomplete.

Article 13. Prequalification proceedings

(1) The procuring entity may engage in prequalification proceedings with a view towards identifying, prior to the submission of tenders, that candidates are qualified. The use of prequalification proceedings is indispensable as a preliminary to open tendering or two-stage tendering in the case of large or complex contracts for goods and construction.

(2) If the procuring entity engages in prequalification proceedings, it shall prepare a set of prequalification documents containing as minimum the following information:

(a) instructions for preparing and submitting prequalification applications;

(b) the nature and quantity of goods, construction or services to be procured;

(c) the desired time for delivery of the goods or completion of the construction or services;

(ç) the criteria and procedures to be used for evaluating the qualifications of the candidates, following the provisions of Article 12;

(d) a summary of the principal required terms and conditions of the contract to be entered into as a result of the procurement proceedings;

(dh) any documentary evidence or other information that must be submitted by candidates to demonstrate their qualifications;

(e) the manner and place for the submission of applications to prequalify and the deadline for submission; and

(e) any other requirements that may be established by the procuring entity in conformity with this Law and the procurement regulations.

(3) An invitation to prequalify shall be advertised in the manner prescribed for invitations in the open tendering procedure by being in compliance with the time limits defined in procurement rules for the pre-qualification procedure and shall contain at least information about;

(a) the name and address of the procuring entity;

(b) a brief description of the purpose of the invitation along with a summary of the nature and quantity of goods, construction and services to which the prequalification will apply.

(c) the means of obtaining prequalification documents and the place and deadline for submission of applications to prequalify.

(4) The procuring entity shall make a decision with respect to the qualifications of each candidate submitting an application to prequalify. In reaching that decision, the procuring entity shall apply only the criteria set forth in the prequalification documents.

Article 14 . Technical specifications

(1) Technical specifications laying down the characteristics of the goods, construction or services to be procured shall be prepared for the purpose of giving a correct and complete description of the object of procurement and for the purpose of creating conditions of fair and open competition between all candidates.

(2) The technical specifications shall clearly describe the procuring entity's requirements with respect to quality, performance, safety and dimensions, symbol,

terminology, packaging, marking and labelling or the processes and methods for their production and requirements relating to conformity assessment procedures.

(3) Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be in terms of performance rather than design or descriptive characteristics; and

(b) be based on international standards, where such exists, or otherwise recognised national standards or building codes.

(4) There shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific origin, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as “or equivalent” are included in the specifications.

Article 15. Rejection of all tenders, proposals or quotations

1. If so specified in the tender documents or in the request for proposal or quotations, and provided rejection can be justified on sound economic grounds, the procuring entity may reject all tenders, proposals or quotations at any time prior to their acceptance. The procuring entity shall upon request communicate to any candidate the grounds for its rejection but is not required to justify those grounds.

2. The procuring entity shall incur no liability towards candidates solely by virtue of its invoking paragraph (1) of this Article.

3. Notice of the rejection shall be given promptly to all participating candidates.

4. If the decision to reject all tenders, proposals and quotations is taken before the closing date, all tenders proposals and quotations received shall be returned unopened to the tenderers submitting them.

Article 16. Inducements from candidates

The procuring entity shall reject a tender, proposal or quotation if the candidate that submitted it gives or promises to give, directly or indirectly, to any current or former officer to employee of the procuring entity or other governmental authority a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the procurement proceedings. Such rejection and the reasons therefore shall be recorded in the record of the procurement proceedings and promptly communicated officially to the candidate concerned.

CHAPTER IV. CHOICE OF PROCUREMENT PROCEDURE

Article 17. Procurement Procedures

1. Except as otherwise provided in this Chapter, the procuring entity shall use open tendering as the preferred procedure of procurement.
2. A procuring entity may use a procedure other than open tendering only pursuant to the following Articles 19,20,21,22 and 23.
3. Exceptionally, in special cases or force major, the Council of Ministers may permit the use of a procedure other than open tendering in situations not foreseen in Articles 19,20,21,22 and 23.
4. A procuring entity shall plan its procurement in a rational manner, and no procurement requirements for a given quantity of goods, construction or services shall be split up with the intention of avoiding a procurement procedure stated in this Law or in the procurement regulations.

Article 18. Conditions for use of restricted tendering

The procuring entity may engage in procurement by means of restricted tendering in accordance with Article 36, when:

- a) the goods, construction or services are available only from a limited number of suppliers ;
- b) the estimated value of the contract does not exceed a threshold set out in the procurement regulations.

Article 19. Conditions for use of direct procurement.

1. The procuring entity may use direct procurement in accordance with Article 37 if this method is not resorted to with a view to avoiding possible competition or in a manner which would constitute a means of discrimination among candidates:
 - a) when in the absence of competition for technical reasons the goods, construction or services can be supplied or provided only by one candidate;
 - b) within limits defined in the procurement regulations, for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, services, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;

c) within limits defined in the procurement regulations, when additional construction services, which were not included in the initial contract have, through enforceable circumstances, become necessary since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons;

c) within limits defined in the procurement regulations, for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded on the basis of open or restricted tendering;

d) for continuation of consulting services, where the original contract has been satisfactory performed and the continuation is likely to lead to gain in economy and efficiency;

dh) for purchase of perishable commodities such as fresh fruits, vegetables or other similar items which are purchased on market terms;

e) for purchases of goods made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers. It is not intended to cover routine purchases from regular suppliers.

(e) for the continuation of the design services that are related with services previously performed, which would violate the author's right if they would be given to another subject.

2. The procuring entity may also use direct procurement for small value purchases of readily available goods when the contract price does not exceed an amount stated in the procurement regulations.

Article 20 Conditions for use of two-stage tendering

The procuring entity may engage in procurement by means of two-stage tendering in accordance with the Article 38, in the case of large or complex contracts for goods or constructions, for which open or restricted tendering is not suitable because of the difficulty in defining precisely the goods or constructions, by requesting:

(a) in a first stage, tenders without prices with full technical information as to various possible means of meeting its objectives, after which,

(b) in a second stage, priced tenders on the basis of technical specifications and other data chosen on the basis of the first stage.

Article 21 Conditions for use of request for proposals.

The procuring entity may engage in procurement by means of request for proposals in accordance with Article 39 when it seek to obtain consulting services or other services for which tendering is not suitable because of the difficulty in defining precisely the services.

Article 22 Conditions for use of request for quotations.

The procuring entity may engage in procurement by means of request for quotations in accordance with Article 40 for the purchase of readily available goods or for procurement of construction or services for which there is an established market, so long as the estimated value of the contract does not exceed an amount stated in the procurement regulations.

CHAPTER V. OPEN TENDERING

Article 23 Basic provision regarding open tendering

Open tendering shall be used when the estimated contract value exceeds an amount stated in the procurement regulations. Procuring entities may engage in open tendering whenever goods, construction or services to be procured are obtainable from domestic sources and in sufficient competition within the country, always subject to the rule of no-discrimination in Article 9. The following basic provision shall apply to open tendering procedures.

Article 24 Invitation to tender.

The invitation to tender shall contain, as a minimum,

- (a) the name and address of the procuring entity,
- (b) a brief description of the goods, construction or services to be obtained, including desired time limit for delivery or completion,
- (c) the means and conditions for obtaining the tender documents and the place from which they may be obtained,
- (ç) the place and deadline for the submission of tenders, and,
- (d) the place and time for opening of tenders, along with an announcement that tenderers' representatives are allowed to attend the opening of tenders.

Article 25 Advertisements

(1) In addition to any publication in the Public Procurement Bulletin, invitations to tender shall be advertised in at least two national newspapers of general circulation.

(2) The time allowed for preparation of tenders shall not be less than a minimum number of days stated in the procurement regulations.

Article 26. Tender documents.

The tender documents shall contain sufficient information to enable competition among the tenderers to take place on the basis of complete, neutral and objective terms. In particular, tender documents must include:

- (a) instructions for the preparation and submission of tenders;
- (b) information on the final date for receipt of tenders, the address to which tenders must be sent, the date, hour and place of such opening, as well as an announcement that tenderers' representatives are allowed to attend the opening;
- (c) forms of tender and, where applicable, forms of tender security to be provided;
- (ç) the number of copies to be submitted with the original tender;
- (d) conditions of contract, general and special; for construction contracts may foreseen even the supervision and taking over of them;
- (dh) specification of requirements, including time limit for delivery or completion, as appropriate;
- (e) evidence to be provided by the tenderer to demonstrate its qualifications as well as its standing with regards to fiscal and social security obligations;
- (ë) the period during which the tender must remain valid;
- (f) the criteria for evaluation of tenders and award of the contract; and
- (g) a reservation to the effect that the procuring entity may reject all tenders at any time prior to the acceptance of a tender.

Article 27 Provision of tender documents.

Tender documents shall be made available to candidates in an expeditious manner, at a price not exceeding the cost of reproduction and delivery to candidates, and otherwise in the manner specified in the invitation to tender.

Article 28 Modifications to tender documents.

At any time prior to the deadline for submission of tenders, the procuring entity may, on its own initiative or in response to an inquiry by a candidate having purchased the tender documents, modify the tender documents by issuing an addendum. Any addendum shall be communicated promptly to all candidates having purchased the tender documents. If the procuring entity considers it necessary to amend the tender documents, and if that amendment is made less than one- third of the time allowed for the preparation of tenders remains until the closing date, the procuring entity shall postpone the closing date by a number of days, depending on the procurement object.

Article 29 Tender security

(1) The procuring entity shall include in the tender documents a condition that tenders must be accompanied by security in the form of a deposit or bank guarantee. The amount of such security shall be sufficient to discourage irresponsible tenders and shall remain within limits stated in the procurement regulations.

(2) Tender security shall be forfeited if a tenderer withdraws his tender within the validity period therefor or, in the case of a successful tenderer, if the tenderer repudiates the contract or fails to furnish performance security, if so required.

Article 30. Submission and receipt of tenders.

(1) Tenders shall be submitted in writing, signed and in a sealed envelope. They should be submitted at the place, time and date specified in the invitation to tender. The tender envelope should contain the documentation for the qualification of the candidates and the technical-economic tender closed in two separate envelopes. In international tender procedures the tenders can be received before the designated opening date, but the invitation to tender should specify the deadline for tender submission. In those cases, the procuring entity, after a request, should give to the tenderer a document specifying the date and time that he has submitted the proposal.

(2) Tenders received after the deadline for submission shall be returned unopened to the tenderer.

Article 31 Opening of tenders.

(1) At the time stipulated in the tender documents for opening of the tenders, which for international tender procedures should follow shortly after the deadline for submission of tenders, the procuring entity shall open all tenders received before the deadline.

(2) Tenderers, or their authorised representatives, shall be allowed to attend the opening of tenders.

(3) The name of the tenderer and the total amount of each qualified tender shall be read out aloud and recorded, a copy of the record shall/and be made available to any tenderer on request.

(4) The envelopes containing the technical-economic tender of a tenderer disqualified for not meeting of qualification criteria, should be sent unopened to the tenderer.

Article 32. Examination and evaluation of tenders.

(1) The procuring entity may ask tenderers for clarification of their tenders in order to assist in the examination and evaluation of tenders. No change in the substance of the tender, including changes in price, shall be sought, offered or permitted.

(2) Notwithstanding paragraph (1), the procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders. The entity shall give prompt notice of any such correction to the tenderer that submitted the tender.

(3) Subject to paragraph (4), the procuring entity shall regard a tender as responsive only if it conforms to all requirements set forth in the tender documents.

(4) The procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in tender documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

(5) The procuring entity shall not accept a tender when a tenderer:

(a) has failed to demonstrate, in the manner foreseen in Article 26 (e), that it is qualified;

(b) does not accept a correction of an arithmetical error made pursuant to paragraph (2) of this Article;

(c) his tender is not responsive.

(ç) has offered an inducement under Article 16

(6) The procuring entity shall evaluate and compare the tenders that have been held responsive in order to ascertain the successful tender, as defined in paragraph (7), in accordance with the procedures and criteria set forth in the tender documents. No criterion shall be used that has not been set forth in the tender documents.

(7) The successful tender shall be the tender which, in accordance with the procedures and criterion set forth in the tender documents, meet the requirements of procurement object with:

(a) the lowest tender price; or

(b) if the procuring entity has so stipulated in the tender documents, the lowest evaluated tender ascertained on the basis of factors affecting the economic value of the tender which have been specified in the tender documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable.

(8) The procuring entity shall prepare an evaluation report, containing a summary of the examination and evaluation of tenders.

Article 33 Process to be confidential.

(1) After the opening of tenders, information relating to the examination, clarification, and evaluation of tenders and recommendations for award must not be disclosed to tenderers or other persons not officially concerned with this process until the award of the contract is announced.

(2) Following opening of the tenders, and until the contract is signed, no tenderer shall make any unsolicited communication to the procuring entity or try in any way to influence the entity's examination and evaluation of the tenders.

Article 34 Tenderers not to be requested to modify their tenders.

A tenderer shall not be required, as a condition for award, to undertake responsibilities not stipulated in the tender documents, to change its price or otherwise to modify its tender.

Article 35 Notification of award and signing of contract.

(1) Prior to the expiry of the period of tender validity, the procuring entity shall notify the successful tenderer that its tender has been accepted.

(2) The notification of award shall constitute the formation of a contract between the parties, which must be signed within the time stated in tender documents. The notification shall contain at least total value of contract, request for the furnishing performance security and the sign of contract form.

(3) The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties

CHAPTER VI. OTHER PROCUREMENT METHODS

Article 36 Restricted tendering procedure

Restricted tendering procedures are the same as those applied in open tendering, except that:

(a) the invitation to tender is addressed to a limited number of qualified candidates - for the purpose of obtaining not less than three tenderers - which have declared an interest in submitting tenders. The selection should be made in a nondiscriminatory manner, and the number of candidates invited should be, if possible, sufficient to ensure effective competition;

(b) procuring entities maintaining updated lists of qualified suppliers may select candidates to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the list;

(c) the time allowed for preparation of tenders shall not be less than a minimum number of days stated in the procurement regulations; and

(c) the procuring entity may decide, depending on the circumstances, if tender security will have to be submitted or not.

Article 37 Direct procurement procedure.

(1) When the procuring entity engages in direct procurement according to Article 19(1), it shall prepare a description of its needs and any special requirements as to quality, quantity, terms and time of delivery, and shall be free to negotiate with the sole candidate. Any agreement reached by procurement according to Article 19 (1) shall be confirmed by a contract signed by both parties.

(2) Direct procurement according to Article 19 (2) requires no contract or other documents.

Article 38 Two-stage tendering procedure

(1) When the procuring entity engage in two-stage tendering, it shall select candidates on the basis of prequalification proceedings according to Article 13.

(2) In the first stage, the procuring entity shall invite prequalified candidates to submit tenders without price but including information about the technical performance, quality or other characteristics of the goods or construction that they consider best suited to meet the procuring entity's objectives. In this stage, the procuring entity may engage in negotiations with any candidate concerning any aspect of its tender.

(3) In the second stage, the procuring entity shall invite final, priced tenders on the basis of final technical specifications from candidates which have presented satisfactory tenders in the first stage.

(4) For award of a contract based on tenders submitted in the second stage, the provisions of Chapter V shall apply.

Article 39 Request for proposals procedure

(1) Request for proposals shall be addressed to not less than three, not more than seven candidates selected by the procuring entity.

(2) A request for proposals shall contain at least the following information:

(a) name and address of the procuring entity;

(b) a description of the services required, normally through terms of reference;

(c) in case of consultancy assignments which may involve potential conflict of interest, a reminder that candidates for such assignment must exclude themselves from procurement of goods and construction which may follow as a result of, or in relation to, the assignment;

(c) the criteria for evaluating the proposals, the relative weight to be given to price and other criteria, and the manner in which they will be applied in the evaluation of proposals;

(d) place and deadline for the submission of proposals.

(3) The procuring entity may negotiate with candidates with respect to the content of their proposals and may seek or permit revision thereof.

(4) Any award by the procuring entity shall be made to the candidate whose proposal is most advantageous, determined in accordance with the criteria and procedures for evaluating proposals set forth in the request for proposals.

Article 40 Request for quotation procedure.

(1) The procuring entity shall request quotations from as many candidates as practicable, but from at least three.

(2) The request shall contain a clear description of the requirements of the procuring entity as to quality, quantity, terms and time of delivery as well as other special requirements.

(3) Any award by the procuring entity shall be placed with the candidate who meets the requirements of the procuring entity stipulated in paragraph(2) and who quotes the lowest price.

(4) The procuring entity shall place a contract with successful candidate.

CHAPTER VII. INTERNATIONAL PROCEDURES

Article 41 Open international tendering

(1) The procuring entity shall use "Open international tendering" whenever in open tendering an effective competition cannot be obtained unless foreign firms are invited to tender.

(2) Open international tendering shall respect the provisions of Chapter V as well as the following provisions:

(a) The invitation to tender and the tender documents shall be in Albanian language and in a language generally used in international trade.

(b) The invitation to tender shall be advertised in a newspaper using the same foreign language as the invitation and being of sufficient circulation to attract foreign competition.

(c) The deadline for submission of tenders, stated in the procurement regulations, shall be sufficient for the invitation to reach candidates and for enabling them to prepare and submit tenders.

(c) Technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade.

(d) Candidates shall be permitted to express their tenders,as well as any security documents to be present by them,in their respective home currencies, or in a currency widely used in international trade and stated in the tender documents

(dh) General and special conditions of contract shall be of a kind generally used in international trade.

Article 42. Other international procedures

Whenever international competition cannot be obtained unless foreign firms are invited to participate in procedures other than open international tendering,such as restricted

or two-stage tendering, the provisions of Article 42 (2) shall apply to the extent practicable in addition to the stipulations of Chapter VI.

CHAPTER VIII. ADMINISTRATIVE REVIEW

Article 43 General

(1) Subject to the provisions of this Chapter, any candidate is free to seek administrative review of an act or omission by a procuring entity which the candidate considers to be in breach of this Law, the procurement regulations or any instructions issued pursuant thereto.

(2) The following shall not be subject to the review provided for in paragraph (1) of this Article:

(a) the choice of a procurement method pursuant to Chapter IV;

(b) a decision by the procuring entity under Article 15 to reject all tenders, proposals or quotations;and

(c) a decision taken by the entity with the consent of the Council of Ministers.

(3) Once the procuring entity has signed a contract with the candidate of successful tender or proposal, a complaint against an act omission in the process leading up to that stage cannot be entertained through administrative review.

Article 44. Review by the head of the procuring entity

(1) A complaint against an act or omission by the procuring entity shall, in the first instance, be submitted to the head of the procuring entity.

(2) Unless the complaint is resolved by mutual agreement, the head of the procuring entity shall suspend the procurement proceedings and shall, within 15 days after submission of the complaint, issue a written decision, stating the reasons, and, if the complaint is upheld, indicating the corrective measures to be taken.

(3) If the head of the procuring entity does not issue a decision within the time stated in paragraph (2),or if the candidate is not satisfied with the decision of the head of the procuring entity, he presents a complaint to the central or local body and, if he doesn't receive the desired solution of the problem the candidate is entitled to submit a complaint to the Public Procurement Agency.

Article 45 **Review by the Agency**

(1) Upon receipt of a complaint, the Agency shall promptly give notice of the complaint to the procuring entity. Such action automatically suspends further action by the procuring entity until the matter has been settled by the Agency.

(2) The Agency, unless it dismisses the complaint, may prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure, may order the procuring entity to proceed in a manner conforming to this Law, and may annul, in whole or in part, an unlawful act or decision by the procuring entity, other than a decision to award or conclude a contract.

(3) The Agency shall, before taking any decision regarding a complaint, notify interested candidates of the complained and shall take into account information and arguments received from such candidates and from the procuring entity.

(4) The Agency shall issue its decision within 30 days of receiving the complaint, stating the reasons for its decision and remedies granted, if any.

(5) The Agency's decision shall be final.

CHAPTER IX. FINAL PROVISIONS

Article 46. **Administrative infringements**

The higher central or local authority when ascertains the breach of the provisions of this law and procurement regulations, has the right to penalize for administrative infringement the responsive persons of procuring entity with a fine from 50 to 100 thousand leke. Against to the penalize decision may be lodged a complaint, within 5 days after the notification, to the court of district of procuring entity.

Article 47. **Repeal of other legislation**

All provisions that contradict with this law are repealed.

Article 48. **Entry in force**

This law shall enter into force on 1 November 1995.