



PUBLIC PROCUREMENT MANUAL

GUIDELINES FOR CONDUCTING PUBLIC PROCUREMENT PROCEDURES

First Edition - April 2007

The First Edition of the Public Procurement Manual was published in hard copies and on CD-ROM, and distributed to selected government institutions and participants to “Train-the-trainers” program on Public Procurement. It is also published on the Public Procurement Agency’s website (www.app.gov.al) and can be downloaded as PDF File, for free, by public officials and economic operators.

This publication was made possible with support by the Millennium Challenge Corporation (MCC) and the Millennium Challenge Albania Threshold Agreement with the Government of Albania, administered by USAID.

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ACRONYMS

CA	Contracting Authority
CV	Curriculum Vitae
EO	Economic Operator
EOI	Expressions of Interest
IT	Invitation to Tender
LOI	Letter of Invitation
PAB	Public Announcement Bulletin
PAO	Public Advocate Office
PM	Procurement Manual
PO	Procurement Order
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPR	Public Procurement Regulation
REOI	Request for Expressions of Interest
RFP	Request for Proposals
SAO	Supreme Auditing Office
TD	Tender Document
TOR	Terms of Reference
TS	Technical Specifications
VFM	Value for Money

FOREWORD

Dear Reader,

FOREWORD

Dear Readers,

This manual, which was prepared with assistance by the Millennium Challenge Albania Threshold Agreement project, is an important effort to support all parties involved in organizing and participating in public procurement procedures and those who are simply curious to learn about these procedures.

Public procurement is a relatively new area in Albania and, usually, the information in this area is obtained through non-professional channels. Therefore, this manual is necessary. The manual serves primarily contracting authorities' officials, economic operators, and the office of the Public Procurement Advocate. But it also serves groups that are not involved on a daily basis in public procurement, but still need to receive professional information in this area. Thus, this manual may be seen also as an opportunity for judges, students, and journalists to be acquainted with public procurement procedures and to assist them in their profession.

The manual offers information related to the public procurement legislation, its implementation in practice, issues and cases faced during daily work, as well as solutions or opportunities to find such solutions. Which institutions and actors operate in this field and what is their role in a procurement procedure? You may find the answer to this and other similar questions in the manual.

Hoping that this manual will serve to increase the efficiency and transparency in public procurement in Albania, I would like to thank the Public Procurement Agency staff and that of the Millennium Challenge Albania project for their work in preparing this manual.

Thank you to you, readers, for using this manual!

Sincerely,

Klodiana Cankja
Director of the Public Procurement Agency

INTRODUCTION

Objectives of the Public Procurement Manual

The new Law on Public Procurement of 2006 (No. 9643, dated 20.11.2006) and the Regulations passed based on this Law have provided the Republic of Albania with a more open and transparent public procurement regime, in compliance with the European Union and International Best Practices.

This Manual has been developed as a reference guide to comply with the implementation of the national Procurement Law and Regulations and contains Standards, Procedures and Guidance on all aspects of public procurement. Although the compliance with the advice or guidance found in the Manual is not compulsory, it is strongly recommended to all categories of procurement staff at the state, regional and local levels. Hence, the Manual can only be applied as an additional tool to the Procurement Law and Regulations in force.

The document is primarily intended for public procurement practitioners, providing them with a suitable tool to ensure an efficient and consistent practice of the public procurement procedures. It also should help contracting entities to better and faster grasp procurement procedures in the day-to-day course of their activities.

The Manual will also serve as training material in the context of procurement training activities for strengthening knowledge of staff associated with the public procurement process.

Amendments to the First Edition of the Manual

This First Edition of the Manual is seen as a document that can be further developed and improved following users' utilisation and comments. However, amendments or changes will only be made by the Public Procurement Agency, which aims to publish a Second Edition in 2008.

Content of the Public Procurement Manual

The Manual consists of five Sections, which are succinctly presented below.

Section I provides a short summary of the national Public Procurement Law and Public Procurement Regulations, as well as a glossary of terms used in the field of procurement that are set out by the Law and shall apply to this Procurement Manual.

Section II comprises information on the national procurement policy from the general principals of public procurement to the responsibilities of the different entities involved in procurement. It also introduces the procurement process from the preparation stage to the selection of the pertinent contract type.

Section III describes the different procurement methods for goods, works and services and presents in detail certain phases of each procurement procedure. Each method is summarised in a flowchart to enable users an easy and practical overview of the step-by-step process.

Section IV deals with the contract administration phase once the tendering and contract award phases are completed, and discusses the essential features relating to the oversight of contract performance.

Section V provides practitioners with useful procurement forms and template documents whose usage is recommended in the practical course of the procurement process.

SECTION I - THE NATIONAL PROCUREMENT LEGAL FRAMEWORK

1. OVERVIEW OF THE PUBLIC PROCUREMENT LAW

The new national Law on Public Procurement, together with the procurement Regulations and the Procurement Manual set out the administrative framework for public procurement procedures in the country. The Law applies to all awarding procedures for the provision of public goods, works and services, which are also applicable to Contracting Authorities (CA) and Economic Operators.

The responsibility for implementing and administering the procurement-related provisions remain the CA, which are subject to the monitoring procedures of the Public Procurement Agency and Supreme Auditing Office.

The new PPL establishes the rights, obligations and responsibilities of all parties in the procurement procedures. It sets out procedures for the control of the public procurement in order to:

- (i) Ensure a better use of public funds and reduce procedural cost;
- (ii) Encourage Economic Operators to participate in public procurement procedures;
- (iii) Promote competition among Economic Operators;
- (iv) Guarantee an equal and non-discriminatory treatment for all Economic Operators participating in public procurement procedures;
- (v) Guarantee integrity, public trust and transparency in public procurement procedures.

The national legal framework is composed of:

- Public Procurement Law
- Public Procurement Regulations

The rationale behind this legal framework is the following:

- *In the context of Market Integration:* Model that supports a Single Economy Space;
- *In the context of EU Integration Process:* Model in line with the “Acquis Communautaire” and International Standards;
- *In the context of International Relations:* Model that strengthens the State position and is harmonised with the EU Directives, bringing the Albania legal framework in line with European standards;

1.1 Main Provisions of the Law

CHAPTER I

This chapter covers the General Provisions of the Law, including:

- (i) Purpose of the Law
- (ii) Awarding Principles
- (iii) Definitions
- (iv) Scope of Application
- (v) Common Provisions

The **Awarding Principles** are stated in Article 2. The CA shall use the provisions of this Law and PPR to award their **public goods, works and services**.

The **Law does not apply to** Government's secret contracts and contracts requiring special security measures in accordance with the laws, regulations or administrative provisions in force, or when the protection of the State's essential interests so requires (Article 6).

At the beginning of the procurement procedure the CA estimates the value. This value has publication purposes and in some circumstances may determine the procedure. As a general rule, **Open Procedure** is to be pursued by the CA. The relations between threshold values and award procedures will be further explained in the following sections of this manual.

For conducting procurement procedures, the CA shall establish an **Evaluation Commission**. The Evaluation Commission is a mandatory and "ad hoc" institution. Documents relevant to the procurement procedure shall be in the official **language** of Albania, and English language in case of tenders above high value.

CHAPTERS II AND III

Chapters II and III (Articles 12 to 35) describe the different **Procurement Procedures** in relation to the contract value, which are:

- (i) Open Procedure
- (ii) Restricted Procedure
- (iii) Negotiated Procedure with prior Publication of a Contract Notice
- (iv) Negotiated Procedure without prior Publication of a Contract Notice
- (v) Request for Proposals
- (vi) Small Value Purchase
- (vii) Consultancy Service
- (viii) Design Contest

In principle, Contracting Authorities should use the **Open Procedure** as the most favoured method of Government procurement. The Law, while encouraging competition, shall also ensure the protection of the Albanian economy by ensuring **fair and open competition for all Economic Operators**.

CHAPTER IV

Chapter IV describes the rules applicable to E-procurement, meaning information regarding the specifications necessary for the electronic submission of tenders and requests to participate. Electronic tenders must be accompanied by an advanced electronic signature, in conformity with international standards.

CHAPTER V

Chapter V describes the implementation steps of the procurement procedures. Contracting Authorities appropriately shall decide to award a public contract by open, restricted or negotiated procedure according to respectively Articles 30, 31 or 32 of the PPL, or to launch a design contest according to Article 35 of the PPL. Contract Notices for contracts of a value above the high financial threshold shall be published in the PAB and also on the website of the PPA.

CHAPTER VI

Chapter VI describes the performance of contracts, which includes: conditions of performance of contracts; rules applicable to contracts; sub-contracting; and obligations valid throughout the performance of contracts.

CHAPTER VII

Chapter VII describes administrative review procedures such as rights of interested persons and responsibilities of the PPA and PP Advocate.

CHAPTER VIII

Chapter VIII describes the administrative investigation. The **Public Procurement Agency (PPA)** may start an investigation procedure if it is found out that there has been a violation of the PPL.

The PPA has its seat in Tirana and reports to the Council of Ministers. The Agency has policy-making, advisory, monitoring and information functions, and shall ensure the proper implementation of the Law by:

- (i) Proposing amendments to the Law, in order to keep it up-to-date with Albanian needs and EU standards;
- (ii) Providing advice to both CA and Economic Operators on the interpretation and application of the Law;
- (iii) Planning and conducting training for Contracting Authorities;
- (iv) Providing access to information on public tenders.

The **Public Procurement Advocate (PA)** is the administrative body reporting to the Albanian Parliament. The PA based on a complaint, or on its own initiative, may start an investigation procedure, if he/she observes or suspects that there has been an infringement of the PPL. Once the investigation is completed, the PA may take one the following decisions:

- (a) Close the investigation as the actions, or failure to act, of the Contracting Authority under investigation did not infringe the PPL or any other provision. In this case, when there is a complainant, the PP Advocate explains in writing to the complainant the reasons for ending the investigation, and when appropriate, sends information to the PPA;
- (b) Send immediately relevant information to the PPA, for any case of law infringement, in order to support the latter in decision-taking and complaints' examination or in taking administrative measures against responsible persons;
- (c) Report the offence to the competent authority where satisfied that an officer of the Contracting Authority has committed a deliberate and intentional breach of law or criminal offence.

1.2 The Public Procurement Regulations

The Public Procurement Regulations (PPR) are commonly adopted to clarify and further develop some of the provisions of the Procurement Law.

CHAPTER I – PUBLIC PROCUREMENT ORGANISATION

- Responsibility of Contracting Authorities
- Central Purchase Body
- Public Announcement Bulletin

CHAPTER II – COMMON PROCUREMENT RULES

- Financial Threshold
- Calculation of Estimated Value

CHAPTER III – STANDARD TENDER DOCUMENTS

- Standard Tender Documents
- General Information
- Specific Information

CHAPTER IV – TYPES AND SELECTION PROCEDURES

:

- Type of Procedure
- Open Procedure
- Restricted Procedure
- Negotiated Procedure with and without Prior Published Contract Notice
- Request for Proposals
- Consultancy Service
- Design Contests

CHAPTER V – CONDUCT OF THE PROCEDURES

- Procurement Unit and Purchase Order
- Preparation of Tender Documents
- Submission of Tender
- Evaluating a Tender

CHAPTER VI – CONDUCT OF PROCEDURES FOR REQUEST FOR PROPOSALS,
SMALL VALUE PURCHASE, CONSULTANCY SERVICES, DESIGN CONTEST

Request for Proposals
Small-Value Purchase
Consultancy Service
Design Contest

CHAPTER VII – TERMS OF GENERAL APPLICABILITY

Lack of Competition
Association of Economic Operators
Duration of Contract(s)

CHAPTER VIII – PERFORMANCE OF THE CONTRACT

Sub-Contracting
Monitoring Process of Contract

CHAPTER IX – REVIEW OF COMPLAINTS

Complaints with the contracting authority
Complaint with the PPA

CHAPTER X – ADMINISTRATIVE SANCTIONS AND DISCIPLINARY MEASURES

Deadlines
Contract value
Technical Specifications

CHAPTER XI – EXPLANATORY MANUALS AND TRAINING

.Explanatory instructions and Procurement Manuals,
Training Needs

2. TERMINOLOGY/GLOSSARY OF TERMS

The following definitions within Article 3 of the Procurement Law also apply in the context of this Manual:

1. **“Awarding procedures”** are the procedures carried out by Contracting Authorities in order to award a public contract for goods, works or services.
2. **“Consultancy contracts”** are contracts for consulting services of intellectual and advisory nature, to the exclusion of other types of services where the physical aspects of the activity predominate.
3. **“Public contracts”** are contracts for pecuniary interest concluded by exchange of written communication between one or more economic operators and one or more contracting authorities, and having as their object the execution of works, the supply of goods or the provision of services within the meaning of this law.
4. **“Public Funds”** means:

- a) Any monetary value of the State Budget determined to be used for public contracts;
- b) Any monetary value of the local budget determined to be used for public contracts;
- c) Aid or credit funds provided by foreign donors, based on international agreements, which do not require the implementation of other procedures different from this law;
- ç) Incomes from state, local enterprises, marketing associations and any other entity, where the State has the majority of the capital shares.

5. “Public service contracts” are public contracts having as their object the provision of services. A public contract having as its object both goods and services shall be considered to be a “public service contract” if the value of the services in question exceeds that of the goods covered by the contract. A public contract having as its object services and including works that are only incidental to the principal object of the contract shall be considered to be a “public service contract”.

6. “Public supply contracts” are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of goods. A public contract having as its object the supply of products, which covers also, as an incidental matter, sitting and installation operations, shall be considered to be a “public supply contract” where the value of “goods” exceeds the value of sitting and installation.

7. A “Good” is any material thing which can be economically evaluated.

8. “Public works contracts” are public contracts having as their object either the execution, or both the design and execution of works or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

9. A “Work” means the outcome of building or civil engineering works taken as a whole, which is sufficient of itself to fulfil an economic or technical function.

10. “Dynamic Purchasing System” is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

11. “Electronic Auction” is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions.

12. “Contractor”, “Supplier” and “Service provider” mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.

13. “Economic operator” shall cover equally the concepts of contractor, supplier and service provider, without any kind of distinction.

- a) An economic operator who has submitted a tender shall be designated as a “tenderer”.
- b) One which has sought a to take part in a restricted or negotiated procedure shall be designated as a “candidate”.

14. “Contracting authorities” mean all those entities subject to the PPL for the execution of their public contracts. Namely, the following:

- a) Constitutional and other central institutions, independent central institutions, local governing entities,
- b) Any bodies:
 - (i) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - (ii) having legal personality; and
 - (iii) financed, for the most part, by the State, regional or local authorities, or other public bodies; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other public bodies;
- c) Associations formed by one or several of such authorities, or one or several of such public bodies;
- ç) Any other public body.

15. “Exclusive right” is a right granted to a contracting authority only, or an association of those, by published legislation, capable of excluding any other contracting authority from the provision of the same services.

16. A “central purchasing body” is a contracting authority which:

- a) Acquires goods and/or services intended for contracting authorities, or
- b) Awards public contracts for goods, works or services intended for contracting authorities.

17. “Open procedures” are those procedures whereby any interested economic operator may submit a tender.

18. “Restricted procedures” are those procedures in which any economic operator may request to participate and whereby only those economic operators selected by the contracting authority may submit a tender.

19. “Negotiated procedures” are those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the contract terms with one or more of these.

20. “Request for proposals” is a negotiated procedure without prior public notice, whereby the contracting authority may seek offers from a limited number of economic operators of its choice and compare them according to the criterion of price.

21. “Design contests” are those procedures enabling the contracting authority to acquire a study or design of a merely aesthetic nature, selected by a jury after being put out to competition.

22. “Written communications” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

23. “Electronic means” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means.

24. “Procurement regulations” means any implementing regulation issued by the Council of Ministers, within the scope of the PPL.

25. “Public Announcement Bulletin” means the publication of public procurements issued by the Public Procurement Agency, and of other public notices.

26. “Tender documents” are the documents provided by contracting authorities to candidates and prospective tenderers as a basis for the preparation of their tenders.

27. “Relevant information” means documents and information relevant to the procedures which have to be disclosed - upon request - to the tenderer wishing to challenge one or more decisions taken by contracting authorities in the course of the awarding procedures. The disclosure of such information is only limited to the extent necessary to comply with confidentiality obligations or security requirements.

28. “Threshold” means the monetary value used to determine the procurement procedure to be followed by the contracting authority, in compliance with the Public Procurement Law and the public procurement rules.

SECTION II- THE NATIONAL PROCUREMENT POLICY

1. GENERAL PRINCIPLES OF PUBLIC PROCUREMENT

The award of public contracts is governed by the main following general principles:

- (i) Non-discrimination and equality of treatment;
- (ii) Transparency;
- (iii) Confidentiality.

1.1 Non-Discrimination and Equality of Treatment

The principle of “non-discrimination” is a cornerstone of Public Procurement. This principle prohibits any discrimination on grounds of nationality, meaning that all participants shall be treated in the same manner, unless the difference is objectively justified. Both direct and indirect discrimination is prohibited, and no national preferences are allowed. Contracting Authorities must remain non-biased and impartial toward all participants.

1.2 Transparency

Attracting a sufficient number of Economic Operators to public procurement through processes that are open and fair is a key concern in Albania. In order to ensure a fair system for Economic Operators, there is common recognition of the need for providing:

- a) Clear and readily accessible information on general laws, regulations, judicial decisions, administrative rulings, procedures and policies on public procurement;
- b) Consistent information to all tenderers on procurement opportunities, methods for tendering, specifications, as well as selection and award criteria.

Transparency in the context of public procurement refers to the ability of all interested parties to know and understand the actual methods and processes by which contracts are awarded and managed. It represents a key pre-condition to promote wide participation in procurement. The level of transparency and openness of the procurement procedure varies in practice according to:

- a) *The stage of the public procurement process:* Although the tender process is strictly regulated, the phases prior to and after the tender are less subject to transparency and accountability requirements;
- b) *The sensitivity of information:* There is also a limited number of restrictions on the information provided outside the government in order to protect commercially-sensitive information in tenders (e.g. content of open tenders such as commercial secrets, individual prices, etc.) or security-sensitive information for the State (e.g. defence, national security) that could harm interests of the tenderers;
- c) *The specificity and value of the procurement:* There is a balance to be found between the need for transparency and other considerations, such as

efficiency, depending on the type of contract at stake. Therefore, the information made available and the means for its dissemination vary proportionally to the size of the contract and the specificity of the object to be procured.

1.3 Confidentiality of Tenders

All tenders should be kept in a safe and secure environment to ensure that the confidentiality of tenders and requests to participate are preserved. Confidential information may include technical or trade secrets. The principle of confidentiality obligates the Contracting Authority not to examine the content of requests to participate, and of tenders, before the deadline for their submission has expired.

2. MAIN ELEMENTS OF THE PROCUREMENT CYCLE

The CA is a structured administrative entity with a managerial system depending on the tasks assumed in the procurement process. The following paragraphs explain the role and responsibilities of each layer of decision-making process in the procurement cycle. The existence and well-functioning of this administrative structure is vital to the success of the procurement process.

2.1 The Authorising Official

Every CA has a senior executive position which stands at the top of the decision-making process. It can be a physical person or a collegial body. Hence, the term Head is used equally and is interchangeable with the notion of Authorising Official.

The Head of the Contracting Authority is responsible for the organisation and realisation of the procurement procedures. This power can be exercised even by an authorised official under the principle of administrative delegation. This official can be selected among one of the main managers of the Contracting Authority, usually the Deputy Head.

He/she has to ensure that there is a clear separation of duty between officials involved in the preparation of tender documents and those involved in the evaluation and awarding process. Legal requirements for preventing conflict of interest shall be strictly observed when appointing a procurement official. All employees participating in the procurement process shall sign a declaration stating that he/she is not in a situation of conflict of interest.

The Authorising Official of the Contracting Authority is not allowed to chair or take part to any commission, during the award procedure phase, except when exercising the tasks given specifically by the PPL and PPR.

2.2 The Procurement Unit

The Procurement Unit is a specialised department within any CA which deals permanently with the procurement process. Each Contracting Authority must host a Procurement Unit. According to the PPR the Unit must have at least three persons with high education, of whom one must be a jurist. The CA or PPA must train the staff members of the Procurement Unit at least once per year in public procurement

matters. Staff development and training is an essential element for a successful activity.

In case of lack of personnel, at the beginning of the year, the Head of the Contracting Authority is allowed to assign Procurement Unit's tasks to officials belonging to other sectors. Another option is for several CA with limited number of personnel or limited tender procedures to form a joint Procurement Unit based on administrative instruction or mutual agreement.

The Procurement Unit is solely responsible for: (i) the preparation of public procurement forecast register, realisation register; (ii) drafting and sending Procurement Notices within the time limits for publication; (iii) drafting Procurement Orders and Tender Documents; (iv) the collection of all necessary documents attached to Tender Documents (such as maps, designs, blueprints, etc); (v) keeping records of the different steps of the procurement procedure, including minutes of meetings; (vi) estimating the sale price of Tender Documents; and (vii) providing Tender Documents upon request of Economic Operators.

2.3 Preparation of Tender Documents

The Procurement Unit is responsible for the preparation of tender documents. The Unit shall use only the official STD approved by the PPA in accordance with the procurement legislation. In preparing the TD the members of the Unit must respect all the requirements provided in the PPL and PPR. The criteria required pursuant article 46 of the PPL shall be proportionate and strictly related to the nature and value of the contract.

The Unit is fully responsible for the preparation of tender documents, qualification requirements and evaluation criteria, whereas the technical specifications shall be prepared by the relevant structure inside the Contracting Authority specialised in the object to be procured, or outside the Contracting Authority when there is a lack of expertise. Minutes of meetings shall be taken during the drafting of the above-mentioned documents and shall be signed by all members of the Unit.

In case of complex or specific contracts, the Contracting Authority may appoint outside experts or contractors, in order to assist the Unit in drafting the tender documents.

After the preparation of tender documents, the Head of the Contracting Authority shall authorise the publication of the Contract Notice, in accordance with articles 38 and 39 of the PPL. The Contract Notice must clearly indicate the time, date and place for the submission and for the opening of tenders.

2.4 Establishment of Tender Evaluation Commissions

The names of the members of the Commission responsible for evaluating tenders shall be determined by special order, following the Contract Notice, but no later than 5 days before the end of the time limit for the submission of offers/requests. As a rule, the Commission will be formed after the publication of the Contract Notice and TD. This is to avoid any undue influence during the preparation of TD.

Tender Evaluation Commissions (TEC) have delegated responsibilities and powers to conduct the evaluation phase in accordance with the PLL and PPR. An Evaluation Commission will consist of a minimum of three members, all of whom should have knowledge about procurement or the contract subject to award, and will carry voting rights. The number shall be always an odd number. One of the members of the Contracting Authority will be appointed as chairperson of the TEC.

In special cases where a specialist or specific technical knowledge is not available within the Contracting Authority, outside experts may be employed in addition to the Contracting Authority members, but these experts normally do not have voting rights.

Tender Evaluation Commissions must be of the highest professional standards and integrity. Members who have been convicted of fraud, bribery or other corrupt practices by a competent court of Albania will not be eligible for appointment; neither shall those who have been determined to have engaged in serious professional misconduct. All members and experts appointed are subject to the law, and every member of a Commission must sign a declaration of impartiality and confidentiality. All meetings of the Commission shall be recorded in minutes, and the minutes attached to their report on the contract award procedure carried out.

2.5 Audit

All aspects of procurement activity are subject to examination by internal audit, the PPA and Supreme Audit Office, against the standards and procedures set out in the public procurement regulations and relevant laws of Albania. All procurement decisions must be supported by a properly documented audit trail detailing the procurement process and the reasons for selecting the successful tenderers.

During all the meetings for preparation of the tender documents or the awarding process, minutes of meetings shall be taken. These minutes shall reflect all the sequences and rationales behind any decision.

2.6 Responsibilities of the Contracting Authority

The role and responsibilities of the Contracting Authority are described in the table below.

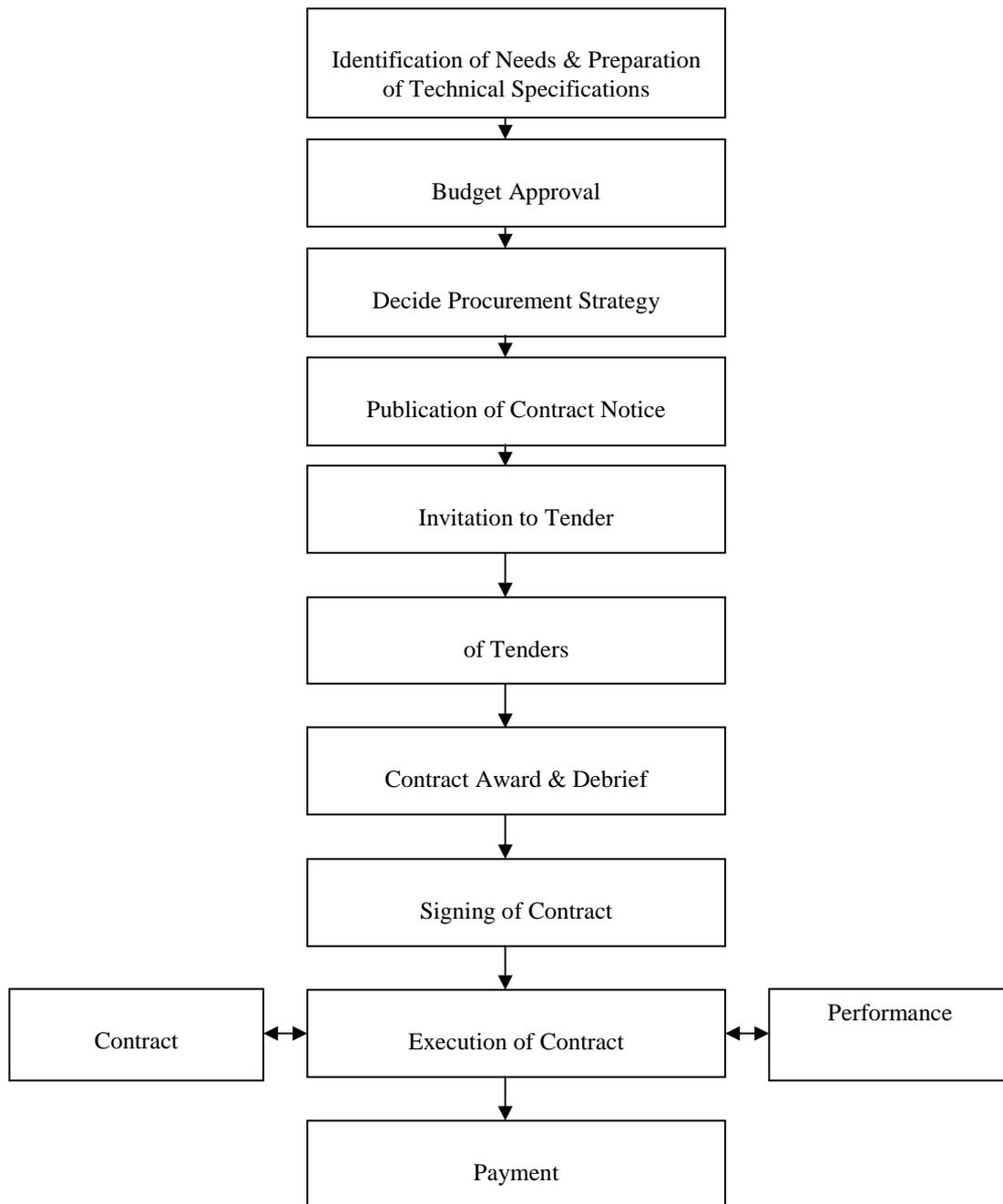
GENERAL	Exercise monitoring and control over the PP procedures.
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<p>TENDER PROCESS</p>	<p>Procure the public goods, works and consultancy services required by the CA, in the most cost-effective and efficient way.</p> <p>Ensure all activities connected with the procurement process are carried out in a transparent way during tender process and in compliance with the PP legislation.</p> <p>Implement open competition on all public procurement, consistent with the award procedures set forth in the procurement regulations.</p> <p>Ensure that scheduling of all procurement is consistent with the work plan(s) and approved annual procurement plan(s).</p> <p>Implement reporting procedures as determined by the PPR and the requirements of the PPA, and ensure these are carried out in the proper format and delivered on time.</p> <p>Ensure staff training and development, and maintain regular contacts with the PPA as required by the legislation.</p> <p>Contract Notices Conduct all public announcements and advertisements of tenders.</p> <p>Implementation of Tendering Procedures Implement the tendering procedures in accordance with the PP legislation and the financial thresholds established therein.</p> <p>Tender Evaluation Participate in the Evaluation Commission in selecting the best evaluated tender with the best qualifications for all procurements.</p> <p>Notification of Award Notify the successful and unsuccessful tenderers strictly in accordance with the PPR.</p> <p>Deliverables Ensure that the full services required by the Contracting Authority are appropriate and adequate provided.</p>
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<p>COMPLAINTS</p>	<p>Respond to all complaints from tenderers concerning the procedure in general, or the procedure related to a specific tender.</p> <p>Ensure that all prospective tenderers have access to the complaints mechanisms and make reference to this in the tender documents.</p> <p>Provide all papers and records connected with second instance complaints to the PPA and Public Procurement Advocate.</p>
<p>INFORMATION</p>	<p>Distribute all information connected with tendering opportunities to the PPA Bulletin and PPA, to ensure that all contract notices are published with full information.</p> <p>Ensure that all information connected with public procurement is available to the public, including tendering opportunities and contract awards.</p> <p>Maintain all records, forms and documents necessary for the operation of the CA Officer, and as required by the PPA.</p>

Fig 1

GENERIC PROCUREMENT PROCESS: MAIN ELEMENTS



3. PREPARATION STAGE OF THE PROCUREMENT PROCESS

Procurement of goods, works and services is sometimes portrayed as the combination of the three fundamentals:

- (i) Quality
- (ii) Time
- (iii) Price.

Competition is an essential factor in achieving this objective and promotes efficiency and effectiveness in procurement, discourages monopoly situations and avoids favouritism. A balance needs to be achieved when deciding on how many tenderers should be asked to participate in the procurement process. If there are too many the process becomes time-consuming for both the Contracting Authority and the tenderers; if there are too few then competition suffers. Tenderers do incur costs in preparing and submitting their tenders. Hence, an unnecessarily large tender list will result in much wasted effort by tenderers, which could be criticised. Generally, the higher the value and importance of requirements, the more tenderers should be invited to tender.

Although the identification of needs by CA and the decisions on what to procure varies between each of the public sectors, the standards rules of public procurement apply independently of the type of procurement (goods, works or services) and the tendering processes are essentially the same.

3.1 Procurement Planning

The rules regulating the public acquisition of goods, works and services all require the advertisement of information about procurement plans, tenders and contract awards.

The purpose of the **Preliminary Notice** is to provide potentially interested Economic Operators with:

- a) Information about a Contracting Authority's procurement plans;
- b) Notification that competition procedures for specific procurement have been released;
- c) Details and other information on the award of contracts.

Procurement Order

When funds become available and there is a need for goods, works or services, the Head of the Contracting Authority or the authorised official must issue the Procurement Order (PO) which contains the following:

- (i) the object of procurement;
- (ii) the available estimated fund;
- (iii) the type of procurement procedure and reasons for its application.

One important element on the order is the justification for selecting a certain procurement method other than the Open Procedure. This needs to be well explained against the circumstances provide in the Law.

Usually the procurement order should follow the indicative notice of the annual procurement plan which is published in the Public Announcement Bulletin. However CA can plan unforeseen purchases as long as they have the funds available.

Contract Notice

All procurements must be published simultaneously in the Public Announcement Bulletin and on the PPA website, except where procurement is subject to a *negotiated* procedure *without* prior publication of a Contract Notice. If the total value of procurement exceeds the threshold, then it must also be published in international journals and/or newspapers.

The principles behind the publication of Contract Notices ensure:

- a) Equity, non-discrimination and transparency in respect of suppliers;
- b) Competition is encouraged;
- c) No information about, or distribution of, tender documents is provided before the Contract Notice has been published in the PAB and on the PPA website.

If a Contract Notice, which has already been published, needs to be amended prior to the closing date for the submission of tenders, a new contract notice must be published in the same form as the original. If necessary, the time allowed for submitting tenders or applications may be extended.

3.2 Different Contract Approaches

One important element in the procurement procedure is for the Contracting Authority to determine the following:

- (i) Subject matter of the contract
- (ii) Total value of the contract
- (iii) Duration of the contract

These characteristics will determine the type of procedure to be used, and the various legal obligations in terms of publicity.

Subject Matter of the Contract

The Contracting Authority should provide a full and accurate description of the goods, services or works required. The technical specifications should be clearly defined and easily comprehensible, and should be based on the function of the requirements. Brand names should be avoided.

Type of Contracts

The three types of contract defined within the PPL are:

- a) Public Supply Contracts
- b) Public Works Contracts
- c) Public Services Contracts

According to the Law, the definitions of these contracts are the following:

“Public supply contracts” are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of goods. A public contract having as its object the supply of products, which covers also, as an incidental matter, sitting and installation operations shall be considered to be a ‘public supply contract’ where the value of ‘goods’ exceeds the value of sitting and installation.

“Public works contracts” are public contracts having as their object either the execution, or both the design and execution of works or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

“Public service contracts” are public contracts having as their object the provision of services. A public contract having as its object both goods and services shall be considered to be a ‘public service contract’ if the value of the services in question exceeds that of the goods covered by the contract. A public contract having as its object services and including works that are only incidental to the principal object of the contract shall be considered to be a ‘public service contract’.

Estimated Value of Contracts

The estimated value of contracts is a key element of transparency and accountability in the way public funds are managed. The estimated value is the single most important policy document of governments, whereby policy objectives are reconciled and implemented in concrete terms. The financial commitments need to be approved before starting the procurement.

The calculation of the estimated value of a public contract shall be based on the total amount payable, net of VAT, as projected by the Contracting Authority when the contract notice is sent for publication. The calculation of the value shall also take into account the estimated total amount to be paid, including any form of renewals of the contract, if provided as an option. The calculation of this value aims at classifying the contract in accordance with the thresholds, or/and at the planning and publishing issues.

The value of the VAT shall be calculated separately and shall not be included, nor published, with the threshold in the contract notice. When the VAT is applicable, it shall be added to the value of the awarded tender, in order to calculate the total amount of the contract to be signed.

A key challenge is the difficulty of **defining a budget consistent with the expected costs of a procurement ensuring value for money**. To develop a sound cost estimate

for procurement based on a good understanding of the market and options available, CA should use various alternatives, as described below:

1. For multi-year contracts or contracts with renewal option, the Contracting Authority must provide clauses for the revision of prices in accordance with published official inflation. In case of goods contracts through renting or leasing of goods, the estimated value of the public contract shall be based on the monthly rent or fee multiplied by the number of months the contract will last. In estimating the value of the contract, the Contracting Authority shall:
 - (i) Take into account the published INSTAT prices, and/or other published official published prices (such as tax office, customs office, chamber of commerce, manuals, etc);
 - (ii) Make reference to established market prices such as commercial catalogues;
 - (iii) Use knowledge of prior procurements of a similar nature (this is a common best international practice);
 - (iv) Develop cost estimate methodologies.
2. The Contracting Authority is responsible for comparing the above-mentioned elements with a cost analysis of the goods, services or works to procure based on the relevant technical specifications for goods, services and works.
3. In case of procedures above the high value threshold, the Contracting Authority may estimate an equivalent contract value in the currency of its choice. The exchange rate of currency shall be one of the Bank of Albania at the date the contract notice is sent for publication.
4. In the case of contracts made up of a set of homogenous goods, works or services serving a similar purpose and where the combined value is such that only few Economic Operators would be able to provide them all, the contract must be divided into LOTS. This method may be used especially with the aim of encouraging the participation of the small and medium businesses, or of decreasing the administrative costs.
5. Provide adequate guidance to procurement officials and adequate skills.

Estimating the Value of Supplies Contracts

The basis for calculation of the estimated value of procurement of goods shall be determined in the following manner:

1. Where the subject of the procurement is the sale and purchase, rental or leasing of goods and where the period for which the contract is concluded is 12 months or less, the total value of the contract during the whole period shall be taken into account. When the period exceeds 12 months, the total value of the contract shall include the value for the first 12 months and the value for the remaining period until the expiry of the contract.
2. If the contract is concluded for an indefinite period, or needs to be renewed after the expiry of a certain period, the estimated value of the procurement shall be determined on the basis of the real total value of similar contracts

concluded in the previous budget, or business year, or during the previous 12 months, adjusted to the expected, i.e. the envisaged changes regarding the quantity or the volume and value of the goods subject to procurement (contract) during the 12 months beginning on the day of the originally concluded contract.

When setting the estimated value of the public procurement, the data on the prices obtained in market research shall also be taken into consideration.

Estimating the Value of Works Contracts

With regard to works to execute, the project shall be completed with unit price details for each volume and type of work provided in the tender documents.

The works can be procured through measuring works based on the fixed prices, when the volume of works specified in the project might change during the execution. In this case the contractor is obliged to maintain unit prices without alteration as part of the submitted tender.

An additional option is the “**turnkey contract**”, where the volumes of works given in the project may serve only as an orientation, and the tenderer shall conduct a detailed study of the project without any obligation to respect the works volumes of the project. In this case the contractor has the responsibility of executing the works, without claiming any additional funds other than the value of the award contract, which in any case includes also all fiscal obligations in force.

When setting the value of the public procurement for construction works, the Contracting Authority must include the value of all goods and services necessary for the execution of the contract.

Estimating the Value of Service Contracts

When calculating the estimated value of the procurement of services, the Contracting Authority must include all the costs for the services rendered by the tenderer in the value of the services. Regarding certain services, the Contract Authority shall take into account the following amounts:

- a) For insurance services: the amount of the premium;
- b) For banking and other financial services: the fees, commissions and interest, as well as other types of payments adding to the service;
- c) For architectural services, industrial design, spatial planning, etc.: the bonus, the fee or the commission to be paid.

Estimating the Value of the Procurement per Lots

In the case of contracts made up of a set of homogenous products or services serving a similar purpose, and where the combined value is such that few economic operators would be able to provide them all, the contract should be divided into LOTS. Any competent Economic Operator can tender for one or more lots.

When the procurement is divided into lots, and each one of them is subject to a separate contract, the value of all the lots shall be taken into account when estimating the total value of the procurement.

Duration of the Contract

All contracts must be applicable for a limited period. This also applies to contracts covering operations of a repetitive nature or for which the tendering procedure must be repeated at regular intervals. Contracts for multi-annual operations should normally include a clause allowing them to be renewed, subject to certain conditions, usually at the end of the first year, and for once only.

4. ETHICS IN PUBLIC PROCUREMENT

The Code of Ethics in public procurement identifies three main categories as the follow:

- a) Confidence in the public procurement process;
- b) Professionalism of employees;
- c) Quality of execution.

To accomplish these goals, the fundamental basic principles of impartiality, independence and integrity apply, and should be followed at all times. This means that:

- (i) No suspicion of conflict of interest should be existent;
- (ii) Corrupt practice should be immediately reported;
- (iii) No impression should be given that actions will be influenced by a gift or favour;
- (iv) Dealings with tenderers must be honest, fair and even-handed.

All employees involved directly or indirectly in the procurement process are subject to the following:

- a) They shall not engage in personal, business or professional activity nor hold a financial interest that conflict with the duties and responsibilities of their position.
- b) They shall not solicit, accept or agree to accept any gratuity for themselves, their families or others, which results in personal gain, and which may affect their impartiality in making decisions on the job.
- c) They shall not directly or indirectly use, take, dispose of, nor allow the use, taking or disposing of any property or resources belonging to any Contracting Authority.

Conflict of Interest

Contracting authorities shall reject a tender, or a request to participate, if:

- a) The tenderer or candidate gives, or promises to give, directly or indirectly, to any current officer a gratuity in any form, an employment or any other good or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the Contracting Authority in connection with the awarding procedure.
- b) The tenderer or candidate is in circumstances of conflict of interest.

Such rejection and the reasons therefore shall be recorded in procurement proceedings as provided for in Article 12 of the PPL and promptly communicated officially to the candidate or tenderer concerned. The decision may be subject to judicial review.

Decisions taken by Contracting Authorities, pursuant to paragraph 1 of the above-mentioned Article, are without prejudice of any obligation to file a complaint with the prosecuting authorities, when the action concerned is considered a criminal offence under criminal law.

5. VALUE FOR MONEY IN THE PUBLIC PROCUREMENT PROCESS

Value for Money is defined as the optimal combination of whole life costs, service delivery and quality necessary to meet the end user's requirements. Meeting the end user's requirements is fundamental. End end users are not usually the purchasers themselves and their needs must be tested critically for cost effectiveness. To ensure best VFM in procurement the relevant factor is whole life cost. Whole life cost takes into account all aspects of cost over time, including capital, maintenance, management and operating costs, whenever they fall. It is Government policy that purchasers should also use their commercial influence to help improve the competitiveness of suppliers, e.g. by ensuring that the products, processes and services which they buy, as far as possible, reflect the requirements (in terms of quality and price) of world markets. Suppliers should not be put to unnecessary costs through casual enquiries for bids. All procurement officials are responsible for ensuring that best VFM is achieved throughout the procurement process.

In the case of **construction projects**, VFM relates both to the functionality and building quality of the finished building/structure, and to the quality of service provided by the various consultants and contractors engaged by the end user. The former may include several factors such as: design aesthetics; appropriateness and sensitivity to surroundings; ease of maintenance; adaptation to suit future client requirements; and impact on the wider environment. The latter should take account of the particular abilities, skills and strengths of potential service providers, including their aptitude for providing innovative solutions and for working effectively alongside the other team members.

Goods and services should be acquired by competition unless there are convincing reasons to the contrary. Competition avoids any suggestion of favoritism and the encouragement of monopoly; it also helps promote efficiency and economy. The form of competition should be appropriate to the value and complexity of the goods or services acquired. It is a policy principle that procurement should be undertaken through open competition. Purchasers, in consultation with customers, are responsible

for identifying suppliers most likely to offer best VFM and for encouraging them to tender.

Whole Life Cost

Contracting Authorities, whenever initiate procurement, shall take into account the whole life cost of the contract object, in order to strategise better what to purchase. The concept envisages all of the ownership costs related to a building or facility throughout its lifetime, comprising: its purchasing (including design, other consultancy, construction and equipment fit-out); its operational and running costs (including energy use, maintenance and replacement of equipment or components); and its disposal costs.

SECTION III- PUBLIC PROCUREMENT METHODS

In the context of public contracts, Contracting Authorities shall apply the standard tendering procedures set forth in the PPL. The tendering procedures are basically the same for goods, works and services. The main types of procedures established in the Law are:

1. Open Procedure
2. Restricted Procedure
3. Negotiated Procedure with Prior Publication of a Contract Notice
4. Negotiated Procedure without Prior Publication of a Contract Notice
5. Request for Proposals Procedure
6. Small Value Purchase Procedure
7. Consultancy Service Procedure
8. Design Contest Procedure

1. OPEN PROCEDURE

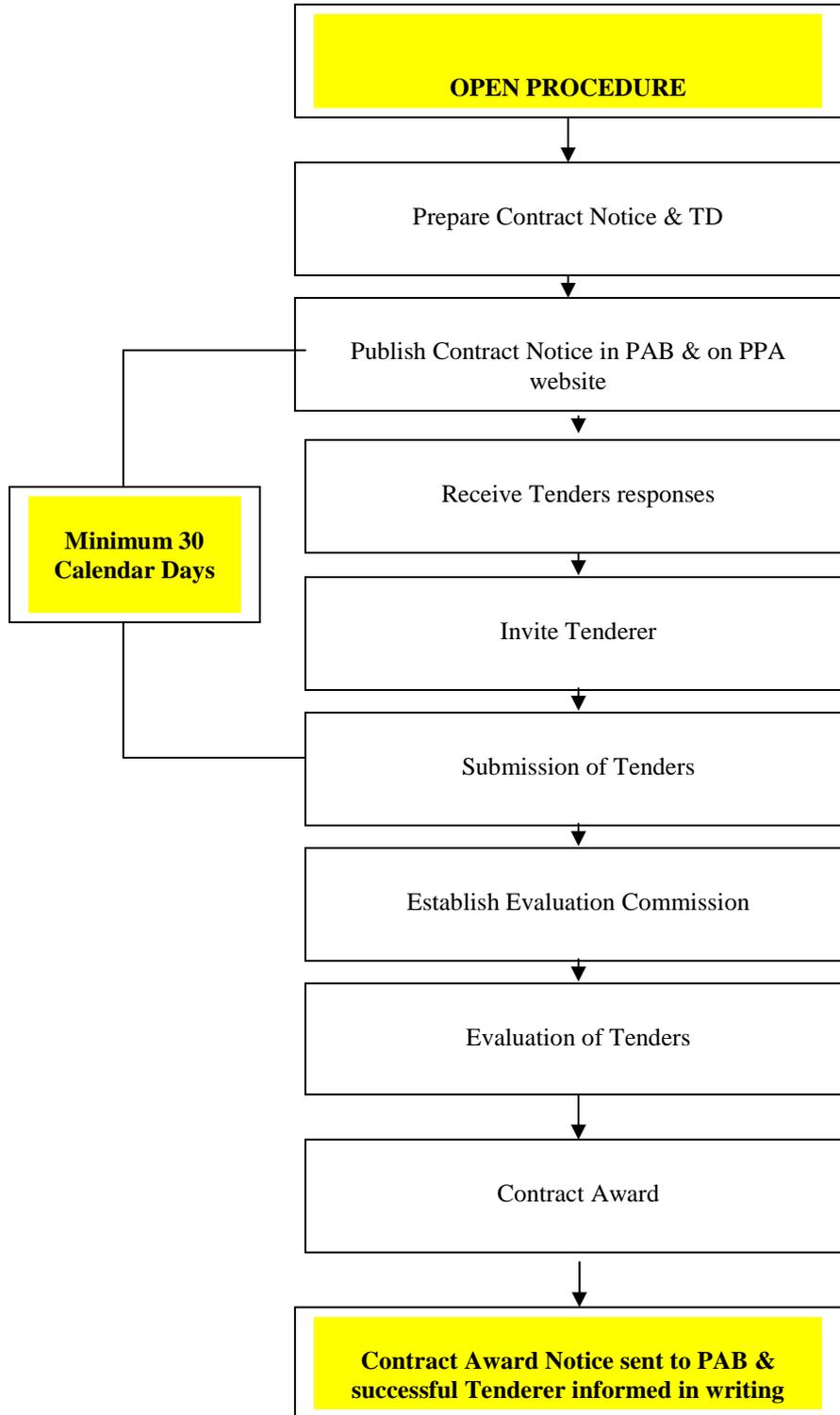
For all public contracts, open procedures can always be used. Restricted procedures can be used when it is necessary to distinguish between the selection phase - dealing only with the candidates' qualifications - and the award phase - dealing with the offer. Distinction in the use between open and restricted procedures is provided in public procurement rules. All Economic Operators who are interested and meet the minimum technical and financial criteria set out in the contract notice may submit a tender.

A contract notice describing the main characteristics of the contract is prepared and published in the PAB and on PPA website. The tender documents define in detail the content of the contract, its terms and conditions, and the award criteria.

Steps to be Followed

- Prepare Contract Notice & TD
- Publish Contract Notice in PAB & on PPA website
- Receive Tender responses
- Send TD to Tenderers
- Submission of Tender
- Establish Evaluation Commission
- Tenders Evaluation
- Contract Award
- Contract Award Notice sent to PAB & successful Tenderer informed in writing.

Fig 2



2. RESTRICTED PROCEDURE

In a restricted procedure, only those who have been selected to participate following a pre-qualification procedure, may submit tenders. Any interested Economic Operator may ask to be included if they have requested, and have completed, the pre-qualification documents satisfactorily. A contract notice is published in the Public Announcement Bulletin describing the scope of work and clearly indicating the criteria to be used for selecting the tenderers. Any interested Economic Operator will be invited to request the pre-qualification documents. Only the selected tenderers will receive the tender documents and be allowed to tender. It is recommended that a minimum number of tenderers be selected - not less than five, provided a sufficient number of tenderers satisfy the selection criteria - otherwise the Contracting Authority may decide to cancel the procedure. This procedure may be used for large or complex procurements, which require a pre-qualification procedure. When making the decision to apply the Restricted Procedure, the Contracting Authority will take into account:

- a) The nature of the contract;
- b) The time frame involved;
- c) The costs;
- d) The expected number of tenderers.

Consideration of these factors will help the Contracting Authority decide whether or not the application of this procedure is justified.

The general principles applying to the appraisal exercise of Economic Operators under the pre-qualification procedure are:

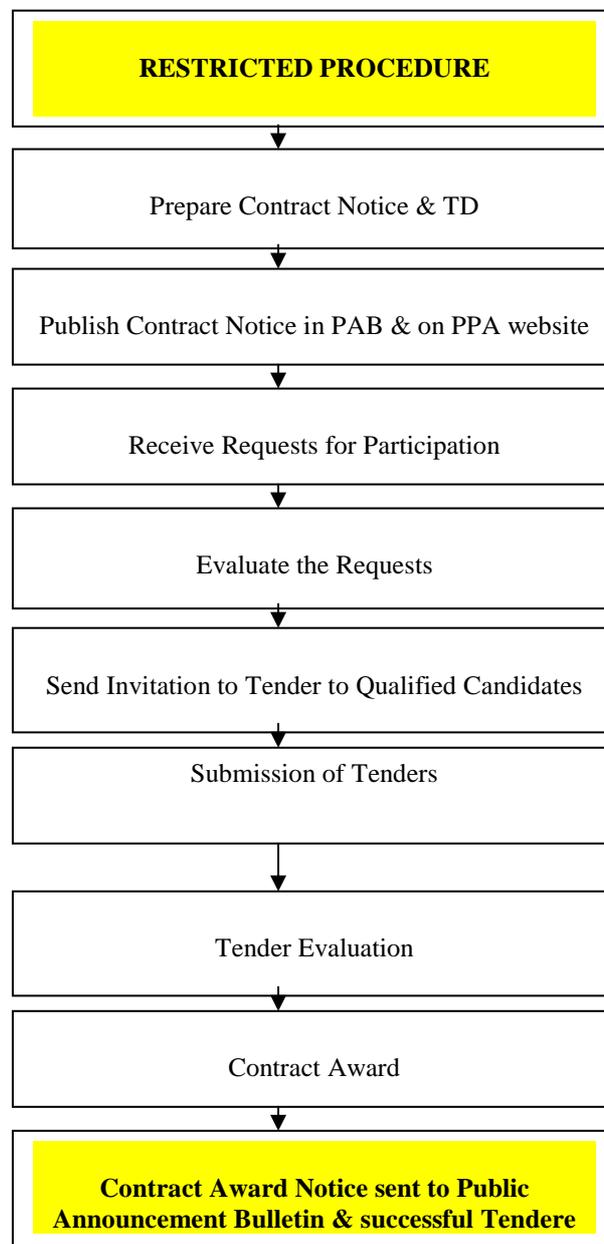
- a) All economic operators must be appraised technically and financially on the same basis;
- b) The criteria to be used must be put down in writing in advance of drafting the contract notice;
- c) Information requested in the contract notice must only be that required to carry out the appraisal;
- d) The number of candidates selected to receive the tender documents must fall within the range specified in the contract notice, unless there are fewer candidates.

The only considerations to be taken into account in appraising Economic Operators are:

- a) Financial and economic standing
- b) Technical capacity
- c) Ability

- Steps to be Followed**
- Prepare Contract Notice & TD
 - Publish Contract Notice in PAB & on PPA website
 - Receive Tender responses
 - Invite Tenderes
 - Establish Evaluation Commission
 - Tenders invited from selected Qualified Tenders
 - Submission of Tenders
 - Tenders Evaluation
 - Contract Award
 - Contract Award Notices sent to PAB & successful Tender

Fig 3



3. NEGOTIATED PROCEDURES

The negotiated procedure can only be used in exceptional and clearly defined circumstances. It can be conducted with or without the prior publication of a contract notice. The rules regarding transparency and confidentiality must be strictly applied, for example:

- (i) All negotiations should be held separately with each candidate/tenderer;
- (ii) No information whatsoever which has been obtained from one candidate/tenderer should be release to another;
- (iii) Solutions passed or submitted by one candidate/tenderer should not be revealed to third parties;
- (iv) Every tenderer must be subject to the same requirements, and be given the same information;
- (v) Equality of treatment among all tenderers must be ensured;
- (vi) All proceedings must be recorded.

3.1 Negotiated Procedure with Prior Publication of a Contract Notice (Fig. 4)

The conditions under which the Contracting Authority can carry out the negotiated procedure with the prior publication of a contract notice are described below

1. When the value of the contract to be awarded is **above the low value thresholds**, Contracting Authorities may use the negotiated procedure with prior publication of the contract notice, in the following cases:

- a) In the event of irregular tenders or the submission of tenders which are unacceptable under national legal provisions, in response to an open or restricted procedure, insofar as no substantial alteration is included in the contract as provided in the public procurement rules;
- b) In exceptional cases, when the nature of the goods, works or services or the risks attaching thereto do not permit prior overall pricing, namely:
 - (i) in case of service contracts, particularly intellectual services such as services involving the design of works, insofar as the nature of the services cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;
 - (ii) in case of works contracts, for works which are performed solely for the purpose of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

2. When the value of the contract is **lower than the low value thresholds**, Contracting Authorities may use negotiated procedures with prior publication of a contract notice in any case which they deem appropriate, provided that the procedure complies with the principles of equal treatment, proportionality and transparency.

3. Contracting Authorities shall negotiate with tenderers the tenders submitted by the latter in order to adapt them to the requirements which they have set out in the

contract notice, the specifications and additional documents, if any, to seek out the best tender in accordance with Article 55 of the PPL.

4. During the negotiations, while dialogue is carried on with each candidate individually, Contracting Authorities shall ensure equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

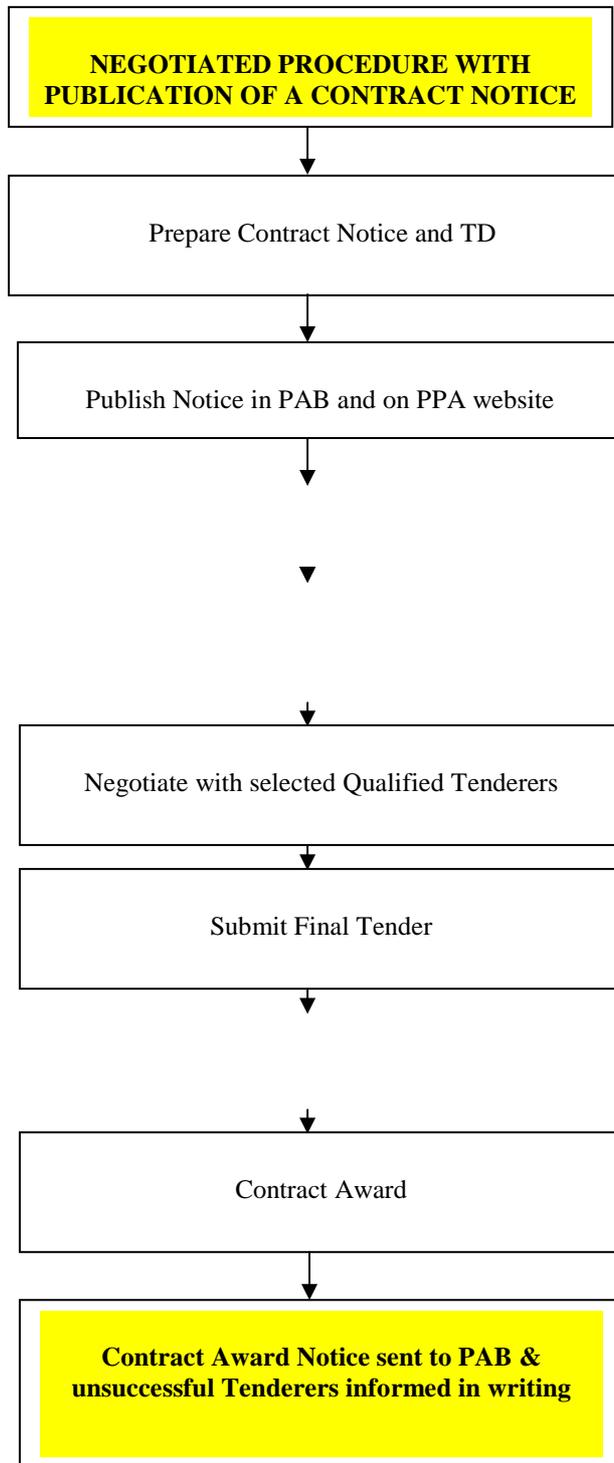
5. Contracting Authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been made to this option. The negotiated procedure following publication of a contract notice may be used where:

- a) The nature of the risk involved prevents overall pricing (e.g. repair services, where the extent of the work required would not become apparent until after it had started);
- b) The nature of the service(s) to be provided is/are such that specifications cannot be defined with sufficient precision before issuing Invitations to Tender (e.g. contracts for consultancy or financial services);
- c) The nature of the works to be performed is solely for the purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

Steps to be Followed

- Prepare Contract Notice & TD
- Publish Notice in PAB and on PPA website
- Tenderers respond to notice and request to participate
- Evaluation Commission carries out the request to participate
- Negotiate with selected Qualified Tenderers
- Submit Final Tender
- Evaluate Final Offers
- Contract Award
- Contract Award Notice sent to PAB and unsuccessful Tenderers informed in writing

Fig. 4



3.2 Negotiated Procedure without Prior Publication of a Contract Notice (Fig. 5)

The negotiated procedure without the prior publication of a contract notice may be used for all types of public contracts:

- 1) When no tenders, or no suitable tenders, or no application have been submitted in response to an open or restricted procedure, provided there is no substantial alteration to the initial conditions of the contract.
- 2) When for technical or artistic reasons, or for reasons connected with the exclusive rights or intellectual property rights, the contract may be executed only by a particular Economic Operator.

Note: This provision must be strictly interpreted. It is not sufficient for the products in question to be protected by exclusive rights; it must also be possible for them to be manufactured or delivered by a particular supplier only. This condition is met only in the case of products for which there is no competition in the market.

- 3) Insofar as it is strictly necessary when, for reasons of urgency brought about by causes unforeseeable by the Contracting Authority, such as earthquakes, floods, and when the time limits provided for in open, restricted or negotiated procedures with publication cannot be complied with. The circumstances invoked to justify urgency must not in any event be attributed to the Contracting Authority and in no case must be used to justify the realisation of complex investments, which have a longer duration than one budgetary year.

Note: For this provision to apply, four conditions must be met: (i) there must have been an unforeseeable event; (ii) the event must not be attributable to the Contracting Authority; (iii) the event might harm the general interests of the local community; (iv) it must be impossible to follow the standard.

- 4) For additional works or services which were not included in the initial contract, but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the Economic Operator performing such works or services; as long as the aggregate value of contracts awarded for additional works and services does not exceed 20 % of the value of the initial contract.

Note: The Contracting Authority may use this option only on condition that the award is made to the contractor performing the contract and that the aggregate value of the additional contracts does not exceed 20% of the amount of the initial contract.

- a) For new works or services consisting in the repetition of similar works or services entrusted to the Economic Operator to whom the same Contracting Authorities awarded the original contract, provided that such works or services are in conformity with a basic project for which the initial contract was awarded on the basis of open or restricted procedure. As soon as the first project is up for tender, the possible use of this procedure shall be disclosed in the contract notice for the initial contract, and the total estimated cost of subsequent works or services shall be taken into consideration by the

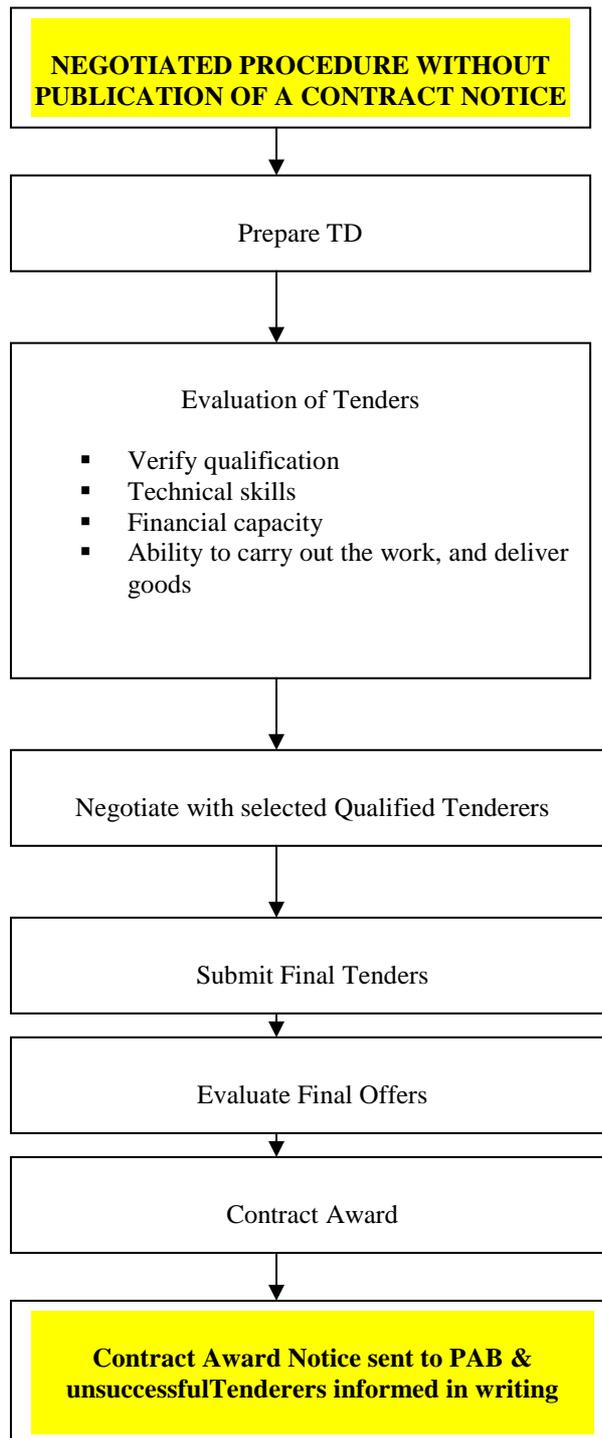
Contracting Authority. This procedure may be used only during 3 years following the conclusion of the original contract. In no case the additional contract shall exceed the value of 20% of the total value of the original contract.

Note: This can only be used where a change of supplier would oblige the Contracting Authority to acquire different technical characteristics, thereby resulting in incompatibility or disproportionate technical difficulties in operation or maintenance. The length of such contracts shall not exceed three years.

Steps to be Followed

- Prepare TD
- Evaluation of Tenders
- Negotiate with selected Qualified Tenderers
- Submit Final Tenders
- Evaluate Final Offers
- Contract Award
- Contract Award Notice sent to PAB & unsuccessful Tenderers informed in writing

Fig. 5



4. REQUEST FOR PROPOSALS PROCEDURE

the Contracting Authority may use the request for proposals procedure for contracts of a value below the low thresholds. Pursuant to this procedure, Contracting Authorities may seek offers from a limited number of Economic Operators of their choice, or may use the electronic communication, as provided in Article 36 of the PPL, and evaluate them according to the criteria of quality and price. The comparison must be made among at least 5 offers, unless this proves impossible for technical reasons or for lack of sufficient competition.

This procedure shall not be used in order to circumvent competitive awarding procedures. When Contracting Authorities use electronic communications, they shall publish an electronic notice, in accordance with the PPL, as determined in the public procurement regulations. As the rules lay down no minimum time limit for receiving tenders in procedures for low-value contracts that are put out to competitive tender, it is advised to apply the time limit for the Open Procedure. The actual time limit must be long enough to allow interested parties a reasonable and appropriate period, taking into particular account the nature and scope of the contract and, if applicable, the need to visit the site.

Steps to be Followed

- Prepare TD
- Invitation to Tender
- Evaluation of Tenders
- Contract Award
- Contract Award Notice sent to PAB & unsuccessful Tenderers informed in writing

5. CONSULTANCY SERVICE PROCEDURE

“Consultancy contracts” are contracts for consulting services of intellectual and advisory nature, to the exclusion of other types of services where the physical aspects of the activity predominate. In this type of services, the intellectual aspect and inputs dominate and exceed the other physical aspects of the contract. The range of consultancy services may include intellectual services such as studies, research, work projects, technical assistance, etc.

In the PP Regulations it is stipulated that consultancy services are awarded according to the procedures provided in the PPL, as better specified in the following paragraphs. The following provisions are equally applicable to the consultant as a physical or legal person, the consultant’s personnel and sub-consultants, and to associations of consultants.

The procurement process includes the following main steps:

Procurement Order

The CA issues a procurement order with the same content and under the same procedure as provided in Chapter V, paragraph 1 c of the PPR.

Preparation of Cost Estimate and Budget

The cost estimate shall be based on the Contracting Authority’s assessment of the resources needed to carry out the assignment: staff time, logistical support and physical inputs. Costs shall be divided into two broad categories: fee (or remuneration) and reimbursable.

Cost Estimate Template Summary

	<i>Local Currency</i>		<i>Foreign Currency</i>	
	(LC)	(FC)	(FC)	(FC) ¹
1. Staff Remuneration				
Key Staff				
Other Staff				
	Total 1			
2. Reimbursables				
Transportation				
Air				
Ground				
Staff Accommodation ²				
Office				
Rent				
Furniture/Equipment				
Supplies, Utilities				
Reports, Documents ³				
	Total 2			
3. Surveys				
(a)				
(b)				
	Total 3			
4. Miscellaneous				
	Total 4			
Total				

-
1. A proposal can be expressed in local and foreign currency.
 2. Per diem and housing.
 3. Purchase, translation, editing, printing.

5.1 Consultant Conflicts of Interest

Consultants may associate with each other in the form of a consultants' joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term, independent of any particular assignment, or for a specific assignment.

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

(i) Conflict between consulting activities and procurement of goods, works or services: a firm that has been engaged by the Contracting Authority to provide goods, works or services (other than consulting services) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services) resulting from or directly related to the firm's consulting services for such preparation or implementation.

(ii) Conflict among consulting assignments: neither consultants nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.

(iii) Relationship with the Contracting Authority's staff: consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Contracting Authority's staff who are directly or indirectly involved in any part with the preparation of the terms of the contract, and/or the selection process for such contract, and/or supervision of such contract, shall be disqualified from providing consulting services related to this contract.

Consultant Conflicts of Interest: Range of Possible Cases

Consultant assignment generates for the incumbent the following possibilities:	Example	Incumbent allowed to participate?	Risk for Borrower Consultant may:	Mitigation of risk
Supply of goods and works whose specifications were prepared by the consultants	Equipment, computers	No	Favor its associates	Disqualification of consultant and affiliates
Continuation assignments	Detailed design after feasibility study	No (permissible upon conditions)	Influence TOR; bias feasibility study or recommendations	TOR of continuation; third party who validates feasibility
Conflicting assignments	Environmental audit of consultants' project design by the same consultants	No	Apply partiality in assessing own designs	Disqualify incumbent
Related assignments other than continuation	Restructure study of a public asset after preparing privatisation plan	No (permissible upon conditions)	Unduly influence TOR of related assignment	Disqualify incumbent or have third party draft TOR
Related assignments or	Study of a project competing with another client's project	No (permissible upon conditions)	Advise to client (s) both clients agree on scope of work	Disqualify incumbent, or have third party agree on scope of work
Unrelated useful assignments	Study of future projects	Yes	n.a.	n.a.

5.2 Developing the Terms of Reference

Main Consideration

The Terms of Reference (TOR) are the key document in the RFP. They explain the objectives, scope of work, activities and tasks to be performed, respective responsibilities of the CA and consultant, as well as expected results and deliverables of the assignment. An adequate and clear TOR is important for the understanding of the assignment and its correct execution. Drafting the TOR requires expertise with the type of assignment and needed resources as well as familiarity with the project background and knowledge of the CA's organisation. If the needed qualifications to produce the TOR are not available in-house, CA should hire a specialised independent consultant.

Drafting the Terms of Reference

The following considerations must guide the preparation of the TOR:

- a) The TOR should contain sufficient background information on the project to enable consultants to present responsive proposals;
- b) The scope of work in particular should be consistent with the available budget;
- c) The TOR should take into account the organisation of the entity and its level of technical expertise and institutional strength.

Outline of the Terms of Reference

The TOR normally consists of:

1. Background of the project;
2. Objectives of the consulting assignment;
3. Scope of work;
4. Transfer of knowledge;
5. List of reports, schedule of deliveries, and period of performance;
6. Data, local services, personnel and facilities to be provided by the CA.

1. BACKGROUND OF THE PROJECT

The background summarises the main features of the project and describes the assignment's objectives and general purpose. In particular, it should include:

- a) Name of the Contracting Authority;
- b) Rationale of the project;
- c) Need for consultants in the project and issues to be resolved;
- d) Activities to be carried out;
- e) Supervision arrangements.

2. OBJECTIVES OF THE CONSULTING ASSIGNMENT

The TOR should precisely describe the objectives and expected results, and should include:

- a) Design of project;
- b) Preparation of bidding documents;
- c) Supervision of works;
- d) Provision of training;
- e) Collection and analysis of data.

3. SCOPE OF WORK

The TOR should describe only the activities, not the approach or methodology. The scope of work is defined by addressing the following:

- a) Definition, scope, limits and criteria of acceptance of the assignment;
- b) Level of detail;
- c) Main issues to be addressed;
- d) Special equipment requirements;
- e) Legal framework;
- f) Transfer of knowledge;
- g) Need for continuity;
- h) Quality management requirements (if needed).

4. TRANSFER OF KNOWLEDGE

The TOR should provide specific details on the characteristics of the required services.

5. REPORTS AND SCHEDULE OF DELIVERIES

The TOR should indicate the estimated duration of the assignment, from the date of commencement to the date the CA receives and accepts the consultant's final report. The TOR should indicate the format, frequency and content of reports.

6. DATA, LOCAL SERVICES, PERSONNEL AND FACILITIES

The TOR may provide all the needed facilities (office space, vehicles, survey equipment, office and computer equipment, and telecommunication systems).

5.3 Request for Expressions of Interest

To obtain Expressions of Interest (EOI), the Contracting Authority shall notify a request for expressions of interest for each contract for consulting services, which shall contain selection criteria in compliance with the PPL. The time-limit for receipt of expressions of interest shall not be less than 15 days from the date of publication.

5.4 Short listing

The Contracting Authority shall examine the qualifications of candidates expressing interest according to the selection criteria set out in the procurement notice. The candidates who do not fulfill the qualification criteria shall be disqualified and promptly notified. Shortlists shall include at least 3 candidates. In cases where the number of candidates who have expressed their interest is lower than the fixed minimum, the Contracting Authority can proceed with the procedure provided that there are at least 2 candidates.

5.5 Request for Proposals

The Contracting Authority shall address a Request for Proposals (RFP) to the short-listed candidates, which shall include:

- a) The Letter of Invitation (LOI) stating the intention of the Contracting Authority to enter into a contract for the provision of consulting services, the source of funds, the details of the client; and the date, time and address for submission of proposals;
- b) The instructions to the tenderers containing all necessary information that would help tenderers to prepare responsive proposals, including information on the evaluation process and evaluation criteria/factors as well as their respective weighting and the minimum quality score;
- c) The proposal validity period;
- d) The terms of the draft contract to be awarded;
- e) The time-limit to submit proposals;
- f) Tender security.

5.6 Receipt of Proposals

The Contracting Authority shall set a time-limit for submitting proposals which allows enough time for the tenderers to prepare their proposals. The period of time allowed shall depend on the object of the contract to be awarded and shall not be less than 20 (twenty) days. During this time, the tenderers may request clarifications about the information provided in the request for proposals. The Contracting Authority shall provide these clarifications by written communication and copy them to all short-listed candidates and if necessary shall extend the time-limit for submission.

Technical and financial proposals shall be submitted at the same time in separate sealed envelopes. No amendments to technical or financial proposals shall be accepted after the time-limit for submission has expired. The envelopes containing the technical proposals shall be opened immediately after the closing time for submission of proposals while the financial proposals shall remain sealed. Any proposal received after the closing time for submission of proposals shall be returned unopened.

5.7 Evaluation of Technical Proposals and Consideration of Quality

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

- (i) consultant's relevant experience;
- (ii) the quality of the methodology proposed;
- (iii) qualifications of the key staff proposed;
- (iv) the transfer of knowledge, if required.

Each criterion shall be marked on a scale of 1 to 100, and then the marks shall be rated to become scores. The rating system shall be disclosed in the request for proposals. The Contracting Authority shall inform the tenderers who have submitted

proposals on the technical score assigned to each consultant, and shall notify those consultants whose proposals did not meet the minimum qualifying score or were considered non responsive to the request for proposals. The Contracting Authority shall simultaneously notify the consultants who have reached the minimum qualifying score, on the date, time and place set for the opening of the financial proposals.

5.8 Public Opening of Financial Proposals

The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend, in person or by way of teleconference or other adequate electronic means, if possible. The name of each tenderer, its technical score and the proposed prices shall be read aloud and recorded when the financial proposals are opened. For the purpose of evaluation, the price shall include all consultants' remuneration and other expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their offered prices. The methodology to be used shall be described in the request for proposals.

5.9 Disqualification of Tenderers

The tenderers who do not fulfill the technical and/or the financial requirements shall be disqualified. The Contracting Authority must promptly inform the disqualified tenderers.

5.10 Final Evaluation of Quality & Cost and Contract Award

The total score shall be obtained by rating the quality and cost scores, and adding them. The marks for the "cost" shall be chosen taking into account the complexity of the object of the contract to be awarded and the relative importance of quality.

After the identification of the best tender, the Contracting Authority shall inform the tenderers about the final classification and shall initiate negotiations to clarify and eventually improve the terms of the contract, the methodology, staffing and special conditions. Negotiations must not substantially alter the original terms of the contract or the selected proposal. The financial offer must not be altered in any case.

If the successful tenderer fails to sign the written contract, or fails to provide any security for the performance of the contract - where so required - the Contracting Authority shall invite the next best tenderer for negotiations.

When the contract is awarded to an association in the form of a joint venture of Operators, the association should appoint one of the firms' members to represent the association. All members of the joint venture shall sign the contract and shall be jointly liable for the entire assignment.

5.11 Preparation of the Draft Contract

The Procurement Unit shall elaborate a draft contract with a clear definition of the objectives, goals and scope of the assignment, which must contain the background information for interested candidates and the expected outputs of the service to be provided.

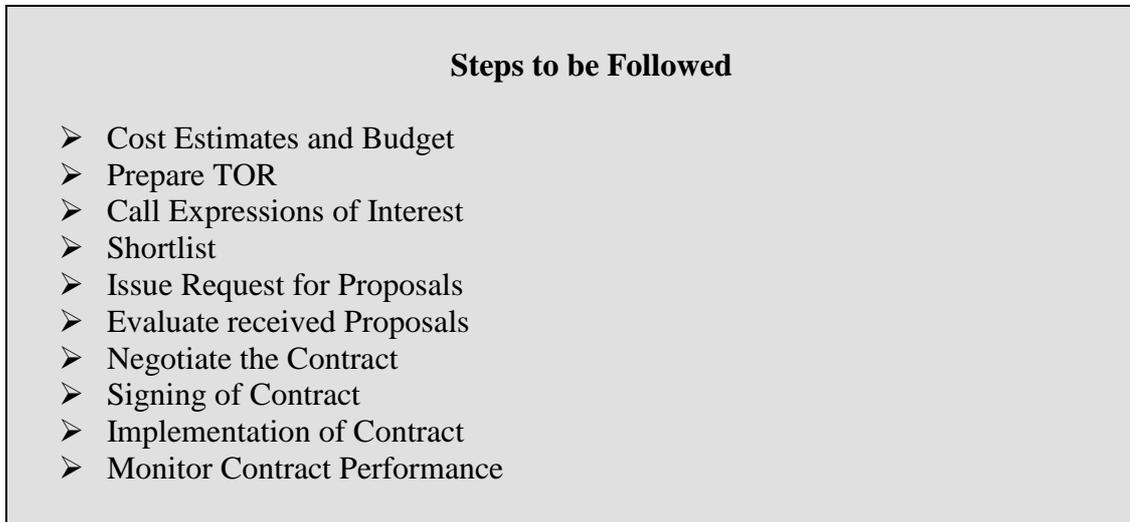
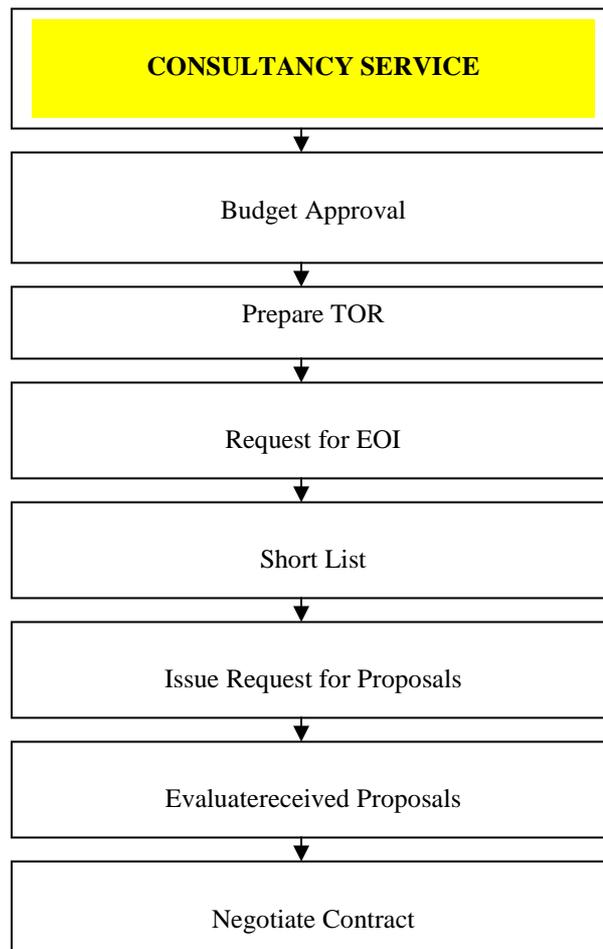
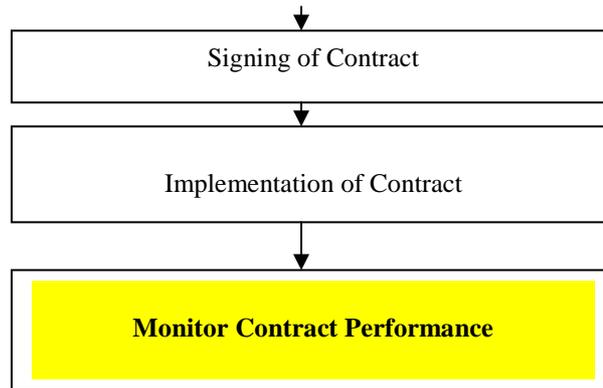


Fig. 6





6. DESIGN CONTEST PROCEDURE

The Design Contest (DC) is a selection method under which short listed firms, in general architectural firms, are invited to submit their conceptual design of a physical project (for example, a hospital, research centre or transportation terminal). The conceptual design forming the main component of the DC is expected to highlight the aesthetic aspects of the project in addition to technical characteristics. The conceptual design of a DC is a preliminary design to be followed, in the case of continuation, by bidding documents and detailed engineering design.

Firms are short listed on the basis of experience, capability and reputation. The Contracting Authority sends them a Request for Design Proposals which includes: (i) a letter of invitation; (ii) information to proponents; (iii) a TOR composed of the design criteria; and (iv) technical specifications.

Evaluation criteria may include: (i) innovation; (ii) aesthetic content; (iii) adequate blending with the surroundings; (iv) efficient use of the available space; (v) attractiveness for the potential users; and (vi) estimated construction costs.

Each bidder shall present its sealed proposal containing the preliminary conceptual design of its proposed solution and the related cost estimates responding strictly to the Request for Design Proposals.

The Contracting Authority may require that proposals be submitted anonymously to ensure that decisions be reached solely on the grounds of the indicated evaluation criteria, and to avoid the Evaluation Commission being influenced by the different renown of individual competitors.

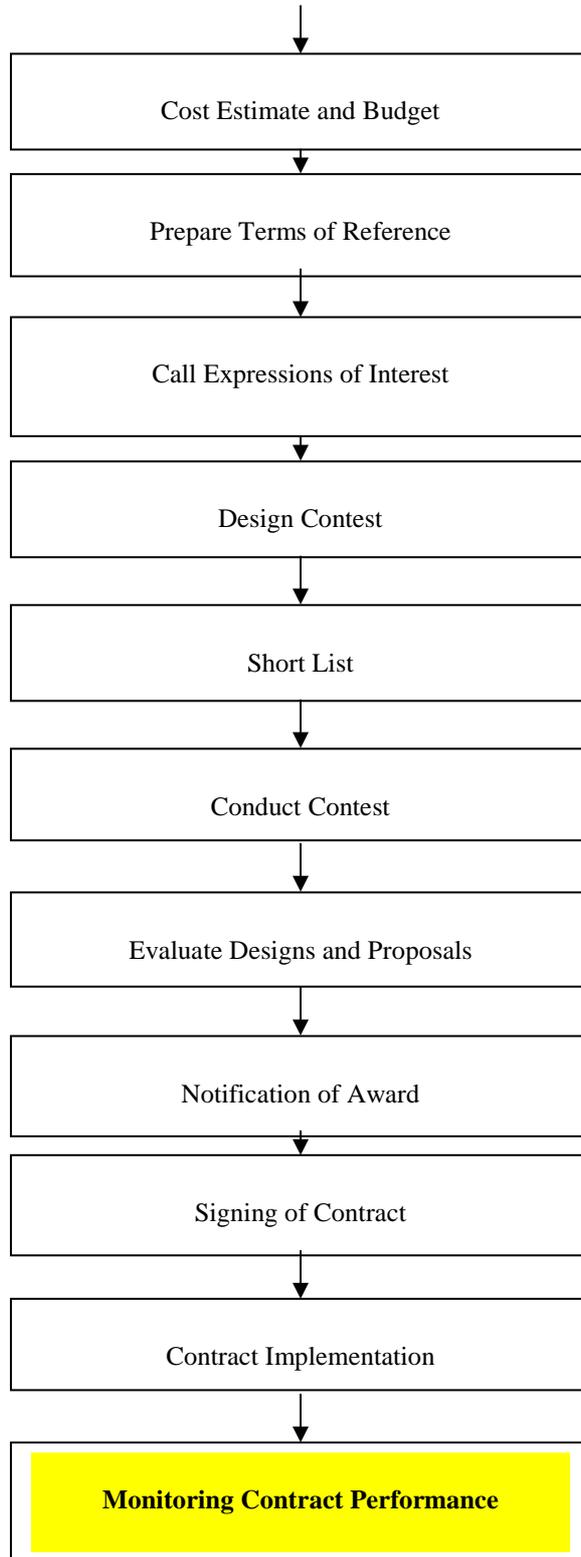
The Evaluation Commission proceeds with the evaluation of the proposed designs, in accordance with the broad evaluation criteria spelled out in the Request for Design Proposals. The winner of the contest is awarded a prize, which may consist of the contract for the subsequent design phase of the project, or a money prize. Because the preparation of the design for large projects is time consuming and expensive, a number of short listed proponents (generally not all) may receive awards to partially offset the expenditures they have incurred.

Steps to be Followed

- An appropriate contest notice must be published in the PAB and on the PPA website;
- The contest must be open to natural persons or bodies corporate, and must not be restricted to candidates from specific territories;
- Evaluation criteria should be set out in the TD;
- The Evaluation Commission shall be constituted according to the rules laid down in procurement regulations. The Commission shall be composed exclusively by persons independent of participants in the contest, and shall conduct the contest autonomously. The Commission's decisions shall be based on the criteria set out in the contest and respect the principle of anonymity of participants;
- The procedure is often linked to the Consultancy Services Procedure.
(See Fig. 6)

Fig. 7





7. SMALL VALUE PURCHASE PROCEDURE

This method is used for off-the-shelf items of goods or standard specification commodities available from several sources of supply within the country. Purchase orders may be signed only by officers with the appropriate authority.

Members of the Evaluation Commission shall contact Economic Operators, obtaining at least three indications of prices of goods or services. On the basis of the lowest price criterion, the Commission shall award the contract. Members of the Commission shall address the Economic Operator who offered the best price for the goods or services. Minutes of meeting shall be taken during the activity and shall be signed by all involved officials. A final report must be prepared with annexed receipts of the purchase of goods or services and, in any case, must be signed by all members.

Steps to be Followed

- Prepare Technical Specifications;
- Prepare list of suppliers broad enough to generate good competition but to yield at least three quotations, as required. Such a list may be prepared based on the past experience, Internet or direct market research;
- Prepare Purchasing Order (PO);
- Send the PO to the suppliers;
- Make sure that the requirement of obtaining a minimum of three quotations has been fulfilled;
- Receive quotations and evaluate them;
- Prepare an evaluation report and make recommendation for award of contract;
- Submit evaluation report and award recommendation to the official authorized to approve the contract;
- Finalise the draft Purchase Order;
- Receive and inspect goods, and make payments as per the PO;
- Copy of all orders issued by the Contracting Authority to be placed on the running file.

SECTION IV- CONTRACT ADMINISTRATION

TO BE DRAFTED

SECTION V- STANDARD TENDER DOCUMENTATION & TEMPLATE DOCUMENTS

1. TENDER DOCUMENTATION

Bidding documents form the basis of any subsequent contract and comprise:

- a) Instructions to Tenderers
- b) Technical Specifications
- c) Tender Form
- d) Price Schedule Form
- e) General Conditions of Contract
- f) Contract Award

A short introduction precedes each model document or form. It should be emphasised that these are models only and should be tailored to the particular needs of Contracting Authorities.

1.1 Instructions to Tenderers

(Template Document 2)

Instructions to Tenderers provide instructions covering such things as:

- a) Access to government information
- b) Submission of tenders
- c) Group bids
- d) Alternative tenders

The model document has been compiled to avoid the necessity for constant amendment and its use is mandatory.

The wording of the Instructions to Tenderers Model must not be altered without consulting the Public Procurement Agency.

1.2 Technical Specifications

A Specification is a statement of requirement. It is also sometimes referred to as a Scope of Work. Getting the Specifications right is a key element in any successful procurement. Performance based specifications will include:

- a) A description of the work to be done;

- b) The output required, in amount and quantity;
- c) Quality and performance standards to be achieved;
- d) Measurement of performance of the product;
- e) Ancillary services required;
- f) Delivery schedule.

Specifications for Goods

The Specifications must be clear and unambiguous so that both buyer and seller are certain that the same product is being considered. For more complex or high value items, the Specifications require careful consideration and will require input from the end-user, purchasing staff and where necessary technical or other expert advice. If the purchase cannot otherwise be described in a detailed way, references to trademarks, parents or brands may only be made provided the words “*OR EQUIVALENT*” are used. Factors to be considered include:

- (i) Any design requirements;
- (ii) Performance required;
- (iii) Size, colour, materials, etc.
- (iv) Quantity;
- (iv) Quality - wherever possible use recognised International, European or National standards;
- (v) Maintenance requirements (generally more cost-effective to negotiate this with the initial purchase rather than separately);
- (vii) Delivery date.

Specifications for Services

Specifications for Services should wherever possible be "output" based. Under this approach the desired outcome including quality, performance and reliability levels, is described by the customer and suppliers are left to suggest the best ways in which this can be achieved.

Over prescription greatly reduces the scope for innovative responses and can increase the degree of risk carried by Contracting Authorities by excluding altogether some suppliers who would be perfectly capable of meeting the performance levels required. The cost of providing Services to support the work of any Contracting Authority represents a significant proportion of total running costs and in general terms, about twice as much is spent on Services than on the purchase of Goods.

Overall the opportunities for efficiencies and value for money initiatives are greater in the purchase of Services than in the purchase of Goods.

Standards

Wherever possible Specifications for Goods or Services should be based on International or National Standards. The advantages of using such standards are that they:

- a) Represent the views of the whole market

- b) Ensure that a product will meet a minimum standard of performance in defined areas
- c) Can help avoid lengthy written specifications
- d) Can help ensure compatibility of equipment

Selection Criteria

The sole purpose of these criteria is to determine whether an Economic Operator has the necessary **financial, economic, technical and professional capacity** to carry out the contract.

As with the exclusion criteria, and for the same reason, the selection criteria must be included in the tender documents.

Under the Law the contracting Authority must specify the minimum requirements of economic and financial standing required of the candidates or tenderers, and can ask them to provide the following documents in support:

- a) Appropriate statements from banks, and where relevant, evidence of professional risk insurance;
- b) Balance sheets, or extracts from balance sheets;
- c) Statement of overall turnover in the area covered by the contract for up to a maximum of three previous financial years;
- d) Profit and loss accounts for a maximum of up to three previous financial years.

In any event, all selection criteria must be clear, non-discriminatory and proportionate to the contract in question.

Drafting Specifications

The following points should be borne in mind when specifications are being drafted:

- (i) Use simple language
- (ii) Define terms, symbols and acronyms
- (iii) Use a logical structure
- (iv) Be as concise as possible and keep the meaning clear
- (v) Plan and analyse your needs
- (vi) Arrange the components of the requirement into a logical form matching the evaluation model. A good way of doing this is to set out a skeleton structure with the main headings and then add in sub-headings as necessary
- (vii) List the most important elements of the requirement first and work through to the least important
- (viii) Discuss the requirements with colleagues. During this process you may also identify other topics you need to include

Reviewing Specifications

When reviewing specifications, keep in mind that a good specification should:

- (i) State the requirement completely, clearly, concisely, logically and unambiguously;
- (ii) Focus on outputs not how they are to be met;
- (iii) Contain enough information for potential suppliers to decide on and cost the goods or services they will offer, or in the case of a negotiated route to arrive at realistic budgetary costs;
- (iv) Allow offered goods or services to be evaluated against defined criteria by examination, trial, test or documentation;
- (v) Contain only the essential features or characteristics of the requirement;
- (vi) Provide equal opportunity for all potential suppliers to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions;
- (vii) Comply with any legal obligations e.g. under national law, EU Directives.

A good specification should not:

- a) Over-specify requirements;
- b) Contain features that directly or indirectly discriminate in favour of, or against, any Supplier, product, process or source. Discrimination on grounds of nationality is illegal.

1.3 Tender Form

(Template Document 3)

Tenderers must be asked to sign and return a Tender Form thereby confirming that their offer is made on the organisation's terms and conditions.

All those documents which will form the contract in the Tender Form should be included and the organisation must ensure that the documents listed are correct and comprise the whole of the tender package. This list of documents together with an accepted offer will form the contract.

1.4 Price Schedule Form

(Template Document 4)

It is mandatory to include a pricing schedule within the Invitation to Tender package, but its format is entirely up to the Contracting Authority. The final decision as to the layout and basis of pricing will need to be decided by the Contracting Authority having regard to the specific requirement of the Services to be provided.

Contracting Authorities must ensure that the Price Schedule:

- a) Is correct for the method of pricing selected
- b) They are obtaining within the Schedule the relevant information to assist with the evaluation of tenders.

Some common examples of pricing arrangements are:

- a) Firm Price - where the price is unchanged throughout the duration of the contract. Usually applicable when the full requirement is established and costs are unlikely to fluctuate greatly;
- b) Subject to Review - where there is a provision for prices to be reviewed, ordinarily after 2 years. Features of this arrangement can be:
- c) An Estimated Cost arrangement whereby individual item prices remain unchanged but the overall total cost is estimated.

The Subject to Review pricing basis should only be used if, due to market circumstances or the duration of the contract, the contractor would be unwilling to tender a Firm Price, e.g. if raw material costs or wage costs are likely to fluctuate greatly during the course of the contract.

Note: A firm price provides the maximum incentive for the contractor to carry out the work to time and within the price agreed.

1.5 General Conditions of Contract

The Conditions of Contract are mandatory, and shall be used when tendering for the supply of Goods and associated services, Services and Works.

Contracting Authorities shall decide whether or not Special Conditions, other than the *mandatory* ones, are applicable to their particular requirement.

Contracting Authorities must consult the Public Procurement Agency before making any amendment or qualification to either the General or Special Conditions of Contract.

Explanation of the General Conditions of Contract

1. Law

The Law against which public procurement is conducted is the Law on Public Procurement for Albania.

2. Definitions

Defined terms establish a distinct vocabulary for a contract. The definitions provided here cover the basic conditions - more may be required if Special or amended conditions are to be used.

3. Corruption Practices

Prohibits the offering and receipt of such gifts etc. and provides for the contract to be terminated in the event of a breach of this condition.

4. Confidential Information

Requires the Contractor to safeguard information and restricts the amount of information the Contractor may reveal about the Contract. Also prevents the Contractor from publishing any information or communicating with the media without the contracting authority's prior permission and approval.

5. Intellectual Property

Ensures that no party other than the organisation or the Contractor has any right to enforce any term or Conditions of the Contract.

6. Drawings, Specifications

Provides for all drawings produced or used in connection with the contract to become / remain the contracting authority's property and be kept in an agreed format, so they can be used for any future work by the organisation.

7. Packaging

Places responsibility on the Contractor to ensure Articles are delivered to the organisation in a secure and protected manner. The specification should require the Contractor to appropriately package the Article(s).

8. Test and Inspections

Provides the contracting authority with rights of access to premises and use of facilities to inspect and examine the Articles (both completed and in the course of production).

9. Delivery

Defines the period during which orders may be made against the Contract.

10. Insurance

Requires the Contractor to have and to maintain adequate insurance to cover all the risks faced in the contract.

11. Warranty

Places an obligation on the Contractor to remedy any defective Article.

12. Acceptance

Details when an Article delivered by the Contractor would ordinarily become the property of the contracting authority.

13. Qualities

All deliverables provided under Contract are of equal quality and condition.

14. Performance

Places responsibility on the Contractor to perform the Services with the special skills, and care which are expected and for complying with any legal/statutory provisions associated with the Services.

15. Contractor's Performance

The Contractor is responsible for proper management of all aspects of the contract (including any regulations). Provides for the identification of key personnel (and subsequently the right for the contracting authority to approve any replacement) and makes the Contractor responsible for ensuring all personnel employed on the contract have appropriate qualifications / competence.

16. Duration of the Contract

Identifies the period during which the contract is in force. Dates should be determined in the contracts and included in the specification.

17. Invoices and Payment

Covers the basic process of invoicing and payment.

18. Rejection

Provides the contracting authority with the right to reject unsatisfactory Articles and provides the contracting authority with remedies on such rejection.

19. Termination of the Contract

Provides the contracting authority with the right to terminate the Contract in certain circumstances where the Contractor is at fault.

20. Insolvency of the Contractor

Companies can become insolvent (not enough funds to cover debts) but individuals (or partnerships) go bankrupt. This condition requires the Contractor to notify the contracting authority in the event of his insolvency (or bankruptcy) and gives the contracting authority the right to terminate the contract. Ordinarily the Contract Manager should be aware (through normal liaison) if the Contractor is in financial difficulties.

21. Sub-Contracting

Ensures that the contract cannot be transferred to a third party and that the Contractor cannot appoint any sub-contractor without the contracting authority's prior written agreement.

22. Transfer of Responsibility

Requires the Contractor to co-operate where the work or continued provision of the Articles is to be transferred to another Contractor (e.g. on expiry or termination of the Contract) to aid continuity of supply.

23. Arbitration

Contracting Authorities may set the mechanism for arbitration of any dispute which is NOT dealt with elsewhere in the Contract. Arbitration can only be used to settle any dispute if all parties to the contract agree, and this closure should be part of the contract.

24. Meetings and Reports

Requires the Contractor to attend any meetings and submit any reports reasonably called for by the contracting authority.

25. Loss or Damage

Requires the Contractor to accept liability for losses arising as a consequence of his performance or purported performance (including his servants, agents or sub-contractors on the Contract), other than losses arising from the neglect or default of others outside his control). Where there is a split responsibility for losses, the condition makes it clear that the Contractor has liability for the proportion of loss for which he is responsible.

26. Liquidated Damages

Provides for the payment of damages if the organisation is in a loss making situation because the contractor fails to complete the contract on time. The organisation must have arrived at a genuine pre-estimate of possible losses accruing to the organisation in the event of late delivery before inviting tenders. The figure should in no way represent a penalty. Refer any queries about the use of this condition to Public Procurement Agency immediately.

27. Force Majeure

It is not normal policy to offer this condition. However, occasionally tenderers will only accept the Liquidated Damages condition if a Force Majeure condition is also included. Requests to include this condition as a 'quid pro quo' for liquidated damages should be resisted. Under the law, Force Majeure is only justified if three conditions exist; the events were impossible to determine in advance; inevitable; and external.

28. Retention of Documentation

Requires the Contractor to retain documents generated as a consequence of performing the work for two years after the end of the Contract - also allows access to the documents; intended mainly for audit purposes.

1.6 Contract Award

(Template Document 5)

Contract Award recommendation

On completion of Evaluation of Tenders, the Tender Evaluation Commission should produce:

- a) Evaluation report
- a) Contract award recommendation

On receipt of the Evaluation Report from the Tender Evaluation Commission, the Contracts Officer must make sure that the award recommendation is fully supported and that all aspects, including any clarification, conditioning, or Post Tender Negotiations are covered in the report.

In particular, the following aspects should be covered:

- (i) Confirmation that the tender is fair and reasonable and represents value for money;
- (ii) Confirmation that the tender is fully compliant;
- (iii) Any case for passing-over lower tenders is fully substantiated ;
- (iv) If only one tender was received in competition, confirmation that re-tendering was considered and the reasons why this was rejected;
- (v) A summary of all tenders in descending order with the total costs calculated;
- (vi) Details of any presentations by tenderers and any post tender action;
- (vii) Confirmation that financial approval has been received.

Acceptance

An unqualified acceptance of the tenderer's offer secures a contract. Therefore it is essential to ensure that the basis of a sound contract exists *before* issuing the acceptance.

The important points to bear in mind when preparing an acceptance of tender are:

- a) An acceptance must be notified within the tender validity period;
- b) The offer and acceptance must be free from ambiguity, and the acceptance *must be unqualified*. Any point of issue must therefore be resolved prior to acceptance. In any cases of doubt, PPA should be consulted. Remember that once the offer has been accepted, the Department's ability to negotiate is considerably undermined;
- c) The acceptance must be approved by an officer with the appropriate contractual authority;
- d) The contract documentation must be clear and unambiguous so that both parties are in no doubt as to the basis under which the contract is awarded;
- e) The goods and services being offered are what is required, i.e. they meet the criteria of quality, construction, materials, design, etc required by the technical specification;
- f) The contract represents value for money;
- g) When satisfied that the tender has been fully evaluated, and all outstanding issues satisfactorily completed, the Procurement Officer should submit a formal recommendation for acceptance to the officer holding the appropriate contractual authority.

Approval to Accept

The formal submission seeking contract approval should be endorsed 'approved for acceptance' by the officer with the contractual authority, provided:

- a) The tender validity date has not expired;
- b) The recommendation has been examined and found to be satisfactory;
- c) All queries have been cleared satisfactorily;
- d) Confirmation has been received that additional funds are available, if required;
- e) All the relevant tender documents are complete;
- f) The recommendation to accept is fully detailed and comprehensive.

Awarding the Contract

Once the 'approved for acceptance' has been given, the successful tenderer should be notified in writing of the acceptance of his/her tender and award of contract. The award letter should state:

- a) All variations and qualifications agreed during Post Tender Negotiations and meetings;
- b) The dates of all correspondence received and sent during the tender process;
- c) The contract/tender number;

- d) The correct name and address of the contractor;
- e) The description of the goods/service being purchased;
- f) The contract period;
- g) The contract price(s);
- h) The date when the service or deliveries of the goods to be supplied will commence or, if not known, how the contractor is to be notified of the commencement date;
- e) The requirement that the award letter must be acknowledged.

Acceptance by telex or fax is permitted, but confirmation must immediately be made by letter.

Contract Award Letter

(Template Document 5)

The Contract Award letter is the final document which creates a legally binding contract between the organisation and the contractor. Prior to sending the award letter, the Procurement Officer responsible should satisfy him/herself that all negotiations and outstanding issues are fully resolved (the contractor is likely to be far more responsive to any changes the organisation may require prior to contract award).

The award letter is the organisation's *acceptance* of the contractor's offer. Provided the acceptance is unqualified, it has the effect of forming the contract and therefore only an acknowledgement of receipt is requested.

At no time should a Contracting Authority make counter-offers or convey a qualified acceptance within the award letter as this effectively means no contract is formed - it would rest with the proposed contractor to reject, amend or accept the counter-offer.

List in an Appendix to the Contract Award letter any key personnel required under the contract.

1.7 Notification of Unsuccessful Tenderers

(Template Document 6)

At the same time as the successful tenderer is notified of the award of contract, the other tenderers should be informed in writing that they were unsuccessful. See "*Notification to unsuccessful tenderers*" template document.

1.8 Debriefing

Unsuccessful tenderers may want to know why their tender failed. The amount of information that can be conveyed will vary according to the circumstances of the particular contract, but you can give a broad indication of the reasons and, on cost, where they ranked in the tender list.

It is essential that any information passed to the tenderer does not breach the commercial confidentiality inherent in competitive tendering. Detailed prices should

not be disclosed without consultation with PPA as their disclosure could breach this confidentiality.

Copies of all correspondence must be placed on the Contract File.

Debriefing helps potential suppliers improve their performance so that future bids will be more competitive. However, do not disclose details of one tenderer's offer, particularly prices, to others.

On occasions, following the award of a newsworthy contract, a **Press notice** may be proposed by the Contracting Authority or the appointed supplier. The draft notice should be approved by the responsible Contracts Officer to ensure that any contractual issues are covered.

However, it is mandatory to immediately advise the PPA of all contracts issued.

Template Document 1

Contract Notice

[Contract Name]

[Place]

[Date]

- 1. Contracting Authority**
The Contracting Authority full contact details: name, address, telephone, facsimile numbers and the responsible contact person (s).
- 2. Type of the Contracting Authority**
- 3. Object of the Contract**
Describe briefly the scope of supply, works and services or their combination.
- 4. Duration of the Contract for Execution**
Place and time limits for the execution of the contract (i.e. in case of supply contracts: delivery time) and, where appropriate, the duration of the contract (i.e. for consultancy services: the overall contract duration).
- 5. Location of the Contract**
- 6. Division into Lots**
Short description of the lots, including information whether the contract is divided into lots and whether it is allowed to offer for one or more of the lots.
- 7. Contract Covered by the Specific Agreement between Albania and Other States**
- 8. Legal, Financial and Technical Information**
Any information relevant to tenderers about the legal, financial and technical aspects of the procedure.
- 9. Type of Procedure**
The type of contract chosen and award criteria.
- 10. Time-limit for Receipt of Tenders or Request to Participate**
- 11. Time-limit for Opening Tenders or Request to Participate**
- 12. Period of Effectiveness of Offers**
- 13. Language**
Specify any requirement regarding the language for the tender procedure, which has to be consistent with the requirements laid down in the tender documents.

14. Complementary Information

15. How to Obtain the Bidding Documents

The bidding documents are available from the internet address of the PPA/Contracting Authority. They are also available for collection from the Contracting Authority (full contact details to be included, telephone, facsimile, email and person in charge).

16. Clarification to the Bidding Documents

Tenderers with questions regarding the tender should send them in writing [specify contact person, e-mail and postal addresses] before the deadline for submission of tenders given. The Contracting Authority must reply to all tenderers' questions before the deadline for submission of tenders.

17. Deadline for Submission of Tenders

Time and date to be specified - must be a working day at least 120 calendar days after the date of publication of the contract notice. The deadline for submission of tenders must be combined with the public opening. Any tender received after this deadline will not be considered.

18. Tender Opening Session

Date, time and place of tender opening session.

Instructions to Tenderers

1. The [*name of Contracting Authority*] looks forward to receiving your tender for the work described in the attached documents. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in the Tender Documents. To ensure fairness all tenderers are required to submit their tenders in accordance with these instructions. Failure to submit a tender containing all the required information and documentation within the deadline specified, and to comply with the requirements of the TD, will lead to rejection of your tender.

2. No account can be taken of any reservation in your tender as regards the tender dossier; any reservation will result in the immediate rejection of the tender without further evaluation.

3. The projected timetable for the period from issue of this Invitation to Tender to the date of contract award is attached to these instructions.

4. (*option*) A site visit will be organized on _____ (dd/mm/yy) so that Economic Operators can familiarize themselves with the local conditions. An Interested Economic Operator should write to the given address in advance to confirm its intention to participate in the site visit. Additional information or clarifications provided during the site visit will be distributed to all Economic Operator. All Economic Operators' costs relating to the site visit shall be met by them. Without the prejudiced of the above and on its own risk and expenses, an economic operator, any time can visit the premises, location if that is possible.

To arrange a site visit please contact:

Eligibility to Participate in the Procedure

5. In accordance with Article 45 of the PPL, the tender will be rejected if the Economic Operator:

- a. is bankrupt or is being wound up or has entered into an arrangement with creditors or has suspended or limited business activities or who is in any analogous situation arising from a similar procedure under the relevant laws and regulations of Albania or its country of establishment;
- b. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or for an arrangement with creditors or of any other similar proceedings under the relevant laws and regulations of Albania or its country of establishment;
- c. has been convicted by a judgment of any offence regarding his or her professional conduct within 5 (five) years prior to date of submission of a tender ;

- d. has been found guilty by a competent courts of Albania of grave professional misconduct within 5 (five) years prior to date of submission of a tender;
- e. has not fulfilled its obligations relating to the payment of social security contributions in accordance with the relevant laws of Albania or its country of establishment;
- f. has not fulfilled its obligations relating to the payment of taxes in accordance with the relevant laws of Albania or its country of establishment;

Submission of tenders

6. You should send your tender in an envelope, using the enclosed label, to arrive at the address shown no later than the time and date stated in the attached letter (unless the date is subsequently amended in writing by the [*name of Contracting Authority*]). The [*name of Contracting Authority*] will safeguard all tenders received and open them once the tender deadline has expired. All late tenders will be rejected. It is your responsibility to ensure that your tender is received on time. Tenders may not be considered if any of the information requested is not supplied with the tender or the tender is otherwise non-compliant or incomplete. You must not tell anyone else, even approximately, what your tender price is or will be, before the date of contract award. The only exception is if you need an insurance quotation to calculate your tender price - in which case you may give your insurance company or brokers any essential information they ask for, provided that you do so in strict confidence. You must not try to obtain any information about anyone else's tender or proposed tender before the date of contract award.

You must not make any arrangements with anyone else about whether or not they should tender, or about their or your tender price. Tender documents must not be transferred to anyone (other than the firm named in the Invitation to Tender) without the prior specific approval of the [*name of Contracting Authority*] in writing. You must ensure that your tender is completed legibly, in ink or typed, in the official language of Albania, with all prices in LEK, and is signed and dated where required. Any amendments you make to your tender, prior to submission, must be initialled and preferably also noted separately.

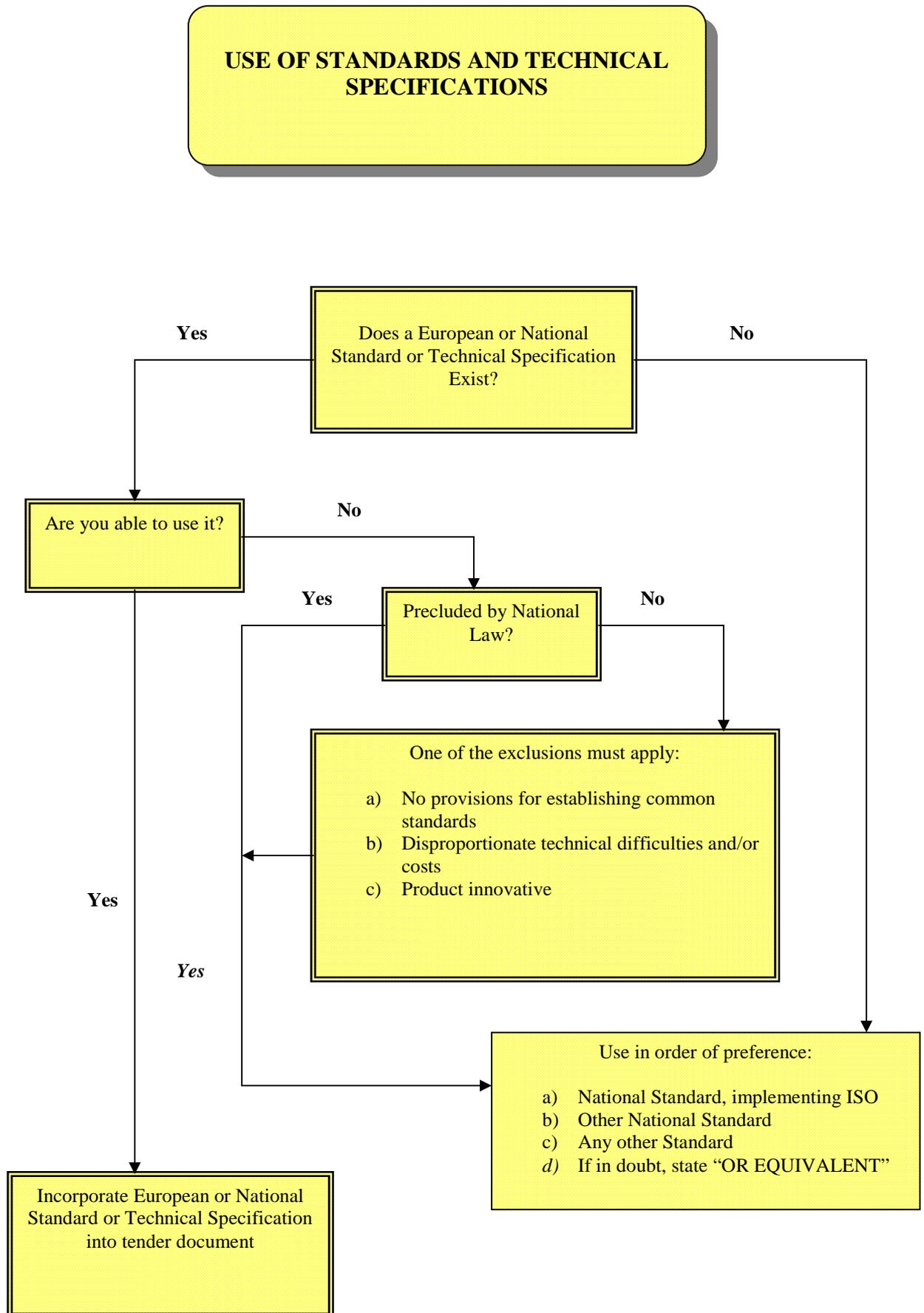
Tender validity

7. Your tender should remain open for acceptance for a minimum of [*insert number*] days from the Tender Deadline or for such other period as may be specified by the [*name of Contracting Authority*].

8. Where reference is made to an International, European or national Standard then you may offer an equivalent to any of these, provided that your Standard offers equivalent guarantees of safety, suitability and fitness for purpose to the one specified.

9. Any points of clarification which you need to make with the [*name of Contracting Authority*] should be addressed solely to the Contracts Officer. You should note that in order to ensure fair and equal treatment to all tenderers, any points of clarification made by any tenderer plus the response from the [*name of organisation*] will be copied to all tenderers.

Fig. 8



Template Document 3

Tender Form

[Ref.]

[Date]

To: *[Name and address of the contracting authority]*

Award procedure *(if applicable)*: *[File reference attributed by the contracting authority]*

Short description of the contract: *[type of procedure and object (for instance, open procedure for purchasing personal computers)]*

Publication *(if applicable)*: Public procurement bulletin *[Date] [Number]*

With reference to the abovementioned procedure, we, the undersigned, declare that:

1. We have examined the tender documents for this procedure and we accept, with no reserves or exclusions, the requirements, time limits and conditions, therein expressed;
2. We satisfy all legal, financial-economical and technical requirements specified in the tender documents as proved by certificates and documents submitted with this declaration;
(in case of restricted or negotiated procedure for qualification phase)
3. We express our interest to participate to the procedure in case of selection by the contracting authority;
(in case of open tender / restricted or negotiated procedure during the offer phase and lowest price criterion)
4. The total price of our bid is *[currency and amount of the offer]* VAT excluded;
5. The total price of our bid is *[currency and amount of the offer]* VAT included;
(in case of open tender / restricted or negotiated procedure during the offer phase and most economically advantageous tender criterion)
6. Our bid shall be valid for the period specified in the tender documents;
7. Where our offer is accepted, we will provide a contract security as provided in the tender documents;
8. We shall not participate as tenderer in more than one bid for this procedure.

[Representative]

Template Document 4

Price Schedule Form

Page No. [.... of]

Contract Ref: _____

Name of Tender: _____

Summary Bill of Quantities					
No.	Work Breakdown Structure	Description	Quantity	Unit Costs	Total
1.					
2.					
3.					
4.					
Total Price					
Contingency					
Grand Total incl. VAT & Contingency					

Template Document 5

Contract Award Form

Section I: Contracting authority

I.1 Name and address of the contracting authority

Name _____
Address _____
Tel/Fax _____
E-mail _____
Internet address _____

I.2 Type of the contracting authority and main activity or activities:

Central institution	Independent institution
<input type="checkbox"/>	<input type="checkbox"/>
Regional/local Entity	Others
<input type="checkbox"/>	<input type="checkbox"/>

Section I Object of the contract

II.1 Type of contract

Works	Services	Supplies
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of "Public works contracts"

Execution	Design and execution
<input type="checkbox"/>	<input type="checkbox"/>

Type of 'Public service contracts'

Design contest	Consultancy services	Other services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of "public supplies contracts"

Purchase	Rent	Lease	Hire purchase	A combination of these
<input type="checkbox"/>				

II.2 Short description of the contract

(Quantity or scope of the contract and fund limit)

II.3 Duration of the contract or time-limit for completion:

Durations in months or days

or

Starting and completion

II.4 Division into lots:

Yes No

If yes, numbers of lots:

II.5 Options:

Number of possible renewals (if any):

or Range: between and .

Section II Procedure

III.1 Type of procedure:

Open Restricted Negotiated Design contest

In case of negotiated procedure:

Justification for the choice of negotiated procedure without prior publication of a contract notice:

III.2 Award criteria:

A) lowest price

or

B) most economically advantageous tender

in terms of weight: Price or Quality

III.3 Number of offers received: **Number of regular offers:**

III.4 File reference attributed by contracting authority:

Section III Contract information

IV.1 Contract number: _____
□□/□□/□□□□

Contract Date

IV.2 Name and address of the contractor

Name _____

Address _____

Tel/Fax _____

E-mail _____

Internet address _____

IV.3 Total final value of the contract (including lots and options):

Value _____ (net of VAT) Currency _____

IV.4. Previous publication concerning the same contract (if applicable):

Public procurement bulletin Date _____ Number _____

V.4 Additional information

Date of dispatch of this notice □□/□□/□□□□

Template Document 6

Letter of Notification to Unsuccessful Tenderers

[Place and date]

[Name and address of the Contracting Authority]

[Address of tenderer]

Dear [Contact name]

Thank you for participating in the above mentioned public procurement procedure. The procedure was conducted in accordance with the Law on Public Procurement no. 9643 dated 20.11.2006, henceforth “the PP Law”.

Your tender was carefully evaluated against the conditions and requirements established in the procurement notice and in the tender dossier. I regret to inform you that you were [disqualified] [eliminated] because the tender submitted by you was rejected due to the following reason(s) [*mark appropriate box*]:

[Your company] [your manager] [your director]

1. Participated in the preparation of the contract notice or tender dossier or its part(s) which was used by the contracting authority;
2. Received assistance in preparation of the contract notice or tender dossier of its part.

[Your company]

1. Have/has been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt practices, money laundering, criminal organization or activities described, or similar to those described, in Article 45 of the PP.Law, under the laws or regulations applicable in Albania or any country, or under international treaties or conventions;
2. Have/has been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;
3. Have/has been determined to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct;
 - a. is bankrupt or wound up, and your affairs are being administrated by the court, in accordance with article 45, 2(b);
 - b. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with the creditors or of any other similar proceedings in accordance with article 45, 2(c);

- c. has been convicted by a definitive judgment of any offence concerning his professional conduct;
- ç. has been guilty of grave professional misconduct according to Albanian law;
- d. has not fulfilled his obligations to pay social security contributions in accordance with Albanian law or the applicable provisions in the country of origin;
- e. has not fulfilled its obligations relating to the payment of taxes in accordance with Albanian law or the applicable provisions in the country of origin;

You failed to submit:

- 1. Required certifications or attestations demonstrating or affirming that you are not disqualified under Article 45 of the PP Law;
- 2. A certificate, document or document or other sufficient evidence that has been reasonably required by a contracting authority under Article 46 of the present law for the purpose of verifying your professional suitability;
- 3. Sufficient evidence, as described under Article 46 of the Law, reasonably demonstrating that such candidate or tenderer meets the minimum financial, technical and professional capacity requirements specified in the tender dossier or contract notice;
- 3. Have/has been determined by the Contracting Authority that you have submitted documents containing false information or documents forged for purposes of qualification;
- 4. Your tender [is not responsive] [is irregular] [is abnormally low];
- 5. You failed to comply with the tender security requirements .

Justification:

[You were disqualified] [Your tender was rejected] due to the following reason(s):
[State detailed reasons for disqualification or rejection of tender accordingly]

If you believe that the Contracting Authority, during the public procurement procedure, has breached the PPL or its implementing regulations you have right to initiate the review procedure regulated in Chapter VII of the PP Law.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our procurement initiatives.

Yours sincerely
[Name]