

ORGANIZACIÓN MUNDIAL DEL COMERCIO

GPA/65/Add.1
17 de abril de 2002

(02-2120)

Comité de Contratación Pública

Original: inglés

SOLICITUD DE ADHESIÓN DE ALBANIA AL ACUERDO SOBRE CONTRATACIÓN PÚBLICA

Addendum

Se ha recibido de la Misión Permanente de Albania la siguiente comunicación, de 21 de marzo de 2002, con el ruego de que se distribuya al Comité.

Albania procede a notificar al Comité de Contratación Pública la siguiente legislación nacional de aplicación, para que sea examinada por todas las Partes*:

Ley Nº 8767 de 5 de abril de 2001, relativa a algunas adiciones y modificaciones de la Ley Nº 7971 de 26 de julio de 1995.

Decisión del Consejo de Ministros Nº 335 de 23 de junio de 2000 sobre las normas de contratación pública.

Instrucción del Consejo de Ministros Nº 1 de 1º de enero de 1996 sobre contratación pública.

Instrucción del Consejo de Ministros Nº 3 de 19 de febrero de 1996 sobre las compras de poco valor.

* En inglés solamente.

**REPUBLIC OF ALBANIA
PARLIAMENT**

**Law No. 8767 dated 05.04.2001 on some additions and changes on the
Law No. 7971, dated 26.07.1995 “On public procurement”, changed by
the Laws No. 8039 dated 23.11.1995, No. 8074 dated 22.02.1996 and
Law No. 8112 dated 28.03.1996**

In Accordance with Articles 78 and 83 para.1 of the Constitution, and with proposal of the Council of the Ministers,

**THE PARLIAMENT
OF THE REPUBLIC OF ALBANIA**

DECIDED:

In the law No. 7971 dated 26.07.1995 “On Public Procurement”, changed by the laws No. 8039 dated 23.11.1995, No. 8074 dated 22.02.1996 and law No. 8112 dated 28.03.1996, are made these additions and changes:

Article 1

Article 1 is amended as follows:

Article 1

This law determines the regulations on procurement of goods, constructions and services and aims:

- (a) To promote an efficient and economic use of public funds by procurement entities;
- (b) To encourage the participation of candidates in the public procurement procedures;
- (c) To promote competition between candidates in procurement for the supply of goods, construction and services;
- (d) To ensure fair, equal and non-discriminatory treatment of all candidates participating in the procurement;
- (e) To ensure fairness, public trust and transparency in public procurement.

Article 2

In Article 2 the last paragraph is changed as follows:

“Public funds” means the following funding resources:

- (a) Every monetary value originated from the state budget allocated for use in public procurement;
- (b) Every monetary value originated from the local government allocated for use in public procurement;
- (c) Funds granted in the form of an aid or credit by foreign donors under international agreements, unless they require compliance with procedures other than those of this Law;
- (ç) The revenues from state-owned companies, enterprises depended on municipalities and commercial companies where the state owns the majority of the capital.

After the last paragraph the following paragraphs are added:

“Suspension” means discontinuation of the procurement procedure by head of the procurement entity, by central or local body, or by the Agency of Public Procurement, as the result of the administrative complaint.

“Re-evaluation” means re-examination and correction of the imperfections pointed out by the head of the procurement entity, by central or local body, or by the Agency of Public Procurement, in a procurement procedure.

“Annulment” means repetition from the beginning of a procurement procedure, as the result of the breaching of the procurement regulation pointed out by central or local body, or by the Agency of Public Procurement.

Article 3

After paragraph 2 of the Article 5 is added the paragraph 3 in the following content:

3. In the beginning of every year, according to the deadlines determined in the public procurement regulations, the procurement entity sends to the Agency of Public Procurement annual planing of the intended procurements to be published in the Bulletin of Public Procurement.

Article 4

After paragraph 3 of the Article 7 is added paragraph 4 in the following content:

4. The procurement entity is obliged to establish the procurement unit within the structure of the entity. The tasks of the procurement unit are defined in the Guidelines of the Council of the Ministers.

Article 5

In the Article 8 are made these changes:

In the paragraph “c” of the point 2 is added the sentence in the following content:

“In the beginning of every year, the Agency of Public Procurement publishes in the Bulletin of Public Procurement the list of suppliers which are excluded form the participation in the public procurement procedures, according to the Article 12 paragraphs 5 and 7 of this law.

After letter “g” of the item 2 is are added the paragraphs “gj” and “h” in the following content:

(gj) establishes a system of public procurement procedures performed. These data are received from central and local public procurement entities.

(h) encourages and promotes the use of international technical standards for the preparation of technical specifications and keep constant relations and contacts with the General Directorate for Standardization.

Article 6

In the Article 12 are made these amendments and changes:

In the paragraph 5, in the before last sentence, the words “up to 1 year” are changed “from 1 up to 3 years”.

After paragraph 6 is added paragraph 7 containing as follows:

7. When the Agency of Public Procurement, regards that disqualification of candidates is done in conformity with Article 12 paragraph 5, or when the Agency regards that the bidder presents a document that contains a false information, it takes the decision for exclusion of this bidder from the public procurement procedures for a period from 1 year up to 3 years. The decision of the Agency is communicated to all procurement entities through publication of the decision in the Bulletin of Public Procurement.

Article 7

In the Article 16 are made these changes and amendments:

1. The title of the article is changed as follows:
“Corruptive Actions”

2. After the existed paragraph is added an paragraph in the following content:

Any sum of money given to or taken as a stimulus for an act, decision or procurement procedure by the officials of the procurement entity or officials of other bodies that the entity depends on is called corruptive action. When this action does not constitute a penal act is considered an administrative violation and is penalized according to the provisions of this law.

Article 8

Article 17 is amended as follows:

Paragraph 3 is amended as follows:

3. In exceptional circumstances of a force major or emergency, the Council of Ministers may permit the use of a procurement procedure other than open tender, in situations foreseen in Articles 18, 19, 20, 21 and 22.

The permitting of a procurement procedure must be accompanied with these documents:

- (a) A request by procurement entity related with the use of the selected procurement procedure, along with the relevant arguments in favor of its choice;
- (b) Motivation of the procurement entity in the selection of the candidate(s) to participate in public procurement procedure;
- (c) Data confirming registration in the court of the candidate(s) to participate in procurement procedure, their activity, seriousness and credibility;
- (d) Data on the determination of the threshold fund and work volume for constructions.

After paragraph 4 is added paragraph 5 with the following content:

5. For the big public objects, the construction works of which spends a time period that pass next calendar year, the procurement entity procures the funds for the constructions and their supervision, as per total value of the objects. The total value of every object procured, the

construction of which expires the time period of one calendar year, will be obligatorily included in the budget of the next year, for continuation and finalizing of their works.

Article 9

In the Article 19 are made these changes and amendments:

The paragraph “a” of point 1 is amended as follows:

(a) When in absence of the competition for technical reasons the goods, construction works and services are provided only by one candidate, or when a supplier or contractor has the exclusive rights for goods, construction works or services and it does not exist any other possibility for substitution;

The paragraph “b” of point 1 is amended as follows:

(b) According to the restrictions previewed in the procurement rules, for supplementary delivery of goods and services by the previous supplier, which are done either as substitution or as a supplement of goods, or existed services. In this cases, a change of the supplier would oblige the procurement entity to procure goods or services, which will not meet the requirements of conformity with goods and existed services.

After paragraph “e” of point 1 are added these paragraphs:

(ë) The procurement entity will use the direct procurement procedure foreseen

in the paragraphs a), b), c) ç) of the paragraph 1, only after obtaining the approval by the Agency of Public Procurement.

(f) In the cases of emergent necessity for goods, services and construction works, those not foreseen in the annual planing of intended procurement, and where this emergent necessity is caused by circumstances that are out of control of the procurement entity. The procurement entity will use direct procurement procedure after obtaining the approval by the Agency of Public Procurement.

Point 2 is changed as follows:

2. The procurement entity can use also direct procurement for the procurement in small values, when the calculated value is less than monetary limit defined in regulations on public procurement.

Article 10

The paragraph 1 of Article 25 is changed as follows:

1. The invitation to tender shall be addressed to all candidates that in a written form are interested in participating in a procurement procedure. The invitation to tender is published in the Public Procurement Bulletin and at least in two national newspapers of general circulation.

Article 11

The first sentence of the paragraph 1 of Article 29 is changed as follows:

The procurement entity must determine in the tender documentation the condition of bid security in the form of bank guarantee or a guarantee issued by insurance companies, licensed by the state.

Article 12

Paragraph 1 of Article 31 is changed as follows:

The procurement entity shall open all offers in the date and the time determined in the bid documentation, which comes immediately after last deadline of their acceptance.

Article 13

In the Article 32 are made these changes:

- The first sentence of paragraph 1 is changed as follows:

When it deems appropriate, the procurement entity may request clarifications from bidders on their offers, aiming that the examination and the evaluation of the offers to be fair and transparent.

- In the paragraph 4, in first line, the words “may consider” will be substituted with the words “considers”.
- Paragraph 7/b is changed as follows:

7.b) The offer that, on the basis of the requirements and criteria set forth in the bid’ documents, meets the criteria and specific conditions of the procurement object with the best economic value. The best economic value is evaluated on the basis of factors specified in the bid documents which to the extent practicable shall be objective and clearly quantifiable. These factors shall be given relative weight in the evaluation procedure or be expressed in monetary terms.

Article 14

After the paragraph 3 of the article 35 are added these paragraphs:

4. Within 30 days of the signing of the contract, the procurement entity must publish the procurement contract award in the Public Procurement Bulletin. The procurement contract is deemed concluded, when it is signed by the procurement entity and by the winner bidder.
5. The Civil Code provisions are applicable for a contract of public procurement.
6. The procurement entity or the body, which puts into disposal the funds after the awarding of the contract, supervises the fulfilment of the obligations of the contract.
7. The procurement procedure ends, when all the contract obligations of the parties are fulfilled.

Article 15

In the article 36 are made these changes and additions:

-The paragraph “b” is changed as follows:

- (b) the procurement entity, which has updated lists regularly, but at least twice per year, must choose the bidders from these lists, and must accept offers from those bidders whose want to participate in the procurement procedure, giving to all of them equal possibilities in the competition”,

-After the paragraph “ç” is added the paragraph “d” with this content:

- (d) the procurement entity must take prior approval by the Public Procurement Agency, for the organizing of the procurement procedures with less than 3 offers.”

Article 16

The point 3 of the Article 39 is changed like this:

- 3. The procurement entity can negotiate with the winner bidder for the content of his proposal and can ask or can allow the re-examination of this proposal.

Article 17

The point 1 of the article 40 is changed as follows:

- 1. The procurement entity should request quotations from as much suppliers as it can, to obtain not less than 3 offers. In case of obtaining less than 3 offers, the procurement entity must take prior approval of the Public Procurement Agency to continue or not this procedure.

Article 18

The point 1 of the article 41 is changed like follows:

- 1. The procurement entity must use the procedure “Open International Tendering”, when the calculated value of the fund is over a monetary limit defined in the procurement regulations or of the limit funds under this monetary value, where the useful competition can not be assured in the open tendering for the procurement of goods, for the constructions and for the services, without the participation of the foreign physical or juridical persons.

Article 19

Paragraph 1 of Article 45 is changed as follows:

- 1. Upon receipt of a complaint by a bidder participant in the public procurement, the Public Procurement Agency, unless it refuses the complaint, shall promptly notify the procuring entity to suspend further action of procurement procedure. The Agency orders the entity to submit to the Public Procurement Agency, within five days from the date of receipt of this notice, all documents relating to the relevant procurement procedure.

Article 20

Article 46 is amended as follows:

1. In case breaches of the provisions of this Law and of procurement regulations, the Public Procurement Agency has the right to:
 - (a) propose to the central or local body to penalize the responsible persons of the procuring entity who have made the administrative violation;
 - (b) penalize for administrative violation the responsible persons with a fine from 50 thousand to 1million Lek. A complaint may be lodged against the penalizing decision to the court of district of the procuring entity within 5 days after the notification.
2. If the head of the central or local body and the head of the procurement entity ascertain breaches of this Law and of public procurement regulations, they have the right to:
 - (a) penalize responsible persons of the procuring entity for administrative violation with a fine from 50 thousand Lek to 100 thousand Lek. A complaint may be lodged against the penalizing decision to the Public Procurement Agency that review the complaint within 30 days from the date its submission;
 - (b) order dismissal from task of persons responsible for administrative violation.
3. The collection of the fines is made in the base of the Law nr.7697, date 7.4.1993 “On Administrative Violations”.
4. The fines foreseen in this article, for the same violation is applied only once.

Article 21

This Law enters into force 15 days following its publication in the Official Journal.

REPUBLIC OF ALBANIA
Council of Ministers

DECISION

No. 335 dated 23.06.2000

ON PUBLIC PROCUREMENT REGULATIONS

In implementation of Article 100 of the Constitution, and Article 8, paragraph 2/a, of the Law no.7971, date 26.07.1995 *On Public Procurement*, on proposal by the Deputy Prime Minister and Minister of Labor and Social Affairs, the Council of Ministers,

D E C I D E D

1. A procuring entity shall use "open tendering", according to Article 23 of the Law no. 7971, dated 26.07.1995, *On Public Procurement*, when the estimated value of the contract is over 5 (five) million Lek for the procurement of construction, over 3 (three) million Lek for the procurement of goods and over 1 (one) million Lek for the procurement of services, with the exception of design services.

2. A procuring entity shall use "limited tendering", according to paragraph "b", Article 18, and Article 36 of the said Law, when the estimated value of the contract is less than 5 (five) million Lek for the procurement of construction, less than 3 (three) million Lek for the procurement of goods and less than 1 (one) million Lek for the procurement of services, with the exception of design services, where reference shall be made to the value envisaged for the procurement of the construction and not that of service.

In this case the procuring entity shall obtain tenders by no less than 3 (three) candidates. In the case of an international tendering, the procuring entity shall obtain at least 3 (three) tenders from no less than 3 (three) different countries.

3. procuring entity shall use "request for quotation", according to Articles 22 and 40 of the said Law, when the estimated value of the contract is less than 2 (two) million Lek for the procurement of construction, 1 (one) million Lek for the procurement of goods and 500,000 (five hundred thousand) Lek for the procurement of services.

4. A procuring entity shall use "direct procurement", according to Article 19 of the said Law:

- (a) Point 1/b/c/ç, for a value of less than 30 per cent of initial contract, when the need for this addition arises before the testing of construction and within 3 months from the expiry of the contract term for goods and services.
- (b) Point 2, for goods of smaller value, such as readily available goods, when the estimated purchase price of each item is less than 200,000 (two hundred thousand) Lek, within a calendar year.
- (c) In respect of the Directory of Governmental Services, when the estimated purchase value of each item is less than 600,000 (six hundred thousand) Lek, within a calendar year.

5. The period from the announcement of invitation to tender to the day of the submission of tenders shall be:

- (a) In the case of "open tendering", no less than 20 (twenty) days for the procurement of construction, goods and services;
- (b) In the case of "limited tendering", no less than 15 (fifteen) days for the procurement of construction, goods and services;
- (c) In the case of "request for quotation" no less than 10 (ten) days for the procurement of construction, goods and services;
- (d) In the case of international procedures, no less than 45 (forty-five) days.

6. The condition of tender security, in the form of bank guarantee, according to Article 29 of the said Law, shall be 2-5 per cent of the estimated contract value (estimated preliminary by the procuring entity and given in absolute value in the tender data), and the contract security condition shall be 10 per cent of the contract value.

7. Before announcing the winning tender or proposal, the procuring entity shall submit a summarized report on procurements for prior review and approval:

- (a) To the head of the procuring entity, in respect of procurements of less than 5 (five) million Lek;
- (b) To the head of the central or local authority, in respect of procurements of over 5 (five) million Lek;
- (c) To the Public Procurement Agency in respect of procurements of over 100 (a hundred) million Lek.

8. The successful bidder must declare to the procuring entity, through signing the contract form, his/her will to sign the contract within 15 days from the receipt of notification, in respect of open tendering, limited tendering and invitation for quotation, and open or limited international tendering.

In case that within this term the response by the successful bidder is negative, the procuring entity is entitled to notify the second-ranking participant in the classification, of contract award, and effect at the same time forfeiture of the tender security of the winning bidder.

9. The procuring entity is bound to establish a procurement register at the start of each year, where records relating to the observance and application of procurement procedures are entered.

10. All procuring entities shall submit for publication to the Public Procurement Agency the invitation to tender in the open tendering, limited tendering, and request for quotation, not later than 10 days prior to its announcement. In addition, in respect of a tendering which are published in the Public Procurement Bulletin, the procuring entity is bound, prior to contract signing, to make a public notice of the successful tenderer in the Public Procurement Bulletin.

11. Within January 30, the procuring entity shall submit to the Public Procurement Agency accurate statistics on the annual planning of procurements. Furthermore, it shall also submit to the Public Procurement Agency any alterations to the plan of public procurements in the course of the calendar year. At the end of each three-month period and within the tenth day of the following

month, the procuring entity shall submit to the Public Procurement Agency an index of fulfilment or not of planned procurements, accompanied with a report of relevant explanations. Whereas, the Public Procurement Agency shall, within the 20th day of the same month submit to the Council of Ministers an overall statement of all procurements in the country.

12. Any candidate is free to seek administrative review of an act or omission by a procuring entity, where the candidate considers to be in breach of this Law or the procurement regulations, within the following deadlines:

- (a) With the procuring entity and central or local authority, within 5 (five) days following announcement of the final classification of tenders;
- (b) With the Public Procurement Agency, 5 (five) days after the expiry of the term for the lodging of any complaints with the procuring entity.

13. In the case when a procurement procedure is subjected to review by the Public Procurement Agency, the procuring entity is bound, within 5 (five) days from the moment this decision is issued, to submit to the Public Procurement Agency, a summary review report.

14. The procuring entity shall record and make available to inspection authorities the procurements register, records and complete documents of any performed procurements. Recording of these documents shall be made in compliance with the terms stated in the Law "*On Archives*".

15. The Decision no.12, date 01.01. 1996 of the Council of Ministers, *On Public Procurement Regulations* is abrogated.

This Decision is entered into force after its publication in the "Official Journal"

PRIME MINISTER

ILIR META

**REPUBLIC OF ALBANIA
COUNCIL OF MINISTERS**

GUIDELINES

NO. 1 DATED 1.01.1996

ON PUBLIC PROCUREMENT

Pursuant to the proposal of the Agency of Public Procurement, the Council of Ministers,

INSTRUCTS

I. THE PROCURING ENTITY AND THE PROCUREMENT ORDER

1. The Procuring Entity is the central or local body, which has available funds for procurement, when it is making the procurement by itself. In case when the procuring entity delegates in writing the procurement to another juridical person, then the latter bears the rights and responsibilities of the procurement entity.

The head of Procuring Entity, after the allocation of funds, issues the procurement order, in which it defines

- (a) the object to be procured;
- (b) the available funds;
- (c) the procurement procedure;
- (ç) the commission of tender evaluation;
- (d) the group that prepares the tender documents where there is no procuring unit

II. PROCUREMENT PROCEDURES

The procurement procedure to be followed is decided on the basis of law no.7971, dated 26.07.1995 "On Public Procurement", and decision of the Council of Ministers no .12, dated 1.1.1996 " On the Rules of Public of Procurement".

2. In the procurement procedures no highest and lowest values can be defined, for the purpose of the disqualification of the tenderers.

(a) Open and international tendering procedures

Open tendering is the type of procedure mainly addressed to the local companies, but which allows the participation of other companies as well, despite their nationality. The open tendering documents will be prepared only in Albanian language, the tenders will be presented only in Albanian language and the announcements will be published in the local press.

Open international tendering is the type of procedure addressed to all companies; the tender documents will be prepared in Albanian and also in another language widely used in the international trade; the announcements will be published not only in the Bulletin of Public Procurement Agency and local press, but according to article 25 of the law no.7971, dated 26.7.1995, these announcements should be published as well in an international newspaper to promote competition.

Open tendering will be the preferred tender procedure because it makes use of local human resources and has its advantages in relation to the organization of tenders, because:

- the procurement is made in a shorter time because the deadlines are shorter;
- geographical distances facilitate the contacts between the employer and the contractor;
- the announcement is published in the Bulletin of the Public Procurement Agency and in the local press; therefore its cost is lower;
- the native language is used;
- there is time benefits in relation to the exchange of announcements, clarifications, organization of meetings, dispatch and reception of the additional materials (where necessary) etc.;
- the procurement laws and rules are known to the tenderers, therefore misunderstandings are avoided to the maximum, facilitating in this way the communication.

This procedure will always be used when effective competition can be achieved, otherwise international open tendering will be used as provided in article 41, of the law no. 7971, dated 26.7.1995.

(b) Pre-qualification procedures

The pre-qualification procedures will be used according to Article 13 of the Law No. 7971, date 26.07.1995, in cases of complex procurements when considerable efforts are needed to prepare the tenders and to examine and evaluate them.

This procedure encourages the companies to participate in the pre-qualification stage, because the documentation they are asked to prepare during this stage does not cost much time and money.

This procedure also enables the procuring entity to invite only those companies that have sufficient capacity and recourses to compete, avoiding participation of unqualified companies.

The announcement for the pre-qualification stage is made within the time limits established for open and international tendering.

The pre-qualification documents will request from the prospective tenderers to demonstrate their capacity and recourses to satisfactorily fulfil contracts, taking into consideration their performance in previous similar contracts; the capacity of its personnel; the number, type and source of the construction and production machinery and equipment; its financial situation, etc.

After the pre-qualification procedures have been completed, the tender documents are distributed to the pre-qualified companies.

The information provided in the documentation for pre-qualified will be verified before signing the contract. If the provided information results false, inaccurate or incomplete, the tenderer will be disqualified according to the Article 12. Paragraph 5 and 6 of the Law No. 7971 dated 26.07.1995. In this case the procuring entity awards the contract to second ranking tenderer.

The pre-qualification procedures may be applied even for a group of similar procurements, when a certain value is defined, under which pre-qualification is not necessary.

In this case pre-qualification may be valid for a certain period of time, which should be specified in the documents of pre-qualification stage. Upon expiring of the time limit, pre-qualification should be repeated.

(c) Two-stage tendering

“Two-stage tendering” will be applied when the final design and technology of the goods and works to be procured, present some difficulty in the preparation of the technical specifications and other tender documents.

This may happen when the preliminary preparation of complete technical specifications would be difficult or non-practical and the procuring entity considers as more reasonable to collect proposals of the participating companies (in case of turn-key contracts or complex contracts).

This procurement procedure is also suitable in the case of procurement of such equipment, which are subject to rapid changes in technology, i.e. computer systems or communication systems.

The first stage of two-stage tendering may be open or restricted based on the Law No. 7971, dated 26.07.1995 and the Decision of the Council of the Ministers No. 12 date 01.01. 1996, respecting time-limits and thresholds specified in this decision. The second stage of “Two-stage tendering” should respect the time limits of “Limited Tendering”.

(ç) Request for Proposal

“Request for Proposal” is a type of limited tendering, where the number of tenderers is conditioned by the number of the companies or individuals capable of presenting valid tenders.

If there is an international “Request for Proposals”, the procuring entity should ask for proposals from not less than three countries.

The pre-qualification stage in “Request for Proposals” may or may not be used.

When the procuring entity uses “Request for Proposals” without the pre-qualification stage, it should prepare before hand a short list of the companies or individuals with due capacity to present valid proposals.

This procurement procedure may be used in consulting or designing services, preparation of feasibility studies, supervision of works, etc.

The tender documents should contain the terms of reference, the type and quality of solicited proposal, all laws and sub-legal acts if any, regulating such procedure, rules, standards, technical conditions which support the solicited proposal.

(d) Request for Quotations

“Request for Quotations” is used when works, services or goods that will be procured have a stable market and the value of the contract is small.

This procurement procedure is a kind of limited tendering that has priority compared to other forms of procurement because the time needed for procurement is shorter and there are less requests for qualification.

When procuring construction works or services only the legal and administrative documentation is requested. In the case of procurement of goods, tendering conditions will be

included in a purchase order and the quotations may be received even by fax or telex, under the condition that the legal and administrative documentation of the winning company will be verified before signing the contract.

Local "Request for Quotations" is organized when tenders for works, services or goods may be obtained from more than two sources and with competitive prices. In international "Request for Proposals" the procuring entity will request quotations from not less than three countries.

"Request for Quotations " may or may not have the pre-qualification stage.

III. TENDER DOCUMENTS

The tender documents consist of (a) the general part, according to the forms attached to these guidelines, including:

- invitation to tender
- instruction to tenderers
- tender form
- general and specific conditions of the contract
- requests for the qualification of the participants
- form of tender security

and (b) the specific part, in accordance to the type of procurement, including:

1. Procurement of construction works

- final designs and technical specifications
- volumes of works and schedule of works (if necessary)
- schedule of works completion (if necessary)
- evaluating criteria

2. Procurement of goods

- technical specifications
- schedule of delivery
- evaluating criteria

(a) The general part

Invitation to tender contains the name and address of the procuring entity, the available funds, the object and the procurement procedure, the price and place of purchasing tender documents, the place, date and time of opening of tenders.

-Instructions to bidders contains all necessary information for preparation of bids.

Tenderers will use the standard tender documents and the general conditions of the contract enclosed in the instructions, without making any change. Changes may be made only in the specific conditions of the contract.

In international tendering the tender documents will be prepared in Albanian and in English (if not otherwise envisaged in the respective agreements), specifying which language will prevail. In local tendering the Albanian language will be the language of the tender.

All the participants in tendering will be given equal opportunities to visit the sites of big and complex works, and a preliminary meeting may be organized where prospective tenderers may request explanations for questions that have emerged during the preparation of their tender. The clarifications will be requested in a written form and after being prepared by the procuring entity will be distributed to all the possible tenderers without exception.

Every correction or amendment in the tender documents will be sent to each of the candidates within a reasonable time before the receipt of the tenders.

The tender documents should define the currency or the currencies in which the tenderers will present their tenders; the procedures for price adjustments of different currencies (not more than three) in a single currency; and the currency in which payments of the contract will be made. The exchange rate of different currencies will be the rate of 28 days prior of opening tenders. This avoids mistakes in currency exchange, provides fairness and transparency during the evaluation process and enables the participants from countries with weak currencies to use a stronger currency.

Tender documents should also make clear that the tenderers should include in their tenders all fiscal taxes and duties to be paid according to the laws in effect 28 days before opening of the tenders.

The tender form should contain confirmation of the tenderer for the prices offered by him for the completion of the contract and the declaration that his tender is in accordance to the contract conditions and technical specifications given in the tender documents.

General conditions of the contract should denominate the range of works to be performed, goods to be delivered, the rights and obligations of the procuring entity and of the contractor, as well as the functions and competencies of the contractor and the director of works in supervision and contract administration. Besides the general conditions of the contract, there will also be provided the special conditions of contract. In the specific conditions of contract it is also stated the amount of performance security, which will protect the procuring entity in case of contract infringement by the contractor. Part of this guarantee will be extended beyond the completion date to pay for the defects or maintenance until the procuring entity takes over the works. The contract may envisage the retention of a certain percentage in every periodic payment until the procuring entity takes over the object.

Requests for qualification should contain the legal and administrative documentation of the candidate that have been considered as necessary by the procuring entity, in conformity with article 12 of law no 7971 dated 26.7.1995. For construction works and designing activity, the requests for qualification will include except the legal and administrative documentation, even other data related to the staff, technical capacity and experience of the company.

Form of tender security serves to protect the procuring entity from irresponsible tenders, but this amount should not be as high as to discourage the participation in tendering process. The form of tender security will be a bank deposit or guarantee in a bank related to Albanian banks. Tender security of the successful tenderer should be valid for a period of 30 days after the termination of tender validity, so that the procuring entity will have enough time to forfeit tender security if it becomes necessary. Tender security of the unsuccessful tenderers will be returned immediately after signing the contract with the winner.

The procuring entity will define the percentage of tender security depending on the estimated value of the contract as given in the Decision of the Council of Ministers no 12, dated 1.1.1996, aiming at the lowest limit for contracts of big amounts and the upper limit for the small value contracts.

(b) The specific part

1. Procurement of construction

New construction works should have the detailed final design so that work items and volumes are clearly stated in the tender documents.

Construction works may be procured with fixed prices when the volumes of work given in the final design are subject to changes during construction work. In this case the successful tenderer is obliged to keep the unit prices unchanged as defined in its tender.

Construction works may be procured also with turn-key contracts, when work volumes given in the tender documents are not precise and the tenderers should make a detailed study of the design, without being obliged to respect the given volumes. In this case the successful tenderer is responsible for handling over the object without claiming any additional amount over the price it has offered in its tender responding also to all fiscal obligations according to the existing laws.

The technical specifications should clearly state the requirements of the procuring entity on the quality of works, materials to be used, or other requirements besides those envisaged in the final design or technical conditions.

In the requests for qualification there should be clearly given the minimal requests related to:

- qualifications and licenses of the staff that will be directly involved in the object; i.e. the key personnel responsible for the implementation of the works.
- the number and type of plant and equipment, i.e. the indispensable technical capacity for carrying out the works.
- the minimal value of similar objects built by the contractor (documented through certificates issued by the investor) in order to convince the Procuring Entity that the contractor is capable of realizing the requested works.

If the contractor fulfils these requests for qualification given in the tender documents, it is considered as qualified and then its tender will be evaluated (and also time, if this is foreseen as evaluation criterion in the tender documents). The requests for qualification serve only for the qualification of the tenderer and are not awarded with points, though they may surpass the limit requested in, the tender documents.

In all the cases when the contracts are based upon unique prices, the work volumes should be complete in all the items and percentages the procuring entity judges as need to be fixed, (reserve fund, the minimal planned profit, the minimal supplementary expenses, the percentage of the value added tax, etc).

The order of completion of different stages of works should be given in the tender documents, if the procuring entity considers as necessary that different stages of works should be completed according to a certain order.

If the time for completion of works is not an evaluating criterion, this shall be clearly stated in the tender documents; in the opposite case time for completion of works shall be part of the evaluating criteria.

In the evaluating criteria there should be given the weight of every criterion; i.e. the maximal points for the tender with the lowest price, or the maximal points for the tender with the shortest time schedule, (when time is an evaluating criterion), and the formula for calculating the points of the successive tenderers: $P_i = V_{min} \times P_{max}/V_i$ where:

P_i = points of the tender under evaluation

P_{max} = the maximal points given to the lowest tender

V_i = value of the tender under evaluation

V_{min} = the value of the lowest tender

When procuring reconstruction works and there is no final design, the procuring entity may use two-stage tendering procedures. On the basis of technical specifications, in the first stage the procuring entity will request from the tenderers, besides the qualification requests, the work volumes and other opinions related to the object. After the work volumes have been fixed, the Procuring Entity in the second stage asks *for* the price of the tenders.

As far as requests for qualification, technical specifications or evaluating criteria are concerned, there will be used the same procedures applied when procuring construction works.

2. Goods

The invitation to tender for goods should be made on the basis of CIF prices, where the supplier includes also the transportation and insurance of the goods. The evaluation and selection is made on the basis of CIF prices. If the Procuring Entity undertakes the transportation and insurance of the goods through local companies, the tenderers may be requested to present in their tenders based in FOB prices. In this case, the evaluation and selection are made with CIF prices, but the Procuring Entity may sign the contract with FOB prices and will be itself responsible for the transportation and insurance of the goods.

If the tender documents require, the contracts for the delivery of goods should guarantee full payment for the contracted goods after their delivery and control, with the exception of contracts for installation and starting of the machinery. In these cases a part of the payment may be made after the supplier had fulfilled all its contracting obligations. Payment through irrevocable Letter of Credit confirmed by the Albanian Banks should gain priority in order to ensure direct payment for the supplier.

Technical specifications should clearly provide a description of the goods related to their quality, function, safety, dimensions, symbols, terminology, packing, marketing and labeling on the basis of article 14 of law 7971, dated 26.7.1995.

The delivery schedule of the goods should clearly provide the way and time limits the procuring entity has requested for the delivery of these goods.

After evaluating the technical specifications and delivery schedule of the goods, the only evaluating criterion will be the price of the good.

In the case when the evaluating criteria are more than one, some other factors may be taken into consideration as expenditures for internal transportation and insurance up to the delivery place, payment schedule, delivery time, operational expenses, equipment effectiveness and suitability, services and spare parts. Besides the price which will be used for determining the lowest cost tender, the specific weight of all these factors should be determined; i.e. how many points will be given to each criterion and how will be the calculations for the successive tenderers. All the criteria set for the evaluation of the bids should be objectively fair and possibly expressed in numbers. In every case

when there are more than one evaluating criteria the price of the good should not have less than 80 points.

The ranking of the points will be calculated through the following formula:

$$P_i = V_{\min} \times P_{\max} / V_i$$

3. Services

The type of service required should be clearly described, with all the specific characteristics of the procuring entity for its quality and time schedule.

If the requests of the procuring entity are clear and complete, then the only evaluating criterion of the tenders may be the price of the service.

In special cases, when the evaluating criteria are more than one, all the criteria that determine tenders' evaluation should be objective and possible expressed in numbers. It should also be stated the weight of every criterion and the way of calculating the points for the tenders.

When the criteria are expressed in points the calculating formula will be:

$$P_i = V_{\min} \times P_{\max} / V_i$$

In every case when the criteria are more than one, the weight of the criterion of price should not be less than 80 points.

3.1 Designing services

The terms of reference should be complete and clear in such a way that provides equal opportunities to all the tenderers. They should also state the available fund for the construction of the object.

In the technical specifications there should be clearly stated all the requests of the Procuring Entity for the design of the object, the functional and technological aspect of the works, the materials to be used etc.

In the requests for qualifications there should be clearly stipulated the minimal requests related to:

- qualifications and licenses of the persons that will be directly involved in the design of the object, management of construction works or consulting services, i.e. curriculum vitae of each of the staff;

- similar designing services proved by the certificates of the investor (if designed before 1992, their total value will be calculated through conversion coefficients).

Except for requests for qualification, the candidates will be requested to present the preliminary design and the preliminary bill of quantities with equal prices for all the tenderers (the procuring entity, in the tender documents will give instructions for these prices). The tenderers will also state the price of the design that will be an evaluating criterion.

During the preparation of tender documents for designing services, according to article 39, paragraph 2/c, there should be stipulated in the tender documents that all tenderers will be excluded from the procurement process of goods or works related to the design under discussion.

In the tender documents for designing services, the procurement order will also include the available fund, which is the amount to be used for the payment of the design and not the total fund for the object; this will be stated in the terms of reference.

The evaluating criteria for the designs will be: not less than 75 points for the technical offer i.e. quality of the design; 15 points for the economic offer i.e. the value of the preliminary bill of quantities and about 10 points for the price of the design.

The bill of quantities of the final design, that reflects all remarks of the technical council should not surpass the amount of the preliminary bill of quantities prepared on the basis of the preliminary design and presented for bidding; if it is not so, the contract security of the designer will be forfeited.

A designer cannot be part of designing staff of two different designing companies that participate in the tender for the same object.

Two-stage tendering may be applied in the cases when a final design will be procured, the preliminary design of which has been defined in general lines and a routine tender of designing process will provide different solutions, the comparison of which would be senseless (e.g. pavement of existing roads, water supply and sewerage network).

In the first stage the candidates will be requested to submit the preliminary bill of quantities with the same prices for all the tenderers (in the tender documents, the Procuring Entity will give due instructions for these prices) together with details of the preliminary design which may influence the value of the bill of quantities.

After the Procuring Entity will decide on the basis of the submitted tenders for the best offer together with the preliminary bill of quantities, the procuring entity announces the second tendering stage to obtain tenders for the price of the design.

In this case price is the only evaluating criterion.

IV COMMISSIONS

The commission of tenders' evaluation should consist of not less than 5 members, specialists of the specific field and one economist. It is recommended that the Vice-Head of the Procuring Entity to be the Chairman of the Commission. The Head of the Procuring Entity can not be the Chairman of the Commission.

The Procurement Unit (or the persons that compile the tender documents) consists of not less than two specialists of the respective field and one lawyer.

The Procurement Unit together with the tender evaluation commission prepares the tender documents as defined in the procurement order.

In special cases, depending on the complexity of the object to be procured, the tender documents may be prepared by a specialized technical group, Albanian or foreign.

When procuring designs, the evaluating commission should be a kind of technical council. It should consist of not less than seven specialists of the respective field. In this case the procuring entity should determine the opposition for every design.

The procurement unit is responsible for making announcements or distributing invitations to tender (in restricted tendering), sending for publication in the Bulletin of Public Procurement of the invitation to tender, obtaining the materials needed for the tender documents (as maps, designs, bill of quantities, technical conditions, standards etc) preparation of tender documents with the respective forms, respecting the time limits as defined by the Decision of the Council of Ministers no.12, dated 1996 and, according to these guidelines, the calculation of the price for selling the tender documents to the tenderers (on the basis of article 27 of law no 7971, dated 26.7.19950), and handling the tender documents to the tenderers.

The lawyer, who is member of the group that prepares the tender documents, is responsible for implementing the envisaged procedures on the basis of the existing legislation; he also enjoys the right to suspend these procedures when he notices any infringements.

The Evaluating Commission participates together with the Procuring Entity in the compilation of tender documents and is responsible for the special part of these documents related to the technical specifications and requests for qualification, as well as for the evaluating criteria.

During the preparation of the tenders by the tenderers, the procuring entity is obliged to clarify to the tenderers any question that may arise to them during the preparation of their tenders which is related to the tender documents. If this question or clarification is a kind of interpretation requested in a written form or an addendum that should be given by the procuring entity, then, on the basis of article 28 of law no 7971, dated 26.2.1995, these addendum should be sent to all the tenderers despite the fact that have requested it or not and it will constitute an integral part of the tender documents.

If the opinion of the evaluating commission is needed for the clarifications requested by the tenderers, then the procuring entity through the head of the commission, should organize a meeting of the commission or even a meeting of the commission with the tenderers if necessary.

In national tenders the tenders will be submitted in the place, date and time specified these in the Invitation to Tender.

In the place, date and time defined in the Invitation to Tender and in the presence of the representatives of the participating companies, the commission receives the tenders in national tendering, or opens the tenders of international tendering when the tenders have been previously received.

Members of the evaluating commission should not have any business, kinship or interests relations to the tenderers.

The tenders submitted in conformity with the requests provided in the guidelines for the participants in tendering are reviewed by the commission. The other irregular tenders are turned back to the tenderers.

After opening the tender, the procedure starts with the qualification documentation. The documents are immediately examined in the presence of the commission and representatives of the companies.

The tenderers that have not fulfilled the qualification requests are considered as disqualified.

When it is possible for the verification to be made on the spot, the technical and economic tenders should not be opened without completing the qualification process of the tenderers. The tenderers that have fulfilled the qualification requests, are considered as qualified with the exception of the cases mentioned in article 12, paragraph 6 of Law No. 7971, dated 26.7.1995.

The commission opens the technical-economic tenders after having declared the disqualified companies, and read in a loud voice the total value of the tenders as well as the time deadlines when time is an evaluating criterion.

All the pages that present the calculations for the final value of the tender, are signed by all the members of the commission.

The minute of opening of the tender is prepared in conformity with the requests of the Article 31, item 3 of law 7971, dated 26.7.2995.

The whole documentation opened by the commission is part of the tender file and is not turned back to the tenderers after the end of the tendering process.

After receiving the tenders the commission should select the best tender on the basis of the criteria established in the tender documents, in conformity with article 32 of the Law No.7971, dated 26.7.1995, and the ranking classification of all other tenders.

The decisions of the commission are reached through consensus or majority of open votes and not through secret voting.

The procuring unit should be present during the work of the evaluating commission and might give opinions or make remarks.

The procuring entity should keep and sign all the records of commission work, which should also be signed by all the members of evaluating commission, collect and keep in a separate file all the documentation of tendering, (procurement order, announcements, etc decision for announcing the winner); at the end of the procuring procedures, the Procuring Entity should submit the file in the archive of the Procuring Entity, where it should be preserved according to paragraph 10 of the Decision of the Council of Ministers, dated 1.1.1996.

The Chairman of the Commission organizes the work of the commission during the tendering process and together with the lawyer, which are responsible for following up tendering procedures according to the existing laws and regulations.

The Chairman of the Commission prepares the ranking list of the tenders and officially announces it to the tenderers.

V. THE HEAD OF THE PROCURING ENTITY

The tenderers that do not agree with the decision of the procuring entity and want to know the reasons for the rejection of their tender, enjoy the right to complain at the Procuring Entity within 10 days from the receipt of the official announcement.

In this case only the tender of the claiming candidate will be reviewed, and not the other tenders.

The head of the Procuring Entity may suspend tendering procedures if the complaint is upheld, or in the opposite case he is entitled to clarify and respond on the basis of article 44, paragraph 2, of the Law 7971, dated 26.7.1995 to all the complaints that have been submitted to the Procuring Entity within 10 days: from the official announcement on classification of the tenders from the evaluating commission.

VI. APPROVAL

The procuring entity prepares a summary report according to article 7, paragraph 2 of the Law no. 7971, dated 26.7.1995, reflecting all the complaints (if any), the respective answers and sends this report to the central or local body that makes available the funds.

The Head of the Procuring Entity on the basis of the report and possible complaints sent by the Procuring Entity decides whether it is necessary to seek for review the complete file of tender documents; in the opposite case he approves the winner of the tender and makes available the necessary funds.

After reviewing the requested documentation, the central or local organ should give the approval or corrective measures, if any, not later 20 days from the receipt of the documentation.

Only after the approval of the organ that manages the funds, the procuring entity is entitled to announce the winner and to sign the contract for the procured object.

Winner announcement and contract signing before receiving the written approval of the organ that possesses the fund are not valid.

The candidate that is not satisfied with the answer of the procuring entity is entitled to further express his complaint according to article 44, item 3, Law no 7971, dated 26.7.1995. The Head of the Procuring Entity, after receiving the approval from the central or local body, informs the winner before the expiry of the validity period of his tender in conformity with the respective form in the tender documents.

The validity period will be estimated by the procuring entity, by adding the time the commission will need to review the tenders to the time needed for receiving complaints, giving approval and signing of the contract.

If the central or local organ that makes available the fund turns back to the Procuring Entity the classification of the tenders, the validity period may be postponed.

The tender documents are constituent part of the contract signed by the two parties.

VII. GENERAL ISSUES

Temporary joint- ventures of companies will be admitted to participate in tendering, on the following conditions:

- There is a contract among the companies where there are clearly specified the works that will be realized by each of the companies and the way the profit will be shared among them.
- Through written Power of Attorney one of the companies is nominated as being in charge of the joint group of companies it will represent the other companies in all the steps of tendering till contract signing.

-The companies should have joined together not later than two weeks before the date of submission of the tenders.

All the conditions for participation in tendering of the joint companies should be clearly revealed in the tender documents.

Subcontracting. When the contractor aims at carrying out some of the works through other subcontractors, it should present in the tender documents the complete set of documentation requested for the subcontractor and the concrete works it is going to subcontract.

Repetition of the tendering procedures. If all the tenders are rejected because of lack of competition (there is submitted only one tender), or all the tenders do not fulfill the qualification conditions, tendering procedures should be repeated.

In this case the Procuring Entity should find the reasons of such a rejection and review the tender documents.

When tender documents are redone, the Procuring Entity may decide to invite only those companies that presented tenders the first time, if they are not less than three.

In limited tendering also the list of the invited companies should be reviewed. These guidelines come into force immediately.

PRIMEMINISTER
ALEKSANDER MEKSI

**REPUBLIC OF ALBANIA
COUNCIL OF MINISTERS**

GUIDELINE

No.3, dated 02/19/1996

ON

SMALL VALUE PURCHASES

At the proposal of the Public Procurement Agency, the Council of Ministers

G U I D E S :

1. The commission on procurement of small value purchases is composed of not less than members and is appointed each calendar year by the head of the procurement agency according to Form no. 1 attached to this Guideline.

The chairman of the commission shall be the head of finance of the procurement entity.

In the cases when the procurement entity has set up a procurement unit that functions in line with the Guidelines of the Council of Ministers No. 1, dated 01/1/1996 and has no less than two procurement experts and one lawyer, they will also be the members of the procurement commission on small value purchases.

2. Small value purchases, other than goods, include all services of small values such as developing and printing of films, photocopying, key reproduction, repair or change of locks, repair of different equipment such as type writers, photocopiers, computers etc., waste water work, repair of small defects of vehicles during trips and other services of this kind.
3. The needs for small value purchases that will be carried out through the direct procurement procedure, according to Article 19, point 2 of Law No.7971, dated 07/26/1995 "On Public Procurement", are determined by the chairman of the procurement entity in the procurement order according to Form no.2 that is attached to this Guideline, and determines the kind of goods or services, as well as the quantity for each good or service.

At the central institutions level, if the head of the institution sees it reasonable, Form no.2 can be signed by another authorized person that could be the Chief of Cabinet, Personnel Director or Chief of Administration.

4. After the commission has received the procurement order, it appoints two members that will carry out the purchasing. These members will go to the sale units with the list provided in the procurement order and will receive the prices per each good or service. Then, they will propose these prices to the commission. After all the commission members agree with the proposed prices, this gets written in the minutes according to Form no.3 that is attached to this Guideline. Also, Form no.3 determines the members

that are appointed for the purchases, and the prices approved per each purchase. The minutes are signed by all commission members.

The members appointed by the commission carry out the purchase based on the prices approved in the above mentioned minutes and bring the relevant receipts signed and sealed by the sales unit. The receipts are also by the members that have carry out the purchase and are attached to the procurement order to be submitted to the accountant office.

5. Purchases up to Lek 10 thousand can be done in cash, whereas purchases that involve amounts higher than Lek 10 thousand should be done through a payment order.
6. In emergency cases, when a payment order can not be issued preliminary and when the commission can not gather to approve the price because the need for a given service is a sudden one and could not have been projected, such as a flat tire or other defects that need to be repaired immediately, water work on pipes or other similar cases, the receipt will be accepted with the signature of the sales person and the seal of the sales unit or the relevant service unit, also signed by the person that has carried out the payment (it was not necessary that this person be a commission member).

In these cases, after the interested person has submitted the receipt, the commission gathers and through the minutes according to Form no.4 to be attached to this Guideline approves the expenditures incurred and justifies the case of emergency, and the impossibility for its impossibility for its prior projection. The minutes are signed by all the commission members and get approved finally by the head of the procurement order (form no.20) and the minutes (form no.3) that are drafted for projected purchases together with the relevant receipt to be submitted to the accountant's office.

This Guideline enters into force immediately.

PRIME MINISTER
Aleksander Meksi
