

**REPUBLIC OF ALBANIAN
THE ASSEMBLY**

**LAW
No. 131/2012**

**ON SOME ADDITIONS AND AMENDMENTS TO LAW NO. 9643,
DATED 20 NOVEMBER 2006, "ON PUBLIC PROCUREMENT",
AS AMENDED¹**

Pursuant to Articles 78, 81, Paragraph 1 and Article 84 Paragraph 4 of the Constitution, upon the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

DECIDED:

The additions and amendments as described hereunder shall be made to Law No. 9643, dated 20 November 2006 "On Public Procurement", as amended:

Article 1

Paragraph 20 of Article 3 "Definitions" shall be reworded as follows:

"20. Request for proposal "is a procedure whereby the contracting authority shall seek bids from a limited number of economic operators of its choice, but also accept bids submitted by other interested economic operators".

Article 2

The phrase "... and those, which are governed by another law" shall be removed in Paragraph 4.

Article 3

The title of Article 6 shall be amended provided hereunder:

Secret contracts, contracts requiring special security measures and the contracts, which are imposed by substantial interests of the state.”

¹ This Law is partially harmonized with the following:

Article 4

The amendments as described hereunder shall be made to Article 12 "The responsibility of the contracting authority":

1. The phrase "...which have been made available ...", shall be removed in Paragraph 1.
2. Paragraph 2 shall be amended as follows:

"The contracting authority should keep complete records and documentation for procedures performed when determining the winner of the contract, so as to allow the control of law enforcement.

For each procurement procedure, the records should contain at least the following information:

- a) A brief description of the supplies, services or works to be procured, or the need for procurement, for which the contracting authority has made a decision to start the procedure;
- b) The reasons for choosing a particular procedure;
- c) A summary of all requests for clarification about the tender documents, responses to these requests, as well as, a summary of all adjustments made to these documents.
- ç) The names and addresses of the bidders that have submitted bids, the name and address of the bidder, if there is one, whose bid is determined as the winner, as well as the value of the contract;
- d) The qualification manner of the bidders or candidates or their absence;
- dh) The amount or method for calculation of the amount and a summary of other essential conditions for each bid and procurement contract;
- e) A summary of the bids evaluation and comparison;
- ë) In case of rejection of all bids, under Article 24 of this Law, the declaration and the reasons for such refusal;
- f) For the case when a bid has been rejected for the reasons set out in Article 47 of this Law;
- g) A summary of the complaints and their resolution."

3. In paragraph 3, the phrase "... creates a register for..." shall be replaced with the term "administer."

4. Paragraph 3/1 shall be reworded as follows:

"3/1. In the case of electronic procurement, the report generated by the system itself, as defined in the rules of procurement by electronic means, shall become part of the procurement file."

Article 4

The amendments as hereunder described shall be made to Article 13 "Public Procurement Agency":

1. Subparagraph "g" of Paragraph 2 shall be reworded as follows:

"g) Verify the implementation of public procurement procedures following the phase of the signing of the contract under the requirements as laid down in this law and bylaws, and it shall monitor the progress of the public procurement system through information received from the periodical reports of the contracting authorities."

2. The amendments and additions as described hereunder shall be made to Paragraph 3:

- a) Subparagraph "ç" shall be amended as hereunder provided:

"ç) Failure to comply with contractual obligations of public contracts, within the time specified in the procurement rules."

b) Subparagraph "d" with the content as hereunder provided shall be added after Subparagraph "ç":

"d) When there is a final decision of the Competition Authority Commission on bids collusions."

3. In paragraph 5, the phrase "other personnel" shall be replaced with the term "support staff."

Article 6

Articles 14, 15,16,17,18,19 shall be repealed.

Article 7

The amendments as provided hereunder shall be made to Article 21 "The right to information":

Paragraph 1 shall be reworded as follows:

1. "Under Article 12 of this Law, the administered information shall be made available to any interested party, to a party in the process at its request, after the classification of bids has been completed. The contracting authority shall be obliged to make the information available within 5 days of receipt of the request."

2. The following amendments shall be made to Paragraph 2:

a) In the first Paragraph, the phrase "... as soon as possible, but ..." shall be removed.

b) In Subparagraph "c", the phrase "... for the characteristics and advantages of the selected bid" shall be replaced by the phrase "bid classification."

Article 8

The additions and amendments as hereunder provided shall be made to Article 22:

1. The phrase "or by electronic means" shall be added after the phrase "... in writing ..." in Paragraph (1).

2. Paragraphs 2 and 3 shall be amended as follows:

"2. In cases where the contracting authority communicates in electronic form, the electronic communication means and their technical characteristics shall be non-discriminatory, available and interoperable with the products of information and communication technology, which are widely used. Rules and procedures for this form of communication shall be defined in the public procurement rules.

"3. When the communication between economic operators and contracting authorities is carried out in some other form, other than those provided for in this Article, its content should be documented in writing immediately."

Article 9

The sentence with the content as provided hereunder shall be added at the end of the Subparagraph "c" of Paragraph 3 of Article 23:

"... Each reference should be accompanied by the words "or its equivalent".

Article 10

The amendments as hereunder provided shall be made to Article 24:

1. Paragraph 1 shall be reworded as follows:

"1. The Contracting Authority shall cancel the procurement procedure only in the following cases:

- a) For reasons, which go beyond the control of the contracting authority and, which are unpredictable at the time of the commencement of the procurement procedure, while respecting the principles of equality and transparency, as defined in the rules of public procurement;
- b) When no bids have been submitted within the deadline;
- c) When less than 2 candidates qualify in the first phase of the restricted procedure and negotiated procedure with prior publication.
- ç) None of the bids submitted complies with the criteria set out in the tender documents;
- d) If all accepted bids contain prices exceeding the Contracting Authority's budget, provided for a given contract;
- e) When the Public Procurement Commission makes a cancelling decision under the provisions of the Subparagraph "b" and "ç" of Paragraph 3 of Article 64 of this Law."

2. In Paragraph 4, the phrase "... within 10 days" shall be replaced by the phrase "no later than 5 days".

Article 11

Paragraph 3 with the content as provided hereunder shall be added after Paragraph 2 in Article 26:

"3. In the event that, at the time of bid opening, it is observed that one or more of the economic operators are in a conflict of interest with one or more of the officers who are assigned to evaluate the bids, and this conflict situation could not have been observed before this moment, then officer/officers in question should be replaced and then the procurement process should continue."

Article 12

Subparagraph "dh" with the content as provided hereunder shall be added after Subparagraph "d" of Paragraph 1 of Article 29:

"dh) consultancy service" procedure"".

Article 13

Subparagraph "ç" with the content as provided hereunder shall be added after Subparagraph "c" of Paragraph 2 of Article 31:

"ç) The criteria of determining the winning bid as defined in Article 55."

Article 14

The phrase "... and evaluate them on the basis of quality and price" at the end of the second sentence of Paragraph 1 of Article 34 shall be removed.

Article 15

Article 34/1 with the content as provided hereunder shall be added after Article 34:

Article 34/1
Consultancy Service

1. Contracting Authority, which undertakes a consultancy service procedure, shall announce the purpose of the procurement through the publication of a contract notice, in accordance with Article 38 of this Law. The notice should contain the information provided for in Article 39 of this Law.
2. Detailed procedures of conducting this procurement procedure shall be provided for in the procurement rules."

Article 16

Paragraph 1 of Article 36 shall be amended as follows:

"1. Without prejudice to the general principle of non-discrimination and the provisions of Article 22 of this Law, the following rules shall be applicable to the receipt of tenders and participation requests through the electronic transmission means:

a) Information relating to the specifications necessary for the electronic submission of bids and requests to participate, including encryption, shall be made available to interested parties. Means for the electronic receipt of bids and requests to participate should comply with requirements, which are set out in the public procurement rules and in the relevant legislation;

b) Electronic bids should in compliance with the relevant legislation in force on electronic signature, electronic document, and with the state database;

c) In advance of the expiry of the deadline set for receipt of bids or requests to participate, bidders shall undertake to submit the documents, certificates and evidence as mentioned in Articles 45 and 46 of this Law, if the latter do not exist in the electronic format."

Article 17

Paragraph 1 of Article 38 shall be reworded as follows:

"1. The contracting authority, which conducts bidding for public contracts through the open procedure, restricted procedure, negotiated procedure with prior publication of the notice, request for proposal or consultancy service, under Articles 30, 31, 32, 34 and 34 / 1 of this Law, or when it sets off the design contest procedure, it shall, under Article 35 of the Law, make a public announcement for the performance of the respective type of public procurement."

Article 18

Paragraph 4 of Article 40 shall be amended as follows:

"4. The contracting authority, when using restricted procedures and negotiated procedures, shall invite all candidates who qualify in the first stage of the procedure to submit bids. The contracting authority may continue the procurement procedure only when there are at least 2 candidates with the exception of the negotiated procedure without prior publication of notice. The contracting authority should define in the tender notice objective, non-discriminatory criteria, as well as, the rules to be applied."

Article 19

Article 41 shall be reworded as follows:

“Article 41
Tender Documents

1. The contracting authority, when drafting the tender documents, shall use standard documents, as defined in the procurement rules, and it shall make them electronically available for free.

2. The contracting authority, when requested by the economic operators, shall make available to interested parties the tender documents against payment. In any case, the names and the number of economic operators who have expressed interest in purchasing the tender documentation or in its examination, should be kept secret. "

Article 20

The last sentence of Paragraph 1 of Article 42 shall be removed.

Article 21

The phrase "and in any case they should be under the provisions set out in the rules of public procurement" shall be added after the phrase "... and secondary" in Paragraph 3 of Article 46.

Article 22

The phrase "or a forged document" shall be removed in the first sentence of Article 47.

Article 23

Paragraph 4 of Article 48 shall be amended as follows:

"4. Submission of bids shall be carried out as follows:

a) Bids shall be submitted in writing, in person or by mail, signed and sealed in an envelope, with the exception of the cases as described in Subparagraph "b" of this Paragraph, when the contracting authority shall, upon request, provide the bidder with a certificate, stating the date and time of receipt of the bid;

b) Bids shall be submitted electronically, as specified in the bylaws. "

Article 24

The term "accrued" shall be added after the term "value" in Subparagraph "a" of Paragraph 1 of Article 49.

Article 25

Paragraph 1 of Article 55 shall be amended as follows:

"1. The winning bid should be:

- a) the bid, which, under the requirements and criteria as set forth in the tender documents, meets the requirements of the procurement subject matter with the lowest price; or
- b) the most economically advantageous tender based on various criteria related to the subject matter of the contract to be procured, such as: quality, price, technical characteristics, aesthetic, functional and environmental features, operating costs, the economic efficiency, after-sales maintenance, delivery or execution deadline, provided that the following criteria be objective and non-discriminatory."

Article 26

The phrase "...before rejecting them" shall be replaced by the phrase "before qualifying them" in Paragraph 1 of Article 56.

Article 27

The following amendments shall be made to Article 58:

1. Paragraph 2 and 3 shall be amended as follows:

"2. Within 5 days of notification of award, the Contracting Authority shall send a notice to the Public Procurement Agency for publication in the Public Procurement Bulletin.

In the case of procedures, which are conducted by electronic means, the notice of award shall be send to the electronic procurement platform the next working day of the receipt of the decision.

The notification shall contain at least the following information:

- a) The names of participating bidders;
- b) The values of the bids;
- c) The names of disqualified bidders and reasons for disqualification;
- ç) The name of the successful bidder and value offered by him;
- d) Complaints, if there have been any or not.

3. The contracting authority and the winning bidder shall sign the contract according to the deadlines set out in the public procurement rules. In any case, this deadline should not exceed the period of bid validity as specified in the contract notice or in the tender documents."

2. Paragraph 5 shall be reworded as follows:

"5. When the winning bidder fails to sign the contract or fails to provide the contract security, when such a thing is requested, the contracting authority shall carry out the forfeiture of bid security and select the bidder that is ranked the second in the list of selected bids, which have remained. In the event that the criteria of the "lowest price" is applied when determining the winning bid, the authority will select the second ranked bidder only if the difference between the bid, which is ranked in the first and second place, will not be higher than the value of the bid security. This shall not affect the right of the Contracting Authority, under Article 24 of this Law, to reject all remaining bids, and to cancel the procurement procedure. The notice, under Paragraph 1 of this Article, shall be sent to the bidder, whose bid is selected under this Paragraph."

Article 28

The following amendments shall be made to Article 63:

1. Paragraph 1/1 with the content as provided hereunder shall be added after Paragraph 1:

"1.1 In the case of complaints against the tender documents, the economic operators may file a complaint with the contracting authority within 7 days of publication of the contract notice on the website of the Public Procurement Agency.

Upon receipt of a written complaint, the contracting authority shall suspend the continuation of the procurement procedure until the complaint has been fully examined, including making of a decision within 3 days from the filing of the complaint. Under Paragraph 6 et sequens of this Article, the contracting authority's final decision may be appealed to the Public Procurement Commission.

2. The sentence "against the decisions of the contracting authority" shall be added after the word "complaint .."

3. The phrase ... "as defined in Paragraph 5" shall be replaced by the phrase "as defined in Paragraph 5 and 6" shall be added in Paragraph 3.

4. In Paragraph 6, the phrase "within 7 days" shall be replaced with the phrase "within 10 days."

5. The phrase "... the public procurement rules .." shall be replaced by the phrase "the Council of Ministers Decision" in Paragraph 9.

6. Paragraph 11 with the content as provided hereunder shall be added after Paragraph 10:

"11. The procedures of administrative review shall not apply in the case of procurement procedures, for which no public notice has been published as provided for in Article 38 of this Law. ."

Article 29

Subparagraph "c" of Paragraph 4 of Article 64 shall be removed.

Article 30

Paragraph 1 of Article 64/ shall be amended as follows:

"The parties shall be entitled to the right to file a lawsuit with the relevant court against the decision of the Public Procurement Commission to review the administrative dispute."

Article 31

Articles 65 and 66 with the content as provided hereunder shall be added after Article 64/3 "Appeal to the court":

"Article 65

Administrative investigation procedure

1. Public Procurement Agency shall verify the implementation of public procurement procedures, following the procurement contract signing stage, when there is sufficient evidence that there has been a violation of this Law.

2. During the administrative investigation, the Public Procurement Agency shall have the following rights:

a) Carry out on site administrative investigations, including entering also into any office of public institutions and on site examination of the acts or documents relating to the issue under investigation;

b) Seek information and explanations from all the bodies of the central and local administration, as well as, access to any files or materials relating to administrative investigation;

c) Interrogate any person who, according to it, is related to the matter under investigation and summon all people without immunity;

ç) Require the relevant expertise from third-party experts.

3. To perform its functions, the Public Procurement Agency shall enjoy the right to have access to all offices of public administration institutions, which are recognized as contracting authorities, under this Law.

4. The Public Procurement Agency shall be entitled to the right to set a deadline for a response to its requests for information and about submission of the relevant documents, under the legislation governing administrative procedures.

Article 66

Action upon the completion of administrative investigation

1. Upon completion of the administrative investigation, the Public Procurement Agency may make the following decisions:

a) Dismiss the investigation, if the acts or omissions of the contracting authority under investigation fail to constitute a violation of this law or of the administrative or criminal provisions.

b) Impose disciplinary measures or fines pursuant to Article 72 of this Law for the observed violations.

2. 2. In any case, the parties will be notified in writing of the decision."

Article 32

Articles 69,70,71,71/1 of Chapter IX "The activity of the Procurement Advocate" shall be repealed.

Article 33

Article 72 shall be amended as follows:

“Article 72

Administrative violations

1. Under the provisions of this law, failure to comply with procurement rules, when constituting an administrative offense, shall be punishable by disciplinary measure or with a fine as follows:

a) Failure to meet the obligation as set out in Article 4 of this Law shall be punished by a fine of 1, 000, 000 Albanian Leks.

b) Failure to meet the obligation as set out in Paragraph 2 of Article 12 of this law, shall be punished by a fine of 15, 000 to 30, 000 Albanian Leks;

c) Breach of the obligation regarding the form of communication, exchange and storage of information, as defined in Article 21 of this Law, shall be punished by a fine of 50, 000 to 100, 000 Albanian Leks;

ç) Failure to meet the obligation laid down in Article 23 of this Law shall be punished by a fine of 50, 000 to 200, 000 Albanian Leks;

d) Failure to meet the obligation set out in Article 25 of this Law shall be punished by a fine of 50, 000 to 100, 000 Albanian Leks;

dh) Failure to meet the obligation set out in Article 28 of this Law shall be punished by a fine of 20, 000 to 1, 000, 000 Albanian Leks.

e) Failure to meet the obligation set out in Article 38 of this Law shall be punished by a fine of 500, 000 to 1, 000, 000 Albanian Leks;

ë) Failure to meet one of the obligations laid down in Articles 39, 40, 41 and 42 of this Law shall be punished by a fine of 50, 000 to 300, 000 Albanian Leks;

f) Failure to meet the obligations set out in Article 43 of this law, shall be punished by a fine of 50, 000 to 500, 000 Albanian Leks;

g) Failure to meet the obligation set out in Article 53 of this Law shall be punished by a fine of 50, 000 to 1, 000, 000 Albanian Leks;

gj) Failure to meet the obligation set out in Article 56 of this Law shall be punished by a fine of 50, 000 to 100, 000 Albanian Leks;

h) Failure to meet the obligation set out in Article 63 shall be punished by a fine of 100, 000 to 1, 000, 000 Albanian Leks;

i) Persons who try to influence the decision-making of Public Procurement Commission, in violation of Article 19/7 of this Law, shall be punished by a fine of 50, 000 to 100, 000 Albanian Leks;

2. In all the above cases, when the responsible persons are not punished with a fine, and in any other case of violation of the provisions of this law, imposing of disciplinary measures shall be required against them.

3. Under the Code of Civil Procedure interested persons may file an appeal with the court.”

Article 34

The set of words "... and Procurement Advocate” in Article 73 shall be removed.

Article 35

Upon entry into force of this Law, the Procurement Advocate and his staff shall be treated in compliance with the legislation in force.

Within one month of entry into force of this Law, the Procurement Advocate shall deliver to the Assembly the inventory and the archive.

Article 36

Entry into force

This Law shall enter in force immediately and it shall be published in the earliest edition of the Official Journal.

SPEAKER OF THE ASSEMBLY

JOZEFINA TOPALLI (ÇOBA)

Passed on 27 December 2012

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